









THE  
ENGLISH AND EMPIRE DIGEST  
WITH  
COMPLETE AND EXHAUSTIVE  
ANNOTATIONS.

SUPPLEMENT No. 4  
DEALING WITH  
VOLUMES I—XLI.

**In this Volume the new English Cases reported up to 1st January, 1929, are included, and other new cases are included so far as the Volumes of Reports of the same were available in London on that date.**

# THE ENGLISH AND EMPIRE DIGEST

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ANNOTATIONS

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VOLUMES I—XLI.

*BEING CUMULATIVE AND CONTAINING ALL THE MATTER OF THE  
PREVIOUS SUPPLEMENTS, AND, IN ADDITION, ALL THE NEW CASES  
AND ANNOTATIONS WHICH HAVE BEEN DECIDED IN THE INTERVAL*

EDITED BY  
HAROLD G. MEYER, Esq., M.A., LL.B.,  
OF THE INNER TEMPLE, BARRISTER-AT-LAW.

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IN accordance with their original plan the Publishers are continuing to keep "THE ENGLISH AND EMPIRE DIGEST" up to date, the method adopted being very similar to that employed in the case of the "LAWS OF ENGLAND," and the system has been found by Subscribers to be equally satisfactory in use.

Supplement No. 4, to which this note is a preface, brings the published Volumes of the main Work up to January 1st, 1929, viz. Vols. 1-41.

The use of this Supplement will enable subscribers to find with the minimum of time and trouble all the judicial decisions and annotations reported since the first forty-one Volumes were each and severally published.

As regards English cases additional citations and annotations are preceded by the number of the case in the original volume, while new cases follow as far as possible the arrangement in the original volume, and are given the number of the case which they should follow, with the addition of a letter of the alphabet, beginning with the letter "a."

In dealing with the Scottish and Irish decisions, and the decisions of the Overseas Dominions, where they can be justifiably connected with a specific English case in the original volume, or in the Supplement, or with a specific Colonial case in the original volume, that fact is indicated by giving them the number borne by the English case, or the letter of the alphabet borne by the Colonial case, followed by a serial number in Roman numerals. Cases that cannot be joined in this manner are marked with two letters of the alphabet, the first one being the letter "s," and are placed as near as possible to the English or Colonial case which they most resemble.

As regards the Table of Cases to the Supplement the name of the title in which the case is cited is given in an abbreviated form between the number of the original volume in which the title appears and, as regards English cases, the number of the case, or, as regards Scottish and Irish cases and decisions of the Overseas Dominions, the number of the page of the Supplement on which the case is dealt with. The abbreviated forms of the titles are set out below :—

## TABLE OF ABBREVIATIONS OF THE TITLES IN THE WORK.

FULL TITLE.	ABBREVIATIONS.	FULL TITLE.	ABBREVIATIONS.
<b>Vol. I.</b>		<b>Vol. XII.</b>	
ACTION . . . .	Action	CONTRACT . . . .	Contr.
ADMIRALTY . . . .	Adm.	<b>Vol. XIII.</b>	
AGENCY . . . .	Agcy.	COPYHOLDS . . . .	Cohlds.
<b>Vol. II.</b>		COPYRIGHT AND LITERARY	
AGRICULTURE . . . .	Agric.	PROPERTY . . . .	Coprt.
ALIENS . . . .	Aliens	CORONERS . . . .	Crnrs.
ANIMALS . . . .	Animals	CORPORATIONS . . . .	Corpns.
ARBITRATION . . . .	Arbn.	COUNTY COURTS . . . .	Cty. Cts.
<b>Vol. III.</b>		<b>Vols. XIV. &amp; XV.</b>	
AUCTION AND AUCTIONEERS .	Auct.	CRIMINAL LAW AND PRO-	
BAILMENT . . . .	Bailmt.	CEDURE . . . .	Crim.
BANKERS AND BANKING .	Bank.	<b>Vol. XVI.</b>	
BARRISTERS . . . .	Barr.	CONTEMPT OF COURT, ATTACH-	
BASTARDY . . . .	Basty.	MENT AND COMMITTAL .	Cntmpt.
<b>Vols. IV. &amp; V.</b>		COURTS . . . .	Courts
BANKRUPTCY AND INSOLVENCY	Bkpcy.	CROWN PRACTICE . . . .	Cr. Pract.
<b>Vol. VI.</b>		<b>Vol. XVII.</b>	
BILLS OF EXCHANGE, PRO-		CUSTOM AND USAGES . . . .	Custom
MISSORY NOTES & NEGOTI-		DAMAGES . . . .	Damgs.
ABLE INSTRUMENTS . . . .	B. of Exch.	DEEDS AND OTHER INSTRU-	
<b>Vol. VII.</b>		MENTS . . . .	Deeds
BILLS OF SALE . . . .	B. of Sale	DEPENDENCIES INCLUDING	
BONDS . . . .	Bonds	DOMINIONS, DEPENDENCIES,	
BOUNDARIES, FENCES AND		COLONIES AND BRITISH POS-	
PARTY WALLS . . . .	Bounds.& F.	SESSIONS . . . .	Dep.
BUILDING CONTRACTS, EN-		<b>Vol. XVIII.</b>	
GINEERS & ARCHITECTS .	Bldg. Conts.	DESCENT AND DISTRIBUTION	Desct.
BUILDING SOCIETIES . . . .	Bldg. Soc.	DISCOVERY, INSPECTION AND	
BURIAL AND CREMATION .	Burial	INTERROGATORIES . . . .	Discy.
<b>Vol. VIII.</b>		DISTRESS . . . .	Distr.
CARRIERS . . . .	Carr.	<b>Vol. XIX.</b>	
CHARITIES . . . .	Char.	EASEMENTS AND PROFITS &	
CHOSSES IN ACTION . . . .	Chos.	PRENDRE . . . .	Easmt.
CLUBS . . . .	Clubs	ECCLESIASTICAL LAW . . . .	Eccl.
<b>Vols. IX. &amp; X.</b>		EDUCATION . . . .	Educ.
COMPANIES . . . .	Coys.	<b>Vol. XX.</b>	
<b>Vol. XI.</b>		ELECTIONS . . . .	Elect.
COMMONS AND RIGHTS OF		ELECTRIC LIGHTING AND	
COMMON . . . .	Comns.	POWER . . . .	Electric
COMPULSORY PURCHASE OF		EQUITY . . . .	Eqy.
LAND AND COMPENSATION	Comp. Pche.	<b>Vol. XXI.</b>	
CONFLICT OF LAWS . . . .	Conf.	ESTATE AND OTHER DEATH	
CONSTITUTIONAL LAW . . . .	Const. L.	DUTIES . . . .	
		ESTOPPEL . . . .	Estpl.
		EXECUTION . . . .	

# TABLE OF ABBREVIATIONS OF THE TITLES IN THE WORK—Continued.

FULL TITLE.	ABBREVIATIONS.	FULL TITLE.	ABBREVIATIONS.
<b>Vol. XXII.</b>		<b>Vol. XXXIV.</b>	
EVIDENCE . . . . .	Evid.	MASTER AND SERVANT . . . . .	Mast. & S.
<b>Vols. XXIII. &amp; XXIV.</b>		MAYOR'S AND CITY OF LONDON COURT . . . . .	May. Ct.
EXECUTORS AND ADMINISTRATORS . . . . .	Exors.	MEDICINE AND PHARMACY . . . . .	Med. &
EXTRADITION AND FUGITIVE OFFENDERS . . . . .	Extrdn.	METROPOLIS . . . . .	Metrop.
FACTORIES AND SHOPS . . . . .	Fact.	MINES, MINERALS AND QUARRIES . . . . .	Mines
FAMILY ARRANGEMENTS . . . . .	Fam. Arr.	<b>Vol. XXXV.</b>	
FERRIES . . . . .	Ferries	MISREPRESENTATION AND FRAUD . . . . .	Misrep.
<b>Vol. XXV.</b>		MISTAKE . . . . .	Mistake
FISHERIES . . . . .	Fish.	MONEY AND MONEY-LENDING . . . . .	Money
FOOD AND DRUGS . . . . .	Food	MORTGAGE . . . . .	Mtge.
FRAUDULENT AND VOIDABLE CONVEYANCES . . . . .	Fraud. Conv	NAME AND ARMS . . . . .	Name
FRIENDLY SOCIETIES . . . . .	Fr. Soc.	<b>Vol. XXXVI.</b>	
GAME . . . . .	Game	NEGLIGENCE . . . . .	Negl.
GAMING AND WAGERING . . . . .	Gaming	NOTARIES . . . . .	Notar.
GAS . . . . .	Gas	NUISANCE . . . . .	Nuis.
GIFTS . . . . .	Gifts	OPEN SPACES AND RECREATION GROUNDS . . . . .	Open Sp.
<b>Vol. XXVI.</b>		PARLIAMENT . . . . .	Parl.
GUARANTEE AND INDEMNITY . . . . .	Guar.	PARTITION . . . . .	Partn.
HIGHWAYS, STREETS, AND BRIDGES . . . . .	Hghys.	PARTNERSHIP . . . . .	Prtnrs.
<b>Vol. XXVII.</b>		PATENTS AND INVENTIONS . . . . .	Pats.
HUSBAND AND WIFE . . . . .	H. & W.	<b>Vol. XXXVII.</b>	
<b>Vol. XXVIII.</b>		PAWNS AND PLEDGES . . . . .	Pawns
INCOME TAX . . . . .	Inc. T.	PEERAGES AND DIGNITIES . . . . .	Peer.
INDUSTRIAL, PROVIDENT, AND SIMILAR SOCIETIES . . . . .	Ind. Soc.	PERPETUITIES . . . . .	Perps.
INFANTS AND CHILDREN . . . . .	Infts.	PERSONAL PROPERTY . . . . .	Pers. Prop.
INJUNCTION . . . . .	Injon.	POLICE . . . . .	Police
<b>Vol. XXIX.</b>		POOR LAW . . . . .	Poor L.
INNS AND INNKEEPERS . . . . .	Inns	POST OFFICE . . . . .	Post Off.
INSURANCE . . . . .	Insce.	POWERS . . . . .	Powers
INTERPLEADER . . . . .	Intpr.	PRESS AND PRINTING . . . . .	Press
<b>Vols. XXX. &amp; XXXI.</b>		PRISONS . . . . .	Prns.
INTOXICATING LIQUORS . . . . .	Intox.	PRIZE LAW AND JURISDICTION . . . . .	Prize L.
JUDGMENTS AND ORDERS . . . . .	Jdgmts.	<b>Vol. XXXVIII.</b>	
JURIES . . . . .	Juries	PUBLIC AUTHORITIES, BODIES AND OFFICERS . . . . .	Pub. Auth.
LAND IMPROVEMENT . . . . .	Land Imp.	PUBLIC HEALTH AND LOCAL ADMINISTRATION . . . . .	Pub. Hlth.
LAND TAX . . . . .	Land Tax	RAILWAYS AND CANALS . . . . .	Rys.
LANDLORD AND TENANT . . . . .	L. & T.	RATES AND RATING . . . . .	Rates
<b>Vol. XXXII.</b>		REAL PROPERTY AND CHATELS REAL . . . . .	Real Prop.
LIBEL AND SLANDER . . . . .	Libel	<b>Vol. XXXIX.</b>	
LIEN . . . . .	Lien	RECEIVERS . . . . .	Recrs.
LIMITATION OF ACTIONS . . . . .	Limit. of A.	REGISTRATION OF BIRTHS, MARRIAGES, AND DEATHS . . . . .	Regn.
LITERARY AND SCIENTIFIC INSTITUTIONS . . . . .	Lit. Inst.	RENTCHARGES AND ANNUITIES . . . . .	Rntchgs.
LOAN SOCIETIES . . . . .	Loan Soc.	REVENUE . . . . .	Revenue
<b>Vol. XXXIII.</b>		ROYAL FORCES . . . . .	Royal F.
LOCAL GOVERNMENT . . . . .	L. G.	SALE OF GOODS . . . . .	S. Goods
LUNATICS AND PERSONS OF UNSOUND MIND . . . . .	Lunat.	<b>Vol. XL.</b>	
MAGISTRATES . . . . .		SALE OF LAND . . . . .	S. Land
MALICIOUS PROSECUTION AND PROCEDURE . . . . .	Mal. Pros.	SET-OFF AND COUNTERCLAIM . . . . .	Set-off
MARKETS AND FAIRS . . . . .	Mkts.	SETTLEMENTS . . . . .	Sttlmts.
		<b>Vol. XLI.</b>	
		SEWERS AND DRAINAGE . . . . .	Sewers
		SHERIFFS AND BAILIFFS . . . . .	Shrffs.
		SHIPPING AND NAVIGATION . . . . .	Ship.

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Just as the Supplement to "THE LAWS OF ENGLAND" has helped that great Work to establish its unrivalled position in the British Commonwealth of Nations, so do the Publishers confidently believe that the Supplement to "THE ENGLISH AND EMPIRE DIGEST" will assist in making "THE ENGLISH AND EMPIRE DIGEST" not only always complete and up to date, but also indispensable wherever the great system of law practised by the English-speaking nations is in force.

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# REPORTS INCLUDED IN THIS WORK AND THEIR ABBREVIATIONS

A. C. (preceded by date)	Law Reports, Appeal Cases, House of Lords, since 1890 ( <i>e.g.</i>	
A. Jur. Rep.	Australian Jurist Reports ... ..	Eng.
A. L. T. ...	Australian Law Times ... ..	Aus.
A. R. ...	Ontario Appeal Reports, 27 vols., 1876—1900 ... ..	Aus.
Act. ...	Acton's Reports, Prize Causes, 2 vols., 1809—1841 ...	Can.
Ad. & El.	Adolphus and Ellis's Reports, King's Bench and Queen's Bench, 12 vols., 1834—1842 ... ..	Eng.
Adam ...	Adam's Justiciary Reports (Scotland), 1893—(current) ...	Eng.
Add. ...	Addams' Ecclesiastical Reports, 3 vols., 1822—1826 ... ..	Scot.
Agra ...	Agra High Court ... ..	Eng.
Agra F. B.	Agra High Court, Full Bench ... ..	Ind.
Alc. & N.	Alcock and Napier's Reports, King's Bench (Ireland), 1 vol., 1813—1833 ... ..	Ind.
Alc. Reg. Cas. ..	Alcock's Registry Cases (Ireland), 1 vol., 1832—1841 ... ..	Ir.
Aleyn ... ..	Aleyn's Reports, King's Bench, fol., 1 vol., 1646—1649 ...	Ir.
All. ... ..	New Brunswick Reports (Allen) ... ..	Eng.
Alta. L. R. ..	Alberta Law Reports ... ..	Can.
Amb. ... ..	Ambler's Reports, Chancery, 1 vol., 1716—1783 ... ..	Can.
And. ... ..	Anderson's Reports, Common Pleas, fol., 2 parts in one vol.,	Eng.
Andr. ... ..	Andrews' Reports, King's Bench, fol., 1 vol., 1737—1740	Eng.
Anst. ... ..	Anstruther's Reports, Exchequer, 3 vols., 1792—1797	Eng.
App. Cas. ..	Law Reports, Appeal Cases, House of Lords, 15 vols 1875-	Eng.
App. Ct. Rep. ..	Appeal Court Reports ... ..	Eng.
App. D. ... ..	South African Law Reports, Appellate Division	N.Z.
Architects' L. R	Architects' Law Reports, 4 vols., 1904—1909 ... ..	S. Af.
Argus L. R.	Argus Law Reports ... ..	Eng.
Arkley ... ..	Arkley's Justiciary Reports (Scotland), 1 vol., 1846—1848 ...	Aus.
Arm. M. & O.	Armstrong, Macartney, and Ogle's Civil and Criminal Reports (Ireland), 1840—1842 ... ..	Scot.
Arn. ... ..	Arnold's Reports, Common Pleas, 2 vols., 1838—1839 ... ..	Ir.
Arn. & H.	Arnold and Hodges' Reports, Queen's Bench, 1 vol., 1840—1841	Eng.
Ashb. ... ..	Ashburner's Principles of Equity, 1902 ... ..	Eng.
Asp. M. L. C.	Aspinall's Maritime Law Cases, 1870—(current) ... ..	Eng.
Ayl. Pan.	Atkyns' Reports, Chancery, 3 vols., 1736—1754 ... ..	Eng.
Ayl. Par.	Ayliffe's New Pandect of Roman Civil Law ... ..	Eng.
	Ayliffe's Parergon Juris Canonici Anglicani ... ..	Eng.
B. & Ad. ... ..	Barber's Gold Law ... ..	S. Af.
B. & Ald.	Barnewall and Adolphus' Reports, King's Bench, 5 vols., 1830—1834 ... ..	Eng.
B. & C.	Barnewall and Alderson's Reports, King's Bench, 5 vols., 1817—	Eng.
B. & C. R. (preceded by date)	Barnewall and Cresswell's Reports, King's Bench, 10 vols., 1822—1830 ... ..	Eng.
B. & S. ... ..	Reports of Bankruptcy and Companies Winding up Cases, 1918—(current) ( <i>e.g.</i> , [1918—19] B. & C. R.) ... ..	Eng.
B. C. R. ... ..	Best and Smith's Reports, Queen's Bench, 10 vols., 1861—1870	Eng.
B. Dig. ... ..	British Columbia Reports ... ..	Can.
B. L. R. ... ..	Bose's Digest ... ..	Ind.
B. L. R. A. C.	Bengal Law Reports ... ..	Ind.
B. L. R. P. C. ...	Bengal Law Reports, Appeal Cases ... ..	Ind.
B. L. R. Sup. Vol	Bengal Law Reports, Privy Council ... ..	Ind.
B. R. A. ... ..	Bengal Law Reports, Supp. Vol. ... ..	Ind.
B. W. C. C. ... ..	Butterworths' Rating Appeals, 2 vols., 1913—1924 ... ..	Eng.
Bac. Abr. ... ..	Butterworths' Workmen's Compensation Cases, 1907—(current)	Eng.
Bail Ct. Cas. ...	Bacon's Abridgment ... ..	Eng.
	Bail Court Cases (Lowndes and Maxwell), 1 vol., 1852—1854	Eng.



# xiv      REPORTS INCLUDED IN THIS WORK AND THEIR ABBREVIATIONS.

Baild.	Baildon's Select Cases in Chancery (Selden Society, Vol.	Eng.
Ball & B.	Ball and Beatty's Reports, Chancery (Ireland), 2 vols., 1807-1814	Ir.
Bankr. & Ins. R.	Bankruptcy and Insolvency Reports, 2 vols., 1853-1855	Eng.
Bar. & Arn.	Barron and Arnold's Election Cases, 1 vol., 1843-1846	
Bar. & Aust.	Barron and Austin's Election Cases, 1 vol., 1842	Eng.
Barn. Ch.	Barnardiston's Reports, Chancery, fol., 1 vol., 1740-1741	Eng.
Barn. K. B.	Barnardiston's Reports, King's Bench, fol., 2 vols., 1726-	Eng.
Barnes	Barnes' Notes of Cases of Practice, Common Pleas, 1 vol., -1760	Eng.
	Batty's Reports, King's Bench (Ireland), 1 vol., 1825-1826	Ir.
Beat.	Beatty's Reports, Chancery (Ireland), 1 vol., 1813-1830	Ir.
Beav.	Beavan's Reports, Rolls Court, 36 vols., 1838-1866	Eng.
Beav. & Wal.	Beavan and Walford's Railway Parliamentary Cases, 1 vol., 1846	Eng.
	Beawes's Lex Mercatoria	Eng.
Bell, C. C.	T. Bell's Crown Cases Reserved, 1 vol., 1858-1860	Eng.
Bell, Ct. of Sess.	R. Bell's Decisions, Court of Session (Scotland), 1 vol., 1790-1792	Scot.
Bell, Ct. of Sess. fol.	R. Bell's Decisions, Court of Session (Scotland), fol., 1 vol., 1794-1795	Scot.
Bell, Dict. Dec.	S. S. Bell's Dictionary of Decisions, Court of Session (Scotland), 2 vols., 1808-1833	Scot.
Bell, Sc. App.	S. S. Bell's Scotch Appeals, House of Lords, 7 vols., 1842-1850	Scot.
Bellewe	Bellewe's Cases temp. Richard II., King's Bench, 1 vol.	Eng.
Belt's Sup.	Belt's Supplement to Vesey Sen., Chancery, 1 vol., 1746-1756	Eng.
Benl.	Benloe's Reports, Common Pleas, fol., 1 vol., 1357-1579	Eng.
	Benloe's (or Bendloe's) Reports, King's Bench, fol., 1 vol.,	Eng.
	New Brunswick Reports (Berton)	Can.
Bing.	Bingham's Reports, Common Pleas, 10 vols., 1822-1834	Eng.
Bing. N. C.	Bingham's New Cases, Common Pleas, 6 vols., 1834-1840	Eng.
Biss. & Sm.	Bisset and Smith's Digest	S. Af.
Bitt. Prac. Cas.	Bittleston's Practice Cases in Chambers under the Judicature Acts, 1873 and 1875, 1 vol., 1875-1876	Eng.
Bitt. Rep. in Ch.	Bittleston's Reports in Chambers (Queen's Bench Division), 1 vol., 1883-1884	Eng.
Bl. Com.	Blackstone's Commentaries	
Bl. D. & Osb.	Blackham, Dundas, and Osborne's Reports, Practice and Nisi Prius (Ireland), 1 vol., 1846-1848	Ir.
Bli.	Bligh's Reports, House of Lords, 4 vols., 1819-1821	Eng.
Bli. N. S.	Bligh's Reports, House of Lords, New Series, 11 vols., 1827-1837	Eng.
Bluett	Bluett's Isle of Man Cases	I. of M.
Bom.	Bombay High Court Reports	Ind.
Bom. A. C.	Bombay Reports, Appellate Jurisdiction	Ind.
Bom. Cr. Ca.	Bombay Reports, Crown Cases	Ind.
Bom. O. C.	Bombay Reports, Original Civil Jurisdiction	Ind.
Bos. & P.	Bosanquet and Puller's Reports, Common Pleas, 3 vols. 1804	Eng.
Bos. & P. N. R.	Bosanquet and Puller's New Reports, Common Pleas, 2 vols., 1804-1807	Eng.
	Bott's Laws Relating to the Poor, 2 vols., 6th ed., 1827	Eng.
Bourke	Bourke's Reports	Ind.
Br. & Col. Pr. Cas.	British and Colonial Prize Cases, 3 vols., 1914-1919	Eng.
Bract.	Bracton De Legibus et Consuetudinibus Angliæ	
Bro. Abr.	Sir R. Brooke's Abridgement	Eng.
Bro. C. C.	W. Brown's Chancery Reports, 4 vols., 1778-1794	Eng.
Bro. Ecc. Rep.	W. G. Brooke's Ecclesiastical Reports, Privy Council, 1 vol., 1850-1872	Eng.
Bro. N. C.	Sir R. Brooke's New Cases, 1 vol., 1515-1558	Eng.
Bro. Parl. Cas.	J. Brown's Cases in Parliament, 8 vols., 1702-1800	Eng.
Bro. Supp. to Mor.	M. P. Brown's Supplement to Morison's Dictionary of Decisions, Court of Session (Scotland), 5 vols.	Scot.
Bro. Synop.	M. P. Brown's Synopsis of Decisions, Court of Session (Scotland), 4 vols., 1532-1827	Scot.
Brod. & Bing.	Broderip and Bingham's Reports, Common Pleas, 3 vols., 1819	
Brod. & F.	Broderick and Fremantle's Ecclesiastical Reports, Privy Council, 1 vol., 1705-1864	Eng.
Broun	Broun's Justiciary Reports (Scotland), 2 vols., 1842-1845	Scot.
Brown. & Lush.	Browning and Lushington's Reports, Admiralty, 1 vol., 1863-	
Brownl.	Brownlow and Goldesborough's Reports, Common Pleas, 2 parts, 1569-1624	Eng.
Bruce	Bruce's Decisions, Court of Session (Scotland), 1714-1715	Scot.



# INCLUDED IN THIS WORK AND THEIR ABBREVIATIONS.

<b>Buch.</b> ...	... Buchanan's Reports of the Supreme Court of the Cape of Good Hope, 1868—1879	S. Af.
<b>Bush. A. C.</b>	Buchanan's Reports of Appeal Court (Cape)	S. Af.
<b>Buchan.</b> ...	Buchanan's Reports, Court of Session and Justiciary (Scotland), 1806—1813	Scot.
<b>Buck</b> ...	Buck's Cases in Bankruptcy, 1 vol., 1816—1820	Eng.
<b>Bull. N. P.</b>	Buller's Nisi Prius (published, London, 1772)	Eng.
	Bulstrode's Reports, King's Bench, fol., 3 parts in 1 vol., 1610—1626	Eng.
<b>Bunb.</b> ...	Bunbury's Reports, Exchequer, fol., 1 vol., 1713—1741	Eng.
<b>Burr.</b> ...	Burrow's Reports, King's Bench, 5 vols., 1756—1772	Eng.
<b>Burr. S. C.</b>	Burrow's Settlement Cases, King's Bench, 1 vol., 1733—1776	Eng.
<b>Burrell</b> ...	Burrell's Reports, Admiralty, ed. by Marsden, 1 vol., 1648—1840	Eng.
<b>C. A.</b> ...	Court of Appeal Reports, 3 vols., 1867—1877	N.Z.
<b>C. &amp; P.</b> ...	Carrington and Payne's Reports, Nisi Prius, 9 vols., 1823—1841	Eng.
<b>C. B.</b> ...	Common Bench Reports, 18 vols., 1845—1856	Eng.
<b>C. B. N. S.</b>	Common Bench Reports, New Series, 20 vols., 1856—1865	Eng.
<b>C. B. R.</b> ...	Canadian Bankruptcy Reports Annotated, 1920—(current)	Can.
<b>C. C. Ct. Cas.</b>	Central Criminal Court Cases (Sessions Papers), 1834—1913	Eng.
<b>C. L. Ch.</b>	Common Law Chambers	Can.
<b>C. L. J.</b> ...	Cape Law Journal	S. Af.
<b>C. L. J. N. S.</b>	Canada Law Journal, New Series, 1865—(current)	Can.
<b>C. L. J. O. S.</b>	Canada Law Journal, Old Series, 10 vols., 1855—1864	Can.
<b>C. L. R.</b> ...	Common Law Reports, 3 vols., 1853—1855	Eng.
<b>C. L. R.</b> ...	Commonwealth Law Reports	Aus.
<b>C. L. R.</b> ...	Calcutta Law Reporter	Ind.
<b>C. L. T.</b> ...	Canadian Law Times	Can.
<b>C. L. T. Occ. N.</b>	Canadian Law Times, Occasional Notes	Can.
	Upper Canada Common Pleas	Can.
<b>C. P. D.</b> ...	Law Reports, Common Pleas Division, 5 vols., 1875—1880	Eng.
<b>C. P. D.</b> ...	Cape Provincial Division Reports	S. Af.
<b>C. R. [date] A. C.</b>	Canadian Reports, Appeal Cases	Can.
<b>C. T. R.</b> ...	Cape Times Reports of the Supreme Court of the Cape of Good Hope	S. Af.
<b>C. W. N.</b> ...	Calcutta Weekly Notes	Ind.
<b>Cab. &amp; El.</b> ...	Cababé and Ellis's Reports, Queen's Bench Division, 1 vol., 1882—1885	Eng.
<b>Cald. Mag. Cas.</b>	Caldecott's Magistrates' Cases, 1 vol., 1776—1785	Eng.
<b>Calth.</b> ...	Calthrop's City of London Cases, King's Bench, 1 vol., 1609—1618	Eng.
<b>Cam. Cas.</b> ...	Cameron's Supreme Court Cases	Can.
<b>Cam. Prac.</b> ...	Cameron's Supreme Court Practice	Can.
<b>Camp.</b> ...	Campbell's Reports, Nisi Prius, 4 vols., 1807—1816	Eng.
<b>Can. Com. Cas.</b> ...	Commercial Law Reports of Canada, 4 vols., 1901—1905	Can.
<b>Can. Crim. Cas.</b>	Canadian Criminal Cases, Annotated, 1898—(current)	Can.
<b>Can. Gaz.</b> ...	Canadian Gazette	Can.
<b>Can. Ry. Cas.</b> ...	Canadian Railway Cases	Can.
<b>Car. &amp; Kir.</b> ...	Carrington and Kirwan's Reports, Nisi Prius, 3 vols., 1843—1853	Eng.
<b>Car. &amp; M.</b> ...	Carrington and Marshman's Reports, Nisi Prius, 1 vol., 1841—1842	Eng.
<b>Car. C. L.</b> ...	Carrington's Treatise on Criminal Law	Can.
<b>Card. Doc. Ann.</b>	Cardwell's Documentary Annals of the Reformed Church of England, 2 vols., 1546—1716	Eng.
	New Brunswick Reports (Carleton)	Can.
<b>Carp. Pat. Cas.</b> ...	Carpmael's Patent Cases, 2 vols., 1602—1842	Eng.
<b>Cart.</b> ...	Carter's Reports, Common Pleas, fol., 1 vol., 1664—1673	Eng.
<b>Cart.</b> ...	Cases on British North America Act (Cartwright)	Can.
<b>Carth.</b> ...	Carthew's Reports, King's Bench, fol., 1 vol., 1687—1700	Eng.
<b>Cary</b> ...	Cary's Reports, Chancery, 1 vol.	Eng.
<b>Cas. in Ch.</b> ...	Cases in Chancery, fol., 3 parts, 1660—1697	Eng.
<b>Cas. Pract. K. B.</b>	Cases of Practice, King's Bench, 1 vol., 1655—1775	Eng.
<b>Cas. Sett.</b> ...	Cases of Settlements and Removals, 1 vol., 1685—1727	Eng.
<b>Cas. temp. Finch</b>	Cases temp. Finch, Chancery, fol., 1 vol., 1673—1680	Eng.
<b>Cas. temp. King</b>	Select Cases temp. King, Chancery, fol., 1 vol., 1724—1733	Eng.
<b>Cas. temp. Talb.</b>	Cases in Equity temp. Talbot, fol., 1 vol., 1730—1737	Eng.
<b>Cass. Dig.</b> ...		Can.
<b>Ch. (preceded by date)</b>	Law Reports, Chancery Division, since 1890 (e.g., [1891] 1 Ch.)	Eng.
<b>Ch. App.</b>	Law Reports, Chancery Appeals, 10 vols., 1865—1875	Eng.
<b>Ch. Cas. in Ch.</b>	Choyce Cases in Chancery, 1557—1606	Eng.
<b>Ch. Ch.</b> ...	Upper Canada Chancery Chambers Reports	Can.
<b>Ch. D.</b> ...	Law Reports, Chancery Division, 45 vols., 1875—1890	Eng.
<b>Ch. Rob.</b>	Christopher Robinson's Reports, Admiralty, 6 vols., 1798—1808	Eng.
<b>Char. Cham. Cas.</b>	Charley's Chamber Cases, 2 vols., 1875—1876	Eng.
<b>Char. Pr. Cas.</b> ...	Charley's New Practice Reports, 3 vols., 1875—1876	Eng.
<b>Chip.</b> ...	New Brunswick Reports (Chipman)	Can.

Chit. ...	Chitty's Practice Reports, King's Bench, 2 vols., 1770—1822...	Eng.
Cl. & Fin. ...	Clark and Finnelly's Reports, House of Lords, 12 vols., 1831—1846 ...	Eng.
Cl. & Sc. Dr. Cas.	Clark and Scully's Drainage Cases ...	Can.
Clay. ...	Clayton's Reports and Pleas of Assizes at Yorke, 1 vol., 1631—1650 ...	Eng.
Clif. & Rick. ...	Clifford and Rickards' Locus Standi Reports, 3 vols., 1873—1884	Eng.
Clif. & Steph. ...	Clifford and Stephens' Locus Standi Reports, 2 vols., 1867—1872	Eng.
Co. A. ...	Cook's Lower Canada Admiralty Court Cases ...	Can.
Co. Ent. ...	Coke's Entries ...	Eng.
Co. Inst. ...	Coke's Institutes ...	Eng.
Co. L. J. ...	Colonial Law Journal ...	N.Z.
Co. Litt. ...	Coke on Littleton (1 Inst.) ...	Eng.
Co. Rep. ...	Coke's Reports, 13 parts, 1572—1616 ...	Eng.
Coch. ...	Nova Scotia Reports (Cochran) ...	Can.
Cockb. & Rowe	Cockburn and Rowe's Election Cases, 1 vol., 1833 ...	Eng.
Coll. ...	Collyer's Reports, Chancery, 2 vols., 1844—1846 ...	Eng.
Coll. Jurid. ...	Collectanea Juridica, 2 vols. ...	Eng.
Colles ...	Colles' Cases in Parliament, 1 vol., 1697—1713 ...	Eng.
Colt. ...	Coltman's Registration Cases, 1 vol., 1879—1885 ...	Eng.
Com. ...	Comyns' Reports, King's Bench, Common Pleas, and Exchequer, fol., 2 vols., 1695—1740 ...	Eng.
Com. Cas. ...	Commercial Cases, 1895—(current) ...	Eng.
Com. Dig. ...	Comyns' Digest ...	Eng.
Comb. ...	Comberbach's Reports, King's Bench, fol., 1 vol., 1685—1698	Eng.
Con. & Law. ...	Connor and Lawson's Reports, Chancery (Ireland), 2 vols.,	Ir.
Cong. Dig. ...	Congdon's Digest ...	Can.
Const ...	Const's edition of Bott's Poor Laws, 3 vols., 1807 ...	Eng.
Cooke & Al. ...	Cooke and Alcock's Reports, King's Bench (Ireland), 1 vol., 1833—1834 ...	Ir.
Cooke, Pr. Cas. ...	Cooke's Practice Reports, Common Pleas, 1 vol., 1706—1747	Eng.
Cooke, Pr. Reg.	Cooke's Practical Register of the Common Pleas, 1 vol., 1702—1742 ...	Eng.
Coop. G. ...	G. Cooper's Reports, Chancery, 1 vol., 1792—1815 ...	Eng.
Coop. Pr. Cas. ...	C. P. Cooper's Reports, Chancery Practice, 1 vol., 1837—1838	Eng.
Coop. temp. Brough.	C. P. Cooper's Cases temp. Brougham, Chancery, 1 vol., 1833—	Eng.
Coop. temp. Cott.	C. P. Cooper's Cases temp. Cottenham, Chancery, 2 vols., 1846—1848 (and miscellaneous earlier cases) ...	Eng.
Cor. ...	Coryton's Reports ...	Ind.
Corb. & D. ...	Corbett and Daniell's Election Cases, 1 vol., 1819 ...	Eng.
Correspondances Jud.	Correspondances Judiciaires ...	Can.
Couper ...	Couper's Justiciary Reports (Scotland), 5 vols., 1868—1885 ...	Scot.
Cout. ...	Coutlees' Unreported Cases ...	Can.
Cout. Dig. ...	Coutlees' Digest ...	Can.
Cowp. ...	Cowper's Reports, King's Bench, 2 vols., 1774—1778 ...	Eng.
Cox & Atk. ...	Cox and Atkinson's Registration Appeal Cases, 1 vol., 1843—1846	Eng.
Cox, C. C. ...	E. W. Cox's Criminal Law Cases, 1843—(current) ...	Eng.
Cox, Eq. Cas. ...	S. C. Cox's Equity Cases, 2 vols., 1745—1797 ...	Eng.
Cox, M. & H. ...	Cox, Macrae, and Hertslet's County Courts Cases and Appeals, 1 vol., 1846—1852 ...	Eng.
Cr. & J. ...	Crompton and Jervis's Reports, Exchequer, 2 vols., 1830—1832	Eng.
Cr. & M. ...	Crompton and Meeson's Reports, Exchequer, 2 vols., 1832—1834	Eng.
Cr. & Ph. ...	Craig and Phillips' Reports, Chancery, 1 vol., 1840—1841 ...	Eng.
Cr. App. Rep. ...	Cohen's Criminal Appeal Reports, 1908—(current) ...	Eng.
Cr. M. & R. ...	Crompton, Meeson, and Roscoe's Reports, Exchequer, 2 vols.,	Eng.
Craw. & D. ...	Crawford and Dix's Circuit Cases (Ireland), 3 vols., 1838—1846	Ir.
Craw. & D. Abr. C.	Crawford and Dix's Abridged Cases (Ireland), 1 vol., 1837—1838	Ir.
Cress. Insolv. Cas.	Cresswell's Insolvency Cases, 1 vol., 1827—1829 ...	Eng.
Cripps' Church Cas.	Cripps' Church and Clergy Cases, 2 parts, 1847—1850 ...	Eng.
Cro. Car. ...	Croke's Reports temp. Charles I., King's Bench and Common Pleas, 1 vol., 1625—1641 ...	Eng.
Cro. Eliz. ...	Croke's Reports temp. Elizabeth, King's Bench and Common Pleas, 1 vol., 1582—1603 ...	Eng.
Cro. Jac. ...	Croke's Reports temp. James I., King's Bench and Common Pleas, 1 vol., 1603—1625 ...	Eng.
Cru. Dig. ...	Cruise's Digest of the Law of Real Property, 7 vols. ...	Eng.
Cunn. ...	Cunningham's Reports, King's Bench, fol., 1 vol., 1734—1735	Eng.
Curt. ...	Curteis' Ecclesiastical Reports, 3 vols., 1834—1844 ...	Eng.
D. ...	Duxbury's Reports of the High Court of the South African Republic ...	S. Af.
D. O. A. ...	Dorion's Queen's Bench Reports ...	Can.
D. L. R. ...	Dominion Law Reports ...	Can.

# REPORTS INCLUDED IN THIS WORK AND THEIR ABBREVIATIONS.

xvii

Dal. ...	Dalison's Reports, Common Pleas, fol., 1 vol., 1546—1574 ...	Eng.
Dalr. ...	Dalrymple's Decisions, Court of Session (Scotland), fol., 1 vol., 1698—1720 ...	Scot.
Dan. ...	Daniell's Reports, Exchequer in Equity, 1 vol., 1817—1823 ...	Eng.
Dan. & Ll. ...	Danson and Lloyd's Mercantile Cases, 1 vol., 1828—1829 ...	Eng.
Dav. & Mer. ...	Davison and Merivale's Reports, Queen's Bench, 1 vol., 1843—	Eng.
Dav. Ir. ...	Davys' (or Davis' or Davy's) Reports (Ireland), 1 vol., 1604—1611 ...	Ir.
Dav. Pat. Cas. ...	Davies' Patent Cases, 1 vol., 1785—1816 ...	Eng.
Day ...	Day's Election Cases, 1 vol., 1892—1893 ...	Eng.
Dea. & Sw. ...	Deane and Swabey's Ecclesiastical Reports, 1 vol., 1855—1857 ...	Eng.
Deac. ...	Deacon's Reports, Bankruptcy, 4 vols., 1834—1840 ...	Eng.
Deac. & Ch. ...	Deacon and Chitty's Reports, Bankruptcy, 4 vols., 1832—1835 ...	Eng.
Dears. & B. ...	Dearsly and Bell's Crown Cases Reserved, 1 vol., 1856—1858 ...	Eng.
Dears. C. C. ...	Dearsly's Crown Cases Reserved, 1 vol., 1852—1856 ...	Eng.
Deas & And. ...	Deas and Anderson's Decisions (Scotland), 5 vols., 1829—1832 ...	Scot.
De G. ...	De Gex's Reports, Bankruptcy, 2 vols., 1844—1848 ...	Eng.
De G. & J. ...	De Gex and Jones's Reports, Chancery, 4 vols., 1857—1859 ...	Eng.
De G. & Sm. ...	De Gex and Smale's Reports, Chancery, 5 vols., 1846—1852 ...	Eng.
De G. F. & J. ...	De Gex, Fisher and Jones's Reports, Chancery, 4 vols., 1859—1862 ...	Eng.
De G. J. & Sm. ...	De Gex, Jones, and Smith's Reports, Chancery, 4 vols., 1862—1865 ...	Eng.
De G. M. & G. ...	De Gex, Macnaghten and Gordon's Reports, Chancery, 8 vols.,	Eng.
Delane ...	Delane's Decisions, Revision Courts, 1 vol., 1832—1835 ...	Eng.
Den. ...	Denison's Crown Cases Reserved, 2 vols., 1844—1852 ...	Eng.
Dick. ...	Dickens' Reports, Chancery, 2 vols., 1559—1798 ...	Eng.
Dirl. ...	Dirleton's Decisions, Court of Session (Scotland), fol., 1 vol., 1665—1677 ...	Scot.
Dods. ...	Dodson's Reports, Admiralty, 2 vols., 1811—1822 ...	Eng.
Donnelly ...	Donnelly's Reports, Chancery, 1 vol., 1836—1837 ...	Eng.
Doug. El. Cas. ...	Douglas' Election Cases, 4 vols., 1774—1776 ...	Eng.
Doug. K. B. ...	Douglas' Reports, King's Bench, 4 vols., 1778—1785 ...	Eng.
Dow ...	Dow's Reports, House of Lords, 6 vols., 1812—1818 ...	Eng.
Dow & Cl. ...	Dow and Clark's Reports, House of Lords, 2 vols., 1827—1832 ...	Eng.
Dow. & L. ...	Dowling and Lowndes' Practice Reports, 7 vols., 1843—1849 ...	Eng.
Dow. & Ry. K. B. ...	Dowling and Ryland's Reports, King's Bench, 9 vols., 1822	Eng.
Dow. & Ry. M. C. ...	Dowling and Ryland's Magistrates' Cases, 4 vols., 1822—1827 ...	Eng.
Dow. & Ry. N. P. ...	Dowling and Ryland's Reports, Nisi Prius, 1 part, 1822—1823 ...	Eng.
Dowl. ...	Dowling's Practice Reports, 9 vols., 1830—1841 ...	Eng.
Dowl. N. S. ...	Dowling's Practice Reports, New Series, 2 vols., 1841—1843 ...	Eng.
Dr. & Wal. ...	Drury and Walsh's Reports, Chancery (Ireland), 2 vols., 1837—1841 ...	Ir.
Dr. & War. ...	Drury and Warren's Reports, Chancery (Ireland), 4 vols., 1841—1843 ...	Ir.
Dra. ...	Draper's King's Bench Reports ...	Can.
Drew. ...	Drewry's Reports, Chancery, 4 vols., 1852—1859 ...	Eng.
Drew. & Sm. ...	Drewry and Smale's Reports, Chancery, 2 vols., 1859—1865 ...	Eng.
Drinkwater ...	Drinkwater's Reports, Common Pleas, 1 vol., 1840—1841 ...	Eng.
Drury temp. Nap. ...	Drury's Reports temp. Napier, Chancery (Ireland), 1 vol., 1858—1859 ...	Ir.
Drury temp. Sug. ...	Drury's Reports temp. Sugden, Chancery (Ireland), 1 vol., 1841—1844 ...	Ir.
Dugd. Orig. ...	Dugdale's Origines Juridiciales ...	Eng.
Dunl. (Ct. of Sess.) ...	Dunlop, Court of Session Cases (Scotland), 2nd Series, 24 vols., 1838—1862 ...	Scot.
Dunning ...	Dunning's Reports, King's Bench, 1 vol., 1753—1754 ...	Eng.
Durie ...	Durie's Decisions, Court of Session (Scotland), fol., 1 vol., 1621—1642 ...	Scot.
Dyer ...	Dyer's Reports, King's Bench, 3 vols., 1513—1581 ...	Eng.
E. & A. ...	Upper Canada Error and Appeal ...	Can.
E. & B. ...	Ellis and Blackburn's Reports, Queen's Bench, 8 vols., 1852—1858 ...	Eng.
E. & E. ...	Ellis and Ellis's Reports, Queen's Bench, 3 vols., 1858—1861 ...	Eng.
E. B. & E. ...	Ellis, Blackburn, and Ellis's Reports, Queen's Bench, 1 vol., 1858—1860 ...	Eng.
E. D. C. ...	Reports of the Eastern Districts Court (Cape) from 1880 ...	S. Af.
E. D. L. ...	South African Law Reports, Eastern Districts Local Division ...	S. Af.
E. L. R. ...	Eastern Law Reporter ...	Can.
E. R. (or Eng. Rep.) ...	English Reports ...	Eng.
E. R. ...	Ontario Election Reports ...	Can.
Eag. & Y. ...	Eagle and Younge's Tithe Cases, 4 vols., 1204—1825 ...	Eng.



xviii      REPORTS INCLUDED IN THIS WORK AND THEIR ABBREVIATIONS.

East ..	East's Reports, King's Bench, 16 vols., 1800—1812 ... ..	Eng.
East, P. C	East's Pleas of the Crown ... ..	
Ecc. & Ad	Spinks' Ecclesiastical and Admiralty Reports, 2 vols., 1853—1855	Eng.
Eden ..	Eden's Reports, Chancery, 2 vols., 1757—1766 ... ..	Eng.
Edgar ..	Edgar's Decisions, Court of Session (Scotland), fol., 1724—1725	Scot.
Edw. ..	Edwards' Reports, Admiralty, 1 vol., 1808—1812 ... ..	Eng.
Elchies ..	Elchies' Decisions, Court of Session (Scotland), 2 vols., 1733—1754 ... ..	Scot.
Emden's B. C. ...	Emden's Building Contracts, Building Leases and Building	
Eng. Pr. Cas. ...	Roscoe's English Prize Cases, 2 vols., 1745—1858 ... ..	Eng.
Eq. Cas. Abr. ...	Abridgment of Cases in Equity, fol., 2 vols., 1667—1744 ...	Eng.
Eq. Rep. ...	Equity Reports, 3 vols., 1853—1855 ... ..	Eng.
Esp. ...	Espinasse's Reports, Nisi Prius, 6 vols., 1793—1810 ... ..	Eng.
Ex. D. ...	Law Reports, Exchequer Division, 5 vols., 1875—1880 ...	Eng.
Exch. ...	Exchequer Reports (Welsby, Hurlstone, and Gordon), 11 vols., 1847—1856 ... ..	Eng.
Exch. C. R. ...	Exchequer Court Reports ... ..	Can.
F. (Ct. of Sess.)	Fraser, Court of Session Cases (Scotland), 5th series, 8 vols., 1898—1906 ... ..	Scot.
F. ...	Foord's Reports of the Supreme Court of the Cape of Good Hope, 1879—1880 ... ..	S. Af.
F. & F. ...	Foster and Finlason's Reports, Nisi Prius, 4 vols., 1856—1867	Eng.
F. N. D. ...	Finnemore's Notes and Digest of Natal Cases, 1863—1867 ...	S. Af.
Fac. Coll. ...	Faculty of Advocates, Collection of Decisions, Court of Session (Scotland), 38 vols., 1752—1841 ... ..	Scot.
Falc. ...	Falconer's Decisions, Court of Session (Scotland), 2 vols., fol., 1744—1751 ... ..	Scot.
Falc. & Fitz. ...	Falconer and Fitzherbert's Election Cases, 1 vol., 1835—1838	Eng.
Fenton ...	Fenton, Important Judgments ... ..	N.Z.
Ferg. ...	Ferguson's Consistorial Decisions (Scotland), 1 vol., 1811—1817	Scot.
Fitz. Nat. Brev.	Fitzherbert's Natura Brevium ... ..	Eng.
Fitz-G. ...	Fitz-Gibbons' Reports, King's Bench, fol., 1 vol., 1727—1731	Eng.
Fl. & K. ...	Flanagan and Kelly's Reports, Rolls Court (Ireland), 1 vol., 1840—1842 ... ..	Ir.
Fonbl. ...	Fonblanque's Reports, Bankruptcy, 2 parts, 1849—1852 ...	Eng.
For. ...	Forrest's Reports, Exchequer, 1 vol., 1800—1801 ... ..	Eng.
Forb. ...	Forbes' Decisions, Court of Session (Scotland), fol., 1 vol., 1705—1713 ... ..	Scot.
Fort. De Laud.	Fortesque, De Laudibus Legum Angliæ ... ..	Eng.
Fortes. Rep. ...	Fortescue's Reports, fol., 1 vol., 1692—1736 ... ..	Eng.
Post. ...	Foster's Crown Cases, 1 vol., 1708—1760 ... ..	Eng.
Fount. ...	Fountainhall's Decisions, Court of Session (Scotland), fol., 2 vols., 1678—1712 ... ..	Scot.
Fox & S. Ir. ...	M. C. Fox and T. B. C. Smith's Reports, King's Bench (Ireland), 2 vols., 1822—1825 ... ..	Ir.
Fox & S. Reg. ...	J. S. Fox and C. L. Smith's Registration Cases, 1 vol., 1886—	
Fras. ...	Fraser (Simon), Election Cases, 2 vols., 1793 ... ..	Eng.
Freem. Ch. ...	Freeman's Reports, Chancery, 1 vol., 1660—1706 ... ..	Eng.
Freem. K. I	Freeman's Reports, King's Bench and Common Pleas, 1 vol., 1670—1704 ... ..	Eng.
G. ...	Gregorowski's Reports of the High Court of the Orange Free State from 1883 ... ..	S. Af.
G. & R.	Nova Scotia Reports (Geldert & Russell) ... ..	Can.
G. I. Dig.	General Index Digest ... ..	Can.
G. W. D.	South African Law Reports, Griqualand West Local Division	S. Af.
G. W. L.	South African Law Reports, Griqualand West Local Division	S. Af.
Gal. & Dav.	Gale and Davison's Reports, Queen's Bench, 3 vols., 1841—1843	Eng.
Gale ...	Gale's Reports, Exchequer, 2 vols., 1835—1836 ... ..	Eng.
Gaz. L. R.	New Zealand Gazette Law Reports ... ..	
Geld. Dig.	Geldert's Digest ... ..	Can.
Gib. Cod.	Gibson's Codex Juris Ecclesiastici Anglicani ... ..	Eng.
Giff. ...	Giffard's Reports, Chancery, 5 vols., 1857—1865 ... ..	Eng.
Gilb. ...	Gilbert's Cases in Law and Equity, 1 vol., 1713—1714 ...	Eng.
Gilb. C. P.	Gilbert's History and Practice of the Court of Common Pleas	
Gilb. Ch.	Gilbert's Reports, Chancery and Exchequer, fol., 1 vol., 1706—	Eng.
Gilm. & F.	Gilmour and Falconer's Decisions, Court of Session (Scotland), 2 parts, Part I. (Gilmour) 1661—1666, Part II. (Falconer) 1681—1686 ... ..	Scot.
Gl. & J.	Glyn and Jameson's Reports, Bankruptcy, 2 vols., 1819—1828	Eng.
Glanv. El. Cas. ...	Glanville, De Legibus et Consuetudinibus Regni Angliæ ...	Eng.
Glascok	Glanville's Election Cases, 1 vol., 1623—1624 ... ..	Eng.
	Glascok's Reports (Ireland), 1 vol., 1831—1832 ... ..	Ir.

Godb. ...	Godbolt's Reports, King's Bench, Common Pleas, and Exchequer, 1 vol., 1574—1637	Eng.
Gouldsb.	Gouldsbrough's Reports, Queen's Bench and King's Bench, 1 vol., 1586—1601 ...	Eng.
Gow	Gow's Reports, Nisi Prius, 1 vol., 1818—1820 ...	Eng.
Griffin's Patent Cases ...	Upper Canada Chancery (Grant) ...	Can.
Gwill. ...	Griffin's Patent Cases, 1884—1887 ...	Eng.
	Gwillim's Tithe Cases, 4 vols., 1224—1824 ...	Eng.
H. ...	Hertzog's Reports of the High Court of the South African Republic, 1893 ...	S. Af.
H. & C. ...	Hurlstone and Coltman's Reports, Exchequer, 4 vols., 1862—1866	Eng.
H. & N. ...	Hurlstone and Norman's Reports, Exchequer, 7 vols., 1856—1862	
H. & Tw.	Hall and Twells' Reports, Chancery, 2 vols., 1848—1850 ...	Eng.
H. & W.	Hurlstone and Walmsley's Reports, Exchequer, 1 vol., 1840—1841 ...	Eng.
H. B. R. (preceded by date)	Hansell's Reports of Bankruptcy and Companies' Winding up Cases, 3 vols., 1915—1917 (e.g., [1915] H. B. R.) ...	Eng.
H. C. ...	Reports of the High Court of Griqualand West ...	S. Af.
H. E. C. ...	Hodgin's Election Reports ...	Can.
H. L. Cas.	Clark's Reports, House of Lords, 11 vols., 1847—1866 ...	Eng.
Hag. Adm.	Haggard's Reports, Admiralty, 3 vols., 1822—1838 ...	Eng.
Hag. Con.	Haggard's Consistorial Reports, 2 vols., 1789—1821 ...	Eng.
Hag. Ecc.	Haggard's Ecclesiastical Reports, 4 vols., 1827—1833 ...	Eng.
Hailes ...	Hailes's Decisions, Court of Session (Scotland), 2 vols., 1766—1791 ...	Scot.
Hale, C. L.	Hale's Common Law ...	Eng.
Hale, P. C.	Hale's Pleas of the Crown, 2 vols. ...	Eng.
Han.	New Brunswick Reports (Hannay) ...	Can.
Har. & Ruth.	Harrison and Rutherford's Reports, Common Pleas, 1 vol., 1865—1866 ...	Eng.
Har. & W.	Harrison and Wollaston's Reports, King's Bench and Bail Court, 2 vols., 1835—1836 ...	Eng.
Harc.	Harcarse's Decisions, Court of Session (Scotland), fol., 1 vol., 1681—1691 ...	Scot.
Hard.	Hardres' Reports, Exchequer, fol., 1 vol., 1655—1669 ...	
Hare	Hare's Reports, Chancery, 11 vols., 1841—1853 ...	Eng.
Hawk. P. C.	Hawkins's Pleas of the Crown, 2 vols. ...	Eng.
Hay	Hay's Reports ...	Ind.
Hay & Marr.	Hay & Marriott's Decisions, Admiralty, 1 vol., 1776—1779 ...	Eng.
Hayes	Hayes's Reports, Exchequer (Ireland), 1 vol., 1830—1832 ...	Ir.
Hayes & Jo.	Hayes and Jones's Reports, Exchequer (Ireland), 1 vol., 1832—1834 ...	Ir.
Hem. & M.	Hemming and Miller's Reports, Chancery, 2 vols., 1862—1865	Eng.
Het.	Hetley's Reports, Common Pleas, fol., 1 vol., 1627—1631 ...	Eng.
Hob.	Hobart's Reports, Common Pleas, fol., 1 vol., 1613—1625 ...	Eng.
Hodg.	Hodges' Reports, Common Pleas, 3 vols., 1835—1837 ...	Eng.
Hog.	Hogan's Reports, Rolls Court (Ireland), 2 vols., 1816—1834 ...	Ir.
Holt, Adm.	W. Holt's Rule of the Road Cases, Admiralty, 1 vol., 1863—1867	Eng.
Holt, Eq.	W. Holt's Equity Reports, 2 vols., 1845 ...	Eng.
Holt, K. B.	Sir John Holt's Reports, King's Bench, fol., 1 vol., 1688—1710	Eng.
Holt, N. P.	F. Holt's Reports, Nisi Prius, 1 vol., 1815—1817 ...	Eng.
Home, Ct. of Sess.	Home's Decisions, Court of Session (Scotland), fol., 1 vol., 1735—1744 ...	Scot.
Hong Kong L. R.	Hong Kong Reports ...	Hong Kong
Hop. & Colt.	Hopwood and Coltman's Registration Cases, 2 vols., 1868—1878	Eng.
Hop. & Ph.	Hopwood and Philbrick's Registration Cases, 1 vol., 1863—1867	Eng.
Horn & H.	Horn and Hurlstone's Reports, Exchequer, 2 vols., 1838—1839	Eng.
Hov. Supp.	Hovenden's Supplement to Vesey Jun.'s Reports, Chancery, 2 vols., 1753—1817 ...	Eng.
How. C. ...	Howard's Chancery Practice ...	Ir.
How. C. S.	Howard's Supplement to Rules, etc., of the High Court of Chancery in Ireland ...	Ir.
How. E. E.	Howard's Equity Exchequer ...	Ir.
How. P. L.	Howard on the Popery Laws ...	Ir.
Hud. & B.	Hudson and Brooke's Reports, King's Bench and Exchequer (Ireland), 2 vols., 1827—1831 ...	Ir.
Hudson's B. C. ...	Hudson on Building Contracts, 2 vols. ...	Eng.
Hut.	Hume's Decisions, Court of Session (Scotland), 1 vol., 1781—1822	Scot.
	Hutton's Reports, Common Pleas, fol., 1 vol., 1617—1638 ...	Eng.
	Henry Blackstone's Reports, Common Pleas, 2 vols., 1788—1796	Eng.
Hyde	Hyde's Reports ...	Ind.
	Irish Common Law Reports, 17 vols., 1849—1866	Ir.
I. Ch. R.	Irish Chancery Reports, 17 vols., 1850—1867 ..	Ir.
I. Eq. R.	Irish Equity Reports, 13 vols., 1838—1851 ..	Ir.

# REPORTS INCLUDED IN THIS WORK AND THEIR ABBREVIATIONS.

I. L. R. ...	...	Irish Law Reports, 13 vols., 1838—1851	...	...	Ir.
I. L. R. (Vol.) All.	...	Indian Law Reports, Allahabad	...	...	Ind.
I. L. R. (Vol.) Bom.	...	Indian Law Reports, Bombay	...	...	Ind.
I. L. R. (Vol.) Calc.	...	Indian Law Reports, Calcutta	...	...	Ind.
I. L. R. (Vol.) Lah.	...	Indian Law Reports, Lahore	...	...	Ind.
I. L. R. (Vol.) Mad.	...	Indian Law Reports, Madras	...	...	Ind.
I. L. R. (Vol.) Pat.	...	Indian Law Reports, Patna	...	...	Ind.
I. L. R. (Vol.) Ran.	...	Indian Law Reports, Rangoon	...	...	Ind.
I. L. T. ...	...	Irish Law Times, 1867—(current)	...	...	Ir.
I. L. T. Jo.	...	Irish Law Times Journal, 1867,—(current)	...	...	Ir.
I. R. (preceded by date)	...	Irish Reports, since 1893 ( <i>e.g.</i> , [1894] 1 I. R.)	...	...	Ir.
I. R. (Vol.) C. L.	...	Irish Reports, Common Law, 11 vols., 1866—1877	...	...	Ir.
I. R.	...	Irish Reports, Equity, 11 vols., 1866—1877	...	...	Ir.
I. R. R. & L.	...	Irish Reports, Registry Appeals in the Court of Exchequer Chamber and Appeals in the Court for Land Cases Reserved, 1 vol., 1868—1876	...	...	Ir.
Ind. Awards	...	Industrial Awards Recommendations	...	...	N.Z.
Ind. Jur. N. S.	...	Indian Jurist, New Series	...	...	Ind.
Ind. Jur. O. S.	...	Indian Jurist, Old Series	...	...	Ind.
Ir. Cir. Rep.	...	Reports of Irish Circuit Cases, 1 vol., 1841—1843	...	...	Ir.
Ir. Jur.	...	Irish Jurist, 18 vols., 1849—1866	...	...	Ir.
Ir. L. Rec. 1st ser.	...	Law Recorder (Ireland), 1st series, 4 vols., 1827—1831	...	...	Ir.
Ir. L. Rec. N. S.	...	Law Recorder (Ireland), New Series, 6 vols., 1833—1838	...	...	Ir.
Irv.	...	Irvine's Justiciary Reports (Scotland), 5 vols., 1852—1867	...	...	Scot.
J. Bridg.	...	Sir John Bridgman's Reports, Common Pleas, fol., 1 vol., 1613	...	...	Eng.
J. D. R.	...	Juta's Daily Reporter, reporting Cases in the Cape Provincial Division	...	...	S. Af.
J. P.	...	Justice of the Peace, 1837—(current)	...	...	Eng.
J. P. Jo.	...	Justice of the Peace (Weekly Notes of Cases)	...	...	Eng.
J. R.	...	Jurist Reports	...	...	N.Z.
J. R. N. S.	...	Jurist Reports, New Series	...	...	N.Z.
J. Shaw, Just.	...	J. Shaw's Justiciary Reports (Scotland), 1 vol., 1848—1852	...	...	Scot.
Jac.	...	Jacob's Reports, Chancery, 1 vol., 1821—1823	...	...	Eng.
Jac. & W.	...	Jacob and Walker's Reports, Chancery, 2 vols., 1819—1821	...	...	Eng.
James	...	Nova Scotia Reports (James)	...	...	Can.
Jebb & B.	...	Jebb and Bourke's Reports, Queen's Bench (Ireland), 1 vol. 1841—1842	...	...	Ir.
Jebb & S.	...	Jebb and Symes' Reports, Queen's Bench (Ireland), 2 vols., 1838—1841	...	...	Ir.
Jebb, C. C.	...	Jebb's Crown Cases Reserved (Ireland), 1 vol., 1822—1840	...	...	Ir.
Jebb, Cr. & Pr. Cas.	...	Jebb's Crown and Presentment Cases	...	...	Ir.
Jo. & Car.	...	Jenkins' Reports, 1 vol., 1220—1623	...	...	Eng.
Jo. & Lat.	...	Jones and Carey's Reports, Exchequer (Ireland), 1 vol., 1838	...	...	Ir.
Jo. Ex. Ir.	...	Jones and La Touche's Reports, Chancery (Ireland), 3 vols., 1844—1846	...	...	Ir.
John.	...	T. Jones' Reports, Exchequer (Ireland), 2 vols., 1834—1838	...	...	Ir.
John. & H.	...	Johnson's Reports, Chancery, 1 vol., 1858—1860	...	...	Eng.
Jur.	...	Johnson and Hemming's Reports, Chancery, 2 vols., 1859—1862	...	...	Eng.
Jur. N. S.	...	Jurist Reports, 18 vols., 1837—1854	...	...	Eng.
K.	...	Jurist Reports, New Series, 12 vols., 1855—1867	...	...	Eng.
K. & G.	...	Kotze's Reports of the High Court of the Transvaal Province 1877—1881	...	...	S. Af.
K. & J.	...	Keane and Grant's Registration Cases, 1 vol., 1854—1862	...	...	Eng.
K. B. (preceded by date)	...	Kay and Johnson's Reports, Chancery, 4 vols., 1854—1858	...	...	Eng.
Kames, Dict. Dec.	...	Law Reports, King's Bench Division, since 1900 ( <i>e.g.</i> , [1901] 2 K. B.)	...	...	Eng.
Kames, Rem. Dec.	...	Kames, Dictionary of Decisions, Court of Session (Scotland), fol., 2 vols., 1540—1741	...	...	Scot.
Kames, Sel. Dec.	...	Kames, Remarkable Decisions, Court of Session (Scotland), 2 vols., 1716—1752	...	...	Scot.
Kay	...	Kames, Select Decisions, Court of Session (Scotland), 1 vol., 1752—1768	...	...	Scot.
Keb.	...	Kay's Reports, Chancery, 1 vol., 1853—1854	...	...	Eng.
Keen	...	Keble's Reports, fol., 3 vols., 1661—1677	...	...	Eng.
Keil.	...	Keen's Reports, Rolls Court, 2 vols., 1836—1838	...	...	Eng.
Kel.	...	Keilwey's Reports, King's Bench, fol., 1 vol., 1327—1578	...	...	Eng.
Kel. W.	...	Sir John Kelyng's Reports, Crown Cases, fol., 1 vol., 1662—1707	...	...	Eng.
Ken.	...	W. Kelynge's Reports, fol., 1 vol., Chancery, 1730—1732; King's Bench, fol., 1731—1734	...	...	Eng.
Keny.	...	Kenyon's Notes of Cases, King's Bench, 2 vols., 1753—1759	...	...	Eng.
Keny. Ch.	...	Chancery Cases in Vol. II. of Kenyon's Notes of Cases, 1753—1754	...	...	Eng.
Kerr	...	New Brunswick Reports (Kerr)	...	...	Can.

# REPORTS INCLUDED IN THIS WORK AND THEIR ABBREVIATIONS.

xxi

Kilkerran	...	Kilkerran's Decisions, Court of Session (Scotland), fol., 1 vol., 1738—1752	
Kn. & Omb.	...	Knapp and Ombler's Election Cases, 1 vol., 1834—1835	Scot.
Knapp	...	Knapp's Reports, Privy Council, 3 vols., 1829—1836	Eng.
Knox	...	Knox's Reports	Eng.
Konst. & W. Rat. App.	...	Konstam and Ward's Reports of Rating Appeals, 1 vol., 1909—1912	Aus.
Konst. Rat. App.	...	Konstam's Reports of Rating Appeals, 2 vols., 1904—1908	Eng.
L. & G. <i>temp.</i> Plunk.	...	Lloyd and Goold's Reports <i>temp.</i> Plunkett, Chancery (Ireland), 1 vol., 1834—1839	Eng.
L. & G. <i>temp.</i> Sugd.	...	Lloyd and Goold's Reports <i>temp.</i> Sugden, Chancery (Ireland), 1 vol., 1835	Ir.
L. & Welsb.	...	Lloyd and Welsby's Commercial and Mercantile Cases, 1 vol.,	Ir.
L. C. & M. Gaz.	...	Local Courts and Municipal Gazette	Eng.
L. C. J.	...	Lower Canada Jurist	Can.
L. C. L. J.	...	Lower Canada Law Journal	Can.
L. C. R.	...	Lower Canada Reports	Can.
L. G. R.	...	Local Government Reports, 1902—(current)	Can.
L. J. Adm.	...	Law Journal, Admiralty, 1865—1875	Eng.
L. J. Bcy.	...	Law Journal, Bankruptcy, 1832—1880	Eng.
L. J. C. C.	...	Law Journal (County Courts Reporter), 1912—(current)	Eng.
L. J. C. P.	...	Law Journal, Common Pleas, 1831—1875	Eng.
L. J. Ch.	...	Law Journal, Chancery, 1831—(current)	Eng.
L. J. Eccl.	...	Law Journal, Ecclesiastical Cases, 1866—1875	Eng.
L. J. Ex.	...	Law Journal, Exchequer, 1831—1875	Eng.
L. J. Ex. Eq.	...	Law Journal, Exchequer in Equity, 1835—1841	Eng.
L. J. K. B. or Q. B.	...	Law Journal, King's Bench or Queen's Bench, 1831—(current)	Eng.
L. J. M. C.	...	Law Journal, Magistrates' Cases, 1831—1896	Eng.
L. J. N. C.	...	Law Journal, Notes of Cases, 1866—1892 (from 1893, see Law Journal)	Eng.
L. J. O. S.	...	Law Journal, Old Series, 10 vols., 1822—1831	Eng.
L. J. P.	...	Law Journal, Probate, Divorce and Admiralty, 1875—(current)	Eng.
L. J. P. & M.	...	Law Journal, Probate and Matrimonial Cases, 1858—1859, 1866—1875	Eng.
L. J. P. C.	...	Law Journal, Privy Council, 1865—(current)	Eng.
L. J. P. M. & A.	...	Law Journal, Probate, Matrimonial and Admiralty, 1860—1865	Eng.
L. Jo.	...	Law Journal Newspaper, 1866—(current)	Eng.
L. L. R.	...	Leader Law Reports	S. Af.
L. M. & P.	...	Lowndes, Maxwell, and Pollock's Reports, Bail Court and Practice, 2 vols., 1850—1851	Eng.
L. N.	...	Legal News	Can.
L. R. A. & E.	...	Law Reports, Admiralty and Ecclesiastical Cases, 4 vols., 1865—1875	Eng.
L. R. C. C. R.	...	Law Reports, Crown Cases Reserved, 2 vols., 1865—1875	Eng.
L. R. C. P.	...	Law Reports, Common Pleas, 10 vols., 1865—1875	Eng.
L. R. Eq.	...	Law Reports, Equity Cases, 20 vols., 1865—1875	Eng.
L. R. Exch.	...	Law Reports, Exchequer, 10 vols., 1865—1875	Eng.
L. R. H. L.	...	Law Reports, English and Irish Appeals and Peerage Claims, House of Lords, 7 vols., 1866—1875	Eng.
L. R. Ind. App.	...	Law Reports, Indian Appeals, Privy Council, 1873—(current)	Eng.
L. R. Ind. App. Supp. Vol.	...	Law Reports, India Appeals Privy Council, Supplementary Volume, 1872—1873	Eng.
L. R. Ir.	...	Law Reports (Ireland), Chancery and Common Law, 32 vols., 1877—1893	Ir.
L. R. P. & D.	...	Law Reports, Probate and Divorce, 3 vols., 1865—1875	Eng.
L. R. P. C.	...	Law Reports, Privy Council, 6 vols., 1865—1875	Eng.
L. R. Q. B.	...	Law Reports, Queen's Bench, 10 vols., 1865—1875	Eng.
L. R. Q. B.	...	Quebec Reports, Queen's Bench	Can.
L. R. Sc. & Div.	...	Law Reports, Scotch and Divorce Appeals, House of Lords 2 vols., 1866—1875	Eng.
L. T.	...	Law Times Reports, 1859—(current)	Eng.
L. T. Jo.	...	Law Times Newspaper, 1843—(current)	Eng.
L. T. O. S.	...	Law Times Reports, Old Series, 34 vols., 1843—1860	Eng.
L. Th.	...	La Themis	Can.
	...	Lane's Reports, Exchequer, fol., 1 vol., 1605—1611	Eng.
	...	Latch's Reports, King's Bench, fol., 1 vol., 1625—1628	Eng.
Laws. Reg. Cas.	...	Lawson's Registration Cases, 1895—(current)	Eng.
Ld. Raym.	...	Lord Raymond's Reports, King's Bench and Common Pleas, 3 vols., 1694—1732	Eng.
Le. & Ca.	...	Leigh and Cave's Crown Cases Reserved, 1 vol., 1861—1865	Eng.
Leach	...	Leach's Crown Cases, 2 vols., 1730—1814	Eng.
	...	Sir G. Lee's Ecclesiastical Judgments, 2 vols., 1752—1758	Eng.
Lee <i>temp.</i> Hard.	...	T. Lee's Cases <i>temp.</i> Hardwicke, King's Bench, 1 vol., 1733—1738	Eng.



## xxii      REPORTS INCLUDED IN THIS WORK AND THEIR ABBREVIATIONS.

Leg. Rep.	Legal Reporter	...	...	...	...	...	Ir.
Legge	Legge's Reports	...	...	...	...	...	
Leon.	Leonard's Reports, King's Bench, Common Pleas and Exchequer, fol., 4 parts, 1552—1615	...	...	...	...	...	Eng.
Lev.	Levinz's Reports, King's Bench and Common Pleas, fol., 3 vols., 1660—1696	...	...	...	...	...	Eng.
Lew. C. C.	Lewin's Crown Cases on the Northern Circuit, 2 vols., 1822—1838	...	...	...	...	...	Eng.
Ley	Ley's Reports, King's Bench, fol., 1 vol., 1608—1629	...	...	...	...	...	Eng.
Lib. Ass.	Liber Assisarum, Year Books, 1—51 Edw. III.	...	...	...	...	...	Eng.
Lilly	Lilly's Reports and Pleadings of Cases in Assize, fol., 1 vol.	...	...	...	...	...	Eng.
	Littleton's Reports, Common Pleas, fol., 1 vol., 1627—1631	...	...	...	...	...	Eng.
Lloyd, L. R.	Lloyd's List Law Reports, 1919—(current)	...	...	...	...	...	Eng.
Lloyd, Pr. Cas.	Lloyd's Reports of Prize Cases, 5 vols., 1914—1918	...	...	...	...	...	Eng.
Lofft	Lofft's Reports, King's Bench, fol., 1 vol., 1772—1774	...	...	...	...	...	Eng.
Long. & T.	Longfield and Townsend's Reports, Exchequer (Ireland), 1 vol.,	...	...	...	...	...	Ir.
Lords Journals	Journals of the House of Lords	...	...	...	...	...	Eng.
Lud. E. C.	Luder's Election Cases, 3 vols., 1784—1787	...	...	...	...	...	Eng.
Lumley, P. L. C.	Lumley's Poor Law Cases, 2 vols., 1834—1842	...	...	...	...	...	Eng.
Lush.	Lushington's Reports, Admiralty, 1 vol., 1859—1862	...	...	...	...	...	Eng.
	Sir E. Lutwyche's Entries and Reports, Common Pleas, 2 vols., 1682—1704	...	...	...	...	...	Eng.
Lut. Reg. Cas.	A. J. Lutwyche's Registration Cases, 2 vols., 1843—1853	...	...	...	...	...	Eng.
Lynd.	Lyndwood, Provinciale, fol., 1 vol.	...	...	...	...	...	Eng.
M.	Menzie's Reports of the Supreme Court of the Cape of Good Hope, 1828—1850	...	...	...	...	...	S. Af.
M. & S.	Maule and Selwyn's Reports, King's Bench, 6 vols., 1813—1817	...	...	...	...	...	Eng.
M. & W.	Meeson and Welsby's Reports, Exchequer, 16 vols., 1836—1847	...	...	...	...	...	Eng.
M. C. C.	Mining Commissioner's Cases	...	...	...	...	...	Can.
M. C. R.	Montreal Condensed Reports	...	...	...	...	...	Can.
M. H. C. R.	Madras High Court Reports	...	...	...	...	...	Ind.
M. L. R. (Vol.) K. B. or Q. B.	Montreal Law Reports, King's Bench or Queen's Bench	...	...	...	...	...	Can.
M. L. R. (Vol.) S. C.	Montreal Law Reports, Superior Court	...	...	...	...	...	Can.
M. M. Cas.	Martin's Reports of Mining Cases	...	...	...	...	...	Can.
Mac.	Macassey's New Zealand Reports	...	...	...	...	...	N.Z.
Mac. & G.	Macnaghten and Gordon's Reports, Chancery, 3 vols., 1849—1852	...	...	...	...	...	Eng.
Mac. & H.	Macrae and Hertslet's Insolvency Cases, 1 vol., 1847—1852	...	...	...	...	...	Eng.
M'Cle.	M'Clelland's Reports, Exchequer, 1 vol., 1824	...	...	...	...	...	Eng.
M'Cle. & Yo.	M'Clelland and Younge's Reports, Exchequer, 1 vol., 1824—1825	...	...	...	...	...	Eng.
Macfarlane	Macfarlane's Jury Trials, Court of Session (Scotland), 3 parts, 1838—1839	...	...	...	...	...	Scot.
Macl. & Rob.	Maclean and Robinson's Scotch Appeals (House of Lords), 1 vol., 1839	...	...	...	...	...	Scot.
Macph. (Ct. of Sess.)	Macpherson, Court of Session (Scotland), 3rd series, 11 vols.,	...	...	...	...	...	Scot.
Macq.	Macqueen's Scotch Appeals, House of Lords, 4 vols., 1849—1865	...	...	...	...	...	Scot.
Macr.	Macrory's Patent Cases, 2 parts, 1847—1856	...	...	...	...	...	Eng.
Mad.	Madras High Court Reports	...	...	...	...	...	Ind.
Madd.	Maddock's Reports, Chancery, 6 vols., 1815—1822	...	...	...	...	...	Eng.
Madd. & G.	Maddock and Geldart's Reports, Chancery, 1 vol., 1819—1822 (Vol. VI. of Madd.)	...	...	...	...	...	Eng.
Madox	Madox's Formulæ Anglicanum	...	...	...	...	...	Eng.
Madox, Exch.	Madox's History and Antiquities of the Exchequer, 2 vols.	...	...	...	...	...	Eng.
Mag.	Magistrate and Municipal and Parochial Lawyer, London, 5 vols., 1848—1852	...	...	...	...	...	Eng.
Man. & G.	Manning and Granger's Reports, Common Pleas, 7 vols., 1840—1845	...	...	...	...	...	Eng.
Man. & Ry. K. B.	Manning and Ryland's Reports, King's Bench, 5 vols., 1827—1830	...	...	...	...	...	Eng.
Man. & Ry. M. C.	Manning and Ryland's Magistrates' Cases, 3 vols., 1827—1830	...	...	...	...	...	Eng.
Man. L. J.	Manitoba Law Journal	...	...	...	...	...	Can.
Man. L. R.	Manitoba Law Reports	...	...	...	...	...	Can.
Man. R. temp. Wood	Manitoba Reports temp. Wood	...	...	...	...	...	Can.
Mans.	Manson's Bankruptcy and Company Cases, 21 vols., 1893—1914	...	...	...	...	...	Eng.
Mar. L. C.	Maritime Law Reports (Crockford), 3 vols., 1860—1871	...	...	...	...	...	Eng.
March	March's Reports, King's Bench and Common Pleas, 1 vol.,	...	...	...	...	...	Eng.
Marr.	Hay & Marriott's Decisions, Admiralty, 1 vol., 1776—1779	...	...	...	...	...	Eng.
Marsh.	Marshall's Reports, Common Pleas, 2 vols., 1813—1816	...	...	...	...	...	Eng.
Marsh.	Marshall's Reports	...	...	...	...	...	Ind.
Mayn.	Maynard's Reports, Exchequer Memoranda of Edw. I. and Year Books of Edw. II., Year Books, Part I., 1273—1326	...	...	...	...	...	Eng.
Meg.	Megone's Companies Acts Cases, 2 vols., 1889—1891	...	...	...	...	...	



# REPORTS INCLUDED IN THIS WORK AND THEIR ABBREVIATIONS.

xxiii

Men. ...	Menzie's Reports of the Supreme Court of the Cape of Good Hope, 1828—1850 ... ..	S. Af.
	Merivale's Reports, Chancery, 3 vols., 1815—1817 ... ..	Eng.
Milw. ... ..	Milward's Ecclesiastical Reports (Ireland), 1 vol., 1819—1843 ... ..	Ir.
Mod. Rep. ... ..	Modern Reports, 12 vols., 1669—1755 ... ..	Eng.
Mol. ... ..	Molloy's Reports, Chancery (Ireland), 3 vols., 1808—1831 ... ..	Ir.
Mont. ... ..	Montagu's Reports, Bankruptcy, 1 vol., 1829—1832 ... ..	Eng.
Mont. & A. ... ..	Montagu and Ayrton's Reports, Bankruptcy, 3 vols., 1832—1838 ... ..	Eng.
Mont. & B. ... ..	Montagu and Bligh's Reports, Bankruptcy, 1 vol., 1832—1833 ... ..	Eng.
Mont. & Ch. ... ..	Montagu and Chitty's Reports, Bankruptcy, 1 vol., 1838—1840 ... ..	Eng.
Mont. & M. ... ..	Montagu and Macarthur's Reports, Bankruptcy, 1 vol., 1826—1830 ... ..	Eng.
Mont. D. & De G. ... ..	Montagu, Deacon, and De Gex's Reports, Bankruptcy, 3 vols., 1840—1844 ... ..	Eng.
Moo. & P. ... ..	Moore and Payne's Reports, Common Pleas, 5 vols., 1827—1831 ... ..	Eng.
Moo. & S. ... ..	Moore and Scott's Reports, Common Pleas, 4 vols., 1831—1834 ... ..	Eng.
Moo. Ind. App. ... ..	Moore's Indian Appeal Cases, Privy Council, 14 vols., 1836—1872 ... ..	Eng.
Moo. P. C. C. ... ..	Moore's Privy Council Cases, 15 vols., 1836—1863 ... ..	Eng.
Moo. P. C. C. N. S. ... ..	Moore's Privy Council Cases, New Series, 9 vols., 1863—1873 ... ..	Eng.
Mood. & M. ... ..	Moody and Malkin's Reports, Nisi Prius, 1 vol., 1826—1830 ... ..	Eng.
Mood. & R. ... ..	Moody and Robinson's Reports, Nisi Prius, 2 vols., 1830—1844 ... ..	Eng.
Mood. C. C. ... ..	Moody's Crown Cases Reserved, 2 vols., 1824—1844 ... ..	Eng.
Moore, C. P. ... ..	J. B. Moore's Reports, Common Pleas, 12 vols., 1817—1827 ... ..	Eng.
Moore, K. B. ... ..	Sir F. Moore's Reports, King's Bench, fol., 1 vol., 1485—1620 ... ..	Eng.
Mor. Diet. ... ..	Morison's Dictionary of Decisions, Court of Session (Scotland), 43 vols., 1532—1808 ... ..	Scot.
Morr. ... ..	Morrell's Reports, Bankruptcy, 10 vols., 1884—1893 ... ..	Eng.
Mos. ... ..	Moseley's Reports, Chancery, fol., 1 vol., 1726—1730 ... ..	Eng.
Mun. Rep. ... ..	Municipal Reports ... ..	Can.
Murd. Epit. ... ..	Murdoch's Epitome ... ..	Can.
Murp. & H. ... ..	Murphy and Hurlstone's Reports, Exchequer, 1 vol., 1837 ... ..	Eng.
Murr. ... ..	Murray's Reports, Jury Court (Scotland), 5 vols., 1816—1830 ... ..	Scot.
My. & Cr. ... ..	Mylne and Craig's Reports, Chancery, 5 vols., 1835—1841 ... ..	Eng.
My. & K. ... ..	Mylne and Keen's Reports, Chancery, 3 vols., 1832—1835 ... ..	Eng.
N. A. C. ... ..	Native Appeal Cases ... ..	S. Af.
N. & S. ... ..	Nichols and Stop's Reports (Tasmania) ... ..	Tasmania
N. B. Dig. ... ..	New Brunswick Digest (Stevens) ... ..	Can.
N. B. Eq. Rep. ... ..	New Brunswick Equity Reports ... ..	Can.
N. B. R. ... ..	New Brunswick Reports ... ..	Can.
N. B. R. (All.) ... ..	New Brunswick Reports (Allen) ... ..	Can.
N. B. R. (Ber.) ... ..	New Brunswick Reports (Berton) ... ..	Can.
N. B. R. (Carl.) ... ..	New Brunswick Reports (Carleton) ... ..	Can.
N. B. R. (Chip.) ... ..	New Brunswick Reports (Chipman) ... ..	Can.
N. B. R. (Han.) ... ..	New Brunswick Reports (Hannay) ... ..	Can.
N. B. R. (Kerr) ... ..	New Brunswick Reports (Kerr) ... ..	Can.
N. B. R. (P. & B.) ... ..	New Brunswick Reports (Pugsley and Burbidge) ... ..	Can.
N. B. R. (P. & T.) ... ..	New Brunswick Reports (Pugsley and Trueman) ... ..	Can.
N. B. R. (Pug.) ... ..	New Brunswick Reports (Pugsley) ... ..	Can.
N. B. R. (Tru.) ... ..	New Brunswick Reports (Trueman) ... ..	Can.
N. I. (preceded by date) ... ..	Northern Ireland Law Reports, 1925—(current) (e.g., [1925] N. I.) ... ..	Ir.
N. L. R. ... ..	Natal Law Reports ... ..	S. Af.
N. P. D. ... ..	South African Law Reports, Natal Provincial Division ... ..	S. Af.
N. S. R. ... ..	Nova Scotia Reports ... ..	Can.
N. S. R. (Coch.) ... ..	Nova Scotia Reports (Cochran) ... ..	Can.
N. S. R. (G. & O.) ... ..	Nova Scotia Reports (Geldert and Oxley) ... ..	Can.
N. S. R. (G. & R.) ... ..	Nova Scotia Reports (Geldert and Russell) ... ..	Can.
N. S. R. (James) ... ..	Nova Scotia Reports (James) ... ..	Can.
N. S. R. (Old.) ... ..	Nova Scotia Reports (Oldrights) ... ..	Can.
N. S. R. (R. & C.) ... ..	Nova Scotia Reports (Russell and Chesley) ... ..	Can.
N. S. R. (R. & G.) ... ..	Nova Scotia Reports (Russell and Geldert) ... ..	Can.
N. S. R. (Thom.) ... ..	Nova Scotia Reports (Thomson) ... ..	Can.
N. S. W. Adm. or Ad. ... ..	New South Wales Reports, Admiralty ... ..	Aus.
N. S. W. B. ... ..	New South Wales Reports, Bankruptcy ... ..	Aus.
N. S. W. Bkpty. Cas. ... ..	New South Wales Bankruptcy Cases ... ..	Aus.
N. S. W. Eq. ... ..	New South Wales Reports, Equity ... ..	Aus.
N. S. W. Ind. Arbtrn. Cas. ... ..	New South Wales Industrial Arbitration Cases ... ..	Aus.
N. S. W. L. R. ... ..	New South Wales Law Reports ... ..	Aus.
N. S. W. Land App. Cts. ... ..	New South Wales Land Appeal Courts ... ..	Aus.
N. S. W. S. C. R. (Eq.) ... ..	New South Wales Supreme Court Reports (Equity) ... ..	Aus.
N. S. W. S. C. R. (L.) ... ..	New South Wales Supreme Court Reports (Law) ... ..	Aus.
N. S. W. S. C. R. N. S. ... ..	New South Wales Supreme Court Reports, New Series ... ..	Aus.
N. S. W. W. N. ... ..	New South Wales Weekly Notes ... ..	Aus.
N. W. ... ..	North-Western Provinces High Court Reports ... ..	Ind.
N. W. T. R. ... ..	North-West Territories Reports ... ..	Can.
N. Z. Jur. ... ..	New Zealand Jurist ... ..	N.Z.
N. Z. Jur. Mining Law ... ..	New Zealand Jurist Mining Law ... ..	N.Z.

# xxiv      REPORTS INCLUDED IN THIS WORK AND THEIR ABBREVIATIONS.

N. Z. Jur. N. S. ...	New Zealand Jurist, New Series ... ..	N.Z.
N. Z. L. R. ...	New Zealand Law Reports, 1883—(current) ... ..	N.Z.
N. Z. L. R. C. A.	New Zealand Law Reports, Court of Appeal, 5 vols., 1883—1887	N.Z.
Nels. ...	Nelson's Reports, Chancery, 1 vol., 1625—1693 ... ..	Eng
Nev. & M. K. B.	Nevile and Manning's Reports, King's Bench, 6 vols., 1832—1836	Eng.
Nev. & M. M. C.	Nevile and Manning's Magistrates' Cases, 3 vols., 1832—1836	Eng.
Nev. & P. K. B.	Nevile and Perry's Reports, King's Bench, 3 vols., 1836—1838	Eng
Nev. & P. M. C.	Nevile and Perry's Magistrates' Cases, 1 vol., 1836—1837 ...	Eng
New Mag. Cas.	New Magistrates' Cases (Bittleston, Wise and Parnell), 5 vols., 1844—1850 ... ..	Eng.
New Pract. Cas.	New Practice Cases (Bittleston and others), 3 vols., 1844—1848	Eng
New Rep. ...	New Reports, 6 vols., 1862—1865 ... ..	Eng.
New Sess. Cas. ...	New Sessions Magistrates' Cases (Carrow, Hamerton, Allen, etc.), 4 vols., 1844—1851 ... ..	Eng.
Nfld. L. R. ...	Newfoundland Reports ... ..	Nfld.
Nolan ...	Nolan's Magistrates' Cases, 1 vol., 1791—1793 ... ..	Eng.
Notes of Cases ...	Notes of Cases in the Ecclesiastical and Maritime Courts, 7 vols., 1841—1850 ... ..	Eng.
Noy ...	Noy's Reports, King's Bench, fol., 1 vol., 1558—1649 ...	Eng.
O. B. & F. ...	Ollivier Bell and Fitzgerald's Reports ... ..	N.Z.
O. B. S. P. ...	Old Bailey Session Papers ... ..	Eng.
O. Bridg. ...	Sir Orlando Bridgman's Reports, Common Pleas, 1 vol., 1660— 1666 ... ..	Eng.
O. F. S. ...	Reports of the High Court of the Orange Free State, 1879—1883	S. Af.
O. L. R. ...	Ontario Law Reports ... ..	Can.
O'M. & H. ...	O'Malley and Hardcastle's Election Cases, 1869—(current) ...	Eng.
O. P. D. ...	South African Law Reports, Orange Free State Provincial Division	S. Af.
O. R. ...	Ontario Reports ... ..	Can.
O. R. ...	Official Reports of the South African Republic, 1894—1899 ...	S. Af.
O. R. C. ...	Reports of the High Court of the Orange River Colony ...	S. Af.
O. S. ...	Upper Canada Queen's Bench, Old Series ... ..	Can.
O. W. N. ...	Ontario Weekly Notes ... ..	Can.
O. W. R. ...	Ontario Weekly Reporter ... ..	Can.
Old. ...	Nova Scotia Reports (Oldrights) ... ..	Can.
Ont. Dig. ...	Digest of Ontario Case Law, 4 vols., 1823—1900	Can.
Owen ...	Owen's Reports, King's Bench and Common Pleas, fol., 1 vol., 1557—1614 ... ..	
P. (preceded by date) ...	Law Reports, Probate, Divorce, and Admiralty Division, since 1890 ( <i>e.g.</i> , [1891] P.) ... ..	
P. &	New Brunswick Reports (Pugsley and Burbidge) ... ..	Can.
P. &	New Brunswick Law Reports (Pugsley and Trueman) ... ..	Can.
P.	Prize Cases Heard and Decided in the Prize Court During the Great War, 3 vols., 1914—1922 ... ..	Eng. & Col.
P.	Law Reports, Probate, Divorce, and Admiralty Division, 15 vols., 1875—1890 ... ..	Eng.
P. E. I. ...	Prince Edward Island Reports ... ..	Can.
P. R. ...	Ontario Practice ... ..	Can.
P. Wms.	Peere Williams' Reports, Chancery and King's Bench, 3 vols., 1695—1735 ... ..	Eng.
Palm. ...	Palmer's Reports, King's Bench, fol., 1 vol., 1619—1629 ...	Eng.
	Parker's Reports, Exchequer, fol., 1 vol., 1743—1767; App. 1678—1717 ... ..	Eng.
Pat. App. ..	Paton's Scotch Appeals, House of Lords, 6 vols., 1726—1822	Scot.
Pater. App. ..	Paterson's Scotch Appeals, House of Lords, 2 vols., 1851—1873	Scot.
Peake ...	Peake's Reports, Nisi Prius, 1 vol., 1790—1794 ... ..	Eng.
Peake, Add. Cas.	Peake's Additional Cases, Nisi Prius, 1 vol., 1795—1812 ...	Eng.
	Peckwell's Election Cases, 2 vols., 1803—1806 ... ..	Eng.
Pelham ...	Pelham (S. A.) Reports ... ..	Aus.
Per. & Dav.	Perry and Davison's Reports, Queen's Bench, 4 vols., 1838—1841	Eng.
Per. & Kn.	Perry and Knapp's Election Cases, 1 vol., 1833 ... ..	
Per. C. S.	Perrault's Conseil Supérieur ... ..	Can.
Per. P. ...	Perrault's Prévosté de Quebec, 1726—1756 ... ..	Can.
	Phillips' Reports, Chancery, 2 vols., 1841—1849 ... ..	Eng.
Phil. El. Cas. ...	Philipps' Election Cases, 1 vol., 1780 ... ..	Eng.
Phillim. ...	J. Phillimore's Ecclesiastical Reports, 3 vols., 1809—1821 ...	Eng.
Phillim. Eccl. Jud.	Sir R. Phillimore's Ecclesiastical Judgments, 1 vol., 1867—1875	Eng.
Phip. ...	Phipson's Digest of Natal Reports, 1858—1859 ... ..	S. Af.
Pig. & R. ...	Pigott and Rodwell's Registration Cases, 1 vol., 1843—1845 ...	Eng.
Pitc. ...	Pitcairn's Criminal Trials (Scotland), 3 vols., 1488—1624 ...	Scot.
Plowd. ...	Plowden's Reports, fol., 2 vols., 1550—1580, and Plowden's Queries, Vol. I. ... ..	Eng.
Poll. ...	Pollexfen's Reports, King's Bench, fol., 1 vol., 1670—1682 ...	Eng.
Poph. ...	Popham's Reports, King's Bench, fol., 1 vol., 1591—1627 ...	Eng.
Pow. R. & D. ...	Power, Rodwell, and Dew's Election Cases, 2 vols., 1848—1856	Eng.

Pratt	Pratt's Supplement to Bott's Poor Laws, 1833	...	Eng.
Prec. Ch.	Precedents in Chancery, fol., 1 vol., 1689—1722	...	Eng.
Price	Price's Reports, Exchequer, 13 vols., 1814—1824	...	Eng.
Price	Price's Mining Commissioners' Cases	...	Can.
Pug.	New Brunswick Reports (Pugsloy)	...	Can.
Py. R.	Pykes' Lower Canada Reports	...	Can.
	Queen's Bench Reports (Adolphus and Ellis, New Series), 18 vols., 1841—1852	...	Eng.
Q. B. (preceded by date)	Law Reports, Queen's Bench Division, 1891—1901 ( <i>e.g.</i> , [1891] 1 Q. B.)	...	Eng.
Q. B. D.	Law Reports, Queen's Bench Division, 25 vols., 1875—1890	...	Eng.
Q. J. P.	Queensland Justice of Peace Reports	...	Aus.
L. J.	Queensland Law Journal and Reports, 11 vols., 1879—1901	...	Aus.
Q. L. R.	Quebec Law Reports	...	Can.
Q. L. R. (Beor)	Queensland Law Reports by Beor, 1876—1878	...	Aus.
P. R.	Quebec Practice Reports	...	Can.
Q. R. (Vol.) K. B. or Q. B.	Rapports Judiciaires de Québec, Cour du Banc du I, 1892—(current)	...	Can.
Q. R. (Vol.) S. C.	Rapports Judiciaires de Québec, Cour Supérieure, 1892—(current)	...	Can.
Q. S. C. R.	Queensland Supreme Court Reports, 5 vols., 1860—1881	...	Aus.
Q. S. R.	Queensland State Reports, 6 vols., 1902—1906	...	Aus.
Q. W. N.	Weekly Notes, Queensland	...	Aus.
R.	The Reports, 15 vols., 1893—1895	...	Eng.
	Roscoe's Reports of the Supreme Court of the Cape of Good Hope, 1861—1867, 1871—1872, 1877—1878	...	S. Af.
R. (Ct. of Sess.)	Rettie, Court of Session Cases (Scotland), 4th series, 25 vols., 1873—1898	...	Scot.
R. A. C.	Ramsay, Appeal Cases	...	Can.
R. & C.	Nova Scotia Reports (Russell & Chesley)	...	Can.
R. & G.	Nova Scotia Reports (Russell and Geldert)	...	Can.
R. C.	La Revue Critique de Législation et de Jurisprudence de Canada	...	Can.
R. de J.	Revue de Jurisprudence	...	Can.
R. de L.	Revue de Législation et de Jurisprudence, 3 vols., 1845—1848	...	Can.
R. E. D.	New South Wales, Reserved and Equity Decisions	...	Aus.
R. E. D.	Ritchie's Equity Decisions (Russell)	...	Can.
R. J. R. Q.	Quebec Revised Reports	...	Can.
R. L. N. S.	Revue Légale, New Series, 1895—(current)	...	Can.
R. L. O. S.	Revue Légale, Old Series, 21 vols., 1869—1892	...	Can.
R. P. C.	Reports of Patent Cases, 1884—(current)	...	Eng.
R. R.	Revised Reports	...	Eng.
	Rastell's Entries	...	Eng.
Rayn.	Rayner's Tithe Cases, 3 vols., 1575—1782	...	Eng.
Real Prop. Cas.	Real Property Cases, 2 vols., 1843—1847	...	Eng.
Rep. Ch.	Reports in Chancery, fol., 3 vols., 1615—1710	...	Eng.
Rep. in C. of A.	Reports in Courts of Appeal	...	N.Z.
Res. & Eq. Jud.	New South Wales Reserved and Equity Judgments	...	Aus.
Reserv. Cas.	Reserved Cases	...	Ir.
Rick. & M.	Rickards and Michael's Locus Standi Reports, 1 vol., 1885—1889	...	Eng.
Rick. & S.	Rickards and Saunders' Locus Standi Reports, 1 vol., 1890—1894	...	Eng.
Ridg. L. & S.	Ridgeway, Lapp, and Schoales' Reports (Ireland), 1 vol., 1793—1796	...	Ir.
Ridg. Parl. Rep.	Ridgeway's Parliamentary Reports (Ireland), 3 vols., 1784—1796	...	Ir.
Ridg. temp. H.	Ridgeway's Reports temp. Hardwicke, 1 vol., King's Bench, 1733—1736; Chancery, 1744—1746	...	Eng.
Ritch. Eq. Rep.	Ritchie's Equity Reports	...	Can.
Rob. Eccl.	Robertson's Ecclesiastical Reports, 2 vols., 1844—1853	...	Eng.
Rob. L. & W.	Roberts, Leeming, and Wallis' New County Court Cases, 1 vol., 1849—1851	...	Eng.
Robert. App.	Robertson's Scotch Appeals, House of Lords, 1 vol., 1709—1727	...	Scot.
Robin. App.	Robinson's Scotch Appeals, House of Lords, 2 vols., 1840—1841	...	Scot.
Roll. Abr.	Rolle's Abridgment of the Common Law, fol., 2 vols.	...	Eng.
Roll. Rep.	Rolle's Reports, King's Bench, fol., 2 vols., 1614—1625	...	Eng.
Rom.	Romilly's Notes of Cases in Equity, 1 part, 1772—1787	...	Eng.
Roscoe's B. C.	Roscoe, Digest of Building Cases	...	Eng.
Rose	Rose's Reports, Bankruptcy, 2 vols., 1810—1816	...	Eng.
Ross, L. C.	Ross's Leading Cases in Commercial Law (England and Scotland), 3 vols.	...	Eng.
Rowe	Rowe's Reports (England and Ireland), 1 vol., 1798—1823	...	Eng.
Rul. Cas.	Campbell's Ruling Cases, 25 vols.	...	Eng.
Russ.	Russell's Reports, Chancery, 5 vols., 1824—1829	...	Eng.
Russ. & M.	Russell and Mylne's Reports, Chancery, 2 vols., 1829—1833	...	Eng.



# xxvi REPORTS INCLUDED IN THIS WORK AND THEIR

Russ. & Ry. ...	Russell and Ryan's Crown Cases Reserved, 1 vol., 1800—1823	Eng.
Rus. E. R. ...	Russell's Election Reports...	
Ry. & Can. Cas. ...	Railway and Canal Cases, 7 vols., 1835—1854 ...	
Ry. & Can. Tr. Cas. ...	Railway and Canal Traffic Cases, 1855—(current) ...	Eng.
Ry. & M. ...	Ryan and Moody's Reports, Nisi Prius, 1 vol., 1823—1826 ...	Eng.
Ryde & K. Rat. App. ...	Ryde and Konstam's Reports of Rating Appeals, 1 vol., 1894—1904 ...	Eng.
Ryde, Rat. App. ...	Ryde's Rating Appeals, 8 vols., 1871—1893 ...	Eng.
S. ...	Searle's Reports of the Supreme Court of the Cape of Good Hope	S. Af.
S. A. L. J. ...	South African Law Journal ...	S. Af.
S. A. L. R. ...	South Australian Law Reports ...	Aus.
S. A. L. R. ...	South African Law Reports ...	S. Af.
S. A. R. ...	Reports of the High Court of the South African Republic, 1881—1892 ...	S. Af.
S. A. S. R. ...	South Australian State Reports, since 1921 ( <i>e.g.</i> , [1921] S. A. S. R.) ...	Aus.
S. C. ...	Reports of the Supreme Court of the Cape of Good Hope from 1880 ...	S. Af.
S. C. (preceded by date)	Court of Session Cases (Scotland), since 1906 ( <i>e.g.</i> , [1906] S. C.)	Scot.
S. C. (H. L.) (preceded by date)	Court of Session Cases (Scotland) (House of Lords), since 1906 ( <i>e.g.</i> , [1906] S. C. (H. L.)) ...	Scot.
S. C. (J.) (preceded by date)	Court of Justiciary Cases (Scotland), since 1906 ( <i>e.g.</i> , [1906] S. C. (J.)) ...	Scot.
S. C. R. ...	Canada, Supreme Court Reports ...	Can.
S. L. T. ...	Scots Law Times, 1893 (current) ...	Scot.
l. R. ...	Queensland State Reports ...	Aus.
	Reports of the High Court of Southern Rhodesia ...	S. Af.
S. R. C. ...	Stuart's Lower Canada Reports ...	Can.
S. R. N. S. W. ...	New South Wales, State Reports ...	Aus.
S. R. Q. ...	Queensland Reports, Supreme Court ...	Aus.
S. V. A. R. ...	Stuart's Vice-Admiralty Reports ...	Can.
S. W. A. ...	South-West Africa Law Reports ...	S.-W. Af.
Saint ...	Saint's Digest of Registration Cases, 1843—1906, 1 vol. ...	Eng.
	Salkeld's Reports, King's Bench, 3 vols., 1689—1712 ...	Eng.
Sask. L. R. ...	Saskatchewan Law Reports ...	Can.
Sau. & Sc. ...	Sausee and Scully's Reports, Rolls Court (Ireland), 1 vol., 1837	Ir.
Saund. ...	Saunders's Reports, King's Bench, 2 vols., 1666—1672 ...	Eng.
Saund. & A. ...	Saunders and Austin's Locus Standi Reports, 2 vols., 1895—1904	Eng.
Saund. & B. ...	Saunders and Bidder's Locus Standi Reports, 1905—(current)	Eng.
Saund. & C. ...	Saunders and Cole's Reports, Bail Court, 2 vols., 1846—1848 ...	Eng.
Saund. & M. ...	Saunders and Macrae's County Courts and Insolvency Cases (County Courts Cases and Appeals, Vols. II. and III.), 2 vols.,	
		Eng.
Sav. ...	Savile's Reports, Common Pleas, fol., 1 vol., 1580—1591 ...	Eng.
Say. ...	Sayer's Reports, King's Bench, fol., 1 vol., 1751—1756 ...	Eng.
Sc. Jur. ...	Scottish Jurist, 46 vols., 1829—1873 ...	Scot.
Sc. L. R. ...	Scottish Law Reporter, 61 vols., 1865—1924 ...	Scot.
Sc. R. R. ...	Scots Revised Reports ...	Scot.
Sch. & Lef. ...	Schoales and Lefroy's Reports, Chancery (Ireland), 2 vols., 1802—1806 ...	Ir.
Scott ...	Scott's Reports, Common Pleas, 8 vols., 1834—1840 ...	Eng.
Scott, N. R. ...	Scott's New Reports, Common Pleas, 8 vols., 1840—1845 ...	Eng.
Sea. & Sm. ...	Searle and Smith's Reports, Probate and Divorce, 1 vol., 1859—	Eng.
Sel. Cas. Ch. ...	Select Cases in Chancery, fol., 1 vol., 1685—1698 (Pt. III. of Cas. in Ch.) ...	Eng.
Selwyn's N. P. ...	Selwyn's Abridgement of the Law of Nisi Prius ...	Eng.
Sess. Cas. K. B. ...	Sessions Settlement Cases, King's Bench, 2 vols., 1710—1747	Eng.
Sett. & Rem. ...	Cases adjudged in K. B. concerning Settlements & Removals, 1 vol., 1685—1727 ...	Eng.
Sh. (Ct. of Sess.)	Shaw, Court of Session Cases (Scotland), 1st series, 16 vols.,	Scot.
Sh. & MacI. ...	Shaw and Maclean's Scotch Appeals, House of Lords, 3 vols., 1835—1838 ...	Scot.
Sh. Dig. ...	P. Shaw's Digest of Decisions (Scotland), ed. by Bell and Lamond, 3 vols., 1726—1868 ...	Scot.
Sh. Just. ...	P. Shaw's Justiciary Decisions (Scotland), 1 vol., 1819—1831	Scot.
Sh. Sc. App. ...	P. Shaw's Scotch Appeals, House of Lords, 2 vols., 1821—1824	Scot.
Sh. Teind Ct. ...	P. Shaw's Teind Court Decisions (Scotland), 1 vol., 1821—1831	Scot.
Shep. Touch. ...	Sheppard's Touchstone of Common Assurances ...	Eng.
Show. ...	Shower's Reports, King's Bench, 2 vols., 1678—1695 ...	
Show. Parl. Cas. ...	Shower's Cases in Parliament, fol., 1 vol., 1694—1699 ...	Eng.
	Siderfin's Reports, King's Bench, Common Pleas and Exchequer, fol., 2 vols., 1657—1670 ...	

# REPORTS INCLUDED IN THIS WORK AND THEIR ABBREVIATIONS.

xxvii

Sim. ...	Simons' Reports, Chancery, 17 vols., 1826—1852 ...	Eng.
Sim. & St.	Simons and Stuart's Reports, Chancery, 2 vols., 1822—1826 ...	Eng.
Sim. N. S.	Simons' Reports, Chancery, New Series, 2 vols., 1850—1852 ...	Eng.
Skin. ...	Skinner's Reports, King's Bench, fol., 1 vol., 1681—1697 ...	Eng.
Sm. & Bat.	Smith and Batty's Reports, King's Bench (Ireland), 1 vol.,	Ir.
Sm. & G.	Smale and Giffard's Reports, Chancery, 3 vols., 1852—1857 ...	Eng.
Smith, K. B.	J. P. Smith's Reports, King's Bench, 3 vols., 1803—1806 ...	Eng.
Smith, L. O.	Smith's Leading Cases, 2 vols. ...	Eng.
Smith, Reg. Cas.	C. L. Smith's Registration Cases, 1895—(current) ...	Eng.
Smythe ...	Smythe's Reports, Common Pleas (Ireland), 1 vol., 1839—1840	Ir.
Sol. Jo. ...	Solicitors' Journal, 1856—(current) ...	Eng.
Spence ...	Spence's Equitable Jurisdiction of the Court of Chancery ...	Eng.
Spinks ...	Spinks' Prize Court Cases, 2 parts, 1854—1856 ...	Eng.
St. R. Qd. (preceded date) ...	Queensland State Reports, since 1902 ( <i>e.g.</i> , [1902] St. R. Qd.)	Aus.
Stair Rep. ...	Stair's Decisions, Court of Session (Scotland), fol., 2 vols.,	Scot.
Stark. ...	Starkie's Reports, Nisi Prius, 3 vols., 1814—1823 ...	Eng.
State Tr. ...	State Trials, 34 vols., 1163—1820 ...	Eng.
State Tr. N. S.	State Trials, New Series, 8 vols., 1820—1858 ...	Eng.
Stewart ...	Stewart's Nova Scotia Admiralty Reports, 1803—1813	Can.
Stockton ...	Stockton's Vice-Admiralty Report and Digest ...	Can.
Story ...	Story's Commentaries on Equity Jurisprudence ...	Eng.
Stra. ...	Strange's Reports, 2 vols., 1716—1747 ...	Eng.
Stu. M. & P. ...	Stuart, Milne, and Peddie's Reports (Scotland), 2 vols., 1851.	Scot.
Stuart ...	Sessions Cases (Stuart) ...	Scot.
Stuart, Adm. ...	Stuart's Vice-Admiralty (Lower Canada) Cases, 1836—1856 ...	Can.
Stuart, Adm. N. S.	Stuart's Vice-Admiralty (Lower Canada) Cases, 2nd series, 1859 —1874 ...	Can.
Stuart, K. B. ...	Stuart's Reports of Cases in King's Bench, etc. (Lower Canada),	Can.
Sty. ...	Style's Reports, King's Bench, fol., 1 vol., 1646—1655 ...	Eng.
Sw. ...	Swabey's Report, Admiralty, 1 vol., 1855—1859 ...	Eng.
Sw. & Tr. ...	Swabey and Tristram's Reports, Probate and Divorce, 4 vols., 1858—1865 ...	Eng.
Swan. ...	Swanston's Reports, Chancery, 3 vols., 1818—1821 ...	Eng.
Swin. ...	Swinton's Justiciary Reports (Scotland), 2 vols., 1835—1841 ...	Scot.
Syme ...	Syme's Justiciary Reports (Scotland), 1 vol., 1826—1829 ...	Scot.
T. & M. ...	Temple and Mew's Criminal Appeal Cases, 1 vol., 1848—1851	Eng.
T.	Reports of the Witwatersrand High Court (Transvaal Colony), 1902—1909 ...	S. Af.
T.	Sir T. Jones's Reports, King's Bench and Common Pleas, fol., 1 vol., 1667—1685 ...	Eng.
T. L. ...	Reports of the Witwatersrand High Court (Transvaal Colony), 1910—(current) ...	S. Af.
T. L. R. ...	The Times Law Reports, 1884—(current) ...	Eng.
T. P. ...	Reports of the Supreme Court of the Transvaal, 1910—(current)	S. Af.
T. P. D. ...	South African Law Reports, Transvaal Provincial Division ...	S. Af.
T. Raym. ...	Sir T. Raymond's Reports, King's Bench, fol., 1 vol., 1660—	Eng.
T. S. ...	Reports of the Supreme Court of the Transvaal, 1902—1909 ...	S. Af.
Taml. ...	Tamlyn's Reports, Rolls Court, 1 vol., 1829—1830 ...	Eng.
Tas. L. It. ...	Tasmanian Law Reports ...	Aus.
Taunt. ...	Taunton's Reports, Common Pleas, 8 vols., 1807—1819 ...	Eng.
Tax Cas. ...	Tax Cases, 1875—(current) ...	Eng.
Tay. ...	Taylor's King's Bench Reports ...	Can.
Temp. Wood ...	Manitoba Reports <i>temp.</i> Wood ...	Can.
Term Rep. ...	Term Reports (Durnford and East), fol., 8 vols., 1785—1800 ...	Eng.
Terr. L. R. ...	Territories Law Reports ...	Can.
Thom. ...	Nova Scotia Reports (Thomson) ...	Can.
Toth. ...	Tothill's Transactions in Chancery, 1 vol., 1559—1646 ...	Eng.
Town St. Tr. ...	Townsend, Modern State Trials ...	Eng.
Trem. P. C. ...	Tremaine Pleas of the Crown, 1 vol., 1667 ...	Eng.
Trist. ...	Tristram's Consistory Judgments, 1 vol., 1872—1890 ...	Eng.
Tru. ...	New Brunswick Reports (Trueman) ...	Can.
Tudor, L. C. Merc. Law.	Tudor's Leading Cases on Mercantile and Maritime Law ...	Eng.
Tudor, L. C. Real Prop.	Tudor's Leading Cases on Real Property ...	Eng.
Turn. & R. ...	Turner and Russell's Reports, Chancery, 1 vol., 1822—1825 ...	Eng.
Tyr. & Gr.	Tyrwhitt's Reports, Exchequer, 5 vols., 1830—1835 ... Tyrwhitt and Granger's Reports, Exchequer, 1 vol., 1835—1836	Eng.
U. C. Jur.	Upper Canada Jurist ...	Can.
U. C. L. J.	Canada Law Journal, New Series, 1865—(current) ...	Can.

# VIII REPORTS INCLUDED IN THIS WORK AND THEIR ABBREVIATIONS.

U. C. L. J. O. S.	Canada Law Journal, Old Series, 10 vols., 1855—1864	...	Can.
U. C. R. ...	Upper Canada Reports, Queen's Bench	...	Can.
Udal ...	Fiji Law Reports (Udal)	...	Fiji.
V. L. R. ...	Victorian Law Reports	...	Aus.
V. R. ...	Victorian Reports	...	Aus.
V. R. (Adm.) ...	Victorian Reports (Admiralty)	...	Aus.
V. R. (Eq.) ...	Victorian Reports (Equity)	...	Aus.
V. R. (Law) ...	Victorian Reports (Law)	...	Aus.
Vaugh. ...	Vaughan's Reports, Common Pleas, fol., 1 vol., 1666—1673	...	Eng.
Vent. ...	Ventris' Reports (Vol. I., King's Bench; Vol. II., Common Pleas), fol., 2 vols., 1668—1691	...	Eng.
Vern. ...	Vernon's Reports, Chancery, 2 vols., 1680—1719	...	Eng.
Vern. & Scr. ...	Vernon and Scriven's Reports, King's Bench (Ireland), 1 vol., 1786—1788	...	Ir.
Ves. ...	Vesey Jun.'s Reports, Chancery, 19 vols., 1789—1817	...	Eng.
Ves. & B. ...	Vesey and Beames's Reports, Chancery, 3 vols., 1812—1814	...	Eng.
Ves. Sen. ...	Vesey Sen.'s Reports, 2 vols., 1747—1756	...	Eng.
Vin. Abr. ...	Viner's Abridgment of Law and Equity, fol., 22 vols.	...	Eng.
Vin. Supp.	Supplement to Viner's Abridgment of Law and Equity, 6 vols.	...	Eng.
W. ...	Watermeyer's Reports of the Supreme Court of the Cape of Good Hope, 1857	...	S. Af.
W. A. L. R. ...	West Australian Law Reports	...	Aus.
W. A'B. & W. ...	Webb, A'Beckett and Williams' Victorian Reports	...	Aus.
W. & W. ...	Wyatt and Webb	...	Eng.
W. C. C. ...	Workmen's Compensation Cases (Minton-Senhouse), 9 vols., 1898—1907	...	S. Af.
W. H. C. ...	South African Law Reports, Witwatersrand High Court	...	Eng.
W. Jo. ...	Sir W. Jones's Reports, King's Bench and Common Pleas, fol., 1 vol., 1620—1640	...	S. Af.
W. L. D. ...	South African Law Reports, Witwatersrand Local Division	...	Can.
W. L. R. ...	Western Law Reporter	...	Can.
W. L. T. ...	Western Law Times	...	Eng.
W. N. (preceded by date)	Law Reports, Weekly Notes, 1866—(current) ( <i>e.g.</i> , [1866] W. N.)	...	Ind.
W. N. ...	Calcutta Weekly Notes	...	Eng.
W. R. ...	Weekly Reporter, 54 vols., 1852—1906	...	Ind.
W. R. ...	Sutherland's Weekly Reporter	...	S. Af.
W. R. ...	Weekly Reporter, reporting cases in the Cape Provincial Division	...	Aus.
W. W. & A'B. ...	Wyatt, Webb and A'Beckett	...	Can.
W. W. R. ...	Western Weekly Reports	...	Ir.
Wallis by Lyne	Wallis' Reports, Chancery (Ireland), 1 vol., 1766—1791	...	Eng.
Web. Pat. Cas. ...	Webster's Patent Cases, 2 vols., 1602—1855	...	Ir.
Welsh, Reg. Cas.	Welsh's Registry Cases (Ireland), 1 vol., 1832—1840	...	Eng.
Went. Off. Ex.	Wentworth's Office and Duty of Executors	...	Eng.
West ...	West's Reports, House of Lords, 1 vol., 1839—1841	...	Eng.
West temp. Hard.	West's Reports temp. Hardwicke, Chancery, 1 vol., 1736—1740	...	Eng.
West. Tithe Cas.	Western's London Tithe Cases, 1 vol., 1592—1822	...	Eng.
White ...	White's Justiciary Reports (Scotland), 3 vols., 1886—1893	...	Scot.
White & Tud. L. C.	White and Tudor's Leading Cases in Equity, 2 vols.	...	Eng.
Wight ...	Wightwick's Reports, Exchequer, 1 vol., 1810—1811	...	Eng.
Will. Woll. & Dav.	Willmore, Wollaston, and Davison's Reports, Queen's Bench and Bail Court, 1 vol., 1837	...	Eng.
Will. Woll. & H.	Willmore, Wollaston, and Hodges' Reports, Queen's Bench and Bail Court, 2 vols., 1838—1839	...	Eng.
Wilm. ...	Willes' Reports, Common Pleas, 1 vol., 1737—1758	...	Eng.
Wils. ...	Wilmot's Notes of Opinions and Judgments, 1 vol., 1757—1770	...	Eng.
Wils. & S.	G. Wilson's Reports, King's Bench and Common Pleas, fol., 3 vols., 1742—1774	...	Eng.
Wils. Ch.	Wilson and Shaw's Scotch Appeals, House of Lords, 7 vols.	...	Scot.
Wils. Ex.	J. Wilson's Reports, Chancery, 2 vols., 1818—1819	...	Eng.
Win. ...	J. Wilson's Reports, Exchequer in Equity, 1 part, 1817	...	Eng.
Wm. Bl.	Winch's Reports, Common Pleas, fol., 1 vol., 1621—1625	...	Eng.
Wm. Rob.	William Blackstone's Reports, King's Bench and Common Pleas, fol., 2 vols., 1746—1779	...	Eng.
Wms. Saund.	William Robinson's Reports, Admiralty, 3 vols., 1838—1850	...	Eng.
Wolf. & B.	Williams' Notes to Saunders' Reports, 2 vols.	...	Eng.
Wolf. & D.	Wolferstan and Bristowe's Election Cases, 1 vol., 1859—1864	...	Eng.
Woll. ...	Wolferstan and Dew's Election Cases, 1 vol., 1857—1858	...	Eng.
Wood ...	Wollaston's Reports, Bail Court and Practice, 1 vol., 1840—1841	...	Eng.
Y. A. D.	Wood's Tithe Cases, Exchequer, 4 vols., 1650—1798	...	Can.
	Young's Vice-Admiralty Reports	...	

# REPORTS INCLUDED IN THIS WORK AND THEIR ABBREVIATIONS.

xxix

Y. & C. Ch. Cas.	Younge and Collyer's Reports, Chancery Cases, 2 vols., 1841-1843	Eng.
Y. & C. Ex. ...	Younge and Collyer's Reports, Exchequer in Equity, 4 vols 1833—1841	Eng.
Y. & J. ...	Younge and Jarvis' Reports, Exchequer, 3 vols , 1826—1830	Eng.
Y. B. ...	Year Books ...	Eng.
Y. B. (Rolls Series)	Year Books (Rolls Series) ...	Eng.
Y. B. (Sel. Soc.)...	Year Books (Selden Society)	Eng.
Yelv. ...	Yelverton's Reports, King's Bench, fol., 1 vol., 1602—1613	Eng.
You. ...	Younge's Reports, Exchequer in Equity, 1 vol., 1830—1832	Eng.





# ABBREVIATIONS

## USED IN THIS WORK.

(For Abbreviations used in citing Reports, see pp. xiii—xxix,

Act.	for Attorney-General.
Add.	Actiengesellschaft.
Admlty.	Additional.
Affd.	Admiralty.
Affg.	„ Affirmed.
Akt.	„ Affirming.
Alta.	„ Aktiengesellschaft ; Aktiebolaget ; Aktieselskabet.
Anon.	„ Alberta.
Apld.	„ Anonymous.
Appct.	„ Applied.
Appln.	„ Applicant.
Appln.	„ Application.
Applt.	„ Application to Register a Trade Mark.
Apprvd.	„ Appellant.
Arbn.	„ Approved.
Archbp.	„ Arbitration.
Art.	„ Archbishop.
Ass. Tax Case	„ Article.
Assce. .	„ Assessed Tax Case.
Assocn.	„ Assurance.
	„ Association.
B. C. .	„ Borough Council.
B. C. .	„ British Columbia.
Bkpcy. .	„ Bankruptcy.
Bkpt. .	„ Bankrupt.
Bldg. Soc.	„ Building Society.
Bp. .	„ Bishop.
C. A. .	„ Court of Appeal.
C. & S. L. Ry Co.	„ City & South London Railway Co.
C. C. A.	„ Court of Criminal Appeal.
C. C. R.	„ County Court Rules.
C. O. R.	„ Court of Crown Cases Reserved.
C. L. P. Act.	„ Common Law Procedure Act.
C. L. Ry. Co.	„ Central London Railway Co.
C. O. R.	„ Crown Office Rules.
C. S. U. C.	„ Consolidated Statutes of Upper Canada.
Ca. sa. .	„ <i>Capias ad satisfaciendum</i> .
Cale. Ry. Co.	„ Caledonian Railway Co.
Ch. .	„ Chancery.
Ch. Div.	„ Chancery Division.
Co. .	„ Company.
Co-op. Assocn	„ Co-operative Supply Association.
Comrs. .	„ Commissioners.
Consd. .	„ Considered.
Corpn. .	„ Corporation.
Ct. .	„ Court.
Ct. of Ch.	„ Court of Chancery.
Ct. of Eq.	„ Court of Equity.
Ct. of R.	„ Court of Review.
	„ Divisional Court.
Dbtd. .	„ Doubted.

Deft. .	for Defendant.
Distd. .	„ Distinguished.
Div. Ct.	„ Divisional Court.
Eccl. Comrs.	„ Ecclesiastical Commissioners.
Eccl. Ct.	„ Ecclesiastical Court.
Ex. Ch.	„ Exchequer Chamber.
<i>Ex p.</i> .	„ <i>Ex parte</i> .
Exch. .	„ Exchequer.
Exor. .	„ Executor.
Exorship.	„ Executorship.
Expld. .	„ Explained.
Extd. .	„ Extended.
Extrix. .	„ Executrix.
<i>Fi. fa.</i> .	„ <i>Fieri facias</i> .
Folld. .	„ Followed.
G. & S. W. Ry. Co. . . .	„ Glasgow & South Western Railway Co.
G. C. Ry. Co. . . .	„ Great Central Railway Co.
G. E. Ry. Co. . . .	„ Great Eastern Railway Co.
G. N. of Scotland Ry. Co. .	„ Great North of Scotland Railway Co.
G. N. Picc. & Brompton Ry. Co	„ Great Northern, Piccadilly & Brompton Railway Co.
G. N. Ry. Co. . . .	„ Great Northern Railway Co.
G. S. & W. Ry. Co. of Ireland .	„ Great Southern & Western Railway Co. of Ireland.
G. W. Ry. Co. . . .	„ Great Western Railway Co.
Govt. . . .	„ Government.
Grdns. . . .	„ Guardians or Guardians of the Poor.
H. C. of A. . . .	„ High Court of Australia.
	„ House of Lords.
I. R. Comrs. .	„ Inland Revenue Commissioners.
Insce. . .	„ Insurance.
	„ Justices.
Jud. Act . . .	„ Judicature Act.
K. B. Div. . .	„ King's Bench Division.
L. & B. Ry. Co. .	„ London & Brighton Railway Co.
L. & N. E. Ry. Co.	„ London & North Eastern Railway Co.
L. & N. W. Ry. Co.	„ London & North Western Railway Co.
L. & S. W. Ry. Co.	„ London & South Western Railway Co.
L. & Y. Ry. Co. .	„ Lancashire & Yorkshire Railway Co.
L. B. . . .	„ Local Board.
L. B. & S. C. Ry. Co.	„ London, Brighton & South Coast Railway Co.
L. O. . . .	„ Lord Chancellor.
L. C. & D. Ry. Co.	„ London, Chatham & Dover Railway Co.
L. C. C. . . .	„ London County Council.
L. Elec. Ry. Co. .	„ London Electric Railway Co.
L. G. Board . .	„ Local Government Board.
L. J. . . .	„ Lord Justice.
L. J. J. . . .	„ Lords Justices.
L. M. & S. Ry. Co.	„ London, Midland & Scottish Railway Co.
L. T. & S. Ry. Co. .	„ London, Tilbury & Southend Railway Co.
M. S. Act . . .	„ Merchant Shipping Act.
M. S. & L. Ry. Co.	„ Manchester, Sheffield & Lincolnshire Railway Co.
Mags. . . .	„ Magistrates.
Man. . . .	„ Manitoba.
Mentd. . . .	„ Mentioned.
Met. Dist. Ry. Co. .	„ Metropolitan District Railway Co.
Met. Ry. Co. . .	„ Metropolitan Railway Co.
Mid. G. W. Ry. Co.	„ Midland Great Western Railway Co.
Mid. Ry. Co. . .	„ Midland Railway Co.
Mtge. . . .	„ Mortgage.
Mtgee. . . .	„ Mortgagee.
Mtgor. . . .	„ Mortgagor.
N. B. . . .	„ New Brunswick.
N. B. Ry. Co.	„ North British Railway Co.
N. E. Ry. Co.	„ North Eastern Railway Co.
N. F. . . .	„ Not Followed.
N. P. . . .	„ <i>Nisi Prius</i> .

N. S.	for Nova Scotia.
N. W. P.	„ North-West Provinces.
N. W. T.	„ North-West Territories.
Ont.	Ontario.
Ord.	Order.
Overd.	„ Overruled.
P. C.	„ Privy Council.
P. E. I.	„ Prince Edward Island.
Petn.	„ Petition or Election Petition.
Pltf.	„ Plaintiff.
Q. B. Div.	„ Queen's Bench Division.
Qu.	„ <i>Quære</i> .
Que.	„ Quebec.
R. C.	Rural Council.
R. D. C.	„ Rural District Council.
R. S. A.	„ Rural Sanitary Authority.
R. S. C.	„ Revised Statutes of Canada.
R. S. C.	„ Rules of the Supreme Court, 1883.
Refd.	„ Referred.
Regn. of Trade Mk.	„ Registration of Trade Mark.
Regr. of Trade Mks.	„ Registrar of Trade Marks.
Resp.	„ Respondent.
Restg.	„ Restoring.
Revsd.	„ Reversed.
Revsg.	„ Reversing.
Ry. Co.	„ Rail. Co. or Railway Co.
S. C.	„ Same Case.
S. C. (name of colony following)	„ Supreme Court of a Colony.
S. E.	„ Settled Estates.
S. E. & C. Ry. Co.	„ South Eastern & Chatham Railway Co.
S. E. Ry. Co.	„ South Eastern Railway Co.
S. P.	„ Same Point.
S.S.	„ Steamship.
Sask.	„ Saskatchewan.
Sched.	„ Schedule.
<i>Sci. fa.</i>	„ <i>Scire facias</i> .
Sect.	„ Section.
Set. Land Act	„ Settled Land Act.
Settlmt.	„ Settlement.
Soc.	„ Society.
Soc. Anon.	„ Société Anonyme, etc.
Solr.	„ Solicitor.
Trade Mk.	„ Trade Mark.
Tram. Co.	„ Tramways Company.
U. C.	„ Urban Council.
U. D. C.	„ Urban District Council.
U. S. A.	„ United States of America.
Union Assmt. Com.	„ Union Assessment Committee.
Urban S. A.	„ Urban Sanitary Authority.
V.-O.	„ Vice-Chancellor.
Workmen's Comp. Act	„ Workmen's Compensation Act.
Y. T.	„ Yukon Territory.



# MEANING OF TERMS

## USED IN CLASSIFYING ANNOTATING CASES.

THE different expressions used to describe the effect of the annotating cases have the following meanings, and the classification of the annotating cases has been done strictly in accordance with these meanings. The annotating cases, except such as are classified as "Mentioned," are grouped according to the points in the case which they annotate: within these groups they are listed chronologically, except such as are classified as "Referred to," which come at the end of the group and are arranged *inter se* in chronological order. Cases which annotate the annotated case generally are grouped together after cases which annotate specific points, similarly arranged, and are followed by cases classified as "Mentioned" arranged chronologically *inter se*. The terms used in classifying the annotating cases are as follows:—

- "APPLIED" (Apld.).—This expression is used to denote the fact that the principle of law enunciated in the annotated case has been applied to a new set of facts and circumstances in the annotating case.
- "APPROVED" (Apprvd.).—This expression is used to denote the fact that the annotated case has been considered to be good law in the annotating case where the latter is in a higher court than the former.
- "CONSIDERED" (Consd.).—This expression is used where the remarks in the annotating case are devoid of adverse criticism and merely denote the giving of more or less careful consideration to the annotated case.
- "DISTINGUISHED" (Distd.).—This expression is used where the earlier case is not necessarily doubted, but where some essential difference (either on the facts or in law) between it and the annotated case is pointed out.
- "DOUBTED" (Dbtd.).—This expression is used where the court in the annotating case without definitely going to the length of saying that the annotated case is wrong, adduces reasons which seem to show that it is not accurate.
- "EXPLAINED" (Expld.).—This expression is used where the earlier case is not necessarily doubted, but the decision arrived at is justified or accounted for by calling attention to some point of fact or of law which is usually, but not necessarily, one not obvious on the face of the report.
- "EXTENDED" (Extd.).—Compare "APPLIED," *supra*.
- "FOLLOWED" (Folld.).—This expression is used to denote that the same principles of law are applied in the two cases. It does not necessarily imply that the facts are substantially identical in the two cases.
- "NOT FOLLOWED" (N.F.).—Compare "FOLLOWED," *supra*, to which it is the adverse.
- "OVERRULED" (Overd.).—This expression is used where the annotating case is on substantially identical facts with the annotated case and in a higher court and the rule in the latter case is held to be wrong.
- "REFERRED" (Refd.).—This expression is used only where the annotating case deals with the point of the Digest paragraph and is without comment of any definite character on the case annotated, and where there is no delicate shade of approval or disapproval which would justify the use of any of the foregoing words.
- "MENTIONED" (Mentd.).—This expression is used only where none of the foregoing terms apply. In other words, it is used only where the case annotated is cited on a point having nothing to do with the point in the Digest paragraph.



# TABLE OF CASES.

INCLUDING CASES FROM THE COURTS OF SCOTLAND, IRELAND, THE EMPIRE OF INDIA, AND DOMINIONS BEYOND THE SEAS.

*The Figures in Black Type relate to Volumes.*

*The Figures in Ordinary Type relate as regards English cases to the number of the case, and as regards other cases to the page in the Supplement on which the case appears.*

## A.

- *v.* — (1839); **19. Eccl.** No. 4034  
**A. v. A.** (Can.); **27. H. & W.** pp. 660, 662  
**A. & B., Re** (Can.); **35. Mtgc.** p. 813  
**A. & B. Taxis, Ltd. v. Secretary of State for Air** (1922); **11. Const. L.** No. 499a  
**A. & C. Black, Ltd. v. Claude Stacey, Ltd.** (1928); **13. Coprt.** No. 196a  
**A. & M., Re** (1926); **4. Bkpcy.** No. 226a  
**A. B.'s Petition, Re** (1927); **3. Basty.** No. 130d; **16. Courts,** No. 280a  
—, *Re* (1928); **27. H. & W.** No. 4280a  
**A. R. Williams Machinery Co., Ltd. v. Moore** (Can.); **8. Chos.** p. 313  
**A. W., Ltd. v. Cooper & Hall, Ltd.** (1925); **13. Cty. Cts.** Nos. 645a, 783a  
**Abass v. Globe & Rutgers F. Insurance Co.** (Can.); **29. Insee.** p. 714  
**Abbotsford Lumber Co. v. Stevenson** (Can.); **9. Coys.** p. 335  
**Abbott v. McDougall & Cowans** (Can.); **1. Agcy.** p. 49  
**Abdul Aziz Khan v. Nanhe Khan** (Ind.); **28. Infts.** p. 697  
**Abdul Hamid v. Muhammad Afzal** (Ind.); **2. Arbn.** p. 138  
**Abdul Razack v. Khandi Row** (Ind.); **2. Aliens,** p. 110  
**Abdul Vahad, etc. v. Hasanalli Atibhai, etc.** (Ind.); **9. Coys.** p. 325  
**Abdur Rahim v. Mahomed Barkat Ali** (Ind.); **21. Estpl.** p. 580  
**Abdur Rahman, son of Ismail v. Abdur Rahman, son of Zahuri** (Ind.); **20. Elect.** p. 562  
**A'Beckett v. Trustees, Executors & Agency Co.** (Aus.); **37. Powers,** p. 841  
**Aberdeen Harbour Comrs. v. Stott** (Scot.); **25. Fish.** p. 624  
**Abergavenny Settled Estates, Re, Abergavenny (Marquis) v. Nevill** (1926); **21. E. D.** No. 274a  
**Abid-Ud-Din v. Bisharat Ali, etc., Raoof-Un-Din, etc.** (Ind.); **21. Estpl.** p. 580  
**Abraham, Re** (Can.); **5. Bkpcy.** p. 216  
**Abraham v. Abraham & Harding** (1919); **3. Barr.** No. 383b  
— *v.* **Durban Corpn.** (S. Af.); **17. Dep.** p. 522  
**Abram S.S. Co. v. Westville Shipping Co.** (1923); **3. Barr.** No. 421a  
**Abramson v. United States Fire Insurance Co.** (Can.); **18. Discy.** p. 534  
**Abubaker Haji Abdulla, Re** (Ind.); **5. Bkpcy.** p. 235  
**Acadia Coal Co. v. McNeil** (Can.); **36. Negl.** pp. 815, 816  
**Acadia Coal Co.'s Assessment, Re** (Can.); **38. Rates,** p. 851  
**Achilli v. Tovell** (1927); **28. Injon.** No. 677a  
**Achillopoulos, Re, Johnson v. Mavromichali** (1928); **23. Exors.** No. 2441a  
**Achutha, etc. v. Oakley** (Ind.); **1. Agcy.** p. 55  
**Ackerman v. Morrison** (Can.); **39. S. Goods,** p. 865  
**Ackles v. Beatty** (Can.); **1. Agcy.** p. 63  
**Acme Grain Co., Ltd. v. Wenaus** (Can.); **12. Contr.** p. 388  
**Acme Steel Goods Co. of Canada, Ltd. v. Walsh Construction Co., Ltd.** (Can.); **1. Agcy.** pp. 43, 44  
**Acuna v. Bingley** (1616); **1. Action,** No. 366a  
**Adair, Ex p., Re Gross** (1871); **3. Bank.** No. 347  
— *v.* **Colville & Sons, Ltd.** (Scot.); **34. Mast. & S.** p. 794  
**Adam, Ex p.** (1813); **4. Bkpcy.** No. 218b  
— *v.* **Jhavary** (S. Af.); **17. Deeds,** p. 510  
**Adams v. Camfoni** (1928); **30. Intox.** No. 733a  
— *v.* **Galloway** (1925); **2. Animals.** No. 690a  
— *v.* **Huck** (Can.); **20. Elect.** p. 562  
— *v.* **Huck** (No. 2) (Can.); **20. Elect.** p. 560  
— *v.* **Liverpool Corpn.** (1927); **34. Mast. & S.** No. 628a  
— *v.* **Loomis** (Can.); **27. H. & W.** p. 656  
— *v.* **M'Goldrick** (Ir.); **31. L. & T.** p. 734  
— *v.* **Morgan & Co.** (1924); **1. Agcy.** No. 1872a  
**Adams River Lumber Co. v. Kamloops Sawmills, Ltd.** (Can.); **16. Cr. Pract.** p. 491  
**Adams Shoe Co., Re, Ex p. Penetanguishene Town** (Can.); **4. Bkpcy.** pp. 201, 209  
**Adamson v. Adamson** (Can.); **38. Real Prop.** p. 856  
— *v.* **Newcastle Steam-Ship Freight Insurance Assocn.** (1879); **12. Contr.** No. 3178a  
— *v.* **Vachon** (Can.); **22. Evid.** p. 600  
**Adanac Grain Co., Ltd., Re** (Can.); **4. Bkpcy.** p. 206  
**Adanson Fibre Co., Re, Miles' Claim** (1874); **6. B. of Each.** No. 691a



- Addington Election, *Re* (Can.); **20. Elect.** p. 560  
 Adelman & Ham Boiler Corp. v. Llanrwst Foundry Co. (1928); **36. Pats.** No. 308a  
 Administration Act, *Re, Re* Haddon (Can.); **28. Infts.** p. 697  
 Admiralty Comrs. v. National Provincial & Union Bank of England, Ltd. (1922); **3. Bank.** No. 333a  
 Adolph v. Hilton & Stephens (Can.); **21. Exon.** p. 592  
 Advance Rumely Thresher Co. Incorporated v. Manske (Can.); **17. Deeds.** p. 510  
 Advance Rumely Thresher Co. Incorporated v. Service (Can.); **1. Agcy.** p. 77  
 Advance Rumely Thresher Co. Incorporated v. Yorga (Can.); **12. Contr.** p. 390  
 Advocate, *An, Re* (Ind.); **3. Barr.** p. 181  
 Advocate, H.M. v. Aitken (Scot.); **14. Crim.** p. 453  
 — v. Anderson (Scot.); **15. Crim.** p. 470  
 — v. Bickerstaff (Scot.); **14. Crim.** pp. 445, 452  
 — v. Carson (Scot.); **14. Crim.** p. 457  
 — v. Keen (Scot.); **14. Crim.** p. 453  
 — v. Lee (Scot.); **14. Crim.** p. 454  
 — v. Lieser (Scot.); **14. Crim.** p. 453  
 — v. M'Fadyen (Scot.); **14. Crim.** p. 453  
 — v. Macphie (Scot.); **14. Crim.** p. 454  
 — v. Montgomery (Scot.); **15. Crim.** p. 471  
 — v. Ritchie (Scot.); **14. Crim.** p. 440  
 — v. Savage (Scot.); **15. Crim.** p. 469  
 — v. Sharp (Scot.); **14. Crim.** p. 439  
 Advocate-General of Bengal v. Webb-Johnson (Ind.); **8. Char.** p. 309  
 Affréteurs Réunis Société Anonyme v. Leopold Walford (London), Ltd. (1919); **1. Agcy.** No. 1786a  
 Agha Husain v. Qasim Ali (Ind.); **21. Exon.** p. 588  
 Agricultural Fire Insurance Co. of Watertown, New York Claim, Clarke v. Union Fire Insurance Co. (Can.); **29. Insee.** p. 704  
 Agricultural Wholesale Society v. Biddulph & District Agricultural Society (1925); **9. Coys.** Nos. 431a, 1226a  
 Agriculture & Fisheries Minister v. Dean (1924); **2. Agric.** No. 266g  
 Aheir v. Caplette (Can.); **2. Animals.** p. 126  
 Ahmed Hamid Moussa, *Ex p.*, R. v. Graham Campbell (1921); **2. Aliens.** Nos. 553d, 558h, 558i  
 Ah Yet v. Union Government (S. Af.); **2. Aliens.** p. 114  
 Aikman v. Burdick Brothers (Can.); **1. Agcy.** pp. 46, 52, 53  
 Ainley v. Lowey (Can.); **2. Agric.** p. 81  
 Ainslie v. Ainslie (Aus.); **11. Confl.** p. 374  
 Aker, *Ex p.*, *Re* Dominion Ticket, etc. Corp. (Can.); **5. Bkpcy.** p. 220  
 Akers v. London & North Eastern Ry. Co. (1926); **34. Mast. & S.** No. 4055a  
 Akt. Ocean v. Harding (B.) & Sons, Ltd. (1928); **41. Ship.** Nos. 1780a, 4001a, 4126a  
 Alabama Coal, Iron, Land & Colonization Co., Ltd. v. Mylam (1926); **28. Inc. T.** No. 122a  
 Albemarle Supply Co., Ltd. v. Hind & Co. (1928); **32. Lien.** No. 322a  
 Alberni Pacific Lumber Co., *Re*, Thomas v. Lawson (Can.); **10. Coys.** p. 345  
 Albert v. Hoffnung & Co., Ltd. (Aus.); **13. Coprt.** p. 424  
 Albert v. Storey (Can.); **12. Contr.** p. 408; **18. Distr.** p. 537  
 Albert Mining Co. v. Spurr (Can.); **12. Contr.** p. 402  
 Alberta Act, Section 17, *Re* (Can.); **17. Dep.** p. 510  
 Alberta Election Act, *Re, Re* Bow Valley Election (Can.); **20. Elect.** p. 561  
 Alberta Lumber Co. v. Alberta Department of Agriculture, *Re* Froment (Can.); **4. Bkpcy.** pp. 202, 203  
 Alberta Potato & Vegetable Co. v. Canadian Pacific Ry. Co. (Can.); **8. Carr.** p. 287  
 Alberta Province, *Re, Re* Cardston U.F.A. Co-operative Assocn., Ltd. (Can.); **4. Bkpcy.** p. 210  
 Alberta Province's Claim, *Re, Re* Standard Pharmacy, Ltd. (Can.); **4. Bkpcy.** pp. 209, 210  
 Alberta Railway Legislation, *Re* (Can.); **17. Dep.** p. 519  
 Alderman v. Bannister (1826); **2. Agric.** No. 964a  
 Alderson v. R. (Can.); **2. Animals.** p. 128  
 Alexander, *Ex p.*, *Re* Anderson (Aus.); **4. Bkpcy.** p. 193  
 — v. A.-G. (Can.); **11. Confl.** p. 366; **21. E. D.** p. 575  
 — v. City & South London Ry. Co. (1928); **8. Carr.** No. 598b  
 — v. Cowie (Can.); **18. Distr.** p. 538  
 — v. Webber (1922); **1. Agcy.** No. 1638a  
 Alexander Brown Milling Co. v. Canadian Pacific Ry. Co. (Can.); **11. Comp. Pche.** pp. 357, 358  
 Aliotis & Cliris, *Re* (Can.); **5. Bkpcy.** pp. 215, 226  
 Alison (J. Gordon) & Co., Ltd. v. Wallsend Slipway & Engineering Co., Ltd. (1927); **17. Deeds.** No. 1735a  
 All Risk Insurance Agencies, Ltd., *Re* (Can.); **10. Coys.** p. 349  
 Allahabad Bank, Ltd., Lahore v. Rattan Chand Chawla (Ind.); **6. B. of Exch.** p. 250  
 Allan, *Ex p.*, *Re* Hercules Rubber Co. (Can.); **4. Bkpcy.** p. 210  
 Allan v. Levesconte (Can.); **27. H. & W.** p. 656  
 Allan Brown's, Ltd. & Dryall, *Re* (Can.); **9. Coys.** p. 336  
 Allan Grain Growers' Co-operative Assocn., *Re, Ex p.* Robinson, Little & Co. (Can.); **4. Bkpcy.** p. 204  
 Allbrighton, *Ex p.*, R. v. Leicester JJ. (1927); **30. Intox.** No. 381a  
 Allen v. Hanson, *Re* Scottish Canadian Asbestos Co. (Can.); **10. Coys.** p. 351  
 — v. Norfolk Co-operative Dairy Co., Ltd. (N.Z.); **7. B. of Sale.** p. 266  
 — v. Royal Bank of Canada (1925); **12. Contr.** No. 3784c  
 — v. Smith (Can.); **2. Animals.** p. 125  
 Allen & Co., Ltd. v. Whiteman (1920); **1. Agcy.** No. 836b  
 Allen-Stoltze Lumber Co., Ltd. v. Summit Lake Lumber Co., Ltd. (Can.); **7. B. of Sale.** p. 260  
 Allenach v. Des Brisay (Can.); **21. Exon.** p. 590  
 Allester (D.), Ltd., *Re* (1922); **3. Bank.** No. 865a; **7. B. of Sale.** No. 138a  
 Alliance & Dublin Consumers' Gas Co. v. Davies (Ir.); **28. Inc. T.** p. 680  
 — v. M'Williams (Ir.); **28. Inc. T.** p. 676  
 Alliance Film Corp., Ltd. v. Knoles (1927); **10. Coys.** No. 6436a  
 Alliance Finance Co. & Standard Motors, Ltd. v. Simons Garage & Goodchap (Can.); **32. Lien.** p. 753  
 Alliance Trust Co. v. Johnson (Can.); **6. B. of Exch.** p. 250  
 Allison, *Re* (Can.); **18. Descr.** p.  
 — v. Allison (1927); **27. H. & W.** No. 5523a  
 Allnutt v. Mills (1925); **21. Estpl.** No. 204a  
 Alloway v. Campbell (Can.); **38. Rates.** p. 853  
 Alloway & Champion, Ltd. v. Stephenson (Can.); **35. Mtge.** p. 812  
 Almon v. Fairbanks (Can.); **7. Bldg. Soc.** p. 280  
 Althouse v. Besana (Can.); **2. Animals.** p. 121



- Altobelli v. John Ellis & Sons, Ltd.** (1926); **34. Mast. & S. Nos. 2426a, 2574a**
- Altrincham Urban District Council v. O'Brien** (1927); **26. Hghys. No. 2229a**
- Alymer v. Mahaffey (Ir.)**; **21. Estpl. p. 578**
- Amalgamated Anthracite Collieries, Ltd.'s Application, Re** (1927); **34. Mines, No. 180a**
- Ambatielos, The, The Cephalonia** (1928); **1. Adm. No. 430a**
- American Canning Co. v. Canadian Government Merchant Marine** (1928); **30. Jdgmts. No. 728a**
- Amin v. Ebrahim (S. Af.)**; **31. L. & T. p. 740**
- Amiss v. Hall** (1857); **24. Exors. No. 7250a**
- Amusements Construction Co., Ltd., Re** (1927); **10. Coys. No. 5908a**
- Anandi v. Nand Lal (Ind.)**; **22. Evid. p. 600**
- Anchor Donaldson, Ltd. v. Crossland** (1928); **34. Mast. & S. No. 3702d**
- Anderson, Ex p., R. v. Wood** (1928); **13. Crms. No. 308a**
- , **Re (N.Z.)**; **4. Bkpcy. p. 207**
- , **Re, Ex p. Alexander (Aus.)**; **4. Bkpcy. p. 193**
- **v. Cameron (Can.)**; **1. Agcy. p. 39**
- **v. Herbert Paint & Varnish Co., Ltd. (Can.)**; **9. Coys. p. 327**
- **v. John Deere Plow Co., Ltd. (Can.)**; **27. H. & W. p. 656**
- **v. Kennedy (Can.)**; **2. Animals, p. 126**
- **v. McIntyre (Can.)**; **12. Contr. p. 391**
- **v. McLaren (Can.)**; **6. B. of Each. p. 245**
- **v. Serge (Can.)**; **4. Bkpcy. pp. 205, 206**
- **v. Stasiuk (Can.)**; **2. Agric. p. 89**; **21. Exon. p. 589**
- **v. Stasiuk (No. 3) (Can.)**; **21. Exon. p. 589**
- Anderson & Munro, Ltd., Re (Scot.)**; **9. Coys. p. 325**
- Anderson Estate, Re (Can.)**; **28. Inc. T. p. 675**
- Anderson Estate, Re, Canadian Permanent Trust Co. v. McAdam (Can.)**; **21. E. D. p. 575**
- Anderson, Ltd. v. Daniel** (1924); **2. Agric. No. 978a**
- Anderson-Berry, Re, Harris v. Griffith** (1928); **20. Egy. No. 2702a**; **23. Exors. No. 2744a**
- Anderton v. Seroka (Can.)**; **3. Basty. pp. 187, 188**
- Andover & Perth Electric Light Comrs., Ex p. (Can.)**; **20. Electric, p. 563**
- Andrew v. Griffin (Can.)**; **3. Bailmt. p. 155**
- Andrew Kelly, The v. Commodore, The (Can.)**; **1. Adm. p. 27**
- Andrew Motherwell Estate, Re (Can.)**; **4. Bkpcy. p. 202**; **5. Bkpcy. p. 241**
- Andrew Motherwell of Canada, Ltd., Re (Can.)**; **5. Bkpcy. p. 238**; **32. Lien, p. 753**
- Andrews, Ex p., Re Emmett** (1816); **4. Bkpcy. No. 3558**
- **v. Andrews & Chalmers** (1924); **3. Basty. No. 22a**
- **v. Sinclair (Can.)**; **1. Agcy. p. 40**
- Angerstein, Re, Ex p. Angerstein** (1874); **5. Bkpcy. No. 7438a**
- Anglia v. R. (S. Af.)**; **2. Aliens, p. 115**
- Anglican Synod v. Russell & May (Can.)**; **35. Mtge. p. 812**
- Anglo-Australian & Universal Family Life Assurance Co., Re** (1875); **12. Contr. No. 4985**
- Anglo-Austrian Bank, Re, Re Dresdner Bank, Re Direction der Disconto Gesellschaft** (1920); **2. Aliens, Nos. 219c, 223e**
- , **Re, Re National Bank für Deutschland** (1921); **2. Aliens, No. 236b**
- Anglo-Baltic & Mediterranean Bank v. Barber & Co.** (1924); **10. Coys. No. 7034**
- Anglo-Newfoundland Development Co. v. R.** (1920); **2. Arbn. Nos. 316a, 379a, 408a**
- Anglo-Persian Oil Co., Ltd. (Madras) v. Panchapakesa Aiyar (Ind.)**; **2. Arbn. p. 135**
- Anglo-Spanish Tartar Refineries, Ltd., Re** (1924); **10. Coys. No. 7407a**
- Anna Christiana, The** (1778); **37. Prms. No. 1177a**
- Annable v. Coventry (Can.)**; **38. Real Prop. p. 85**
- Annapolis Municipality, N. S. v. Canadian National Rys. (Can.)**; **38. Rys. p. 850**
- Annapurnabai v. Ruprao** (1924); **16. Courts, No. 408a**
- Annesley, Re, Davidson v. Annesley** (1926); **11. Confl. Nos. 249a, 251a**
- Annette, The, The Dora** (1919); **1. Adm. Nos. 141b, 170a**
- Anon.** (1523), **Y. B. 14 Hen. 8, fo. 16, pl. 3**; **15. Crim. No. 8459a**; **16. Courts, No. 302a**
- (1531), **Bro. N. C. 86**; **17. Deeds, No. 1869a**
- (1538), **Bro. N. C. 16**; **12. Contr. No. 1914a**
- (1541), **Cary, 9**; **3. Bailmt. No. 106**
- (1553), **Bro. N. C. 95, pl. 437**; **30. L. & T. No. 1225a**
- (1561), **Moore, K. B. 24, pl. 82**; **31. L. & T. No. 1783a**
- (1563), **Dal. 53**; **19. Eccl. No. 292**
- (1574), **1 And. 47**; **19. Eccl. No. 3615**
- (1606), **Lane, 22**; **25. Fraud. Conv. No. 604a**
- (1632), **Cro. Car. 264**; **19. Eccl. No. 3391a**
- (1675), **1 Vent. 274**; **7. Burial, No. 165**
- (1677), **2 Vent. 35**; **19. Eccl. No. 2599a**
- (circa 1678), **1 Eq. Cas. Abr. 20, pl. 5**; **12. Contr. No. 1217a**
- (1695), **12 Mod. Rep. 73**; **21. Exon. No. 1579b**
- (1702), **7 Mod. Rep. 8**; **21. Exon. No. 1584a**
- (1702), **7 Mod. Rep. 118**; **21. Exon. No. 881a**
- (1704), **6 Mod. Rep. 105**; **21. Exon. No. 574a**
- (1705), **1 Salk. 404**; **11. Confl. No. 352**
- (circa 1716), **cited in 2 Atk. at p. 32**; **6. B. of Exch. No. 295a**
- (1718), **2 Eq. Cas. Abr. 48**; **30. L. & T. No. 472a**
- (1774), **Lofft. 390**; **21. Exon. No. 1578b**
- (1806), **12 Ves. 4**; **23. Exors. No. 209a**
- (1837), **1 Jur. 84**; **21. Exon. No. 1577a**
- (1839), **3 Jur. 125**; **22. Evid. Nos. 6052a, 6108a**
- (1849), **13 L. T. O. S. 325**; **17. Deeds, No. 1157a**
- Anthony Salt Co., Re (Can.)**; **4. Bkpcy. p. 210**
- Antwerpen, The** (1919); **2. Aliens, No. 156a**
- Apex Lumber Co. v. Johnstone (Can.)**; **4. Bkpcy. p. 212**
- Apothecaries' Co. v. Fernyhough** (1826); **22. Evid. No. 2488a**
- Appasanu Mudaliar v. R. (Ind.)**; **14. Crim. p. 443**
- Appleton v. Doily** (1609); **23. Exors. No. 3687a**
- Appleton & Ross, Re (Can.)**; **35. Mtge. p. 810**
- Aramayo Francke Mines, Ltd., Re** (1921); **2. Aliens, No. 237b**
- **v. Public Trustee** (1922); **2. Aliens, No. 237b**
- Araya v. Coghill (Soot.)**; **4. Bkpcy. p. 191**
- Arbitration Act, Re, Re Guyot & Vigouret & Award made by Gosselin (Can.)**; **2. Arbn. p. 143**
- , **Re, Re Roshko & Winnipeg School District** **No. 1 (Can.)**; **11. Comp. Pche. p. 361**
- , **Re, Re Woods (Can.)**; **11. Comp. Pche. p. 360**
- Archangel Saw Mills Co. v. Baring Brothers & Co.** (1922); **1. Agcy. No. 2814a**
- Archer-Shee v. Baker** (1927); **28. Inc. T. No. 442**
- Archibald v. McNerhanie (Can.)**; **36. Prtnrs. p. 824**
- **v. Truro Corpn. (Can.)**; **38. Pub. Auth. p. 846**
- **v. Washer & Co. & Kinnerney (N.Z.)**; **3. Auct. p. 153**; **Bailmt. p. 160**
- **v. Youville (Can.)**; **38. Rates, p. 853**
- Architects Registration Board of Victoria v. Hutchison (Aus.)**; **16. Cr. Pract. p. 491**
- Arden v. Goodacre** (1852); **8. Chos. No.**



- A.-G. & Lumley v. T. S. Gill & Son Pty., Ltd. (Aus.); 13. *Corpn's*. p. 428; 38. *Pub. Hlth.* p. 847
- A.-G. for Alberta v. A.-G. for Canada (1928); 17. *Dep.* Nos. 98b, 178a, 381a
- v. Cook (1926); 11. *Confl.* No. 899a, & p. 864
- A.-G. for Australia v. Somerville (1924); 8. *Char.* No. 199b
- A.-G. for British Columbia v. Brooks, Bidlake & Co. (Can.); 12. *Contr.* pp. 397, 407
- v. Canadian Pacific Ry. Co. (1927); 17. *Dep.* No. 135b
- v. Robertson (Can.); 2. *Agric.* p. 93
- v. Standard Lumber Co., Ltd. (Can.); 28. *Inc. T.* p. 877
- v. Wilson, *Re* Succession Duty Act (Can.); 21. *E. D.* p. 575
- A.-G. for British Columbia & Watt v. Saanich Corp'n. (Can.); 2. *Agric.* p. 90
- A.-G. for Canada, *Ex p.*, *Re* Canadian Carpet & Comforter Manufacturing Co. (Can.); 4. *Bkpcy.* p. 201; 5. *Bkpcy.* p. 234
- A.-G. for Canada Intervening, A.-G. for New Brunswick v. Canadian Pacific Ry. Co. (1925); 17. *Dep.* Nos. 121a, 130d
- A.-G. for Canada v. Alexander Brown Milling & Elevator Co. (Can.); 17. *Dep.* p. 517
- v. Gordon (Can.); 18. *Distr.* p. 537
- v. Pugh (Can.); 11. *Const. L.* p. 386
- A.-G. for Manitoba v. A.-G. for Canada (1925); 17. *Dep.* No. 135a
- v. Kelly (1922); 2. *Arbn.* Nos. 238a, 1593a
- A.-G. for New Brunswick v. Canadian Pacific Ry. Co., A.-G. for Canada Intervening (1925); 17. *Dep.* Nos. 121a, 130d
- A.-G. for New South Wales v. Dickson (1904); 11. *Const. L.* No. 728a
- A.-G. for Nova Scotia v. Nova Scotia Legislative Council (1928); 17. *Dep.* Nos. 52a, 52b
- A.-G. for Ontario v. A.-G. for Canada (1925); 17. *Dep.* Nos. 181a, 200a
- v. Baby (Can.); 11. *Confl.* p. 366; 17. *Dep.* p. 518; 21. *E. D.* p. 575
- v. Booth (Can.); 7. *Bounds. & F.* p. 271
- v. Canadian Wholesale Grocers Assocn. (Can.); 17. *Dep.* p. 515
- v. Daly (1924); 16. *Courts*, p. 481; *Cr. Pract.* p. 491; 17. *Dep.* Nos. 538a, 538b
- v. McLean Gold Mines, Ltd. (Can.); 16. *Cr. Pract.* p. 486
- v. Reciprocal Insurers (1924); 17. *Dep.* Nos. 108a, 128a, 145a, 162a, 170a
- v. Russell (Can.); 11. *Const. L.* p. 381; 16. *Cr. Pract.* p. 496
- A.-G. for Quebec v. A.-G. for Canada (1926); 17. *Dep.* No. 378a
- v. Nipissing Central Ry. Co. & A.-G. for Canada (1926); 17. *Dep.* No. 122a
- A.-G. for Straits Settlements v. Pang Ah Yew (1925); 16. *Cr. Pract.* No. 356a
- A.-G. of Alberta v. Cowan (Can.); 21. *E. D.* p. 575
- v. Smoky Lake Municipal District (Can.); 38. *Rates*, p. 853.
- A.-G. of British Columbia v. A.-G. of Canada (1924); 17. *Dep.* No. 128b
- A.-G. of Canada v. Flint (Can.); 17. *Dep.* p. 517
- v. Foster (Can.); 17. *Dep.* p. 517
- A.-G. of Prince of Wales v. Lambe (1848); 18. *Discy.* No. 1090a
- Auchterlonie v. Arms (Can.); 12. *Contr.* p. 407
- Auchteroni & Co. v. Midland Bank, Ltd. (1928); 3. *Bank.* No. 600a
- Auckland Harbour Board v. R. (1924); 17. *Dep.* No. 238a
- Auditorium, Ltd. v. Lumsden (Can.); 9. *Coys.* p. 324
- Auerbach v. Nelson (1919); 12. *Contr.* No. 1022a
- Augusta, The (1909); 1. *Adm.* No. 1078a
- Augustino v. Canadian North-Western Ry. Co. (Can.); 2. *Aliens*, p. 96
- Aurora Trading Co., Ltd. & Jackson v. Nelson Freezing Co., Ltd. (N.Z.); 3. *Bailmt.* pp. 157, 158
- Ausman (Doe d.) v. Miathorne (Can.); 21. *Exon.* p. 587
- Austin v. Columbia Graphophone Co. (1923); 13. *Coprt.* Nos. 118a, 488a
- Austin (Doe d.) v. Cowderoy (1837); 31. *L. & T.* No. 5788a
- Austin v. Partington Steel & Iron Co., Ltd. (1928); 34. *Mast. & S.* Nos. 3056, 3057b
- Australasian Investment Co., *Ex p.*, Union Bank of Australia, *Re* Queensland Mercantile & Agency Co. (1892); 11. *Confl.* No. 417a
- Australia (Owners) v. Nautilus (Owners), The Australia (1927); 1. *Adm.* No. 1198a
- Australian Bank of Commerce v. Perel (1926); 1. *Agcy.* No. 338a
- Australian Performing Right Assocn. & J. Leist Incorporated v. Turner & Son (Aus.); 13. *Coprt.* p. 425
- Automatic Bottle Makers, *Re*, Osborne v. Automatic Bottle Makers (1926); 10. *Coys.* No. 4730a
- Avelsgaard's Case, *Re* Land Titles Act (Can.); 38. *Real Prop.* p. 856
- Averbach v. Bloom & Dworkin (Can.); 17. *Deeds*, p. 511
- Avory & Son v. Parks (Can.); 2. *Arbn.* p. 149
- Axford v. Prior (1866); 29. *Inns*, No. 116a
- Ayer v. Orme (1563); 19. *Eccl.* No. 292
- Ayers, *Re* (Can.); 11. *Confl.* p. 375
- v. South Australian Banking Co. (1871); 35. *Mtge.* No. 78a
- Aylesford's (Earl) Case (1727); 12. *Contr.* No. 1234a
- Aylet v. Dodd (1741); 2. *Agric.* No. 107a
- Aylward, *Re*, *Ex p.* McMillan (Can.); 4. *Bkpcy.* p. 205; 35. *Mtge.* p. 809
- v. Aylward (1928); 27. *H. & W.* No. 2733a
- Aylwin v. Evans (1882); 29. *Intpr.* No. 443a
- Ayotte, *Re* (Can.); 22. *Evid.* p. 602
- Ayre, *Re*, *Ex p.* Potts (1840); 4. *Bkpcy.* No. 1007a
- Ayres v. South Australian Banking Co. (1871); 35. *Mtge.* No. 78a
- Ayrshire Education Authority v. Buteshire Education Authority (Scot.); 19. *Educ.* pp. 555, 556
- Ayscough v. Sheed Thomson & Co. (1923); 2. *Arbn.* No. 164a
- v. — (1924); 2. *Arbn.* No. 164a

## B.

- B. v. L. (1919); 22. *Evid.* No. 3437a
- B. N. Sen & Brothers v. Chuni Lal Dutt & Co. (Ind.); 3. *Barr.* p. 181
- B. W. B. Navigation Co. v. Kiltuish, The (Can.); 1. *Adm.* p. 28
- Babcock v. Standish (Can.); 30. *Jdgmts.* p. 723
- Babineau v. Bourque (Can.); 12. *Contr.* p. 408
- Back v. Kett (1822); 20. *Egy.* No. 1637a
- Backer, Klorasance v. Ahmed Esmail Jamal (Ind.); 7. *B. of Sale*, p. 267
- Backus v. Smith (Can.); 19. *Easmt.* p. 543
- Badat, *Ex p.* (S. Af.); 30. *Regn.* p. 858

- Badische Co., Ltd., *Re*, *Re* Bayer Co., Ltd., *Re* Griesheim Elektron. Ltd., *Re* Kalle & Co., Ltd., *Re* Berlin Aniline Co., Ltd., *Re* Meister Lucius & Bruning, Ltd. (1921); 2. *Aliens*, Nos. 195a, 405a
- Badman Brothers v. R. (1924); 16. *Cr. Pract.* No. 374a
- Badtolph v. Bamfeild (1874); 11. *Confl.* No. 788
- Baelz v. Public Trustee (1926); 9. *Coys.* No. 26a
- Baglehole v. Walters (1811); 39. *S. Goods*, No. 643b
- Baijnath v. Atlas Assurance Co., Ltd. (S. Af.); 29. *Insce.* p. 714
- Bailey v. Bailey (1926); 3. *Bank.* No. 112a
- Bailie v. Inglis & Co., Ltd. & Jamison (Ir.); 18. *Discy.* p. 531
- Bain v. McIntyre (Can.); 23. *Exors.* p. 606
- Baines v. Harman (Can.); 32. *Lien*, p. 754
- Baines v. National Provincial Bank, Ltd. (1927); 3. *Bank.* No. 270a
- Baird v. Lees (Scot.); 10. *Coys.* p. 342
- v. Murphy (Ir.); 21. *Exon.* pp. 592, 593; 39. *Recrs.* p. 857
- (William) & Co. v. Campbell (Scot.); 21. *Exon.* p. 591; 34. *Mast. & S.* p. 789
- Baird & Peters, *Ex p.*, *Re* Wetmore (Can.); 5. *Bkpcy.* p. 229
- Baittle, *Re*, Freedman v. Hart (Can.); 5. *Bkpcy.* p. 236
- Baker, *Re* (Can.); 33. *Mags.* p. 766
- v. Archer-Shee (1927); 28. *Inc. T.* No. 442
- v. Baker (Can.); 21. *Estpl.* p. 583
- v. Dewey (Can.); 32. *Lien*, p. 754
- v. Henderson (1830); 18. *Discy.* No. 651a
- v. Lloyds Bank (1920); 3. *Bank.* Nos. 921a, 921b
- v. Mable Todd & Co., Ltd. (1927); 28. *Inc. T.* No. 241a
- v. R. (Can.); 14. *Crim.* p. 452
- v. Richards (Can.); 5. *Bkpcy.* p. 225
- Baker, Carver & Morell Inc. v. Astoria (Can.); 1. *Adm.* p. 18
- Balcombe, The, The Carlston (1926); 1. *Adm.* No. 894b
- Baldwin v. Baldwin (1922); 17. *Dep.* No. 586a
- v. Brianger (Can.); 2. *Animals*, p. 125
- v. Snook (Can.); 2. *Animals*, p. 128
- Baldwin & Willinsky, *Re* (Can.); 2. *Arbn.* p. 142
- Baldwin Raper v. Baldwin Raper & Metz, Baldwin Raper v. Baldwin Raper (1926); 27. *H. & W.* No. 4882a.
- Ball v. Thorne (Can.); 4. *Bkpcy.* p. 209
- Ballam v. Hatfield (Can.); 12. *Contr.* p. 389
- Ballantine v. International Ry. Co. (Can.); 36.
- Ballantyne v. McCulloch & Co. & Sims (Can.); 21. *Exon.* p. 588
- Ballard v. Horton's Estate, Ltd. (1926); 26. *Hghys.* No. 2591a
- Ballem v. Fried (Can.); 6. *B. of Exch.* p. 252
- Ballingall & Son v. Dundee Ice & Cold Storage Co. (Scot.); 3. *Bailmt.* p. 158
- Balls v. McGregor (Can.); 1. *Agcy.* p. 61
- Banbury, *Ex p.*, *Re* Wegg (1843); 5. *Bkpcy.* No. 7735
- Bane v. Foxall & Canfor in the County Court of Norfolk (1856); 13. *Cty. Cts.* No. 272a
- Banfield v. Chester (1925); 11. *Confl.* No. 1248b; 17. *Dep.* No. 714a
- Bank of Australasia v. Bank of Australia (1847); 3. *Bank.* Nos. 156, 264
- v. Curtis (N.Z.); 6. *B. of Exch.* p. 250
- Bank of Baroda, Ltd. v. H. B. Shivdasani (Ind.); 10. *Coys.* p. 338
- Bank of British North America v. Edgecombe (Can.); 5. *Bkpcy.* p. 226
- Bank of British North v. St. Quebec Ry. Co. (Can.); 2. *Coys.* p. 336
- Bank of Commerce, *Ex p.*, *Re* Wiarton Lumber Co. (Can.); 3. *Bank.* p. 178
- Bank of Hamilton v. Black (Can.); 25. *Fraud. Conv.* p. 627
- Bank of Liverpool & Martins, Ltd. v. Holland (1926); 8. *Chos.* Nos. 204a, 221a
- Bank of Montreal, *Re*, *Re* Winding-up Act & Franco-Canadian Mortgage Co., Ltd. (Can.); 26. *Guar.* p. 644
- Bank of Montreal v. Holoboff (Can.); 3. *Bank.* p. 176
- v. Hueston (Can.); 3. *Bank.* p. 177
- v. Irvine & Feinstein (Can.); 6. *B. of Exch.* p. 252
- v. Isbell (Can.); 3. *Bank.* p. 177
- v. Lyon (Can.); 18. *Distr.* p. 537
- v. McNeill & McNeill (Can.); 6. *B. of Exch.* p. 253
- v. Normandin (Can.); 3. *Bank.* p. 177
- v. Reis (Can.); 25. *Fraud. Conv.* p. 627
- v. Tannas (Can.); 21. *Exon.* p. 587
- v. Weisdepp (Can.); 3. *Bank.* p. 177; 12. *Contr.* p. 411
- Bank of Montreal Assessment, *Re* (Can.); 28. *Inc. T.* p. 680
- Bank of N. T. Butterfield & Son, Ltd. v. Golinsky (1926); 9. *Coys.* No. 2703a
- Bank of New Zealand v. Baker (N.Z.); 3. *Bank.* p. 179
- Bank of Nova Scotia, *Ex p.*, *R. v.* Woodstock Town Assessors (Can.); 16. *Cr. Pract.* p. 494
- Bank of Nova Scotia v. Cushing (Can.); 6. *B. of Exch.* p. 259
- v. Hatfield (Can.); 1. *Agcy.* p. 75
- Bank of Ottawa v. McLaughlin (Can.); 6. *B. of Exch.* p. 259
- Bank of Toronto v. Adames (Can.); 3. *Bank.* p. 177
- v. Bennett (Can.); 6. *B. of Exch.* p. 253
- v. Borys (Can.); 6. *B. of Exch.* p. 250
- v. Cochrane (Can.); 6. *B. of Exch.* p. 250
- v. Matheson (Can.); 1. *Agcy.* p. 40
- v. Sweeney (Can.); 6. *B. of Exch.* p. 250
- Bank of Upper Canada v. Murphy (Can.); 21. *Exon.* p. 589
- Bankers' & Traders' Insurance Co., Ltd. v. Junna Khan (Aus.); 29. *Insce.* p. 704
- Banking Service Corp., Ltd. v. Toronto Finance Corp., Ltd. (Can.); 9. *Coys.* p. 324
- Bankruptcy Act, *Re*, *Re* Tenenbein (Can.); 4. *Bkpcy.* p. 193
- Bankruptcy Notice, A, *Re* (1924); 4. *Bkpcy.* No. 797a; 5. *Bkpcy.* No. 8782a; 12. *Contr.* Nos. 1178a, 1248a
- (No. 292 of 1928), *Re* (1928); 4. *Bkpcy.* No. 274b
- Bankruptcy Notice, A (No. 62 of 1924), *Re*, *Ex p.* Petitioning Creditors v. Debtor (1924); 4. *Bkpcy.* No. 797a; 12. *Contr.* No. 1178a
- Banks Peninsula Electric Power Board v. Akaroa Borough Council (N.Z.); 12. *Contr.* p. 388; 17. *Deeds*, p. 509; 19. *Easmt.* p. 541
- Bannatyne v. Pritchard (Can.); 38. *Rates*, p. 853
- Bannermann v. Bradley (Can.); 1. *Agcy.* p. 63
- Banque Belge Pour L'Etranger v. Hambrouck (1921); 3. *Bank.* No. 639a
- Banque Canadienne Nationale v. Sawchuk (Can.); 3. *Bank.* p. 177; 10. *Coys.* p. 348
- v. Tancha (Can.); 25. *Fraud. Conv.* p. 628; 27. *H. & W.* p. 656
- Banque d'Hochelaga v. Brownstone (Can.); 7. *B. of Sale*, p. 260
- v. Brunet (Can.); 3. *Bank.* p. 164



## CASES.

- Banque d'Hochelaga v. Hayden & Gillespie Elevator Co.* (Can.); 7. *B. of Sale*, pp. 264, 265  
— *v. Jeannotte* (Can.); 5. *Bkpcy.* p. 230  
— *v. Marshall* (Can.); 1. *Agcy.* p. 77  
*Banque Internationale de Commerce de Petrograd v. Goukassow* (1925); 10. *Coys.* No. 8524  
*Banque Provinciale du Canada v. Capital Trust Corp.* (Can.); 24. *Exors.* p. 615  
*Bansilal Abirchand v. Ghulan Mahbub Khan* (Ind.); 12. *Contr.* p. 407  
*Banting v. Law Union & Crown Mortgage Co.* (Can.); 29. *Insce.* p. 710  
— *v. Western Assurance Co.* (Can.); 29. *Insce.* p. 710  
*Barager v. Wallace* (Can.); 1. *Agcy.* p. 57  
*Barakat, Re* (N.Z.); 4. *Bkpcy.* p. 198  
*Barber, In the Goods of* (1886); 23. *Exors.* No. 774a  
*Barber v. Chudley* (1922); 8. *Char.* No. 23a  
*Barber & Sons v. Rigley* (1922); 5. *Bkpcy.* No. 774a  
*Barber, etc. v. New Zealand Sounds Hydro Electric Concessions, Ltd.* (N.Z.); 9. *Coys.* p. 333  
*Barclay v. Collett* (1838); 38. *Real Prop.* No. 536a  
*Barclay & Co., Ltd. v. Malcolm & Co.* (1925); 12. *Contr.* Nos. 4340a, 4377a  
*Barish & Co. v. Gap No. 3 Rural Municipality & Biss* (Can.); 38. *Rates*, p. 853  
*Barker v. Hutson* (1929); 31. *L. & T.* Nos. 7037a, 7351a, 7352d, 7359a  
— *v. Stead* (1847); 30. *Jdgmts.* No. 661a  
*Barkley v. Winnychuk* (Can.); 1. *Agcy.* p. 72  
*Barkwell, In the Estate of, Barkwell v. Barkwell* (1928); 23. *Exors.* No. 938a  
— *v. Barkwell* (1928); 23. *Exors.* Nos. 938a, 1022a  
*Barley, Re, Ex p. Harrison* (1923); 4. *Bkpcy.* No. 3152a  
*Barlow v. Breeze* (Can.); 18. *Distr.* p. 538  
— *v. Canadian Pacific Ry. Co.* (Can.); 30. *Juries*, p. 729  
*Barnard v. Evans* (1925); 2. *Animals*, No. 572a  
*Barnes v. Allen* (1927); 19. *Easmt.* No. 1442a  
— *v. Black* (Can.); 8. *Chos.* p. 814  
— *v. Sharpe* (Can.); 21. *Exon.* p. 593  
— *v. Sykes* (Can.); 32. *Libel*, pp. 750, 751  
*Barnet Glass Rubber Co., Ltd. v. McDonald* (N.Z.); 12. *Contr.* p. 397  
*Barnet Lighterage Co. v. Kiltuish, The* (Can.); 1. *Adm.* p. 28  
*Barnett v. Beirnsstein (or Bernstein), Re Beirnsstein (or Bernstein)* (1925); 23. *Exors.* No. 5594a  
*Barney v. Lauzon* (Can.); 6. *B. of Exch.* pp. 251, 252  
*Barnhart v. Robertson* (Can.); 12. *Contr.* p. 410  
*Barr v. H.M. Advocate* (Scot.); 15. *Crim.* p. 474  
*Barre v. R.* (Can.); 14. *Crim.* p. 460  
*Barrett v. Baron* (Can.); 4. *Bkpcy.* p. 206; 25. *Fraud. Conv.* pp. 627, 628  
— *v. Hardie & Thompson, Ltd.* (N.Z.); 2. *Animals*, p. 121  
— *v. Rapelje* (Can.); 12. *Contr.* p. 389  
*Barron, Re, Ex p. Barron* (Can.); 4. *Bkpcy.* p. 211  
*Barrow, Lane & Ballard, Ltd. v. Phillip Phillips & Co., Ltd.* (1928); 39. *S. Goods*, No. 403a  
*Barry v. Desrosiers* (Can.); 7. *Bounds & F.* p. 271  
— *v. James* (S. Af.); 11. *Conf.* p. 365  
— *v. Porthleven (Owners)* (1928); 34. *Mast. & S.* No. 3226a  
— *v. Roberts* (1835); 3. *Bailmt.* No. 103a  
— *v. Rubenstein* (Can.); 30. *Juries*, p. 729  
*Barstow v. Terry* (1924); 13. *Coprt.* No. 808a  
*Bartel v. Beyea* (Can.); 17. *Deeds*, pp. 509, 510  
*Barter, Re* (Can.); 5. *Bkpcy.* p. 280  
*Barthe v. Sharples* (Can.); 17. *Dep.* p. 521  
— *v. Bartlett* (1925); 11. *Conf.* No. 440a  
— *v. Wells* (1862); 28. *Inf.* No. 363a  
— *v. West Metropolitan Tramways Co.* (1893); 10. *Coys.* No. 8444a  
*Bartley v. Gall* (Can.); 3. *Basty.* p. 188  
*Bartman v. Ukrainian Publishing Co. of Canada* (Can.); 32. *Libel*, p. 752  
*Barton v. Keeble* (1928); 31. *L. & T.* Nos. 2913a, 2981a, 7358b  
— *v. Muir* (1874); 12. *Contr.* No. 2435a  
*Bartram v. Brown* (1929); 31. *L. & T.* Nos. 7037a, 7351a, 7352d, 7359a  
*Bashford v. Cann* (1863); 29. *Insce.* No. 3052c  
*Bateman (Baroness), Re, A.-G. v. Wreford-Brown* (1925); 21. *E. D.* Nos. 107a, 755a  
*Bateman v. Snelgrove & Garden* (Can.); 1. *Agcy.* p. 59  
*Bateman & Matthews v. Spencer* (Can.); 12. *Contr.* p. 392  
*Bates, Re, Mountain v. Bates* (1928); 40. *Stillmts.* No. 2009a  
*Bates & United Shoe Machinery Co., Ltd.'s Patent, Re, Re Bates, Richards & United Shoe Machinery Co., Ltd.'s Patent* (1928); 36. *Pats.* No. 2064b  
*Bath's Estate, Re* (Can.); 24. *Exors.* p. 616  
*Batho v. Fulton* (1824); 23. *Exors.* No. 3732a  
*Batt (John) & Co. (London) v. Kanoolal & Co.* (Ind.); 2. *Arbn.* p. 148  
*Batten Pool v. Kennedy* (1907); 21. *Estpl.* No. 1318a  
*Battle Creek Toasted Corn Flake Co. v. Kellogg Toasted Corn Flake Co.* (Can.); 1. *Agcy.* p. 75; 16. *Courts*, pp. 481, 482; 17. *Deeds*, p. 508; *Dep.* p. 525; 21. *Exon.* p. 586  
*Baumfelder v. Secretary of State of Canada* (Can.); 2. *Aliens*, p. 98  
*Baxter v. Rollo* (Can.); 17. *Deeds*, p. 510  
*Bayer v. Kaizer* (Can.); 17. *Dep.* p. 516  
*Bayer Co., Ltd., Re* (1921); 2. *Aliens*, Nos. 195a, 405a  
*Baynes & Horie v. Vancouver Board School Trustees* (Can.); 7. *Bldg. Contr.* p. 274  
*Beach v. Hydro-Electric Power Commission of Ontario* (Can.); 2. *Arbn.* pp. 144, 146; 16. *Cr. Pract.* p. 497; 20. *Electric*, p. 564  
*Beadman v. Beadman, Re Hack* (1925); 13. *Cohlds.* No. 1533a  
*Beale v. Moulds* (1847); 1. *Agcy.* No. 645a  
*Beaman v. Tully* (Can.); 2. *Agric.* p. 89  
*Beamish v. Owens* (1846); 22. *Evid.* No. 4161a  
*Bean (William) & Sons, Ltd. v. Flaxton Rural District Council* (1928); 38. *Pub. Hlth.* Nos. 121a, 333a, 509b  
*Beard v. Davidson* (1843); 5. *Bkpcy.* No. 7801b  
*Beard & Scott's Patent, Re, Re Scott & Beard's Patent* (1927); 36. *Pats.* Nos. 1557b, 1687a, 1706a  
*Beardmore & Co., Ltd. v. Barry* (Scot.); 9. *Coys.* p. 323  
*Beattie v. Ebury* (Lord) (1872); 21. *Estpl.* No. 1036a  
— *v. —* (1874); 21. *Estpl.* No. 1036a  
*Beatty v. Beatty* (1924); 11. *Conf.* No. 1113a  
— *v. London Spiritualistic Alliance, Re Hummeltenberg* (1923); 8. *Char.* No. 4a  
— *v. Mathewson* (Can.); 2. *Agric.* p. 91  
*Beaty v. Radenhurst* (Can.); 35. *Mtge.* p. 812  
*Beau Monde Ladies' Tailoring Co. v. Garrett* (Can.); 21. *Exon.* p. 593  
*Beaumont v. Grover* (1701); 24. *Exors.* No. 6861a  
— *v. Jeffery* (1925); 13. *Cohlds.* No. 394a  
*Beaver Lumber Co., Ltd. v. Curry* (Can.); 32. *Lien*, p. 754  
— *v. Korotky* (Can.); 32. *Lien*, p. 754  
*Beaver Truck Co., Re* (Can.); 10. *Coys.* p. 345

- Beaver Wood Fibre Co., Ltd. & American Forest Products Corp., *Re* (Can.); 2. *Arbn.* p. 142
- Bechoff & Co. v. Bubna, *Re* Sutherland (Duchess) (1921); 2. *Aliens*, No. 156b
- Beck, *Re* (Can.); 4. *Bkpcy.* p. 205
- Beck, *Re*, Crook v. Royal National Lifeboat Institution (1926); 8. *Char.* No. 1186a
- Beck v. Motley (1835); 24. *Exors.* No. 7225a
- Becker v. Bachman (Can.); 6. *B. of Exch.* pp. 250, 251
- Becker, Shillan & Co. & Barry Brothers, *Re* (1921); 2. *Arbn.* Nos. 1954a, 2361a
- Beckett v. Booth (1708); 26. *Guar.* No. 782a
- v. Case (1828); 6. *B. of Exch.* No. 696a
- Beckman's Estate, *Re* (Can.); 24. *Exors.* p. 615
- Bedali, *Ex p.*, *Re* Olympia Cafe Co., Ltd. (Can.); 4. *Bkpcy.* pp. 202, 210
- Bedard v. Dawson & A.-G. for Quebec (Can.); 17. *Dep.* p. 520
- Beddow v. Beddow (1878); 28. *Injon.* No. 22a
- Beddy v. Smith (Ir.); 23. *Exors.* p. 612
- Bede Steam Shipping Co., Ltd. v. Bunge y Born Limitada S.A. (1927); 2. *Arbn.* No. 165d
- Bedford v. Bedford & Powdrill (1926); 27. *H. & W.* No. 4677a
- Bednall v. Bednall & Shivussawa (1927); 3. *Basty.* No. 130a; 27. *H. & W.* No. 5781a
- Beel (Doe d.) v. Reaumore (Can.); 18. *Distr.* p. 539
- Beevor v. Simpson (1829); 40. *S. Land*, No. 1416a
- Begg v. Hagan (N.Z.); 1. *Agcy.* p. 70
- Beirnsstein, *Re*, Barnett v. Beirnsstein (1925); 23. *Exors.* No. 5594a
- Bejoy Lal Seal v. Benarasidas Khandelwal (Ind.); 30. *L. & T.* p. 733
- Belanger, etc. v. Royal Bank of Canada (Can.); 17. *Dep.* p. 516
- Belcher v. Dixon (N.Z.); 6. *B. of Exch.* p. 251
- Belfast Riots Commission Case (1886); 3. *Barr.* No. 66a
- Belford v. Foord (1595); 19. *Eccl.* No. 3614
- Belgian Industrial Co., Ltd. v. Canada Cement Co., Ltd. (Can.); 12. *Contr.* p. 403
- Bell, *Re* (Can.); 5. *Bkpcy.* pp. 221, 228, 229, 230
- v. Bell (Ir.); 11. *Confl.* p. 373
- v. Bennett (1928); 34. *Mines*, Nos. 1117a, 1120a
- v. Chartered Trust & Executor Co. (Can.); 5. *Bkpcy.* p. 228
- v. Harker (1928); 25. *Fr. Soc.* No. 35a
- v. Union Bank (N.Z.); 3. *Bank.* p. 167
- Bell & Schiesel v. Jacobson & Weitzer (Can.); 18. *Distr.* p. 537
- Bell (Robert) Engine & Thresher Co. v. Farquharson (Can.); 1. *Agcy.* p. 47
- Bella Guidita, The (1785); 2. *Aliens*, No. 419a
- Bellamy v. Green (Can.); 34. *Mast. & S.* p. 773
- v. Porter (Can.); 6. *B. of Exch.* p. 256
- Bellemare v. Gamache (Can.); 7. *B. of Sale*, p. 267
- Beller v. Klotz (Can.); 12. *Contr.* p. 392
- Benabu & Co. v. Produce Brokers Co., Ltd. (1921); 2. *Arbn.* No. 1107a
- Benaim & Co. v. Debono (1924); 11. *Confl.* No. 658a
- Bence-Jones v. A.-G., *Re* Ludlow (1923); 8. *Char.* No. 755a
- Bendigo, etc. Co. v. Cunningham (Aus.); 1. *Agcy.* p. 55
- Bengal National Bank, Ltd. v. Janaki Lath Roy (Ind.); 31. *L. & T.* p. 737
- Benjamin, *Re* (Can.); 29. *Insce.* p. 711
- v. Benjamin (Ind.); 27. *H. & W.* p. 659
- Bennet v. Bennet (1879); 20. *Egy.* No. 1873a
- Bennett, *Re*, Gibson v. A.-G. (1920); 8. *Char.* No. 751a
- Bennett v. Ewens (1928); 25. *Gaming*, No. 401a
- v. Greensill (N.Z.); 12. *Contr.* p. 387
- v. Kidd (Ir.); 17. *Deeds*, p. 508
- v. Peattie (Can.); 22. *Evid.* p. 608
- v. Quebec Pharmaceutical Assocn. (Can.); 17. *Dep.* p. 514
- v. Smith (1852); 3. *Auct.* No. 155a
- Bennett (Sidney), Ltd. v. Kreeger (1925); 17. *Damgs.* No. 215a
- Benson-Johnston, Ltd., *Re* (Can.); 4. *Bkpcy.* p. 203
- Bent, *Re* (Can.); 24. *Exors.* p. 617
- v. McDougall (Can.); 18. *Distr.* p. 537
- Bentley v. Mackay (1862); 12. *Contr.* No. 1432a
- v. O'Sullivan (1925); 2. *Arbn.* No. 2580a
- Benton v. Campbell, Parker & Co. (1925); 1. *Agcy.* No. 2753a; 3. *Auct.* No. 312a
- Benyon v. Thorpe (1928); 28. *Inc. T.* No. 496b
- Berchtold, *Re*, Berchtold v. Capron (1923); 11. *Confl.* Nos. 302, 439a
- Berge v. Grew (Can.); 2. *Arbn.* p. 135
- Bergen & Mott, *Re* (Can.); 31. *L. & T.* p. 743
- Bergeon v. De Kermor Electric Heating Co., Ltd. (Can.); 36. *Pats.* pp. 827, 828
- Bergerem v. Marsh (1921); 5. *Bkpcy.* No. 6115b
- Bergman v. Canadian Farm Imp. Co. (Can.); 1. *Agcy.* p. 48
- Bergman & Waldron, *Re*, *Re* Infants Act (Can.); 11. *Confl.* p. 375
- Berlin Aniline Co., Ltd., *Re* (1921); 2. *Aliens*, Nos. 195a, 405a
- Berliner Gramophone Co., Ltd. v. N. H. Phinney & Co., Ltd. (Can.); 12. *Contr.* p. 414
- Bermondsey Borough Council v. Mortimer (1926); 7. *Burial*, Nos. 300a, 300b, 323a
- Bernard v. Williams (1928); 12. *Contr.* No. 2621a; 40. *S. Land*, No. 2009a
- Berners v. Fleming (1925); 12. *Contr.* No. 2835a
- Bernstein, *Re*, Barnett v. Bernstein (1925); 23. *Exors.* No. 5594a
- Bernstein v. Erickson (Can.); 12. *Contr.* p. 400
- Berquist, *Re* (Can.); 16. *Cr. Pract.* p. 495
- Berry v. Confederation Life Assocn. (Can.); 1. *Agcy.* p. 63
- v. Morse (1847); 28. *Infts.* No. 1074a
- Besinnett v. White (Can.); 28. *Injon.* p. 701
- Best v. Barber (1782); 4. *Bkpcy.* No. 5399b
- v. Barker (1782); 4. *Bkpcy.* No. 5399b
- v. Wertheim, *Re* Biedermann (1922); 2. *Aliens*, No. 215h
- Betford v. Ford (1595); 19. *Eccl.* Nos. 3614, 3615
- Bettcher v. Turner (Can.); 36. *Nuis.* p. 819
- Bettinson's Representative v. Trustee, *Re* Wadsley (1925); 2. *Agric.* No. 226a; 5. *Bkpcy.* No. 7756a
- Bevan v. Lancasters Steam Coal Collieries (1927); 34. *Mast. & S.* No. 2831a
- v. Nixon's Navigation Co., Ltd. (1928); 34. *Mast. & S.* No. 3243b
- Bevan & Girling, *Re* (1863); 16. *Cntmpt.* No. 931a
- Bevington v. Perks & Bell Assurance Society (1925); 13. *Cty. Cts.* No. 695b
- Bevoy Krishna Mukherjee v. Satish Chandra Giri (1927); 16. *Courts*, No. 348a; 39. *Recrs.* No. 106a
- Bewley v. Hancock (1856); 36. *Pats.* No. 1557a
- Bhagwan Sahai v. Bhagwan Din (Ind.); 35. *Mtge.* p. 809
- Bhagwati Dayal v. Dhan Khunwar (Ind.); 17. *Dep.* p. 527
- Bharat National Bank v. Banarje Das (Ind.); 3. *Bank.* p. 175
- Bhowanidas Ramgobind v. Pannachand Luchmipat (Ind.); 2. *Arbn.* p. 133
- Bick v. Motley (1835); 24. *Exors.* No. 7225a
- Bickerdike v. Lucy (1920); 2. *Agric.* No. 267b

- Biddulph & District Agricultural Society v. Agricultural Wholesale Society (1927); **9. Coys.** No. 431a; **28. Ind. Soc.** No. 45
- Bidgood v. Davies (1826); **11. Const. L.** No. 264a
- Biedermann, *Re*, Best v. Wertheim (1922); **2. Aliens**, No. 215h
- v. Allhausen & Co. (1921); **6. B. of Exch.** No. 2205a
- Biel's Estate, *Re*, Gray v. Warner (1873); **25. Fraud. Conv.** No. 895a
- Bielitski v. Obadisk (Can.); **17. Damgs.** p. 502
- Bigaquette v. R. (Can.); **14. Crim.** p. 449
- Bigelow v. Craigellachic-Glenlivet Distillery Co. (Can.); **12. Contr.** p. 388
- Biggard (Doe d.) v. Millard (Can.); **25. Fraud. Conv.** p. 627
- Biggs v. Burridge (1924); **14. Crim.** No. 72a
- Bijou Motor Parlors v. Keel (Can.); **3. Bailmt.** p. 156
- Bilbrough v. Demaer (Can.); **29. Insce.** p. 704
- Bill's Estate, *Re* (Can.); **7. B. of Sale**, p. 265
- Billingsley (Lady) v. Hersey (1612); **2. Agric.** No. 518a
- Bills of Sale & Chattel Mortgage Act, *Re*, *Re* Crop Payments Act (Can.); **7. B. of Sale**, p. 260
- Bilodeau v. McLean (Can.); **1. Agcy.** p. 63; **12. Contr.** p. 395
- Bingle, *Re* (1854); **22. Evid.** No. 5951a
- Binkley v. Stewart (Can.); **29. Insce.** p. 704
- Birch, *Re* (1808); **33. Lunat.** No. 827a
- Birdsall v. Merritt (Can.); **2. Animals**, p. 121
- Birkdale District Electric Supply Co. v. Southport Corp'n. (1926); **20. Electric**, No. 52
- Birkenhead School, Ltd. v. Dring (1926); **28. Inc. T.** No. 59a
- Birkett v. Northern L. Assurance Co. (Can.); **29. Insce.** p. 710
- v. Purdom (1895); **4. Bkpcy.** No. 4334a
- Birkett & Sons, Ltd., *Ex p.*, *Re* Sun Ray Manufacturing Co. (Can.); **9. Coys.** p. 324
- Birmingham Corp'n. v. Mother-General of Convent of Sisters of Charity of St. Paul (1927); **26. Hghys.** No. 2466a
- Birchnell v. Morris (Aus.); **1. Agcy.** p. 58
- Bisheshwar Pratap Narayan Sahi v. Chandreshwar Prasad Narayan Singh (Ind.); **39. Recrs.** p. 857
- Bishop v. Black (Can.); **27. H. & W.** p. 659
- v. Kilcup (Can.); **16. Courts**, p. 480
- v. Western Trust Co. (Can.); **38. Real Prop.** p. 856
- Biskawbad v. Mukamnad (Ind.); **17. Deeds**, p. 509
- Bjornstad & Ouse Shipping Co., *Re* (1924); **2. Arbn.** No. 629a
- Black v. Drouillard (Can.); **21. Exon.** p. 587
- v. Hunter (Can.); **28. Infts.** p. 695
- v. Ocean Accident & Guarantee Co. (Can.); **18. Discy.** pp. 531, 533
- v. Williams & Co. (Wishaw), Ltd. (Scot.); **2. Arbn.** p. 138
- Black & White Hat Shop, Ltd., *Re*, Newton v. Finesilver (Can.); **5. Bkpcy.** p. 229
- Black (A. & C.), Ltd. v. Claude Stacey, Ltd. (1928); **13. Coprt.** No. 196a
- Blackburn, *Re*, *Ex p.* Moffatt (Can.); **7. B. of Sale**, p. 265
- v. McIntosh (Can.); **34. Mast. & S.** p. 782
- Blackett v. Clutterbuck Brothers (Adelaide), Ltd. (Aus.); **12. Contr.** p. 389
- Blackie v. Miniota Municipality (Can.); **26. Hghys.** p. 647
- Blackley v. Kenny (Can.); **25. Fraud. Conv.** p. 628
- Blackman v. R. (Can.); **21. E. D.** p. 576
- Blackmore v. Cumberford (1680); **17. Deeds**, No. 1944a
- Blackstock v. North Alberta Land Registration District Registrar (Can.); **38. Real Prop.** p. 856
- Blackwell v. Wood (1831); **40. Stillmts.** No. 897a
- Blagburn Estate, *Re* (Can.); **23. Exors.** p. 609
- Blaina Colliery Co., Ltd., *Re* (1926); **9. Coys.** No. 1448a
- Blair, *Re*, *Ex p.* Maple Leaf Millg. Co. (Can.); **7. B. of Sale**, p. 265
- Blakie v. McLennan (Can.); **17. Deeds**, p. 510
- Blanc, Le v. Emilien Burke, The (Can.); **1. Adm.** p. 25
- Blanchard v. Blanchard (1928); **27. H. & W.** No. 2813a
- v. Scanlan (Can.); **38. Rates**, p. 853
- Bland & Mohun, *Re* (Can.); **8. Chos.** p. 312
- Blanshay, *Re* (Can.); **17. J. v.** p. 514
- Blatcher v. Kemp (1782); **14. Crim.** No. 1678a
- Blay v. Dadswell (1922); **2. Agric.** No. 30d
- Bleecker v. Stutsman (Can.); **1. Agcy.** p. 72
- Bleeker v. Bleeker (S. Af.); **27. H. & W.** p. 660
- Bletchingdon Surveyor v. Dand (1849); **18. Distr.** No. 1532
- Blois v. Halifax (City) (Can.); **35. Misrep.** p. 804
- Blome v. Regina (City) (Can.); **2. Arbn.** p. 146; **7. Bldg. Conts.** pp. 275, 279
- Bloom, *Ex p.*, R. v. Brixton Prison (Governor) (1920); **2. Aliens**, No. 553a
- Bloomaert v. Dunlop (Can.); **30. Juries**, p. 729; **L. & T.** p. 732.
- Bloomfield v. Monarch Overall Manufacturing Co., Ltd. (No. 1) (Can.); **18. Discy.** p. 533
- v. Monarch Overall Manufacturing Co., Ltd. (No. 2) (Can.); **9. Coys.** p. 332
- Bloor v. Sutton (Owners) (1926); **34. Mast. & S.** No. 2166a
- Blouin, *Re*, Gagnon v. Grain & Provision Co. (Can.); **5. Bkpcy.** p. 226
- Bloxham v. Medical Defence Union, Ltd. (1894); **9. Coys.** No. 4072a
- Bluebird Corp'n., Ltd., *Re* (Can.); **9. Coys.** pp. 323, 324
- Bluebird Fashion Shops, Ltd., *Re* (Can.); **5. Bkpcy.** p. 241
- Blyth v. A.-G., *Re* Smith (1920); **8. Char.** No. 841b
- Blyth Shipbuilding & Dry Docks Co., *Re*, Forster v. Blyth Shipbuilding & Dry Docks Co. (1926); **7. Bldg. Conts.** No. 319a
- Boak v. Merchants' Marine Insurance Co. (Can.); **29. Insce.** p. 707
- v. Woods (Can.); **9. Coys.** p. 327
- Boak (Geo. E.) & Son, *Re* (Can.); **5. Bkpcy.** p. 229
- Board of Trade v. Cayzer, Irvine & Co. (1927); **2. Arbn.** No. 254a; **32. Limit of A.** Nos. 16, 79, 139a
- Board of Trade of Halifax, St. John & Sackville, N. B., Canadian Lumbermen's Assoc'n. v. Canadian National Rys. (Can.); **38. Rys.** p. 850
- Bocalter v. Hazle (Can.); **12. Contr.** p. 390
- Bocz v. Spiller (Can.); **21. Exon.** p. 587
- Boddy v. Dawes (1836); **23. Exors.** No. 5240a
- Body v. Body (Can.); **27. H. & W.** p. 657
- Boehner v. Backman (Can.); **7. Bldg. Conts.** p. 275
- Bogota (Owners) v. Alconda (Owners) (Scot.); **1. Adm.** p. 28
- Bohemian Union Bank v. Austrian Property Administrator (1927); **2. Aliens**, No. 49g
- Boily v. McNulty (Can.); **4. Bkpcy.** p. 212
- Boks & Co. & Peters, Rushton & Co., *Re* (1919); **2. Arbn.** No. 1985a



- Boland v. Canadian National Rys. (1927); 11. *Comp. Pche.* Nos. 62a, 99a  
 v. Canadian National Rys. (Can.) (1926); 17. *Dep.* p. 526  
 Boland v. McCarroll (Can.); 20. *Egy.* p. 569  
 Boland & Canadian National Rys., *Re* (Can.); 38. *Rys.* p. 850  
 Bolckow, Vaughan & Co. v. Young (1880); 18. *Discy.* No. 1442a  
 Bolton, *Re* (Ir.); 5. *Bkpcy.* p. 220  
 Bolus & Co., Ltd. v. Inglis Brothers, Ltd. (N.Z.); 1. *Agcy.* p. 68  
 Bombay (Sheriff) v. Hukmoji Motaji & Co. (Ind.); 13. *Corpn.* p. 427  
 Bond v. Dawson (Aus.); 1. *Agcy.* p. 62  
 — v. Sturgeon Consolidated Collieries, Ltd. (Can.); 1. *Agcy.* p. 57  
 Bonham v. Bonham (Can.); 6. *B. of Exch.* p. 247  
 — v. Maycock (1928); 1. *Agcy.* No. 710a; 35. *Mtge.* No. 3436a  
 Bonnerji v. Sitanath Das (Ind.); 1. *Agcy.* p. 47  
 Bontex Importing Co. v. Panar (Can.); 1. *Agcy.* p. 49  
 Booker, *Ex p.*, Waterhouse v. Clout (1871); 23. *Exors.* No. 5864a  
 Boorne v. Wicker (1927); 24. *Exors.* No. 6446a  
 Boose v. Zeederberg & Duncan (S. Af.); 1. *Agcy.* pp. 57, 58  
 Booth v. Ford & Shaw (Can.); 34. *Mast. & S.* p. 773  
 — v. Southend-on-Sea Estate Co.'s Contract (1927); 8. *Char.* No. 1532a  
 Booth & Southend-on-Sea Estates Co.'s Contract, *Re* (1927); 8. *Char.* Nos. 1532a, 1870a  
 Bordass, *In the Estates of* (1928); 23. *Exors.* No. 1772a  
 Border v. Edley (S. Af.); 1. *Agcy.* p. 60  
 Borne v. Wicker (1927); 24. *Exors.* No. 6446a  
 Borre, The (1921); 1. *Adm.* Nos. 781a, 781b, 781c  
 Borthwick (Thomas) & Sons, Ltd. v. Nolder (1926); 28. *Inc. T.* No. 204a  
 Bortoluzzi v. Kaplan (Can.); 4. *Bkpcy.* p. 205  
 Boslund v. Abbotsford Lumber Mining & Development Co. (Can.); 11. *Confl.* p. 366; 30. *Jdgmts.* p. 723  
 Bossi, *Re* (Can.); 23. *Exors.* pp. 612, 613  
 Boston v. Boston (1928); 3. *Basty.* No. 65d; 27. *H. & W.* No. 6250d  
 Boston Corpn. v. Witham Outfall Board (1927); 41. *Ship.* No. 8661  
 Bosworthick v. Bosworthick (1927); 27. *H. & W.* No. 5623a  
 Bothamley v. Heyward (1862); 21. *Exon.* No. 883a  
 Bott v. Chester, *Re* Park (1921); 3. *Barr.* No. 220a  
 Bottomley v. Heyward (1862); 21. *Exon.* No. 883a  
 — v. Hurst & Blackett, Ltd. & Houston (1928); 32. *Libel.* No. 1854a  
 Bouboulis v. Mann, MacNeal & Co., Ltd. (Scot.); 10. *Coy.* p. 342  
 Boucaut Bay Co., Ltd. v. Commonwealth, The (Aus.); 17. *Damgs.* p. 505  
 Boucher v. Smith (Can.); 35. *Mtge.* p. 811  
 Boucicault v. Ponsford (1886); 29. *Intpr.* No. 497a  
 Boulton v. Gillespie (Can.); 32. *Lien.* p. 754  
 Boulton Brothers & Co., *Re, Ex p.* Moncrieff v. Official Receiver (1927); 4. *Bkpcy.* Nos. 1657a, 5093a  
 Boulton's Settlement Trust, *Re*, Stewart v. Boulton (1928); 37. *Powers.* Nos. 187a, 187b  
 Boundary between Canada & Newfoundland in Labrador Peninsula, *Re* (1927); 17. *Dep.* No. 378b  
 Bounty v. Heaton (1865); 36. *Prtnrs.* No. 718a  
 Bourdon v. Selwyn (Can.); 12. *Contr.* p. 490  
 Bourgeois, *Re* (Can.); 4. —  
 — v. Weddell & Co. (1924); 2. *Arbn.* No. 1028a  
 Bourgoin v. Compagnie du Chemin de Fer Montréal, Ottawa, et Occidental 110c  
 17. *Dep.* No. 154a  
 Bourke v. Butterfield & Lewis, Ltd. (Aus.); *Fact.* p. 620  
 Bourque v. Chappell (Can.); 38. *Real Prop.* p. 856  
 Bouyer's Patent, *Re* (1928); 36. *Pats.* Nos. 2021a, 2064c  
 Bow v. Pfeiffer & Gilbert (Can.); 12. *Contr.* p. 398  
 Bow Valley Election, *Re, Re* Alberta Election Act (Can.); 20. *Elect.* p. 561  
 Bow's Emporium, Ltd. v. Brett (A. R.) & Co., Ltd. (1927); 1. *Agcy.* Nos. 1687a, 1706a; 36. *Parl.* No. 135a  
 Bowden v. R. (N.Z.); 7. *B. of Sale*, p. 264  
 Bowen, *Re, Ex p.* The Debtor (1924); 4. *Bkpcy.* No. 1357a  
 — v. Bramidge (1833); 5. *Bkpcy.* No. 8929a  
 — v. Davidson, *Re* Stokes (1928); 23. *Exors.* No. 5273a  
 — v. Lightfoot (Can.); 2. *Animals*, p. 122  
 Bower Williams, *Re, Ex p.* Trustee (1927); 5. *Bkpcy.* No. 7096b  
 Bowerbank v. Walker (1787); 16. *Cr. Pract.* No. 3185b  
 Bowers v. Caton (1798); 30. *L. & T.* No. 463a  
 Bowes, *Ex p.* (Can.); 21. *Exon.* p. 591  
 — v. Chaley (Aus.); 12. *Contr.* p. 407  
 — v. Reid (Can.); 19. *Easmt.* p. 542  
 Bowker v. Premier Drug Co., (1928); 25. *Food*, Nos. 78a, 98a, 150a  
 — v. Woodroffe (1928); 25. *Food*, Nos. 78a, 98a, 150a  
 Bowler v. Lovegrove (1921); 3. *Auct.* No. 15a  
 Bowman v. A.-G. (Can.); 21. *E. D.* p. 576  
 Bowser & Co., *Ex p.*, *Re* Randwick Municipal Council (Aus.); 16. *Cr. Pract.* p. 491  
 Boyce v. Cox (1922); 3. *Basty.* No. 262a  
 Boyd v. Boyd (Ir.); 23. *Exors.* p. 612  
 — v. Millett (Can.); 38. *Real Prop.* p. 856  
 — v. O'Connor (Aus.); 1. *Agcy.* p. 42  
 Boyd & Anderson v. Superior Spruce Mills, Ltd. (Can.); 32. *Lien.* p. 754  
 Boyd & Elgie v. Kersey (Can.); 21. *Exon.* p. 592  
 Boyd (T. L.) & Sons, Ltd. v. Stephen (1926); 28. *Inc. T.* No. 179  
 Boyle v. Blackstock (1863); 5. *Bkpcy.* No. 8929b  
 — v. Boyle (Can.); 11. *Confl.* p. 365  
 — v. Fitzsimons (Ir.); 31. *L. & T.* pp. 745, 746, 747  
 Boynton v. Richardson (1924); 2. *Arbn.* Nos. 53a, 71a  
 Boys v. Star Ptg. & Pub. Co. (Can.); 32. *Libel.* p. 751  
 Braby v. Donaldson (S. Af.); 13. *Coprt.* p. 425  
 Bracey v. Pales (1927); 31. *L. & T.* No. 7037b  
 — v. Royal National Lifeboat Institution, *Re* Clarke (1923); 8. *Char.* Nos. 47a, 735a  
 Bradburn v. Edinburgh Life Assurance Co. (Can.); 17. *Dep.* p. 516  
 Bradbury v. Loney (Can.); 21. *Exon.* p. 590  
 — v. Moffatt & Carman (Can.); 18. *Discy.* p. 532  
 Bradford Advance Co., Ltd. v. Ayers (1924); 7. *B. of Sale*, No. 283b  
 Bradford & Sons v. Price Brothers (1923); 1. *Agcy.* No. 747a  
 Bradford City Premises, *Re*, Scaife v. Public Trustee (1928); 36. *Open Sp.* No. 24a  
 Bradford Overseers & Bradford Corpn., *Ex p.*, *Re* Lister (1926); 5. *Bkpcy.* No. 7764a  
 Bradford Overseers & Corpn. v. Durrance, *Re* Lister (1925); 5. *Bkpcy.* No. 7764a  
 Bradley v. — (1744); 8. *Ches.* No. 274a  
 Bradley v. Bailey & Jasperson (Can.); 17. pp. 501, 502, 504



## OF CASES.

- v. Bell Bus Co. (N.Z.)*; 8. *Carr.* p. 289  
*Imperial Bank of Canada (Can.)*; 27. *H. & W.*  
 p. 657  
*Bradshaw v. Air Council (1926)*; 11. *Comp. Pche.*  
 No. 773a  
 — *v. Bird (1920)*; 2. *Agric.* Nos. 265b, 266a  
 — *v. British Columbia Rapid Transit Co., Ltd.*  
*(Can.)*; 17. *Dep.* p. 526; 30. *Juries*, p. 729  
*Bradshaw & Simcoe County Registrar, Re (Can.)*; 35. *Mtge.* p. 809  
*Bragg v. Hatchard (1858)*; 16. *Cntmpt.* No. 781a  
*Bragg & Hatchard, Re (1858)*; 16. *Cntmpt.* No. 781a  
*Braithwaite v. Braithwaite (N.Z.)*; 5. *Bkpcy.*  
 p. 226  
*Brakspear (W. H.) & Sons, Ltd. v. Barton (1924)*; 13. *Cty. Cts.* No. 71a  
*Branch v. Bennett's Dairies, Ltd. (1928)*; 31. *L. & T.* No. 7346a  
*Brand v. National Life Assurance Co. of Canada (Can.)*; 2. *Arbn.* pp. 135, 136  
*Brandon v. Bank of Montreal (Can.)*; 3. *Bank.*  
 p. 165  
*Brandt v. Heatig (1818)*; 24. *Exors.* No. 7439a  
*Branigan v. Saba (N.Z.)*; 12. *Contr.* p. 400; 21. *Estpl.* pp. 578, 584  
*Brantford Cordage Co. v. Milne (Can.)*; 3. *Bank.*  
 p. 165  
*Brassard v. Smith (Can.)*; 21. *E. D.* p. 575  
*Brasseth v. Royal Bank of Canada (Can.)*; 1. *Agcy.* p. 48; 3. *Bank.* p. 177  
*Bratt v. Malden (Township) (Can.)*; 19. *Easmt.*  
 p. 541  
*Braund v. Mutual Life & Citizens Assurance Co., Ltd. (N.Z.)*; 29. *Insce.* p. 704  
*Bray v. Vulcan Iron Works (Can.)*; 25. *Gifts*,  
 p. 640  
*Bready v. McLennan (No. 2) (Can.)*; 19. *Easmt.*  
 p. 542  
*Brealey v. Andrew (1837)*; 12. *Contr.* No. 1285a  
*Brebner v. Henderson (Scot.)*; 6. *B. of Exch.*  
 p. 249  
*Brechin & Drapery Importing Co., Ltd., Re (N. Z.)*; 2. *Arbn.* pp. 140, 144  
*Brecht v. Heffel (Can.)*; 6. *B. of Exch.* p. 252  
*Bremner v. Bleakley (Can.)*; 1. *Action*, p. 4  
*Brendzij v. Hajdij (Can.)*; 19. *Eccl.* p. 548  
*Brenner v. American Metal Co. (Can.)*; 5. *Bkpcy.*  
 p. 236  
*Brenner (N.) & Co., Ltd., Re (Can.)*; 5. *Bkpcy.*  
 p. 238  
*Brenner's Trustee v. Brenner (Can.)*; 5. *Bkpcy.*  
 p. 236  
*Bresand v. Northern S.S. Co., Ltd. (N. Z.)*; 34. *Mast. & S.* p. 774  
*Bresnik, Re (Can.)*; 2. *Aliens*, p. 112  
*Bressler, Ex p., R. v. Home Secretary (1924)*; 2. *Aliens*, No. 553c  
*Brethour v. Taylor & Bank of Montreal (Can.)*; 21. *Exon.* p. 592  
*Brett, Ex p., R. v. Lincolnshire JJ. (1926)*; 3. *Basty.* No. 403b  
*Brewer v. Calori (Can.)*; 3. *Bailmt.* p. 155  
*Brice & Sons v. Christiani & Nielsen (1928)*; 3. *Bailmt.* No. 218a  
*Bridgeford v. Dixon (S. Af.)*; 1. *Agcy.* p. 37  
*Bridges v. Hales (1729)*; 20. *Eqy.* Nos. 1918a, 1920a  
*Bridgett & Hayes' Contract, Re (1928)*; 23. *Exors.* No. 3819a  
*Bridson v. Perth Diocesan Trustees (Aus.)*; 34. *Mast. & S.* p. 780  
*Briggs v. Carson (Can.)*; 21. *Exon.* p. 589  
*Brij Raj v. Ram Sarup (Ind.)*; 28. *Infsts.* p. 698  
*Brilliant Silk Manufacturing Co. v. Kaufman (Can.)*; 12. *Contr.* p. 402  
*Brindle, Ex p., R. v. Henderson (Can.)*; 33. *Mags.* p. 765  
*Brinton, Re, Brinton v. Preen (1923)*; 23. *Exors.*  
 No. 4869a  
*Briscoe v. Molsons Bank (Can.)*; 5. *Bkpcy.* p. 230  
 — *v. Standard Bank (Can.)*; 5. *Bkpcy.* p. 229  
*Bristol Channel Steamers, Ltd. v. R. (1924)*; 11. *Const. L.* No. 526a  
*Bristol Corp'n. v. Virgin (1928)*; 38. *Pub. Hlth.*  
 No. 502c  
*Britannia Hygienic Laundry Co. v. Thornycroft & Co. (1925)*; 17. *Damgs.* No. 235a  
*Britannic Assurance Co., Ltd. & Assurance Companies Act, 1909, Re (1927)*; 10. *Coys.*  
 No. 7542a  
*British America Nickel Corp'n. v. O'Brien (1927)*; 10. *Coys.* No. 4858a  
*British American Continental Bank v. British Bank for Foreign Trade (1926)*; 12. *Contr.*  
 No. 4590a  
*British & North European Bank, Ltd. v. Zalstein (1927)*; 3. *Bank.* No. 284a  
*British Broadcasting Co. v. Wireless League Gazette Publishing Co. (1926)*; 13. *Coprt.*  
 Nos. 85a, 332a  
*British Columbia & Alberta (Provinces of) v. Canadian National & Canadian Pacific Ry. Cos. (Fares for Provincial Police Case) (Can.)*; 38. *Rys.* p. 850  
*British Columbia County Courts, Re (Can.)*; 17. *Dep.* p. 520  
*British Columbia Hop Co., Ltd. v. Kent District (Can.)*; 26. *Hghys.* p. 647  
*British Columbia Permanent Loan Co. v. Canadian Northern Ry. Co. (No. 3) (Can.)*; 11. *Comp. Pche.* p. 357  
*British Columbia Permanent Loan Co. v. Canadian Northern Ry. Co., Re Arbitration under the Railway Act (No. 1) (Can.)*; 11. *Comp. Pche.* p. 360  
*British Columbia Tie & Timber Co., Re (Can.)*; 10. *Coys.* p. 345  
*British Empire Steel Corp'n., Ltd., Re (Can.)*; 10. *Coys.* p. 341  
*British Extracting Co., Ltd., British Soap Co., Ltd. & British Creameries, Ltd. v. London & North Eastern Ry. Co. (1925)*; 8. *Carr.*  
 No. 1349a  
*British Hay Traders' Assocn. v. London, Midland & Scottish Ry. Co., London & North Eastern Ry. Co., Southern Ry. Co., & Great Western Ry. Co. (1925)*; 8. *Carr.*  
 No. 1326a  
*British Imperial Oil Co., Ltd. v. Federal Comr. of Taxation (Aus.)*; 16. *Courts*, p. 479; 17. *Dep.* p. 521; 28. *Inc. T.* p. 689  
*British Incandescent Mantle Works, Ltd., Re (1923)*; 2. *Aliens*, No. 223g  
*British Industries Federation v. London, Midland & Scottish Ry. Co., London & North Eastern Ry. Co., Southern Ry. Co., & Great Western Ry. Co. (1925)*; 8. *Carr.*  
 No. 1326a  
*British Music Industries Federation v. Caledonian Ry. Co. (1922)*; 8. *Carr.* No. 1323b  
*British Oxygen Co. v. Liquid Air, Ltd. (1925)*; 13. *Coprt.* Nos. 43a, 398a  
*British Petroleum Co., Ltd. v. A.-G. for Ceylon (Ceylon)*; 11. *Const. L.* p. 380  
*British Petroleums, Ltd., Re, Re Companies Act (Can.)*; 9. *Coys.* p. 325  
*British Railway Traffic & Electric Co. v. Kahn (1921)*; 7. *B. of Sale*, No. 15a  
*British Thomson-Houston Co. v. Crowther & Osborn, Ltd. (1924)*; 9. *Coys.* No. 3327a

- British Thomson-Houston Co., Ltd. v. Henry (P.) & Co., Ltd. (1928); **36. Pats.** No. 2781a  
— v. Metropolitan-Vickers Electrical Co., Ltd. (1928); **36. Pats.** Nos. 472a, 659  
— v. Sterling Accessories, Ltd. (1924); **9. Coys.** No. 3327a  
British Trade, The (1924); **1. Adm.** Nos. 368a, 417a  
British United Shoe Machinery Co., Ltd. v. Gimson Shoe Machinery Co., Ltd. (1928); **36. Pats.** No. 680b  
— v. Lambert Howarth & Sons, Ltd. & Gimson Shoe Machinery Co., Ltd. (1927); **36. Pats.** No. 680a  
Britt v. Galmoye & Nevill (1928); **34. Mast. & S.** No. 1100a  
Broadbent v. Broadbent (1927); **27. H. & W.** No. 6250a  
Brock v. Benness (Can.); **30. L. & T.** p. 732  
— v. Saul (Can.); **3. Auct.** p. 152  
Brock & Patterson, Ltd. v. Crockett (Can.); **6. B. of Exch.** p. 253  
Brocklebank, Ltd. v. R. (1924); **11. Const. L.** No. 526b  
— v. — (1925); **11. Const. L.** No. 526b  
Brodie & Bowmanville Corpn., Re (Can.); **38. Pub. Hlth.** p. 847  
Broit v. Bennie S. Cohen & Son (N. S. W.), Ltd. (Aus.); **29. Insce.** pp. 710, 714  
Brojo Lal Saha Banikya v. Budh Nath Pyarilal (Ind.); **36. Prtnrs.** p. 824  
Broken Hill Associated Smelters Proprietary, Ltd. v. Vella (Aus.); **34. Mast. & S.** p. 792  
Broken Hill Proprietary Co. v. Broken Hill Municipal Council (1926); **21. Estpl.** No. 256a  
Broken Hill Proprietary Co., Ltd. v. Warnock (Aus.); **2. Aliens**, pp. 104, 109, 110  
Bromley Guardians, Re (1845); **11. Comp. Pche.** No. 1242a  
Brondson v. Northgraves (Can.); **22. Evid.** p. 595  
Brook & Allison v. Hendricks (Can.); **1. Agcy.** p. 59  
Brooke v. Rool (1928); **1. Agcy.** No. 2318b; **36. Negl.** No. 473a  
Brookes v. Liffen (1928); **31. L. & T.** No. 7352c  
Brooks v. Bloor (1920); **2. Agric.** No. 30c  
— v. Blount (1923); **15. Crim.** No. 9399a  
— v. R. (Can.); **14. Crim.** p. 464  
Broome v. Agar (1928); **32. Libel**, No. 1045a  
Brophy v. A.-G. of Manitoba (1895); **17. Dep.** No. 177b  
Brotherson v. Kennedy (Can.); **2. Animals**, p. 118  
Brovey v. Bull (Can.); **1. Agcy.** p. 55  
Brown, Ex p., R. v. McTavish (Can.); **14. Crim.** p. 444  
—, Ex p., R. v. Midland, etc. Ry. Co. (1867); **11. Comp. Pche.** No. 160  
—, Re (Can.); **12. Contr.** p. 408; **30. Intox.** p. 721; **38. Real Prop.** p. 856  
— v. Brown (Can.); **21. Exon.** p. 591  
— v. — (N.Z.); **21. E. D.** p. 573  
— v. Bulmer (Can.); **5. Bkpcy.** p. 228  
— v. Dominion Express Co. (Can.); **8. Carr.** pp. 286, 287  
— v. Doyle (1788); **1. Agcy.** No. 2740a  
— v. Eastern & Mildands Ry. Co. (1889); **26. Hghys.** No. 1546a  
— v. Great Northern Ry. Co. (Can.); **38. Rys.** p. 849  
— v. Hand-in-Hand Fire Insurance Society (1895); **3. Bailmt.** No. 374a  
— v. Hose (Can.); **16. Courts**, p. 480  
— v. Jones, Re Morgan (1927); **3. Barr.** No. 191a  
— v. Kelly-Douglas & Co. (Can.); **4. Bkpcy.** pp. 193, 195  
— v. Leech (1924); **3. Basty.** No. 65a  
Brown v. McInness (Can.); **11. Confl.** p. 373  
— v. McKeel (Can.); **26. Hghys.** p. 647  
— v. M'Millan (1840); **21. Exon.** No. 1564a  
— v. MacPherson (1840); **21. Exon.** No. 1564a  
— v. Moore (Can.); **16. Courts**, p. 482  
— v. Patchell (Can.); **1. Agcy.** p. 60  
— v. Roberts (Can.); **40. S. Land**, p. 867  
— v. Sage (Can.); **21. Exon.** p. 589  
— v. St. Francois Xavier Rural Municipality & Breland (Can.); **18. Distr.** p. 540  
— v. Thornes (N.Z.); **1. Agcy.** p. 51  
— (Ellis) v. Van Rooyen (S. Af.); **1. Agcy.** p. 72  
— v. Weil (Can.); **25. Fraud. Conv.** p. 628  
— & Argue, Re (Can.); **3. Basty.** pp. 184, 185  
— Brothers & Burnstad, Ltd., Ex p., Re Progressive Farmers Co. (Can.); **5. Bkpcy.** p. 229  
—, Janson & Co. v. Hutchinson & Co. (1895); **36. Prtnrs.** No. 1459a  
—, Jr. v. Indochine S.S. (Can.); **1. Adm.** p. 15  
— (Alexander) Milling Co. v. Canadian Pacific Ry. Co. (Can.); **11. Comp. Pche.** pp. 357, 358  
— Taxi Co. & Detroit Radiator Co., Re (Can.); **4. Bkpcy.** pp. 201, 202  
— Transfer Co. v. Townshend (Can.); **13. Corps.** p. 428  
Brown's Case (1500); **7. Bonds**, No. 536  
— Case (1647); **14. Crim.** No. 1663a  
— (Allan), Ltd. & Dryall, Re (Can.); **9. Coys.** p. 336  
Browne v. Collins (1872); **24. Exors.** No. 7190b  
— v. Garborough (1588); **12. Contr.** No. 1828a  
— v. London Necropolis & National Mausoleum Co. (1857); **10. Coys.** No. 8621a  
— v. Pearce (Ind.); **21. Exon.** p. 591  
— v. Sidney Mills, Ltd. (Can.); **5. Bkpcy.** p. 234  
Browning v. Aylwin (1827); **18. Discy.** No. 640a  
Brownlee (J.) & Co. v. Canadian National Rys. (Can.); **38. Rys.** p. 849  
Bruce v. Bruce (Can.); **27. H. & W.** p. 661  
— v. Tolton (Can.); **12. Contr.** p. 389  
Bruff v. Conybeare (1862); **12. Contr.** No. 3379a  
— v. — (1868); **12. Contr.** No. 3379a  
Brunning v. Kollross (1923); **2. Aliens**, No. 558c  
Brunstetter v. Zushing (Can.); **1. Agcy.** p. 76  
Brutton, Ex p., Re Fisher (1845); **4. Bkpcy.** No. 4704a  
Bryant v. City Dairy Co. (Can.); **1. Action**, p. 8  
Bryant, Isard & Co., Re (Can.); **4. Bkpcy.** pp. 201, 202; **5. Bkpcy.** pp. 216, 237  
—, Re, Ex p. Langley (Can.); **16. Cntmpt.** p. 477  
Brylinski v. Inkol (Can.); **2. Arbn.** p. 134; **8. Clubs**, p. 316  
Bryson v. Bryson (Can.); **3. Bank.** p. 164  
Buchanan v. Glasgow Corpn. (Scot.); **8. Carr.** p. 290  
— v. Kerby (Can.); **35. Mtge.** p. 812  
— v. Neale (N.Z.); **1. Agcy.** p. 64  
— v. Samson (N.Z.); **1. Agcy.** pp. 38, 52, 57  
— (R. M.) Co., Ltd. v. Eby (Can.); **1. Agcy.** p. 58  
Buchannan, Re (Can.); **5. Bkpcy.** p. 230  
Buck v. Denning (1926); **34. Mast. & S.** No. 3227a  
Buckhaven & Methil Corpn. v. Wemyss Coal Co. (Scot.); **38. Rates**, p. 851  
Buckle v. Holmes (1926); **2. Animals**, No. 163a  
Buckley, Re, Public Trustee v. Wellington Society for Prevention of Cruelty to Animals Inc. (N. Z.); **8. Char.** p. 307  
Buckley v. Queen Insurance Co. (Can.); **2. Arbn.** p. 136  
Buckmaster v. Knickle (Can.); **20. Elect.** p. 562  
Buczko v. Chobotar (Can.); **15. Crim.** p. 465

- Bueb, *Re, Ex p. Trustee* (1927); **4. Bkpcy.** No. 3365a  
 Bueckert v. Friesen (Can.); **6. B. of Exch.** p. 256  
 Buerger v. New York Life Assurance Co. (1927); **17. Damgs.** No. 612a  
 Buerger & Co. v. Barnett (1919); **2. Arbn.** Nos. 1603a, 1822a  
 Buff Pressed Brick Co., *Re* (Can.); **9. Coys.** p. 323  
 Buffet v. Waller & Lazarnick (Can.); **1. Agcy.** p. 59  
 Buick Sales, Ltd., *Re* (N.Z.); **10. Coys.** pp. 338, 343  
 Bulgaria (Ferdinand, Ex-Tsar), *Re* (1921); **2. Aliens,** No. 208a  
 Bulger v. Home Insurance Co. (Can.); **2. Arbn.** p. 137; **30. Jdgmts.** p. 723  
 Bull (A. H.) & Co. v. West African Shipping, etc. Co. (1927); **34. Mast. & S.** No. 55a  
 Bullar, *Ex p.* (1857); **8. Char.** No. 2111a  
 Bullen, *Re* (Can.); **23. Exors.** p. 608  
 Bulley v. Bulley (1874); **20. Egy.** No. 233a  
 Bulmer v. R. (Can.); **11. Const. L.** p. 379  
 Bulters v. Roope (N.Z.); **1. Agcy.** pp. 37, 50  
 Bulwer v. Hoare (1825); **20. Egy.** No. 1580a  
 Bunarsee Dass v. Gholam Hossein (1870); **6. B. of Exch.** No. 692a  
 Bunting v. Hovland & Watkins (Can.); **1. Agcy.** p. 58  
 Bunton v. Miller (Scot.); **25. Gaming,** p. 634  
 Burchell v. Burchell (Can.); **11. Confl.** pp. 374, 376  
 — v. Sydney Corpn. (Can.); **32. Lien,** p. 753; **38. Pub. Hlth.** p. 847  
 Burdett v. Abbot (1811); **21. Exon.** No. 574b  
 — v. — (1817); **21. Exon.** No. 574b  
 — v. Colman (1817); **21. Exon.** No. 574b  
 Burdett Coutts, *Ex p.* (1927); **11. Comp. Pche.** No. 1384a  
 Burgin, *Re* (Aus.); **2. Agric.** p. 89  
 Burjor F. R. Joshi v. Ellerman City Lines, Ltd. (Ind.); **2. Arbn.** p. 129; **41. Ship.** p. 877  
 Burkard v. Oakley (Aus.); **2. Aliens,** pp. 99, 100  
 Burke, *Re, King v. Terry* (1919); **5. Bkpcy.** No. 6115a  
 — v. Beatty & White (Ir.); **12. Contr.** p. 411  
 — v. British Columbia Electric Ry. Co., Ltd. (Can.); **8. Carr.** p. 289  
 — v. Clausen (N. Z.); **30. Intox.** p. 720  
 — v. Ritchie (Can.); **35. Mistake,** p. 805  
 Burke Estate, *Re* (Can.); **11. Confl.** pp. 366, 369  
 Burlington Presbyterian Church, *Re* (Can.); **19. Eccl.** p. 554  
 Burn v. Carvalho (1834); **5. Bkpcy.** No. 6208a  
 — v. — (1839); **5. Bkpcy.** No. 6208a  
 Burnaby District Corpn. v. Ocean View Development, Ltd. (Can.); **7. Burial,** p. 284  
 Burnard v. Lysnor (N. Z.); **26. Guar.** p. 643  
 Burnes v. Sykes (Can.); **32. Libel,** p. 750  
 Burnett v. Berry (1896); **14. Crim.** Nos. 6298a, 6298b  
 Burnfiel v. Burnfiel (Can.); **11. Confl.** p. 373; **18. Desct.** p. 530  
 Burnham (Viscount) v. Atlantic & Pacific Fibre Importing & Manufacturing Co., Ltd., *Re* Atlantic & Pacific Fibre Importing & Manufacturing Co., Ltd. (1928); **10. Coys.** No. 4904a; **32. Limit. of A.** No. 785a  
 Burnham v. Ramsay (Can.); **7. Bonds,** p. 269  
 Burns v. Associated Newspapers, Ltd. (1925); **20. Elect.** No. 1038a  
 — v. Burne (S. Af.); **2. Arbn.** pp. 138, 139  
 — v. Dilworth Trust Board (N.Z.); **31. L. & T.** p. 735  
 — v. Graham (Can.); **5. Bkpcy.** pp. 227, 230, 237  
 — v. Minchau (Can.); **1. Agcy.** p. 61  
 — v. Royal Bank of Canada (Can.); **5. Bkpcy.** pp. 227, 230  
 Burns & Brown v. Zulauf & Doer (Can.); **7. B. of Sale,** p. 262  
 Burrell v. Maashaven S.S. Co., Ltd. (Scot.); **2. Aliens,** p. 105  
 Burrell & Son v. Leven (1926); **25. Gaming,** No. 70a  
 Burridge & Son v. Haines (F. H.) & Sons, Ltd. (1918); **2. Animals,** No. 145a  
 Burris v. Dartmouth Town (Can.); **13. Corpns.** p. 431; **34. Mast. & S.** p. 772  
 — v. Rhind (Can.); **12. Contr.** p. 391  
 Burrough's Adding Machine, Ltd. v. Aspinall (1924); **21. Estpl.** No. 1319a  
 Burroughs v. Intercolonial Gold Min. Corpn. (Can.); **22. Evid.** p. 604  
 — v. R. (Can.); **11. Const. L.** p. 380  
 Burrows v. Base, *Re* Whitrod (1926); **23. Exors.** No. 5340a  
 — v. Greenwood (1840); **40. Stillmts.** No. 803a  
 — v. Rapson (1927); **24. Food,** No. 475a  
 Bursaw's Estate, *Re* (Can.); **12. Contr.** p. 391  
 Burt v. Broken Hill South, Ltd. (Aus.); **34. Mast. & S.** p. 775  
 — v. National Bank of South Africa, Ltd. (S. Af.); **3. Bank.** p. 176  
 Burton v. Burton (N. Z.); **27. H. & W.** p. 667  
 Burton (James) & Sons, Ltd., *Re* (1927); **9. Coys.** No. 1654a  
 Bury v. Canner, *Re* Canner (1923); **34. Mines,** No. 277a  
 Busby v. Avgherino (1928); **19. Eccl.** No. 3454a  
 Busch, *Re* (Can.); **24. Exors.** p. 615  
 Bussell v. Bussell & McKenna (No. 2) (Can.); **27. H. & W.** p. 666  
 — v. — (No. 3) (Can.); **27. H. & W.** p. 663  
 Butchart v. Doyle (Can.); **19. Easmt.** p. 544  
 Butler v. Evans (Can.); **6. B. of Exch.** p. 259  
 — v. Fairhall (Can.); **9. Coys.** p. 325  
 — v. Mortgage Co. of Egypt, Ltd. (1928); **28. Inc. T.** No. 430b  
 Butson v. Davies, *Re* Davies (1888); **16. Cntmpt.** No. 98  
 Butt v. Oshawa Corpn. (Can.); **17. Damgs.** p. 506  
 Butterfield v. Cormack & Mackie (Can.); **12. Contr.** p. 397  
 Butterfield (N. T.) & Son's Bank, Ltd. v. Golinsky (1926); **9. Coys.** No. 2703a  
 Buttrum v. Udell (Can.); **22. Evid.** p. 603  
 Butts v. Sydney Mines (Can.); **37. Poor L.** p. 838  
 Butwick v. Grant (1924); **1. Agcy.** No. 714a  
 Buxton v. Cumming (1927); **22. Evid.** No. 31a; **25. Gaming,** No. 62a  
 Buxton & High Peak Publishing & General Printing Co. v. Mitchell (1885); **5. Bkpcy.** No. 7950a  
 Bye-Law made by Prospect District Council, *Re, Ex p. Hill* (Aus.); **22. Evid.** p. 597  
 Byers v. Murphy (Can.); **21. Exon.** p. 587  
 — v. Singleton (Can.); **16. Courts,** p. 480  
 Byrom, *Re, Ex p. Eckersley* (1853); **4. Bkpcy.** No. 3134  
 Byzantion, The (1922); **1. Adm.** Nos. 248a, 768a

## C.

- C., *Re* (Ir.); **5. Bkpcy.** p. 243  
 C. D.'s Petition, *Re* (1927); **3. Basty.** No. 130d; **16. Courts,** No. 280a  
 C. L. v. C. F. W. (1928); **27. H. & W.** No. 5360a  
 Caballero v. Slater (1854); **31. L. & T.** No. 4142a  
 Cabana v. Bank of Montreal (Can.); **3. Bank.** p. 172  
 Caddick v. Terry (1864); **12. Contr.** No. 487b  
 Cadwell v. Campeau (Can.); **26. Guar.** p. 642



- Caerphilly Urban District Council v. Griffin (1928); **20. Electric**, No. 39a  
 Cahuac v. Erle (Can.); **30. L. & T.** p. 733  
 — v. Scott (Can.); **30. L. & T.** p. 733  
 Caie, *In the Estate of, In the Estate of Davis* (1927); **23. Exors.** No. 1371a  
 Cain v. Copeland (Can.); **7. Bounds. & F.** p. 271  
 — v. Teare (1843); **38. Real Prop.** No. 520a  
 Caine v. Schultz (Can.); **2. Agric.** p. 91  
 Cairns v. Brown (Can.); **12. Contr.** p. 407  
 Cairns & McNairn, *Re* (Can.); **12. Contr.** p. 411  
 Calcraft v. London General Omnibus Co. (1923); **13. Cty. Cts.** No. 497b  
 Calcus Co., Ltd., *Re* (Can.); **4. Bkpcy.** p. 212  
 —, *Re, Ex p. McGuire* (Can.); **4. Bkpcy.** p. 210  
 Calder v. Alexander (Scot.); **19. Educ.** p. 556  
 Calder's Yeast Co. v. Stockdale (1928); **31. L. & T.** No. 4482a  
 Caldwell, etc. v. Fleming (N.Z.); **21. F. D.** p. 573  
 Caledonian Heritable Estates, Ltd. v. Methven (Scot.); **31. L. & T.** p. 748  
 Caledonian Ry. Co. v. Greenock Corpn. (Scot.); **3. Barr.** p. 181  
 Calgary (City) v. Blow (Can.); **2. Arbn.** p. 136  
 Calgary Furniture Store, Ltd. & Higgs, *Re* (Can.); **10. Coys.** p. 344  
 Calhoun, *Ex p.* (Can.); **38. Rates**, p. 852  
 — v. Canadian National Rys. (Can.); **38. Rys.** p. 850  
 — v. Reid (Can.); **2. Animals**, p. 118; **27. H. & W.** p. 656  
 California State (People of) v. Skinner (Can.); **15. Crim.** pp. 470, 471  
 Callaghan v. Nicholls (Can.); **11. Confl.** pp. 375, 376  
 Callander v. Callander (Can.); **27. H. & W.** p. 663  
 Calow, *Re, Calow v. Calow* (1928); **20. Eqty.** No. 937a  
 — v. Shelton Iron, Steel & Coal Co., Ltd. (1928); **34. Mast. & S.** No. 3737a  
 Calver's Yeast Co. v. Stockdale (1928); **31. L. & T.** No. 4482a  
 Camberwell Motors Pty., Ltd., *Re* (Aus.); **9. Coys.** p. 327  
 Cambo Shipping Co., Ltd. (Rossetti (Owners)) v. Dampskibsselskabet Magnus (Scot.); **1. Adm.** pp. 27, 28  
 Cambridge County Council Case, Fordham v. Webber (1925); **20. Elect.** No. 1593a  
 Cambridge University v. A.-G., *Re Stanford* (1924); **8. Char.** No. 1457a  
 Cambridge University Press v. University Tutorial Press (1928); **13. Coprt.** No. 420a  
 Camden (Marquis), *Ex p.*, R. v. Powell (1925); **2. Agric.** Nos. 29b, 29c  
 Camden (Lord) v. Home (1791); **16. Cr. Pract.** No. 2187a  
 Cameron v. Milloy (Can.); **24. Exors.** p. 616  
 — v. Moseley (Can.); **4. Bkpcy.** p. 201  
 — v. St. Luke's Salt Springs (Trustees) (Can.); **19. Eccl.** p. 554  
 Camillo Tank S.S. Co., Ltd. v. Alexandria Engineering Works (1921); **1. Agcy.** No. 2139b  
 Cammaert v. Grasswold (Can.); **3. Bailmt.** p. 157  
 Cammell, *Re, Public Trustee v. A.-G.* (1925); **8. Char.** No. 657a  
 Campbell, *Re, Commercial Bank of Scotland v. Campbell* (1923); **28. Inc. T.** No. 646a  
 Campbell v. Campbell (Can.); **11. Confl.** p. 373  
 — v. Canadian Pacific & Canadian National Ry. Cos. (Can.); **8. Carr.** p. 287  
 — v. Cleugh (Can.); **21. Exon.** p. 588  
 — v. Gallant, Crockett & Royal Bank of Canada, *Re Milligan Estate* (Can.); **5. Bkpcy.** p. 231  
 Campbell v. Hedley (Can.); **2. Animals**, p. 118  
 — v. Imperial Bank (Can.); **3. Bank.** p. 175  
 — v. McIsaac (Can.); **26. Guar.** p. 641  
 — v. Mahler (Can.); **12. Contr.** pp. 390, 393; **17. Damgs.** p. 504  
 — v. Raynor (Can.); **35. Mtge.** p. 812  
 — v. Royal Canadian Bank (Can.); **38. Real Prop.** p. 855  
 — v. Smith (Can.); **21. Exon.** p. 590  
 — (Doe d.) v. Thompson (Can.); **21. Exon.** p. 589  
 — v. Woods, Irmie & The Canadian Press (Can.); **18. Discy.** pp. 531, 533  
 Campbell Endowment Trust, *Re, Argyll Education Authority v. Campbeltown Corpn.* (Scot.); **19. Educ.** p. 557  
 Campbell's Trustees v. Campbell (Scot.); **8. Char.** p. 305  
 Campbell's Trusts, *Re* (1871); **30. Jdgmts.** No. 422a  
 Campbellford, Lake Ontario & Western Ry. Co. v. Massie (Can.); **2. Arbn.** p. 130  
 Campbeltown Coal Co. v. Argyll (Duke) (Scot.); **31. L. & T.** p. 742  
 Camrud v. Camrud (Can.); **27. H. & W.** pp. 663, 664, 665, 666  
 Canada & Newfoundland in Labrador Peninsula, *Re Boundary between* (1927); **17. Dep.** No. 378b  
 Canada (Dominion of) & Provinces of Ontario & Quebec, *Re, Re Indian Claims* (Can.); **17. Dep.** p. 524  
 Canada Central Ry. Co. v. McLaren (Can.); **22. Evid.** pp. 595, 600  
 Canada Cycle & Motor Co., Ltd. v. Mehr (Can.); **12. Contr.** p. 414  
 Canada Drugs, Ltd. v. A.-G. for Saskatchewan (Can.); **17. Dep.** p. 519  
 Canada Life Assurance Co.'s Case, *Re Land Titles Act* (Can.); **35. Mtge.** p. 809; **38. Real Prop.** p. 856  
 Canada Lumber Co. v. Gaffney (Can.); **5. Bkpcy.** p. 239  
 Canada, Minister of Interior for v. Nelson (Can.); **7. Bounds. & F.** p. 272  
 Canada Permanent Mortgage Corpn. v. Barnard (Can.); **12. Contr.** p. 388  
 Canada Southern Ry. Co. v. International Bridge Co. (Can.); **26. Hghys.** p. 647  
 Canada Trust Co. v. Schultz (Can.); **31. L. & T.** p. 743  
 Canadian American Shipping Co. v. Woran S.S. (1927); **1. Adm.** No. 1794a  
 Canadian Bank of Commerce v. Brookdale Collieries, Ltd. (Can.); **6. B. of Exch.** p. 253  
 — v. Colwell (Can.); **6. B. of Exch.** pp. 250, 252  
 — v. Foreman (Can.); **26. Guar.** p. 644; **27. H. & W.** p. 657  
 — v. Johnson (Can.); **6. B. of Exch.** p. 258; **10. Coys.** p. 337  
 — v. Kenzie (Can.); **5. Bkpcy.** p. 239  
 — v. La Brash (Can.); **8. Chos.** p. 313  
 — v. Livingston (Can.); **6. B. of Exch.** p. 245  
 — v. Munroe (Can.); **7. B. of Sale**, p. 265  
 — v. Peebles (Can.); **6. B. of Exch.** p. 251  
 — v. Pioneer Farm Co., Ltd. & Hall (Can.); **9. Coys.** p. 335  
 — v. Reid (Can.); **3. Bank.** p. 177  
 — v. Smith (Can.); **9. Coys.** p. 329; **12. Contr.** pp. 408, 409  
 — v. Treacy (Can.); **5. Bkpcy.** p. 230  
 Canadian Cap Co., *Re, Ex p. Trustee* (Can.); **4. Bkpcy.** p. 193  
 Canadian Cap Co., Ltd., *Re, Stevenson v. Taylor* (Can.); **5. Bkpcy.** pp. 227, 228

- Canadian Carpet & Comforter Manufacturing Co., *Re, Ex p. A.-G. for Canada* (Can.); 4. *Bkpcy.* p. 201; 5. *Bkpcy.* p. 234
- Canadian Cereal & Flour Mills Co., *Re* (Can.); 4. *Bkpcy.* p. 201
- Canadian Chocolate Co., *Re* (Can.); 4. *Bkpcy.* p. 194
- Canadian Coal Supply, *Re, Ex p. Staples Bell Inc.* (Can.); 4. *Bkpcy.* p. 199
- Canadian Collieries (Dunsmuir), Ltd. v. Dunsmuir (Can.); 17. *Deeds*, p. 510
- Canadian Cordage & Manufacturing Co., *Re* (Can.); 10. *Coys.* p. 343
- Canadian Credit Men's Trust Assocn. v. Anderson (Can.); 6. *B. of Exch.* p. 258
- v. Caldwell, *Re* Supplies, Ltd. (Can.); 9. *Coys.* p. 324
- v. Edmonton (City) (Can.); 4. *Bkpcy.* p. 209
- v. Jang Bow Kee & Yin Shee (Can.); 4. *Bkpcy.* p. 213; 5. *Bkpcy.* p. 237
- v. Monka (Can.); 4. *Bkpcy.* p. 210
- v. Morton (Can.); 18. *Discy.* p. 534
- v. Spivak, *Re* Cohen & Mahlin (Can.); 4. *Bkpcy.* p. 208; 5. *Bkpcy.* pp. 215, 226, 229, 231
- v. Winnipeg Fire Underwriters' Agency (Can.); 5. *Bkpcy.* p. 219
- Canadian Dredging Co. v. Northern Navigation Co. (Can.); 1. *Adm.* p. 30
- Canadian Express Co., *Ex p., Re* Christie Grant, Ltd. (Can.); 5. *Bkpcy.* p. 220
- , *Ex p., Re* Standard Imports, Ltd. (Can.); 5. *Bkpcy.* p. 220
- Canadian Farm Implement Co., Ltd. v. Alberta Foundry & Machine Co., Ltd. (Can.); 35. *Misrep.* p. 803
- Canadian Flexible Skate Co., Ltd. v. Monarch Brass Manufacturing Co., Ltd. (Can.); 17. *Damgs.* p. 504
- Canadian General Electric Co., Ltd. v. Fada Radio, Ltd. (Can.); 36. *Pats.* pp. 826, 827
- Canadian General Securities Co., Ltd. v. George (Can.); 1. *Agcy.* p. 46
- Canadian Grain Co., Ltd. v. Nichol (Can.); 1. *Agcy.* p. 65
- Canadian Guarantee Trust Co. v. Delisle, *Re* Smith's Estate (Can.); 21. *Exon.* p. 587
- Canadian Hart Products, *Re* (Can.); 5. *Bkpcy.* p. 238
- Canadian Hart Products, Ltd. (Trustee) v. Royal Bank (Can.); 3. *Bank.* p. 177
- Canadian Lumbermen's Assocn. v. Canadian National & Canadian Pacific Ry. Cos. (Can.); 38. *Rys.* p. 849
- Canadian Minister of Finance v. Smith (1926); 28. *Inc. T.* No. 99d
- Canadian Mortgage Assocn. v. R. (Can.); 35. *Mistake*, p. 805
- Canadian National Rys. v. Boland (Can.); 11. *Comp. Pche.* p. 360
- v. Hydro Electric Power Commission & Department of Highways for Ontario (Westhill Crossing Case) (Can.); 38. *Rys.* p. 849
- v. Lepage (Can.); 8. *Carr.* p. 290
- v. Montreal Tramways (Guy St. Crossing Case) (Can.); 38. *Rys.* p. 849
- v. Stamford (Township) (Can.); 38. *Rys.* p. 850
- v. Toronto Iron Works (Can.); 11. *Comp. Pche.* p. 355
- Canadian Northern Quebec Ry. Co. v. Pleet (Can.); 8. *Carr.* p. 286
- Canadian Northern Ry. Co. v. Ketcheson (Can.); 11. *Comp. Pche.* p. 360
- v. Ousley (Can.); 2. *Arbn.* p. 187
- Canadian Northern Ry. Co. & Ottawa, *Re* (Can.); 17. *Deeds*, p. 511
- Canadian Oil Co., Ltd. v. Jamieson (Can.); 25. *Fraud. Conv.* p. 627
- Canadian Oil Cos., Ltd. v. Margeson (Can.); 16. *Courts*, p. 480
- Canadian Pacific Ry. Co., *Re*, Crown Lumber Co. v. McKenzie (Can.); 21. *Exon.* p. 587
- v. Calgary (Can.); 28. *Injon.* p. 701
- v. Ottawa Fire Insurance Co. (Can.); 17. *Dep.* p. 520
- v. Parent (Can.); 22. *Evid.* p. 604
- v. Paul (Can.); 11. *Comp. Pche.* p. 360
- v. R. (Can.); 1. *Agcy.* p. 40
- v. Stewart (Can.); 2. *Agric.* p. 89
- v. Windebank (Can.); 2. *Arbn.* p. 143
- Canadian Pacific Ry. Co. & County & Township of York, *Re* (Can.); 17. *Dep.* p. 516
- Canadian Pacific Ry. Co., and Piles, P. Q., *Re* (Can.); 38. *Rys.* p. 550
- Canadian Peerless Jewelry Co. & Royal Trust Co. v. R. (Can.); 32. *Lien*, p. 753
- Canadian Performing Right Society, Ltd. v. Famous Players Canadian Corpn., Ltd. (Can.); 13. *Coprt.* p. 423
- Canadian Permanent Trust Co. v. McAdam, *Re* Anderson Estate (Can.); 21. *E. D.* p. 575
- Canadian Provincial Power Co., Ltd. v. Nova Scotia Power Commission (Can.); 38. *Real Prop.* p. 856
- Canadian Shippers' Traffic Bureau v. Canadian National Rys. (Can.); 38. *Rys.* p. 850
- Canadian Stevedoring Co., Ltd. v. Robin Line S.S. Co. (Can.); 17. *Deeds*, p. 509
- v. Seas Shipping Co. (Can.); 17. *Deeds*, p. 509
- Canadian Vickers Co., Ltd. v. Susquehanna, The (Can.); 1. *Adm.* pp. 29, 33
- Canadian Western Steel Corpn., *Re* (Can.); 4. *Bkpcy.* pp. 205, 206
- Canadian Westinghouse Co., Ltd. v. Canadian Pacific Ry. Co. (Can.); 8. *Carr.* p. 286
- Cannel v. Buckle (1724); 7. *Bonds*, No. 947a
- Canner, *Re*, Bury v. Canner (1923); 34. *Mines*, No. 277a
- Canniffe v. Howie (Aus.); 1. *Agcy.* p. 38
- Cannon Brewery Co., Ltd. v. Signal Press, Ltd. (1928); 31. *L. & T.* No. 6352a
- Cantiere v. Clyde (Scot.); 2. *Aliens*, p. 109
- Cantiere Navale Triestina v. Handelsvertretung der Russ. Soz. Föd. Soviet Republik Naphtha Export (1925); 12. *Contr.* No. 3183a
- Canton, The (1928); 36. *Parl.* No. 155a
- Canton (Owners) v. Rhesus (Owners) (1928); 1. *Adm.* No. 1695a; 36. *Parl.* No. 155a
- Cantrell & Cochrane v. Neeson (Ir.); 3. *Bailmt.* p. 155
- Canvey Island Comrs. v. Preedy (1922); 7. *Bounds. & F.* No. 171a
- Cape Asbestos Co., Ltd. v. Lloyds Bank, Ltd. (1921); 3. *Bank.* No. 756c
- Capel St. Mary, Suffolk (Rector & Churchwardens) v. Packard (1927); 19. *Eccl.* Nos. 1768a, 2801a, 2809a, 2818a, 2824a, 2899a, 2899b, 2904a, 2915a, 2924a, 2947a, 2947b, 2947c, 2947d, 2965a, 2972a, 3015a
- v. Packard (1928); 19. *Eccl.* Nos. 1768a, 1775a, 1789a, 2801a, 2809a, 2818a, 2824a, 2899a, 2899b, 2904a, 2915a, 2924a, 2947a, 2947b, 2947c, 2947d, 2965a, 2972a, 3015a
- Caplan, *Re* (Can.); 4. *Bkpcy.* p. 212
- Capron v. Capron (1927); 21. *Exon.* No. 1754a; 27. *H. & W.* No. 5957a
- Captain J. A. Cates Tug & Wharfage Co. v. Franklin Insurance Co. (1927); 29. *Insce.* Nos. 2014a, 2055a, 2152a, 2333a

- Caraman Rowley & May v. Aperghis (1923); **12. Contr.** No. 5066a
- Carbon Coal & Clay Co. v. Nanoose-Wellington Collieries (Can.); **12. Contr.** p. 388
- Carbonit Akt., *Re*, *Re* Letters Patent No. 139,207 (1924); **11. Const. L.** No. 348a
- Cardell v. New Quay Local Board (1875); **36. Nuis.** No. 134a
- Cardiff Collieries, Ltd. v. Great Western Ry. Co. (1927); **8. Carr.** No. 1237b
- Cardiff Corp'n. v. Cook (1923); **11. Comp. Pche.** No. 533a
- Cardiff Hall, The (1918); **1. Adm.** No. 1286a
- Cardinal v. R. (Can.); **14. Crim.** p. 460
- Cardston U.F.A. Co-operative Assocn., Ltd., *Re*, *Re* Province of Alberta (Can.); **4. Bkpcy.** p. 210
- Carew's Trusts, *Re*, Gellibrand v. Carew (1910); **5. Bkpcy.** No. 5902a
- Carey & Lot 65, Sub-division of Lot 39 E., St. John, *Re* (Can.); **38. Rates**, p. 853
- Carland (David) & Sons, Ltd. v. Inland Revenue Comrs. (Scot.); **28. Inc. T.** p. 689
- Carlile v. Northern Trusts Co. (Can.); **1. Agcy.** p. 51
- Carlino v. Zimblarte (Can.); **32. Limit. of A.** p. 755
- Carlisle v. Orr (No. 2) (Ir.); **1. Action**, p. 8
- Carlson v. Thompson (Can.); **1. Agcy.** p. 62
- Carlsson v. Saga, The (Can.); **1. Adm.** p. 28
- Carlston, The, The Balcombe (1926); **1. Adm.** No. 894b
- Carlyle, The (1858); **1. Adm.** No. 970a
- Carmichael, *Ex p.*, R. v. Postmaster-General (1928); **16. Cr. Pract.** No. 2736a
- Carmichael v. Bowers (Can.); **1. Agcy.** p. 59
- Carnarvon's (Earl) Chesterfield Settled Estates, *Re*, *Re* Carnarvon's (Earl) Highclere Settled Estates (1927); **13. Corpns.** No. 903a
- Carnegie v. Cox (Can.); **18. Discy.** p. 534
- Carney v. Fair (Ir.); **1. Agcy.** p. 46
- Caron v. R. (1924); **17. Dep.** Nos. 130b, 130c
- Carpathia Tin Mining Co., Ltd., *Ex p.* (Aus.); **28. Inc. T.** p. 689
- Carpenter v. Commercial Bank of Canada (Can.); **21. Estpl.** p. 579
- Carpenter Hales & Co., Ltd., *Re* (Aus.); **10. Coys.** p. 344
- Carpet Import Co., Ltd. v. Beath & Co., Ltd. (N.Z.); **19. Easmt.** p. 542; **26. Hghys.** p. 646; **28. Injon.** p. 699
- Carpmael's Application, *Re* (1928); **36. Pats.** No. 1495a
- Carr v. Fry & McCune (Can.); **1. Agcy.** p. 45
- v. Guardian Assurance Co., Ltd. & Cracknell & Crimp (N. Z.); **29. Insee.** p. 712
- v. La Dreche (Can.); **1. Agcy.** p. 59
- Carr-Harris v. Canadian General Electric Co. (Can.); **12. Contr.** p. 398
- Carrall v. Montreal Bank (Can.); **21. Exon.** p. 588
- Carrique v. Catts (Can.); **35. Misrep.** p. 804
- Carroll, *Re* (Can.); **30. Intox.** p. 722
- v. Baer (Can.); **17. Damgs.** p. 506
- v. National Press, Ltd. (Can.); **32. Libel**, p. 752
- Carrot River Rural Municipality, *Re*, *Re* Rural Municipality Act, Minaker v. Sanderson (Can.); **20. Elect.** p. 561
- Carruthers, *Ex p.*, *Re* Gaudreau (Can.); **5. Bkpcy.** p. 236
- v. MacGregor (Scot.); **7. Bldg. Conts.** p. 276; **36. Negl.** p. 816
- Carscallen v. Leeson (Can.); **2 Agric.** p. 88.
- v. Moodie (Can.); **21. Exon.** p. 588
- Carson, *Re* (Can.); **5. Bkpcy.** pp. 228, 229, 230
- v. Simpson (Can.); **21. Exon.** p. 587
- Carstairs v. Spence (Scot.); **19. Easmt.** p. 544
- Carter v. Beard (1839); **7. Burial**, No. 20a
- v. British Thomson-Houston Co., Ltd. (1927); **34. Mast. & S.** No. 2515a
- v. Maritime United Farmers Co-operative (Can.); **12. Contr.** p. 413
- v. Suddaby (Can.); **19. Easmt.** p. 545
- v. Warne (1830); **5. Bkpcy.** Nos. 7649b, 9026a
- Cartwright v. Glover (1861); **5. Bkpcy.** No. 7670a
- Carver v. A.-G. of Prince Edward Island (Can.); **11. Const. L.** p. 381
- Casa Loma, *Re* (Can.); **38. Pub. Hlth.** p. 847; **Rys.** p. 850
- Case (J. I.) Threshing Machine Co. v. General Motors Acceptance Corp'n. (Can.); **8. Chos.** p. 314
- v. Mitten (Can.); **21. Estpl.** p. 584
- Cassel, *Re*, Public Trustee v. Mountbatten (1927); **21. E. D.** Nos. 22a, 136b, 254a
- Cassidy v. Ingoldsby (Can.); **21. Estpl.** p. 579
- Cassimjee v. Maharaj (S. Af.); **6. B. of Exch.** pp. 254, 255
- Casswell & Co., Ltd. & Donald & Jacobs, Ltd., *Re* (N.Z.); **2. Arbn.** p. 143
- Castle v. Bilsky (Can.); **12. Contr.** p. 409
- Castlecomer Co-operative Society, *Re* (Ir.); **28. Ind. Soc.** p. 694
- Castleman v. Johnson (Can.); **16. Cr. Pract.** p. 491
- Catchpool, *Re*, Harris v. Catchpool (1928); **40. Sttlmts.** No. 3139a
- Catholic Publishing & Bookselling Co., Ltd. v. Wyman (1863); **22. Evid.** No. 5523a
- Cato v. Alion (S. Af.); **17. Damgs.** p. 501
- Catton v. Ashwell & Nesbit, Ltd. (1928); **34. Mast. & S.** No. 3702c
- Caudwell v. George (Can.); **21. Exon.** pp. 589, 590
- Caulfield v. R. (Can.); **14. Crim.** p. 447
- Caughy v. Copeland, *Re* Patton (Ir.); **23. Exors.** p. 614
- Cauldon Potteries, Ltd. v. Johnson (1926); **34. Mast. & S.** Nos. 3192a, 3821a
- Caulfield v. Arnold (No. 1) (Can.); **12. Contr.** p. 399
- v. Arnold (No. 2) (Can.); **35. Mistake**, p. 805
- Cavaliero v. Slater (1854); **31. L. & T.** No. 4142a
- Cave v. Page (1923); **2. Agric.** No. 265a
- Caven v. Canadian Pacific Ry. Co. (Can.); **18. Discy.** pp. 534, 536
- Cavenett, *Re* (N.Z.); **16. Cr. Pract.** p. 489; **33. Mags.** p. 766
- Cayzer, Irvine & Co. v. Board of Trade (1925); **2. Arbn.** No. 254a
- v. Board of Trade (1927); **32. Limit. of A.** No. 139a
- Cecil v. Plaistow (1794); **5. Bkpcy.** No. 9253a
- Cecil v. Wettlaufer (Can.); **1. Agcy.** pp. 61, 62
- Cecilian Co., *Re* (Can.); **4. Bkpcy.** p. 209
- Cedar Rapids Manufacturing & Power Co. v. Lacoste (Can.); **11. Comp. Pche.** p. 360; **38. Rys.** p. 849
- Central India Mining Co. v. Société Coloniale Anversoise (1920); **2. Aliens**, No. 198a
- Central Motors, Glasgow, Ltd. v. Cessnock Garage & Motor Co. (Scot.); **3. Bailmt.** p. 157
- Centre Star Mining Co., Ltd. v. Rossland Miners' Union (Can.); **13. Corpns.** p. 427
- Cephalonia, The, The Ambatielos (1923); **1. Adm.** No. 430a
- Chalmers, *Re* (N.Z.); **3. Barr.** p. 181
- Chamberlain, *Ex p.* (Can.); **38. Real Prop.** p. 856
- Chamberlain v. Chamberlain, *Re* Chamberlain's Settlement (1921); **2. Aliens**, Nos. 49c, 49j, 215c
- Chamberlain & Peerless Bumper & Accessories, Ltd., *Re* (Can.); **18. Distr.** p. 537
- Chamberlain & Sproat v. Wall & Lloyd (1920); **3. Bank.** No. 38a



- Chamberlain's Settlement, *Re*, Chamberlain v. Chamberlain (1921); 2. *Aliens*, Nos. 49c, 49j, 215c
- Chamberlin v. Maw (Can.); 1. *Agcy.* p. 57
- Chambers v. Dollar & Stevenson (Can.); 21. *Estpl.* p. 578
- v. Unger (Can.); 21. *Estpl.* p. 578
- Champaklal Gopaldas v. Keshrichand Naganmal (Ind.); 6. *B. of Exch.* p. 245
- Champdany Jute Co., Ltd., *Re* (Scot.); 10. *Coys.* p. 347
- Champsey Bhara & Co. v. Jivraj Balloo Spinning & Weaving Co. (1923); 2. *Arbn.* No. 1598b
- Chandanmull Benganey v. National Bank of India, Ltd. (Ind.); 3. *Bank.* p. 175
- Chandler (J. H.) & Co., Ltd., *Re* (Ind.); 9. *Coys.* p. 320
- Chandler's Estate, *Re* (Can.); 24. *Exors.* p. 618; 35. *Mtge.* p. 811
- Chandra Kishore Chakravarty v. Biseswar Pal (Ind.); 38. *Real Prop.* p. 855
- Chandreshwar Prasad Narain Singh v. Bisheshwar Pratap Narain Singh (Ind.); 23. *Exors.* p. 609
- Chaney v. Maclow (1928); 3. *Auct.* No. 63a
- Channel Queen, The (1928); 1. *Adm.* No. 1521a
- Channell v. O'Cedar Corp'n. (Can.); 36. *Pats.* pp. 829, 830
- Chapiewski v. Campbell (Can.); 2. *Agric.* p. 91
- Chaplin, *Ex p.*, *Re* Harrington Motor Co. (1928); 10. *Coys.* No. 6056a
- Chapman, *Re*, Hales v. A.-G. (1922); 8. *Char.* Nos. 740a, 1424a, 1449a
- v. Chapman (N.Z.); 27. *H. & W.* p. 662
- v. Fylde Waterworks Co. (1894); 26. *Hghys.* No. 1372a
- v. Paulson (Can.); 32. *Limit. of A.* p. 755
- Chappell, *Ex p.*, *Re* Merchant Traders' Ship, Loan & Insurance Assocn. (1852); 4. *Bkpcy.* No. 5367
- v. Rees (1852); 32. *Limit. of A.* No. 976a
- Chappell & Co., Ltd. v. Associated Radio Co. of Australia, Ltd. (Aus.); 13. *Coprt.* p. 424
- Chapple v. Moss (Aus.); 1. *Agcy.* p. 57
- Chappus v. La Salle (Can.); 26. *Hghys.* p. 648
- Chardon, *Re*, Johnston v. Davies (1928); 8. *Char.* No. 231a; 37. *Perps.* No. 408a
- Charlebois v. Baril (Can.); 12. *Contr.* p. 389
- Charles v. Cardiff Collieries, Ltd. (1928); 34. *Mines*, No. 1106a
- v. Lewis & McMahon (Can.); 20. *Elect.* pp. 560, 561
- Charles Dale, Ltd. (Scot.); 10. *Coys.* p. 348
- Charlotte, The (1920); 1. *Adm.* No. 781g
- Charlotte (Owners) v. Theory (late) (Owners), The Charlotte (1921); 1. *Adm.* No. 1553a
- Charlton v. Fox (1865); 30. *Jdgmts.* No. 448a
- v. West (1861); 33. *Lunat.* No. 1459a
- Charrington, Gardner, Lockett & Co., Ltd. v. Southern Ry. Co. (1926); 8. *Carr.* No. 976a
- Chartered Trust & Executor Co. v. Bell & Bursey (Can.); 5. *Bkpcy.* p. 228
- Charters, *Re*, *Ex p.* Trustee (1923); 5. *Bkpcy.* No. 7119a
- Chase v. Coleridge (Can.); 2. *Animals*, p. 119
- Chatterby, *Ex p.*, *Re* Wix (1881); 5. *Bkpcy.* No. 7601
- Chatterson v. Dutton (Can.); 2. *Arbn.* p. 149
- Cheeseman v. Corey (Can.); 40. *S. Land*, p. 867
- Chelsea Vestry v. King (1864); 2. *Animals*, No. 333a
- Chelston, The (1920); 1. *Adm.* No. 1600a
- Chemische Fabrik auf Actien (Vorm E. Schering) Patent, *Re* (1928); 36. *Pats.* No. 810a
- Cherrier & Orton v. McCreight & Pennington (Can.); 12. *Contr.* p. 406
- Cherry v. Bredin (Can.); 2. *Agric.* p. 88
- Cheshire County Council v. Hopley (1923); 2. *Agric.* No. 229a
- Chester v. Kinnear (Can.); 36. *Negl.* p. 816
- Chesterman v. Federal Comr. of Taxation (Aus.); 8. *Char.* p. 300; 21. *E. D.* p. 572
- Chesterville Public School Board, *Re* (Can.); 19. *Educ.* p. 556
- Cheveley v. Fuller (1853); 22. *Evid.* No. 2477a
- Chhote Lal v. Kedar Nath (Ind.); 5. *Bkpcy.* p. 221
- Chiandetti, *Re*, *Ex p.* Trustee (1921); 5. *Bkpcy.* Nos. 6912a, 6916a, 7113a
- Chidzey v. Breckler (Aus.); 1. *Action*, p. 2
- Child v. Comber (1723); 12. *Contr.* No. 1185
- v. Mann (1867); 29. *Intpr.* No. 173a
- Child Villiers' Application, *Re*, Villiers v. A.-G. (1922); 8. *Char.* No. 2137
- Children's Aid Society of St. Adelard v. Ste. Rose Rural Municipality (Can.); 16. *Cr. Pract.* p. 493
- Chillingworth v. Esche (1924); 12. *Contr.* No. 546b
- Chin Man Yee, *Ex p.*, Porter v. R. (Aus.); 16. *Cntmpt.* p. 476; 17. *Dep.* p. 521
- Chinniah, *Re* (Ind.); 25. *Gaming*, p. 634
- Chipman (Doe d.) v. Deveber (Can.); 32. *Limit. of A.* p. 757
- Chippendall v. Tomlinson (1785); 5. *Bkpcy.* No. 6298
- Chisholm v. Chisholm (Can.); 28. *Infts.* p. 696
- Chittick v. Lowery (Can.); 21. *Exon.* p. 589
- Chmelnitsky, *Re* (Can.); 5. *Bkpcy.* p. 243
- Chorlton upon Medlock (Constables & Burgesses) v. Walker (1842); 26. *Hghys.* No. 2470a
- Christchurch (Mayor, etc.) v. Pyne, Gould, Guinness (N. Z.); 38. *Rates*, p. 851
- Christie v. Fraser (Can.); 28. *Injon.* p. 700
- Christie Estate, *Re*, *Re* Great West Life Assurance Co. (Can.); 35. *Mtge.* p. 812
- Christie, etc. Petitioners (Scot.); 7. *Burial*, p. 282
- Christie Grant, Ltd., *Re* (Can.); 4. *Bkpcy.* p. 204
- , *Re*, *Ex p.* Canadian Express Co. (Can.); 5. *Bkpcy.* p. 220
- Christmanson v. Christmanson (Can.); 27. *H. & W.* p. 662
- Christoforides v. Terry (1924); 1. *Agcy.* No. 1550a
- Christopher v. Cohen (Ind.); 19. *Easmt.* p. 543
- Christy v. McKay (Can.); 32. *Lien*, p. 754
- Church v. College of Physicians & Surgeons (Can.); 34. *Med.* p. 797
- Churchbridge Rural Municipality No. 211 v. London Guarantee & Accident Co., Ltd. (Can.); 26. *Guar.* p. 644
- Cie des Bois du Nord v. St. Louis S.S. (Can.); 1. *Adm.* p. 17
- Cimitian v. Gout (1922); 2. *Aliens*, No. 13a
- Citizens Coal & Forwarding Co., *Re* (Can.); 9. *Coys.* p. 333
- Citizens Ins. Co. v. Johnston (Can.); 11. *Const. L.* p. 380
- City Equitable Fire Insurance Co., Ltd., *Re* (1925); 9. *Coys.* Nos. 432a, 3059a, 3060a, 3063a, 3063b, 3068a, 3109a, 3127a, 3128a, 3280a, 3282a, 3661a, 3662a, 3670a; 10. *Coys.* Nos. 6150a, 6173a
- City Garage & Machine Co., Ltd., *Re*, *Re* Land Titles Act (Can.); 5. *Bkpcy.* p. 242
- City Life Assurance Co., Ltd., *Re* (1926); 10. *Coys.* No. 7627b
- City of Baroda, The (1926); 1. *Adm.* No. 1062b; 18. *Discy.* Nos. 373a, 874a
- City of Edinburgh, The (1921); 1. *Adm.* No. 579a
- City of London Insurance Co., Ltd., *Re* (1925); 9. *Coys.* No. 432c
- Claman v. Claman (Can.); 27. *H. & W.* p. 659
- v. — (No. 2) (Can.); 27. *H. & W.* p. 666

- Clan Line Steamers, Ltd. v. Board of Trade (1928);  
 41. *Ship*. No. 8755a  
 Clancarty, *Re* (Ir.); 5. *Bkpcy*. p. 222  
 Clapham, *Re*, Minister of Finance v. Burke-Roche  
 (Can.); 21. *E. D.* p. 576  
 Clappison Bridge Case, Public Highways Dept.,  
 Ontario v. Canadian Pacific Ry. Co. (Can.);  
 26. *Hghys.* p. 654  
 Clara Camus, *The* (1925); 1. *Adm.* No. 1655a  
 — (1926); 1. *Adm.* No. 1655a  
 Clare & Heyworth v. Betts (1927); 28. *Inc. T.*  
 No. 210  
 Clarendon's (Earl) Case (1687); 14. *Crim.* No.  
 967a  
 Clark, *Re*, Clark v. Clark (1926); 4. *Bkpcy.* No.  
 5387a; 5. *Bkpcy.* No. 5826a  
 — v. Chambers (1878); 26. *Hghys.* No. 1381a  
 — v. Epsom Rural District Council (1928); 38.  
*Pub. Hlth.* No. 29a  
 — v. Hepworth (Can.); 1. *Agcy.* p. 55  
 — v. Hume (1825); 5. *Bkpcy.* No. 7650a  
 — v. Lawson (Can.); 14. *Crim.* p. 439  
 — v. Wilson (Aus.); 36. *Negl.* p. 818  
 Clark's Case (1596); 13. *Corpns.* No. 736a  
 Clarke, *Re*, Bracey v. Royal National Lifeboat  
 Institution (1923); 8. *Char.* Nos. 47a,  
 735a  
 — v. Anderson (Can.); 40. *S. Land*, p. 867  
 — v. Babbitt (Can.); 32. *Limit. of A.* p. 757  
 — v. Chamberlin (1880); 38. *Real Prop.* No. 663a  
 — v. Clarke (Can.); 27. *H. & W.* p. 661  
 — v. Fidelity-Phoenix Fire Insurance Co. of  
 New York (Can.); 29. *Insce.* p. 710  
 — v. Griffiths (1927); 8. *Clubs*, No. 111b  
 — v. Hawke (Can.); 23. *Exors.* p. 613  
 — v. Langs & Roddis, Ltd. (Can.); 12. *Contr.*  
 p. 391  
 — v. Moose Jaw (City) (Can.); 17. *Dep.* p. 518  
 — v. Murray (Can.); 17. *Damgs.* p. 507  
 — v. Southern Ry. Co. (1927); 34. *Mast. & S.*  
 No. 2488a  
 — v. Union Fire Insurance Co., Agricultural Fire  
 Insurance Co. of Watertown, New York  
 Claim (Can.); 29. *Insce.* p. 704  
 Clarke Brothers, Ltd. v. Goodin & Pederson (Can.);  
 8. *Chas.* p. 313  
 Clarke-Jervoise v. Scutt (1920); 2. *Agric.* Nos.  
 56a, 117a  
 Clarkson v. Hanway (1723); 25. *Fraud. Conv.*  
 No. 807a  
 — v. Lawson (Can.); 6. *B. of Each.* p. 253  
 — v. McLean (Can.); 3. *Bank.* p. 163  
 — v. Robinet (Can.); 3. *Bank.* p. 164  
 — v. Ryan (Can.); 17. *Dep.* p. 521  
 — v. Smith & Goldberg (Can.); 3. *Bank.* p. 164  
 Clarkson & Home Bank of Canada v. Lancaster  
 (Can.); 3. *Bank.* p. 164  
 Clausen v. Canada Timber & Lands, Ltd. (Can.);  
 12. *Contr.* p. 402; 17. *Damgs.* p. 506  
 Clavel's Application, *Re* (1928); 36. *Pats.* No.  
 1368a  
 Clavelle v. Russell (Can.); 1. *Agcy.* p. 63  
 Clay, *Re*, Clay v. Booth, *Re* A Deed of Indemnity  
 (1919); 1. *Action*, No. 153a  
 Clayton v. Barclay (1895); 35. *Mtge.* No. 3378  
 — v. Newcastle (Duke) (1682); 21. *Estpl.* No. 993b  
 Clayton & Barclay's Contract, *Re* (1895); 35.  
*Mtge.* No. 3378  
 Clayton & Beaumonts' Contract, *Re* (1895); 5.  
*Bkpcy.* Nos. 6331, 7689  
 Clayton's Petition, *Re* (1927); 3. *Basty.* No. 130c  
 Clearing Office Controller v. Edwards & Co. (Bread  
 Street), Ltd. (1923); 2. *Aliens*, No.  
 — v. Weir & Co. (1925); 2. *Aliens*, No.  
 — v. — (1926); 2. *Aliens*, No. 215c  
 Cleary v. Hite (Can.); 2. *Animals*, p. 120  
 v. McDonald  
 Clementi v. Fielding (1848);  
 Clements v. Coughlan (Can.); 1. *Agcy.* p. 64  
 — v. County of Devon Insurance Committee (1918);  
 2. *Arbn.* No. 36a  
 Clemons v. St. Andrews (Can.); 38. *Rates*, p. 853  
 Clerical Disabilities Act, 1870, *Re*, *Ex* p. Cowan  
 (1927); 19. *Eocl.* No. 1851a  
 Clibborn v. Forstall (Ir.); 28. *Infsts.* p. 698  
 Clifton v. Johnstone (N.Z.); 1. *Agcy.* p. 38  
 — v. Strauss, *Re* Aschrott (1927); 21. *E. D.* Nos.  
 Clinton v. Bernard (Ir.); 28. *Infsts.* p. 698  
 Clonard Brick & Estate Co., Ltd., *Re* (Ir.); 10.  
*Coys.* p. 348  
 Cloncurry (Lord) v. Laffan (Ir.); 12. *Contr.* pp.  
 393, 394  
 Clouse v. Coleman (Can.); 22. *Evid.* p. 597  
 Cloutman v. Regnart, *Re* Rayner (1920); 8. *Char.*  
 No. 27a  
 Clow v. Doull (Can.); 6. *B. of Each.* pp. 251, 253,  
 255  
 Cluff Brothers, *Re* (Can.); 4. *Bkpcy.* p. 195  
 Clyde Engineering Co., Ltd. v. Cowburn (Aus.);  
 17. *Dep.* p. 522  
 Clyde Industrial Training Ship Assocn. (Scot.); 8.  
*Char.* p. 308  
 Clyde Navigation Trustees v. Kelvin Shipping Co.,  
 Ltd. (Scot.); 35. *Money*, p. 807  
 Clydebank Investment Co., Ltd. v. Marshall  
 (Scot.); 31. *L. & T.* p. 746  
 Clydesdale Bank, Ltd. v. (James Allan) Senior &  
 Son (Liquidators) (Scot.); 3. *Bank.* p. 169  
 Coady, *Re* (Can.); 30. *Intox.* p. 722  
 Coal & Coke Rates Case, Standard Hardwood  
 Lumber Co. v. Canadian Pacific Ry. Co. &  
 Canadian National Rys. (Can.); 38. *Rys.*  
 p. 850  
 Coaster, *The* (1922); 1. *Adm.* No. 1548a  
 Cobb v. Roy (Can.); 7. *Bldg. Conts.* p. 279  
 Cobbett, *Re* (Aus.); 8. *Char.* p. 301  
 Cobourg & Grafton Toll Road Co., *Re* (Can.); 11.  
*Comp. Pche.* p. 359  
 Cobourg Felt Co., *Re*, *Ex* p. Weaver (Can.); 5.  
*Bkpcy.* p. 243  
 Coca Cola Co. v. Duckworth & Co. (1928); 18.  
*Discy.* No. 1690a  
 Cochran's Trusts, *Re* (No. 2) (Can.); 2. *Arbn.*  
 p. 149  
 Cochrane, *Re* (N.Z.); 5. *Bkpcy.* p. 231  
 Cochrane (Town) & King, *Re* (Can.); 38. *Rates*,  
 p. 851  
 Cockburn v. Sylvester (Can.); 6. *B. of Each.* p. 250  
 Cocks Estate & Consort Trading Co., *Re* (Can.);  
 5. *Bkpcy.* p. 220  
 Cockshutt Plow Co., Claimant, Imperial Lumber  
 Yards, Ltd. v. Ferguson (Can.); 7. *B. of*  
*Sale*, pp. 264, 265  
 Codville, *Re* (Can.); 11. *Comp. Pche.* p. 356  
 Codville Co., Ltd. v. Goddard (Can.); 12. *Contr.*  
 p. 408  
 Codville Co. v. Jordan (Can.); 6. *B. of Each.* pp.  
 250, 253  
 Cody v. Cody (Can.); 11. *Confl.* p. 374; 28. *Infsts.*  
 p. 696  
 Cofield v. Waterloo Case Co., Ltd. (Aus.); 24. *Fact.*  
 p. 620  
 Coghlin v. La Fonderie de Joliette (Can.); 17.  
*Damgs.* p. 507  
 Cogstad (O. T.) & Co. v. Newsom (H.), Sons  
 Co. (1921); 2. *Arbn.* Nos. 1058a,  
 Cohen, *Re*, p. Trustee (W. R.) & Co.  
 4. 4665a; 5.  
 No.  
 , Cohen v.

- v. Gold* (1927); 31. *L. & T.* No.  
*v. Jonesco* (1926); 21. *Estpl.* No. 108a  
*v. Lapin* (Aus.); 21. *Estpl.* p. 579  
*v. Roche* (1927); 3. *Auct.* Nos. 76a, 151b  
— *v. Sellar* (1926); 25. *Gifts*, No. 175a  
Cohen & Cohen, *Ex p.*, *Re Lavey* (1920); 5. *Bkpcy.* No. 8104a  
—, *Ex p.*, *Re Lavey* (1921); 4. *Bkpcy.* No. 2028a; 5. *Bkpcy.* No. 8104a  
Cohen & Mahlin, *Re*, Canadian Credit Men's Trust Assocn., Ltd. *v.* Spivak (Can.); 4. *Bkpcy.* p. 208; 5. *Bkpcy.* pp. 215, 226, 229, 231  
Cohen & Sweigman, *Re*, *Ex p.* Gelman (Can.); 4. *Bkpcy.* p. 205  
—, *Re*, *Ex p.* Rosenberg (Can.); 4. *Bkpcy.* p. 191  
Cohn *v.* Canary (Can.); 27. *H. & W.* p. 656  
Coimbra, The (1928); 1. *Adm.* No. 1541a  
Cokers *v.* Belleville (Can.); 26. *Hghys.* p. 648  
Colchester *v.* Peck (1926); 3. *Basty.* No. 366a  
Colchester South (Township) *v.* Hackett (Can.); 32. *Limit. of A.* p. 757; 38. *Real Prop.* p. 856  
Coldman *v.* Hill (1919); 2. *Animals*, No. 846a  
Cole *v.* Cole (Can.); 20. *Egy.* p. 569  
— *v.* London & North Eastern Ry. Co. (1928); 34. *Mast. & S.* No. 2310a  
— *v.* Merton Park (Wimbledon) Golf Club, Ltd. (1927); 8. *Clubs*, No. 21a  
— *v.* Nanalal Morarji Dare (Ind.); 3. *Bailmt.* p. 159  
— *v.* Reed (Can.); 36. *Prtnrs.* p. 825  
— *v.* Sumner (Can.); 12. *Contr.* p. 390  
Cole & Knowles, *Re* (Can.); 34. *Mines*, p. 800  
Colebourne *v.* Harrop (Can.); 38. *Rys.* p. 849  
Coleman, *In the Goods of* (Ir.); 23. *Exors.* p. 608  
— *v.* Monahan (Can.); 31. *L. & T.* p. 737  
Coleman (Township) & Northern Ontario Light & Power Co., Ltd., *Re* (Can.); 28. *Inc. T.* p. 676; 38. *Rates*, p. 851  
Coleman & Toronto & Niagara Power Co., *Re* (Can.); 2. *Arbn.* p. 147  
Coleman's Case (1619); 15. *Crim.* No. 7564a  
Coleridge *v.* Coleridge (Can.); 27. *H. & W.* pp. 659, 663  
Coles, *In the Goods of* (1871); 23. *Exors.* No. 54a  
— *v.* White City (Manchester) Greyhound Assocn., Ltd. (1928); 9. *Coys.* No. 525a  
Coleshill *v.* Manchester Corpn. (1928); 16. *Courts*, No. 22a; 26. *Hghys.* No. 1191b; 30. *Juries*, No. 295a  
Colgrove *v.* Gundy (Can.); 20. *Egy.* p. 569  
Collaroy Co., Ltd. *v.* Giffard (1928); 10. *Coys.* No. 6989b  
Collingwood *v.* Union Government (S. Af.); 2. *Aliens*, p. 115  
Collins, *Re* (1925); 5. *Bkpcy.* Nos. 6129a, 6659a, 6745b  
—, *Re* (Can.); 24. *Exors.* p. 618  
—, *Re*, *Ex p.* Salaman (Trustee) (1925); 5. *Bkpcy.* No. 6659a  
— *v.* Collins (Ir.); 18. *Desct.* p. 529  
— *v.* General Service Transport Co. (Can.); 36. *Negl.* p. 816  
— *v.* Reid (Can.); 35. *Mtge.* p. 810  
— *v.* Whiteway (Henry) & Co. (1927); 16. *Courts*, No. 17a; 32. *Libel*, No. 1347a  
Colonial Investment & Loan Co. *v.* Hush (Can.); 25. *Fraud. Conv.* p. 627  
— *v.* Martin (Can.); 11. *Confl.* p. 376; 35. *Mtge.* p. 812  
Colorado, The (1923); 11. *Confl.* No. 1309a  
Colp *v.* Hunter (Can.); 12. *Contr.* p. 391; 25. *l. Conv.* p. 629  
—, *Sherwood* (Can.); 35. *Mtge.* p. 811  
— *v.* Driscoll (Can.); 38. *Rates*, p. 853  
Columbia Gramophone Co., Ltd. *v.* Fossey (Aus.); 36. *Pats.* p. 830  
Columbia Graphophone Co. *v.* Union Bank of Canada (Can.); 3. *Bank.* pp. 172, 175  
Columbia Phonograph Co., General *v.* Regent Fittings Co. (1913); 36. *Pats.* No. 3152a  
Comba *v.* Simpson (Can.); 16. *Courts*, pp. 479, 480  
Comean *v.* Leblanc (Can.); 12. *Contr.* p. 407  
Comforter & Cushion Manufacturing Co., *Re*, *Ex p.* Henderson (J. B.) & Co. (Can.); 7. *B. of Sale*, p. 263  
Commercial & Estates Co. of Egypt *v.* Board of Trade (1925); 11. *Const. L.* Nos. 534a, 535a  
Commercial Bank of Scotland *v.* Campbell, *Re* Campbell (1923); 28. *Inc. T.* No. 646a  
Commercial Credit Co. of Canada, Ltd. *v.* Fulton Brothers (Can.); 7. *B. of Sale*, p. 265  
Commercial Pacific Cable Co. *v.* Prince Albert, The (Can.); 1. *Adm.* p. 18, 14  
Commercial Properties, Ltd., *Re* (Ind.); 28. *Inc. T.* p. 676  
Commodore, The (1853); 1. *Adm.* No. 1277  
Common Councilmen for the Ward of Farringdon Without in the City of London, *Re* Election. of (1925); 20. *Elect.* No. 1038a  
Commonwealth, The *v.* Kreglinger & Fernau, Ltd. & Bardsley (Aus.); 17. *Dep.* p. 521  
Commonwealth & A.-G. for Commonwealth *v.* Australian Commonwealth Shipping Board (Aus.); 13. *Corpn.* p. 431; 17. *Dep.* p. 521  
Commonwealth & Central Wool Committee *v.* Colonial Combing, Spinning & Weaving Co., Ltd. (Aus.); 17. *Dep.* p. 521  
Commonwealth & Commonwealth Oil Refineries, Ltd. *v.* State of South Australia, Ltd. (Aus.); 17. *Dep.* p. 522  
Community of Sisters of the Holy Names of Jesus & Mary, *Re*, *Re* Winnipeg Charter (Can.); 16. *Courts*, p. 481  
Compania Mercantil Argentina *v.* United States Shipping Board (1924); 1. *Action*, No. 893a  
Companies Act, *Re*, *Re* British Petroleum, Ltd. (Can.); 9. *Coys.* p. 325  
Companies Winding Up Act, *Re*, *Re* Saskatchewan Co-operative Elevator Co., Ltd. (Can.); 2. *Agric.* p. 79  
Compte de Wohronzoff, The (1781); 2. *Aliens*, No. 419a  
Comstock *v.* Ashcroft Estates, Ltd. (Can.); 2. *Animals*, p. 124  
Con Planck, Ltd. *v.* Kolynos Incorporated (1925); 13. *Coprt.* No. 229a  
Conds *v.* Kabota (Can.); 16. *Cr. Pract.* p. 490  
Coneys *v.* Morris, *Re* Morris (Ir.); 3. *Bank.* p. 178  
Conlan's Estate, *Re* (Ir.); 32. *Limit. of A.* p. 757  
Conn Presbyterian Church, *Re* (Can.); 19. *Ecel.* p. 554  
Connel (Doe d.) *v.* Dickinson (Can.); 17. *Deeds*, p. 511  
Connell *v.* Rorke (Nfld.); 25. *Fish.* p. 624  
Connolley *v.* Connolley (Can.); 27. *H. & W.* p. 660  
Connolly *v.* Shives (Can.); 24. *Exors.* p. 616  
Connor, *Re* (Ir.); 3. *Basty.* pp. 186, 187  
— *v.* McPherson (Can.); 38. *Rates*, p. 853  
— *v.* Nelson, Moate & Co. (N.Z.); 31. *L.* T. p. 735  
Connors *v.* Egli (Can.); 17. *Dep.* pp. 520, 528  
— *v.* McGregor (Can.); 12. *Contr.* pp. 413, 414; 17. *Damgs.* p. 504; *Deeds*, pp. 510, 511  
Conquer *v.* Boot (1928); 21. *Estpl.* No. 447a  
Conradie *v.* Rousseouw (S. Af.); 12. *Contr.* p. 395  
Conrod *v.* R. (Can.); 34. *Mast. & S.* p. 773  
Conron *v.* London County Council (1922); 11. *Comp. Pche.* No. 2225a



- Consett Industrial & Provident Society, Ltd. v. Consett Iron Co. (1922); 11. *Comms.* No. 903
- Consolidated Rendering Co. v. Canadian National Rys. (Can.); 38. *Rys.* p. 849
- Consolidated Wafer Co., Ltd. v. International Cone Co., Ltd. (Can.); 22. *Evid.* p. 594; 36. *Pats.* p. 829
- Conson v. London County Council (1922); 11. *Comp. Pche.* No. 2225a
- Constitutional Questions Determination Act, *Re*, *Re* Legal Professions Act (Can.); 17. *Dep.* p. 519
- Consumers' Gas Co. v. R. (Can.); 25. *Gas.* p. 638
- Continental, *Re* (Aus.); 2. *Aliens*, p. 109
- Continental Fire & Casualty Co., *Re* (Can.); 10. *Coys.* pp. 342, 349
- Continental Guaranty Corp'n. of Canada, Ltd. v. Horodyske & Canmore Coal Co., Ltd. (Can.); 21. *Exon.* p. 591
- v. Mark (Can.); 28. *Infts.* p. 695
- Continental Publishing Co., *Re*, *Ex p.* Davis & Simmons (Can.); 4. *Bkpcy.* pp. 204, 210
- Cooley v. Brome Municipality (Can.); 17. *Dep.* p. 519
- Cooil v. Clarkson (Can.); 21. *Estpl.* p. 584
- Cook, *Ex p.*, *Re* Gunsbourg (1920); 5. *Bkpcy.* No. 5775a
- v. M'Dougall (Scot.); 4. *Bkpcy.* p. 198
- v. Orr (Can.); 7. *B. of Sale*, p. 267
- Cooke v. Mocroft (Can.); 32. *Lien*, p. 754
- v. Wallace (N.Z.); 1. *Agcy.* p. 38
- Cooley v. Walsh & Cooney (Ir.); 31. *L. & T.* p. 746
- Coolin v. Coolin (Can.); 39. *S. Goods*, p. 863
- Cooper v. Collins Electrical, Ltd. (1926); 34. *Mast. & S.* No. 3698b
- v. Micklefield Coal & Lime Co., Ltd. (1912); 12. *Contr.* Nos. 4908a, 4931a
- v. Rayner (1912); 12. *Contr.* Nos. 4908a, 4931a
- v. Visser (S. Af.); 2. *Animals*, p. 119
- Co-operative Music Supply Co. v. Gold Medal Furniture Manufacturing Co., *Re* Hughes Music Sales Co. (Can.); 5. *Bkpcy.* p. 228
- Copp v. Williams (Can.); 5. *Bkpcy.* p. 229
- Corbett v. Jamieson (N.Z.); 3. *Bailmt.* p. 155
- Cork, *Ex p.*, *Re* Tabor (1920); 5. *Bkpcy.* Nos. 6516a, 6881a, 6890a
- Cornish Coast (Owners) v. Societa Nazionale di Navigazione, The Fagernes (1927); 11. *Const. L.* No. 136a; 16. *Courts*, No. 37a
- Cornwall v. Williams (1701); 40. *S. Land*, No. 2242a
- Corporation Agencies, Ltd. v. Home Bank of Canada (1926); 16. *Courts*, No. 388a
- Corporation Agencies v. Home Bank of Canada (1927); 3. *Bank.* No. 544a
- Corrigal v. Boulton (Can.); 26. *Guar.* p. 643
- Corsini v. Palm (Can.); 35. *Mtge.* p. 812
- Corson Shoe Co., *Re* (Can.); 4. *Bkpcy.* pp. 209, 210
- Cory Lighterage, Ltd. v. Dalton (Owners), The Harlow (1922); 1. *Adm.* No. 1536a
- Cosgrove v. Canadian National Rys. (Can.); 17. *Damgs.* pp. 501, 502, 503, 507
- Cottage Club Estates v. Woodside Estates Co. (Amersham), (1928); 7. *Bldg. Conts.* No. 345a
- Cottingham v. Boulton (Can.); 35. *Mistake*, p. 805
- Cottle, *Ex p.*, *Re* Wolverhampton, Chester & Birkenhead Junction Ry. Co. (1850); 1. *Agcy.* No. 646
- Cotton v. Dempster (Can.); 21. *Exon.* p. 586
- Coughlin & Co., *Re*, *Ex p.* Guarantee Co. of North America (Can.); 4. *Bkpcy.* pp. 202, 206
- Coull v. Fife Education Authority (Scot.); 19. *Educ.* p. 558
- Coulson v. Austin Motor Co., Ltd. (1927); 9. *Coys.* No. 3734a
- v. Gzowski (Can.); 41. *Ship.* p. 878
- County Hotel & Wine Co. v. London & North Western Ry. Co. (1918); 1. *Action*, No. 604a
- v. — (1921); 1. *Action*, No. 604a
- Coursolles v. Fookes (Can.); 20. *Egy.* p. 569
- Court v. Holland, *Ex p.* Holland & Walsh (Can.); 22. *Evid.* p. 596
- v. Walsh (Can.); 32. *Limit. of A.* p. 757
- Courtaulds, Ltd. v. City of London Corp'n. (1926); 11. *Comp. Pche.* No. 2286a
- Courteis v. Johnson (1853); 10. *Coys.* No. 7723a
- Cousin v. Edinburgh Assessor (Scot.); 38. *Rates*, p. 852
- Cousins v. Greaves (Can.); 2. *Animals*, p. 121
- Coutu v. James (Can.); 32. *Lien*, p. 754
- Coventry v. Great Eastern Ry. Co. (1883); 21. *Estpl.* No. 1610a
- Covington, *Re* (Can.); 4. *Bkpcy.* p. 213
- Cowan, *Ex p.*, *Re* Clerical Disabilities Act, 1870 (1927); 19. *Eccl.* No. 1851a
- v. A.-G. (Can.); 21. *E. D.* p. 575
- v. Eisler (Can.); 34. *Mast. & S.* p. 771
- v. Macaulay (Can.); 38. *Real Prop.* p. 856
- Cowan Brothers, Ltd. & Rymer (Henry) & Co., *Re* (1919); 2. *Arbn.* No. 1857c
- Coward, Chance & Co., *Re* (1928); 35. *Mtge.* No. 4061a
- Cowcher v. Mills & Co., Ltd. (1927); 28. *Inc. T.* No. 248b
- Cowdray v. Ferries (Scot.); 2. *Agric.* p. 83
- Cowie v. Sawyer-Massey Co. (Can.); 1. *Agcy.* p. 65
- Cowne v. Cordery (1862); 18. *Distr.* No. 1266a
- Cowper v. Frankenberg (Aus.); 2. *Aliens*, p. 101
- Cox, *Re* (Can.); 11. *Const. L.* p. 386; 23. *Exors.* p. 607
- v. Hogan & Victoria Corp'n. (Can.); 8. *Char.* p. 305
- Cox Towing Line v. Bunfield & Co. (Can.); 2. *Arbn.* pp. 131, 134
- Coyle, *Ex p.* (Can.); 33. *Mags.* p. 765
- Cozier, *Re*, Parker v. Glover (Can.); 24. *Exors.* p. 618
- Craig v. Armaghdale (Lady), *Re* Armaghdale (Lord) (1928); 28. *Inc. T.* No. 696a
- v. Kennedy (Can.); 5. *Bkpcy.* p. 216
- v. McCreath (Can.); 1. *Agcy.* p. 39
- v. University of Toronto (Governors) (Can.); 19. *Educ.* p. 557
- Craig & Co. v. Blackater (Scot.); 1. *Agcy.* pp. 69, 73
- Craig (W. G.) & Co., Ltd. v. Gillespie (Can.); 5. *Bkpcy.* p. 229; 7. *B. of Sale*, p. 265
- Craigson v. R. (1924); 17. *Dep.* No. 108a
- Cramb v. Goodwin (1919); 1. *Agcy.* No. 1829a
- Crawford, *Re* (1847); 22. *Evid.* No. 6092a
- v. Northern Lighthouses Comrs. (Scot.); 7. *Bldg. Conts.* p. 278
- v. Western Assurance Co. (Can.); 29. *Insce.* p. 704
- v. White City Rink (Newcastle-on-Tyne), Ltd. (1913); 12. *Contr.* No. 845a
- Crawford & Co. v. Hunters & Co. (Nfld.); 4. *Bkpcy.* p. 210
- Craythorne v. Jenkins (N.Z.); 12. *Contr.* p. 413
- Creagh v. Sutherland & Reade (Can.); 21. *Exon.* p. 591
- Crediton Gas Co. v. Crediton Urban Council (1928); 25. *Gas*, No. 51a
- Creelman & Verge v. R. (Can.); 11. *Const. L.* p. 380
- Creighton v. United Oils, Ltd. (Can.); 11. *Const. L.* p. 386
- Cremidas v. British Columbia Electric Ry. Co. (Can.); 2. *Aliens*, p. 107

- Crerar v. Bank of Scotland (Scot.)**; **3. Bank.** p. 177  
**Crerar & Patterson v. Braybrook (Can.)**; **1. Agcy.** p. 62  
**Crest Estate, Re (Can.)**; **23. Exors.** p. 612  
**Creteforest, The (1920)**; **1. Adm.** Nos. 856a, 979a, 1001a  
**Crew v. Petit (1834)**; **1. Agcy.** No. 2658  
**Crewkerne United Breweries, Ltd. v. Slade, Re Slade (1921)**; **4. Bkpcy.** No. 4335a  
**Crimdon, The (1918)**; **1. Adm.** Nos. 131a, 141a  
**Cristal v. Simovitch (Can.)**; **6. B. of Exch.** p. 256  
**Crocker v. Hutchinson (Can.)**; **21. Estpl.** p. 583  
**Croft & Sons, Ltd., Ex p., Re Gardner (Can.)**; **5. Bkpcy.** pp. 242, 243  
**Croker v. Martin (1827)**; **20. Eqq.** No. 1619a  
**Cromarty v. Cromarty (Can.)**; **11. Confl.** pp. 371, 373  
**Crombie v. R. (Can.)**; **16. Cr. Pract.** p. 487  
**Cromwell's (Lord) Case (1578)**; **22. Evid.** No. 1200a  
**Cronshaw v. Chapman (1862)**; **21. Exon.** No. 1231a  
**Crook v. Royal National Lifeboat Institution, Re Beck (1926)**; **8. Char.** No. 1186a  
**— v. Wilson (1855)**; **19. Easmt.** No. 1406a  
**Crooks & Co. v. Agricultural Co-operative Union, Ltd. (S. Af.)**; **1. Adm.** p. 36  
**Crop Payments Act, Re, Re Bills of Sale & Chattel Mortgage Act (Can.)**; **7. B. of Sale,** p. 260  
**Cropper v. Mellersh (1855)**; **35. Mtge.** No. 2897a  
**Crosby v. Thomson (Can.)**; **11. Confl.** p. 365  
**Crosfield's Oil & Cake Co., Ltd. v. London, Midland & Scottish Ry. Co. (1925)**; **8. Carr.** No. 1377h  
**Croskill v. Wortman (Can.)**; **31. L. & T.** p. 734  
**Crosman & McLeod's Election, Re, Ex p. Howard (Can.)**; **16. Cr. Pract.** p. 492  
**Cross v. Wood (Can.)**; **1. Agcy.** p. 59  
**Crosse v. Crosse & Heath (Aus.)**; **27. H. & W.** p. 665  
**Crossingham v. Park (1928)**; **35. Money,** Nos. 377a, 379a  
**Croteau & Clark Co., Ltd., Re (Can.)**; **4. Bkpcy.** p. 196  
**Crowder v. Coleman (Can.)**; **21. Exon.** p. 588  
**Crown Lumber Co. v. McKenzie, Re Canadian Pacific Ry. Co. (Can.)**; **21. Exon.** p. 587  
**— v. Saulsberry (Can.)**; **1. Agcy.** p. 39  
**Crown's Customs Duties Claim, Re (Can.)**; **4. Bkpcy.** p. 210  
**Croydon Canal Co., Re (1839)**; **2. Arbn.** Nos. 1435a, 1516a  
**Croyston v. Banes (1702)**; **12. Contr.** No. 1184a  
**Crystal, Re (Can.)**; **4. Bkpcy.** p. 210  
**Crystal, Ltd. v. Willard Kitchen, Ltd. (Can.)**; **18. Distr.** p. 538  
**Crystall v. Olsen (Can.)**; **7. B. of Sale,** p. 267; **18. Distr.** p. 537  
**Cubitt v. Smith (1864)**; **7. Bldg. Conts.** No. 273a  
**Cudworth v. Eddy (Can.)**; **1. Agcy.** p. 64  
**Cull v. Grand Trunk Ry. Co. (Can.)**; **16. Cr. Pract.** p. 496  
**Cull v. Green (Aus.)**; **26. Hghys.** p. 650  
**Cullen v. Cullen (Can.)**; **21. Exon.** p. 586  
**— v. Kemp (Can.)**; **28. Infts.** p. 996  
**— v. Stanley (Ir.)**; **20. Elect.** p. 560  
**Cumberland v. Lanarkshire Tramways Co. (Scot.)**; **34. Mast. & S.** p. 795  
**Cummings & Ellis v. O'Flynn (Can.)**; **25. Fraud.-Conv.** p. 627  
**Cummins v. Bond (1927)**; **13. Coprt.** No. 197a  
**Cunard's Lessee v. Irvine (Can.)**; **32. Limit. of A.** p. 757  
**Cunliffe v. Planta (Can.)**; **1. Agcy.** p. 76  
**Cunnard v. Plummer (Can.)**; **26. Guar.** p. 641  
**Cunningham v. Cunningham (Ir.)**; **18. Desct.** p. 530  
**— v. Insinger (Can.)**; **17. Damgs.** p. 501  
**Cunningham v. Northern Banking Co., Ltd. (Ir.)**; **3. Bank.** p. 164  
**Cunningham's Trustees v. Cunningham (Scot.)**; **11. Confl.** p. 367  
**Cunnington, Re, Healing v. Webb (1924)**; **11. Confl.** No. 526a  
**Curlews v. Butts (1831)**; **19. Eccl.** No. 2496  
**Curley v. Briggs (Administrator of Drury Estate) (Can.)**; **3. Bank.** p. 171; **6. B. of Exch.** p. 245  
**Curling v. Austin (1862)**; **23. Exors.** No. 3766a  
**Curran (Edward) & Co. v. Kays (1928)**; **34. Mast. & S.** No. 3753a  
**Currie v. McKnight (1897)**; **30. Jdgmts.** No. 595a  
**— v. Nicholson (Can.)**; **16. Courts,** p. 480  
**— v. Wardrop (Scot.)**; **17. Damgs.** p. 502  
**— v. Wreford Rural Municipality, No. 280, & Lasher (Can.)**; **1. Agc.** p. 74  
**Currier v. Crosby (Can.)**; **4. Auct.** p. 152  
**Curtis v. Curtis (1833)**; **18. Discy.** No. 555a  
**— v. Flindall (Can.)**; **12. Contr.** p. 412  
**— v. French (1928)**; **40. S. Land.** No. 771a  
**— v. Sheffield (1836)**; **5. Bkpcy.** No. 6390a  
**Curzon Syndicate, Ltd., Re (1920)**; **8. Clubs,** Nos. 53a, 54a, 148a  
**Cusack v. Day (Can.)**; **3. Bank.** p. 175; **25. Gifts,** p. 640  
**Cushion v. Tredegar Iron & Coal Co., Ltd. (1927)**; **34. Mast. & S.** No. 3274a  
**Custodian, The v. Blucher (Can.)**; **17. Damgs.** p. 506; **35. Money,** p. 807  
**Customs Comr. v. Airtion Timber Co., Ltd. (S. Af.)**; **17. Dep.** p. 513  
**Cutinha v. Salvadora Minazes (Ind.)**; **31. L. & T.** p. 741  
**Cutler v. Chiffey (Can.)**; **5. Bkpcy.** p. 239  
**Cutten v. Bickell (Can.)**; **1. Agcy.** p. 52  
**Cuvillier v. Thibodo (Can.)**; **22. Evid.** p. 603  
**Cyr v. Dufault (Can.)**; **12. Contr.** p. 392  
**Czarnikow v. Roth, Schmidt & Co. (1922)**; **2. Arbn.** No. 1036a

## D.

- Dabbs v. Humphries (1835)**; **29. Intpr.** No. 503b  
**Dadoo v. Krugersdorp (S. Af.)**; **2. Aliens,** p. 97  
**Dadson v. Grest (Can.)**; **9. Coys.** p. 337  
**Dageland v. Catala, S.S. (Can.)**; **34. Mast. & S.** pp. 783, 794  
**Dahlberg v. Swanson (Can.)**; **27. H. & W.** pp. 655, 664  
**Dairy Proprietary Assocn. (Inc.) v. New Zealand Dairy Produce Control Board (N.Z.)**; **30. Jdgmts.** p. 724  
**Dale v. Hatfield Chase Corpn. (1922)**; **2. Agric.** Nos. 265c, 266b, 266c, 266d  
**— v. Mitcalfe (1928)**; **28. Inc. T.** No. 545b  
**Dale & Carroll, Re (Can.)**; **5. Bkpcy.** p. 228  
**Dale (Charles), Ltd. (Scot.)**; **10. Coys.** p. 348  
**Daley & Morin v. Fogel (Can.)**; **4. Bkpcy.** p. 206  
**Dalgety v. Gray (Aus.)**; **1. Agcy.** p. 55  
**Dalhousie Mills Presbyterian Church, Re (Can.)**; **19. Eccl.** p. 554  
**Dalison v. Stark (1802)**; **22. Evid.** No. 1829a  
**Dalley, Re (1926)**; **23. Exors.** No. 2585a  
**Dalling v. McKendrick (Can.)**; **33. Mal. Pros.** p. 768  
**Dalphe v. Fairbanks, Gosselin & Co. (Can.)**; **5. Bkpcy.** p. 220  
**Dalton v. Botts (Can.)**; **12. Contr.** p. 395  
**Dalton v. Eaton (Can.)**; **7. B. of Sale,** p. 262  
**Daly, Re (Can.)**; **23. Exors.** p. 612  
**— v. Irish Transport & General Workers' Union (Can.)**; **32. Libel,** p. 751  
**— v. Keliher (Can.)**; **1. Agcy.** p. 64

- D'Amours v. Trois-Pistoles (Can.)*; 7. *Bldg. Contr.* p. 274
- Dampney & Co., Ltd. & Reduced, Re* (1924); *Coys.* No. 1019b
- Danby v. Wakaw (Village) & Kraus (Can.)*; 38. *Pub. Hlth.* p. 847
- Daniel v. Metropolitan Ry. Co.* (1871); 22. *Evid.* No. 55b
- Danish v. Gillespie (Scot.)*; 1. *Agcy.* p. 42
- Daphne v. Shaw* (1926); 28. *Inc. T.* No. 268a
- Darapale, etc. v. Nazir (Ind.)*; 17. *Deeds*, p. 509
- D'Arcy v. Land (Can.)*; 1. *Agcy.* p. 55
- Darling v. Burton (Scot.)*; 39. *Revenue*, p. 860
- *v. McLeon (Can.)*; 26. *Guar.* p. 643
- Darnborough v. Darnborough & Smith* (1926); 27. *H. & W.* No. 4985b
- Darrock v. Burns (S. Af.)*; 6. *B. of Exch.* p. 251
- Darwen & Pearce, Re* (1927); 26. *Guar.* No. 1224a
- Dasharathi Ghose v. Khondkar Abdul Hannan (Ind.)*; 12. *Contr.* pp. 401, 408
- Dashwood v. Dashwood* (1927); 16. *Cntmpt.* No. 429a
- Daum & Plaetzer, Re, Ex p. Monroe (Can.)*; 4. *Bkpcy.* p. 208
- Dauncey v. Howlett* (1926); 28. *Inc. T.* Nos. 504a, 510
- Dauphinee v. Dauphinee (Can.)*; 17. *Deeds*, p. 511
- Davey v. Robinson* (1923); 13. *Cty. Cts.* No. 373a
- David, Re (Can.)*; 5. *Bkpcy.* p. 230
- Davidge v. Johnson & McDonald, Ltd. (Can.)*; 36. *Negl.* p. 817
- Davidson, Ex p., R. v. Norfolk JJ.* (1925); 16. *Cr. Pract.* No. 2142a
- *v. Annesley, Re Annesley* (1926); 11. *Confl.* Nos. 249a, 251a
- *v. Scott's Shipbuilding & Engineering Co., Ltd. (Scot.)*; 33. *Lunat.* p. 763
- Davidson & Smith, Re, Ex p. London Guarantee & Accident Co. (Can.)*; 21. *Exon.* p. 592
- Davidson & Vancouver Terminal Grain Co. v. North Western Dredging Co. & Vancouver Harbour Comrs. (Can.)*; 28. *Injon.* p. 701
- Davie v. Hooper* (1711); 37. *Powers*, No. 1233a
- Davies, Re, Ex p. Miles* (1921); 5. *Bkpcy.* No. 7339a
- , *Re, Ex p. Trustee* (1921); 5. *Bkpcy.* No. 7339a
- , *Re, Butson v. Davies* (1888); 16. *Cntmpt.* No. 98
- , *Re, Davies v. Duggan (Can.)*; 30. *Jdgmts.* p. 723
- *v. Abbott* (1927); 28. *Inc. T.* No. 25c
- *v. Baldwins, Ltd.* (1926); 34. *Mast. & S.* No. 3801a
- *v. Davies* (1926); 13. *Cty. Cts.* No. 404b
- *v. Donald (S. Af.)*; 1. *Agcy.* p. 55
- *v. Duggan, Re Davies (Can.)*; 30. *Jdgmts.* p. 723
- *v. Lowndes* (1835); 22. *Evid.* No. 2707a
- *v. —* (1838); 22. *Evid.* No. 2707a
- *v. Ripon Corpn.* (1928); 25. *Gas*, No. 15a; 26. *Hghys.* No. 1761a
- Davies Footwear Co., Re, Underhills, Ltd. v. Barber (Can.)*; 4. *Bkpcy.* p. 201
- Davis, In the Estate of, In the Estate of Caie* (1927); 23. *Exors.* No. 1371a
- , *Re (Can.)*; 4. *Bkpcy.* pp. 201, 210
- , *Re, Thomas v. Davis* (1923); 8. *Char.* No. 724a
- *v. Beggs (Can.)*; 1. *Agcy.* p. 56
- *v. Davis (Can.)*; 27. *H. & W.* p. 659
- *v. Davis & Helbing* (1928); 27. *H. & W.* Nos. 3635a, 4848b
- *v. Elliot (Can.)*; 8. *Carr.* p. 287
- *v. Harrison* (1927); 28. *Inc. T.* No. 502a
- *v. Holding* (1836); 4. *Bkpcy.* No. 1366a
- *v. Lowry (Can.)*; 36. *Prints.* p. 825
- *Mayhew, In the Estate of* 23. *Exors.* No. 2079a
- *v. Nuttall (N.Z.)*; 25. *Gaming*, p. 635
- *v. R. (Can.)*; 14. *Crim.* p. 490
- *v. Symonds* (1787); 17. *Deeds*, No. 1177a
- Davis & Primrose, Ltd. v. Clyde Shipbuilding Engineering Co., Ltd. (Scot.)*; 2. p. 109
- Davis & Simmons, Ex p., Re Continental Publishing Co. (Can.)*; 4. *Bkpcy.* pp. 204, 210
- Davis Log & Raft Patents Co. v. Gathels (Can.)*; 36. *Pats.* pp. 826, 828, 831
- Davison, Re (Can.)*; 5. *Bkpcy.* p. 231
- *v. Benjamin (Can.)*; 17. *Deeds*, p. 512
- *v. Conrad (Can.)*; 36. *Negl.* p. 816
- *v. King (Ir.)*; 9. *Coys.* p. 334
- *v. Vickery's Motors, Ltd. (Aus.)*; 9. *Coys.* p. 330
- Davy v. Hooper* (1711); 37. *Powers*, No. 1233a
- Dawson v. Great Central Ry. Co.* (1919); 3. *Barr.* No. 356a
- *v. Paradise Mine & Canadian Pacific Ry. Co. (Can.)*; 2. *Animals*, p. 119
- *v. Sinclair (N.Z.)*; 25. *Gaming*, p. 634
- Dawson's Settled Estates, Re* (1928); 40. *Sttlmts.* No. 3138
- Day v. Harrison, Re Harrison* (1920); 3. *Bank.* No. 391a
- *v. Tuckett* (1846); 18. *Discy.* No. 539a
- Dean (Henry) & Sons (Sydney), Ltd. v. P. O'Day Proprietary, Ltd. (Aus.)*; 39. *S. Goods*, p. 864
- Deane v. Rastron* (1792); 25. *Fraud. Conv.* No. 909a
- Deans v. Orr (Can.)*; 1. *Agcy.* pp. 46, 47
- Dearne Valley Ry. Co. v. Great Northern Ry. Co. & Great Central Ry. Co.* (1914); 8. *Carr.* Nos. 1051a, 1058a
- Death v. New South Wales Railway Comrs. (Aus.)*; 38. *Rys.* p. 850
- Debenham's, Ltd. v. Perkins* (1925); 21. *Estpl.* No. 581a
- Debortoli v. R. (Can.)*; 15. *Crim.* p. 470
- Debret v. Debret (Can.)*; 2. *Arbn.* p. 144
- Debtor, The, Ex p., Re Bowen* (1924); 4. *Bkpcy.* No. 1357a
- Debtor (No. 718 of 1920), Ex p., Re Debtor* (1921); 4. *Bkpcy.* No. 1548a
- Debtor, The, Ex p., Re A Debtor (No. 16 of 1922)* (1922); 4. *Bkpcy.* No. 875a
- Debtor The, Ex p., Re A Debtor (No. 13 of 1922)* (1923); 4. *Bkpcy.* No. 1483a
- Debtor, The (No. 1088 of 1923), Ex p., Re A Debtor* (1924); 4. *Bkpcy.* No. 1552a
- Debtor, Ex p., Re Debtors (No. 807 of 1922)* (1922); 4. *Bkpcy.* Nos. 804a, 887a, 1500a
- Debtor, A (No. 446 of 1918), Re* (1920); 4. *Bkpcy.* Nos. 1515a, 1519a
- Debtor, A (No. 1507 of 1921), Re* (1922); 4. *Bkpcy.* Nos. 1367a, 1541a
- Debtor, A (No. 199 of 1922), Re* (1922); 4. *Bkpcy.* Nos. 389a, 1545a
- Debtor, A (No. 3 of 1926), Re* (1926); 4. *Bkpcy.* No. 274a
- Debtor, A (No. 82 of 1926), Re* (1927); 4. No. 3740a; 10. *Coys.* No. 6442a
- Debtor, A (No. 229 of 1927), Re* (1927); 1 No. 1640a; 4. *Bkpcy.* No. 1047a
- Debtor (No. 883 of 1927), Re* (1928); 4. *Bkpcy.* No. 1491a
- Debtor (No. 99 of 1928), Re* (1928); 4. *Bkpcy.* No. 1286a
- Debtor (No. 549 of 1928), Re* (1928); 4. *Bkpcy.* Nos. , *Re, Ex p. Debtor (No. 718 of 1920)* (1921); 4. *Bkpcy.* No. 1548a



- o. 16 of 1922), *Re, Ex p. The*  
(1922); 4.  
Debtor, A (No. 13 of 1922), *Re*, Debtor  
No. 1488a  
A, *Re, Ex p. The Debtor* (No. 1088 of  
923) (1924); 4. *Bkpcy.* No. 1552a  
(No. 27 of 1927), *Re, Ex p. Debtor v.*  
*Petitioning Creditor* (1928); 4. *Bkpcy.* No.  
Debtor, A, *Re, Ex p. The Debtor v. Petitioning*  
*Creditors & Official Receiver* (1920); 4.  
*Bkpcy.* No. 1515a  
Debtor, *Re, Ex p. Lawrence* (No. 21 of 1928)  
(1928); 4. No. 1077a  
Debtor, A, *Re, Ex p. Newburys, Ltd.* (1926); 4.  
No. 1177a  
Debtor, A, *Re, Ex p. Petitioning Creditor* (1920);  
4. *Bkpcy.* No. 1347a  
Debtor, A (No. 4 of 1922), *Re, Ex p. Petitioning*  
*Creditor* (1922); 4. *Bkpcy.* No. 1110a  
Debtor (No. 21 of 1928), *Re, Ex p. Petitioning*  
*Creditor v. Debtor* (1928); 4. *Bkpcy.* No.  
1077a  
Debtor, A, *Re, Ex p. Petitioning Creditors* (No. 24  
of 1924) (1924); 4. *Bkpcy.* No. 1179a  
Debtor v. Official Receiver, *Ex p., Re Kutner*  
(1921); 4. *Bkpcy.* No. 5264a  
Debtor v. Petitioning Creditor, *Ex p. Official Re-*  
*ceiver, Re Mumford* (1927); 4. *Bkpcy.* No.  
3740a; 10. *Coys.* No. 6442a  
Debtor v. Petitioning Creditor, *Ex p., Re Debtor*  
(No. 27 of 1927) (1928); 4. *Bkpcy.* No.  
3052a  
Debtor, The v. Petitioning Creditors & Official  
Receiver, *Ex p., Re A Debtor* (1920); 4.  
*Bkpcy.* No. 1515a  
Debtors (No. 771 of 1926), *Re* (1926); 4. *Bkpcy.*  
No. 923a; 5. *Bkpcy.* No. 5760a  
Debtors (No. 669 of 1926), *Re* (1927); 4. *Bkpcy.*  
No. 1051a  
Debtors (No. 807 of 1922), *Re, Ex p. Debtor*  
(1922); 4. *Bkpcy.* Nos. 804a, 887a, 1500a  
De Bunsen v. Hardinge, *Re Sturt* (1922); 20. *Eqy.*  
No. 1316a  
Decker's Delicatessen, *Re* (Can.); 4. *Bkpcy.*  
p. 209  
Decock v. Barrager (Can.); 2. *Agric.* p. 89  
Dedford v. Boulton (Can.); 32. *Limit. of A.*  
p. 757  
Dee Conservancy Board v. McConnell (1928); 41.  
*Ship.* No. 6809a  
Deed of Arrangement, A (No. 9 of 1924), *Re* (1925);  
5. *Bkpcy.* No. 8645a  
Deed of Indemnity, A, *Re, Re Clay, Clay v. Booth*  
(1919); 1. *Action*, No. 153a  
Deere (John) Plow Co. v. Bowen (Can.); 27.  
*H. & W.* p. 656  
Deergarden, The (1747); 2. *Aliens*, No. 419a  
De Freville v. Dill (1927); 30. *Juries*, Nos. 301a,  
423a; 33. *Lunat.* Nos. 1856b, 1856d  
Degrow v. Union Bank of Canada (Can.); 3.  
*Bank.* p. 176  
Dehra Dun-Mussoorie Electric Tramway Co., Ltd.,  
*Re, Re Panna Lal* (Ind.); 10. *Coys.* p.  
343  
De Kock v. Fincham (S. Af.); 1. *Agcy.* pp. 51,  
De v. Worsnop & Co. (1928); 2. *Arbn.*  
No. 237a  
Delahunt v. Moody (Ir.); 34. *Mast. & S.* pp. 783,  
785  
Delap v. Hayden (Can.); 17. *Dep.* p. 524  
v. Delaporte (Can.); 11. *Conf.* p. 375  
Cloth & General Mills Co., Ltd. v. Delhi  
Income Tax Comrs. (Ind.); 17. *Dep.* p.  
527  
Delisle v. Dewitt (Can.); 21. *Econ.* p. 589  
Dell v. Quilty (N.Z.); 2. *Animals*, p. 125  
Dellaca, *Ex p.* (Aus.); 34. *Mines*, p. 802  
Dellow v. Bell (N.Z.); 34. *Mast. & S.* p. 774  
Delombre v. Fouquault (1909); 3. *Basty.* No.  
306a  
Delory v. Guyett (Can.); 1. *Agcy.* p. 45  
Demchenko v. Fricke (Can.); 12. *Contr.* p. 399  
Demers, Garnishee, Morris v. Kline (Can.); 5.  
*Bkpcy.* pp. 216, 236  
Demery, *Re* (Can.); 5. *Bkpcy.* p. 229  
De Mille, *Re* (Can.); 22. *Evid.* p. 597  
Demings v. Bedell (Can.); 21. *Estpl.* p. 583  
De Monchy v. Phoenix Insurance Co. of Hartford  
(1928); 29. *Insce.* Nos. 1611a, 2404a  
Dempsey v. Piper (N.Z.); 4. *Bkpcy.* p. 191  
Dempsey & Midland L. & S. Co., *Re* (Can.); 17.  
*Deeds*, pp. 510, 511  
Demry & Demry, *Re, Trustee v. Halland* (Can.);  
4. *Bkpcy.* p. 205; 5. *Bkpcy.* p. 229  
Dening v. Ware (1856); 40. *Sttlmts.* No. 803b  
Denis v. Morinill Corp'n. (Can.); 3. *Auct.* p. 152  
Denison v. Union Bank of Canada, *Re Raport*  
(Can.); 8. *Chos.* p. 315  
Denman v. Tousaw, Hart & Anderson & Bell  
Telephone Co. (Can.); 5. *Bkpcy.* p. 220  
Dennis v. Ivey & Boyce (Can.); 6. *B. of Exch.*  
p. 251  
Dennison v. Keiller, Ltd. (1926); 34. *Mast. & S.*  
No. 2479a  
Dennistoun v. Dennistoun (1925); 22. *Evid.*  
No. 6876a  
Denovich v. Hucal (Can.); 27. *H. & W.* p. 658  
Dent, *Re, Ex p. Trustee* (1923); 4. *Bkpcy.* No.  
2902a; 5. *Bkpcy.* Nos. 7153a, 7161a  
Denton v. Goodman (Can.); 1. *Agcy.* p. 70  
Denton Estate, *Re* (Can.); 23. *Exors.* p. 606  
De Pass' Case (1859); 9. *Coys.* No. 2344a  
Deputy Federal Comr. of Taxation for Tasmania  
v. Thomas (Aus.); 16. *Courts*, p. 479  
Derby (Lord) v. Bassom (1926); 28. *Inc. T.*  
No. 99  
Deremore Estate, *Re* (Can.); 8. *Char.* p. 308  
De Robeck v. Inland Revenue Comrs. (Scot.);  
28. *Inc. T.* p. 690  
Derry v. Great Western Ry. Co. (1926); 34.  
*Mast. & S.* No. 2890a  
— v. Inland Revenue (Scot.); 28. *Inc. T.* p. 689  
Desai v. Immigrants' Appeal Board (S. Af.);  
2. *Aliens*, p. 114  
Des Brisay v. Glencross (Can.); 17. *Deeds*, pp. 510,  
511  
Desrochers v. Quebec Liquor Commission &  
Simard (Can.); 22. *Evid.* p. 601  
Desroisers v. R. (Can.); 1. *Agcy.* p. 69  
Des Rosiers v. Balmoral & Dalhousie School Dis-  
tricts No. 1 (Can.); 19. *Educ.* p. 555  
Des Salles D'Epinoix v. Des Salles D'Epinoix  
(1919); 2. *Aliens*, No. 261a  
Detro v. Detro (Can.); 11. *Conf.* p. 376  
Detroit Rubber Products Inc. v. Republic Rubber  
Co. (Can.); 36. *Pats.* p. 827  
Deutsche Bank (London Agency), *Re* (1921);  
2. *Aliens*, Nos. 198b, 219b  
Devall v. Gorman (Can.); 1. *Agcy.* p. 63  
Deveber v. Roop (Can.); 22. *Evid.* p. 595  
De Villiers v. O'Sullivan (S. Af.); 2. *Agric.* p. 90  
Devlin v. Grand Trunk Ry. Co. of Canada (Can.);  
8. *Carr.* p. 286  
— v. Moore's Mills Creamery, Ltd. (Can.); 6.  
*B. of Exch.* p. 251  
Devon Mutual Steamship Insurance Asscn. v.  
Ogg (1927); 28. *Inc. T.* No. 307b  
De Vries v. Smallridge (1928); 13. *Cty. Cts.* Nos.  
206a, 235a; 30. *Jdgmts.* No. 642a  
— v. Sparks (1927); 31. *L. & T.* No. 7281a

## TABLE OF CASES.

- Dew v. United British S.S. Co., Ltd. (1928); **30. Juries**, No. 571a; **41. Ship**, No. 614a
- Dewdney v. Matheson (Aus.); **1. Agcy.** p. 59
- Dewdney Election Appeal, *Re*, Smith v. Catherwood (Can.); **20. Elect.** p. 561
- Dewe v. Dewe (1928); **27. H. & W.** Nos. 595a, 2040a, 6124a
- Dewhurst v. McCoppin (Can.); **18. Distr.** p. 538
- De Wolf v. Delmage (Can.); **1. Agcy.** p. 61
- Dexter v. Cosford (Can.); **38. Real Prop.** p. 856
- Dexters, Ltd. v. Hill Crest Oil Co. (Bradford) (1926); **2. Arbn.** Nos. 1083b, 1851a
- Diamanti v. Martelli (N.Z.); **9. Coys.** p. 323
- Diamond v. Montgomery (Can.); **21. Estpl.** p. 582
- v. Western Realty Co. (Can.); **21. Estpl.** p. 577
- Dibrugarh District Club, Ltd., *Re* (Ind.); **28. Inc. T.** p. 676
- Dick v. Schwartz (Can.); **17. Deeds**, p. 511; **35. Mtge.** p. 812.
- Dickenson v. Gapp (1821); **2. Animals**, No. 416a
- v. Gross (1927); **28. Inc. T.** No. 613a
- Dickie v. Spare (Can.); **2. Agric.** p. 81
- Dickinson v. Kitchen (1858); **21. Exon.** No. 680
- v. Stonehague Rural Municipality (Can.); **1. Agcy.** p. 66
- Dicks v. Barbour (Can.); **18. Distr.** p. 538
- Dickson v. Chamberland (Can.); **25. Gifts**, p. 639
- v. Halesowen Steel Co. (1928); **9. Coys.** No. 3771a
- v. Hampstead Borough Council (1927); **28. Inc. T.** No. 393a
- v. Jacques (Can.); **12. Contr.** p. 392
- Dickson's Settled Estates, *Re* (1921); **20. Eqq.** No. 815a
- Digby v. Alexander (1831); **37. Peer.** No. 89a
- v. Stirling (Lord) (1831); **37. Peer.** No. 89a
- Diggins v. Diggins (1927); **27. H. & W.** No. 6179a
- Dille v. Great West Life Assurance Co. (Can.); **2. Animals**, p. 118
- Dimitroff v. Gonder (Can.); **1. Agcy.** p. 52
- Dinabandhu Jana v. Durgaprasad Jana (Ind.); **2. Arbn.** p. 135
- Dinabandhu Saha v. Abdul Latif Molla (Ind.); **1. Agcy.** p. 70
- Dinsmore v. Philip (Can.); **1. Agcy.** p. 40
- Direction der Disconto Gesellschaft, *Re*, *Re* Anglo-Austrian Bank, *Re* Dresdner Bank (1920); **2. Aliens**, Nos. 219c, 223e
- Disourdi v. Sullivan Group Mining Co. & Maryland Casualty Co. (Can.); **29. Insce.** p. 712
- Divarka Prasad Mithal, *Re* (Ind.); **3. Barr.** p. 182
- Dixon v. Richelieu Navigation Co. (Can.); **8. Carr.** p. 292
- v. South Australian Railways Comrs. (Aus.); **7. Bldg. Conts.** p. 274
- Dixon & Toronto Corpn., *Re* (Can.); **11. Comp. Pche.** p. 360
- Dixon (T. & M.), Ltd. v. London, Midland & Scottish Ry. Co. (1924); **8. Carr.** No. 1337b
- Dobbel v. Loudoun (N. Z.); **24. Exors.** p. 615
- Dobie (Doe d.) v. Vanderlip (Can.); **24. Exors.** p. 616
- Dobing, *Ex p.*, R. v. Hartlepool Corpn. (1851); **20. Elect.** No. 146a
- Dobrolowski v. Danyluk (Can.); **2. Animals**, p. 120
- Dobrovitch, *Re*, Dobrovitch v. Canadian Credit Men's Trust Assocn., Ltd. (Can.); **5. Bkpcy.** p. 221
- Dodd v. Amalgamated Marine Workers' Union (1923); **13. Corpn.** Nos. 340a, 345a
- v. Oceanic Steam Navigation Co., Ltd. (1928); **34. Mast. & S.** No. 3702b
- Dodge Estate, *Re* (Can.); **24. Exors.** p. 616
- Doe d. McKay v. Allen (Can.); **38. Real** p. 855
- d. France v. Andrews (1850); **22. Evid.** No. 1459a
- d. Rankin v. Andrews (Can.); **5. Bkpcy.** p. 236
- d. Fenton v. Butcher (1847); **22. Evid.** No. 3919a
- d. Keogh v. Calhoun (Can.); **21. Exon.** p. 587
- d. Austin v. Cowderoy (1837); **31. L. & T.** No. 5788a
- d. McGregor v. Crow (Can.); **32. Limit. of A.** p. 757
- d. Sullivan v. Currey (Can.); **24. Exors.** p. 615
- d. Chipman v. Deveber (Can.); **32. Limit. of A.** p. 757
- d. Connel v. Dickinson (Can.); **17. Deeds**, p. 511
- d. Upper v. Edwards (Can.); **38. Rates**, p. 853
- d. Lees v. Ford (1853); **40. Stillmts.** No. 134a
- d. McGregor v. Hawke (Can.); **32. Limit. of A.** p. 757
- d. St. John v. Hore (1799); **22. Evid.** No. 2475a
- d. Wilt v. Jardine (Can.); **38. Real Prop.** p. 856
- Proudfoot v. McCrae (Can.); **25. Fraud. Conv.** p. 628
- d. Tiffany v. McEwan (Can.); **21. Estpl.** p. 581
- d. Steel v. McGill (Can.); **25. Fraud. Conv.** p. 627
- d. Peabody v. McKnight (Can.); **21. Exon.** p. 589
- d. Biggard v. Millard (Can.); **25. Fraud. Conv.** p. 627
- d. Ausman v. Minthorne (Can.); **21. Exon.** p. 587
- d. Purdy v. Peters (Can.); **31. L. & T.** p. 734
- d. Simpson v. Privat (Can.); **21. Exon.** p. 587
- d. Beel v. Reaumore (Can.); **18. Distr.** p. 539
- d. Petit v. Renard (Can.); **22. Evid.** p. 594
- d. Harcourt v. Roe (1813); **21. Exon.** No. 1706a; **31. L. & T.** No. 6315a
- d. Kirk v. Roe (1838); **19. Eccl.** No. 4033a
- d. Smith (or Smythe) v. Roe (1840); **19. Eccl.** No. 4034a
- d. Hagerman v. Strong (Can.); **21. Exon.** p. 589
- d. Campbell v. Thompson (Can.) (1843); **21. Exon.** p. 589
- v. Thompson (Can.) (1860); **24. Exors.** p. 615
- d. Dobie v. Vanderlip (Can.); **24. Exors.** p. 616
- d. Hastings v. Waters (1850); **30. L. & T.** No. 330a
- d. Roberts v. Watson (Can.); **21. Exon.** p. 589
- d. Stocking v. Watts (Can.); **22. Evid.** p. 599
- d. Nesmith v. Williston (Can.); **21. Exon.** p. 589
- d. Upton v. Witherwick (1825); **21. Exon.** No. 1658a
- Doll v. Howard (Can.); **9. Coys.** p. 325
- Dollar (Robert) Co. v. Walker (Can.); **21. Exon.** p. 587
- Dollar Taxi Co., *Re*, *Ex p.* Trustee (Can.); **5. Bkpcy.** p. 219
- Domanisky v. Fitzgerald (Can.); **38. Rates**, p. 853
- Dombrowski, *Re*, *Ex p.* Trustee (1923); **5. Bkpcy.** No. 5775b
- Dominion Art Co., Ltd. v. Murphy (Can.); **3. Barr.** p. 182; **17. Damgs.** p. 506
- Dominion Building Corpn., Ltd. v. R. (Can.); **2. Arbn.** p. 130
- Dominion Coal Co. v. Lord Strathcona S.S. Co. (Can.); **12. Contr.** p. 405
- Dominion Fire Insurance Co. v. Nakata (Can.); **12. Contr.** p. 399
- Dominion Fire-Brick & Clay Products, Ltd. v. Pollock (Can.); **38. Real Prop.** p. 856
- Dominion Iron & Steel Co., Ltd. v. Invernairn (1927); **9. Coys.** No. 260a

- Dominion Iron & Steel Co. v. R. (Can.); 12. *Contr.* p. 389  
 Dominion Loose Leaf Co. v. Manuel (Can.); 28. *Injon.* p. 702  
 Dominion Lumber Co. v. Alberta Fish Co. (Can.); 7. *B. of Sale*, p. 266  
 Dominion Meat Co. v. Jameton (Can.); 12. *Contr.* p. 395  
 Dominion Millers' Assocn. v. Canadian National & Canadian Pacific Ry. Cos. (Can.); 38. *Rys.* p. 849  
 Dominion of Canada Guarantee & Accident Co., Ltd. v. Housing Commission of City of Halifax (Can.); 26. *Guar.* p. 644  
 Dominion Press, Ltd. v. Customs & Excise Minister (Can.); 39. *Revenue*, p. 860  
 Dominion Shipbuilding & Repair Co., Ltd., *Re* (Can.); 7. *B. of Sale*, p. 260; 10. *Coys.* p. 345.  
 Dominion Steel Corpn., *Re* (Can.); 10. *Coys.* p. 341  
 Dominion Sugar Co. v. Warrell (Can.); 36. *Prtnrs.* p. 825  
 Dominion Textile Co. v. Skaife (Can.); 30. *Jdgmts.* p. 723  
 Dominion Ticket, etc. Corpn., *Re, Ex p.* Aker (Can.); 5. *Bkpcy.* p. 220  
 Donald v. Donald (N.Z.); 11. *Confl.* p. 365  
 — v. Jukes (Can.); 8. *Chos.* p. 313  
 Donald Mason & Co., *Re* (Can.); 28. *Inc. T.* p. 679; 38. *Rates*, p. 851  
 Donaldson's Executors v. Inland Revenue Comrs. (Scot.); 28. *Inc. T.* p. 691  
 Donaldson's Hospital (Edinburgh) Trustees v. Esslemont (Scot.); 2. *Agric.* pp. 79, 82, 83  
 Doner v. Loose (Can.); 1. *Agcy.* p. 59  
 — v. Ross (Can.); 24. *Exors.* p. 618  
 Donohoe v. Schroeder (Aus.); 2. *Aliens*, p. 112  
 — v. Wong Sau (Aus.); 2. *Aliens*, p. 113  
 Donovan v. Crofts (Ir.); 28. *Inc. T.* p. 689  
 — v. Hanna (N.Z.); 35. *Mtge.* p. 813  
 — v. Hogan (Can.); 38. *Rates*, p. 853  
 Dooley v. Burke & Hackett (Nfld.); 34. *Mast. & S.* p. 771  
 — v. Dooley (Ir.); 21. *Estpl.* p. 577  
 Dora, The, The Annette (1919); 1. *Adm.* Nos. 141b, 170a  
 Doran v. McKinnon (Can.); 12. *Contr.* pp. 393, 394  
 Dorenwends, Ltd., *Re* (Can.); 9. *Coys.* pp. 324, 334  
 Dorey v. Gray (Can.); 17. *Deeds*, p. 510  
 Dorf v. Neumann, Luebeck & Co. (1924); 1. *Agcy.* No. 1426a  
 Dorizzi v. Mackey (Aus.); 34. *Mast. & S.* p. 776  
 Dorman v. Crapper (Can.); 7. *B. of Sale*, p. 267  
 Dorrett v. Meux (1854); 22. *Evid.* No. 2345a  
 Dorrington's Case (1615); 1. *Adm.* No. 12a  
 Doty v. Marks (Can.) (1924); 5. *Bkpcy.* p. 228  
 Doty & Marks, *Re* (Can.) (1925); 21. *Estpl.* p. 577  
 Doughty v. Taxes Comr. (N.Z.); 28. *Inc. T.* p. 677  
 Douglas v. Associated Newspapers, Ltd. (1922); 3. *Barr.* No. 162a  
 — v. Carrington (Can.); 18. *Distr.* p. 537  
 — v. Forrest (1828); 11. *Confl.* Nos. 1044a, 1262a  
 — v. Smith (1849); 4. *Bkpcy.* No. 5364a  
 Doulin v. Parcell (1926); 31. *L. & T.* No. 7352b  
 Doull v. Keefe (Can.); 21. *Exon.* p. 589  
 Dover v. Mills (1831); 3. *Bailmt.* No. 195a  
 Dow v. Dayment (Can.); 5. *Bkpcy.* p. 239  
 Dowell v. Benningfield (1841); 15. *Crim.* No. 11,642a  
 Dowlin v. — (1823); 1. *Action*, No. 711a  
 Dowling v. Methven, Sons & Co., Ltd. (Scot.); 1. *Agcy.* p. 67  
 — v. Rae (Aus.); 12. *Contr.* p. 403  
 Down County Council v. Stewart (Ir.); 26. *Hghys.* p. 651  
 Dowsett v. Edmunds (Can.); 17. *Dep.* p. 517; 30. *Jdgmts.* p. 726  
 Doyle, *Ex p.*, *Re* Grantham (Can.); 4. *Bkpcy.* pp. 207, 209  
 — v. Deady (Can.); 17. *Dep.* p. 520  
 — v. Foley-O'Brien, Ltd. (Can.); 34. *Mines*, p. 802  
 — v. Gibbon (S. Af.); 1. *Agcy.* p. 58  
 — v. McKinnon (Can.); 26. *Guar.* p. 641  
 Drabble (Harold), Ltd. v. Hycolite Manufacturing Co. (1928); 13. *Court.* No. 229b  
 Drage (J.) & Sons, *Re*, Palmer & Roberts v. Knight (1926); 5. *Bkpcy.* Nos. 7166a, 7237a  
 Drake, *Re*, Drake v. Wilson (1926); 21. *E.D.* No. 244a  
 Drake's Estate, *Re* (Ir.); 8. *Char.* p. 309  
 Draper, *Re* (1888); 5. *Bkpcy.* No. 5932a  
 Draper v. South Australian Railways Comr. (Aus.) 11. *Comp. Pche.* p. 359  
 Dresdner Bank (London Agency), *Re* (1920); 2. *Aliens*, No. 219a  
 Dresdner Bank, *Re, Re* Direction der Disconto Gesellschaft, *Re* Anglo-Austrian Bank (1920); 2. *Aliens*, Nos. 219c, 223e.  
 — v. Russo-Asiatic Bank (1923); 2. *Aliens*, Nos. 221a, 223a  
 Drewe-Mercer v. Drewe-Mercer, *Re* Mercer (1889); 35. *Name*, No. 62a  
 Drewitt v. Britannic Assurance Co., Ltd. (1927); 34. *Mast. & S.* No. 3031a  
 Drewry v. Barnes (1826); 20. *Eqy.* No. 258a  
 Dreyfus & Co. v. Atlantic Shipping & Trading Co. (1921); 2. *Arbn.* No. 165a; 16. *Courts*, No. 150  
 Dreyfus (Louis) & South Australian Milling & Trading Co., *Re* (Aus.); 2. *Arbn.* p. 143; 22. *Evid.* p. 595  
 Driscoll v. Colletti (Can.); 1. *Agcy.* p. 71; 30. *Jdgmts.* p. 726  
 Drogheda & District Co-operative Society, Ltd., *Re* (Ir.); 10. *Coys.* p. 345  
 Drought Area Relief Act, *Re*, Snowden v. Baker (Can.); 16. *Cntmpt.* p. 478  
 Drughorn (F.), Ltd. v. Rederiakt. Trans-Atlantic (1919); 1. *Agcy.* No. 2609a  
 Drummond v. Hervey (1927); 13. *Cty. Cts.* No. 962a  
 Drury v. Johnston (Ir.); 31. *J. & T.* p. 745  
 Drysdale v. Dugas (Can.); 2. *Animals*, p. 123  
 — v. Reid (Can.); 2. *Animals*, p. 118  
 Dube v. Algoma Steel Corpn., Ltd. (Can.); 34. — v. Morneault (Can.); 6. *B. of Exch.* p. 250  
 Ducat v. Sweeney (Can.); 12. *Contr.* p. 412  
 Duck v. Braddyll (1824); 30. *L. & T.* No. 1082a  
 Ducker v. Rees Roturbo Development Syndicate (1928); 28. *Inc. T.* No. 96a  
 Duckett v. Imposts Collector (Aus.); 39. *Revenue*, p. 860  
 Duckworth & Skinkle, *Re* (Can.); 3. *Basty.* p. 184  
 Ducondu v. Dupuy (Can.); 30. *L. & T.* p. 733  
 Duff Development Co., Ltd. v. Kelantan Government (1923); 1. *Action*, Nos. 392a, 393b, 407a; 2. *Arbn.* No. 1644a; 22. *Evid.* No. 3122a  
 — v. — (1924); 1. *Action*, Nos. 387a, 393c, 407b; 22. *Evid.* Nos. 1264a, 3122b  
 — v. — (1925); 2. *Arbn.* No. 1051a  
 Duguid v. Muirhead (Scot.); 2. *Agric.* p. 79  
 Dumfermline Trading Co., *Re, Ex p.* Reliable Trading Co. (Can.); 4. *Bkpcy.* pp. 204, 205  
 Dumont v. Landry (Can.); 2. *Bldg. Conts.* p. 276  
 Duncan v. Campbell (1842); 27. *H. & W.* No. 757a  
 — v. M'Calmont (1841); 1. *Adm.* No. 25



- Duncan & Gray, Ltd. v. Silver Spring Brewery (Can.); 10. Coys. p. 345
- Duncanson v. Atwell (Can.); 32. Limit. of A. p. 757
- Duncan v. Duncan (Ir.); 18. Descr. p. 530
- Dunkelman v. Lister (Can.); 31. L. & T. 740
- Dunlop & Douro (Township), Re (Can.); 38. Hth. p. 847
- Dunlop Drug Depot v. Hartt Boot & Shoe Co. (Can.); 18. Discy. pp. 534, 536
- Dunn, Ex p., Re Hutchinson's Settlement (1852); 37. Powers, No. 133a
- v. Graf (Can.); 1. Agcy. p. 65
- v. R. (Can.); 35. Money, p. 807
- v. Sinclair (Can.); 1. Agcy. p. 60
- v. Thickett (Can.); 26. Guar. p. 642
- Dunn & Expropriation Act, Re (Can.); 38. Rates, p. 853
- Dunn (M.), Ltd. v. Jefferson (1925); 6. B. of Exch. Nos. 577a, 2040a
- Dunnet v. Nelson (Scot.); 32. Libel, p. 751
- Dunsany, Re (1849); 22. Evid. No. 6096a
- Dunshea v. Kesteven (N.Z.); 6. B. of Exch. p. 251
- Dunsmuir v. MacKenzie (Can.); 17. Deeds, p. 510
- Dunstone v. Ferrari (Aus.); 34. Mast. & S. p. 788
- Du Plessis v. Levy (S. Af.); 3. Basty. p. 188
- Du Preez v. Laird (S. Af.); 1. Agcy. p. 42
- Dupuis Freres, Ltd. v. Customs & Excise Minister (Can.); 28. Inc. T. p. 686
- Durnford (James) & Sons, Ltd. v. Great Western Ry. Co. (1927); 26. Guar. No. 1826a
- Durost v. Home-Mixed Fertilizers, Ltd. (Can.); 9. Coys. pp. 327, 329
- D'Usez v. Traffics & Discoveries, Ltd. (1924); 7. B. of Sale, No. 213a; 12. Contr. No. 3784b
- Dustoor v. R. (Can.); 14. Crim. p. 464
- Dutch v. Dutch (1928); 27. H. & W. No. 6250c
- Dutton v. Evans (Aus.); 2. Animals, p. 128
- Dutton, Massey & Co., Re, Ex p. Manchester & Liverpool District Banking Co. (1924); 4. Bkpcy. Nos. 3375a, 3383a, 4102a
- Dwijendra Nath Mullick v. Gopiram Gobindaram (Ind.); 12. Contr. p. 398
- Dwirnichuk v. Zaichuk (Can.); 19. Eccl. p. 554
- Dwyer v. Bulbeck (Can.); 3. Basty. p. 189
- Dyament & Pzadkawolski v. Canadian Express Co. (Can.); 8. Carr. p. 286
- Dyck v. Dyck (Can.); 2. Agric. p. 89
- Dyke v. Stephens (1885); 16. Courts, No. 1014a
- Dynes v. Bales (Can.); 17. Deeds, p. 508
- Dyster v. Randall & Sons (1928); 1. Agcy. No. 2125a; 5. Bkpcy. No. 8138a
- Dzydz, Re, Re Rozecki (Can.); 28. Infts. p. 697
- E. A., Re (1928); 33. Lunat. No. 529b
- E. J. Lane, Ltd., Re, Ex p. Milligan (Can.); 9. Coys. p. 335
- Eagle, Star & British Dominions Insurance Co. v. Dinanath (Ind.); 2. Arbn. p. 130; 18. Discy. p. 531
- Eagle, Star & British Dominions Insurance Co., Ltd. v. Reiner (1927); 29. Insce. No. 720b
- Earl v. Earl & Kyle, Earl v. Earl (1926); 27. H. & W. No. 4985a
- Earle (G. & T.), Ltd. v. Hemsworth Rural District Council (1928); 7. Bldg. Contrs. No. 342a; 8. Chos. Nos. 77a, 483a
- East India Co. v. Oditchurn (1850); 17. Dep. No. 315a
- East Kent Colliery Co. v. Heath (1926); 34. Mast. & S. No. 3860a
- East Riding of Yorkshire County Council v. Selby Bridge Co. of Proprietors (1925); 24. Ferries, No. 8
- Tamari Co-operative Dairy Co. v. Nornen (N. Z.); 18. Discy. p. 532
- v. Hopkins (N.Z.); 1. Agcy. p. 77
- Eastern Carrying Insurance Co. v. National Benefit Life & Property Assurance Co., Eastern Development Co. v. McKay (Can.); 17. Dep. p. 520
- Eastern Ontario Milk Products Co., Re (Can.); 4. Bkpcy. pp. 209, 210
- Eastern Townships Investments Co. v. McLennan (Can.); 6. B. of Exch. p. 245
- Eastern Trust Co. v. Lloyd Manufacturing Co. (Can.); 5. Bkpcy. p. 236
- v. Nova Scotia Steel & Coal Co., Ltd. (Can.); 10. Coys. p. 340; 35. Mige. p. 811
- Eastern United Assurance Corp., Re (1928); 22. Evid. No. 6083a
- Eastmans, Ltd. v. Inland Revenue Comrs. (1928); 28. Inc. T. No. 252a
- v. Shaw (1928); 28. Inc. T. No. 252a
- Easton v. Niddrie & Benhar Coal Co., Ltd. (Scot.); 34. Mast. & S. p. 794
- Eastwood & Holt v. Studer (1926); 21. Estpl. No. 214a
- Eaton v. Brant (Can.); 21. Exon. p. 593
- Ebbw Vale Steel, Iron & Coal Co., Ltd. v. London, Midland & Scottish Ry. Co. (1927); 8. Carr. No. 1377k
- Ebner v. Lascelles (1928); 31. L. & T. Nos. 7067a, 7103a, 7302a
- Ebrahim Mamoojee Parekh v. R. (Ind.); 22. Evid. p. 601
- Eby-Blain, Ltd. v. Matthews (Can.); 26. Guar. p. 644
- Eccles v. Merchants Bank of Canada (Can.); 6. B. of Exch. p. 247
- Eckersley, Ex p., Re Byrom (1853); 4. Bkpcy. No. 3134
- Edell v. Dullieu (1924); 2. Agric. No. 24a
- Edgar v. Mackay (Scot.); 15. Crim. p. 472
- Edgar, etc. v. Cassells (Scot.); 8. Char. p. 305
- Edgett, Ltd. v. Pacific Great Eastern Ry. Co. (Can.); 8. Carr. p. 286
- Edinburgh Assessor v. Cairn & Crolla (Scot.); 38. Rates, p. 852
- Edinburgh Entertainments, Ltd. v. Stevenson (Scot.); 9. Coys. p. 337
- Edinburgh Life Assurance Co. v. Allen (Can.); 25. Fraud. Conv. p. 629
- v. Barnhart (Can.); 19. Easmt. p. 541
- Edinburgh Parish Council v. Couper (Scot.); 23. Exors. p. 612
- Edinburgh Southern Cemetery Co., Ltd. (Scot.); 9. Coys. p. 336
- Edmonton (City) v. Macdonald (Can.); 33. Mts. p. 769
- Edmonton Brewing & Malting Co., Ltd., Re (No. 2) (Can.); 3. Bank. p. 177
- Edmonton Charter, Re, Freeman Co., Ltd. v. Edmonton Corp. (Can.); 11. Comp. Pche. p. 357
- , Re, Michael Hrushevsky Ukrainian Institute v. Edmonton Corp. (Can.); 11. Comp. Pche. p. 357
- , Re, R. (Clarke) v. Bury (Can.); 33. L. G. p.
- Edmonton School Board Election, Re (Can.); 19. Educ. p. 555
- Edmunds v. Edmunds (1926); 27. H. & W. No. 5410a
- Education (Minister's of) Petition, Re (Can.); 19. Educ. p. 556

- v. Wyvill* (1885); 5. *Bkpcy.* No. Curran & Co. *v. Kays* (1928); 34.
- Edwards, Ex p.* (1745); 4. *Bkpcy.* No. 3566a  
— *v. Freeman* (1727); 18. *Descr.* No. 165a  
— *v. Gwancaegurwen Colliery Co.* (1926); 34. *Mast. & S.* No. 2492a  
*v. "Old Bushmills" Distillery Co., Ltd. (In Liquidation)* (1926); 21. *Estpl.* No. 222a; 28. *Inc. T.* No. 629a  
*v. Ottawa River Navigation Co. (Can.)*; 22.  
  
*v. Pearson* (Can.); 2. *Animals*, p. 126  
*v. Rawlins* (N.Z.); 2. *Animals*, p. 120  
*Eenigheld, The* (1795); 2. *Aliens*, No. 419a  
*Egan v. Egan* (Ir.); 11. *Confl.* p. 372  
*Egbert v. National Crown Bank* (1918); 3. *Bank.* No. 932a & p. 179  
*Eggington v. Lichfield Corpn.* (1855); 13. *Corpn.* No. 1262a  
*Egyptian Delta Land & Investment Co., Ltd. v. Todd* (1928); 28. *Inc. T.* No. 144a  
*Ehinger v. South-Eastern & Chatham Ry. Co. & Pullman Car Co., Ltd.* (1922); 8. *Carr.* Nos. 804a, 851a  
*Ehmka v. Border Cities Improvement Co. (Can.)*; 9. *Coys.* p. 318; 11. *Confl.* p. 370  
*Eisenhauer v. Mackay* (Can.); 2. *Animals*, p. 126  
— *v. Whynacht* (Can.); 19. *Easmt.* p. 542  
*Eleanor & Nancy, The* (1837); 1. *Adm.* No. 1300a  
*Electrical Fittings & Foundry Co., Ltd., Re* (Can.); 3. *Bank.* p. 177  
*Electrolytic Zinc Process Co. v. French's Complex Ore Reducing Co. of Canada, Ltd. (Can.)*; 36. *Pats.* pp. 826, 827, 828  
*Elford v. Elford* (Can.); 1. *Agcy.* p. 40  
*Eliasoph v. Steel Co. of Can. (Can.)*; 1. *Adm.* pp. 18, 35  
*Elizabeth, The* (1749); 2. *Aliens*, No. 419a  
*Elkington v. Wandsworth Corpn.* (1924); 7. *Bldg. Contr.* No. 452a  
*Elkowech v. Elkowech* (Can.); 27. *H. & W.* p. 666  
*Ellard v. Waterloo Manufacturing Co., Ltd. (Can.)*; 12. *Contr.* p. 389  
*Ellerman Lines, Ltd. v. Read* (1927); 11. *Confl.* Nos. 1135a, 1332a; 17. *Damgs.* No. 141a; 21. *Estpl.* No. 385a; 30. *Jdgmts.* No. 260a  
— *v. —* (1928); 11. *Confl.* Nos. 1135a, 1332a; 17. *Damgs.* No. 141a; 21. *Estpl.* No. 385a; 30. *Jdgmts.* No. 260a  
*Ellermans Wilson Line, Ltd. v. Northern Lighthouses Comrs. (Scot.)*; 1. *Adm.* p. 28  
*Ellerton v. Ellerton* (Can.); 27. *H. & W.* p. 655  
*Ellesmere (Lord) v. Wallace* (1928); 25. *Gaming*, No. 15b  
— *v. —* (1929); 25. *Gaming*, No. 15b  
*Ellins, Re, Ex p. Hickin* (1850); 4. *Bkpcy.* No. 4295a  
*Ellott v. Appleton* (Aus.); 16. *Cntmpt.* p. 478.  
*v. Bax-Ironside* (1925); 6. *B. of Exch.* No. 763a  
— *v. Brown* (Can.); 27. *H. & W.* p. 656  
— *v. Elliott* (N.Z.); 27. *H. & W.* p. 660  
— *v. St. Catharines Municipal Corpn. (Can.)*; 33. *L. G.* p. 760  
— *v. Toronto Transportation Commission* (Can.); 8. *Carr.* p. 289  
— *v. Warburton* (Can.); 1. *Agcy.* p. 68  
*Ellis, Ex p.* (Can.); 17. *Dep.* p. 520  
—, *Re, Ex p. Myttenacre* (1925); 5. *Bkpcy.* Nos. 8645a, 9311a  
— *v. Atkinson* (1792); 37. *Powers*, No. 299a  
— *v. Ellis* (1820); 6. *B. of Exch.* No. 292a  
— *v. Torrington* (1920); 1. *Action*, No. 621a  
*Ellis & Co., Re* (1924); 5. *Bkpcy.* No. 7898a  
*Ellis & Co.'s Trustee v. Dixon-Johnson* (1925); 4. *Bkpcy.* No. 8696a  
*& Co.'s Trustee v. Watsham* (1923); 1. *Agcy.* No. 1529a  
*Ellis Brown v. Van Rooyen* (S. Af.); 1. *Agcy.* p. 72  
*Ellison v. Pickering* (1803); 21. *Exon.* No. 417a  
*Ellwood, Re, River Dee Drainage Board v. Hooson* (1927); 4. *Bkpcy.* No. 4281a  
*El Oso, The* (1925); 1. *Adm.* No. 894a  
*Elton v. Jordan* (1815); 2. *Animals*, No. 480  
*Elvin v. Nightingale, Re Pink* (1927); 24. *Flors.* No. 8484a  
*Elvington Tenants, Ltd. v. Hatton* (1928); 31. *L. & T.* No. 7181a  
*Elwell v. Crane Foundry Co.* (1928); 34. *Mast. & S.* No. 4034a  
*Embleton v. Norwich Union Life Insurance Society* (1927); 28. *Inc. T.* Nos. 25b, 50a  
*Emerson, Ex p.* (1895); . No. 204a  
— *v. Canniff* (Can.); 24. *E. s.* p. 617  
*Emery, In the Goods of, Emery v. Emery* (1923); 1. *Action*, No. 90b  
*Emery, Re, Emery v. Emery* (1928); 1. *Action*, No. 90b  
*Emett, Re, Ex p. Andrews* (1816); 4. *Bkpcy.* No. 3558  
*Empire Builders, Ltd., Re, Re Transvaal United Trust & Finance Co., Ltd.* (1919); 10. *Coys.* No. 7014a  
*Empire Financiers, Ltd. v. Nance* (Can.); 6. *B. of Exch.* p. 258  
*Empire of India Life Assurance Co., Bombay v. Nanu Ayyar* (Ind.); 1. *Agcy.* p. 63  
*Empire Stevedoring Co., Ltd. v. Empress of Japan, The* (Can.); 1. *Adm.* p. 35  
*Empire Traction Co., Ltd., Re* (Can.); 4. *Bkpcy.* p. 206  
*Employers' Liability Assurance Corpn. v. Sodgwick Collins & Co.* (1927); 10. *Coys.* No. 8527a; 11. *Confl.* No. 1307b; 21. *Exon.* No. 2170a  
*Emsley, Re* (Can.); 18. *Descr.* p. 530  
*Ene's Case* (1627); 7. *Bonds*, No. 701a  
*Enfield Cycle Co., Ltd. & Smith's Patent, Re* (1927); 36. *Pats.* No. 2090a  
*Enfield Realty Co. v. Peterson* (Can.); 25. *Fraud. Conv.* p. 627  
*Enfield Rural Municipality v. London Guarantee & Accident Co., Ltd. (Can.)*; 29. *Insce.* p. 714  
*Engeland, Re* (Can.); 4. *Bkpcy.* p. 208  
*Engelke v. Musmann* (1928); 11. *Const. L.* Nos. 136b, 418a, 421a, 447a  
*Engineering Profession Act, Re, Re Johnson* (Can.); 7. *Bldg. Contr.* p. 278  
*England v. Lavers* (1866); 20. *Egy.* No. 1578a  
*English v. O'Neill* (Can.); 17. *Dep.* p. 518  
*English Branch Council of General Medical Council v. Inland Revenue Comrs.* (1928); 28. *Inc. T.* No. 472e  
*English Crown Spelter Co., Ltd., Ex p., R. v. Income Tax General Comrs.* (1925); 16. *Cr. Pract.* No. 2149a  
*English Crown Spelter Co., Ex p., R. v. Swansea Income Tax Comrs.* (1925); 16. *Cr. Pract.* No. 2149a  
*English Dairies, Ltd. v. Inland Revenue Comrs.* (1927); 28. *Inc. T.* No. 99e  
— *v. Phillips* (1927); 28. *Inc. T.* No. 99e  
*English Hop Growers v. Dering* (1928); 17. *Damgs.* No. 426a  
*English Insurance Co., Ex p., Re National Benefit Assurance Co.* (1928); 10. *Coys.* No. 7612a; 29. *Insce.* No. 252a  
*Ennos v. McLean* (Can.); 1. *Agcy.* p. 58  
*Enterprise, The, Strong v. Taylor* (1853); 34. *Mast. & S.* No. 1145a  
*Eolo, The* (Ir.); 1. *Adm.* p. 14  
*Epsom Urban Council v. London County Council* (1900); 26. *Hghys.* No. 1858a

- Equal Guardianship of Infants Act, *Re, Re S.* (Can.); **3. Bast.** p. 187  
 Erickson v. Canadian Pacific Ry. Co. (Can.); **8. Carr.** p. 291  
 Erie & Niagara Ry. Co. v. Rousseau (Can.); **32. Limit. of A.** p. 757  
 Eriksen Brothers v. Maple Leaf, The (Can.); **1. Adm.** pp. 17, 22, 23  
 Ernest v. Metropolitan Police Comr. (1919); **2. Aliens**, No. 561a  
 Errington v. Aynesly (1788); **7. Bldg. Conds.** No. 265a  
 Erwin v. Snelgrove (Can.); **12. Contr.** p. 391  
 Eshugbayi Eleko v. Nigeria Government (Administering Officer) (1928); **16. Cr. Pract.** No. 613a  
 Espanoleto, The (1920); **1. Adm.** Nos. 668a, 683a  
 Esquimalt & Nanaimo Ry. Co. v. Granby Consolidated Mining, Smelting & Power Co. (Can.); **18. Discy.** p. 536  
 Esser v. Pritzker (Can.); **35. Mtge.** p. 813  
 Essex Land & Timber Co., *Re, Trout's Case* (Can.); **10. Coys.** p. 340  
 Ethier v. Nolle (Can.); **21. Exon.** p. 589  
 Etic, Ltd., *Re* (1928); **10. Coys.** Nos. 6150b, 6173b  
 European & North American Ry. Co. v. Dunn (Can.); **9. Coys.** p. 325  
 European Assurance Society Arbitration Acts, 1872, 1873, & 1875, *Re, Re Anglo-Australian & Universal Family Life Assurance Co., Harman's Case, Pratt's Case* (1875); **12. Contr.** No. 4985  
 Eustace v. Eustace (1924); **11. Confl.** No. 918c  
 Eva, The (1921); **1. Adm.** Nos. 1489a, 1497a  
 —, *Re* (N.Z.); **4. Bkpcy.** p. 193  
 Evans, *Ex p.* (Aus.); **38. Pub. Auth.** p. 846  
 —, *Re, Public Trustee v. Evans* (1920); **5. Bkpcy.** Nos. 5932b, 5936a  
 — v. Chandler (Can.); **16. Courts**, p. 480  
 — v. Draper (Can.); **7. Bldg. Conds.** pp. 275, 276  
 — v. Fletcher (1926); **30. Intro.** No. 755a  
 — v. Hulton (E.) & Co., Ltd. (1924); **13. Coprt.** No. 394b  
 — v. James Webster & Brothers, Ltd. (1928); **41. Ship.** Nos. 2230a, 2262a  
 — v. Lloyd's Furniture Palace, Ltd., *Re Lloyd's Furniture Palace, Ltd.* (1925); **10. Coys.** No. 4783a; **25. Fraud. Conv.** Nos. 422a, 428a  
 — v. Martyn (Can.); **32. Libel**, p. 749  
 — v. Morgan (1928); **37. Poor L.** No. 225b  
 — v. Piauneau (1927); **2. Aliens**, No. 558d  
 — v. Simpson (James) & Son (1926); **34. Mast. & S.** Nos. 2856a, 2890b  
 — v. Welsh Navigation Steam Coal Co. (1926); **34. Mast. & S.** No. 2120a  
 — (Richard) & Co., Ltd. v. Gilbie (1926); **34. Mast. & S.** Nos. 3057a, 3541a  
 — (Richard) & Co., Ltd. v. Scahill (1927); **34. Mast. & S.** No. 3834  
 Evans, Coleman & Evans, Ltd. v. Roman Prince, The (Can.); **1. Adm.** p. 22  
 Everett v. Islington Guardians (1923); **13. Cty. Cts.** No. 499a  
 Everitt, *Ex p.*, *Re Moss* (1923); **4. Bkpcy.** No. 3945a  
 Ewart v. Dryden (Can.); **35. Mtge.** p. 812  
 Ewen, *Re* (N.Z.); **23. Exors.** p. 607  
 Excel Footwear Co., *Re, Ex p. Nova Scotia Trust Co.* (Can.); **9. Coys.** p. 333  
 Excelsior Electric Dairy Machinery, Ltd., *Re* (Can.); **4. Bkpcy.** p. 202; **16. Cr. Pract.** p. 486  
 Excess Insurance Co., Ltd. v. Mathews (1925); **2. Aliens**, No. 412a  
 Exchequer Court Jurisdiction, *Re* (Can.); **11. Comp. Pche.** p. 360  
 Exmouth's Annuity, *Re* (1925); **21. E. D.** No. 128a  
 Expedite van Rotterdam, The (1782); **2. Aliens**, No. 419a  
 Extra-Judicial Seizures Act, *Re, Rudder v. Lundin* (Can.); **7. B. of Sale**, p. 267
- F.
- F. & E. Stanton, Ltd., *Re* (1928); **10. Coys.** Nos. 4709a, 5316a  
 Factor, *Ex p.*, *R. v. Daily Mail (Editor)* (1928); **16. Cntmpt.** No. 192a  
 Fada Radio, Ltd. v. Canadian General Electric Co., Ltd. (Can.); **36. Pats.** p. 830  
 Faddes v. M'Neish (Scot.); **3. Bast.** p. 188  
 Fagan v. Green & Edwards, Ltd. (1926); **8. Carr.** Nos. 4b, 12b  
 Fagernes, The (1927); **11. Const. L.** No. 136a; **16. Courts**, No. 37a  
 —, The, Cornish Coast (Owners) v. Societa Nazionale di Navigazione (1927); **11. Const. L.** No. 136a; **16. Courts**, No. 37a  
 Fairbairn, *Ex p.* (Can.); **17. Dep.** p. 520  
 Fairer's Will, *Re* (Aus.); **23. Exors.** p. 609  
 Fairfax (John) & Son, Ltd. & Smith's Newspapers, Ltd. v. New South Wales State (Aus.); **17. Dep.** p. 522  
 Fairgrieve v. O'Mullin (Can.); **12. Contr.** p. 392  
 Fairley, *Re, Ex p. Low & Bonar, Ltd.* (1922); **5. Bkpcy.** No. 6918a  
 Fairley, *Re, Ex p. Official Receiver* (1922); **5. Bkpcy.** No. 6918a  
 Fairman v. Perpetual Investment Building Society (1923); **30. Jdgmts.** No. 739a  
 Fairweathers, *Re, Ex p. Montreal (City)* (Can.); **4. Bkpcy.** p. 196  
 Fairweathers, Ltd., *Re* (Can.); **4. Bkpcy.** p. 207  
 Falcon v. Famous Players Film Co., Ltd. (1926); **13. Coprt.** Nos. 16a, 180a, 180b, 308b, 394a, 510a; **22. Evid.** Nos. 580a, 624a, 3513a  
 Falkirk Parish Council v. Stirlingshire Assessor (Scot.); **7. Burial**, p. 284  
 Fallis v. Dalthaser (Can.); **17. Dep.** p. 519  
 Fanshawe v. Fanshawe (1927); **27. H. & W.** Nos. 6006a, 6012a  
 Faraday, Rodgers & Eller v. Carter (1927); **28. Inc. T.** No. 210a  
 Fares for Provincial Police Case, Provinces of British Columbia & Alberta v. Canadian National & Canadian Pacific Ry. Cos. (Can.); **38. Rys.** p. 850  
 Farey v. Cooper (1927); **5. Bkpcy.** No. 9576a  
 Farm Products, Ltd. v. Macleod Flouring Mills, Ltd. (Can.); **1. Agcy.** p. 44  
 Farman v. Farman (1924); **3. Bast.** No. 73a  
 Farmer, *Re* (Can.); **21. E. D.** p. 576  
 Farmers Mutual Hail Insurance Co. v. Foster (Can.); **29. Intpr.** p. 717  
 Farmers Pack Co., Ltd. v. Havers (Can.); **10. Coys.** p. 342  
 — v. Tully & Tully (Can.); **10. Coys.** p. 342  
 Farnham Guardians v. Cambridge Guardians (1928); **37. Poor L.** No. 482a  
 Farquharson v. Colville (Lord) (1772); **20. Eqq.** No. 1424a  
 Farr v. Annable (Can.); **18. Distr.** p. 537  
 — v. Ginnings (1928); **31. L. & T.** No. 5282a  
 Farr, Smith & Co. v. Messers, Ltd. (1928); **12. Contr.** Nos. 859a, 900a  
 Farrell v. Magic Silver-Black Fox Co. (Can.); **9. Coys.** p. 337  
 Farrer & Gilbert's Contract, *Re* (1914); **30. Land Imp.** No. 216a



## TABLE OF CASES.

- Farrington Without in the City of London, *Re* Election of Common Councilmen of the Ward of (1925); **20. Elect.** No. 1038a
- Farrow v. Massey-Harris Co., Ltd. (Can.); **18. Distr.** p. 539; **38. Rates**, p. 853
- Farrow's Bank, Ltd., *Re* (1923); **3. Bank.** Nos. 274a, 479a
- Farshind, etc. v. Bechely-Crundall (Scot.); **12. Contr.** p. 402
- Fasbender v. A.-G. (1922); **2. Aliens**, Nos. 49d, 215i, 215j, 538a
- Fassnidge v. Flint & Son (1892); **21. Exon.** No. 2086a
- Fast v. Zarchekoff (Can.); **26. Guar.** p. 642
- Fateh Ali v. Gehna (Ind.); **35. Mtge.** p. 811
- Faulkner v. Hythe Corp'n. (1927); **26. Hghys.** No. 2430a
- Favorke v. Steinkopff, *Re* Steinkopff (1922); **2. Aliens**, No. 215f; **8. Chos.** No. 21
- Fawcett v. Shafto, *Re* Shafto (1903); **20. Eqq.** No. 2075a
- Fawell v. Andrew (Can.); **18. Distr.** p. 537
- Fayne v. Martin (Ir.); **25. Gifts**, p. 640
- Federal Comr. of Taxation v. Australian Tesselated Tile Co. Proprietary, Ltd. (Aus.); **28. Inc. T.** p. 689
- v. Hipsleys, Ltd. (Aus.); **17. Dep.** p. 521
- v. Lewis Berger & Sons (Australia), Ltd. (Aus.); **28. Inc. T.** p. 689
- v. Munro (Aus.); **17. Dep.** p. 521; **28. Inc. T.** p. 689
- Feeney v. Firbeck Main Collieries, Ltd. (1926); **12. Contr.** No. 4059a
- Fegan, *Re*, Fegan v. Fegan (1928); **23. Exors.** No. 5620a
- v. McLean (Can.); **17. Dep.** p. 524
- Fellowes, O'Brien, Gordon & Tootal (carrying on business as Ellis & Co.), *Re* (1924); **5. Bkpcy.** No. 7393a
- Fellows-Smith v. Shanks (S. Af.); **1. Action**, p. 9
- Fenerty v. Halifax County (Can.); **17. Damgs.** p. 507
- Fenn v. Harrison (1791); **1. Agcy.** No. 845a
- Fennell v. East Ham Corp'n. (1926); **19. Educ.** No. 302b
- v. Montreal S.S. Co. (Nfld.); **8. Carr.** p. 292
- v. Union Bank of Canada (Can.); **7. B. of Sale**, p. 262
- Fenton (Doc d.) v. Butcher (1847); **22. Evid.** No. 3919a
- Fenton v. Mewbinney, *Re* North Bruce Provincial Election (Can.); **20. Elect.** p. 560
- Fenton Textile Assocn., Ltd. v. Lodge (1928); **10. Coys.** Nos. 5067a, 5069a
- v. Thomas & Clark (1928); **9. Coys.** No. 432b
- Fenwick, *Re* (Can.); **11. Confl.** p. 368
- v. Huntingdon Rural District Council (1928); **26. Hghys.** No. 322a
- Fenwick (France) & Co. v. R. (1927); **11. Const. L.** No. 58a
- Ferdinand, Ex-Tsar of Bulgaria, *Re* (1921); **2. Aliens**, No. 208a
- Fergus & Glen Insolvent Estate (Nfld.); **4. Bkpcy.** p. 210
- Ferguson v. Eyer (Can.); **3. Bailmt.** p. 155
- v. Ferguson (Can.); **21. Exon.** p. 589
- v. Kinnoull (Earl) (1842); **1. Action**, No. 206a
- v. Shotts Iron Co., Ltd. (Scot.); **34. Mast. & S.** p. 781
- v. Taylor (Can.); **3. Basty.** p. 189
- v. Wagner (Aus.); **1. Agcy.** p. 71
- Ferns (J. P.) v. Ingelby, The (Can.); **1. Adm.** p. 35
- Ferrando v. Pearce (Aus.); **2. Aliens**, p. 115
- Ferreira v. Gingell (S. Af.); **1. Agcy.** p. 52
- Ferrie v. Oleghorn (Can.); **21. Exon.** p. 587
- Fester Fothergill & Hartung v. Russian Transport & Insurance Co. (1927); **13. Corps.** No. 1544b
- Ficowich v. Maleshchak (Can.); **2. Animals**, p. 118
- Fidelity Phenix Fire Insurance Co. of New York v. McPherson (Can.); **17. Dep.** p. 526
- Fidelity Trust Co. v. Terminal Land & Investment Co. (Can.); **6. B. of Exch.** p. 252
- Field v. Allen (1842); **1. Agcy.** No. 1385a
- v. Peckett (No. 3) (1861); **24. Exors.** No. 7190a
- Fielder v. Bannister (Can.); **19. Easmt.** p. 544; **30. L. & T.** p. 733
- Fielding & North of Scotland Mortgage Co., *Re*, *Re* Land Titles Act (Can.); **35. Mtge.** p. 811
- Fields v. Fields (Can.); **11. Confl.** p. 373
- v. Livingston & Wightman (Can.); **21. Exon.** p. 589
- Filteau & De Roussy v. Nesbitt (Can.); **1. Agcy.** p. 56
- Finance Minister v. Burke-Looche, *Re* Clapham (Can.); **21. E. D.** p. 576
- v. Caledonian Insurance Co., *Re* Land Registry Act & Higginson (Can.); **21. E. D.** p. 576
- v. Smith (1926); **28. Inc. T.** No. 99d
- Finch v. Risley (1593); **38. Pub. Auth.** No. 436a
- Findlay v. Beetar (S. Af.); **4. Bkpcy.** p. 196
- Fingland & Mitchell v. Howie (Scot.); **31. L. & T.** p. 737
- Finlay v. Black (Can.); **1. Agcy.** p. 75; **8. Clubs**, p. 316
- Finlay (James) & Co. v. N. V. Kwik Hoo Tong Handel Maatschappij (1928); **17. Damgs.** No. 347a; **39. S. Goods**, Nos. 885a, 1814a, 2519a
- Finlayson v. Balfour, White & Co., *Re* Thornton Davidson & Co. (Can.); **5. Bkpcy.** p. 237
- v. Copeland Flour Mills (Can.); **7. Bounds. & F.** p. 272
- v. Powell (Can.); **19. Educ.** pp. 557, 558
- Finnie v. Carroll (Aus.); **36. Negl.** p. 817
- Finnigan v. Northwest S.S. (Can.); **1. Adm.** p. 16
- Fino v. South African Railways & Harbours (S. Af.); **2. Arbn.** p. 136
- Finucane v. Standard Bank of Canada (Can.); **3. Bank.** p. 170
- Fireman's Fund Insurance Co. v. Western Australian Insurance Co., Ltd. (1927); **29. Insce.** No. 720a
- First Garden City v. Bonham-Carter (1928); **9. Coys.** No. 3959a
- First Mortgage Co. v. Noud (Can.); **1. Action**, p. 10
- First National Bank of Minneapolis v. Mann & Conway (Can.); **7. B. of Sale**, pp. 262, 266, 267
- First Russian Insurance Co. v. London & Lancashire Insurance Co. (1928); **29. Insce.** No. 712a
- Firth v. Halloran (Aus.); **34. Mines**, p. 801
- Fischel & Co. & Mann & Cook, *Re* (1919); **2. Arbn.** No. 1822b
- Fish v. Higgins (Can.); **7. B. of Sale**, p. 263
- Fisher, *Re* (1850); **33. Lunat.** No. 1009a
- *Re*, *Ex p.* Brutton (1845); **4. Bkpcy.** No. 4704a
- v. Cox (Can.); **7. Bldg. Confs.** p. 275
- v. Kowslowski (Can.); **25. Fraud. Conv.** p. 628
- v. Luke (Aus.); **35. Mistake**, p. 806
- v. Matson & Co. (N.Z.); **2. Arbn.** pp. 142, 146
- v. St. John Lumber Co. (Can.); **1. Agcy.** p. 49
- v. Wilkie, Ltd. (Can.); **4. Bkpcy.** p. 194
- Fitchell v. Lawton (Can.); **1. Agcy.** p. 60
- FitzGeorge v. FitzGeorge, *Re* Hamilton (1921); **5. Bkpcy.** No. 5909a
- Fitzgerald, *Re* (Ir.); **18. Discy.** p. 532; **22. Evid.** p. 600
- v. Apperley (Can.); **32. Lien**, p. 754
- Fitzgerald v. Buckley (Can.); **1. Agcy.** p. 58
- v. McMorrow (Can.); **5. Bkpcy.** pp. 223, 236

## OF CASES.

- Fitzgibbon, *Re* (Can.); 3. *Char.* p. 308  
 — *v. Duggan* (Can.); 35. *Mtge.* p. 810  
 Fitzpatrick *v. R.* (Can.); 16. *Cr. Pract.* p. 487;  
 524  
 Flanagan *v. Ackers Whitley & Co.* (1926); 34.  
*Mast. & S.* No. 2317a  
 — *v. Chapman* (Can.); 1. *Agcy.* p. 61  
 — *v. England* (Can.); 21. *Exon.* p. 593  
 Flannaghan *v. Healy* (Can.); 12. *Contr.* p. 400  
 Flather *v. Hood* (1928); 2. *Agric.* No. 24b  
 Fleetwood's Policy, *Re* (1926); 27. *H. & W.* No.  
 1226a  
 Fleming *v. Doig* (J. S.) (Grimsby), Ltd. (1921);  
 1. No. 26a  
 — *v. Duncan* (Can.); 12. *Contr.* p. 391  
 — *v. Horniman* (1928); 11. *Confl.* Nos. 48a, 54a;  
 23. *Exors.* No. 3171a  
 — *v. Livingstone* (Can.); 16. *Courts*, p. 480  
 — *v. McDougall* (Can.); 35. *Mtge.* p. 811  
 — *v. McNair* (1812); 6. *B. of Exch.* No. 691b  
 — *v. Wilkinson* (1925); 23. *Inc. T.* Nos. 131a, 446a  
 Fletcher, *Ex p.*, *Re Jobhorns* (1835); 38. *Real.*  
*Prop.* No. 183a  
 — *v. Claggett* (Can.); 32. *Lien*, p. 754  
 — *v. Fletcher* (1928); 27. *H. & W.* Nos. 6124c,  
 6300a  
 — *v. Hudson* (1881); 33. *L. G.* No. 27b  
 — *v. Lyons* (Can.); 2. *Agric.* p. 80  
 — *v. Robertson* (Scot.); 2. *Arbn.* pp. 138, 147  
 — *v. Sinclair Iron Co., Ltd.* (1928); 34. *Mast. & S.*  
 Nos. 2668b, 2890d  
 Flexlume Sign Co. *v. Macey Sign Co.* (Can.); 16.  
*Cr. Pract.* p. 487  
 Flick *v. Brisbin* (Can.); 17. *Dep.* p. 517  
 Flockton *v. Bunning* (1868); 24. *Exors.* No. 7169a  
 Flood *v. Pritchard* (1879); 40. *S. Land.* No. 1458a  
 Flora, La (1805); 2. *Aliens*, No. 440a  
 Flower *v. Gardner* (1857); 22. *Evid.* No. 4521a  
 — *v. Lyme Regis Corpn.* (1921); 4. *Bkpcy.* No.  
 1775a; 5. *Bkpcy.* No. 8882a  
 — *v. Sanderson* (Can.); 1. *Agcy.* p. 56  
 Folan *v. Lee* (Ir.); 31. *L. & T.* p. 746  
 Foley *v. Moodie* (Can.); 18. *Distr.* p. 539  
 Folkes *v. King* (1923); 1. *Agcy.* No. 495a  
 Fong (Joe), *Re* (Can.); 2. *Aliens*, p. 114  
 Fonseca *v. Schultz* (Can.); 38. *Rates*, p. 854  
 Foong Tai & Co. *v. Buchheister & Co.* (1908); 1.  
*Adm.* No. 352b  
 Foord's Case (1595); 19. *Eccl.* Nos. 3614, 3615  
 Forbes, *Ex p.*, *Re Milner* (Can.); 4. *Bkpcy.* p.  
 210  
 — *v. Matthew* (Scot.); 3. *Basty.* p. 188  
 — *v. Ralli* (Ind.); 21. *Estpl.* p. 582  
 Ford, *Re, Ex p.* Hawkins (1928); 5. *Bkpcy.* No.  
 6882a  
 —, *Re, Ex p.* Trustee *v. Restell, Brown & Co.*  
 (1928); 5. *Bkpcy.* No. 6882a  
 —, *Re, Powell's Case* (1928); 5. *Bkpcy.* No. 6882b  
 —, *Re, Restall, Brown & Clennell, Ltd.'s Case*  
 (1928); 5. *Bkpcy.* No. 6882a  
 — *v. Dabbs* (1843); 5. *Bkpcy.* No. 8025a  
 — *v. Radford* (1920); 1. *Action*, No. 599a; 12.  
*Contr.* No. 2089a  
 Ford & Canadian Pacific Ry. Co., *Re* (Can.); 11.  
*Comp. Pche.* p. 361  
 Ford (H.) & Co. *v. Compagnie Furness* (France)  
 (1922); 2. *Arbn.* No. 165b  
 Ford & Hardy, *Re* (Can.); 17. *Deeds*, p. 509  
 Ford Motor Co. *v. Union S.S. Co.* (Can.); 8.  
*Carr.* p. 299  
 Forder, *Re, Forder v. Forder* (1927); 5. *Bkpcy.* No.  
 5935a  
 Fordham *v. Webber, Cambridge County Council*  
*Case* (1925); 20. *Elect.* No. 1593a  
 Foreman & Ellams, Ltd. *v. Blackburn* (1928); 39.  
*S. Goods.* No. 1812a  
 Foreshaw *v. Public Trustee, Re Neuburger's Settle-*  
*ment* (1928); 2. *Aliens*, No. 215g  
 Forewood *v. Diction* 15; 7. *Bonds*, No. 456  
*v. Union Trust Co., Ltd.* (Can.); 17. *Deeds*,  
 p. 510  
 Forsikringsakt National (of Copenhagen) *v. A.-G.*  
 (1925); 10. *Coys.* No. 7490a  
 Forster *v. Blyth Shipbuilding & Dry Docks Co.,*  
*Re Blyth Shipbuilding & Dry Docks Co.*  
 (1926); 7. *Bldg. Contrs.* No. 319a  
 — *v. Page* (1929); 29. *Insce.* No. 8217b  
 — *v. Toronto Ry. Co.* (Can.); 8. *Carr.* p.  
 Forsyth, *Re* (Can.); 22. *Evid.* p. 597  
 — *v. Bury* (Can.); 21. *Estpl.* p. 579  
 Forsyth & Richardson *v. Hall* (Can.); 24.  
 p. 618  
 Fort Frances Pulp & Paper Co. *v. Telegram*  
*Printing Co.* (Can.); 21. *Exon.* p. 587  
 Forth Shipbreaking Co., Ltd., *Petitioners* (Scot.);  
 10. *Coys.* p. 847  
 Fortier *v. Lambe* (Can.); 17. *Dep.* p. 520  
 Fortin *v. Caron* (Can.); 19. *Easmt.* p. 545  
 Fortuna, The (1795); 2. *Aliens*, No. 419a  
 Fortune *v. Cockburn* (Can.); 7. *Bonds*, p. 269  
 Foster *v. Crabb* (1852); 38. *Real Prop.* No.  
 537a  
 — *v. Foster's Trustees* (Scot.); 11. *Confl.* p. 366  
 — *v. Halifax* (Can.); 33. *L. G.* p. 760  
 — *v. Heintzman & Co.* (Can.); 12. *Contr.* p. 401;  
 17. *Damgs.* p. 504  
 — *v. Lyons & Co.* (1927); 19. *Easmt.* No. 898a  
 — *v. Reaume* (Can.); 1. *Agcy.* p. 55; 2. *Arbn.* p.  
 150; 21. *Estpl.* p. 578  
*v. Smith* (1856); 2. *Animals*, No.  
 Foucar & Co. *v. Mudaliar* (Ind.); 1. *Agcy.* p. 61  
 Fournier *v. Canadian National Ry. Co.* (1927);  
 17. *Damgs.* No. 592a  
 — *v. McKenna* (Can.); 3. *Bailmt.* p. 157  
 Fowkes *v. Minister of Finance* (Can.); 21. *E. D.*  
 p. 574  
 Fowlers (Aberdeen), Ltd. (Scot.); 9. *Coys.* p. 322  
 Fox, *Re, Lester v. Porter* (Can.); 4. *Bkpcy.* p. 193;  
 5. *Bkpcy.* p. 228  
 — *v. Allchurch* (Aus.); 38. *Pub. Hlth.* p. 847  
 — *v. Charlton* (1865); 30. *Jdgmts.* No. 448a  
 — *v. London, Midland & Scottish Ry. Co.* (Ir.);  
 2. *Animals*, p. 127  
 — *v. Nipissing Ry. Co.* (Can.); 25. *Fraud. Conv.*  
 p. 628  
 — *v. Price* (1926); 34. *Mast. & S.* No. 3162a  
 Fox & Consolidated Mining & Smelting Co. of  
 Canada, *Re* (Can.); 2. *Arbn.* p. 147  
 Fox & Son *v. Morrish, Grant & Co.* (1918); 1.  
*Agcy.* No. 1243b  
 Fox & Windsor Corpn., *Re* (Can.); 23. *Inc. T.*  
 p. 678  
 Foxcroft & London, *Re* (Can.); 38. *Pub. Hlth.* p. 847  
 Foxton *v. Hamilton Steel & Iron Co., Ltd.* (Can.);  
 39. *S. Goods*, p. 863  
 Foy, *In the Goods of* (1839); 11. *Confl.* No. 580a  
 Foy *v. Merrick* (Can.); 3. *Auct.* p. 152  
 Fraher *v. Waterford County Council* (Ir.); 26.  
*Guar.* p. 643  
 France (Doe d.) *v. Andrews* (1850); 22. *Evid.*  
 No. 1459a  
 France *v. Humphreys* (Aus.); 22. *Evid.* p. 597;  
 38. *Intox.* p. 720  
 France Fenwick & Co. *v. Mannheim Insurance Co.*  
 (1905); 17. *Custom*, No. 729a  
*v. R.* (1927); 11. *Const.*  
 Franco *v. Dutto* (1923); 5. *Bkpcy.* No.  
 Franco-Belgium Investment Co. *v.*  
 (Can.); 21. *Exon.* p. 593  
 Franco-British Ship Store Co., Ltd. *v. Compagnie*  
*des Chargeurs Francaise* (1926); 12.  
*Contr.* No. 923a; 17. *Damgs.* No. 412a

- (Ronald) Productions, v. Bell (1927); 12. *Contr.* No. 546c  
v. M'Gusty (1830); 6. *B. of*
- Franklin v. Reardon (Can.); 9. *Coys.* p. 325  
Fraser, *Re* (1928); 33. *Lunat.* No. 529b  
— v. Aztes S.S. (Can.); 1. *Adm.* pp. 28, 33, 35  
— v. Campbell (Scot.); 3. *Basty.* p. 188  
— v. Cummings & Leopold (Can.); 6. *B. Exch.* p. 255  
— v. Ekstrom & Massey (Can.); 29. *Intpr.* p. 716  
— v. Harrison (Can.); 1. *Agcy.* p. 58  
— v. Locie (Can.); 12. *Contr.* p. 408  
— v. McGregor, Johnston & Thomas, Ltd. (Can.); 6. *B. of Exch.* p. 250  
— v. Thomas (1852); 13. *Cohlds.* No. 1461a  
Fraser River Mining Co. v. Gallagher (Can.); 21. *Estpl.* p. 579  
Fraser's Appeal, *Re*; *Re* Winnipeg Charter (Can.); 2. *Arbn.* p. 129; 38. *Rates.* p. 853  
Frayes v. Worms (1861); 11. *Confl.* No. 1098a  
Frazer v. Mattice (Can.); 18. *Distr.* p. 539  
— v. Pate (Scot.); 2. *Animals.* p. 122  
Fredericke & Whitworth, *Re*, *Ex* p. Hibbard (1927); 4. *Bkpcy.* No. 923a  
Frederiksen v. Western Can. Inv. Co. (Can.); 35. *Mtge.* p. 810  
Freeburg v. Farmers' Exchange Bankers (Can.); 32. *Lien.* p. 754  
Freedon, The (1795); 2. *Aliens.* No. 419a  
Freedman, *Re* (Can.); 4. *Bkpcy.* p. 195  
— v. French (Can.); 12. *Contr.* p. 402  
— v. Hart, *Re* Baittle (Can.); 5. *Bkpcy.* p. 236  
Freeman, *Re* (1927); 33. *Lunat.* No. 529a  
Freeman Co., Ltd. v. Edmonton Corp'n., *Re* Edmonton Charter (Can.); 11. *Comp. Pche.* p. 357  
"Freeman's Journal" v. Fernstrom & Traesliberi (Ir.); 16. *Courts.* p. 481; 17. *Dep.* p. 527  
Freiya, The v. R. S., The (Can.); 1. *Adm.* pp. 22, 23  
French v. Gething (1922); 7. *B. of Sale.* No. 673a  
French (L.) & Co. v. Leeston Shipping Co. (1922); 1. *Agcy.* No. 1768a  
French Government v. Tsurushima Maru (Owners) (1921); 2. *Arbn.* Nos. 841b, 888a, 1022a  
Frere v. Frere (1847); 11. *Confl.* No. 594a  
Fried v. German Property Administrator (1925); 2. *Aliens.* No. 215n  
Fried Krupp Akt. v. Orconera Iron Ore Co., Ltd. (1919); 2. *Aliens.* No. 406  
Friedman v. Friedman's Executors (S. Af.); 11. *Confl.* p. 371  
— v. Mayer (Can.); 12. *Contr.* p. 394  
Friendship, The (1814); 17. *Dep.* No. 252a  
Friern Barnet Urban Council v. Adams (1927); 26. *Hghys.* No. 2951a  
Frome United Breweries Co. v. Bath JJ. (1926); 30. *Intox.* No. 381  
Froment, *Re*, Alberta Lumber Co. v. Alberta Department of Agriculture (Can.); 4. *Bkpcy.* pp. 202, 203  
Frontenac Loan Co. v. Morice (Can.); 23. *Exors.* p. 611  
Frost v. Allen (Aus.); 3. *Basty.* p. 188  
— v. Rochon & Verhelst (Can.); 21. *Exon.* pp. 591, 592  
Frost Brothers, *Re* (Can.); 11. *Const. L.* p. 380  
Frostad v. Libek (Can.); 27. *H. & W.* p. 656; 38. *Real Prop.* p. 855  
Fry v. Byrne (Aus.); 1. *Agcy.* p. 62  
— v. Russell (1858); 3. *Bank.* No. 215a  
Fryer v. Buttar (1837); 23. *Exors.* No. 4712a  
Fryers & Co., Ltd. v. Steeves (Can.); 6. *B. of Exch.* p. 251; 27. *H. & W.* p. 657  
ga v. Inspector of Police (N.Z.); 17. *Dep.*
- Fujita & Co., Ltd. v. Northern Fruit Co., (Can.); 12. *Contr.* p. 402  
Fuli Bibi v. Khokai Mondal (Ind.); 28. *Infsts.* p. 697  
Fuller v. Cheveley (1853); 22. *Evid.* No. 2477a  
— v. Garneau (Can.); 11. *Const. L.* p. 386  
Fuller & Co. v. Holland (Can.); 6. *B. of Exch.* p. 250  
Fuller's Theatres, Ltd. v. Musgrove (Aus.); 12. *Contr.* pp. 402, 403  
Fullwood v. Hurley (1928); 1. *Agcy.* No. 1608a  
Fulton, *Re* (Can.); 4. *Bkpcy.* p. 211; 5. *Bkpcy.* p. 228  
Fulton v. Randall, Gee & Mitchell, Ltd. (Can.); 2. *Animals.* p. 119  
Furber v. Sturmeay (1859); 21. *Exon.* No. 783a  
Furlong v. Reid (Can.); 29. *Intpr.* p. 716  
— v. Russell (Can.); 12. *Contr.* p. 399  
Furness Withy Co., Ltd. v. Ahlin (Can.); 3. *Bailmt.* p. 158  
Furphy v. Nixon (Aus.); 30. *Money.* p. 807  
Fusarelli v. Ioco Townsite Co. (Can.); 2. *Arbn.* p. 149  
Fyfe v. Fife Coal Co., Ltd. (1927); 34. *Mast. & S.* No. 2822a  
Fyhri v. Burke (Can.); 31. *L. & T.* p.
- G.
- G., *Re* (Can.); 3. *Basty.* p. 186  
— v. G. (1928); 3. *Basty.* No. 130b; 27. *H. & W.* No. 5781b  
G. & T. Earle, Ltd. v. Hemsworth Rural District Council (1928); 7. *Bldg. Conts.* No. 342a; 8. *Chos.* Nos. 77a, 483a  
G. Stanley & Co., *Re* (1925); 5. *Bkpcy.* No. 7361a; 10. *Coys.* No. 6746a  
Gabriel v. Ah Mook (Aus.); 2. *Aliens.* p. 113  
— v. Eliatamby (Ceylon); 27. *H. & W.* p. 664  
Gaddar Mal v. Tata Industrial Bank, Ltd., Bombay (Ind.); 3. *Bank.* p. 177  
Gadlala v. Mountjoy (S. Af.); 1. *Agcy.* p. 67  
Gadsby, *Re*, *Ex* p. White & Elliott (Can.); 5. *Bkpcy.* p. 221  
Gagara, The (1919); 1. *Adm.* No. 142b  
Gage & Roper v. Pigott & De Jenner (Ir.); 2. *Agric.* p. 90  
Gagne v. Finance Minister (Can.); 28. *Inc. T.* p. 675  
Gagnon v. Grain & Provision Co., *Re* Blouin (Can.); 5. *Bkpcy.* p. 226  
— v. Langis (Can.); 2. *Animals.* p. 125  
Gainers v. Canadian Northern Ry. Co. (Can.); 22. *Evid.* p. 604  
Gajadhar Mahton v. Ambika Prasad Tiwari (Ind.); 16. *Courts.* pp. 482, 483  
Gale v. Motor Union Insurance Co., Ltd. (1928); 29. *Insce.* No. 3217a  
Galibert v. Societe D'Administration Generale & Banque Nationale & Cie. General D'Entreprises Publiques (Can.); 25. *Fraud. Conv.* p. 627  
Gallacher v. William Baird & Co., Ltd. (Scot.); 34. *Mast. & S.* p. 789  
Galloway v. Harris, *Re* Read (1892); 7. *Burial.* No. 56a  
Gallway (Lord) v. Mathew & Smithson (1808), 6. *B. of Exch.* No. 695a  
Galway (Lord) v. Matthew & Smithson (1808); 6. *B. of Exch.* No. 695a  
Gamage (A. W.), Ltd. v. Payne (1925); 18. *Distr.* No. 421a  
Gamble v. Excelsior Life Assurance Co. (Can.); 1. *Agcy.* p. 58  
Gammon Estate, *Re*, Payne v. Gammon (Can.); 23. *Exors.* p. 606



- Ganda Singh v. Bhag Singh-Bhagwan Singh, Mst. Bhani (Ind.); **32. Limit of A.** p. 755
- Ganga Prasad v. Ganeshi Lal (Ind.); **11. Conf.** pp. 374, 375
- Ganpat Tukaram Mali v. Sopana Tukaram Mali (Ind.); **6. B. of Exch.** p. 255
- Gapes v. Fish (Aus.); **19. Easmt.** p. 541
- Garber v. Union Bank of Canada (Can.); **3. Bank.** p. 164
- Garbet, *In the Goods of* (1869); **23. Exors.** No. 1375a
- Garbrey v. Brown (1588); **12. Contr.** No. 1828a
- Garbutt, *Ex p.* (S. Af.); **4. Bkpcy.** p. 194
- Gardiner v. Héading (1928); **1. Agcy.** No. 2487a
- Gardner, *Re, Ex p.* Croft & Sons, Ltd. (Can.); **5. Bkpcy.** pp. 242, 243
- , *Re, Langlois v. Lemire* (Can.); **4. Bkpcy.** p. 202
- v. Guy Street Garage (Can.); **5. Bkpcy.** p. 235
- v. Hirawanu (N.Z.); **2. Agric.** p. 90
- v. Vickers, Ltd. (1928); **34. Mast. & S.** No. 3482a
- Gardner & Co. v. Cone (1928); **31. L. & T.** Nos. 5269a, 5295a
- Garey v. Dominion Manufacturers, Ltd. (Can.); **6. B. of Exch.** p. 256
- Garland v. Newman (Can.); **1. Agcy.** p. 57
- v. O'Reilly (Can.); **25. Gifts.** p. 639
- Garland & Toronto, *Re* (Can.); **11. Comp. Pche.** p. 357
- Garlick & Co. v. Poynton (S. Af.); **2. Arbn.** p. 149
- Garment (J. & G.) Mfg. Co., *Ex p., Re J. R. Morgan, Ltd.* (Can.); **9. Coys.** p. 336
- Garnett v. Pratt (1926); **11. Comns.** No. 939a
- Garrard v. James (1925); **9. Coys.** No. 4050a
- Garrett v. Johnstone (Can.); **26. Guar.** p. 642
- v. Saunders (Can.); **35. Mtge.** p. 811
- Garrioch v. Canadian Bank of Commerce (Can.); **3. Bank.** pp. 167, 171
- Garrison v. Thomsen & Clarke Timber Co. (Can.); **12. Contr.** p. 402
- Garrold, *Ex p., Re Hereford Municipal Election Petition* (1889); **20. Elect.** No. 1626
- Gartrell, *Re, Ex p.* Kearns (Can.); **4. Bkpcy.** p. 190
- Gas Meter Co., Ltd. v. Diaphragm & General Leather Co., Ltd. (1925); **9. Coys.** No. 1814a
- Gaskill v. Gaskill (1921); **3. Basty.** No. 43a
- Gaston, *Re* (Ir.); **5. Bkpcy.** p. 243
- Gaston, Williams & Wigmore & Gaston, *Re, Williams & Wigmore Steamship Corp'n. v. R.* (Can.); **11. Const. L.** p. 384
- Gates, *In the Goods of* (1928); **23. Exors.** No. 2056a
- Gaudet v. Brown, The Argos (Cargo Ex) (1872); **1. Adm.** No. 40
- Gaudreau, *Re, Ex p.* Carruthers (Can.); **5. Bkpcy.** p. 236
- , *Re, Ex p.* Royal Bank of Canada (Can.); **7. B. of Sale,** pp. 263, 265
- Gaul & Houlston's Contract, *Re* (1928); **40. Sttlmts.** No. 2597
- Gauns v. R. (Ind.); **14. Crim.** p. 451
- Gauthier v. R. (Can.); **2. Arbn.** p. 136
- Gavagan, *Re* (Ir.); **3. Basty.** p. 187
- Gavazzi v. Inland Revenue Comrs. (1926); **28. Inc. T.** No. 179
- v. Mace (1926); **28. Inc. T.** No. 179
- Gaviller v. Beaton (Can.); **21. Exon.** p. 589
- Gay, *Re* (Can.); **11. Conf.** p. 374
- Gay Co., Ltd. v. Trick (Can.); **17. Damgs.** p. 507; **30. Juries,** p. 729
- Gayler & Pope, Ltd. v. Davies (B.) & Son, Ltd. (1924); **2. Animals,** Nos. 156b, 206a
- Gearhart v. Quaker Oats Co. (Can.); **1. Agcy.** p. 46
- Gebbie & Forrest v. Kershaw (Can.); **27. H. & W.** p. 658
- Geddes v. Dunfermline District Committee (Scot.); **34. Mast. & S.** pp. 774, 795
- Gehm, *Re, Gehm v. Gatzens* (Can.); **28. Infts.** pp. 696, 697
- Geipel v. Cornforth, The Hewsons (1872); **1. Adm.** No. 40
- Geller Brothers, *Re* (Can.); **5. Bkpcy.** p. 243
- Gellibrand v. Carew, *Re Carew's Trusts* (1910); **5. Bkpcy.** No. 5902a
- Gelman, *Ex p., Re Cohen & Sweigman* (Can.); **4. Bkpcy.** p. 205
- Gemmel v. Sinclair (Can.); **38. Rates,** p. 853
- Gemmell & M'Fadyen v. MacNiven (Scot.); **14. Crim.** p. 454
- General Accident Assurance Co., *Re* (Can.); **29. Insee.** p. 715
- General Electric Co. (1900), Ltd. v. Safety Lift & Elevator Co. (1903); **18. Discy.** Nos. 1625a, 1626a
- General Medical Council v. Inland Revenue Comrs. (1928); **28. Inc. T.** No. 472e
- General Supply Co. of Canada v. O'Neill Morkin Machinery Co. (Can.); **12. Contr.** p. 388; **17. Damgs.** p. 502
- Genesee, The (1917); **37. Prsns.** No. 1302a
- George v. Brayley (Can.); **26. Guar.** p. 641
- v. Canadian Northern Ry. Co. (Can.); **8. Carr.** p. 286
- George W. Griffiths Co., *Re* (Can.); **9. Coys.** p. 320
- Georgeson v. Dominion Bank (Can.); **3. Bank.** p. 177; **17. Damgs.** p. 504
- v. Urwin & Co. (N.Z.); **36. Pats.** p. 827
- Georget Estates, *Re* (Can.); **18. Descr.** p. 530
- German v. Risley (1639); **38. Real Prop.** No. 761a
- Gertrud, The (1927); **1. Adm.** No. 682a
- Ghamandi Lal-Narain Das v. Churanji Lal-Pokhar Mal (Ind.); **2. Arbn.** p. 142
- Ghanshyam Singh v. R. (Ind.); **14. Crim.** p. 451
- Gharib-Ul-Lah v. Khalak Singh (Ind.); **28. Infts.** p. 697
- Ghee, *Re, Ex p.* Lowe King, Public Trustee v. Lowe King (N.Z.); **24. Exors.** p. 618
- Ghosh v. R. (Ind.); **14. Crim.** p. 440
- Gibaud v. Great Eastern Ry. Co. (1921); **3. Bailmt.** No. 192a
- Gibb v. Sell (Aus.); **12. Contr.** p. 392
- Gibbings, *In the Estate of* (1928); **23. Exors.** No. 2585c
- Gibbons, *Re* (Can.); **7. B. of Sale,** p. 265
- v. Riddle (Can.); **2. Agric.** p. 91
- Gibbons & Carnes v. Royal Bank of Canada (Can.); **3. Bank.** p. 169
- Gibbs, *Re, Lyne v. Gibbs, Re Lyne's Settlement Trusts* (1919); **11. Conf.** No. 511
- v. Flight (1853); **30. Jdgmts.** No. 366b
- v. Gibbs (Can.); **27. H. & W.** p. 663
- v. Mersey Ry. Co., *Re Mersey Ry. Co.* (1895); **10. Coys.** No. 8412a
- Giblin v. McMullen (1869); **22. Evid.** Nos. 55a, 59a
- Gibson v. A.-G., *Re Bennett* (1920); **8. Char.** No. 751a
- v. Humphrey (1833); **5. Bkpcy.** No. 7008a
- v. McVeigh (No. 1) (Can.); **12. Contr.** pp. 395, 396
- v. National Cash Register Co. (Scot.); **22. Evid.** pp. 595, 602
- v. O'Keeney (Ir.); **1. Agcy.** p. 71; **3. Bailmt.** p. 162
- v. Plumstead Burial Board (1897); **7. Bounds. & F.** No. 154a
- v. Reynolds (Ir.); **1. Agcy.** p. 71
- v. Wilson & Downer (Can.); **3. Bailmt.** p. 155
- Gier v. Van Aalst (Can.); **1. Agcy.** p. 37

- Gieves v. O'Connor (Ir.); **11. Confl.** p. 376  
 Giffen v. Wedd, *Re Monk* (1927); **8. Char.** Nos. 34a, 1098a  
 Gifford v. Dent (1926); **31. L. & T.** No. 3026a  
 — v. Gifford & Freeman (1926); **27. H. & W.** No. 3092a  
 Gilbert v. Gilbert & Boucher (1928); **27. H. & W.** No. 5583a  
 — v. Jarvis (Can.); **24. Exors.** p. 618  
 Gilbert Brothers, Ltd. v. Keiser (Can.); **1. Agcy.** p. 58  
 Gilbert Brothers v. McDill (Can.); **1. Agcy.** p. 57  
 Gilbert's Patents, *Re* (1927); **36. Pats.** No. 2062a  
 Gilbey v. Gilbey (1927); **27. H. & W.** No. 5382a  
 Gilchrist v. Wiley (Can.); **21. Exon.** p. 591  
 Gilchrist & Sullivan Corp., *Re* (Can.); **38. Pub. Hlth.** p. 847  
 Giles v. Nuttall, *Re House Improvement Assocn., Ltd.* (1885); **10. Coys.** No. 5011a  
 Gill v. Perrott (1928); **34. Mast. & S.** Nos. 2668a, 2885a  
 — v. Power (Nfld.); **32. Lien.** p. 753  
 Gillett v. Abbott (1838); **21. Estpl.** No. 786a  
 Gillette Safety Razor, Ltd. v. Pellett, Ltd. (1909); **28. Injon.** No. 923a  
 Gillis v. Sounding Creek (Can.); **32. Lien.** p. 753  
 Gilpinville, Ltd. v. Dumaresq (Can.); **28. Injon.** p. 699  
 Gilroy v. Brennan (Ir.); **14. Crim.** p. 458  
 — v. Stephens (1882); **24. Exors.** No. 7273a  
 Girard v. Garipey (Can.); **1. Adm.** p. 14  
 Girgaway v. Strathern (Scot.); **15. Crim.** p. 468  
 Giroux, *Ex p.* (Can.); **9. Coys.** p. 331  
 Gissing v. Eaton (T.) Co. (Can.); **12. Contr.** p. 396  
 Git v. Forbes (Can.); **7. Bldg. Conts.** p. 274  
 Giusti Patents & Engineering Works, Ltd. v. Maggs (1923); **13. Cty. Cts.** Nos. 980a, 1008a; **16. Cr. Pract.** Nos. 3131b, 3168b  
 Gladue v. Walch (Can.); **1. Agcy.** pp. 69, 73  
 Glamorgan (former Sheriff), *Ex p.*, Walter v. Davies (1858); **21. Exon.** No. 380  
 Glanville v. Sutton & Co., Ltd. (1928); **2. Animals.** No. 305a  
 Glasgow v. Hood (N.Z.); **1. Agcy.** pp. 38, 56, 57, 72, 73  
 Glasgow & South Western Ry. Co. v. Greenock Corp., (Scot.); **3. Barr.** p. 181  
 Glasgow Dental Hospital (Incorporated) v. Lord Advocate (Scot.); **9. Coys.** p. 336  
 Glasgow Domestic Training School, *Re* (Scot.); **8. Char.** p. 309  
 Glasgow Navigation Co. v. Iron Ore Co. (1910); **16. Courts.** No. 33a  
 Glasgow Underwriters v. Smith (Can.); **2. Arbn.** p. 142  
 Glaskie v. Watkins (1927); **30. Jdgmts.** No. 628a, 628b  
 Glatton, H.M.S. (1923); **1. Adm.** No. 130a  
 Glebe Sugar Refining Co., Ltd. v. Greenock Port & Harbours Trustees (1921); **3. Barr.** No. 383a  
 Glead v. Glead (1927); **27. H. & W.** No. 3825a  
 Glen v. Inland Revenue (Scot.); **21. E. D.** p. 572  
 Glen Bain Rural Municipality v. Haley (Can.); **22. Evid.** p. 598  
 Glenavon Garw Collieries, Ltd. v. Rhondda & Swansea Bay Ry. Co., Great Western Ry. Co. & Barry Ry. Co. (1915); **8. Carr.** Nos. 1043a, 1060a  
 Glendinning, *Re*, Steel v. Glendinning (1918); **3. Bank.** No. 402a  
 Glennie v. Delmar (1850); **13. Cty. Cts.** No. 83  
 — v. Rushton (Can.); **12. Ccntr.** p. 407
- Globe & Rutgers Fire Insurance Co. v. Glace Bay Corp., (Can.); **15. Crim.** p. 466  
 — v. Truedell (Can.); **29. Insce.** p. 710  
 Globe Land Co. v. Heaslip (Can.); **31. L. & T.** p. 737  
 Globe Wine Co., *Re* (Can.); **21. Estpl.** p. 579  
 Glyncorwg Colliery Co., *Re*, *Re Railway Debenture & General Trust Co.* (1926); **10. Coys.** No. 5149a  
 Glyncorwg Colliery Co., *Re*, *Re Railway Debenture & General Trust Co. v. Glyncorwg Colliery Co.* (1926); **10. Coys.** No. 5149a  
 Gobinda Ramanuj Das Mohanta v. Ram Charan Das (Ind.); **21. Estpl.** pp. 583, 584  
 Goddard v. Arnold (S. Af.); **1. Agcy.** p. 59  
 — v. Bainbridge Lumber Co. (Can.); **11. Comp. Pche.** p. 360  
 Goebel v. Canadian Bank of Commerce (Can.); **3. Bank.** p. 177  
 Goff v. Barron (Nfld.); **34. Mast. & S.** p. 771  
 Goffin v. Houlder (1920); **12. Contr.** No. 429a; **17. Damgs.** No. 408a  
 Goggins v. Morrison (Can.); **25. Gaming.** p. 633  
 Gogi v. Wilson & Collins (S. Af.); **34. Mast. & S.** p. 771  
 Gokul Das v. Nathu (Ind.); **12. Contr.** p. 407  
 Golaa, The (1926); **11. Confl.** No. 1379a  
 Gold v. South Vancouver (Can.); **2. Arbn.** p. 137  
 Gold Brothers & Nash, Ltd. v. Fuller (1925); **13. Cty. Cts.** No. 404a  
 Gold Medal Furn. Mfg. Co., *Re*, *Ex p.* Scythes & Co. (Can.); **35. Mistake.** p. 805  
 Gold Seal, Ltd. v. Dominion Express Co. & A.-G. for Alberta Province (Can.); **17. Dep.** p. 516  
 Goldberg, *Ex p.*, *Re Jacobson* (Can.); **4. Bkpcy.** p. 210; **5. Bkpcy.** p. 236  
 —, *Re* (Can.); **5. Bkpcy.** p. 236  
 Goldhammer v. R. (Can.); **14. Crim.** p. 460  
 Goldman v. Barnfield (Aus.); **1. Agcy.** p. 71  
 — v. Cox (1924); **6. B. of Exch.** No. 209a  
 — v. Kirby & Sons, Ltd. (Aus.); **17. Damgs.** p. 507  
 Goldstein, *Ex p.*, *Re Hersh* (Can.); **4. Bkpcy.** p. 199; **5. Bkpcy.** p. 232  
 —, *Re* (Can.); **5. Bkpcy.** p. 229  
 — v. Craft (Aus.); **35. Money.** p. 807  
 Gollan v. Sterling (Can.); **18. Distr.** p. 540  
 Gooch, *Re*, *Ex p.* Judd (1921); **6. B. of Exch.** Nos. 567a, 2096a  
 — v. Stratman (1927); **31. L. & T.** No. 7298a  
 Good (John) & Sons, Ltd. v. London & North Eastern Ry. Co. (1927); **8. Carr.** No. 1377i  
 Goodall v. Cousins (Can.); **1. Agcy.** p. 64  
 — v. Hoogendoorn, Ltd. (S. Af.); **9. Coys.** p. 337  
 Goodbun v. Mitchell (Can.); **24. Exors.** p. 617  
 Goodchild v. Fenton (1829); **24. Exors.** No. 7256a  
 Gooderham v. Nipissing Ry. Co. (Can.); **25. Fraud. Conv.** p. 628  
 Gooding v. Crocker (Can.); **32. Lien.** p. 754  
 Goodison Thresher Co. v. Doyle (Can.); **12. Contr.** p. 388  
 Goodman v. Armstrong (S. Af.); **6. B. of Exch.** p. 256  
 — v. Packer (1870); **31. L. & T.** No. 4116a  
 Goold v. Goold (Scot.); **27. H. & W.** p. 661  
 Goole & Hull Steam Towing Co., Ltd. v. Ocean Marine Insurance Co., Ltd. (1928); **29. Insce.** No. 2010a  
 Goom v. West (1838); **4. Bkpcy.** No. 3750a  
 Gordanier v. C. N. R. (Can.); **18. Discy.** p. 534  
 Gordean Furniture Co., *Re*, *Ex p.* Sladden (Can.); **4. Bkpcy.** p. 210



- Gough v. McBride (Can.); **22. Evid.** p. 598  
Gouin v. R. (Can.); **14. Crim.** p. 463  
Gouin Boulevard Crossing Case, Montreal Corp'n. v. Canadian Pacific Ry. Co. (Can.); **38. Rys.** p. 849  
Gould v. Ryan (Can.); **17. Dep.** p. 520  
Goulding, *Ex p.*, *Re O'Neill* (1829); **6. B. of Exch.** No. 701b  
— v. Rabinovitch (Can.); **12. Contr.** p. 397  
Gout v. Cimitian (1922); **2. Aliens**, No. 13a  
Gowan v. Bown (S. Af.); **1. Agcy.** p. 61; **12. Contr.** p. 414  
Gowans v. Crocker Press Co. (Can.); **6. B. of Exch.** p. 255  
Gowar v. Hales (1928); **36. Negl.** Nos. 421a, 842  
Grace Brothers, Ltd. v. Lawson (Aus.); **3. Bailmt.** p. 162  
Graham, *Ex p.*, *Re Howard Graham & Co.* (Can.); **5. Bkpcy.** p. 233  
— v. Canada Life Assurance Co. (Can.); **27. H. & W.** p. 656  
— v. Carpenter (Aus.); **1. Agcy.** p. 45  
— v. Graham (1923); **11. Confl.** No. 918a  
— v. — (Can.); **12. Contr.** p. 390  
— v. Manders (Ir.); **1. Agcy.** p. 40  
— v. Mencilly (Can.); **27. H. & W.** p. 656  
— v. Provident Life Assurance Co. (N.Z.); **2. Arbn.** pp. 130, 135  
— v. Stirling (Scot.); **2. Agric.** p. 79  
Graham & Co. v. United Turkey Red, etc. Co., Ltd. (Scot.); **1. Agcy.** p. 65  
Graigola Merthyr Co., Ltd. v. Swansea Corp'n. (1926); **22. Evid.** Nos. 5403a, 5403c  
— v. — (1928); **20. Eqq.** No. 2705a; **22. Evid.** Nos. 5403a, 5403c  
Grain Claims Bureau, Ltd. v. Canadian Surety Co. (Can.); **18. Discy.** p. 533  
— v. Canadian Surety Co. (No. 2) (Can.); **29. Insec.** p. 714  
Grainger v. Singer (1927); **28. Inc. T.** No. 632a  
Granby Consolidated Mining, Smelting & Power Co., Ltd. v. A.-G. for British Columbia (Can.); **28. Inc. T.** p. 688  
Granchuk v. Springfield Fire & Marine Insurance Co. (Can.); **2. Arbn.** pp. 134, 135  
Grand Trunk Pacific Coast S.S. Co. v. B.B., The (Can.); **1. Adm.** p. 28  
Grand Trunk Pacific Coast S.S. Co. v. Simpson (Can.); **8. Carr.** p. 291  
Grand Trunk Pacific Coast S.S. Co. v. Victoria-Vancouver Stevedoring Co. (Can.); **26. Guar.** p. 644  
— v. Ford (Can.); **25. Fraud. Conv.** p. 627  
— v. Glasgow Corp'n. (Scot.); **8. Carr.** p. 289  
— v. Hackney Borough Council (1904); **34. Metrop.** No. 29a  
— v. Murchison (Can.); **1. Agcy.** p. 76  
— v. Perpetual Trustee Co. (1928); **20. Eqq.** No. 1438a; **37. Powers**, No. 1105a  
— v. Warner, *Re Biel's Estate* (1873); **25. Fraud. Conv.** No. 895a  
Gray Tractor Co. of Canada & Van Troyen, *Re* (Can.); **2. Arbn.** p. 133  
Grayson v. Grayson (1927); **27. H. & W.** No. 3449a  
— v. Walsh (Can.); **23. Exors.** p. 614  
Great Central Ry. Co. v. London & North Western Ry. Co. (1922); **8. Carr.** No. 1010a  
Great Central Ry. Co. v. Swann (1913); **8. Carr.** No. 1316a  
Great Indian Peninsula Ry. Co., Ltd. v. Jesraj Patwari (Ind.); **8. Carr.** p. 286  
Great Indian Peninsular Ry. Co. v. Kashinath Chinnaji (Ind.); **34. Mast. & S.** pp. 776, 777, 782  
Great North Insurance Co., *Re*, *Painter's Case* (Can.); **9. Coys.** p. 324  
Great Northern Ry. Co. v. L. E. P. Transport & Depository, Ltd. (1922); **8. Carr.** Nos. 5a, 90a, 234a, 896a  
Great Southern & Western Ry. Co. of Ireland v. R. (1924); **16. Cr. Pract.** No. 323a; **17. Dep.** No. 714  
Great West Farms, Ltd. v. Hansberger (Can.); **1. Agcy.** p. 50  
Great West Life Assurance Co., *Re*, *Re Christie Estate* (Can.); **35. Mtge.** p. 812  
Great West Life Assurance Co. v. Campbell (Can.); **7. Bonds**, p. 269; **35. Mtge.** p. 809  
Great West Permanent Loan Co., *Re*, *Re Winding-Up Act* (Can.); **10. Coys.** p. 342  
Great West Permanent Loan Co. & Winding-Up Act, *Re* (Can.); **10. Coys.** p. 3  
Great West Saddlery Co. v. Canadian Ingot Iron Co. (Can.); **21. Estpl.** p. 583  
Great Western Ry. Co. v. Birmingham & Gloucester Ry. Co. (1844); **28. Injon.** No. 105a  
— v. Durnford (James) & Sons, Ltd. (1928); **26. Guar.** No. 1826a  
— v. Jones (Can.); **24. Exors.** p. 617  
— v. Laing (J.) & Co., Ltd. (1922); **8. Carr.** No. 1331a  
— v. Mostyn (Owners), *The Mostyn* (1928); **30. Jgdmts.** Nos. 498a, 569c, 588b; **36. Negl.** No. 706

- Greater Britain Products Development Corpn., Ltd., *Re* (1924); **9. Coys.** No. 1411a  
 Grech v. Board of Trade (1923); **2. Arbn.** No. 1885b  
 Grecian, The (1902); **1. Adm.** No. 1603b  
 Green v. Glicksten (J.) & Son, Ltd. (1928); **28. Inc. T.** No. 204b  
 — v. Premier Glynrhonwy Slate Co., Ltd. (1928); **34. Mast. & S.** No. 3359c  
 — v. Tress (Can.); **31. L. & T.** p. 743  
 Greenaway v. Canadian Pacific Ry. Co. (Can.); **26. Hghys.** p. 647  
 Greenberg v. Cooperstein (1926); **9. Coys.** No. 272a; **10. Coys.** No. 8581a  
 Greene, *Re*, *Re* Whitworth, *Re* E. A., *Re* Fraser, *Re* Wood (1928), **33. Lunat.** No. 529b  
 — v. Ruggles (Can.); **10. Coys.** p. 337  
 Greenhalgh (W. P.) & Sons v. Union Bank of Manchester (1924); **3. Bank.** No. 289a  
 Greenham v. Watt (Can.); **12. Contr.** p. 396  
 Greenhill v. Federal Insurance Co. (1927); **29. Insc.** No. 1265a  
 Greenlaw v. King (1841); **25. Fraud. Contr.** No. 844a  
 Greenock (Provost) v. Peters (Scot.); **19. Eccl.** p. 554  
 Greenock Corpn. v. Admiralty, The (Scot.); **38. Pub. Auth.** p. 845  
 Greenstreet v. Paris (Can.); **9. Coys.** p. 329; **38. Rates**, p. 853  
 Greenway v. A.-G. (1927); **3. Bastj.** No. 130d; **16. Courts**, No. 280a  
 Greenwood v. Rothwell (1841); **18. Discy.** No. 1039a  
 Greenwood & Greenwood v. Welford (Can.); **1. Agcy.** pp. 62, 63  
 Greer v. Downs Supply Co. (1927); **1. Agcy.** No. 2126a; **20. Eqty.** No. 661a  
 — v. Godson (Can.); **1. Agcy.** p. 59  
 — v. Mulmur (Township) (Can.); **26. Hghys.** p. 649  
 Gregg v. Richards (1926); **19. Easmt.** No. 186a  
 Greswolde-Williams v. Newcastle-upon-Tyne Corpn. (1927); **11. Comp. Pche.** No. 595a  
 Greville v. Atkins (1829); **17. Deeds**, No. 1235  
 Grey's (Lord) Case (1541); **14. Crim.** No. 960a  
 Grier v. Georgas (Can.); **7. Bldg. Conts.** p. 274  
 Griesheim Elektron, Ltd., *Re* (1921); **2. Aliens**, Nos. 195a, 405a  
 Grieve McGlory, Ltd. v. Dome Lumber Co., Ltd. & Thompson (Can.); **17. Deeds**, p. 509  
 Griffin v. Cape Breton Electric Co. (Can.); **8. Carr.** p. 289  
 — v. State of South Australia (Aus.); **17. Dep.** pp. 521, 522; **18. Discy.** p. 533  
 Griffith v. Frederickson (Can.); **1. Agcy.** p. 60  
 Griffiths, *Re*, Jones v. Jenkins (1926); **5. Bkpcy.** No. 5922a  
 — v. Anderson (Can.); **1. Agcy.** p. 58  
 — v. Hughes (1847); **30. Jdgmts.** No. 366a  
 Griffiths (George W.) Co., *Re* (Can.); **9. Coys.** p. 320  
 Grindell v. Bass (1920); **1. Agcy.** No. 164a  
 Grindley v. Blakie (Can.); **21. Exon.** p. 589  
 Grinham v. Davies (1928); **30. Juries**, No. 423b; **36. Negl.** No. 842b  
 Grisewood & Smith's Case (1859); **9. Coys.** No. 2344a  
 Grocery Specialty Co., *Re*, *Re* Shulman (Can.); **5. Bkpcy.** p. 233  
 Grocock v. Grocock (1920); **3. Bastj.** No. 367a  
 Groebel v. Hungarian Property Administrator (1925); **2. Aliens**, No. 215p  
 Groedel v. Hungarian Property Administrator (1927); **2. Aliens**, Nos. 49h, 49l  
 Groning v. Crockett (1811); **2. Aliens**, No. 493a  
 Groom, *Re* (1869); **22. Evid.** Nos. 6053a, 6066a  
 — v. West (1838); **4. Bkpcy.** No. 3750a  
 Gross, *Re*, *Ex p.* Adair (1871); **3. Bank.** No. 347  
 Gross, Sherwood & Heald, Ltd. v. Essex County Council (1927); **11. Comp. Pche.** No. 702a  
 Grothe v. Montreal Corpn. (Can.); **2. Arbn.** p. 133  
 Grothkop v. Grothkop (N.Z.); **11. Confl.** p. 365  
 Grove-Grady, *Re*, Plowden v. Lawrence (1928); **8. Char.** No. 204a  
 Grundy v. Broadbent (Ir.); **2. Aliens**, p. 109  
 Grunwaldt, *Ex p.*, *Re* Lee (1920); **5. Bkpcy.** Nos. 8778a, 9032a, 9109a, 9198a  
 Guarantee Co. of North America, *Ex p.*, *Re* Coughlin & Co. (Can.); **4. Bkpcy.** pp. 202, 206  
 Guaranteed Batteries, Ltd., *Re* (Can.); **4. Bkpcy.** p. 206  
 Guatemala (Republica de) v. Nunez (1927); **8. Chos.** No. 27a  
 Guelph Carpet Mills Co. v. Guelph Corpn. (Can.); **22. Evid.** p. 603  
 Guelph Worsted Spinning Co. v. Guelph Corpn. (Can.); **22. Evid.** p. 603  
 Guettler v. Can. Internat'l Paper Co. (Can.); **36. Pats.** p. 826  
 Guggisberg v. Weber (Can.); **6. B. of Exch.** p. 247  
 Guiborn v. Fellows (1717); **6. B. of Exch.** No. 946a; **12. Contr.** No. 2102a  
 Guilbault v. Brothier (Can.); **21. Estpl.** p. 577  
 Guilday v. Winnipeg Electric Ry. Co. (Can.); **8. Carr.** p. 289  
 Guildford Trust, Ltd. v. Goss (1927); **6. B. of Exch.** No. 588a  
 — v. Pohl & Maritch (1928); **6. B. of Exch.** No. 1054a  
 Guilding v. Morel Brothers, Cobbett & Sons, Ltd. (1888); **28. Injon.** No. 929a  
 Guilfoil v. McAvity (T.) & Sons, Ltd. (Can.); **36. Negl.** p. 815  
 Guinand v. Naish (1845); **37. Powers.** No. 637a  
 Guisti Patents & Engineering Works, Ltd. v. Maggs (1923); **13. Cty. Cts.** No. 980a; **16. Cr. Pract.** Nos. 3131b, 3168b  
 Gulbenkian v. Gulbenkian (1927); **27. H. & W.** No. 5623b  
 Gump, *Re* (Can.); **4. Bkpcy.** pp. 201, 202  
 Gunn v. Mackhenry (1750); **16. Cr. Pract.** No. 3185a  
 Gunning v. Lusby (No. 1) (Can.); **1. Agcy.** p. 55  
 Gunns, Ltd. v. Wark (Can.); **6. B. of Exch.** p. 250  
 Gunsbourg, *Re*, *Ex p.* Cook (1920); **5. Bkpcy.** No. 5775a  
 —, *Re*, *Ex p.* Trustee (1920); **5. Bkpcy.** No. 5775a  
 Gunsolly v. Engstrom (Can.); **6. B. of Exch.** p. 253  
 Guran Ditta v. Ram Ditta (Ind.); **27. H. & W.** p. 657  
 Gurditta v. R. (Can.); **14. Crim.** p. 460  
 Gurney v. James (Can.); **21. Exon.** p. 587  
 Gushowaty v. Gushowaty & Jones (Can.); **27. H. & W.** p. 663  
 Gussage All Saints & Gussage St. Michael, Dorset, Parishes, *Re* (1925); **19. Eccl.** No. 2443a  
 Guthrie v. Stewart (Scot.); **31. L. & T.** p. 745  
 Gutieres, *In the Goods of* (1869), **11. Confl.** No. 587b  
 Guttierrez, *In the Goods of* (1869); **11. Confl.** No. 587b  
 Guy St. Crossing Case, Canadian National Rys. v. Montreal Tramways (Can.); **38. Rys.** p. 849  
 Guyot & Vigouret & Award made by Gosselin, *Re*, *Re* Arbitration Act (Can.); **2. Arbn.** p. 143  
 Gwydyr Castle, *Re* (S. Af.); **1. Adm.** pp. 13, 18
- H.
- H. v. H. (1928); **11. Confl.** Nos. 894a, 899b, 903b; **21. Estpl.** No. 10a  
 H. G. Hamilton Pty., Ltd. v. Rae (Aus.); **12. .** p. 403

- Gordon v. Earle (Can.); **34. Mines**, p. 801  
 — v. Goldstein (1924); **7. B. of Sale**, No. 288a  
 — v. Gordon (Can.); **8. Chos.** p. 314  
 — v. Hebblewhite (Can.); **3. Bank.** p. 179  
 — v. Wilhelm (Can.); **31. L. & T.** pp. 735, 742  
 — v. Williamson (1892); **19. Eccl.** No. 482a  
 Gordon Brothers, Ltd., *Re* (Can.); **4. Bkpcy.** p. 212  
 Gordon MacKay & Co., Ltd. v. Capital Trust Co., Ltd. (Can.); **7. B. of Sale**, p. 261  
 Gordon Store, Ltd., *Re, Ex p.* Standard Bank (Can.); **5. Bkpcy.** p. 220  
 Gorham, *Re* (Ir.); **4. Bkpcy.** p. 193  
 Gorman v. Young (Can.); **1. Agcy.** p. 63  
 Gorrie (A. D.) Co., Ltd. v. Whitfield & Michaud (Can.); **6. B. of Exch.** p. 252  
 Gosse Millard v. Canadian Government Merchant Marine (1928); **30. Jdgmts.** No. 728a  
 Gottesman, *Re* (Can.); **2. Aliens**, pp. 107, 113  
 Goudge v. Broughton (1929); **31. L. & T.** Nos. 7037a, 7351a, 7352d, 7359a  
 Gough, *Re, Hanning v. Lowe* (1927); **5. Bkpcy.** No. 7693a  
 Gough v. McBride (Can.); **22. Evid.** p. 598  
 Gouin v. R. (Can.); **14. Crim.** p. 463  
 Gouin Boulevard Crossing Case. Montreal Corp'n. v. Canadian Pacific Ry. Co. (Can.); **38. Rys.** p. 849  
 Gould v. Ryan (Can.); **17. Dep.** p. 520  
 Goulding, *Ex p., Re O'Neill* (1829); **6. B. of Exch.** No. 701b  
 — v. Rabinovitch (Can.); **12. Contr.** p. 397  
 Gout v. Cimitian (1922); **2. Aliens**, No. 13a  
 Gowan v. Bown (S. Af.); **1. Agcy.** p. 61; **12. Contr.** p. 414  
 Gowans v. Crocker Press Co. (Can.); **6. B. of Exch.** p. 255  
 Gower v. Hales (1928); **36. Negl.** Nos. 421a, 842  
 Grace Brothers, Ltd. v. Lawson (Aus.); **3. Bailmt.** p. 162  
 Graham, *Ex p., Re Howard Graham & Co.* (Can.); **5. Bkpcy.** p. 233  
 — v. Canada Life Assurance Co. (Can.); **27. H. & W.** p. 656  
 — v. Carpenter (Aus.); **1. Agcy.** p. 45  
 — v. Graham (1923); **11. Confl.** No. 918a  
 — v. — (Can.); **12. Contr.** p. 390  
 — v. Manders (Ir.); **1. Agcy.** p. 40  
 — v. Mencilly (Can.); **27. H. & W.** p. 656  
 — v. Provident Life Assurance Co. (N.Z.); **2. Arbn.** pp. 130, 135  
 — v. Stirling (Scot.); **2. Agric.** p. 79  
 Graham & Co. v. United Turkey Red, etc. Co., Ltd. (Scot.); **1. Agcy.** p. 65  
 Graigola Merthyr Co., Ltd. v. Swansea Corp'n. (1926); **22. Evid.** Nos. 5403a, 5403c  
 — v. — (1928); **20. Eqq.** No. 2705a; **22. Evid.** Nos. 5403a, 5403c  
 Grain Claims Bureau, Ltd. v. Canadian Surety Co. (Can.); **18. Discy.** p. 533  
 — v. Canadian Surety Co. (No. 2) (Can.); **29. Insee.** p. 714  
 Grainger v. Singer (1927); **28. Inc. T.** No. 632a  
 Granby Consolidated Mining, Smelting & Power Co., Ltd. v. A.-G. for British Columbia (Can.); **28. Inc. T.** p. 688  
 Granchuk v. Springfield Fire & Marine Insurance Co. (Can.); **2. Arbn.** pp. 134, 135  
 Grand Trunk Pacific Coast S.S. Co. v. B.B., The (Can.); **1. Adm.** p. 28  
 Grand Trunk Pacific Coast S.S. Co. v. Simpson (Can.); **8. Carr.** p. 291  
 Grand Trunk Pacific Coast S.S. Co. v. Victoria-Vancouver Stevedoring Co. (Can.); **26. Guar.** p. 644  
 Grand Trunk Ry. Co. v. Credit Valley Ry. Co. (Can.); **17. Dep.** p. 517  
 Grand Trunk Ry. Co. of Canada v. Murphy (Can.); **8. Carr.** p. 289  
 Grant, *Re* (Can.); **5. Bkpcy.** p. 226; **18. Distr.** p. 539  
 Grant v. Derwent (1928); **40. S. Land.** No. 2705a; **41. Sewers**, No. 319a  
 — v. Dominion Loose Leaf Co. (Can.); **9. Coys.** p. 336  
 — v. Knaresborough Urban Council (1928); **30. Jdgmts.** No. 202a; **38. Rates**, No. 1158a  
 — v. McDonald (Can.); **23. Exors.** p. 612  
 — v. Travis (Can.); **8. Chos.** p. 312  
 — v. Van Norman (Can.); **5. Bkpcy.** p. 230  
 — v. Whitzman (Can.); **3. Auct.** p. 152  
 Grantham, *Re, Ex p.* Doyle (Can.); **4. Bkpcy.** pp. 207, 209  
 Grasett v. Hutchinson (Can.); **26. Guar.** p. 641  
 Gravelbourg Town, *Ex p., Re Noel* (Can.); **4. Bkpcy.** p. 209  
 Graves v. Sprague (Can.); **21. Exon.** p. 588  
 Gray, *Re* (Can.); **28. Infts.** pp. 695, 697  
 —, *Re, Todd v. Taylor* (1925), **8. Char.** No. 199a  
 — v. Ford (Can.); **25. Fraud. Conv.** p. 627  
 — v. Glasgow Corp'n. (Scot.); **8. Carr.** p. 289  
 — v. Hackney Borough Council (1904); **34. Metrop.** No. 29a  
 — v. Murchison (Can.); **1. Agcy.** p. 76  
 — v. Perpetual Trustee Co. (1928); **20. Eqq.** No. 1438a; **37. Towers**, No. 1105a  
 — v. Warner, *Re Biel's Estate* (1873); **25. Fraud. Conv.** No. 895a  
 Gray Tractor Co. of Canada & Van Troyen, *Re* (Can.); **2. Arbn.** p. 133  
 Grayson v. Grayson (1927); **27. H. & W.** No. 3449a  
 — v. Walsh (Can.); **23. Exors.** p. 614  
 Great Central Ry. Co. v. London & North Western Ry. Co. (1922); **8. Carr.** No. 1010a  
 Great Central Ry. Co. v. Swann (1913); **8. Carr.** No. 1316a  
 Great Indian Peninsula Ry. Co., Ltd. v. Jesraj Patwari (Ind.); **8. Carr.** p. 286  
 Great Indian Peninsular Ry. Co. v. Kashinath Chimaji (Ind.); **34. Mast. & S.** pp. 776, 777, 782  
 Great North Insurance Co., *Re, Painter's Case* (Can.); **9. Coys.** p. 324  
 Great Northern Ry. Co. v. L. E. P. Transport & Depository, Ltd. (1922); **8. Carr.** Nos. 5a, 90a, 234a, 896a  
 Great Southern & Western Ry. Co. of Ireland v. R. (1924); **16. Cr. Pract.** No. 323a; **17. Dep.** No. 714  
 Groat West Farms, Ltd. v. Hansberger (Can.); **1. Agcy.** p. 50  
 Great West Life Assurance Co., *Re, Re Christie Estate* (Can.); **35. Mtge.** p. 812  
 Great West Life Assurance Co. v. Campbell (Can.); **7. Bonds**, p. 269; **35. Mtge.** p. 809  
 Great West Permanent Loan Co., *Re, Re Winding-Up Act* (Can.); **10. Coys.** p. 342  
 Great West Permanent Loan Co. & Winding-Up Act, *Re* (Can.); **10. Coys.** p. 342  
 Great West Saddlery Co. v. Canadian Ingot Iron Co. (Can.); **21. Estpl.** p. 583  
 Great Western Ry. Co. v. Birmingham & Gloucester Ry. Co. (1844); **28. Injon.** No. 105a  
 — v. Durnford (James) & Sons, Ltd. (1928); **26. Guar.** No. 1826a  
 — v. Jones (Can.); **24. Exors.** p. 617  
 — v. Laing (J.) & Co., Ltd. (1922); **8. Carr.** No. 1331a  
 — v. Mostyn (Owners), The Mostyn (1928); **30. Jdgmts.** Nos. 498a, 569c, 588b; **36. Negl.** No. 706



- Greater Britain Products Development Corpn., Ltd., *Re* (1924); **9. Coys.** No. 1411a
- Grech v. Board of Trade (1923); **2. Arbn.** No. 1885b
- Grecian, The (1902); **1. Adm.** No. 1603b
- Green v. Glicksten (J.) & Son, Ltd. (1928); **28. Inc. T.** No. 204b
- v. Premier Glynrhonwy Slate Co., Ltd. (1928); **34. Mast. & S.** No. 3359c
- v. Tress (Can.); **31. L. & T.** p. 743
- Greenaway v. Canadian Pacific Ry. Co. (Can.); **26. Hghys.** p. 647
- Greenberg v. Cooperstein (1926); **9. Coys.** No. 272a; **10. Coys.** No. 8581a
- Greene, *Re, Re* Whitworth, *Re* E. A., *Re* Fraser, *Re* Wood (1928), **33. Lunat.** No. 529b
- v. Ruggles (Can.); **10. Coys.** p. 337
- Greenhalgh (W. P.) & Sons v. Union Bank of Manchester (1924); **3. Bank.** No. 289a
- Greenham v. Watt (Can.); **12. Contr.** p. 396
- Greenhill v. Federal Insurance Co. (1927); **29. Insee.** No. 1265a
- Greenlaw v. King (1841); **25. Fraud. Conv.** No. p. 554
- Greenock (Provost) v. Peters (Scot.); **19. Eccl.** p. 554
- Greenock Corpn. v. Admiralty, The (Scot.); **38. Pub. Auth.** p. 845
- Greenstreet v. Paris (Can.); **9. Coys.** p. 329; **38. Rates,** p. 853
- Greenway v. A.-G. (1927); **3. Bastj.** No. 130d; **16. Courts,** No. 280a
- Greenwood v. Rothwell (1844); **18. Discy.** No. 1039a
- Greenwood & Greenwood v. Welford (Can.); **1. Agcy.** pp. 62, 63
- Greer v. Downs Supply Co. (1927); **1. Agcy.** No. 2126a; **20. Eqty.** No. 661a
- v. Godson (Can.); **1. Agcy.** p. 59
- v. Mulmur (Township) (Can.); **26. Hghys.** p. 649
- Gregg v. Richards (1926); **19. Easmt.** No. 186a
- Greswolde-Williams v. Newcastle-upon-Tyne Corpn. (1927); **11. Comp. Pche.** No. 595a
- Greville v. Attkins (1829); **17. Deeds,** No. 1235
- Grey's (Lord) Case (1511); **14. Crim.** No. 960a
- Grier v. Georgas (Can.); **7. Bldg. Conls.** p. 274
- Griesheim Elektron, Ltd., *Re* (1921); **2. Aliens,** Nos. 195a, 405a
- Grieve McGlory, Ltd. v. Dome Lumber Co., Ltd. & Thompson (Can.); **17. Deeds,** p. 509
- Griffin v. Cape Breton Electric Co. (Can.); **8. Carr.** p. 289
- v. State of South Australia (Aus.); **17. Dep.** pp. 521, 522; **18. Discy.** p. 533
- Griffith v. Frederickson (Can.); **1. Agcy.** p. 60
- Griffiths, *Re, Jones v. Jenkins* (1926); **5. Bkpcy.** No. 5922a
- v. Anderson (Can.); **1. Agcy.** p. 58
- v. Hughes (1817); **30. Idgmts.** No. 366a
- Griffiths (George W.) Co., *Re* (Can.); **9. Coys.** p. 320
- Grindell v. Bass (1920); **1. Agcy.** No. 164a
- Grindley v. Blakie (Can.); **21. Exon.** p. 589
- Grinham v. Davies (1928); **30. Juries,** No. 423b; **36. Negl.** No. 842b
- Grisewood & Smith's Case (1859); **9. Coys.** No. 2344a
- Grocery Specialty Co., *Re, Re* Shulman (Can.); **5. Bkpcy.** p. 233
- Grocock v. Grocock (1920); **3. Bastj.** No. 367a
- Groebel v. Hungarian Property Administrator (1925); **2. Aliens,** No. 215p
- Groedel v. Hungarian Property Administrator (1927); **2. Aliens,** Nos. 49h, 49l
- Groning v. Crockett (1811); **2. Aliens,** No. 493a
- Groom, *Re* (1869); **22. Evid.** Nos. 6053a, 6066a
- v. West (1838); **4. Bkpcy.** No. 3750a
- Gross, *Re, Ex p.* Adair (1871); **3. Bank.** No. 347
- Gross, Sherwood & Heald, Ltd. v. Essex County Council (1927); **11. Comp. Pche.** No. 702a
- Grothe v. Montreal Corpn. (Can.); **2. Arbn.** p. 133
- Grothkop v. Grothkop (N.Z.); **11. Confl.** p. 365
- Grove-Grady, *Re, Plowden v. Lawrence* (1928); **8. Char.** No. 204a
- Grundy v. Broadbent (Ir.); **2. Aliens,** p. 109
- Grunwaldt, *Ex p., Re* Lee (1920); **5. Bkpcy.** Nos. 8778a, 9032a, 9109a, 9198a
- Guarantee Co. of North America, *Ex p., Re* Coughlin & Co. (Can.); **4. Bkpcy.** pp. 202, 206
- Guaranteed Batteries, Ltd., *Re* (Can.); **4. Bkpcy.** p. 206
- Guatemala (Republica de) v. Nunez (1927); **8. Chos.** No. 27a
- Guelph Carpet Mills Co. v. Guelph Corpn. (Can.); **22. Evid.** p. 603
- Guelph Worsted Spinning Co. v. Guelph Corpn. (Can.); **22. Evid.** p. 603
- Guettler v. Can. Internat'l Paper Co. (Can.); **36. Pats.** p. 826
- Guggisberg v. Weber (Can.); **6. B. of Exch.** p. 247
- Guiborn v. Fellows (1717); **6. B. of Exch.** No. 946a; **12. Contr.** No. 2102a
- Guilbault v. Brothier (Can.); **21. Estpl.** p. 577
- Guilday v. Winnipeg Electric Ry. Co. (Can.); **8. Carr.** p. 289
- Guildford Trust, Ltd. v. Goss (1927); **6. B. of Exch.** No. 588a
- v. Pohl & Maritch (1928); **6. B. of Exch.** No. 1054a
- Guilding v. Morel Brothers, Cobbett & Sons, Ltd. (1888); **28. Injon.** No. 929a
- Guilfoil v. McAvity (T.) & Sons, Ltd. (Can.); **36. Negl.** p. 815
- Guinand v. Naish (1845); **37. Powers.** No. 637a
- Guisti Patents & Engineering Works, Ltd. v. Maggs (1923); **13. Cty. Cts.** No. 980a; **16. Cr. Pract.** Nos. 3131b, 3168b
- Gulbenkian v. Gulbenkian (1927); **27. H. & W.** No. 5623b
- Gump, *Re* (Can.); **4. Bkpcy.** pp. 201, 202
- Gunn v. Mackhenry (1750); **16. Cr. Pract.** No. 3185a
- Gunning v. Lusby (No. 1) (Can.); **1. Agcy.** p. 55
- Gunns, Ltd. v. Wark (Can.); **6. B. of Exch.** p. 250
- Gunsbourg, *Re, Ex p.* Cook (1920); **5. Bkpcy.** No. 5775a
- , *Re, Ex p.* Trustee (1920); **5. Bkpcy.** No. 5775a
- Gunsolly v. Engstrom (Can.); **6. B. of Exch.** p. 253
- Guran Ditta v. Ram Ditta (Ind.); **27. H. & W.** p. 657
- Gurditta v. R. (Can.); **14. Crim.** p. 460
- Gurney v. James (Can.); **21. Exon.** p. 587
- Gushowaty v. Gushowaty & Jones (Can.); **27. H. & W.** p. 663
- Gussage All Saints & Gussage St. Michael, Dorset, Parishes, *Re* (1925); **19. Eccl.** No. 2443a
- Guthrie v. Stewart (Scot.); **31. L. & T.** p. 745
- Gutieres, *In the Goods of* (1869), **11. Confl.** No. 587b
- Gutierrez, *In the Goods of* (1869); **11. Confl.** No. 587b
- Guy St. Crossing Case, Canadian National Rys. v. Montreal Tramways (Can.); **38. Rys.** p. 849
- Guyot & Vigouret & Award made by Gosselin, *Re, Re* Arbitration Act (Can.); **2. Arbn.** p. 143
- Gwydyr Castle, *Re* (S. Af.); **1. Adm.** pp. 13, 18

## H.

- H. v. H. (1928); **11. Confl.** Nos. 891a, 899b, 903b; **21. Estpl.** No. 10a
- H. G. Hamilton Pty., Ltd. v. Rae (Aus.); **12. Contr.** p. 403

- H. J. Webb & Co. (Smithfield, London), Ltd., *Re* (1922); **10. Coys.** Nos. 6460, 6936
- H.M. Advocate *v.* Aitken (Scot.); **14. Crim.** p. 453
- *v.* Anderson (Scot.); **15. Crim.** p. 470
- *v.* Bickerstaff (Scot.); **14. Crim.** pp. 445, 452
- *v.* Carson (Scot.); **14. Crim.** p. 457
- *v.* Keen (Scot.); **14. Crim.** p. 453
- *v.* Lee (Scot.); **14. Crim.** p. 454
- *v.* Lieser (Scot.); **14. Crim.** p. 453
- *v.* M'Fadyen (Scot.); **14. Crim.** p. 453
- *v.* Macphie (Scot.); **14. Crim.** p. 454
- *v.* Montgomery (Scot.); **15. Crim.** p. 471
- *v.* Ritchie (Scot.); **14. Crim.** p. 440
- *v.* Savage (Scot.); **15. Crim.** p. 469
- *v.* Sharp (Scot.); **14. Crim.** p. 439
- Haack *v.* Martin (Can.); **17. Damgs.** p. 505
- Haberlack *v.* Burr (Can.); **30. Intox.** p. 718
- Habib Rouji *v.* Standard Aluminium & Brass Works, Ltd. (Ind.); **9. Coys.** p. 326
- Hachborn, *Re* (Can.); **4. Bkpcy.** p. 202
- Hack, *Re*, Beadman *v.* Beadman (1925); **13. Chlds.** No. 1533a
- Hackney *v.* Lyne (Can.); **1. Agcy.** p. 64
- Hackney Pavilion, Ltd., *Re* (1924); **9. Coys.** No. 2389
- Haddon, *Re*, *Re* Administration Act (Can.); **28. Infts.** p. 697
- Hedwig, The (1853); **1. Adm.** No. 1351a
- Haffize *v.* Jacobson (S. Af.); **1. Agcy.** p. 40
- Hagel & Law Society of British Columbia, *Re* (Can.); **3. Barr.** p. 181
- Hagelberg (W.) Akt., *Re* (1916); **2. Aliens**, No. 219
- Hagen *v.* Ferris (Can.); **40. S. Land**, p. 867
- Hagerman (Doe d.) *v.* Strong (Can.); **21. Exon.** p. 589
- Hagersville (Village) *v.* Hambleton (Can.); **21. Estpl.** p. 578; **38. Rates**, p. 853
- Haggerty *v.* Wilsons & Clyde Coal Co. (Scot.); **34. Mast. & S.** p. 770; **Mines**, pp. 801, 802
- Haglund *v.* Derr (Can.); **32. Lien**, p. 754
- Hahn *v.* Public Trustee (1925); **2. Aliens**, No. 49b
- Haji Ah Jon *v.* Abdul Jalil Khan (Ind.); **2. Aliens**, pp. 98, 108
- Haldane *v.* Sinclair (Scot.); **31. L. & T.** p. 744
- Hales *v.* A.-G., *Re* Chapman (1922); **8. Char.** Nos. 740a, 1424a, 1449a
- *v.* Thomson (Can.); **1. Agcy.** p. 62
- Haley *v.* Comox S.S. (Can.); **1. Adm.** p. 17
- Halifax (City) *v.* Jones (Can.); **17. Dep.** p. 520
- Halifax & Cape Breton Coal & Ry. Co. *v.* Gregory (Can.); **12. Contr.** p. 406
- Halifax Automobile Co. *v.* Drew (Can.); **3. Auct.** p. 152
- Halifax Banking Co. *v.* Matthew (Can.); **25. Fraud. Conv.** p. 627
- Halifax Corp'n. *v.* Brown (Can.); **14. Crim.** p. 457
- *v.* Fairbanks' Estate (1927); **17. Dep.** No. 135c
- Halifax (City) Corp'n. *v.* Western Assurance Co. (Can.); **17. Dep.** p. 518
- Halifax Graving Co. *v.* R. (Can.); **12. Contr.** p. 388
- Halifax's (Lord) Case (undated); **22. Evid.** Nos. 1382a, 1526a
- Hall, *Re* (Can.); **16. Cr. Pract.** p. 491
- *v.* Ball (Can.); **3. Barr.** p. 181
- *v.* Dyson (1852); **4. Bkpcy.** No. 5035b
- *v.* Electric Comrs. of Lawrencetown (Can.); **2. Arbn.** p. 145
- *v.* Goldstone (N.Z.); **12. Contr.** pp. 392, 394; **17. Deeds**, p. 510
- *v.* Hall (1850); **36. Prtnrs.** Nos. 1480a, 1496a
- *v.* Inland Revenue Comrs. (1926); **28. Inc. T.** No. 666
- *v.* Jenkinson (1813); **39. Recrs.** No. 451a
- *v.* Padley (1923); **12. Contr.** No. 3784a
- *v.* Smith (1808); **20. Eqq.** No. 719a
- Hall *v.* Doe d. Surtees (1822); **32. Limit. of A.** No. 1353a
- *v.* Taylor (Can.); **33. Mags.** p. 765
- *v.* Wightman (Ir.); **2. Animals**, p. 122
- Hall Coal Co. *v.* Bayusona, The (Can.); **1. Adm.** pp. 21, 22
- Hallen *v.* Spaeth (1923); **2. Arbn.** No. 305a
- Hallenstein, *Re*, Halsted *v.* Blank (1922); **2. Aliens**, Nos. 215d, 237c
- Halligan *v.* Lawson (Aus.); **2. Arbn.** p. 144
- Halls *v.* Mitchell (Can.); **32. Libel**, pp. 749, 751, 752
- Halse *v.* Peters (1831); **35. Mtge.** No. 623a
- Halsted *v.* Blank, *Re* Hallenstein (1922); **2. Aliens**, Nos. 215d, 237c
- Halton (County) *v.* Trafalgar (Township) (Can.); **13. Corpns.** p. 430
- Hamar, *Re*, *Ex p.* McGuinty & Co. (Can.); **11. Confl.** p. 376
- Hambro *v.* Burnand (1903); **1. Agcy.** No. 2139a
- *v.* — (1904); **1. Agcy.** No. 2139a
- Hambrook *v.* Stokes Brothers (1925); **1. Action**, No. 205b; **17. Damgs.** No. 146a
- Hamburg *v.* Cape Breton Elec. Co. (Can.); **31. L. & T.** p. 734
- Hamel *v.* Patenaude (Can.); **1. Agcy.** p. 57
- Hamelin *v.* Phillips (Can.); **16. Courts**, p. 480
- Hamer, *Re*, *Ex p.* Royal Bank of Canada (Can.); **5. Bkpcy.** p. 243
- Hamilton, *Re*, FitzGeorge *v.* FitzGeorge (1921); **5. Bkpcy.** No. 5909a
- *v.* Hamilton Steel Co. (Can.); **10. Coys.** p. 342
- *v.* Houghton (1820); **30. Jdgmts.** No. 407a
- *v.* Lightbody (Can.); **38. Real Prop.** p. 856
- *v.* Montreal Assurance Co. (Can.); **29. Insec.** p. 709
- *v.* R. (Can.); **11. Const. L.** p. 380
- *v.* Railton (Can.); **8. Chos.** p. 314
- *v.* Street (Can.); **18. Discy.** p. 532
- Hamilton & Oakes, *Re* (Can.); **4. Bkpcy.** pp. 205, 206; **5. Bkpcy.** pp. 225, 235
- Hamilton Gear & Machine Co. *v.* Lewis Brothers (Can.); **12. Contr.** pp. 389, 402, 403; **17. Damgs.** pp. 500, 502, 505
- Hamilton (William) Manufacturing Co. *v.* Victoria Lumbering & Manufacturing Co. (Can.); **22. Evid.** p. 603
- Hamilton Provident Loan & Investment Co. *v.* Smith (Can.); **32. Lien**, p. 754
- Hamilton (H. G.) Pty., Ltd. *v.* Rae (Aus.); **12. Contr.** p. 403
- Hamilton Trusts, *Re* (Can.); **26. Guar.** p. 642
- Hamilton-Gell *v.* White (1922); **2. Agric.** No. 266i
- Hammond, *Re* (Can.); **8. Char.** pp. 305, 307
- Hampstead Guardians *v.* Barclays Bank, Ltd. (1923); **3. Bank.** No. 692b
- Hanbury, *Ex p.*, *Re* Wegg (1843); **5. Bkpcy.** No. 7735
- Hancock *v.* Midland Junction Municipality Corp'n. (Aus.); **20. Electric**, p. 564
- Hancock & Co., Ltd. *v.* Johnstone (N.Z.); **6. B. of Exch.** p. 254
- Hands *v.* Simpson, Fawcett & Co., Ltd. (1928); **34. Mast. & S.** Nos. 530a, 565a
- Handy *v.* Carruthers (Can.); **2. Agric.** p. 89
- Haney *v.* Canadian Northern Ry. Co. (Can.); **2. Arbn.** p. 145
- Hankey & Co., Ltd. *v.* Vernon (Can.); **21. Exon.** p. 591
- Hanks *v.* Coombes (1928); **36. Pats.** Nos. 308b, 804a
- Hanna *v.* Costerton (Can.); **1. Action**, p. 1
- Hanning *v.* Lowe, *Re* Gough (1927); **5. Bkpcy.** No. 7693a
- Hansen *v.* Lechtzier (Can.); **1. Agcy.** p. 66



- Hansen v. Nugget Publishers, Ltd. (Can.); **32. Libel**, p. 751
- Hansford v. London Express Newspaper, Ltd. (1928); **29. Insce.** No. 3157b
- Hanson v. Gleaner, Ltd. (Can.); **18. Discy.** p. 536; **22. Evid.** pp. 602, 603
- v. Parks (Can.); **7. Bldg. Conts.** p. 275
- Hanton v. Royal Trust Co. (Can.); **1. Agey.** p. 63
- v. Stedman (Can.); **1. Agey.** pp. 38, 57
- Hantsport Fruit Co., Ltd. v. Coldwell (Can.); **12. Contr.** p. 413
- Harcourt (Doe d.) v. Roe (1813); **21. Exon.** No. 1706a; **31. L. & T.** No. 6315a
- Hardaker v. Tjabring (S. Af.); **32. Libel**, p. 749
- Hardie & Lane v. Chiltern (1927); **16. Courts**, Nos. 831a, 834a
- Hardie & Lane, Ltd. v. Chiltern (1928); **12. Contr.** No. 4676a; **16. Courts**, Nos. 831a, 834a
- Hardisty & Ribstone, Re, Re Local Option Provision of Government Liquor Control Act of Alberta (Can.); **30. Infor.** p. 721
- Hardman v. McLeod (Aus.); **17. Damgs.** p. 507; **35. Misrep.** p. 804
- Hardy, Re (No. 2) (N.Z.); **5. Bkpcy.** p. 228
- v. Edmonton Corpn. (Can.); **38. Pub. Hlth.** p. 847
- Hare v. Taylor (1837); **2. Animals**, No. 486a
- Hargreaves v. Hargreaves (1926); **27. H. & W.** No. 5624a
- v. Shuttleworth, Re Nightingale (1927); **22. Evid.** No. 1489a
- Hari Chandana Joga Deva v. Hindustan Co-Operative Insurance Society, Ltd. (Ind.); **9. Coys.** p. 333
- Hari Laxman Joshi v. Secretary of State for India (Ind.); **12. Contr.** p. 406
- Harichand Mancharam v. Govind Luxman Gokhale (Ind.); **12. Contr.** p. 390
- Harkaway, The (1928); **41. Ship.** No. 5400a
- Harker v. Britannic Assurance Co., Ltd. (1928); **25. Fr. Soc.** No. 175a
- Harkesh Singh v. Hardevi (Ind); **38. Real Prop.** p. 855
- Harley v. Sholl (1925); **16. Cntmpt.** Nos. 182a, 709a
- Harlow, The (1922); **1. Adm.** No. 87a
- Harlow, The, Cory Lighterage, Ltd. v. Dalton (Owners) (1922); **1. Adm.** No. 1536a
- Harman, Re, Lloyd v. Tardy (1894); **11. Confl.** No. 626a
- Harman's Case (1875); **12. Contr.** No. 4985
- Harmonic Resonator, Ltd. v. Walton (Aus.); **9. Coys.** p. 322
- Harms Incorporated v. Embassy Club, Ltd. (1927); **13. Coprt.** No. 483a
- Harms Incorporated & Chappell & Co. v. Martans Club (1927); **13. Coprt.** No. 483a
- Harnett v. Fisher (1927); **33. Lunat.** Nos. 1856a, 1856c
- Harold Drabble, Ltd. v. Hycolite Manufacturing Co. (1928); **13. Coprt.** No. 229b
- Harper v. Associated Newspapers, Ltd. (1927); **29. Insce.** No. 3157a
- v. Harper (Can.); **23. Exors.** p. 612
- Harrington, Ex p., R. v. Wilson (Can.); **14. Crim.** p. 443
- v. Harrington (Can.); **27. H. & W.** p. 657
- Harrington Motor Co., Re, Ex p. Chaplin (1928); **10. Coys.** No. 6056a
- Harris, Re (Can.); **38. Real Prop.** p. 856
- v. Catchpool, Re Catchpool (1928); **40. Sttlmts.** No. 3139a
- v. Chapman (1868); **22. Evid.** No. 2480a
- v. Dublin & South Eastern Ry. Co. (Ir.); **8. Carr.** p. 287
- v. Garson (Can.); **11. Confl.** p. 376
- Harris v. Griffith, Re Anderson-Berry (1928); **20. Eqq.** No. 2702a; **23. Exors.** No. 2744a
- v. Harris (N.Z.); **27. H. & W.** pp. 666, 667
- v. Holler (1849); **22. Evid.** No. 4228a
- v. Lerner (Can.); **6. B. of Exch.** p. 256
- v. Lucas (1919); **2. Animals**, No. 563a
- v. Manor Powis Coal Co., Ltd. (Scot.); **34. Mast. & S.** p. 792
- v. Myers (Can.); **16. Cntmpt.** p. 478
- v. R. (S. Af.); **14. Crim.** pp. 440, 452, 454
- Harris Abattoir Co. v. Aledo (Owners) (Can.); **1. Adm.** pp. 20, 23
- Harrison, Ex p., Re Barley (1923); **4. Bkpcy.** No. 3152a
- , Re (Can.); **4. Bkpcy.** p. 209
- , Re, Day v. Harrison (1920); **3. Bank.** No. 391a
- v. Armstrong (Ir.); **2. Animals**, p. 121
- v. Carberry Elevator Co. (Can.); **7. B. of Sale**, p. 262
- v. Great Western Ry. Co. (1875); **8. Carr.** No. 833a
- v. Harbottle, Re Vulcaan Coal Co. (1922); **2. Aliens**, Nos. 223c, 223f
- v. Harrison (Can.); **2. Arbn.** pp. 129, 130, 142
- v. King (Can.); **18. Discy.** p. 535
- v. King (No. 2) (Can.); **18. Discy.** p. 536
- v. McGlashan (Can.); **24. Exors.** p. 616
- v. McSheehan (1885); **17. Damgs.** No. 260a
- v. Ridgway (1925); **2. Agric.** No. 29d
- Harrison Bay Co., Ltd. v. Gauthier (Can.); **17. Dep.** p. 524
- Harrison, etc. v. Crespian (Aus.); **2. Arbn.** p. 136
- Harrods, Ltd. v. Harrod (R.), Ltd. (1924); **9. Coys.** No. 228a
- v. Stanton (1923); **7. B. of Sale**, No. 710a
- Harrow School Governors & Murray's Contract, Re (1927); **8. Char.** No. 629a
- Harrup v. Bayley (1856); **33. Mags.** No. 1015
- Hart, Ex p., Re Wigzell (1921); **4. Bkpcy.** Nos. 1579a, 1893a
- v. Barclays Bank, Re Wigzell (1921); **4. Bkpcy.** No. 1893a
- v. Hanson (Can.); **31. L. & T.** p. 741
- v. Nadeau (Can.); **31. L. & T.** p. 741
- v. Reynolds (Can.); **21. Exon.** p. 588
- v. Riversdale Mill Co. (1928); **24. Faci.** No. 264b; **30. Jdgmts.** No. 679a
- v. Ruttan (Can.); **21. Exon.** p. 586
- Harvey, Re (Aus.); **1. Action**, p. 1
- v. Canadian Pacific Ry. Co. (Can.); **22. Evid.** p. 602
- v. Collett (1846); **10. Coys.** No. 8576a
- v. Sylvia Court, Ltd. (Can.); **18. Discy.** p. 534
- Harvey & Co. v. Herefordshire County Council (1920); **2. Agric.** No. 974a
- Harvey & Mann, Re (1920); **2. Agric.** No. 268b
- Harwood v. Astley (1804); **32. Libel**, No. 525a
- Hasan v. Zaman (Ind.); **26. Hghys.** p. 647
- Hascall v. Royal Bank of Canada (Can.); **7. B. of Sale**, p. 262
- Haskell v. Marlow (1928); **31. L. & T.** No. 4739a
- Haslam v. Cron, Olivant's Claim (1871); **3. Bastly.** No. 24a
- v. Diggles (1824); **7. Bonds**, No. 155a
- Haslett, Re, McKenna v. Haslett (Aus.); **24. Exors.** p. 617
- Hastie, Re (N.Z.); **4. Bkpcy.** p. 199
- Hastings (Lord) v. Astley (1861); **35. Mtge.** No. 505a
- Hastings v. Hastings (N.Z.); **11. Confl.** p. 372
- v. Leonidas (Aus.); **31. L. & T.** p. 734
- v. Orde (1840); **28. Infts.** No. 657a
- (Doe d.) v. Waters (1850); **30. L. & T.** No. 330a
- Hatch v. Fick (Can.); **2. Agric.** p. 91
- Hate v. Hate (Can.); **27. H. & W.** p. 660

- Hatfield & Co. v. Canadian Pacific Ry. (Can.) (1926); **8. Carr.** p. 286
- Hatfield & Co. v. Cronkhite (Can.); **17. Damgs.** p. 505
- Hatfield & Scott, Ltd. v. Canadian Pacific Ry. Co. (Can.) (1921); **8. Carr.** p. 286
- Hatimbhai Hassanally v. Eduljee Dinshaw (Ind.); **17. Dep.** p. 523
- Hatt v. Verdier (1770); **4. Bkpcy.** No. 5399a
- Hatter v. Bowman's Bldrs. Supplies, *Re* Morris (Can.); **29. Insce.** p. 710
- Hatton v. Akt. Durban Hansen (Scot.); **1. Adm.** pp. 21, 28, 29
- v. Denison (1926); **5. Bkpcy.** No. 8281a
- v. Morton (Can.); **2. Animals,** p. 121
- Haw, *Re* (N.Z.); **5. Bkpcy.** p. 219
- v. Haw's Official Assignee (N.Z.); **4. Bkpcy.** p. 206
- Hawker v. Royal Bank of Canada (Can.); **3. Bank.** p. 177
- Hawkins, *Ex p.*, *Re* Ford (1928); **5. Bkpcy.** No. 6882a
- Hawkins, *Re*, Hawkins v. Dew & Sons (1926); **19. Educ.** No. 293a
- Hawkins v. Gaden (Aus.); **1. Agcy.** p. 42
- v. Woodgate (1844); **29. Insce.** No. 3052a
- Haworth v. Webb (Can.); **2. Animals,** p. 119
- Hawthorne, *Ex p.*, *Re* Nathan Crystal (Can.); **7. B. of Sale,** p. 265
- Hay v. Allen (Can.); **6. B. of Exch.** p. 251
- v. Bain (Can.); **22. Evid.** p. 603
- Hayes v. Bell (1924); **5. Bkpcy.** No. 8782b
- v. Standard Bank (Can.); **3. Bank.** p. 170
- Hayes Williams, *Re* (Aus.); **22. Evid.** p. 602
- Hayford v. Forrester-Paton (Scot.); **32. Libel,** p. 751
- Haygarth v. Webb (Can.); **1. Agcy.** p. 56
- Haynen v. Mundle (Can.); **3. Bailmt.** p. 156
- Haynes v. Haynes (Can.); **27. H. & W.** pp. 664, 665
- v. Hayton (1828); **22. Evid.** No. 3802a
- Haynes Smith, *Ex p.*, *R. v.* Church Assembly Legislative Committee & Church Assembly (1928); **19. Eccl.** No. 1a
- Hays v. O'Connor (Can.); **29. Intpr.** p. 716
- Haythornthwaite & Sons, Ltd. v. Kelly (1927); **28. Inc. T.** No. 632d
- Healing v. Webb, *Re* Cunningham (1924); **11. Confl.** No. 526a
- Healing (A. G.) & Co. Proprietary, Ltd. v. Harris (Aus.); **36. Negl.** p. 817
- Healy v. Saunders (Aus.); **1. Agcy.** p. 58
- Heap v. Motorists' Advisory Agency, Ltd. (1923); **1. Agcy.** Nos. 488a, 495b, 505a, 507a
- Hearn v. Southern Ry. Co. (1925); **8. Carr.** No. 685b
- Heaslip v. Hasemer (1927); **28. Inc. T.** No. 540a
- Heath v. Parkinson (1926); **1. Agcy.** No. 1848a
- v. Portage La Prairie Corp'n. (Can.); **22. Evid.** p. 599
- Heather v. Maddock, *Re* Municipal Act (Can.); **20. Elect.** p. 562
- Heaton v. Flater (Can.); **12. Contr.** p. 391
- Heaton & Dugard, Ltd. v. Cutting Brothers, Ltd. (1925); **10. Coys.** No. 4716a
- Hecht, *Re*, *Re* Succession Duty Act (Can.); **21. E. D.** pp. 575, 576
- Heddle v. Bank of Hamilton (Can.); **3. Bailmt.** p. 156
- Hedley v. Scissons (Can.); **2. Agric.** p. 91
- Hedwig, *The* (1853); **1. Adm.** No. 1351a
- Hegler v. MacNab (Can.); **18. Discy.** p. 534
- Heidner & Co. v. Hanna Nielsen, *The* (Can.); **18. Discy.** p. 534
- Heisier v. Clarke (1709); **25. Fraud. Conv.** No. 619a
- Heistein & Sons v. Polson Iron Works, Ltd. (Can.); **2. Arb'n.** p. 136
- Heiwa Maru, *The* v. Bird & Co. (Ind.); **1. Adm.** p. 35
- Hellet v. South African Railways & Harbours (S. Af.); **18. Discy.** p. 533
- Hemstreet v. North West Biscuit Co. (Can.); **9. Coys.** p. 336
- Henderson, *In the Goods of* (1850); **11. Confl.** No. 563a
- , *Re* (Can.); **18. Descr.** p. 530; **38. Rates,** p. 853
- v. Bailleul (Can.); **33. Mal. Pros.** p. 768
- v. Gesner (Can.); **6. B. of Exch.** p. 259
- v. Graves (Can.); **20. Eqq.** p. 566
- v. Henderson & McKay (Can.); **27. H. & W.** p. 666
- v. Kane & Pioneer Club (N.Z.); **8. Clubs,** p. 316
- v. Mair (Scot.); **36. Negl.** p. 816
- Henderson (J. B.) & Co., *Ex p.*, *Re* Comforter & Cushion Manufacturing Co. (Can.); **7. B. of Sale,** p. 263
- Heney Co., Ltd. v. Birmingham (Can.); **26. Guar.** p. 641
- Hennig v. Trautman (Can.); **19. Eccl.** p. 548
- Hennigar v. Hennigar (Can.); **17. Damgs.** p. 507
- Henry v. Dickie (Can.); **12. Contr.** p. 398
- v. Sexsmith (Can.); **7. B. of Sale,** p. 266
- v. Sharp (Can.); **24. Exors.** p. 618
- Henry Dean & Sons (Sydney), Ltd. v. P. O'Day Proprietary, Ltd. (Aus.); **39. S. Goods,** p. 864
- Henry, Ltd. v. M'Glade (Ir.); **30. L. & T.** p. 732
- Henshall v. Widdison (1923); **7. B. of Sale,** No. 237a
- Henton v. International Harvester Co. (Can.); **7. B. of Sale,** pp. 262, 263
- Hepenstal v. Merritt (Can.); **22. Evid.** p. 603
- Herbert, *In the Goods of* (1926); **23. Exors.** No. 1883a
- , *Re* (1926); **23. Exors.** Nos. 1431a, 1883a
- Herbert's Trustee v. Higgins (1926); **5. Bkpcy.** No. 7546a; **7. B. of Sale,** No. 420a
- Hercules Rubber Co., *Re*, *Ex p.* Allan (Can.); **4. Bkpcy.** p. 210
- Hereford Municipal Election Petition, *Re*, *Ex p.* Garrold (1899); **20. Elect.** No. 1626
- Heritable Securities & Mtge. Investment Assocn., Ltd. v. Glasgow Assessor (Scot.); **38. Rates,** p. 852
- Hernandez v. Bamfield, *The* (Can.); **1. Adm.** p. 30
- Herr v. Weston (Can.); **38. Real Prop.** p. 856
- Herron v. Mayland (Can.); **17. Deeds,** p. 510; **35. Mtge.** p. 809
- Hersh, *Re*, *Ex p.* Goldstein (Can.); **4. Bkpcy.** p. 199; **5. Bkpcy.** p. 232
- Hervey v. French (Can.); **26. Hghys.** p. 650
- Hess v. Ross (Can.); **35. Misrep.** p. 804
- Hetherington v. Dublin & Blessington Steam Tramway Co. (Ir.); **34. Mast. & S.** p. 780
- Hetherington v. Security Export Co., Ltd. (Can.); **16. Cr. Pract.** p. 495
- Hett, *In the Goods of* (1842); **23. Exors.** No. 931
- Heward, *Re* (1845); **16. Cr. Pract.** No. 926a
- Hewett v. Essex County Council (1928); **11. Comp. Pche.** Nos. 274a, 288a, 289a
- v. Jermyn (Can.); **24. Exors.** p. 616
- Hewitt v. Biffen (1925); **22. Evid.** No. 5407a
- v. Essex County Council (1927); **11. Comp. Pche.** No. 727a
- Hewitt & Hewitt, *Re* (Can.); **11. Confl.** p. 370
- Hewson v. Ontario Power Co. (Can.); **17. Dep.** p. 514
- Hewsons, *The*, Geipel v. Cornforth (1872); **1. Adm.** No. 40
- Hextall Estate, *Re* (Can.); **24. Exors.** p. 617
- Heyden v. Castle (Can.); **38. Rates,** p. 853

- Heyward, *Re* (1845); 10. *Cr. Pract.* No.  
 Heywood, *Ex p.*, *Re* Holmes (1815); 8. *Chos.* No.  
 — *v.* Waring (1815); 8. *Chos.* No. 250a  
 Hianson, *Ex p.*, *Ex p.* Moller, *R. v.* Bannstead  
 (Can.); 2. *Aliens*, pp. 113, 114  
 Hibbard, *Ex p.*, *Re* Fredericke & Whitworth  
 (1927); 4. *Bkpcy.* No. 923a  
 Hibberd *v.* Jamieson (Can.); 33. *Lunat.* p. 764  
 Hickerson *v.* Parrington (Can.); 5. *Bkpcy.* p. 228  
 Hickey *v.* McGuinness (Can.); 29. *Insce.* p. 704  
 Hickin, *Ex p.*, *Re* Ellins (1850); 4. *Bkpcy.* No.  
 4295a  
 Hickman *v.* Kent or Romney Marsh Sheepbreeders'  
 Assocn. (1920); 1. *Action*, Nos. 561b, 584a  
 — *v.* Moose Jaw (City) (Can.); 26. *Hghys.* p. 651  
 Hickman Grain Co. *v.* Canadian Pacific Ry. Co.  
 (Can.); 8. *Carr.* p. 287  
 Hickson, *Re* (Can.); 11. *Confl.* pp. 366, 374; 33.  
*Lunat.* p. 763  
 Hiddleston *v.* Wilson (Scot.); 19. *Educ.* p. 556  
 Higby *v.* Cummings (Can.); 26. *Guar.* p. 641  
 Higgins *v.* Ewing's Trustees (Scot.); 22. *Evid.*  
 p. 604  
 — *v.* Mitchell (Can.); 1. *Agcy.* p. 61  
 — *v.* Warren (Ir.); 31. *L. & T.* p. 746  
 Higgins (W.), Ltd. *v.* Northampton County  
 Borough (1927); 13. *Corpn.* No. 1127b  
 Higginson & Arundel *v.* Pyman, Higginson &  
 Arundel *v.* Pyman (1926); 21. *Estpl.* No.  
 265a  
 Higginson & Arundel's Patent, *Re* (1927); 36.  
*Pats.* No. 2064a  
 Highland *v.* Sherry (Can.); 30. *Land Imp.* p. 730  
 Highland Glen, The (1927); 1. *Adm.* No. 914a  
 Hill, *Ex p.*, *Re* Bye-Law made by Prospect District  
 Council (Aus.); 22. *Evid.* p. 597  
 —, *Re*, *Ex p.* Holt & Co. (1921); 4. *Bkpcy.* No.  
 800a  
 — *v.* Grand Trunk Ry. Co. (Can.); 8. *Carr.*  
 p. 289  
 — *v.* Hill (Can.); 25. *Fraud. Conv.* p. 627  
 — *v.* Hochelaga Bank (Can.); 3. *Bank.* pp. 167,  
 168  
 — *v.* Macaulay (Can.); 38. *Rates*, p. 853  
 — *v.* Mallach (Can.); 2. *Animals*, p. 119  
 — *v.* Mathews (1925); 28. *Inc. T.* No. 99a  
 — *v.* Moisan (Can.); 36. *Pats.* p. 829  
 — *v.* Union Insurance Society, Canton, Ltd.  
 (Can.); 29. *Insce.* p. 707  
 Hillas (W. N.) & Co., Ltd. *v.* Rederi Akt. Acolus  
 (1926); 17. *Custom*, No. 544a  
 Hillman, *Re* (Can.); 16. *Cr. Pract.* pp. 489, 495  
 Hillman *v.* Imperial Bank of Canada (Can.); 18.  
*Discy.* p. 535  
 Hills *v.* Mitson (1853); 4. *Bkpcy.* No. 5039b  
 Hills *v.* Swift Canadian Co. (Can.); 1. *Agcy.* p. 73  
 Hilton *v.* Westminster Bank, Ltd. (1926); 3.  
*Bank.* No. 589a  
 Hin *v.* Purshotumdas & Co. (1923); 12. *Contr.*  
 No. 3101a  
 Hinchcliffe *v.* Baird & Botterell (Can.); 1. *Agcy.*  
 p. 48  
 Hincles *v.* Harris (1921); 2. *Animals*, No. 246a  
 Hincks *v.* Sowerby (Can.); 21. *Exon.* p. 586  
 Hindmarch *v.* Carterthorne Colliery, Ltd. &  
 Durham Colliery Owners' Mutual Pro-  
 tection Assocn. (1928); 29. *Insce.* No.  
 3205b  
 Hindustan Assurance & Mutual Benefit Society,  
 Ltd., Lahore *v.* Khalsa Bank, Ltd., Gujran-  
 wala (Ind.); 9. *Coys.* p. 330; 10. *Coys.*  
 p. 349  
 Hines *v.* Tousley (1926); 2. *Animals*, No. 274a  
 Hingston-Smith, *Re*, *Ex p.* MacPherson Estate  
 (Can.); 18. *Distr.* pp. 538, 539  
 Hinkey, *Ex p.*, *Re* Walker (N.Z.); 4. *Bkpcy.* p. 190  
 Hinks *v.* Riscoe (James) & Sons (1927); 34.  
*Mast. & S.* Nos. 2856b, 2890c  
 Hinshelwood *v.* Auld (Scot.); 22. *Evid.* p. 601  
 Hira Bibi *v.* Ram Hari Lal (Ind.); 17. *Deeds*, p.  
 508  
 Hirawanu *v.* Gardner (N.Z.); 2. *Agric.* p. 90  
 Hirjee Devraj & Co. *v.* Maung Lyun Shein (Ind.);  
 12. *Contr.* p. 399  
 Hirji Mulji *v.* Oheong Yue S.S. Co. (1926); 2.  
*Arbn.* No. 565a; 12. *Contr.* Nos. 3172a,  
 3199a  
 Hirsch *v.* Alton (Can.); 5. *Bkpcy.* p. 243  
 — *v.* Montreal Protestant Board School Comrs.  
 (Can.); 17. *Dep.* pp. 515, 521  
 Hitchcock *v.* Columbia Valley Land Co., Ltd.  
 (Can.); 1. *Agcy.* p. 68  
 Hitchens & Co., Ltd. *v.* Hart (1927); 34. *Mast.*  
*& S.* Nos. 3559a, 3704a  
 Hives *v.* Dawson (1927); 13. *Cty. Cts.* No. 779a  
 Hjorth *v.* Smith (Can.); 17. *Deeds*, p. 508  
 Hoare *v.* Inverarity (Aus.); 36. *Negl.* p. 817  
 Hobbs, *Ex p.*, *R. v.* Evening News (1925); 16.  
*Crimpl.* No. 180a  
 Hobrecker's Estate, *Re*, (Can.); 9. *Coys.* p. 325  
 Hocker *v.* Waller (1924); 1. *Agcy.* No. 1746a  
 Hocking, The (1917); 37. *Prsns.* No. 1302a  
 Hodder & Tolley, Ltd. *v.* Cornes (N.Z.); 12.  
*Contr.* p. 398  
 Hodge *v.* McLean & Union Bank of Canada (Can.);  
 4. *Bkpcy.* p. 206; 5. *Bkpcy.* pp. 229, 231  
 Hodges *v.* Marks (1618); 21. *Exon.* No. 556a  
 Hodgkinson *v.* Hewitt (1928); 31. *L. & T.* No.  
 7145a  
 Hodgson *v.* Davies (1810); 1. *Agcy.* No. 1104a  
 — *v.* McCreagh (1923); 11. *Comms.* Nos. 323a,  
 347a  
 — *v.* Towning (1837); 21. *Exon.* No. 1577a  
 Hodson *v.* Star Paper Mills, Ltd. (1927); 34.  
*Mast. & S.* No. 3251a  
 Hoffman *v.* Cohen (Can.); 12. *Contr.* p. 392  
 Hoffstrom *v.* Stanley (Can.); 32. *Lien*, p. 754  
 Hogan *v.* R. (Can.); 17. *Damgs.* pp. 500, 501  
 Hogg *v.* Belfast Corpn. (Ir.); 2. *Arbn.* p. 135  
 — *v.* Macpherson (Scot.); 26. *Hghys.* p. 649  
 Hogg & Carr's Patents, *Re* (1927); 36. *Pats.* No.  
 2130a  
 Hogg & Co., Ltd. *v.* Taxes Comr. (N.Z.); 28.  
*Inc. T.* p. 681  
 Hoggett *v.* Hoggett (Aus.); 27. *H. & W.* p. 661  
 Hogle *v.* Ernesttown Township (Can.); 2. *Animals*,  
 p. 119  
 Hokanson *v.* Lample (Can.); 33. *L. G.* p. 760  
 Holden *v.* Milburn (Can.); 21. *Exon.* p. 588  
 — *v.* Ryan (Can.); 28. *Injon.* p. 701  
 Holden National Co.'s Claim, *Re*, *Re* Progressive  
 Farmers (Can.); 5. *Bkpcy.* p. 221  
 Holder, *Ex p.*, *Ex p.* Williams, *Re* Madrid Bank,  
 Ltd. (1866); 10. *Coys.* No. 6368a  
 Holding *v.* South Australian Railways Comr.  
 (Aus.); 34. *Mast. & S.* p. 775  
 Holland, *Re* (Can.); 16. *Cr. Pract.* p. 491  
 — (Queen of) *v.* Drukker, *Re* Visser (1928); 11.  
*Confl.* No. 6a  
 — *v.* Gillam, *Re* Robins (1928); 40. *Sttlmts.*  
 No. 1873  
 — *v.* Holland (1925); 3. *Basty.* No. 65b  
 Holland & Humble's Assignees *v.* — (1815); 8.  
*Chos.* No. 250a  
 Holland & Walsh, *Ex p.*, Court *v.* Holland (Can.);  
 22. *Evid.* p. 596  
 Holliday *v.* Hogan (Can.); 26. *Guar.* p. 643  
 Hollinger Consolidated Gold Mines, Ltd. *v.*  
 Northern Canada Power Co., Ltd. (Can.);  
 20. *Electric*, p. 563  
 Hollister, *Re* (Can.); 5. *Bkpcy.* p. 219



- Holloway, *Re, Re Peterson* (Can.); **4. Bkpcy.** pp. 205, 206
- Holmes, *Ex p.* (Aus.); **16. Cr. Pract.** p. 494
- , *Re, Ex p. Heywood* (1815); **8. Chos.** No. 250a
- *v. Allchurch* (Aus.); **25. Gaming**, p. 636
- *v. Holmes* (Can.); **27. H. & W.** p. 655
- *v. Stamp Duties Comr.* (N.Z.); **21. E. D.** p. 572
- Holmes (Samuel), *Ltd., Re* (Ir.); **10. Coys.** p. 339
- Holmes, Wilson & Co., *Ltd. v. Bata Kristor De* (Ind.); **17. Custom**, p. 498
- Holmested *v. Alberta Pacific Grain Co., Ltd.* (Can.); **9. Coys.** p. 323
- Holmstead *v. Minister of Customs & Excise* (Can.); **17. Dep.** p. 518
- Holowachuk *v. Holowachuk* (Can.); **27. H. & W.** p. 658
- Holt *v. Markham* (1923); **12. Contr.** No. 4534a
- Holt & Co., *Ex p., Re Hill* (1921); **4. Bkpcy.** No. 800a
- Holy Law South Broughton Burial Board *v. Failsworth Urban District Council* (1928); **26. Hghys.** No. 2405a
- Home *v. Camden* (Earl) (1795); **16. Cr. Pract.** No. 2187a
- Home & Colonial Insurance Co., *Ltd., Re* (1928); **10. Coys.** Nos. 7174a, 7452a
- Home & Colonial Insurance Co., *Ltd. v. London Guarantee & Accident Co., Ltd.* (1928); **35. Mistake**, No. 464a
- Home Bank *v. Hamona Farmers Assocn.* (Can.); **3. Bank.** p. 164
- Home Bank of Canada, *Re* (Can.); **3. Bank.** p. 164
- , *Re, National Trust Co.'s Case* (Can.); **3. Bank.** p. 164
- Home Bank of Canada & Winding-Up Act, *Re* (Can.); **10. Coys.** p. 345
- Home Insurance Co. of New York *v. Gavel* (Can.); **29. Insee.** p. 710
- Home Investment & Savings Assocn. *v. Lethbridge Northern Colonisation Manager* (Can.); **33. L. G.** p. 760
- Honeyman *v. Marryatt* (1857); **12. Contr.** No. 501a
- Hong Kong & Shanghai Bank *v. Lo Lee Shi* (1928); **6. B. of Exch.** No. 2485a
- Hontestroom, The, *The Sagaporack* (1927); **1. Adm.** No. 1642a
- Hontestroom S.S. *v. Durham Castle S.S.* (1927); **1. Adm.** No. 1642a
- *v. Sagaporack S.S.* (1927); **1. Adm.** No. 1642a
- Hood's Trustees *v. Southern Union General Insurance Co. of Australasia* (1928); **5. Bkpcy.** No. 5958a
- Hooper *v. Anderson (Edward) & Co., Ltd.* (N.Z.); **1. Agcy.** p. 56
- *v. Anderson (Edward) & Co., Ltd.* (No. 2) (N.Z.); **1. Agcy.** p. 56
- *v. Smith & Hamilton* (Can.); **28. Injon.** p. 701
- Hoover *v. Sabourin* (Can.); **7. Bounds. & F.** p. 271
- Hope (Henry) & Sons, *Ltd. v. Sheehy (Richard) & Sons* (Can.); **7. Bldg. Conts.** p. 278
- Hopgood *v. Feener* (Can.); **7. Bldg. Conts.** p. 275
- Hopkins *v. Nightingale* (1794); **21. Exon.** No. 1578c.
- Hopper No. 13, *The* (1925); **1. Adm.** No. 1062a; **18. Discy.** No. 891a
- Hopper No. 21, *The* (1903); **1. Adm.** No. 1297a
- Horlick *v. Scully* (1927); **31. L. & T.** No. 4760a
- Horne, *Re* (N.Z.); **2. Aliens**, p. 113
- *v. Barber* (Aus.); **1. Agcy.** p. 64
- *v. Moulds* (Can.); **31. L. & T.** p. 740
- Horner *v. Walker* (1923); **12. Contr.** No. 1123a; **30. L. & T.** No. 396a
- Hornidge *v. Wilson* (1840); **24. Exors.** No. 6667a
- Horrell *v. St. John of Bletso* (Lord) (1928); **2. Agrie.** No. 266y
- Horseman *v. Nairn* (Aus.); **34. Med.** p. 797
- Horsfall *v. Garnett* (1858); **12. Contr.** No. 31
- Horsfield *v. Cana Rural Municipality*, No. 214 (Can.); **26. Hghys.** p. 649
- Horst *v. Livesley* (Can.); **11. Confl.** p. 369
- Horton *v. Moggridge* (1816); **4. Bkpcy.** No. 5402a
- *v. Thompson* (1855); **32. Limit. of A.** No. 964a
- Horton's Estate, *Ltd. v. Beattie, Ltd.* (1927); **19. Easmt.** No. 934a
- Hosanna Arathoon Kerakoose *v. Serle* (1844); **16. Courts**, No. 949a
- Hosier *v. Read* (1724); **12. Contr.** No. 1186a
- Hosier Brothers *v. Derby* (Earl) (1918); **1. Agcy.** No. 2733a
- Hoskyns-Abrahall *v. Paignton Urban Council* (1928); **7. Burial**, No. 262a
- Hotel Dunlop, *Ltd., Re, Quinn v. Guernsey* (Can.); **4. Bkpcy.** p. 212
- Hoth *v. Cowan* (Scot.); **2. Arbn.** p. 131
- Houghton & Co. *v. Nothard, Lowe & Wills* (1927); **20. Eqty.** No. 649a
- Houghton & Co. *v. Nothard, Lowe & Wills* (1928); **9. Coys.** Nos. 3157a, 3540a, 3567a, 4170a; **20. Eqty.** No. 649a
- Houlding, *Re* (Can.); **5. Bkpcy.** p. 231
- Houlding *v. Canadian Credit Men's Trust Assocn., Ltd.* (Can.); **4. Bkpcy.** p. 211; **5. Bkpcy.** pp. 236, 243
- Hours of Labour, *Re, Re Treaty of Versailles* (Can.); **17. Dep.** p. 520
- House Improvement Assocn., *Ltd., Re, Giles v. Nuttal* (1885); **10. Coys.** No. 5011a
- House Repair & Service Co., *Ltd. v. Miller* (Can.); **2. Arbn.** p. 149; **7. Bldg. Conts.** p. 274
- Houston *v. Victoria Machinery Depot, Ltd.* (Can.); **9. Coys.** pp. 331, 337
- How *v. Mansfield* (N.Z.); **31. L. & T.** p. 741
- Howard, *Ex p., Re Crosman & McLeod's Election* (Can.); **16. Cr. Pract.** p. 492
- *v. Bergin, O'Connor & Co.* (Ir.); **2. Animals**, p. 122
- *v. High River Trading Co.* (Can.); **21. Eron.** p. 586
- *v. Okeover* (1778); **12. Contr.** No. 1027a
- Howard Graham & Co., *Re, Ex p. Graham* (Can.); **5. Bkpcy.** p. 233
- Howard Houlder & Partners, *Ltd. v. Manx Isles S.S. Co.* (1923); **1. Agcy.** Nos. 1751a, 1791a
- Howard-Flanders *v. Maldon Corpn.* (1926); **26. Hghys.** No. 1146a
- Howarth *v. Forder* (1903); **12. Contr.** No. 467b
- *v. Singleton (J. E.) & Sons* (1926); **34. Mast. & S.** No. 3698a
- Howden & Hyslop's Contract, *Re* (1928); **23. Exors.** No. 3111a
- Howe, *Ex p., R. v. Carvery* (Can.); **14. Crim.** p. 444
- , *Re* (Can.); **5. Bkpcy.** p. 242
- *v. Kipp* (Can.); **18. Distr.** p. 539; **38. Rates**, p. 853
- *v. Niagara St. Catharines & Toronto Ry. Co.* (Can.); **8. Carr.** p. 291
- *v. Teefty* (Aus.); **17. Damgs.** p. 505
- Howell *v. Evans* (1926); **12. Contr.** No. 1213a
- *v. Howell & Davidson* (1926); **27. H. & W.** No. 4354a
- *v. Warner* (Can.); **1. Action**, p. 2
- *v. Wilton Rural Municipality*, No. 472 (Can.); **2. Animals**, p. 118
- Howells *v. Great Western Ry. Co.* (1928); **34. Mast. & S.** No. 2342a
- Howie *v. Chatterton* (N.Z.); **23. Exors.** p. 607
- *v. Lawrence* (Can.); **36. Negl.** p. 818
- Howith *v. McFarlane* (Can.); **22. Evid.** p. 596
- Howlett & Bell *v. Doran & Gallant* (Can.); **32. Lien**, p. 754

- Howley v. R. (Can.); **14. Crim.** p. 460  
 Howson v. Buxton (1928); **2. Agric.** No. 266m  
 — v. Crow (Can.); **9. Coys.** p. 324  
 Hoyland & York, *Re* (Can.); **19. Educ.** p. 556  
 Hoyle, *Re, Ex p. Trustee* (1924); **5. Bkpcy.**, Nos. 7172a, 7267a  
 Hoystead v. Taxation Comr. (1926); **21. Estpl.** No. 296a  
 Htin, Gyaw v. R. (Ind.); **14. Crim.** p. 452  
 Hubin v. R. (Can.); **14. Crim.** p. 463; **15. Crim.** p. 471  
 Huckell v. Saintey (1923); **2. Agric.** No. 237a  
 Hucknall v. Manchester Corpn. (1928); **34. Mast. & S.** No. 3896a  
 Huddersfield Fine Worsteds, Ltd. v. Todd (1925); **5. Bkpcy.** Nos. 8782d, 9198b, 9229a  
 Hudson v. Martin (1726); **23. Exors.** No. 3999a  
 — v. Snellgar (1621); **18. Distr.** No. 234  
 Hudson & Hardy v. Biddulph Township (Can.); **2. Animals**, p. 119  
 Hudson Fashion Shoppe, Ltd., *Re, Ex p. Royal Dress Co.* (Can.); **4. Bkpcy.** p. 212  
 Hudson's Bay Co. v. A.-G. for Canada (Can.); **11. Const. L.** p. 386  
 — v. Bullock Farms, Ltd. (Can.); **21. Exon.** p. 587  
 Huestis v. Toronto (City) (Can.); **26. Hghys.** p. 648  
 Huffman v. Ross (Can.); **21. Estpl.** p. 582  
 Huggard v. Ontario & Saskatchewan Land Corpn. (Can.); **17. Deeds**, p. 508  
 Huggins v. Bambridge (1740); **7. Bonds**, No. 119a  
 Hughes, *Ex p., Re Petrie Manufacturing Co.* (Can.); **9. Coys.** p. 331  
 — v. Hughes (1929); **27. H. & W.** No. 2085a  
 — v. Quentin (1838); **2. Animals**, No. 136a  
 — v. Sun Publishing Co. (Can.); **32. Libel**, p. 751  
 — v. Watkins (J. H.) & Co. (Can.); **21. Estpl.** p. 585  
 Hughes (W.) & Son v. Satchell (1925); **13. Cty. Cts.** No. 691a  
 Hughes Music Sales Co., *Re, Co-Operative Music Supply Co. v. Gold Medal Furniture Manufacturing Co.* (Can.); **5. Bkpcy.** p. 228  
 Hull v. M'Kenna (Ir.); **16. Courts**, p. 481; **17. Dep.** p. 527  
 — v. Seneca Superior Silver Mines, Ltd. (Can.); **34. Mines**, p. 802  
 Humber Conservancy Board v. Federated Coal & Shipping Co., Ltd. (1928); **13. Cty. Cts.** No. 206b  
 Humberstone Coal Co., Ltd., *Re, Ex p. National Trust Co., Ltd.* (Can.); **4. Bkpcy.** p. 210  
 Hume v. Hume (Scot.); **27. H. & W.** p. 669  
 Hummeltenberg, *Re, Beatty v. London Spiritualistic Alliance* (1923); **8. Char.** No. 4a  
 Humphrey & Denman, Ltd. (In Liquidation) v. Kavanagh (1925); **9. Coys.** No. 1589a  
 Humphreys v. Taylor (N.Z.); **6. B. of Exch.** p. 247  
 — v. Welling (1862); **4. Bkpcy.** No. 5039c  
 Hunmantrao v. R. (Ind.); **17. Dep.** p. 525  
 Hunt v. Brant School District Trustees (Can.); **19. Educ.** p. 558  
 — v. College of Physicians & Surgeons of Saskatchewan (Can.); **16. Courts**, p. 479; **17. Dep.** p. 520  
 — v. Danvers (1680); **31. L. & T.** No. 2727a  
 — v. Morgan (Can.); **21. Estpl.** p. 582  
 — v. Weiberg (Can.); **2. Agric.** p. 81  
 Hunter v. Damodar Das (Ind.); **10. Coys.** p. 347  
 — v. Farrell (Can.); **38. Real Prop.** p. 855  
 — v. Hunter (Scot.); **29. Insce.** p. 712  
 — v. Lawrie (Can.); **25. Fraud. Conv.** p. 627  
 — v. Thompson (Can.); **32. Limit. of A.** p. 755  
 — v. West Maitland Municipal Council (Aus.); **12. Contr.** p. 391  
 Hurley v. Stepney Borough Council (1923); **16. Cr. Pract.** No. 3722a  
 Hurnandrai Fulchand v. Pragdas Budhsen, *Ex p. Pragdas Budhsen* (1924); **16. Courts**, No. 535a  
 Huron (Synod of) v. Ferguson (Can.); **2. Arbn.** p. 137  
 Husband, *Re, Neave v. Barnardo's Homes National Incorporated Assocn.* (1923); **8. Char.** No. 891a  
 Hussain v. Chin Chong (Ind.); **17. Deeds**, p. 512  
 Hussey v. Fiddall (1690); **5. Bkpcy.** No. 7639a  
 Hutchings v. Campbell, Wilson & Horne, Ltd. (Can.); **19. Easmt.** p. 543  
 Hutchinson v. Beatty (Can.); **2. Agric.** p. 91  
 — v. Morley (1839); **35. Misrep.** No. 434a  
 — v. Zive (S. Af.); **7. Bldg. Contrs.** p. 279  
 Hutchinson Brothers & Co., Ltd. v. Perkins (Can.); **21. Estpl.** p. 584  
 Hutchinson's Settlement, *Re, Ex p. Dunn* (1852); **37. Powers**, No. 133a  
 Hutchison v. Cumming (Scot.); **24. Fact.** p. 621  
 Hutson v. Valliers (Can.); **32. Lien**, p. 754  
 Hutton v. A.-G. (1927); **11. Const. L.** Nos. 505a, 505b  
 — v. Dent (Can.); **11. Confl.** p. 376  
 — v. Mayne (Ir.); **28. Infts.** p. 698  
 — v. Wey (1827); **12. Contr.** No. 2248a  
 Hutton, McLea & Co. v. Kelly (Nfld.); **16. Courts**, p. 480  
 Huxham v. Johnson (1926); **28. Inc. T.** No. 79a  
 Hyams, *Re, Ex p. Lindsay v. Hyams* (1923); **5. Bkpcy.** No. 7778a  
 Hyatt v. Owens (Can.); **21. Exon.** p. 593  
 Hyde v. Tyler (1926); **25. Gaming**, No. 64a  
 Hydro-Electric Power Commission of Ontario v. Grey County (Can.); **20. Electric**, p. 563  
 Hydro-Electric Power Commission of Ontario & Thorold & Pelham (Townships), *Re* (Can.); **38. Rates**, p. 851  
 Hyland v. Costerton (Can.); **1. Agcy.** p. 51  
 Hylton, *Re* (N.Z.); **28. Infts.** p. 697  
 Hyman v. Hyman (1929); **27. H. & W.** No. 2085a
- I.
- Ibis VI., The (1921); **1. Adm.** No. 1520a  
 Ilchester (Earl), *Ex p.* (1803); **12. Contr.** No. 2938b  
 Illing v. Manne & Manne (S. Af.); **31. L. & T.** p. 742  
 Imeson v. Lister (1920); **1. Agcy.** No. 1558a  
 Immigration Act, *Re, Re Pong Fook Wing* (Can.); **2. Aliens**, pp. 113, 114  
 —, *Re, R. v. Jen Jang How* (Can.); **2. Aliens**, p. 113  
 Immigration Act & Santa Singh, *Re* (Can.); **2. Aliens**, p. 114  
 Immigration Act & Wong Shee, *Re* (Can.); **2. Aliens**, pp. 113, 114  
 Imperial Bank of Canada v. Alley (Can.); **3. Bank.** p. 177; **26. Guar.** p. 642  
 — v. Barber (Can.); **4. Bkpcy.** p. 190  
 — v. Dennis (Can.); **6. B. of Exch.** p. 252; **9. Coys.** p. 324  
 — v. Nixon (Can.); **26. Guar.** p. 641  
 — v. Simpson (Can.); **32. Limit. of A.** p. 755  
 — v. Trusts & Guarantee Co. (Can.); **6. B. of Exch.** p. 253  
 — v. Western Supply & Equipment Co. (Can.); **3. Bank.** p. 178  
 Imperial Canadian Trust Co., Ltd. v. North American Lumber & Supply Co., Ltd., *Re Stevens* (Can.); **5. Bkpcy.** p. 231



- Imperial Loan & Investment Co. v. O'Sullivan (Can.); 35. *Mtge.* p. 811
- Imperial Lumber Co. v. Johnson (Can.); 4. *Bkpcy.* p. 206
- Imperial Lumber Yards, Ltd. v. Ferguson, Cockshutt Plow Co., Claimant (Can.); 7. *B. of Sale*, pp. 264, 265
- Importers Co. v. Westminster Bank (1927); 3. *Bank.* Nos. 292b, 672a, 680a
- Inche Noriah Binte Mohamed Tahir v. Shaik Allie Bin Omar Bin Abdullah Bahashuan (1928); 25. *Fraud. Conv.* No. 834a
- Inches v. Fogg & Dowling (Can.); 17. *Deeds*, p. 508
- Income Tax Comr. v. Western India Turf Club (Ind.); 28. *Inc. T.* p. 690
- Incorporated Glasgow Dental Hospital v. Lord Advocate (Scot.); 9. *Coys.* p. 336
- Indar Singh v. Munshi (Ind.); 1. *Action*, p. 9
- Independent Lumber Co. v. Bocz (Can.); 32. *Lien*, p. 754
- Independent Order of Oddfellows v. Independent Order of Oddfellows Bon Accord Lodge No. 11 (Aus.); 25. *Fr. Soc.* p. 631
- India General Navigation & Ry. Co. v. Dekhari Tea Co. (1923); 8. *Carr.* No. 92a
- v. Dekhari Tea Co., Ltd. (Ind.); 8. *Carr.* p. 286
- India General Navigation & Ry. Co., Ltd. v. Giridharilal Goberdhone Das (Ind.); 8. *Carr.* pp. 286, 287
- India Rubber, Gutta Percha & Telegraph Works Co., Ltd. v. Chapman (1926); 22. *Evid.* No. 3850a; 34. *Mast. & S.* No. 2811a
- Indian Claims, *Re*, *Re* Dominion of Canada & Provinces of Ontario & Quebec (Can.); 17. *Dep.* p. 524
- Indian Immigration Trust Board of Natal v. Govindsamy (S. Af.); 2. *Aliens*, p. 115
- Indian Sugar Mills Co., Ltd. v. Brij Lal, Jagannath, *Re* Union (Ind.); 4. *Bkpcy.* p. 204
- Indrajit Pratap Sahi v. Amar Singh (Ind.); 16. *Courts*, p. 482
- Ines v. Calgary General Hospital (Can.); 18. *Discy.* p. 535
- Infants Act, *Re*, *Re* Bergman & Waldron (Can.); 11. *Confl.* p. 375
- Inge v. Lippingwell (1772); 12. *Contr.* No. 2938a
- Inglewood Pulp & Paper Co. v. New Brunswick Electric Power Commission (1928); 11. *Comp. Pche.* No. 1205a
- Ingram v. Crawshay Brothers (1928); 34. *Mast. & S.* No. 3243a
- Ingrebretsen v. Christensen (Can.); 32. *Limit. of A.* p. 755
- Inland Revenue v. Granite City S.S. Co. (Scot.); 28. *Inc. T.* p. 680
- Inland Revenue Comr. v. Royal Exchange Assurance Co. (S. Af.); 17. *Dep.* p. 522
- Inland Revenue Comrs. v. Anderstrom (Scot.); 28. *Inc. T.* p. 684
- v. Bone (Scot.); 28. *Inc. T.* p. 688
- v. Brown (1926); 28. *Inc. T.* No. 131e
- v. Coke (1926); 28. *Inc. T.* No. 662a
- v. Falkirk Temperance Cafe Trust (Scot.); 28. *Inc. T.* pp. 685, 686
- v. Fergus (1926); 28. *Inc. T.* No. 674b
- v. Forth Conservancy Board (1928); 28. *Inc. T.* No. 36a
- v. Glasgow Musical Festival Asscn. (Scot.); 28. *Inc. T.* pp. 685, 686
- v. Hamilton (Lord) of Dalzell (Scot.); 28. *Inc. T.* p. 691
- v. Hawley (1928); 28. *Inc. T.* No. 673a
- v. Livingston (Scot.); 28. *Inc. T.* p. 677
- v. Longford (Countess) (1928); 28. *Inc. T.* No. 691a
- Inland Revenue Comrs. v. Lysaght (1928); *Inc. T.* No. 131c
- v. Medical Charitable Society for West Riding of Yorkshire (1926); 28. *Inc. T.* No. 472a
- v. Pakenham (1928); 28. *Inc. T.* No. 691a
- v. Peeblesshire Nursing Asscn. (Scot.); 28. *Inc. T.* p. 685
- v. Rees Roturbo Development Syndicate (1928); 28. *Inc. T.* No. 96a
- v. Roberts (1927); 28. *Inc. T.* No. 662b
- v. Roberts Marine Mansions Trustees (1926); 28. *Inc. T.* No. 472c
- v. Scottish Central Electric Power Co. (Scot.); 28. *Inc. T.* p. 680
- v. Society for Relief of Widows & Orphans of Medical Men (1926); 28. *Inc. T.* No. 472a
- v. Temperance Council of Christian Churches of England & Wales (1926); 28. *Inc. T.* Nos. 472b, 476a
- v. Wilson (Scot.); 9. *Coys.* p. 326
- v. Wright (1926); 28. *Inc. T.* No. 662a
- v. — (1927); 28. *Inc. T.* No. 662a
- v. Yorkshire Agricultural Society (1928); 28. *Inc. T.* No. 472d
- v. Zorab (1926); 28. *Inc. T.* No. 131d
- Inman, *Re*, Inman v. Inman (1903); 30. *Jdgmts.* No. 709a
- Innes & Griffith v. Cameron Valley Land Co. (Can.); 9. *Coys.* p. 329
- Innisfail, The, The Secret (1876); 1. *Adm.* No. 1280a
- Inrig Shoe Co., *Re* (Can.); 9. *Coys.* p. 385
- Institute of Chartered Accountants of Manitoba v. Bellamy (Can.); 28. *Injon.* p. 701
- Insurance Contracts, *Re* (Can.); 17. *Dep.* pp. 516, 518
- Interior Trust Co. v. Mackenzie (Can.); 5. *Bkpcy.* p. 243
- International Metal Works, Ltd., *Re*, *Ex p. R.* (Can.); 4. *Bkpcy.* p. 209; 10. *Coys.* p. 344
- Interprovincial Flour Mills, Ltd. v. Western Trust Co. (Can.); 4. *Bkpcy.* p. 204
- Inverarity Estate, *Re* (Can.); 17. *Dep.* p. 518
- Inverclyde's (Lord) Trustees v. Inland Revenue Comrs. (1924); 21. *E. D.* No. 277a
- Inverclyde's (Lord) Trustees v. Millar (1924); 21. *E. D.* No. 277a
- Inverness Railway & Coal Co. v. McIsaac (Can.); 2. *Arbn.* p. 137
- Investors Mortgage Security Co. v. McDonald & Henry (Can.); 32. *Limit. of A.* p. 756
- Inwald (Josef) Act. v. Pfeiffer (1927); 2. *Aliens*, No. 280b
- v. Pfeiffer (1928); 2. *Aliens*, No. 280b
- Ireland v. Quirke (Ir.); 25. *Fish.* p. 624
- Irish People's Assurance Society v. Dublin City Assurance Co., Ltd. (Ir.); 32. *Libel*, p. 750
- Irma Co-operative Co., Ltd., *Re*, *Re* Love & Knudson (Can.); 10. *Coys.* pp. 341, 343, 344
- Ironmonger & Co. v. Dyne (1928); 3. *Bank.* No. 1012b; 25. *Gaming*, No. 15c
- Ironsides v. Green (Can.); 38. *Real Prop.* p. 855
- Irving v. Merygold (Can.); 35. *Misrep.* p. 804
- Irwin v. Barker (1925); 15. *Crim.* No. 12,169b
- v. Campbell (Can.); 2. *Arbn.* p. 130
- v. Hamal (N.Z.); 31. *L. & T.* p. 736
- v. Irwin (Can.); 27. *H. & W.* p. 655
- Isaacs v. Keech (1925); 14. *Crim.* No. 1622a
- Isipingo Health Committee v. Jadwat (S. Af.); 17. *Dep.* p. 522
- Isitt & Isitt v. Hammond & National Resources Sec. Co. (Can.); 18. *Discy.* p. 581
- Isman v. Widen (Can.); 26. *Guar.* p. 618
- Iverson & Greater Winnipeg Water District, *Re* (Can.); 2. *Arbn.* p. 148

- J. & G. Garment Mfg. Co., *Ex p.*, *Re* J. R. Morgan, Ltd. (Can.); **9. Coys.** p. 336
- J. B. Rogers, Ltd. v. Harry Lesnie, Ltd. (Aus.); **39. S. Goods.** p. 863
- J. Brownlee & Co. v. Canadian National Rys. (Can.); **38. Rys.** p. 849
- J. H. Chandler & Co., Ltd., *Re* (Ind.); **9. Coys.** p. 320
- J. I. Case Threshing Machine Co. v. General Motors Acceptance Corp. (Can.); **8. Chos.** p. 314
- *v.* Mitten (Can.); **21. Estpl.** p. 584
- J. P. Ferns v. Ingelby, The (Can.); **1. Adm.** p. 35
- J. R. Morgan, Ltd., *Re*, *Ex p.* J. & G. Garment Mfg. Co. (Can.); **9. Coys.** p. 336
- J. Stanley Wedlock, Ltd., *Re* (Can.); **3. Bank.** p. 177; **4. Bkpcy.** p. 201
- J. Stanley Wedlock, Ltd., *Re*, *Ex p.* Royal Bank (Can.); **9. Coys.** p. 331
- Jack v. Nanoose Wellington Collieries, Ltd. (Can.); **17. Deeds.** p. 508
- Jacks & Co. v. Joosab Mahomed (Ind.); **21. Estpl.** p. 582
- Jackson, *Re* (Can.); **4. Bkpcy.** p. 199
- *v.* Anglo-American Oil Co. (1923); **13. Cty. Cts.** No. 695a
- *v.* Bennan (1893); **18. Distr.** No. 654a
- *v.* Bridge (1702); **12. Contr.** No. 4936a
- *v.* Glasgow Corp. (Scot.); **36. Negl.** p. 817
- *v.* Innes (1819); **35. Mtge.** No. 501a
- *v.* Jackson (N.Z.); **27. H. & W.** p. 667
- *v.* Saskatchewan Co-operative Elevator Co., Ltd. (Can.); **1. Agcy.** p. 50
- Jackson & Co., Ltd. v. Co-operative Freezing Co. of South Canterbury, Ltd. (N.Z.); **12. Contr.** p. 401
- Jackson (John) & Co. (Iron Merchants), Ltd. v. Glasgow Assessor (Scot.); **38. Rates.** p. 852
- Jackson (J. B.), Ltd. & Gettas, *Re* (Can.); **31. L. & T.** p. 742
- Jackson Machines, Ltd. v. Michaluck (Can.); **6. B. of Exch.** p. 251
- Jackson's Trustees v. Inland Revenue (Scot.); **8. Char.** p. 305; **28. Inc. T.** p. 685
- Jacob & Co. v. Rash Behari Ghose (Ind.); **3. Barr.** p. 181
- Jacob's Estate, *Re*, Lancaster v. Gaselee, *Ex p.* Lancaster (1851); **29. Insce.** No. 3050
- Jacobs v. Batavia & General Plantations Trust (1924); **9. Coys.** No. 814a
- *v.* Inland Revenue Comrs. (1925); **28. Inc. T.** No. 671a
- *v.* Seward (1872); **20. Eqq.** No. 293a
- Jacobs Levitatz & Braude v. Kroonstad Roller Mills (S. Af.); **1. Agcy.** p. 38
- Jacobson, *Re*, *Ex p.* Goldberg (Can.); **4. Bkpcy.** p. 210; **5. Bkpcy.** p. 236
- *v.* Fort Morgan (Can.); **1. Adm.** p. 19
- *v.* Frachon (1927); **11. Confl.** No. 1147a
- *v.* Schneider (Can.); **2. Animals.** p. 120
- Jacobson, etc. v. Jacobson, etc. (S. Af.); **5. Bkpcy.** p. 227
- Jagan Mohan Sarkar v. Brojendra Kumar Chakrabarti (Ind.); **31. L. & T.** p. 737
- Jai Narain v. Jafar Beg (Ind.); **21. Estpl.** p. 583
- Jaipal Bhagat v. R. (Ind.); **24. Extradn.** p. 619
- James, *In the Estate of* (1926); **23. Exors.** No. 2585b
- *v.* Beaver Consolidated Mines, Ltd. (Can.); **9. Coys.** p. 334
- *v.* Bell (Can.); **38. Rates.** p. 853
- *v.* British General Insurance Co. (1927); **29. Insce.** Nos. 3194a, 3214a, 3216a, 3216b
- James v. Federal Comr. of Taxation (Aus.); **28. Inc. T.** p. 675
- *v.* Gwauncaegurwen Colliery Co. (1926); **34. Mast. & S.** No. 2492a
- *v.* Penderyn Limestone Quarries (Hirwain), Ltd. (1926); **34. Mast. & S.** No. 2494a
- *v.* R. (S. Af.); **15. Crim.** p. 472
- *v.* Toronto (Can.); **26. Hghys.** p. 649
- James (M. A.) & Sons, *Ex p.*, *Re* McMurtry & Co. (Can.); **4. Bkpcy.** p. 207
- James Finlay & Co. v. N. V. Kwik Hoo Tong Handel Maatschappij (1928); **17. Dams.** No. 347a; **39. S. Goods.** Nos. 885a, 1814a, 2519a
- James Lumbers Co., Ltd., *Re* (Can.); **10. Coys.** pp. 341, 342
- James Ross & Co. (Lime Wharf), Ltd. v. Stirlingshire Assessor (Scot.); **38. Rates.** p. 852
- James W. Elwell, The (1921); **1. Adm.** No. 700b
- Jameson v. Cotter, *Re* Wheeler (1928); **21. E. D.** No. 271a
- *v.* Sinclair (Scot.); **25. Gaming.** p. 635
- Jamieson, *Ex p.*, *Re* Raper (Can.); **7. B. of Sale.** p. 265
- *v.* Jamieson (Can.); **2. Arbn.** p. 149
- *v.* Sherwood (Can.); **25. Gaming.** p. 633
- Jamieson Construction Co., Ltd. v. Lacombe & North Western Ry. (Can.); **7. Bldg. Contrs.** p. 275
- Janera, The (1928); **11. Confl.** No. 1378a
- Janoo Hassan Sait v. Mahamad Ohuthu (Ind.); **11. Confl.** p. 374
- Janvier v. Sweeney (1919); **1. Action.** No. 205a
- Jaques v. Federal Comr. of Taxation (Aus.); **28. Inc. T.** p. 688
- Jardine v. Prescott Lumber Co., Ltd. (Can.); **1. Agcy.** p. 58
- Jarvis v. Jarvis (Can.); **1. Agcy.** p. 54; **24. Exors.** p. 616; **25. Gifts.** p. 639
- Jasperson v. Dominion Tobacco Co. (1923); **1. Agcy.** No. 1501a
- Jebara v. Ottoman Bank (1927); **1. Agcy.** No. 215c; **2. Aliens.** No. 402a
- Jeffery v. Rangoon Official Assignee (Ind.); **4. Bkpcy.** p. 207
- Jeffrey (F. W.) & Sons, Ltd. v. Copeland Flour Mills (Can.); **7. Bounds. & F.** p. 272
- Jelfs, *Re* (Can.); **22. Evid.** p. 597
- Jenkins v. Gwauncaegurwen Colliery Co. (1926); **34. Mast. & S.** No. 2492a
- *v.* Jenkins (1928); **6. B. of Exch.** Nos. 2393a, 2976a; **23. Exors.** Nos. 154a, 165b
- Jenkins & Brash v. Vulcan Iron Works (Can.); **25. Gifts.** p. 640
- Jenkins & Co. v. Simon (1926); **13. Cty. Cts.** Nos. 410a, 691b
- Jensen, *Re* (Can.); **18. Descr.** pp. 529, 530
- Jenyns v. Jenyns (Aus.); **36. Pats.** p. 831
- Jerger v. Pearce (Aus.); **2. Aliens.** pp. 112, 115
- Jersey's (Lord) Executors v. Bassom (1926); **28. Inc. T.** No. 99
- Jerusalem-Jaffa District Governor v. Suleiman Murra (1926); **17. Dep.** Nos. 20a, 398a
- Jessie Mac, The v. Sea Lion, The (Can.); **1. Adm.** p. 28
- Jewan Lal Daga v. Nilmani Chaudhuri (Ind.); **22. Evid.** p. 602; **35. Mtge.** p. 809
- Jewan Ram Khettry v. East Indian Ry. Co. (Ind.); **8. Carr.** p. 289
- Jex v. Hicks (Can.); **38. Real Prop.** p. 856
- Jhandoo Mal-Jagan Nath v. Puhl Chand-Faten Chand (Ind.); **12. Contr.** p. 403
- Jivanchand Gambhirmal, etc. v. Laxminarayan Ganeshram (Ind.); **25. Gaming.** p. 633
- Jivangiri Guru Chamelgiri v. Gajanan Narayan Patkar (Ind.); **17. Dep.** p. 527

- Jnauendra Nath Bagchi v. Sures Chandra Roy (Ind.); **2. Arbn.** p. 130
- Joachimson v. Swiss Bank Corpn. (1921); **3. Bank.** No. 338a
- Joannis Vatis, The (1922); **1. Adm.** No. 781e
- Joannis Vatis, The (No. 2) (1922); **1. Adm.** Nos. 706a, 781d
- Jobhorns, *Re, Ex p.* Fletcher (1835); **38. Real Prop.** No. 183a
- Joe Fong, *Re* (Can.); **2. Aliens**, p. 114
- Joe Lee, Ltd. v. Dalmeny (Lord) (1927); **25. Gaming**, No. 15a
- v. Tattersall's Committee (1927); **25. Gaming**, No. 15a
- Jogesh Chandra Roy v. Annada Charan Chaudhury (Ind.); **31. L. & T.** p. 734
- Johannesburg Consolidated Investment Co., Ltd. v. Transvaal Provincial Administration (S. Af.); **17. Dep.** p. 522
- John Batt & Co. (London) v. Kanoolal & Co. (Ind.); **2. Arbn.** p. 148
- John Deere Plow Co. v. Bowen (Can.); **27. H. & W.** p. 656
- John Jackson & Co. (Iron Merchants), Ltd. v. Glasgow Assessor (Scot.); **38. Rates**, p. 852
- John Walker & Sons, Ltd. v. Kilmarnock Assessor (Scot.); **38. Rates**, p. 852
- John Wright & Eagle Range, Ltd. v. General Gas Appliances, Ltd. (1928); **36. Pats.** No. 308c
- Johns, *Re, Worrell v.* Johns (1928); **5. Bkpcy.** No. 5861a
- Johnson, *Ex p., Re* Yates (Aus.); **17. Dep.** pp. 521, 522
- *Re, Re* Engineering Profession Act (Can.); **7. Bldg. Conts.** p. 278
- v. A.-G., *Re* Jones (1925); **23. Exors.** No. 5423a
- v. Beaver Dam Municipal District (Can.); **18. Distr.** p. 540
- v. Buchanan (Can.); **21. Exon.** p. 586
- v. Charles S. Neff, The (Can.), 21 Exch. C. R. 171; **1. Adm.** p. 35
- v. Clarke (1928); **31. L. & T.** No. 1978a
- v. Commonwealth (Aus.); **17. Damgs.** p. 502
- v. Finlay (Nfld.); **12. Contr.** p. 414
- v. Giffen (Can.); **2. Animals**, p. 119
- v. Grant (Scot.); **16. Cntmpt.** p. 476
- v. Hawkes (Can.); **18. Discy.** p. 534
- v. Mavromichali, *Re* Achillopoulos (1928); **23. Exors.** No. 2441a
- v. Medicine Hat Brewing Co., Ltd. (Can.); **1. Agcy.** p. 63
- v. R. (Can.); **22. Evid.** p. 599
- v. Richardson (Can.); **6. B. of Exch.** p. 258
- Johnson & Mackay v. Charles S. Neff, S.S. (Can.), 18 Exch. C. R. 168; **1. Adm.** p. 27
- v. Charles S. Neff, S.S. (No. 1) (Can.), 17 Exch. C. R. 155; **1. Adm.** p. 35
- v. Charles S. Neff, S.S. (No. 2) (Can.), 17 Exch. C. R. 158; **1. Adm.** p. 35
- Johnson Investments, Ltd. v. Pagritide (Can.); **17. Deeds**, p. 511
- Johnson-Ferguson v. Board of Agriculture (Scot.); **2. Agric.** p. 85
- Johnston, *Ex p., Re* Noden, Hallett & Johnston (Can.); **4. Bkpcy.** p. 203
- , *Re* (Can.); **4. Bkpcy.** p. 201
- , *Re, Johnston v.* Hogg (Can.); **23. Exors.** p. 611
- v. Davies, *Re* Chardon (1928); **8. Char.** No. 231a; **37. Perps.** No. 408a
- v. Hogg, *Re* Johnston (Can.); **23. Exors.** p. 611
- v. McCallum, *Re* South Bruce Provincial Election (Can.); **20. Elect.** p. 560
- v. McMorran (Can.); **36. Negl.** p. 817
- Johnston v. Steacy (Can.); **20. Eqq.** p. 566
- Johnstone v. Goodson (N.Z.); **1. Agcy.** p. 6+
- v. Pedlar (1921); **2. Aliens**, No. 65a
- Johnstone Lumber Co. v. Hager (Can.); **25. Fraud. Conv.** pp. 627, 628
- Johurmull Bhutra v. Kedar Nath Bhutra (Ind.); **3. Barr.** pp. 181, 182
- Jonah v. Hitchcock (Can.); **21. Exon.** p. 592
- Jonas v. Gilbert (Can.); **17. Dep.** p. 520
- v. Marshall (Can.); **17. Dep.** p. 520
- Jones, *Ex p.* (Can.); **16. Cr. Pract.** p. 495
- , *In the Estate of* (1927); **23. Exors.** No. 911a
- , *In the Estate of, Thomas v.* Jones (1928); **23. Exors.** No. 3127b
- , *Re* (N.Z.); **4. Bkpcy.** p. 213
- , *Re, Johnson v.* A.-G. (1925); **23. Exors.** No. 5423a
- , *Re, Lambert v.* Colbourn (1928); **21. E. D.** No. 238a
- v. Cooke, *Re* Tithe Act, 1891, Roberts v. Potts (1894); **12. Contr.** No. 4358a
- v. Cory Brothers & Co., Ltd. (1921); **1. Action**, No. 116a
- v. Cory Brothers & Co., Ltd. (1926); **34. Mast. & S.** No. 3129a
- v. Cushing (Can.); **12. Contr.** p. 401
- v. Evans (1923); **2. Agric.** No. 266t
- v. —, *Re* Rees (1920); **8. Char.** No. 702a
- v. Garforth Collieries, Ltd. (1926); **34. Mast. & S.** No. 3226b
- v. Hutton (Can.); **32. Limit. of A.** p. 758
- v. Jenkins, *Re* Griffiths (1926); **5. Bkpcy.** No. 5922a
- v. Jones (Can.); **21. Exon.** p. 589; **27. H. & W.** p. 660
- v. Jones (Ind.); **11. Confl.** p. 365
- v. Kinnear (Can.); **25. Gifts**, p. 639
- v. Oceanic Steam Navigation Co., Ltd. (1924); **8. Carr.** No. 685c; **11. Confl.** No. 639a
- v. Pickering (1873); **20. Elect.** No. 859
- v. Potts (1894); **12. Contr.** No. 4358a
- v. St. John (City) (Can.); **21. Estpl.** p. 578
- v. Smith (Can.); **11. Confl.** p. 376
- v. South-West Lancashire Coal Owners' Assocn. (1927); **28. Inc. T.** No. 307a; **30. Jdgmts.** No. 569b
- v. Thomas & Norman (Can.); **6. B. of Exch.** p. 245
- v. William Muirhead Macdonald Wilson & Co., Ltd. (1926); **34. Mast. & S.** No. 3829a
- v. Wright (1927); **28. Inc. T.** No. 313a
- Jones & Carter, *Re* (1922); **2. Agric.** No. 266u
- Jones & Colquhoun v. Finch (Can.); **6. B. of Exch.** p. 251
- Jones (David), Ltd. v. Leventhal (Aus.); **31. L. & T.** p. 738
- Jones (R. E.), Ltd. v. Waring & Gillow, Ltd. (1926); **6. B. of Exch.** No. 896a
- Jordan v. Roberts (1862); **22. Evid.** No. 4461a
- Jorgenson, *Re* (Can.); **2. Animals**, p. 124
- Josef Inwald Act. v. Pfeiffer (1927); **2. Aliens**, No. 280b
- v. Pfeiffer (1928); **2. Aliens**, No. 280b
- Journal Printing Co. v. McViety (Can.); **13. Corpns.** p. 428
- Journey v. Railway Passengers Assurance Co. (Can.); **21. Estpl.** p. 581
- Jowett v. Federal Taxation Comr. (Aus.); **30. Land Tax**, p. 731
- Joylall & Co. v. Gopram Bhotica (Ind.); **2. Arbn.** p. 136
- Jubilee Cotton Mills, Ltd., *Re* (1924); **9. Coys.** No. 75
- Jubilee Cotton Mills, Ltd. (Official Receiver & Liquidator) v. Lewis (1924); **9. Coys.** No. 75



- Judd, *Ex p.*, *Re Gooch* (1921); **6. B. of Exch.** Nos. 567a, 2096a  
 Judd v. McKeon (Aus.); **17. Dep.** p. 521  
 Judges Act, *Re* (Can.); **17. Dep.** pp. 520, 522  
 Judmaier v. Standard Bank of Canada (Can.); **6. B. of Exch.** p. 246  
 Juffrouw Louisa Margaretha, *The* (1781); **2. Aliens**, No. 419a  
 Jukes v. Miskelly (Can.); **2. Animals**, p. 120  
 Julian v. Auckland (Mayor, etc.) (N.Z.); **35. Mistake**, p. 806  
 Jumna Khan v. Bankers & Traders Insurance Co., Ltd. (Aus.); **29. Insee.** p. 704  
 Jung Yin, *Re* (Can.); **2. Aliens**, pp. 113, 114  
 Jungo Lee v. R. (Can.); **2. Aliens**, p. 114  
 Juno, *The* (1922); **11. Confl.** No. 1383a  
 Jupiter, *The* (1924); **1. Adm.** No. 142d  
 —, *The* (No. 2) (1925); **1. Adm.** Nos. 143a, 171a  
 —, *The* (No. 3) (1927); **11. Const. L.** No. 387a  
 Justice v. Justice (Aus.); **3. Bast.** p. 185; **27. H. & W.** p. 664.
- K.
- K. v. K. (Can.); **27. H. & W.** p. 659  
 K. E. v. Maung Tu Saw (Ind.); **37. Press.** p. 843  
 Kaft v. Star Publishing Co. (Can.); **18. Discy.** p. 534  
 Kaik v. Boraski (Can.); **13. Corpns.** p. 428  
 Kajes v. Immigrants' Appeal Board (S. Af.); **2. Aliens**, p. 114  
 Kajner v. Kovacz (Can.); **7. Bounds. & F.** p. 271  
 Kalle & Co., Ltd., *Re* (1921); **2. Aliens**, Nos. 195a, 405a  
 Kalyani Pillai v. Thiruvankadaswami Ayyangar (Ind.); **16. Courts.** p. 483  
 Kamala Prosad Sukul v. Kishori Mohan Pramanik (Ind.); **38. Real Prop.** p. 856  
 Kamloops Copper Co., *Re, Ex p.* Kamloops (Can.); **4. Bkpcy.** p. 206  
 Kancien v. Mellish (Can.); **7. Bounds. & F.** p. 271  
 Kankakee, *The*, *The Hocking*, *The Genesee* (1917); **37. Prsns.** No. 1302a  
 Kanwar Bhan-Sukha Nand v. Ganpat Rai-Ram Jiwan (Ind.); **12. Contr.** p. 397; **25. Gaming**, p. 633  
 Kaplan, *Re*, McLean (J. J. H.) Estate Co. v. Newton (Can.); **4. Bkpcy.** p. 205  
 Karrar v. Schubert (Can.); **12. Contr.** p. 391  
 Kasler & Cohen v. Slavouski (1928); **17. Damgs.** No. 227a  
 Kassop v. Evans (Nfld.); **21. Exon.** p. 587  
 Kaster v. Cowan (Can.); **2. Animals**, p. 125; **17. Deeds**, p. 510  
 Kathleen, *The* (1925); **1. Adm.** No. 1553b  
 Katzman v. Ownahome Realty Co. (Can.); **1. Agcy.** p. 74; **17. Deeds**, p. 510  
 Kauffield v. Kauffield (Can.); **27. H. & W.** p. 660  
 Kaufman Segal & Domb, *Re, Ex p.* Trustee (1923); **5. Bkpcy.** Nos. 6802a, 6879a  
 Kaulbach v. Boylan (Can.); **28. Injon.** p. 699  
 — v. Cook (Can.); **32. Limit. of A.** p. 757  
 — v. Taylor (Can.); **35. Mtge.** p. 812  
 Kavanagh v. Whittle (Ir.); **31. L. & T.** pp. 744, 746  
 Kawaluk v. Kawaluk (Can.); **27. H. & W.** p. 655  
 Kawin v. Kawin (Can.); **27. H. & W.** p. 655  
 Kaye, *Re* (1822); **16. Cr. Pract.** No. 3352a  
 Kayley v. Hothersall (1925); **21. Exon.** No. 88a  
 Kean & Bird, *Re* (Can.); **16. Cntmpt.** p. 478  
 Keane, *Re* (Ir.); **5. Bkpcy.** p. 235  
 Keane, *Re*, Lumley v. Desborough (1871); **28. Infts.** No. 42a  
 Keane v. Canadian Pacific Ry. Co. (Can.); **12. Contr.** p. 409  
 Kearl v. Wonnacott (Can.); **25. Fraud. Conv.** p. 627  
 Kearney's Estate, *Re*, Whitehurst, Appellant (Aus.); **21. Estpl.** p. 584  
 Kearns, *Ex p.*, *Re Gartrell* (Can.); **4. Bkpcy.** p. 190  
 Keating v. Horwood (1926); **25. Food**, No. 414a  
 Keddy v. Daurey (Can.); **12. Contr.** p. 390  
 Keefe v. McLennan (Can.); **17. Dep.** p. 519  
 Keen v. Mear (1920); **1. Agcy.** Nos. 834b, 836a  
 Keene, *Ex p.* (Aus.); **34. Med.** p. 797  
 —, *Re* (1922); **5. Bkpcy.** Nos. 5495b, 5811a  
 — v. Colley (Can.); **17. Dep.** p. 514  
 Keenleyside v. Partridge (Can.); **25. Fraud. Conv.** p. 627  
 Keewatin Power Co., Ltd. v. Keewatin Flour Mills Co., Ltd. (Can.); **11. Const. L.** p. 386; **16. Cr. Pract.** p. 486  
 Keewatin Power Co., Ltd. v. Lake of the Woods Milling Co., Ltd. (Can.); **11. Const. L.** p. 386; **16. Cr. Pract.** p. 486  
 Kelantan Government v. Duff Development Co. (1923); **2. Arbn.** No. 1644a  
 Kelleway, *Ex p.*, *Re* Southern Cross Motor Fuels, Ltd. (Aus.); **10. Coys.** p. 343  
 Kellington v. Rosa (Can.); **29. Intpr.** p. 717  
 Kellogg v. Dappen (Can.); **2. Animals**, p. 118  
 Kelly v. Grimmer S. D. 25 (Can.); **19. Educ.** p. 559  
 — v. Kelly (Can.); **22. Evid.** p. 604  
 — v. Kelly (Scot.); **27. H. & W.** p. 665  
 — v. Rae (Aus.); **12. Contr.** p. 403  
 — v. Sullivan (Can.); **17. Dep.** pp. 522, 523  
 Kelsey v. Birmingham Corpn. (1927); **34. Mast. & S.** No. 628b  
 Kelvington Grain Growers' Co-operative Assocn., *Re* (Can.); **4. Bkpcy.** p. 202  
 Kemish v. Betson (1732); **24. Exors.** No. 6861b  
 Kemp (Lady) v. Kemp (1671); **20. Eqq.** No. 2188a  
 Kemp v. Waddingham (1866); **23. Exors.** No. 4210a  
 Kendall v. R. (Can.); **16. Cr. Pract.** p. 486  
 Kendrick v. Dominion Bank & Bownas (Can.); **3. Bank.** p. 171; **6. B. of Exch.** p. 245  
 Kennedy v. Agricultural Development Board (Can.); **35. Mtge.** p. 810  
 — v. Berryman (N.Z.); **31. L. & T.** p. 734  
 — v. Harris (Can.); **17. Damgs.** p. 506  
 — v. Thomassen (1928); **12. Contr.** No. 3081a  
 — v. Victory Land & Timber Co. (Can.); **1. Agcy.** p. 58  
 Kenney v. R. (Can.); **16. Cr. Pract.** p. 486  
 Kenny v. Kenny (Can.); **35. Mtge.** p. 812  
 Kensington, *Ex p.* (1862); **16. Courts**, No. 373  
 Kent v. Ellis (Can.); **12. Contr.** p. 395  
 — v. Mercer (Can.); **26. Guar.** p. 642  
 — v. R. (Can.); **28. Inc. T.** p. 673  
 Kenzie v. Hart (Can.); **36. Negl.** p. 817  
 Keogh (Doe d.) v. Calhoun (Can.); **21. Exon.** p. 587  
 Keogh v. Dalgety & Co. (Aus.); **1. Agcy.** p. 54  
 — v. Edinburgh Magistrates (Scot.); **26. Hghys.** p. 649  
 Keough v. Price (Can.); **7. B. of Sale**, p. 265  
 Keppel v. Wheeler (1927); **1. Agcy.** No. 1263a; **12. Contr.** No. 540a  
 Ker's Trustees v. Ker (Scot.); **28. Infts.** p. 696  
 Keratos, S.S. v. Fabian, S.S. (S. Af.); **1. Adm.** p. 23  
 Kerley v. London & Lake Erie Ry. & Transportation Co. (Can.); **17. Dep.** p. 519  
 Kerr, *Re, Ex p.* Martin (Can.); **7. B. of Sale**, p. 265  
 — v. Bradley, *Re* King (1923); **8. Char.** Nos. 3a, 238a, 1444a  
 — v. Capital Grocery, Ltd. (Can.); **5. Bkpcy.** p. 235  
 — v. Louisson (N.Z.); **35. Money**, p. 807



- Kerr v. Marine Products, Ltd. (1928); 9. Coys. No. 2965a  
— v. Scovil (Can.); 21. Exon. p. 586  
Kershaw v. United Artists (Can.); 1. Agcy. p. 42  
Keslering v. Keslering (otherwise Neverka) & Neverka (Can.); 27. H. & W. p. 661  
Kessoram, Poddar & Co. v. Secretary of State for India (Ind.); 38. Pub. Auth. p. 845  
Keswick v. Wright (Scot.); 2. Agric. p. 84  
Ketchen v. R. (Can.); 16. Cr. Pract. p. 486  
Kettle v. Dunster & Wakefield (1927); 6. B. of Exch. No. 763b; 10. Coys. No. 5036a  
Khattar, Re, Re Thebault (Can.); 30. Intox. p. 722  
Khitish Chandra Deb Roy v. R. (Ind.); 15. Crim. p. 472  
Khoo Hooi Leong v. Khoo Hean Kwee (1926); 3. Bastly. p. 184; 18. Courts, No. 585a  
Kibblewhite v. Garland (N.Z.); 40. S. Land. p. 866  
Kidd v. Harden (Can.); 8. Chos. p. 313  
— v. R. (Can.); 39. Revenue, p. 861  
— v. Rawlinson (1800); 25. Fraud. Conv. No. 339a  
— v. Tallentire (1877); 21. Exon. No. 1552a  
Kidman v. Commonwealth of Australia (Aus.); 2. Arbn. p. 148  
Kiehl v. Fussel (Can.); 5. Bkpcy. p. 226  
Kijko v. Baczyski (Can.); 3. Bastly. p. 184; 12. Contr. p. 399  
Kilbride v. Cameron (Can.); 21. Exon. p. 587  
Kimber, Re, Vale v. Rockman (1928); 3. Bank. No. 112c; 39. Revenue, No. 843a  
Kimber v. Press Assocn. (1893); 16. Courts, No. 289a  
Kimber Coal Co. v. Stone & Rolfe, Ltd. (1926); 1. Agcy. No. 2474a  
Kime v. Hamilton Radial Electric Ry. Co. (Can.); 8. Carr. p. 289  
Kin Tye Loong v. Seth (1920); 4. Bkpcy. No. 3264a  
King, Re (Can.); 38. Real Prop. p. 855  
—, Re, Kerr v. Bradley (1923); 8. Char. Nos. 3a, 238a, 1444a  
—, Re, Public Trustee v. Aldridge (1928); 40. Sttlmts. No. 1059a  
— v. Bird (1909); 35. Mtge. No. 772a  
— v. British Steel Corpn., Ltd. (1928); 34. Mast. & S. No. 3745a  
— v. Dominion Bank (Can.); 7. B. of Sale, p. 264  
— v. King (Can.); 17. Dep. p. 520  
— v. Kuhn (Can.); 7. B. of Sale, p. 267  
— v. Price (1816); 2. Animals, No. 390b  
— v. Riley (Can.); 26. Hghys. p. 649  
— v. Schon (Can.); 1. Agcy. pp. 38, 58  
— v. Terry, Re Burke (1919); 5. Bkpcy. No. 6115a  
— v. Turner (1824); 40. S. Land, No. 228a  
King & Boyd v. Porter (Ir.); 6. B. of Exch. p. 252  
King Lumber Mills v. Canadian Pacific Ry. Co. (Can.); 18. Discy. p. 534  
Kingston v. Highland (Can.); 7. Bounds. & F. p. 271  
Kingston Light, Heat & Power Co. & Kingston Corpn., Re (Can.); 11. Comp. Pche. p. 362  
Kingston Mill, Stockport, Ltd. v. Owen (1928); 38. Rates, No. 1184a  
Kinlan v. Ulster Bank, Ltd. (Ir.); 3. Bank. p. 170  
Kinney v. Dudman (Can.); 17. Dep. p. 516  
Kinniburgh, Re (Can.); 5. Bkpcy. p. 229  
Kippan v. McCaw (Can.); 7. B. of Sale, pp. 265, 266  
Kirchhoffer v. Clement (Can.); 21. Exon. p. 586  
Kirk v. Greaves (N.Z.); 17. Deeds, p. 511  
— v. Harvey (Can.); 35. Mtge. p. 811  
— v. Kirk (Can.); 2. Arbn. p. 148  
Kirk (Doe d.) v. Roe (1838); 10. Eccl. No. 4033a  
Kirke's Trustees v. Inland Revenue Comrs. (1926) 28. Inc. T. No. 99b  
Kirkpatrick v. Canadian Pacific Ry. Co. (Can.); 18. Discy. p. 536  
Kirkpatrick & Moroughan, Re (Can.); 3. Bastly p. 187  
Kirlew v. Butts (1831); 21. Exon. No. 1944  
Kitchen v. Boon (Can.); 40. S. Land. p. —  
Kitsilano Indian Reserve, Re, Vancouver Harbour Comrs. v. R. (Can.); 11. Comp. Pche. p. 360  
Klenman v. Isman (Can.); 18. Distr. p. 537  
Kleynhaus Brothers v. Wessels' Trustee (S. Af.); 35. Misrep. p. 804  
Kline, Re (Can.); 21. Estpl. p. 577  
Klock v. Varin, Re Nipissing Dominion Election (Can.); 20. Elect. p. 562  
Klotz v. Jouan (Can.); 6. B. of Exch. p. 251  
Knaggs v. Ledyard (Can.); 21. Exon. p. 589  
Knapp v. McLeod (Can.); 32. Libel, p. 751  
Knechtel Motor Co., Ltd. v. Worden (Can.); 9. Coys. p. 335  
Knevit v. Poole (1601); 2. Agric. No. 332a  
Knight v. Grand Trunk Pacific Development Co. (Can.); 29. Inns, p. 703  
— v. Knight & Owens (Can.); 27. H. & W. pp. 664, 665  
— v. Skinner (1928); 34. Mast. & S. No. 4042a  
— v. T. S. Pattillo Co. (Can.); 7. B. of Sale, p. 267  
Knight, Frank & Rutley v. Gordon (1923); 1. Agcy. No. 1776a  
Knight-Watson Ranching Co. v. Canadian Pacific Ry. Co. (Can.); 2. Animals, p. 127; 8. Carr. p. 292  
Knowles v. Jenkins (Can.); 39. Recrs. p. 857  
Knowlton v. Hydro Electric Power Commission of Ontario (Can.); 8. Carr. pp. 289, 290  
Knox v. Shaw (Can.); 25. Fraud. Conv. p. 628; 29. Intpr. p. 717  
Knox & Lewis v. Hall (Can.); 17. Damgs. p. 505  
Knust v. Abbot (N.Z.); 6. B. of Exch. p. 247  
Knyvett & Pratt v. Suisted (N.Z.); 1. Agcy. p. 57  
Koch v. Grand Trunk Pacific Branch Lines Co. (Can.); 2. Animals, p. 120  
Koechlin et Cie. v. Kestenbaum Brothers (1927); 6. B. of Exch. No. 2791a  
Koehmstedt v. Rural Municipality of Eye Hill, No. 382 (Can.); 11. Comp. Pche. p. 359  
Koerner's Patent, Re (1928); 36. Pats. No. 2251a  
Kojo Pon v. Atta Fua (1927); 16. Courts, No. 578a  
Kok v. R. (S. Af.); 14. Crim. p. 442  
Kolega v. Genser (Can.); 21. Exon. p. 592  
Konkin v. Canadian Bank of Commerce (Can.); 35. Mtge. p. 811  
Konskier v. Goodman (B.), Ltd. (1928); 36. Negl. No. 59a  
Kooperman, Re (1928); 5. Bkpcy. No. —  
Koskas v. Standard Marine Insurance Co., Ltd. (1926); 29. Insee. No. 18a  
— v. Standard Marine Insurance Co., Ltd. (1927); 29. Insee. No. 18a  
Kotzias v. Tyser (1920); 11. Const. L. No. 487a  
Kouame v. Maplecourt S.S. (Can.); 1. Adm. p. 35  
Kouri v. Nemerovsky (Can.); 22. Evid. p. 604  
Kramer v. A.-G. (1922); 2. Aliens, Nos. 49d, 215i, 215j, 538a  
— v. — (1923); 2. Aliens, Nos. 49e, 215j  
Kraus v. Arnold (1822); 12. Contr. No. 2693a  
Krauss (otherwise Des Salles D'Epinoix) v. Krauss (otherwise Des Salles D'Epinoix) & Orbach (1919); 2. Aliens, No. 261a

- Cassel G. m. b. H. v. Schenkers (1927); 9. Coys. No. 3603a  
 Kreitman v. Vidofsky (1927); 31. L. & T. No. 7027a  
 Krienke v. Schafter (Can.); 5. Bkpcy. pp. 237, 238  
 Krige v. Van Dijk's Executors (S. Af.); 1. Agcy.  
 Krishna Chandra Jagati v. R. (Ind.); 14. Crim. p. 442  
 Krishnaswami Naidu v. Andi Chetti (Ind.); 10. pp. 342, 345  
 Kristo v. Hollinger Consolidated Gold Mines, Ltd. (Can.); 2. Aliens, p. 107  
 Kronprinz Olav, The (1921); 1. Adm. Nos. 1493a, 1551a  
 Krumm v. Shepard (Can.); 38. Rates, p. 852  
 Kumar Ganganand Singh v. Maharajah Sir Rameshwar Singh Bahadur (Ind.); 21. Estpl. p. 577; 28. Infts. pp. 695, 697, 698  
 Kuntz & Hodgins, Re (Can.); 38. Real Prop. p. 855  
 Kuproski v. Royal Bank of Canada (Can.); 4. Bkpcy. p. 206  
 Kursell v. Timber Operators & Contractors, Ltd. (1923); 2. Arb. No. 817a  
 — v. Timber Operators & Contractors (1927); 2. Agric. No. 810a; 12. Contr. No. 3225a  
 Kusch v. Peat (Can.); 1. Agcy. p. 42; 3. Bank. p. 164  
 Kushner v. Yasinka (Can.); 25. Fraud. Conv. p. 628  
 Kutner, Ex p. Debtor v. Official Receiver (1921); 4. Bkpcy. No. 5264a  
 Kwik-Hoo-Tong Trading Society v. Royal Commission on Sugar Supply (1923); 2. Arb. No. 949c  
 Kwong Tai Chong Co.'s Assignment, Re (Can.); 4. Bkpcy. p. 213; 5. Bkpcy. p. 237  
 Kyle v. Barnes (Can.); 5. Bkpcy. p. 239  
 — v. Sim (Scot.); 2. Animals, p. 126  
 Kyone Hoe Tsee v. Kyon Soon Sun (Ind.); 3. Barr. p. 182; 23. Exors. pp. 609, 610
- L.
- L. (otherwise B.) v. L. (1919); 22. Evid. No. 3437a  
 L. A. & B. F. M., Re, Ex p. Official Receiver v. Debtors (1926); 4. Bkpcy. No. 226a  
 Labour & Industry Minister (N. S. W.) v. Mutual Life & Citizens Assurance Co., Ltd. (Aus.); 16. Cr. Pract. p. 492  
 Lachance v. Rochon (Can.); 27. H. & W. p. 662  
 Lachman Das v. Ram Prasad (Ind.); 17. Deeds, p. 510  
 Lachmandas, etc. v. Raghumull (Ind.); 1. Agcy. p. 67  
 Lachmi Narain v. Sheonath Ponde (Ind.); 2. Arb. p. 138  
 La Croix Brothers & Co. v. Cook (Can.); 7. Bldg. Conts. p. 275  
 Lady Jane, The (1749); 2. Aliens, No. 419a  
 Laffer v. Gillen (1927); 17. Dep. No. 390a  
 Lafferty v. Darngavil Coal Co., Ltd. (Scot.); 34. Mast. & S. p. 790  
 La Flora (1805); 2. Aliens, No. 440a  
 Lagan Navigation Co. v. Lambeg Bleaching, Dyeing & Finishing Co. (1927); 13. Corpns. No. 1235a  
 Laine v. Kennedy (Can.); 17. Deeds, p. 511  
 Laing, Re (Can.); 4. Bkpcy. p. 202  
 —, Toronto General Trusts Corp. (Can.); 16. Courts, p. 482  
 Estate, Re (Can.); 8. Char. p. 308  
 Lainière de Roubaix v. Glen Hosiery Co., Ltd. (Scot.); 10. Coys. p. 848  
 Laird v. Laird (Can.); 27. H. & W. p. 662  
 Lake v. Crosbie (Nfld.); 12. Contr. p. 409  
 Lake Erie & Northern Ry. Co. v. Brantford Golf & Country Club (Can.); 2. Arb. p. 145  
 — v. Muir (Can.); 2. Arb. p. 145  
 Lal Chand Marwari v. Mahant Ramrup Gir (1925); 22. Evid. Nos. 1421a, 1445a  
 — v. Ramrup Gir (Ind.); 22. Evid. p. 597  
 Lal Singh v. R. (Ind.); 14. Crim. p. 451  
 Lalman v. Chintamani (Ind.); 1. Agcy. p. 53  
 Lalonde, Re (Can.); 4. Bkpcy. p.  
 Lamarre & Co. v. R. (Can.); 11. Const. L. p. 379; 12. Contr. p. 393  
 Lamb, Re (Can.); 33. Mags. p. 765  
 — v. Evans (1895); 13. Coprt. No. 547a  
 — v. Lamb (Can.); 17. Dep. p. 524  
 — v. Walters (S. Af.); 35. Misc. p. 803  
 — v. Wilson (Can.); 12. Contr. pp. 409, 411  
 — v. Wright & Co. (1924); 5. Bkpcy. Nos. 6745a, 6751a  
 Lambard v. Grote (1832); 37. Powers, No. 830a  
 Lambert v. Clement (Can.); 21. Exon. p. 588  
 — v. Colbourn, Re Jones (1928); 21. E. D. No. 238a  
 — v. R. (Can.); 33. Mags. p. 765  
 Lamonby v. Foulds, Ltd. (Scot.); 32. Lien, p. 753  
 Lampard v. West (Aus.); 25. Gaming, p. 636  
 Lampel v. Berger (Can.); 2. Aliens, p. 98  
 Lampert v. Lampert (1789); 40. Stillmts. No. 938a  
 Lamplugh Iron Ore Co., Re (1927); 9. Coys. No. 3105a; 10. Coys. Nos. 6465a, 6938b  
 Lanarkshire Assessor v. O'Hara (Scot.); 38. Rates, p. 853  
 Lancashire & Yorkshire Ry. Co. v. Great Northern Ry. Co. & Great Central Ry. Co. (1914); 8. Carr. Nos. 1051a, 1058a  
 Lancaster, Ex p., Re Jacob's Estate, Lancaster v. Gaslee (1851); 29. Insee. No. 3050  
 — v. Lloyd (Aus.); 19. Easmt. p. 541  
 — v. Vaughan (Can.); 18. Discy. p. 534  
 — v. Vaughan (No. 2) (Can.); 3. Basty. p. 187  
 Lancaster (Parish), St. John, N.B. v. Dominion Express Co. & Canadian National Express Co. (Can.); 38. Rys. p. 850  
 Land Registry Act & Higginson, Re, Minister of Finance v. Caledonian Insurance Co. (Can.); 21. E. D. p. 576  
 Land Tax Acts, Re, Wilson's Case (Aus.); 30. Land Tax, p. 731  
 Land Titles Act, Re (Can.); 35. Mtge. p. 809  
 —, Re, Re City Garage & Machine Co., Ltd. (Can.); 5. Bkpcy. p. 242  
 —, Re, Re Fielding & North of Scotland Mortgage Co. (Can.); 35. Mtge. p. 811  
 —, Re, Re McCraney Rural Municipality Caveat (Can.); 38. Pub. Hlth. p. 848  
 —, Re, Re Registration of a Power of Attorney (Can.); 1. Agcy. p. 40  
 —, Re, Re Smith (Can.); 38. Rates, p. 853  
 —, Re, Avelsgaard's Case (Can.); 38. Real Prop. p. 856  
 —, Re, Canada Life Assurance Co.'s Case (Can.); 35. Mtge. p. 809; 38. Real Prop. p. 856  
 —, Re, Royal Trust Co.'s Case (Can.); 1. Agcy. p. 40  
 —, Re, Saskatchewan General Trust Corp., Ltd.'s Case (Can.); 5. Bkpcy. p. 226  
 Landsberg v. Mendel (1924); 5. Bkpcy. No. 8782c  
 Lane v. Kingsmill (Can.); 16. Cntmpt. p. 478  
 — v. Williams (1692); 6. B. of Exch. No. 694c  
 — v. — (1693); 6. B. of Exch. No. 694c  
 Lane (E. J.), Ltd., Re, Ex p. Milligan (Can.); 9. Coys. p. 835

- Lang Propeller, Ltd., *Re* (1927); **10. Coys.** No. 6936a
- Lang Shirt Co.'s Trustees v. London L. Insurance Co. (Can.); **29. Insee.** p. 710
- Langley, *Ex p.*, *Re* Bryant, Isard & Co. (Can.); **16. Cntmpt.** p. 477
- Langley Estate, *Re*, *Re* Sherwin Estate (Can.); **28. Infts.** p. 697
- Langlois v. Lemire, *Re* Gardner (Can.); **4. Bkpcy.** p. 202
- Langmaid v. Mickle (Can.); **2. Agric.** p. 91
- Langstaff v. Squirrel (Can.); **21. Exon.** p. 593
- Langton v. Bacon (Can.); **18. Distr.** p. 537
- v. Nicholson (Can.); **1. Agcy.** p. 57
- Lanin v. Zawislak & Demosky (Can.); **21. Exon.** p. 591
- Lapierre v. Twin City Gravel & Concrete Co., Ltd. & Terwilleger (Can.); **7. B. of Sale,** p. 266
- Lapp v. Lapp (Can.); **23. Exors.** p. 614
- Lapwing, The (1839); **1. Adm.** No. 595a
- Large v. Perkins (Can.); **22. Evid.** p. 595
- Largo Law, The (1920); **1. Adm.** No. 700a
- Larrinaga & Co. v. Societe Franco-Americaine des Phosphates de Medulla (1922); **2. Arbn.** Nos. 1067a, 1357b
- Larsen, *Ex p.*, *R. v.* Hertfordshire JJ. (1923); **14. Crim.** No. 1704a
- Larson v. Coates (Can.); **23. Exors.** p. 606
- La Salle Extension University v. Freeman (Can.); **10. Coys.** p. 351
- Lascelles v. Rathbun (1919); **1. Agcy.** Nos. 704a, 2742a
- Lasham, *Re* (Can.); **23. Exors.** p. 612
- Lassen v. Inland Revenue Comrs. (1927); **28. Inc. T.** No. 674d
- Latham v. Foster's Australian Fibres, Ltd. (Aus.); **2. Arbn.** pp. 139, 144
- Latimer v. Foster Tobacco Co., Ltd. (Can.); **1. Agcy.** p. 39; **21. Estpl.** p. 578
- Latter v. Jukes & Page (1927); **5. Bkpcy.** No. 6965a
- Lauder v. Barr & Stroud (Scot.); **24. Fact.** p. 620
- Lauer v. Briggs (Aus.); **34. Mast. & S.** p. 788
- Laurance, *Re* (Can.); **4. Bkpcy.** p. 209
- Laurence, *Ex p.*, *Re* Debtor (1928); **4. Bkpcy.** No. 1077a
- Laurenson v. Wellington (City) Corp'n. (N.Z.); **18. Discy.** p. 533
- Laurie & Morewood v. Dudin (John) & Sons (1925); **21. Estpl.** Nos. 1148a, 1435a
- v. Dudin (John) & Sons (1926); **3. Bailmt.** No. 304a; **21. Estpl.** Nos. 1148a, 1435a
- Laurin, *Re* (Can.); **28. Infts.** p. 697
- Lavallee v. Istar, The (Can.); **1. Adm.** p. 20
- Lavey, *Re*, *Ex p.* Cohen & Cohen (1920); **5. Bkpcy.** No. 8104a
- , *Re*, *Ex p.* Cohen & Cohen (1921); **4. Bkpcy.** No. 2028a; **5. Bkpcy.** No. 8104a
- , *Re*, *Ex p.* Trustee (1920); **5. Bkpcy.** No. 7603a
- Lavine, *Re* (Can.); **5. Bkpcy.** p. 229
- Law v. Garrett (1878); **2. Arbn.** No. 350a
- v. Newnes, Ltd. (Scot.); **29. Insee.** p. 712
- v. Toronto (City) (Can.); **2. Arbn.** pp. 133, 135
- Law & Maclean v. Sawyer Massey Co. (Can.); **1. Agcy.** pp. 62, 63, 65
- Lawrance v. Galsworthy (1857); **35. Mtge.** No. 2312a
- Lawrence (No. 21 of 1928), *Ex p.*, *Re* Debtor (1928); **4. Bkpcy.** No. 1077a
- Lawrence v. Errington (Can.); **12. Contr.** p. 403
- v. Hayes (1927); **8. Chos.** No. 607a
- v. Judge (Can.); **2. Agric.** p. 92
- v. Martin (1928); **33. Mags.** No. 1220a
- Lawrence v. Matthews (1924), Ltd. (1928); **34. Mast. & S.** No. 2619a
- Laws v. Rutherford (S. Af.); **12. Contr.** p. 388
- Lawson, *Re*, *Ex p.* Shankey (Can.); **7. B. of Sale,** p. 265
- v. Farley (Can.); **12. Contr.** pp. 399, 400, 412
- v. Intestate Estates Curator, *Re* McMahon (Aus.); **23. Exors.** p. 611
- Layzell v. Thompson (1926); **24. Ferries,** Nos. 13a, 35a, 151a
- v. Thompson (1927); **24. Ferries,** Nos. 13a, 35a, 151a
- Lazard Brothers & Co. v. Union Bank of Canada (Can.); **3. Bank.** p. 178
- Leach v. Mantario Rural Municipality No. 262 & Moir (Can.); **18. Distr.** p. 540
- Leader v. Moxon (1773); **16. Courts,** No. 137a
- Leadley, *Ex p.* (Can.); **16. Cr. Pract.** p. 489
- Leaman v. Lawton (Can.); **1. Agcy.** p. 62
- Lean v. Inland Revenue (Scot.); **28. Inc. T.** pp. 674, 677
- Leavens v. Great West Permanent Loan Co. (Can.); **9. Coys.** pp. 334, 337
- Leavens & Canada National Fire Insurance Co. v. Great West Permanent Loan Co. (No. 2) (Can.); **9. Coys.** p. 333
- Le Blanc, *Re* (Can.); **4. Bkpcy.** p. 209
- v. Emilien Burke, The (Can.); **1. Adm.** p. 25
- Le Cain v. Wieland (Can.); **31. L. & T.** p. 743
- Leckenby v. Wolman (1921); **1. Agcy.** Nos. 308a, 883a
- Leclerc v. Perigord School District No. 850, Board of Trustees (Can.); **19. Educ.** pp. 557, 558
- v. R. (Can.); **8. Carr.** p. 286; **11. Const. L.** p. 380
- Leduc v. Banque D'Hochelaga (Can.); **3. Bank.** p. 164; **6. B. of Exch.** p. 245
- v. Canadian Pacific Ry. Co. (Can.); **38. Rys.** p. 849
- Lee, *Re*, *Ex p.* Grunwaldt (1920); **5. Bkpcy.** Nos. 8778a, 9032a, 9109a, 9198a
- v. Blake (Can.); **6. B. of Exch.** p. 254
- v. Branscombe (Can.); **18. Descr.** p. 529
- v. Breckman (S. & I.) & Co. (1928); **34. Mast. & S.** No. 2589a
- v. Canadian Mutual Loan Co. (Can.); **7. Bldg. Soc.** p. 280
- v. Lee (Can.); **27. H. & W.** p. 661
- v. Morrow (Can.); **1. Agcy.** p. 40
- Lee (Joe), Ltd. v. Dalmeny (Lord) (1927); **25. Gaming,** No. 15a
- v. Tattersall's Committee (1927); **25. Gaming,** No. 15a
- Lee (Sidney) (Exeter), Ltd. v. James (1928); **34. Mast. & S.** Nos. 3545a, 4012a
- Lee Cheong, *Re* (Can.); **11. Confl.** p. 371; **21. E. D.** p. 575
- Lee Lim Ma Hock v. Saw Ma Hone (Ind.); **24. Exors.** p. 618
- Leech v. Leader Publishing Co., Ltd. (Can.); **32. Libel,** p. 751
- Leeds Industrial Co-operative Society, Ltd. v. Slack (1924); **19. Easmt.** No. 1399
- Leen v. President of the Executive Council, etc. (Ir.); **18. Discy.** p. 536
- Lecs (Doe d.) v. Ford (1853); **40. Sttlmts.** No. 134a
- Leeson, *In the Goods of* (Ir.); **23. Exors.** p. 606
- Lefavre & Gagnon v. De Lisle (Can.); **5. Bkpcy.** p. 243
- Lefaux & Carlisle v. Pacific Great Eastern Ry. Co. (Can.); **11. Comp. Pche.** p. 358
- Legace & Lepinay, *Re* (Can.); **4. Bkpcy.** p. 191
- Legacy v. Davison (Can.); **1. Agcy.** p. 42
- Legal Professions Act, *Re*, *Re* Constitutional Questions Determination Act (Can.); **17. Dep.** p. 519



- Legault v. Dufresne (Can.); **5. Bkpcy.** p. 215  
 Legg & Co. v. Premier Tobacco Co. (S. Af.); **9. Coys.** p. 329  
 Leggo v. Brown (Aus.); **1. Agcy.** p. 76  
 Leicester Guardians v. Trollope (1911); **13. Corpns.** No. 1134a  
 Leicestershire & Warwickshire Electric Power Co., *Ex p.*, R. v. Transport Minister (1928); **20. Electric**, No. 3a  
 Leigh v. Inland Revenue Comrs. (1927); **28. Inc. T.** No. 672a  
 Leitch Collieries, Ltd., *Re* (Can.); **10. Coys.** p. 345  
 Lemay v. R. (Can.); **11. Const. L.** p. 384  
 Lemcke v. Newlove (Can.); **24. Exors.** p. 615  
 Lemieux & Copping Motor Distributories, *Re* (Can.); **4. Bkpcy.** p. 201  
 Lemon v. Austin Friars Investment Trust, Ltd. (1926); **10. Coys.** Nos. 4637a, 4825a  
 Leng (Sir W. C.) & Co. (Sheffield Telegraph), Ltd. v. Sillitoe (1928); **25. Gaming**, No. 415c  
 Lennox & Toronto Board of Education, *Re* (Can.); **11. Comp. Pche.** p. 356  
 Leno v. Simpson-Hepworth Co., Ltd. (Can.); **1. Agcy.** p. 70  
 Leonard v. Baker (1813); **5. Bkpcy.** No. 8933a  
 — v. Kellett (Ir.); **24. Exors.** p. 618  
 — v. St. Patrick's Parish (Can.); **19. Eccl.** pp. 553, 554  
 — v. Young (Can.); **22. Evid.** p. 598  
 Leopold Walford (London) v. Affréteurs Réunis Société Anonyme (1918); **1. Agcy.** No. 1786a  
 Lepine v. Laurent (Can.); **17. Dep.** p. 518  
 Leslie, *Re* (Can.); **32. Limit. of A.** p. 757  
 — v. Calvin (Can.); **24. Exors.** p. 616  
 — v. Morrison (Can.); **1. Agcy.** p. 52  
 Lesperance, *Re* (Can.); **38. Real Prop.** p. 855  
 Lesser v. Jones (Can.); **3. Bailmt.** p. 155  
 Lester v. Porter, *Re* Fox (Can.); **4. Bkpcy.** p. 193; **5. Bkpcy.** p. 228  
 Letang v. Ottawa Electric Ry. Co. (1926); **8. Carr.** No. 598a  
 Letbe v. Letbe & Whitehead (1928); **27. H. & W.** No. 3183a  
 Lethbridge Northern Irrigation District Board Trustees v. Munsell (Can.); **17. Damgs.** p. 501  
 Letros & Toronto Corp., *Re* (Can.); **11. Comp. Pche.** pp. 356, 360  
 Letteney v. Dillon (Can.); **33. L. G.** p. 760  
 Letters Patent No. 139,207, *Re*, *Re* Carbonit Akt. (1924); **11. Const. L.** No. 348a  
 Levasseur, *Ex p.* (Can.); **30. Intox.** p. 721  
 Level Estate, *Re* (Can.); **24. Exors.** p. 617  
 Leven Magistrates v. London & North Eastern Ry. Co. (Scot.); **26. Hghys.** p. 654  
 Levene v. Inland Revenue Comrs. (1928); **28. Inc. T.** No. 131b  
 — v. Maton (1907); **21. Exon.** No. 2210a  
 Levin v. Berg, etc. (S. Af.); **2. Arbn.** p. 131  
 — v. Levy (S. Af.); **1. Agcy.** pp. 54, 55, 65  
 Levine v. Wanless (Can.); **14. Crim.** p. 457  
 Levinstein, *Re*, Levinstein v. Levinstein (1921); **2. Aliens**, No. 215e  
 Levy, *Re*, *Ex p.* Official Receiver (1924); **5. Bkpcy.** No. 5475a  
 Levy v. Metropolitan Cab Co. (1854); **9. Coys.** No. 3568a  
 Levy & Jacobs, *Re* (Can.); **16. Courts**, p. 480  
 Lew v. Wing Lee (Can.); **16. Courts**, p. 482  
 Lewcock v. Bromley (1920); **1. Agcy.** No. 834a  
 Lewis, *Ex p.* (Can.); **20. Electric**, p. 564  
 —, *Re*, Meriden Britannia Co., Ltd. v. Walters (Can.); **16. Cntmpt.** p. 477  
 — v. Elgy (1927); **28. Inc. T.** No. 25d  
 Lewis v. Guest, Keen & Nettlefolds, Ltd. (1928); **34. Mast. & S.** No. 3243a  
 — v. Lewis (1928); **27. H. & W.** Nos. 6085a, 6217a  
 — v. Wakeling (Can.); **19. Easmt.** p. 544  
 Lewis & Phalen, *Re* (Can.); **38. Rales**, p. 853  
 Lewis & Sills v. Hughes (Can.); **17. Deeds**, p. 510  
 Lewis Merthyr Consolidated Collieries, Ltd., *Re*, Lloyds Bank v. Lewis Merthyr Consolidated Collieries, Ltd. (1928); **10. Coys.** No. 4982a  
 Leys v. Hollinghead (Can.); **35. Mtge.** p. 809  
 Lezetc v. Metheral (Can.); **34. Mast. & S.** p. 771  
 Liddell v. Strathern (Scot.); **14. Crim.** p. 442  
 Lieb v. Deacon (Can.); **34. Mast. & S.** p. 784  
 Liebenberg Estate v. Standard Bank of South Africa, Ltd. (S. Af.); **6. B. of Exch.** p. 256  
 Liggett (B.) (Liverpool), Ltd. v. Barclays Bank, Ltd. (1928); **3. Bank.** No. 546a; **9. Coys.** No. 4095a  
 Light v. West (William) & Sons, Ltd. (1926); **2. Arbn.** No. 2611a  
 Lighthouse v. Lighthouse (Can.); **27. H. & W.** pp. 655, 664  
 Lillie v. Lillie (Can.); **27. H. & W.** p. 669  
 Lilly v. Pittman (Nfld.); **17. Deeds**, p. 510  
 Limbert v. Grote (1832); **37. Powers**, No. 830a  
 Limerick S.S. Co. v. Commonwealth of Australia (Aus.); **17. Dep.** pp. 521, 526  
 Limprecht v. Franklin (Can.); **26. Hghys.** p. 649  
 Lincoln (County) v. South Grimsby (Township); **26. Hghys.** p. 652  
 Lind v. Mitchell (1928); **29. Insee.** No. 1660a  
 — v. Spicer Brothers (Africa), Ltd. (S. Af.); **1. Agcy.** p. 39  
 Lindners, Ltd., *Re* (Can.); **10. Coys.** p. 348  
 Lindsay, *Ex p.*, R. v. Barry (Can.); **16. Cr. Pract.** p. 495  
 —, *Re* (Ir.); **4. Bkpcy.** p. 210  
 — v. Craig (Scot.); **1. Agcy.** p. 74  
 — v. Hyams, *Ex p.*, *Re* Hyams (1923); **5. Bkpcy.** No. 7778a  
 Ling, *Re* (Can.); **32. Limit. of A.** p. 756  
 Lingangowda v. Basangowda (Ind.); **16. Courts**, p. 482  
 Lingrell v. Stocks No. 363 Municipal District (Can.); **26. Hghys.** p. 649  
 Linkhart v. Linkhart (Can.); **27. H. & W.** p. 661  
 Linney (H.) & Co., Ltd., *Re* (N.Z.); **5. Bkpcy.** pp. 228, 229; **10. Coys.** p. 343  
 Linstead v. Simpson (Scot.); **34. Med.** p. 798  
 Linton v. Inland Revenue Comrs. (Scot.); **25. Gifts**, p. 639  
 Ippard v. Ricketts (1872); **30. Jdgmts.** No. 419a  
 Lipson, *Re* (Can.); **4. Bkpcy.** p. 196; **5. Bkpcy.** pp. 221, 241  
 Lipstein, *Re* (Can.); **2. Aliens**, p. 113  
 Lipton, *Ex p.*, *Re* Armstrong (1926); **4. Bkpcy.** Nos. 3105a, 3173a  
 Lipton (B.), Ltd. v. Bell (1924); **5. Bkpcy.** No. 8782b  
 Liquid Carbonic Co. v. Rountree (Can.); **7. B. of Sale**, p. 266  
 Lister, *Re*, *Ex p.* Bradford Overseers & Bradford Corp., (1926); **5. Bkpcy.** No. 7764a  
 —, *Re*, Bradford Overseers & Corp., v. Durrance (1925); **5. Bkpcy.** No. 7764a  
 Litchfield v. Saskatchewan & Battle River Land & Developing Co. (Can.); **1. Agcy.** p. 73  
 Littauer Glove Corp., v. F. W. Millington (1920), Ltd. (1928); **9. Coys.** No. 26b  
 Little, *Re* (Can.); **4. Bkpcy.** p. 196  
 — v. A.-G. for British Columbia (Can.); **17. Dep.** p. 519  
 — v. Little (1927); **27. H. & W.** No. 2763a  
 Little & Campbellford Lake Ontario & Western Ry. Co., *Re* (Can.); **11. Comp. Pche.** p. 359



- Little Hallingbury, Essex, *Re* (1837); **5. Bkpcy.** No. 5807a
- Littledale v. Dixon (1805); **29. Insce.** No. 1203a
- Littridge, *Re* (Can.); **21. E. D.** p. 574
- Livergant v. Capital Jobbers, Ltd. (Can.); **21. Exon.** p. 592
- Livergood v. Home (Can.); **7. B. of Sale**, pp. 265, 266
- v. Taylor (Can.); **7. B. of Sale**, p. 265
- Liverpool & London & Globe Insurance Co., Ltd. v. Hartley & Ford (Aus.); **8. Chos.** p. 313; **39. Revenue**, p. 860
- Liverpool Grain Storage & Transit Co., Ltd. v. Charlton & Bagshaw (1918); **3. Bailmt.** No. 163a
- Livingstone v. Evans (Can.); **12. Contr.** p. 388
- Livingstonia S.S. Co., Ltd. v. Clyde Navigation Trustees (Scot.); **38. Pub. Auth.** p. 845
- Livock v. Pearson Brothers (1928); **12. Contr.** No. 5041a
- Llandovery Castle, The (1920); **1. Adm.** No. 766a
- Lloyd v. Bowring (1920); **11. Const. L.** No. 487b
- v. Clark (Can.); **25. Gaming**, p. 636
- v. Cook (1929); **31. L. & T.** Nos. 7037a, 7351a, 7352d, 7359a
- v. Sandilands (1818); **21. Exon.** No. 1584b
- v. Tardy, *Re* Harman (1894); **11. Confl.** No.
- Lloyd's Furniture Palace, Ltd., *Re*, Evans v. Lloyd's Furniture Palace, Ltd. (1925); **10. Coys.** No. 4783a; **25. Fraud. Conv.** Nos. 422a, 428a
- Lloyds Bank v. Chartered Bank of India, Australia & China (1928); **3. Bank.** No. 687a
- v. Lewis Merthyr Consolidated Collieries, Ltd., *Re* Lewis Merthyr Consolidated Collieries, Ltd. (1928); **10. Coys.** No. 4982a
- v. Morrison & Son, Ltd. (Scot.); **9. Coys.** p. 318
- Loane v. Black (Can.); **2. Arbn.** p. 129
- Lobb v. Rockwood Rural Credits Society (Can.); **30. Jdgmts.** p. 726; **32. Lien**, p. 753
- Local Option Provision of Government Liquor Control Act of Alberta, *Re*, *Re* Hardisty & Ribstone (Can.); **30. Intox.** p. 721
- Loch v. Blackwood (John), Ltd. (1924); **10. Coys.** Nos. 5357a, 5397a
- Lock v. Lock (1710); **18. Descr.** No. 133a
- v. Purdon (Can.); **12. Contr.** p. 414
- Locke, Lancaster & Johnson (W. W. & R.) & Sons, Ltd., *Ex p.*, *R. v.* London County JJ. (1928); **38. Rates**, No. 1616a
- Lockett v. Norman-Wright (1925); **12. Contr.** No. 546a
- Lockhart v. Harrison (1928); **32. Libel**, No. 1045b
- Loczka v. Ruthenian Farmers' Co-operative Co., Ltd. (Can.); **6. B. of Exch.** p. 249
- Loder v. Chesleyn (1664); **1. Action**, No. 637b
- Loeppky v. Lang (Can.); **8. Chos.** p. 313
- Logan, *Re* (Can.) (1927); **24. Exors.** p. 615
- Logan (H. J.) Co., *Re* (Can.) (1926); **9. Coys.** p. 329; **12. Contr.** p. 408
- Loisburg Land Co. v. Tutty (Can.); **21. Exon.** p. 589
- Londesborough (Earl), *Re*, Spicer v. Londesborough (Earl) (1923); **2. Agric.** Nos. 652a, 661a
- London (Bp.) v. Web (1718); **2. Agric.** No. 894a
- London & Canadian Loan & Agency Co. v. Everett (Can.); **28. Infts.** p. 698
- London & Lancashire Insurance Co., Ltd. v. Fisher (N.Z.); **5. Bkpcy.** p. 219
- London & Montrose Shipbuilding & Repairing Co., Ltd. v. Barclays Bank (1926); **3. Bank.** No. 691c
- London & North Western Ry. Co. v. Neilson (1922); **8. Carr.** No. 454
- London & South American Investment Trust, Ltd. v. British Tobacco Co. (Australia), Ltd. (1927); **9. Coys.** No. 3934a; **17. Dep.** No. 184a
- London Bank of Australia, Ltd. v. Kendall (Aus.); **3. Bank.** p. 174
- London Bridge Acts, *Re*, *Ex p.* Tatham (1838); **11. Comp. Pche.** No. 1614a
- London Bridge Works, Ltd., *Re* (Can.); **4. Bkpcy.** p. 201
- London County Council, *Ex p.*, *R. v.* Central Criminal Court JJ. (1925); **14. Crim.** No. 1016a; **16. Cr. Pract.** No. 2449a
- , *Ex p.*, *R. v.* Poplar Borough Council (1922); **16. Cr. Pract.** No. 1066
- v. Hackney Borough Council (1928); **18. Distr.** No. 1484a; **38. Rates**, Nos. 37a, 1477a
- v. Owner of 14, Lee-street, Stepney (1926); **26. Hghys.** No. 2204a
- v. Wiltshire County Council (1927); **19. Educ.** No. 137a
- London Electricity Joint Committee Co. (1920), Ltd., *Ex p.*, *R. v.* Electricity Comrs. (1924); **16. Cr. Pract.** No. 2303
- London Finance Corp'n. v. Banking Service Corp'n. (Can.); **9. Coys.** p. 331
- London General Omnibus Co., Ltd. v. Pope (1922); **1. Agcy.** No. 2523a
- London Guarantee & Accident Co., *Ex p.*, *Re* Davidson & Smith (Can.); **21. Exon.** p. 592
- London Guarantee & Accident Co. v. Abrams & Kovsky (Can.); **1. Agcy.** p. 41
- London Guarantee & Accident Co. v. Davidson (Can.); **21. Estpl.** p. 579
- London Guarantee & Accident Co., Ltd. v. Halifax (City) (Can.); **26. Guar.** p. 643; **29. Insce.** p. 714
- London Holeproof Hosiery Co., Ltd. v. Padmore (1928); **30. L. & T.** No. 1372a
- London Loan Co. v. Smyth (Can.); **35. Mtge.** p. 812
- London, Midland & Scottish Ry. Co. v. Ince Wagon & Ironworks Co., Ltd. (1924); **8. Carr.** No. 1245a
- London, Midland & Scottish Ry. Co. v. McDonald (Scot.); **24. Ferries**, p. 623
- London Steamship & Trading Corp'n., Ltd. v. Russian Volunteer Fleet (1926); **2. Arbn.** No. 2580b
- Long, *Re*, *Ex p.* Moore (Can.); **21. Exon.** p. 586
- v. Byers (Can.); **2. Animals**, p. 126
- v. R. (Can.); **3. Bailmt.** p. 155
- v. Smithson (1918); **1. Action**, No. 257a
- v. Zlatnick (Can.); **2. Animals**, p. 128
- Longmore, *Re* (Can.); **5. Bkpcy.** pp. 228, 231, 238
- , *Re*, *Ex p.* Royal Bank & Rider (Can.); **5. Bkpcy.** p. 216
- Lonnem Caveat, *Re* (Can.); **27. H. & W.** p. 666
- Lonsdale v. A.-G. (Ir.); **17. Dep.** p. 528
- Loo Len, *Re* (No. 1) (Can.); **2. Aliens**, p. 114
- , *Re* (No. 2) (Can.); **16. Cr. Pract.** p. 488
- Looker v. Law Union & Rock Insurance Co., Ltd. (1928); **29. Insce.** No. 2907a
- Lorch v. Olson (Can.); **16. Courts**, p. 480
- Lord (Owners) v. Newsum, Sons & Co., Ltd. (1920); **2. Arbn.** No. 1058a
- Lord v. Wardle (1837); **21. Estpl.** No. 1297a
- Lord Advocate, The Petitioner (Scot.); **22. Evid.** p. 604
- Lord Advocate v. Warrender's Trustees (Scot.); **21. E. D.** p. 572
- Lord Strathcona, The (1925); **1. Adm.** No. 254a
- Lord Strathcona, The (No. 2) (1926); **1. Adm.** No. 1492a
- Lord Strathcona, The (No. 3) (1926); **1. Adm.** No. 1519a; **22. Evid.** No. 4594a

- Lord's Day Alliance of Canada v. A.-G. for Manitoba** (1925); **17. Dep. No. 164a**  
**Lorden v. Brooke-Hitching** (1927); **31. L. & T. No. 2943a**  
**Lotbiniere Lbr. Co. v. Fortin** (Can.); **36. Prinrs. p. 824**  
**Lothian v. Epworth Press** (1926); **36. Negl. No. 421b**  
**Lothian Chemical Co., Ltd. v. Inland Revenue Comrs. (Scot.)**; **28. Inc. T. p. 680**  
**— v. Rogers (Scot.)**; **28. Inc. T. p. 680**  
**Loughborough Highway Board v. Curzon** (1886); **14. Crim. No. 6293a**  
**Loughrey v. Doherty (Ir.)**; **33. Mkts. p. 769**  
**Lounsbury, Re** (Can.); **5. Bkpcy. p. 221**  
**Lount v. Walkington** (Can.); **38. Rates, p. 853**  
**Loupides v. The Schooner Calimeris** (Can.); **1. Adm. p. 13**  
**Love & Knudson, Re, Re Irma Co-operative Co., Ltd. (Can.)**; **10. Coys. pp. 341, 343, 344**  
**Loverock v. Webb** (Can.); **2. Agric. pp. 89, 90**  
**Low v. Hicks** (Can.); **21. Exon. p. 589**  
**Low & Bonar, Ltd., Ex p., Re Fairley** (1922); **5. Bkpcy. No. 6918a**  
**Low Hong Hing, Re** (Can.); **2. Aliens, p. 113**  
**Lowe, Ex p. (1872)**; **33. Lunat. No. 1670a**  
**— v. Bentley** (1928); **32. Limit. of A. No. 1976a**  
**— v. Bruce (S. Af.)**; **34. Mast. & S. pp. 773, 774**  
**— v. Essex County Council** (1927); **34. Mast. & S. No. 3701b**  
**Lowe King, Ex p., Re Ghee, Public Trustee v. Lowe King** (N.Z.); **24. Exors. p. 618**  
**Lowery v. Lamont** (Can.); **30. Jdgmts. p. 726**; **32. Limit. of A. p. 756**  
**Lowndes' Patent, Re** (1927); **36. Pats. No. 2174a**  
**Lowry v. Reid** (Ir.); **12. Contr. p. 395**  
**— v. Williams** (Ir.); **30. Jdgmts. p. 724**  
**Lowther v. Clifford** (1927); **2. Agric. No. 267c**  
**— v. Harris** (1927); **1. Agcy. No. 485a**  
**Loyst v. General Accident Fire & Life Assurance Corp., Ltd. (1928)**; **29. Insce. No. 3217a**  
**Lucas, Ex p., Re Speal** (Can.); **5. Bkpcy. p. 228**  
**—, Re Rhys v. A.-G. (1922)**; **8. Char. No. 23b**  
**— v. Hall** (1899); **12. Contr. No. 513a**  
**Lucas & Co. v. Moncton Supply Co. (Can.)**; **11. Confl. p. 369**  
**Lucy v. Moore** (1730); **28. Infts. No. 685a**  
**Ludlow, Re, Bence-Jones v. A.-G. (1923)**; **8. Char. No. 755a**  
**Lukey & A.-G. for Saskatchewan v. Ruthenian Farmers Elevator Co., Ltd. (Can.)**; **17. Dep. p. 519**  
**Lumbers v. Montgomery, Re Montgomery** (Can.); **23. Exors. p. 610**  
**Lumley v. Desborough, Re Keane** (1871); **28. Infts. No. 42a**  
**Luna Advertising Co., Ltd. v. Burnham & Co. (1928)**; **36. Pats. No. 3343a**  
**Lund v. Thames & Mersey Marine Insurance Co., Ltd. (1901)**; **29. Insce. No. 1474a**  
**Lundquist v. Puls** (Can.); **25. Fraud. Conv. p. 628**  
**Lundy & McLeod v. Powell** (Can.); **17. Damgs. p. 500**  
**Lunn Estate, Re** (Can.); **21. E. D. p. 575**  
**Luscar Collieries v. McDonald** (1927); **17. Dep. No. 125a**  
**Lussier, Re** (Can.); **4. Bkpcy. p. 208**; **5. Bkpcy. p. 221**  
**Lustre, The** (1834); **39. Royal. F. No. 33a**  
**Luxardo v. Public Trustee** (1924); **2. Aliens, No. 215l**  
**Lye v. British Argentine & Meat Co. (1928), Ltd. (1927)**; **34. Mast. & S. No. 2384a**  
**Lyman's Trust & Trustee Relief Amendment Act, 1860, Re** (1860); **23. Exors. No. 4763a**  
**Lynch v. Limerick County Council (Ir.)**; **34. Mast. & S. p. 773**  
**— v. Turney** (Can.); **7. B. of Sale, p. 262**  
**Lynde v. Nash** (1928); **9. Coys. No. 439a**  
**Lyne's Settlement Trusts, Re, Re Gibbs, Lyne v. Gibbs** (1919); **11. Confl. No. 511**  
**Lyon (J. L.) & Co., Ltd. v. Haddock, Parker & Co. (1919)**; **2. Arbn. No. 1361a**  
**Lyons v. Cowcher** (1926); **28. Inc. T. No. 457a**  
**— v. Smith** (Can.); **6. B. of Exch. p. 256**  
**Lysaght v. Inland Revenue Comrs. (1928)**; **28. Inc. T. No. 131c**  
**— v. Lysaght** (1928); **27. H. & W. No. 5393a**  
**Lyshar v. Gisborne Harbour Board (N.Z.)**; **13. Coprt. p. 420**  
**Lyte v. Currey** (Aus.); **18. Discy. p. 535**  
**Lytton (Earl) v. A.-G., Re Shakespear Memorial Trust** (1923); **8. Char. Nos. 73a, 195a, 2146a**  
**Lytton v. Great Northern Ry. Co. (1856)**; **39. Rys. No. 197a**
- M.**
- M. v. M. (1928)**; **27. H. & W. No. 4189a**  
**M. v. M. (Scot.)**; **28. Infts. p. 697**  
**M. Banerjee v. Anukul Chandra Mitra** (Ind.); **3. Barr, p. 182**; **32. Libel, p. 750**  
**M. E. Moolla v. Collector of Rangoon** (Ind.); **11. Comp. Pche. p. 357**  
**M. Jacobs Young & Co., Ltd. v. Harris** (1926); **28. Inc. T. No. 236a**  
**— Wheeler & Co., Ltd. v. Warren** (1928); **10. Coys. No. 5067b**  
**Ma Mya v. Ma Thein** (Ind.); **30. Jdgmts. pp. 725, 726, 727**  
**Ma Pan Nyun v. Maung Sit Phaung** (Ind.); **21. Estpl. p. 579**  
**Maber, Re, Ward v. Maber** (1928); **28. Infts. No. 831a**; **37. Perps. No. 652a**  
**Mac Fisheries, Ltd. v. Harrison** (1924); **1. Agcy. No. 608a**  
**McAndrew v. Gray** (Aus.); **1. Agcy. p. 59**  
**M'Ardle v. Howie (J. & R.), Ltd. (Scot.)**; **34. Mast. & S. p. 794**  
**McAskill v. North Western Trust Co., Re North Western Trust Co. (Can.)**; **9. Coys. p. 324**  
**Macaulay v. William Baird & Co. (Scot.)**; **34. Mast. & S. p. 790**  
**Macaure v. Northern Assurance Co. (1925)**; **2. Arbn. No. 1850a**  
**McAvity (T.) & Sons, Ltd. v. Walsh** (Can.); **32. Lien, p. 754**  
**M'Bain v. Mitchell** (Scot.); **30. Intox. p. 720**  
**McBride, Re** (Can.); **38. Rates, p. 852**  
**—, v. Darrell** (Can.); **1. Adm. p. 13**  
**— v. Ontario Jockey Club, Ltd. (Can.)**; **8. Chos. p. 314**; **17. Dep. pp. 525, 526**  
**McCabe v. Coste** (Can.); **7. B. of Sale, p. 265**  
**M'Callum v. Brooks** (Scot.); **25. Food, p. 626**  
**McCallum v. Central Manitoba Mines, Ltd. (Can.)**; **34. Mines, p. 800**  
**— v. Cohoe** (Can.); **1. Agcy. p. 48**  
**— v. Urchak** (Can.); **28. Infts. p. 695**  
**McCannell v. Mabee McLaren Motors, Ltd. (Can.)**; **12. Contr. p. 388**  
**— v. Tyreman** (Can.); **12. Contr. p. 413**  
**M'Cartan v. Belfast Harbour Comrs. (Ir.)**; **34. Mast. & S. p. 773**  
**Macartney, Re, Macfarlane v. Macartney** (1921); **3. Basty. Nos. 241a, 274a**  
**McCartney v. Miller** (Can.); **36. Nuis. p. 819**  
**McCarty, Re** (Can.); **1. Agcy. p. 77**  
**— v. McMurray** (Can.); **25. Fraud. Conv. p. 627**

- Macaulay v. Guaranty Trust Co. of New York (1927); **11. Confl.** No. 1285a
- McCauley v. Huber (Can.); **2. Animals**, p. 124
- McCausland v. McCausland (1927); **27. H. & W.** No. 3859a
- McCawley v. R. (Aus.); **3. Barr.** p. 181
- McClanaghan v. St. Ann's Mutual Building Society (Can.); **17. Dep.** p. 516
- McClintock v. Winnipeg Electric Co. (Can.); **36. Negl.** pp. 816, 817
- McClusky v. McClusky (Can.); **27. H. & W.** p. 669
- McColl, *Re*, McColl v. McColl (Can.); **3. Auct.** p. 153
- McConkey's Arbitration, *Re* (Can.); **2. Arbn.** pp. 140, 147
- McConnal v. Harden (Can.); **8. Chos.** p. 313
- McCormack, *Re* (Can.); **4. Bkpcy.** p. 213
- v. Robinson (Can.); **12. Contr.** p. 403
- McCormick v. Park (Can.); **21. Exon.** p. 591
- M'Corquindale v. Carnbroe Coal Co., Ltd. (Scot.); **34. Mast. & S.** p. 778
- McCoubrey, *Re* (Can.); **4. Bkpcy.** p. 201
- , *Re*, *Re* Stratton & Greenshields, Ltd. (Can.); **4. Bkpcy.** p. 204; **5. Bkpcy.** p. 241
- McCowan v. McCulloch (Can.); **3. Bailmt.** p. 156
- McCraney Rural Municipality Caveat, *Re*, *Re* Land Titles Act (Can.); **38. Pub. Hlth.** p. 848
- M'Creadie v. Doulton & Co. (Scot.); **34. Mast. & S.** p. 783
- McCreagh v. Frearson (1921); **2. Agric.** No. 266v
- McCreanney v. McCreanney (1928); **27. H. & W.** No. 6124b
- McCrindle v. London Scottish Canadian Investment Syndicate (Can.); **1. Agcy.** p. 71
- McCrohan v. Edwards (Can.); **31. L. & T.** p. 741
- McCuaig v. Barber (Can.); **35. Mtge.** p. 812
- McCuaig & Bray, *Re* (Can.); **5. Bkpcy.** p. 228
- McCullough v. Samuel Marshall, The (Can.); **1. Adm.** pp. 18, 35
- McCullough & Graham, *Re* (Can.); **38. Real Prop.** p. 856
- McCullum, *Ex p.*, *Re* Macdonald (1920); **5. Bkpcy.** No. 7122
- McCully v. Maritime United Farmers Co-operative (Can.); **12. Contr.** p. 413
- McCurdy v. McDaniel (Can.); **24. Exors.** p. 615
- v. Neve (Can.); **5. Bkpcy.** p. 226
- McCutcheon v. Registrar of Titles (Aus.); **1. Agcy.** p. 40
- McCutcheon & Toronto Corp., *Re* (Can.); **38. Pub. Hlth.** p. 847
- McCutcheon Brick Co. v. Gardiner (Can.); **12. Contr.** p. 401
- McDermott v. Hudson (Aus.); **2. Animals**, p. 121
- McDonagh, *Re* (Can.); **7. B. of Sale**, p. 265
- Macdonald, *Re* (Can.); **35. Mtge.** p. 812
- , *Re*, *Ex p.* McCullum (1920); **5. Bkpcy.** No. 7122
- McDonald v. Arbuckles (Can.); **30. L. & T.** p. 732
- v. Burr (Can.); **2. Animals**, p. 121
- MacDonald v. Canadian Pacific Ry. Co. (Can.); **38. Rys.** p. 849
- McDonald v. Carey (Can.); **7. B. of Sale**, p. 265
- Macdonald v. Casein, Ltd. (Can.); **1. Agcy.** p. 67
- v. Cummings (Can.); **18. Distr.** p. 537
- McDonald v. Halifax Corp., (Can.); **17. Deeds**, p. 509
- v. Linton (Can.); **25. Fish.** p. 624
- Macdonald v. McArthur (Can.); **18. Discy.** p. 535
- McDonald v. McIsaac (Can.); **38. Real Prop.** p. 856
- v. Mitchell (Can.); **21. Exon.** p. 586
- Macdonald v. Normanby Co-operative Dairy Factory Co., Ltd. (N.Z.); **9. Coys.** pp. 332, 333
- MacDonald v. North West Biscuit Co. (Can.); **7. Bldg. Conts.** p. 276
- M'Donald v. Outram (George) & Co., Ltd. (Scot.); **34. Mast. & S.** p. 787
- Macdonald v. Peddle (N.Z.); **8. Chos.** p. 311; **12. Contr.** p. 412; **19. Easmt.** p. 542
- McDonald v. Robillard (Can.); **38. Rates**, p. 853
- v. Wairakei, Ltd. (N.Z.); **9. Coys.** p. 323
- McDonald (Gerald) & Co. v. Nash & Co. (1924); **6. B. of Exch.** Nos. 567b, 2096b
- McDonald & Listowel, *Re* (Can.); **16. Courts** p. 480
- MacDonald's (Lord) Curator (Scot.); **10. Coys.** p. 347
- M'Donnell v. Stenson (Ir.); **18. Descr.** p. 529
- MacDougall, *Re* (Can.); **17. Dep.** p. 524; **23. Exors.** p. 614
- McDougall v. A.-G. (N.Z.); **30. Jdgmts.** p. 724
- M'Dougall v. Summerlee Iron Co., Ltd. (Scot.); **34. Mast. & S.** p. 794
- McDougall & Secord, Ltd. v. Merchants Bank of Canada (Can.); **7. B. of Sale**, p. 265
- McElland's Estate, *Re* (Can.); **5. Bkpcy.** pp. 219, 226
- M'Ewan v. Edinburgh & District Tramways Co. (Scot.); **34. Mast. & S.** p. 773
- McEwan v. Johnstone (N.Z.); **1. Agcy.** pp. 49, 50
- v. Speckt (Can.); **24. Exors.** pp. 617, 618
- McEwen v. McEwen (Can.); **27. H. & W.** p. 661
- McFarland v. London & Lancashire Guarantee & Accident Co. (Can.); **10. Coys.** p. 345
- Macfarlane v. Davis (Can.); **35. Misrep.** p. 803
- McFarlane v. Franklin (Can.); **21. Exon.** p. 593
- v. Hutton Brothers (Stevedores), Ltd. (1926); **34. Mast. & S.** No. 2317b
- Macfarlane v. Macartney, *Re* Macartney (1921); **3. Basty.** Nos. 241a, 274a
- MacFarlane v. Norris (1862); **11. Confl.** Nos. 1277a, 1306a
- McFee v. Dundar (Can.); **19. Educ.** p. 556
- Macfie v. Cater (Can.); **5. Bkpcy.** p. 230
- v. Hunter (Can.); **21. Exon.** p. 588
- McGarritty v. Condry (Aus.); **30. L. & T.** p. 733
- McGee v. Clarke (Can.); **17. Damgs.** pp. 500, 505; **34. Mines**, p. 801
- McGill v. McGlashan (Can.); **17. Deeds**, p. 510
- McGillis v. McDonald (Can.); **21. Exon.** p. 590
- M'Ginley v. Farme Coal Co. (Scot.); **34. Mast. & S.** p. 789
- McGinn v. Ellerton (Can.); **27. H. & W.** p. 655
- M'Glone v. Smith (Ir.); **17. Damgs.** p. 500
- McGoldrick v. Eastern Express Co. (Can.); **12. Contr.** p. 388
- McGowan, *Ex p.*, *Re* Rosedale Produce Co. (Can.); **5. Bkpcy.** p. 229
- MacGrath v. Black (1926); **32. Libel.** No. 951
- McGregor, *Re* (Can.); **34. Mines**, p. 801
- McGregor v. Board of Agriculture for Scotland (Scot.); **2. Agric.** pp. 83, 84
- McGregor (Doe d.) v. Crow (Can.); **32. Limit. of A.** p. 757
- McGregor v. Esquimalt & Nanaimo Ry. Co. (Can.); **17. Dep.** p. 520
- v. Gaulin (Can.); **12. Contr.** p. 408
- McGregor (Doe d.) v. Hawke (Can.); **32. Limit. of A.** p. 757
- Macgregor v. Lord Advocate (Scot.); **11. Const. L.** p. 380
- McGuinness v. McGuinness (N.Z.); **28. Infts.** p. 606
- McGuinness v. Hollingshead, *Re* Mackay (Ir.); **4. Bkpcy.** p. 201
- McGuinty & Co., *Ex p.*, *Re* Hamar (Can.); **11. Confl.** p. 376
- McGuire, *Ex p.*, *Re* Calcus Co., Ltd. (Can.); **4. Bkpcy.** p. 210
- v. Prosser (Can.); **20. Eqty.** p. 565



- M'Harg v. Speirs (Scot.); 2. *Agric.* p. 83  
 Machon v. McLoughlin (1926); 28. *Inc. T.* Nos. 507a, 526a  
 McInnes v. Bird (N.Z.); 20. *Elect.* p. 561  
 McInnis, *Re* (Can.); 38. *Real Prop.* p. 856  
 McIntosh v. Layfield (Can.); 2. *Arbn.* p. 135  
 MacIntosh v. MacIntosh (Can.); 27. *H. & W.* p. 666  
 McIntosh v. Parent (Can.); 21. *Estpl.* pp. 580, 581  
 McIntyre, *Re* (Can.); 5. *Bkpcy.* p. 220  
 —, *Re*, Trustee v. Canada Metal Co., Ltd. (Can.); 7. *B. of Sale*, p. 261; 21. *Estpl.* p. 584  
 — v. McIntyre (Can.); 22. *Evid.* p. 602  
 MacIntyre v. Miller (Can.); 1. *Agcy.* p. 57  
 McIntyre v. Shaw (Can.); 21. *Exon.* p. 589  
 — v. Union Bank (Can.); 7. *B. of Sale*, p. 265  
 McIntyre & Co. v. Law (Can.); 1. *Agcy.* pp. 56, 61  
 Mack v. McLeod (Can.); 1. *Agcy.* p. 64  
 McKay, *Re* (Can.); 4. *Bkpcy.* pp. 190, 202, 203; 5. *Bkpcy.* p. 233  
 —, *Re*, *Ex p.* Mason (Can.); 4. *Bkpcy.* p. 214  
 Mackay, *Re*, McGuinness v. Hollingshead (Ir.); 4. *Bkpcy.* p. 201  
 McKay (Doe d.) v. Allen (Can.); 38. *Real Prop.* p. 855  
 Mackay v. A.-G. for British Columbia (Can.); 11. *Comp. Pche.* p. 355  
 McKay v. Campbell (Can.); 35. *Misrep.* p. 803  
 Mackay v. Lamb (Scot.); 14. *Crim.* pp. 457, 460  
 McKay v. Loucks (Can.); 2. *Animals*, p. 120  
 — v. McDougall (Can.); 38. *Real Prop.* p. 856  
 — v. Sexsmith (Can.); 31. *L. & T.* p. 743  
 — v. Tudhope Anderson Co., Ltd. (Can.); 1. *Agcy.* p. 49  
 — v. Turgeon (Can.); 5. *Bkpcy.* p. 220  
 MacKay (Gordon) & Co., Ltd. v. Capital Trust Co., Ltd. (Can.); 7. *B. of Sale*, p. 261  
 McKeen v. McKay (Can.); 32. *Limit. of A.* p. 757  
 M'Kellar v. M'Master (Scot.); 31. *L. & T.* p. 746  
 McKelvey v. Invercargill Milk Supply Co., Ltd. (N. Z.); 36. *Nuis.* p. 819  
 McKenna v. Haslett, *Re* Haslett (Aus.); 24. *Exors.* p. 617  
 McKenny v. Drummond & Dvoretzky (Aus.); 17. *Damgs.* p. 504; 39. *S. Goods*, p. 863  
 McKenzie, *Re* (Can.); 4. *Bkpcy.* pp. 209, 210, 213; 18. *Descr.* p. 529  
 Mackenzie v. Abbott (1926); 26. *Hghys.* No. 2592a  
 McKenzie v. Lamont (Can.); 17. *Deeds*, p. 508  
 — v. McDonald (Can.); 6. *B. of Exch.* p. 255  
 Mackenzie v. Macgillivray (Scot.); 2. *Agric.* p. 82  
 — v. Smith (Scot.); 19. *Educ.* p. 556  
 Mackenzie Brothers v. The Admiralty (Scot.); 11. *Const. L.* pp. 383, 384  
 Mackenzie's Trustees v. Mackenzie (Scot.); 37. *Powers*, p. 842  
 Mackenzie-Kennedy v. Air Council (1927); 11. *Const. L.* No. 157a; 21. *Estpl.* Nos. 498a, 508a  
 M'Keogh v. O'Brien Moran (Ir.); 32. *Libel*, p. 751  
 M'Keown v. Roe (Ir.); 28. *Inc. T.* p. 687  
 Mackie v. Crombie (Scot.); 25. *Gaming*, p. 635  
 Mackie v. Dumbartonshire County Council, Western District Committee (1927); 26. *Hghys.* No. 1164a  
 McKiernan v. McKiernan (Can.); 27. *H. & W.* p. 670  
 McKinlay v. Jenkins (H. T.) & Son, Ltd. (1926); 28. *Inc. T.* No. 93a  
 McKinnon v. McDonald (Can.); 40. *S. Land.* p. 867  
 Mackinnon v. Mackinnon (Can.); 27. *H. & W.* p. 666  
 Mackintosh, *Re*, Manley v. O'Brien (Can.); 21. *Estpl.* p. 583  
 McKittrick Properties, Ltd., *Re* (Can.); 20. *Electric*, p. 564  
 Macklin v. Newbury Sanitary Laundry (1919); 2. *Animals*, No. 390a  
 M'Laren v. Smith (Scot.); 2. *Animals*, p. 128  
 MacLaren Co. v. Elec. Reduction Co. (Can.); 30. *L. & T.* p. 733  
 McLauchlan & College of Physicians & Surgeons, *Re* (Can.); 34. *Med.* p. 797  
 McLaughlin v. Gentles (Can.); 1. *Agcy.* p. 44  
 — v. Long (Can.); 36. *Negl.* p. 817  
 McLaughlin & Co. v. Birks (Can.); 1. *Agcy.* p. 56  
 McLean v. Brett (Can.); 2. *Animals*, pp. 120, 121  
 — v. Dun (Can.); 26. *Guar.* p. 641  
 M'Lean v. Hardie (Scot.); 28. *Gifts*, p. 697  
 McLean v. Johnson (Can.); 17. *Deeds*, p. 511  
 — v. R. (Can.); 14. *Crim.* p. 450  
 — v. Ratekin (Can.); 25. *Fraud. Conv.* p. 628  
 — v. Watson (Can.); 21. *Exon.* p. 587  
 Maclean & Graham v. Smith & Mackintosh (Ir.); 18. *Descr.* p. 529  
 McLean (J. J. H.) Estate Co. v. Newton, *Re* Kaplan (Can.); 4. *Bkpcy.* p. 205  
 McLean Gold Mines, Ltd. v. A.-G. (Can.); 17. *Dep.* pp. 520, 522  
 McLelan, *Re* (Can.); 21. *Exon.* p. 586  
 McLennan v. Carter (Can.); 4. *Bkpcy.* p. 211  
 — v. McLennan (Can.); 27. *H. & W.* p. 659  
 McLeod v. Black (1927); 34. *Mast. & S.* Nos. 3315a, 3531b  
 — v. Brazilian Traction Light & Power Co., Ltd. (Can.); 9. *Coys.* p. 325  
 — v. Customs & Excise Minister (Can.); 28. *Inc. T.* p. 675  
 — v. Dowling (1927); 36. *Prtnrs.* Nos. 1654a, 1670a  
 — v. Girvin Central Telephone Assocn. (Can.); 21. *Exon.* p. 587  
 — v. United Cannery, Ltd. (Can.); 9. *Coys.* p. 332  
 McLeod & Windsor Corpn., *Re* (Can.); 28. *Inc. T.* p. 688  
 M'Lintock, *Ex p.*, *Re* Thomson (Scot.); 2. *Aliens*, p. 104  
 McMahan, *Re*, Lawson v. Intestate Estates Curator (Aus.); 23. *Exors.* p. 611  
 McManus v. Gravelbourg (Can.); 7. *Bldg. Contrs.* p. 274  
 McMaster v. McPherson (Can.); 21. *Exon.* p. 588  
 McMillan, *Ex p.*, *Re* Aylward (Can.); 4. *Bkpcy.* p. 205; 35. *Mtge.* p. 809  
 McMillan, *Re* (Can.); 23. *Exors.* p. 606  
 — v. Canadian Northern Ry. Co. (Can.); 11. *Confl.* p. 371  
 M'Millan v. Mackinlay (Scot.); 27. *H. & W.* p. 659  
 MacMillan v. Mooney (Can.); 12. *Contr.* p. 398  
 McMillan v. Williams (Can.); 12. *Contr.* p. 395  
 Macmillan & Co. v. Cooper (1923); 13. *Coprt.* Nos. 92a, 426a, 635a  
 McMillan Grain Co. & Winding-Up Act, *Re* (Can.); 10. *Coys.* p. 342  
 McMonagle v. Orton (Can.); 17. *Damgs.* p. 507  
 McMorris v. Empress Theatre Co., Ltd. (Can.); 12. *Contr.* p. 408  
 McMurchy v. Stewart (Can.); 25. *Gifts*, p. 639  
 McMurtry & Co., *Re*, *Ex p.* James (M. A.) & Sons (Can.); 4. *Bkpcy.* p. 207  
 McNab, *Re* (Can.); 8. *Char.* p. 308  
 — v. Coward (Can.); 22. *Evid.* p. 602  
 Macnaghten v. Douglas (1927); 34. *Med.* No. 106  
 McNally v. McNally (Can.); 27. *H. & W.* p. 662



- Macnaught v. Sievwright (Scot.); 5. *Bkpcy.* p. 241
- McNaught v. Stokes-Stephens Oil Co., Ltd. (Can.); 2. *Arbn.* p. 143
- McNaught & Stokes-Stephens Oil Co., *Re* (No. 2) (Can.); 2. *Arbn.* pp. 137, 148
- McNaught & Stokes-Stephens Oil Co., Ltd., *Re* (No. 3) (Can.); 2. *Arbn.* p. 144
- Macnaughton v. Wigg (Can.); 31. *L. & T.* p. 738
- McNeil v. Howe (Can.); 17. *Dep.* p. 520
- McNeill v. Short (Can.); 26. *Guar.* p. 642
- McNish v. Munro (Can.); 32. *Limit. of A.* p. 757
- McParland v. Seymour (Can.); 21. *Exon.* p. 592
- v. Sparks (N.Z.); 30. *Intox.* p. 720
- McPhail v. McKinnon (Can.); 21. *Exon.* p. 588
- McPherson v. Lees (Andrew), Ltd. (N.Z.); 8. *Chos.* p. 314
- Macpherson v. Taxation Comr. (Aus.); 28. *Inc. T.* p. 675
- MacPherson Estate, *Ex p.*, *Re* Hingston-Smith (Can.); 18. *Distr.* pp. 538, 539
- McQuade v. Morgan (Aus.); 5. *Bkpcy.* p. 217
- McQuaid v. Cooper (Can.); 16. *Gourts.* p. 480
- McQueen v. Vancouver Island Power Co., Ltd. (Can.); 2. *Arbn.* p. 148
- McQuillan v. Ryan (Can.); 7. *Bounds. & F.* p. 272
- McRae v. Corbett (Can.); 38. *Rates.* p. 853
- v. McLaughlin Motor Car Co., Ltd. (Can.); 30. *Intox.* p. 721; 33. *Mal. Pros.* p. 768
- Macrae v. Walsh (Aus.); 22. *Evid.* p. 597
- Macroon, The (1927); 1. *Adm.* No. 897a
- McTaggart v. Powers (Can.); 34. *Med.* p. 797; 36. *Negl.* p. 816
- McVittie v. Bolton JJ. (1924); 14. *Crim.* No. 6298c
- MacWilliams v. Higgins (Can.); 6. *B. of Exch.* p. 250
- Macy v. Cork Manufacturing Co., Ltd. (1928); 34. *Mast. & S. Nos.* 3818a, 3834a
- Madame Tussaud & Sons, Ltd., *Re* (1927); 10. *Coys.* No. 6989a
- Madge, *Re*, Pridie (or Pudce) v. Bellamy (1928); 23. *Exors.* No. 3517a
- Madhavji Visram v. Ranniklal Vadilal (Ind.); 17. *Damgs.* p. 506
- Madhoram Hurdeo Das v. Sett (Ind.); 2. *Aliens.* p. 110
- Madras Income Tax Comr. v. T. S. Firm, Tanjore at Negapatam (Ind.); 28. *Inc. T.* p. 677
- Madrid Bank, Ltd., *Re*, *Ex p.* Holder, *Ex p.* Williams (1866); 10. *Coys.* No. 6368a
- Maeburn v. Leckie (1822); 29. *Insce.* No. 2110a
- Magadi Soda Co., Ltd., *Re* (1925); 10 *Coys.* Nos. 4688a, 7409a
- Maggi, *Ex p.* (Aus.); 2. *Aliens.* p. 115
- Maggie A., The (1922); 1. *Adm.* No. 328a
- (1923); 1. *Adm.* No. 1497b
- Maguire, *Ex p.*, R. v. Maidstone Prison (Governor) (1925); 16. *Cr. Pract.* Nos. 660a, 797a
- , *Re* (Can.); 4. *Bkpcy.* pp. 194, 196, 198
- , *Re* (Ir.); 4. *Bkpcy.* p. 210
- v. Day (Ir.); 31. *L. & T.* p. 735
- v. Maguire (Can.); 11. *Confl.* p. 375
- Magurn v. Magurn (Can.); 32. *Lien.* p. 754
- Mah Shin Shong, *Re*, *Re* Sing Yim Hong (Can.); 2. *Aliens.* p. 114
- Mahammad Raza Saheb Belgami v. Sadasiva Rao (Ind.); 16. *Cr. Pract.* p. 494
- Mahan v. Manness (Can.); 1. *Agcy.* p. 41
- Mahler v. Barker (Can.); 12. *Contr.* p. 393
- Mahomed v. Principal Immigration Officer (S. Af.); 2. *Aliens.* p. 115
- Mahomed & Son v. Immigrants' Appeal Board (S. Af.); 2. *Aliens.* p. 94
- Mahomed Auzam Ismail v. Jaganath Jamnadas (Ind.); 19. *Easmt.* p. 546
- Mahomedalli Allabux v. Ismailji Abdulali & Sardar Syedna Taher Saifuddin Mullaji Saheb (Ind.); 16. *Cr. Pract.* p. 488
- Mahon v. Crowe (Can.); 21. *Exon.* p. 588
- v. McLean (Can.); 35. *Mistake.* p. 805
- Mahood v. Geange (N.Z.); 1. *Agcy.* p. 78
- Mailman, *Re* (Can.); 28. *Infts.* p. 697
- Main Cloak Co., *Re* (Can.); 4. *Bkpcy.* p. 198
- Mainfroid v. Mainfroid (Can.); 2. *Arbn.* p. 149; 21. *Estpl.* p. 583
- Mainland Portland Cement Co., *Re* (Can.); 32. *Lien.* p. 754
- Maitland v. Public Trustee (N.Z.); 24. *Exors.* p. 618
- Major v. Canadian Pacific Ry. Co. (Can.); 8. *Carr.* p. 286
- Makower, McBeath & Co., Proprietary, Ltd. v. Dalgety & Co., Ltd. (Aus.); 3. *Bailmt.* pp. 155, 157
- Malatsky, *Ex p.* (Can.); 14. *Crim.* p. 443
- Malcolm v. Barber, Walker & Co., Ltd. (1927); 34. *Mast. & S. Nos.* 3359b, 3891a, 3954b
- Malcomess v. Durban Town Council (S. Af.); 2. *Aliens.* p. 98
- Maleverer v. Spinke (1537); 21. *Exon.* No. 1578a
- Malkin (W. H.) Co., Ltd. v. Sherman (Can.); 26. *Guar.* p. 643
- Mallett v. Staveley Coal & Iron Co., Ltd. (1928); 28. *Inc. T.* No. 248a
- Mallough v. Dick (Can.); 6. *B. of Exch.* p. 258
- Maloney, *Re* (Ir.); 4. *Bkpcy.* pp. 210, 212; 17. *Dep.* p. 527
- Maloof v. Bickell (Can.); 1. *Agcy.* p. 46
- Malowany v. Pasemko (Can.); 1. *Agcy.* p. 67
- Manchersha Soragji v. Virjivallabhdas Jekisondas (Ind.); 19. *Easmt.* p. 544
- Manchester & Liverpool District Banking Co., *Ex p.*, *Re* Dutton, Massey & Co. (1924); 4. *Bkpcy.*, Nos. 3375a, 3383a, 4102a
- Manchester Corp'n. v. Audenshaw Urban Council & Denton Urban Council (1928); 26. *Hghys.* No. 786a
- Manchester Ship Canal Co.'s & Dock & Harbour Authorities Assocn.'s Applications (1927); 38. *Rys.* No. 756a
- Mancomunidad Del Vapor Frumiz v. Royal Exchange Assurance (1927); 29. *Insce.* No. 1708a
- Mangena v. Moyatusi (S. Af.); 1. *Agcy.* p. 52
- Manghi v. Dial Chand (Ind.); 35. *Mtge.* p. 813
- Mani Ram v. R. (Ind.); 14. *Crim.* p. 439
- Manihot Rubber Plantations, Ltd., *Re* (1919); 2. *Aliens.* No. 239a
- Manisty v. Jameson (Ind.); 12. *Contr.* p. 408
- Manitoba Election Act, *Re*, *Re* Winnipeg Electoral District (Can.); 20. *Elect.* p. 581
- Manitoba Institute of Chartered Accountants v. Bellamy (Can.); 28. *Injon.* p. 701
- Manitoba Oil Products, Ltd. v. Langenburg Village (Can.); 18. *Distr.* p. 539
- Manley v. O'Brien, *Re* Mackintosh (Can.); 21. *Estpl.* p. 583
- Mann, *Ex p.*, R. v. Ely JJ. (1928); 33. *Mags.* No. 811a
- Mann & Harvey, *Re* (1920); 2. *Agric.* No. 268b
- Manners v. Cain (Can.); 32. *Lien.* p. 754
- Manning v. Carrique (Can.); 12. *Contr.* p. 388
- v. Nickerson (Can.); 33. *Mal. Pros.* p. 768
- Mannington v. Clifford (Aus.); 12. *Contr.* p. 402
- Manseau v. R. (Can.); 11. *Const. L.* p. 380
- Mansfield v. Robinson (1928); 2. *Agric.* No. 266z
- Mansookhlal Dolatchand & Co. v. Nagardass Moolchand (Ind.); 5. *Bkpcy.* p. 230
- Mantle Lamp Co. of America v. Nixon (Can.); 21. *Estpl.* p. 584
- Manton v. Brocklebank (1928); 2. *Animals.* Nos. 156a, 258a, 270a

- Manton's (Lord) Trustees v. Steele (1927); **28. Inc. T.** Nos. 430a, 444a
- Manufacturers Life Insurance Co. v. Flowery Plains (No. 33) (Can.); **38. Pub. Hlth.** p. 848
- Manufacturers Life Insurance Co. v. Swinney (Can.); **17. Deeds**, p. 509
- Manufacturing Confectioners' Alliance, Incorporated v. Caledonian Ry. Co. (1922); **8. Carr.** No. 1377b
- Maple Leaf Mllg. Co., *Ex p.*, *Re* Blair (Can.); **7. B. of Sale**, p. 265
- Maple Ridge Corp'n. v. Western Power Co. of Canada (Can.); **20. Electric**, p. 563
- Maple Valley Case (Can.); **20. Elect.** p. 561
- Maple Valley Presbyterian Church, *Re* (Can.); **19. Eccl.** p. 554
- Marb  v. George Edwardes (Daly's Theatre), Ltd. (1928); **17. Dams.** No. 181a; **32. Libel**, No. 1948a.
- March (Lady) v. Fowke (1679); **23. Exors.** No. 5641a
- Marchesseault v. Canadian National Rys. (Can.); **8. Carr.** p. 289
- Marcille v. Donnelly (Can.); **31. L. & T.** p. 740
- Margerison, *Ex p.*, *R. v.* Haslewood (1926); **13. Crnrs.** No. 156a
- Mariam & Mahomed v. Immigrants' Appeal Board (S. Af.); **2. Aliens**, p. 115
- Marie Celeste Samaritan Society of London Hospital v. Inland Revenue Comrs. (1926); **28. Inc. T.** No. 483a
- Marie Gartz, The (1920); **2. Aliens**, No. 215a
- Marine Insurance Club, *Ex p.*, *Re* Tucker (Nfld.); **29. Insee.** p. 715
- Maritime Radio Corp'n., Ltd., *Re* (Can.); **5. Bkpcy.** p. 228
- Maritime United Farmers Co-operative, Ltd. v. Dickie (Can.); **9. Coys.** p. 323
- Markle v. Thomas (Sheriff) (Can.); **21. Exon.** p. 589
- Marks, *Re*, *Ex p.* Vann (1923); **5. Bkpcy.** No. 8104b
- Markwald v. A.-G. (1920); **2. Aliens**, No. 520a
- Marlborough (Duke) v. Osborn (1864); **2. Agric.** No. 166a
- Marlborough Hill, Ship v. Cowan & Sons (1921); **1. Adm.** Nos. 541a, 1644a
- Marnell v. Pickmore (1796); **28. Infts.** No. 1961a
- Marriaggi v. Marriaggi (Can.); **11. Confl.** p. 372
- Marriott v. Kirkham (1862); **35. Mtge.** No. 2928a
- Marsden, *Re*, *Ex p.* Sellers (E. H.) & Sons, Ltd. (1921); **4. Bkpcy.** No. 1253a
- v. Edward Heyes, Ltd. (1927); **31. L. & T.** No. 1975a
- Marsh, *Ex p.*, *R. v.* Markham (1923); **3. Basty.** No. 403a
- v. Great Eastern & Great Western Ry. Cos. (1922); **8. Carr.** No. 1377d
- v. Kavenford (1587); **12. Contr.** No. 1740a
- v. Robinson (1802); **22. Evid.** No. 3483a
- v. Royal Bank of Canada (Can.); **3. Bank.** p. 176
- Marsh & Rainsford's Case (1587); **12. Contr.** No. 1740a
- Marshal v. Tweedy (Scot.); **28. Inc. T.** p. 676
- Marshal Shipping Co. v. Board of Trade (1923); **11. Const. L.** No. 526d
- Marshal Shipping Co. (In Liquidation) v. R. (1925); **11. Const. L.** No. 526c
- Marshall v. Fournelle (Can.); **28. Infts.** p. 696
- v. Grinbaum (1921); **3. Bank.** No. 230a
- v. Houghton (Can.); **11. Confl.** p. 376
- v. Inland Revenue Comrs. (Scot.); **28. Inc. T.** p. 681
- v. Kiddle (1927); **34. Mast. & S.** No. 3969a
- Marshall v. Rogers (Can.); **6. B. of Exch.** p. 250
- Marshall & Snelgrove, Ltd. v. Gower (1923); **7. B. of Sale**, No. 830a
- Marsland v. Taggart (1928); **33. Mags.** No. 1236a
- Marston v. Roe d. Fox (1838); **17. Deeds**, No. 1329a
- Mart v. Mart (1926); **3. Basty.** No. 22b
- Martell v. Pringle (Can.); **2. Animals**, pp. 125, 126
- v. Whittam (Nfld.); **12. Contr.** p. 409
- Martin, *Ex p.* (Can.); **16. Cr. Pract.** p. 488
- , *Ex p.*, *Re* Kerr (Can.); **7. B. of Sale**, p. 265
- , *Ex p.*, *Re* Matthews Sheet Metal & Roofing Co., Ltd. (Can.); **8. Chos.** p. 313
- , *Re* (No. 2) (Can.); **24. Extrdn.** p. 619
- v. Benson (1927); **32. Libel**, Nos. 2198a, 2203a
- v. Carpenter (Aus.); **2. Animals**, p. 127
- v. Clarkson (Can.); **10. Coys.** pp. 337, 340
- v. Currie (S. Af.); **1. Agcy.** p. 58
- v. Fowler (Can.); **5. Bkpcy.** p. 224
- v. Green (1864); **1. Adm.** No. 12b
- v. Kennedy (Can.); **16. Courts**, p. 483
- v. Sea Foam, The (Can.); **1. Adm.** p. 17
- v. Stout (1925); **16. Courts**, No. 956b
- Martin Milk Products, *Re* (Can.); **4. Bkpcy.** p. 206
- Martins v. Fowler (Nigeria); **18. Descr.** p. 529
- Martins, Ltd., *Re* (Can.); **4. Bkpcy.** p. 202
- Masecar v. McKenzie & Son (Can.); **9. Coys.** pp. 323, 324; **10. Coys.** p. 343
- Mason, *Ex p.*, *Re* McKay (Can.); **4. Bkpcy.** p. 214
- , *Re* (1928); **16. Cr. Pract.** No. 374b; **18. Descr.** No. 336a
- , *Re* (1929); **16. Cr. Pract.** No. 374b; **18. Descr.** No. 336a; **32. Limit. of A.** No. 1761a
- v. McLeod & Foster (Can.); **21. Exon.** p. 591
- v. Mason (1724); **28. Infts.** No. 538a
- v. Savings Bank of South Australia (Aus.); **3. Bank.** p. 174
- v. South Norfolk Ry. Co. (Can.); **17. Dams.** p. 507
- (Donald) & Co., *Re* (Can.); **28. Inc. T.** p. 679; **38. Rates**, p. 851
- Mason & Dean, Ltd. v. Udovin (Can.); **1. Agcy.** p. 42
- Mason & Risch Piano Co. v. Canadian Pacific Ry. Co. (Can.); **8. Carr.** p. 288
- Massey-Harris v. Moore (Can.); **21. Exon.** p. 587
- Massey-Harris Co. v. Manley (Can.); **35. Mtge.** pp. 810, 811
- v. Schram (Can.); **21. Exon.** p. 587
- Massilia, The (1926); **1. Adm.** No. 1520b
- Masson Seeley & Co., Ltd. v. Embosotype Manufacturing Co. (1924); **13. Coprt.** No. 77a
- Masters v. Crouch (1927); **35. Mtge.** No. 2578a
- Masters & Duveen, *Re* (1923); **2. Agric.** Nos. 242a, 267a
- Masters & McDougall v. Stephen (Can.); **2. Arbn.** pp. 130, 142
- Matergio v. Canada Accident & Fire Assurance Co. (Can.); **29. Insee.** p. 710
- Mathers, *Re* (Can.); **38. Rates**, p. 851
- Matheson, *Re*, *Ex p.* Prince Albert (City) (Can.); **4. Bkpcy.** p. 209
- v. Stuckey (Aus.); **2. Animals**, p. 122
- Mathews v. Donegan & Cooke (Ir.); **18. Descr.** p. 530
- v. National Trust Co. (Can.); **27. H. & W.** p. 657
- v. Williams, Brown & Co. (1894); **3. Bank.** No. 671
- Mathewson v. Mitchell (Can.); **8. Carr.** p. 285
- Mathieson, *Re*, *Ex p.* Trustee (1927); **5. Bkpcy.** No. 7096a
- , *Re*, Moore (Trustee) v. Mathieson (1927); **5. Bkpcy.** No. 7096a

- Mathieson's Trustee v. Burrup, Mathieson & Co. (1927); **4. Bkpcy.** No. 3637a
- Mathra Das-Jagan Nath v. Jiwan Mal-Gian Chand (Ind.); **1. Agcy.** p. 55
- Mathura, Kurmi v. Jagdeo Singh (Ind.); **17. Dep.** p. 527
- Mathurdas Canji Matani v. Ebhrahim Fazalbhoj (Ind.); **36. Prtners.** p. 824
- Matson & Co. v. Fisher (N.Z.); **2. Arbn.** pp. 142, 146
- Matsoukis v. Priestman & Co. (1915); **7. Bldg. Conts.** No. 65a
- Matte v. Vancouver (City) (Can.); **2. Arbn.** p. 137
- Matthew v. Crasse (1613); **2. Agric.** No. 884a
- Matthews v. Dickinson (1817); **5. Bkpcy.** No. 8168a
- v. Forgie (N.Z.); **2. Agric.** p. 90
- v. Goode (Can.); **7. Bounds. & F.** p. 272
- Matthews Sheet Metal & Roofing Co., Ltd., *Re*, *Ex p.* Martin (Can.); **8. Chos.** p. 313
- Matthewson v. Stredicke (Can.); **21. Exon.** p. 593
- v. Thompson (Can.); **12. Contr.** p. 408
- Matthewson Brothers & Mather v. Good (Can.); **35. Mtge.** p. 810
- Maulson v. Moore (Can.); **35. Mtge.** p. 812
- Maung Ba. Than. v. Pegu District Council (Ind.); **17. Dep.** p. 527
- Maung Po Thaung v. Ma Gyi (Ind.); **2. Agric.** p. 90
- Maung Shwe Phoo v. Maung Tun Shin (Ind.); **17. Deeds,** p. 510; **35. Mtge.** p. 809
- Maunsell v. Campbell Security Fireproof Storage & Moving Co., Ltd. (Can.); **3. Bailmt.** p. 158
- v. R. (Can.); **16. Cr. Pract.** p. 486
- Maurat Estate, *Re* (Can.); **23. Exors.** pp. 606, 607
- Maurig Shwe Hpu v. U Min Nyun (Ind.); **2. Arbn.** p. 146
- Maxwell v. Keun (1928); **30. Jdgmts.** No. 30a
- v. Union Bank of Canada (Can.); **3. Bank.** pp. 164, 169
- May v. Howland, Fitch & Webb (Can.); **21. p.** 588
- Mayer & Lage Inc. v. Atlantic Sugar Refineries, Ltd. (Can.); **12. Contr.** p. 406
- Mayes Case v. Prescott (Can.); **30. Juries,** p. 729
- Mayfield Rural Municipality No. 406 v. London & Lancashire Guaranty & Accident Co. of Canada (Can.); **22. Evid.** p. 602; **26. Guar.** p. 644
- Mead v. Clarke (S. Af.); **1. Agcy.** p. 52
- Meade v. Deschene (Can.); **7. B. of Sale,** p. 265
- Meade-King v. Usher's Wiltshire Brewery, Ltd. (1928); **10. Coys.** No. 4872a
- Meagher v. Aetna Insurance Co. & Home Insurance Co. (Can.); **29. Insce.** p. 708
- v. Canadian Pacific Ry. Co. (Can.); **19. Easmt.** p. 542
- Meandros, The (1925); **1. Adm.** No. 147a
- Measner v. Bengert (Can.); **38. Rates,** p. 853
- Measrock v. Liquidator, etc. (S. Af.); **1. Agcy.** p. 40
- Mecklenburg v. Canadian Pacific Ry. Co. (Can.); **33. Mal. Pros.** p. 768
- Medaini Estate, *Re* (Can.); **18. Desct.** p. 529
- Medway Oil & Storage Co. v. Continental Contractors (1929), **40. Set-off,** No. 562
- Medway Oil & Storage Co., Ltd. v. Silica Gel Corp'n. (1928); **39. S. Goods,** No. 744a
- Meghraj v. Krishna Chandra Bhattacharji (Ind.); **23. Exors.** p. 606
- Meier v. Franklin (Can.); **26. Hghys.** p. 649
- v. Klotz (Can.); **32. Libel,** p. 749
- Meiklejohn v. Hugo (Can.); **20. Eqq.** p. 569
- Meister Lucius & Bruning, Ltd., *Re* (1921); **2. Aliens,** Nos. 195a, 405a
- Melanie (Owners) v. San Onofre (Owners) (1919); **1. Adm.** No. 1620a
- Melanie (Owners) v. San Onofre (Owners) (1925); **1. Adm.** No. 1620a
- Melbourne Harbour Trust Comrs. v. Hancock (Aus.); **2. Arbn.** p. 143
- Mellen v. Dobenko (Can.); **27. H. & W.** p. 655
- Mellersh v. Bridger (1853); **23. Exors.** No. 5540
- Mellish v. Motteux (1792); **39. S. Goods,** No. 643a
- Men's Attire Registered v. Hart (Can.); **4. Bkpcy.** p. 201
- Menzies v. Tyndall Quarries Co. (Can.); **9. Coys.** p. 332
- Mercer, *Re*, Drewe-Mercer v. Drewe-Mercer (1889); **35. Name,** No. 62a
- v. Homuth (Can.); **20. Elect.** pp. 560, 561
- Merchant Traders' Ship, Loan & Insurance Asscn., *Re*, *Ex p.* Chappell (1852); **4. Bkpcy.** No. 5367
- Merchants Bank of Canada v. Angers (Can.); **5. Bkpcy.** p. 238
- v. Brett (Can.); **6. B. of Exch.** p. 252
- v. Bush (Can.); **3. Bank.** p. 179
- v. Greenlees (Can.); **8. Chos.** pp. 312, 313, 314
- v. Hancock (Can.); **10. Coys.** p. 337
- v. Ken McClary & Co. (Can.); **5. Bkpcy.** p. 232
- v. Moffatt (Can.); **18. Discy.** p. 532
- Merchants' Marine Insurance Co. v. Liverpool Marine & General Insurance Co. (1928); **29. Insce.** No. 720c
- Merchants' Marine Insurance Co., Ltd. v. North of England Protecting & Indemnity Asscn. (1926); **29. Insce.** No. 505a
- Meredith, *Ex p.*, R. v. Joyce (Aus.); **16. Cr. Pract.** p. 493
- v. Abdulla (Sahib) (Ind.); **1. Agcy.** p. 65
- Meriden Britannia Co., Ltd. v. Walters, *Re* Lewis (Can.); **16. Cntmpt.** p. 477
- Merkel v. McKendry (Can.); **12. Contr.** p. 399
- Merrifield, Ziegler & Co. v. Liverpool Cotton Asscn., Ltd. (1911); **2. Arbn.** No. 1981
- Merritt v. Doherty (Can.); **1. Agcy.** p. 58
- Merry v. Machin (S. Af.); **22. Evid.** p. 600
- Mersey Ry. Co., *Re*, Gibbs v. Mersey Ry. Co. (1895); **10. Coys.** No. 8412a
- Mertens v. Home Freeholds Co. (1921); **7. Bldg. Conts.** Nos. 230a, 285a
- Merz v. South Wales Equitable Money Society, Ltd. (1927); **35. Money,** No. 346a
- Messenger v. British Broadcasting Co. (1927); **13. Corpt.** No. 483b
- v. British Broadcasting Co., Ltd. (1928); **12. Contr.** No. 4922a; **13. Corpt.** No. 483b
- Messenger v. Parker (Can.); **33. Mags.** p. 765
- Messer v. Barrett Co. (Can.); **34. Mast. & S.** p. 771
- Messervey v. Central Canada Canning Co. (Can.); **2. Agric.** p. 89
- Messerveys, Ltd., *Re* (Can.); **4. Bkpcy.** p. 201
- Meston, *Re*, Meston v. Gray (Can.); **12. Contr.** p. 395
- Metcalf v. Adair (Can.); **6. B. of Exch.** p. 258
- v. Boyce (1927); **31. L. & T.** No. 6674a
- Metropolitan Asylums Board, *Ex p.*, R. v. Poplar Borough Council (1922); **16. Cr. Pract.** No. 1066
- Metropolitan Gas Co. v. Melbourne Corp'n. (Aus.); **25. Gas,** p. 638
- Metropolitan Life Assurance Co. v. McQueen (Can.); **19. Easmt.** pp. 545, 546
- Metropolitan Meat Industry Board v. Sheedy (Aus.); **10. Coys.** p. 344
- Metropolitan Ry. Co. v. Great Western Ry. Co. (1886); **8. Carr.** No. 703a
- Metropolitan Tunnel & Public Works v. London Electric Ry. Co. (1926); **2. Arbn.** No. 372a



- Metropolitan Water Board v. Minister of Transport (1925); **20. Electric**, No. 6a
- Metropolitan-Vickers Electrical Co., Ltd. v. British Thomson-Houston Co., Ltd. (1925); **36. Pats.** No. 472a
- Metters, Ltd. & Lever Brothers, Ltd. v. Pickard (Aus.); **17. Dep.** p. 522
- Metx v. Marshall (Can.); **2. Animals**, p. 124
- Meux's Brewery Co., Ltd. v. Newington Licensing JJ. (1926); **30. Intox.** No. 141a
- Mexican & South American Co., *Re*, Grisewood & Smith's Case, De Pass' Case (1859); **9. Coys.** No. 2344a
- Meyer v. Poynton (Aus.); **2. Aliens**, pp. 113, 115
- Meyer & Co. v. Elder (1923); **2. Aliens**, No. 223d
- v. Faber (1921); **2. Aliens**, No. 223b
- v. Faber (No. 2) (1923); **2. Aliens**, No. 223d
- Meyers & Paddington Motor Service, Ltd. v. Dalgety & Co., Ltd. (Aus.); **29. Insce.** p. 714
- Meynell v. Garraway (1662); **20. Eqq.** No. 760b
- Meyrick v. Dyson (1925); **12. Contr.** No. 2899a
- Michael Hrushevsky Ukrainian Institute v. Edmonton Corp., *Re* Edmonton Charter (Can.); **11. Comp. Pche.** p. 357
- Michaelis v. Ryan Motors (Can.); **32. Lien**, p. 754
- Michaelson v. Crisp (1927); **23. Exors.** No. 3518a
- Michaud v. Montreal (City) (1923); **25. Gifts**, No. 26a
- Mickelson v. Nash-Simington Co. (Can.); **7. B. of Sale**, p. 266
- Mid-West Collieries, Ltd. v. McEwen (Can.); **9. Coys.** pp. 329, 331
- Middleton Estate & Colliery Co., Ltd. v. Finan (1926); **34. Mast. & S.** No. 4014a
- Midland Bank, Ltd. v. Inland Revenue Comrs. (1927); **6. B. of Exch.** No. 3146a
- Midland Ry. Co. & Kettering, Thrapston & Huntingdon Ry. Co. v. Robinson (1889); **11. Comp. Pche.** No. 336a
- Midnapore Zamindari Co., Ltd. v. Muktakeshi Patrani (Ind.); **17. Deeds**, p. 509
- Midnapur Zamindari & Co., Ltd. v. Ram Kanai Singh Deo Darpa Saha (Ind.); **28. Injon.** p. 701
- Mildmay v. Standish (1584); **17. Deeds**, No. 1471
- Mildmay's Case (1584); **17. Deeds**, No. 1471
- Miles, *Ex p.*, *Re* Davies (1921); **5. Bkpcy.** No. 7339a
- Miles' Claim, *Re* Adanson Fibre Co. (1874); **6. B. of Exch.** No. 691a
- Miley v. Carty & Miley (Ir.); **20. Eqq.** p. 568
- Milk Rate Case, National Dairy Council v. Grand Trunk & Canadian Pacific Ry. Cos. (Can.); **8. Carr.** p. 297
- Millar, *Re* (Can.); **23. Exors.** p. 612
- Millar v. B. C. Rapid Transit Co., Ltd. (Can.); **22. Evid.** p. 602
- v. Ellard (Can.); **12. Contr.** p. 390
- v. R. (Can.); **1. Action**, p. 1
- Miller, *Re* (Can.); **16. Cntmpt.** p. 476
- v. Great West Natural Gas Corp. (Can.); **18. Discy.** p. 534
- v. Miller (Ind.); **11. Confl.** p. 371
- v. Osier (Can.); **25. Fraud. Conv.** p. 627
- v. R. (Can.); **21. Estpl.** p. 584; **32. Limit. of A.** p. 755
- Milligan, *Ex p.*, *Re* E. J. Lane, Ltd. (Can.); **9. Coys.** p. 335
- Milligan, Petitioner (Scot.); **19. Eccl.** p. 553
- Milligan Estate, *Re*, Campbell v. Gallant, Crockett & Royal Bank of Canada (Can.); **5. Bkpcy.** p. 231
- Mills, *Re* (N.Z.); **28. Infts.** p. 697
- , *Re*, Owen v. Campbell (Can.); **28. Infts.** p. 695
- Mills v. Brooker (1919); **2. Agric.** No. 406a
- v. Canadian Pacific Steamships, Ltd. (Can.); **8. Carr.** p. 289
- v. Davis (Can.); **28. Infts.** p. 695
- v. Glace Bay Housing Commission (Can.); **12. Contr.** p. 404
- v. Jones (1928); **28. Inc. T.** No. 97a
- v. Lethbridge (City) (Can.); **38. Pub. Auth.** p. 846
- v. Rose (1923); **2. Agric.** No. 266f
- Mills (E. W.), Ltd., *Re* (N.Z.); **9. Coys.** p. 322
- Milne v. Durham Hosiery Mills, Ltd. (Can.); **9. Coys.** p. 323
- v. Peterson (Can.); **12. Contr.** p. 399
- v. Yorkshire Guarantee & Securities Corp. (Can.); **26. Guar.** p. 643
- Milner, *Re*, *Ex p.* Forbes (Can.); **4. Bkpcy.** p. 210
- Milo Wheat Co., Ltd., *Re* (Can.); **10. Coys.** p. 341
- Milsted (W. H.) & Son, Ltd. v. Hamp & Ross & Glendinning, Ltd. (1927); **34. Mast. & S.** No. 262a
- Milvain v. Mather (1850); **10. Coys.** No. 7462a
- Milward v. Lysons (1836); **29. Insce.** No. 3052b
- Minaker v. Hadden (Can.); **2. Animals**, p. 118
- v. Sanderson, *Re* Rural Municipality Act, *Re* Carrot River Rural Municipality (Can.); **20. Elect.** p. 561
- Mineral Products Co. v. Continental Trust Co. (Can.); **21. Exon.** p. 589; **30. Jdgmts.** p. 724
- Mining Assocn. of Great Britain v. London, Midland & Scottish, London & North Eastern, Great Western, & Southern Ry. Cos., & Cheshire Lines Committee (1924); **8. Carr.** Nos. 1377f, 1377j
- Minister for Labour & Industry (N.S.W.) v. Mutual Life & Citizens Assurance Co., Ltd. (Aus.); **16. Cr. Pract.** p. 492
- Minister of Education Petition, *Re* (Can.); **19. Educ.** p. 556
- Minister of Finance v. Burke-Roche, *Re* Clapham (Can.); **21. E. D.** p. 576
- v. Caledonian Insurance Co., *Re* Land Registry Act & Higginson (Can.); **21. E. D.** p. 576
- v. Smith (1926); **28. Inc. T.** No. 99d
- Minister of Interior for Canada v. Nelson (Can.); **7. Bounds. & F.** p. 272
- Minister of Railways, Union Government v. Lee (S. Af.); **36. Negl.** p. 818
- Mir Anwarrudin v. Fathim Bai Abidin (Ind.); **32. Libel**, p. 750
- Miss, *Re* (Ind.); **17. Dep.** p. 527
- Mitchell v. Davis (1920); **3. Bailmt.** No. 319a
- v. Greenwood (Can.); **21. Exon.** p. 589
- v. Noble (B. W.), Ltd. (1927); **28. Inc. T.** No. 222a
- v. Saylor (Can.); **12. Contr.** p. 408
- v. Smith, *Re* Patterson (1864); **25. Gifts**, No. 337a
- v. Tennent (Ind.); **25. Gaming**, p. 635
- Mitchell & Union Bank of Canada, *Re* (Can.); **6. B. of Exch.** p. 245
- Mitchell-Gill v. Buchan (Scot.); **2. Agric.** p. 87
- Mitchner, *Re* (Aus.); **2. Aliens**, p. 102; **8. Char.** p. 308
- Mitchner, *Re*, Union Trustee Co. of Australia, Ltd. v. A.-G. for Commonwealth of Australia (Aus.); **2. Aliens**, p. 102
- Mitford v. Mitford & Von Kuhlmann (1923); **11. Confl.** No. 944a
- Moberly v. Baines & Shortis (Can.); **12. Contr.** p. 396
- Modern Construction Co. v. Shaw (Can.); **7. Bldg. Conts.** p. 275
- Modica, The (1926); **1. Adm.** No. 1284a
- Moffat Hydropathic Co., Ltd. v. Secretary of State for War (1924); **11. Const. L.** No. 499b



- Moffatt, *Ex p.*, *Re* Blackburn (Can.); **7. B. of Sale**, p. 265  
 — *v.* Hangar (N.Z.); **18. Discy.** pp. 532, 533  
 Mogileff, *The* (1921); **1. Adm. Nos.** 338a, 352c  
 Mohamet Ali, *Ex p.* (Can.); **16. Cr. Pract.** p. 488  
 Mohan Lal Mehta, *Re*, *Re* Sri Yogashram Pharmacy, Ltd. (In Liquidation) (Ind.); **10. Coys.** p. 347  
 Moiler *v.* Forge (Aus.); **1. Agcy.** p. 64  
 Mold *v.* Wheatcroft (1859); **11. Comp. Pche.** No. 2017a  
 Molière, *The* (1925); **1. Adm. Nos.** 518a, 518b, 523a  
 Moller, *Ex p.*, *Ex p.* Hianson, *R. v.* Bannstead (Can.); **2. Aliens**, pp. 113, 114  
 Momphe *v.* Momphe (S. Af.); **36. Prtnrs.** p. 825  
 Monaghan, *Re* (Can.); **16. Cr. Pract.** p. 491  
 Monarch Lumber Co., Ltd. *v.* Perry (Can.); **22. Evid.** pp. 597, 598  
 Moncrieff *v.* Official Receiver, *Ex p.*, *Re* Boulton Brothers & Co. (1927); **4. Bkpcy.** Nos. 1657a, 5093a  
 Moncton Tramway Electricity & Gas Co., *Ex p.* (Can.); **13. Corpns.** p. 429; **33. L. G.** p. 760  
 Mondor *v.* Willets (Can.); **17. Damgs.** p. 502  
 Money *v.* Money & Turner (1927); **22. Evid.** No. 3419a  
 Monk, *Re*, Giffen *v.* Wedd (1927); **8. Char.** Nos. 34a, 1098a  
 Monks *v.* Fox's Executors (1928); **28. Inc. T.** No. 321a  
 Monmouthshire & South Wales Coal Owner's Assocn. *v.* Great Western Ry. Co. (1923); **8. Carr.** No. 1377e  
 Monmouthshire & South Wales Coke Ovens & Bye-Products Works Assocn. *v.* Great Western Ry. Co. (1923); **8. Carr.** No. 1377e  
 Monroe, *Ex p.*, *Re* Daum & Plaetzer (Can.); **4. Bkpcy.** p. 208  
 Montesanto *v.* Di Ubaldo (Can.); **28. Infts.** p. 695  
 Montgomery, *Re*, Lumbers *v.* Montgomery (Can.); **23. Exors.** p. 610  
 Montgomery *v.* Diamond (Can.); **21. Estpl.** p. 582  
 Monticello State Bank *v.* Guest (Can.); **2. Animals**, p. 126  
 — *v.* Killoran (Can.); **6. B. of Exch.** p. 251  
 Montreal (City), *Ex p.*, *Re* Fairweathers (Can.); **4. Bkpcy.** p. 196  
 Montreal (City) *v.* McAnulty Realty Co. (Can.); **11. Comp. Pche.** p. 357  
 Montreal Corp'n. *v.* Canadian National Rys. (Can.); **38. Rys.** p. 849  
 — *v.* Canadian Pacific Ry. Co. (Gouin Boulevard Crossing Case) (Can.); **38. Rys.** p. 849  
 — *v.* Montreal Harbour Comrs. (1926); **17. Dep.** No. 378a  
 Montreal Dry Docks & Ship Repairing Co., Ltd. *v.* Halifax Shipyards, Ltd. (Can.); **1. Adm.** p. 22  
 Montreal Light, Heat & Power Co. *v.* Montreal (City) (1924); **16. Courts**, No. 483a  
 Montreal Tramways Co. *v.* Montréal-Nord Ville (Can.); **19. Easmt.** p. 541  
 Montreal Transportation Co. *v.* Buckeye State, *The* (Can.); **1. Adm.** p. 25  
 — *v.* R. (Can.); **16. Courts**, p. 483; **Cr. Pract.** p. 487  
 Montreal Trust Co. *v.* Canadian Pacific Ry. Co. (Can.); **22. Evid.** p. 594  
 — *v.* R. (Can.); **11. Const. L.** p. 381  
 Montrose (Duke) *v.* Hart (Scot.); **2. Agric.** p. 87  
 Moodie *v.* Mackenzie (Can.); **12. Contr.** p. 409  
 Moodley *v.* R. (S. Af.); **25. Food**, p. 625  
 Moola (M. E.) *v.* Collector of Rangoon (Ind.); **11. Comp. Pche.** p. 357  
 Moore, *Ex p.*, *Re* Long (Can.); **21. Exon.** p. 586  
 — *v.* Beaumont (1795); **21. Exon.** No. 417b  
 — *v.* Irwin (Can.); **17. Deeds**, p. 508  
 — *v.* Lambeth Waterworks Co. (1886); **26. Hghys.** No. 1369a  
 — (Trustee) *v.* Mathieson, *Re* Mathieson (1927); **5. Bkpcy.** No. 7096a  
 — *v.* National Cash Register Co. (Can.); **7. B. of Sale**, p. 260  
 — *v.* R. (Aus.); **15. Crim.** p. 469  
 — *v.* Shinnors (Can.); **35. Mtge.** p. 812  
 — *v.* Terrell (1833); **32. Libel**, No. 1302a  
 — *v.* Todd (1903); **26. Hghys.** No. 2285a  
 — *v.* Williams (A. R.) Machinery Co., Ltd. (Can.); **4. Bkpcy.** p. 207  
 Moore, etc. *v.* A.-G. (Ir.); **28. Injon.** p. 699  
 Moore's Claim, *Re* Unity Manufacturing Co. (Can.); **5. Bkpcy.** p. 228  
 Moorhouse *v.* Linney (1885); **20. Elect.** No. 1025a  
 Moorwood *v.* Dickens (1616); **7. Bonds**, No. 413  
 Moosbrugger *v.* Moosbrugger & Martin (1913); **16. Courts**, No. 277a  
 Moose Jaw *v.* Taylor (Can.); **3. Auct.** p. 151  
 Moran *v.* Patton (Can.); **21. Exon.** p. 589  
 Morant, *Re*, *Ex p.* Trustees (1924); **5. Bkpcy.** Nos. 7183a, 7414a  
 Morden, *Re* (Can.); **4. Bkpcy.** p. 213  
 More *v.* Weaver (1928); **32. Libel**, No. 1579a  
 Moreau *v.* Federal Taxation Comr. (Aus.); **28. Inc. T.** p. 689  
 Morelli *v.* Fitch & Gibbons (1928); **39. S. Goods**, Nos. 619a, 780a  
 Moren, *Re* (Can.); **23. Exors.** p. 610  
 Morey *v.* Totten (Can.); **25. Fraud. Conv.** p. 629  
 Morgan, *Re*, Brown *v.* Jones (1927); **3. Barr.** No. 191a  
 — *v.* Baker (1838); **5. Bkpcy.** No. 7323  
 — *v.* Hardy (1886); **4. Bkpcy.** Nos. 2385, 2463  
 — *v.* — (1887); **4. Bkpcy.** Nos. 2385, 2463  
 — *v.* Liverpool Corp'n. (1927); **31. L. & T.** Nos. 3160a, 4569a, 4588a  
 — *v.* Rutson (1848); **40. Stillmts.** No. 2399a  
 — *v.* Shaw (Can.); **6. B. of Exch.** pp. 252, 253  
 Morgan (J. R.), Ltd., *Re*, *Ex p.* J. & G. Garment Mfg. Co. (Can.); **9. Coys.** p. 336  
 Morgan Lumber Co. *v.* Scott, *Re* Mount Royal Lumber & Flooring Co. (Can.); **5. Bkpcy.** p. 238  
 Morgana, *The* (1920); **39. Royal F.** No. 56a  
 Morland *v.* Chitty (1833); **29. Intpr.** No. 503a  
 Morley *v.* Lawford & Co. (1928); **28. Inc. T.** No. 224a  
 Moroschan *v.* Moroschan (Can.); **5. Bkpcy.** p. 225  
 Morpeth *v.* Williamson (N.Z.); **23. Exors.** p. 612  
 Morris, *Re* (Can.); **4. Bkpcy.** p. 210  
 —, *Re*, Coneys *v.* Morris (Ir.); **3. Bank.** p. 178  
 —, *Re*, Hatter *v.* Bowman's Bldrs. Supplies (Can.); **29. Insce.** p. 710  
 —, *Re*, Skinner *v.* Sanders (1927); **21. E. D.** No. 209a  
 — *v.* Cameron (Can.); **16. Courts**, p. 480  
 — *v.* Dunstone (Aus.); **31. L. & T.** pp. 734, 735  
 — *v.* Harris (1927); **10. Coys.** No. 7177a  
 — *v.* Kline, Demers, Garnishee (Can.); **5. Bkpcy.** pp. 216, 236  
 — *v.* Walton (Can.); **1. Agcy.** p. 56  
 Morrison *v.* Aboukir (Owners) (1928); **34. Mast. & S.** No. 2552b  
 — *v.* Cassell Hill School District Trustees (Can.); **19. Educ.** p. 559  
 — *v.* Gale (Can.); **12. Contr.** p. 413  
 — *v.* Taylor (Aus.); **3. Basty.** p. 188  
 — *v.* Thompson (Can.); **8. Carr.** p. 287  
 Mortleman *v.* Public Trustee (N.Z.); **35. Mtge.** pp. 812, 813

- Morton v. Brighthouse (Can.); **25. Gifts.** p. 639  
 — v. McLeod (Can.); **12. Contr.** p. 410  
 Morton & Cowell v. Hoffert (Can.); **21. Exon.** p. 589  
 Moss, *Re, Ex p.* Everitt (1923); **4. Bkpcy.** No. 3945a  
 — v. Christchurch Rural District Council (1925); **17. Damgs.** No. 29a  
 — v. Salford Corpn. (1908); **38. Pub. Auth.** No. 739a  
 Mostyn, The, Great Western Ry. Co. v. Mostyn (Owners) (1928); **30. Jdgmts.** Nos. 498a, 569c, 588b; **36. Negl.** No. 706  
 Motchall v. Massoud (Aus.); **22. Evid.** p. 594  
 Moti & Co. v. Cassim's Trustee (S. Af.); **6. B. of Exch.** p. 254  
 Motishaw & Co. v. Mercantile Bank of India (Ind.); **2. Aliens,** p. 109  
 Motor Farming & Development Co. & Davidson v. Smith (Can.); **1. Agcy.** p. 62  
 Motor Fuels Corpn., etc. (In Liquidation) v. Linder Brothers (S. Af.); **9. Coys.** p. 325  
 Motor Manufacturers' & Traders' Society v. Motor Manufacturers' & Traders' Mutual Insurance Co. (1925); **9. Coys.** No. 228b  
 Moule v. Marmite Food Extract Co. (1927); **34. Mast. & S.** No. 2384b  
 Mount Hope Rural Municipality v. Findlay (Can.); **1. Agcy.** p. 72; **25. Fraud. Conv.** p. 627  
 Mount Royal Lumber & Flooring Co., *Re*, Morgan Lumber Co. v. Scott (Can.); **5. Bkpcy.** p. 238  
 Mountain v. Bates, *Re* Bates (1928); **40. Stillmts.** No. 2009a  
 Mountjoy v. R. (Can.); **26. Hghys.** p. 646  
 Mowat v. Clement (Can.); **7. B. of Sale,** p. 263  
 Mowchenko, *Re* (Can.); **24. Exors.** p. 617  
 Moyes v. Magnus Motors, Ltd. (N.Z.); **32. Lien,** p. 753  
 Mudge, *Re* (1914); **8. Chos.** No. 110a  
 Muffatt v. Parsons (1814); **12. Contr.** No. 2652  
 Muhammad Khan v. R. (Ind.); **25. Gaming,** p. 635  
 Muhammad Zafar v. Zahur Husain (Ind.); **7. Bonds,** p. 270  
 Muirhead v. Borland (Scot.); **10. Coys.** p. 350  
 Muldson v. Canadian Pacific Ry. Co. (Can.); **38. Rys.** p. 850  
 Mulgrave v. Clancey (Can.); **3. Bastly.** p. 189  
 Mulholland v. Williamson (Can.); **25. Fraud. Conv.** p. 627  
 Mullen v. Millar (Can.); **9. Coys.** p. 331  
 Muller v. Chennells (S. Af.); **1. Agcy.** p. 67  
 Muller (W. H.) & Co. (London), v. Inland Revenue Comrs. (1927); **28. Inc. T.** No. 567  
 — v. Inland Revenue Comrs. (1928); **28. Inc. T.** No. 567  
 — v. Lethem (1927); **28. Inc. T.** No. 567  
 — v. — (1928); **28. Inc. T.** No. 567  
 Mulliner v. Florence (1878); **32. Lien,** No. 27a  
 Mulvenna v. The Admiralty (Scot.); **21. Exon.** p. 591  
 Mulvey v. The Barge Neosho (Can.); **1. Adm.** pp. 19, 23  
 Muna v. Niagara District Mutual Insurance Co. (Can.); **29. Insce.** p. 704  
 Mumford, *Re*, Debtor v. Petitioning Creditor, *Ex p.* Official Receiver (1927); **4. Bkpcy.** No. 8740a; **10. Coys.** No. 6442a  
 Mumford v. Northern Trusts Co. (Can.); **3. Bailmt.** pp. 155, 156  
 Munday v. Maiden (1875); **15. Crim.** No. 9364a  
 Municipal Act, *Re*, Heather v. Maddock (Can.); **1. Elect.** p.
- Municipal Elections Act & Tomsett, *Re* (Can.); **20. Elect.** p. 561  
 Munn v. Haahti (Can.); **27. H. & W.** p. 655  
 Munro v. Leedham (Can.); **3. Bastly.** p. 187  
 Münster, *Re* (1920); **2. Aliens,** No. 237d  
 Murdoch v. Windsor & Annapolis Ry. Co. (Can.); **17. Dep.** p. 517  
 Murdock v. Lawson (Can.); **35. Mtge.** p. 812  
 Murne v. Morrison (Can.); **17. Dep.** p. 520  
 Murphy, *Re* (Aus.); **21. Exon.** p. 588  
 Murphy, *Re* (Can.); **29. Insce.** p. 711  
 — v. Hart (Can.); **3. Bailmt.** p. 157  
 — v. R. (Can.); **17. Dep.** p. 524  
 — v. Synnott (Ir.); **8. Clubs,** p. 316  
 Murray v. Collins (Can.); **2. Animals,** pp. 124, 125  
 — v. Dalton (1920); **2. Agric.** No. 266q  
 — v. Delta Copper Co., Ltd. (Can.); **1. Agcy.** p. 70; **12. Contr.** p. 408  
 — v. Haylow (Can.); **23. Exors.** p. 607  
 — v. Hopkins (N.Z.); **1. Agcy.** p. 73  
 — v. Inland Revenue Comrs. (Scot.); **28. Inc. T.** p. 688  
 — v. Jenkins (Can.); **1. Agcy.** p. 71  
 — v. Macmillan (Scot.); **14. Crim.** p. 439  
 — v. Nova Scotia Marine Insurance Co. (Can.); **29. Insce.** p. 707  
 — v. Reeves (1828); **4. Bkpcy.** No. 5035a  
 — v. Reid (1828); **4. Bkpcy.** No. 5035a  
 — v. Robertson (Scot.); **14. Crim.** p. 439  
 — v. Thompson (Can.); **26. Guar.** p. 641  
 Murray's Estate, *Re* (Can.); **11. Confl.** p. 365  
 Murugappa Chettiar, *Re* (Ind.); **28. Inc. T.** p. 676  
 Muscroft v. Stewarts & Lloyds, Ltd. (1928); **34. Mast. & S.** No. 2710a  
 Musgrove, *In the Estate of*, Davis v. Mayhew (1927); **23. Exors.** No. 2979a  
 Musmann v. Engelke (1928); **11. Const. L.** No. 418a  
 Mussammat Guljania v. R. (Ind.); **15. Crim.** p. 474  
 Musselman v. Zimmerman (Can.); **2. Animals,** p. 119  
 Musson v. Head (Can.); **1. Agcy.** p. 39  
 Mustard, *Re* (Can.); **4. Bkpcy.** p. 205; **7. B. of Sale,** p. 266  
 Muthiah Chettiar v. Muthu K. R. A. Karoppan Chetti (Ind.); **3. Barr.** p. 181  
 Muthiah Chetty v. Alagappa Chetty (Ind.); **1. Agcy.** p. 54  
 Mutual Property Insurance Co., Ltd. v. Inland Revenue Comrs. (1926); **35. Mtge.** No. 625a  
 Myers v. Union Natural Gas Co. (Can.); **9. Coys.** p. 332; **11. Confl.** p. 370; **17. Deeds,** p. 511; **21. Estpl.** p. 583  
 Myerson v. Green & Homes (Can.); **4. Bkpcy.** p. 210  
 Myklebust v. Galey (Can.); **2. Animals,** p. 126  
 Myttenacre, *Ex p.*, *Re* Ellis (1925); **5. Bkpcy.** Nos. 8645a, 9311a
- N.
- N. v. N. (1928); **27. H. & W.** Nos. 5382b, 5414a  
 N. P. A. Chetliar, Firm v. Sharma (Ind.); **7. Bldg. Conts.** p. 277  
 Nada Shah v. Sleeman (Aus.); **2. Animals,** p. 118  
 Nadan v. R. (1926); **17. Dep.** Nos. 91a, 526a, 549a  
 Naganna v. Venkatappayya (Ind.); **12. Contr.** p. 411  
 Nagel v. Hough (Aus.); **23. Exors.** p. 606  
 Nagoremull v. Triton Insurance Co., Ltd. (1924); **12. Contr.** Nos. 2084a, 2292a  
 Nagy, *Re*, Nagy v. Gall (Can.); **16. Cr. Pract.** p. 496

- Naish v. Tatlock (1794); **5. Bkpcy.** No. 7801a  
 Nakauchi Estate, *Re* (Can.); **23. Exors.** p. 613;  
**28. Infts.** p. 697  
 Nance v. Naylor (1928); **31. L. & T.** No. 6307a  
 Nandkishore Lal v. Pasupati Lath Sahu (Ind.);  
**23. Exors.** p. 606  
 Nantais v. Pazner (Can.); **19. Easmt.** pp. 541,  
 543  
 Nanton v. Villeneuve (Can.); **38. Rates,** p. 853  
 Narainsamy v. Principal, etc. (S. Af.); **2. Aliens,**  
 p. 115  
 Nariman Rustomji Mehta v. Hasham Ismayal  
 valad Haji Khamisa (Ind.); **16. Courts,**  
 p. 481; **17. Dep.** p. 525  
 Nash v. Giles (1926); **26. Hghys.** No. 2282a  
 — v. Lynde (1928); **9. Coys.** No. 439a  
 Nash & Williams v. Edmonton, Dunvegan &  
 British Columbia Ry. Co. (Can.); **11.**  
**Comp. Pche.** p. 360  
 Nash-Simington Co., Ltd. v. Thomas (Can.); **26.**  
**Guar.** p. 642  
 Nathan Crystal, *Re, Ex p.* Hawthorne (Can.);  
**7. B. of Sale,** p. 265  
 Nathoo v. Immigrants' Appeal Board (S. Af.);  
**2. Aliens,** p. 115  
 Nathu Ram v. Chand Kuar (Ind.); **36. Negl.** p.  
 818  
 National Asscn. of Coke & Bye-Product Plant  
 (Owners) v. London, Midland & Scottish,  
 London & North Eastern, Great Western,  
 & Southern Ry. Cos., & Cheshire Lines  
 Committee (1924); **8. Carr.** Nos. 1377f,  
 1377j  
 National Asscn. of Corn & Agricultural Merchants  
 v. London, Midland & Scottish Ry. Co.  
 (1925); **8. Carr.** No. 1377h  
 National Bank für Deutschland, *Re, Re* Anglo-  
 Austrian Bank (1921); **2. Aliens,** No.  
 236b  
 National Bank of New Zealand v. Dalgety & Co.  
 (N.Z.); **7. B. of Sale,** p. 264  
 National Benefit Assurance Co., Ltd., *Re* (1924);  
**10. Coys.** No. 7627a  
 — *Re, Ex p.* English Insurance Co. (1928); **10.**  
**Coys.** No. 7612a; **29. Insce.** No. 252a  
 — *Re, Pacific Great Eastern Ry. Co.'s Case*  
 (Can.); **10. Coys.** pp. 349, 351  
 National Breweries v. Paradis (Can.); **13. Coprt.**  
 p. 425  
 National Cash Register Co. v. Lovett (Can.); **7.**  
**B. of Sale,** p. 260  
 — v. Stanley (1921); **3. Bailmt.** No. 252a  
 National Dairy Council v. Grand Trunk & Canadian  
 Pacific Ry. Cos. (Milk Rate Case) (Can.);  
**8. Carr.** p. 297  
 National Gas Council of Great Britain &  
 Ireland's Appeal, *Re* (1927); **8. Carr.** No.  
 1245c  
 National Life Insurance Co. v. McCoubay (Can.);  
**29. Insce.** p. 712; **30. Jdgmts.** p. 723  
 National Manufacturing Co. v. Stepa (Can.); **6.**  
**B. of Exch.** p. 247  
 National Mortgage & Agency Co., Ltd. v. Braid  
 & Co. (N.Z.); **2. Arbn.** p. 144  
 National Provincial & Union Bank of England  
 v. Charnley (1924); **10. Coys.** No. 4933  
 — v. Lindsell (1922); **7. B. of Sale,** No. 98a  
 National Provincial & Union Bank of England,  
 Ltd. v. Tetley, *Re* Tetley (1923); **8. Char.**  
 No. 740b  
 National Securities, Ltd. v. Darling (Can.); **27.**  
**H. & W.** p. 658  
 National Stadium, Ltd., *Re* (Can.); **9. Coys.**  
 p. 323; **10. Coys.** p. 343  
 National Stores, Ltd., *Re* (1898); **10. Coys.** No.  
 7044a  
 National Trust Co., Ltd., *Ex p., Re* Humber-  
 stone Coal Co., Ltd. (Can.); **4. Bkpcy.** p.  
 210  
 National Trust Co. v. Battell (Can.); **32. Lien,**  
 p. 754  
 — v. Bell (Can.); **27. H. & W.** p. 659  
 — v. Dominion Iron & Steel Co. (Can.); **10. Coys.**  
 p. 340; **39. Recrs.** p. 857  
 — v. Holowaychuk (Can.); **27. H. & W.** p.  
 657  
 National Trust Co. & Municipal District of Vale,  
*Re* (Can.); **2. Arbn.** p. 142  
 National Trust Co.'s Case, *Re* Home Bank of  
 Canada (Can.); **3. Bank.** p. 164  
 National Union Fire Insurance Co. of Pittsburg  
 v. Martin (Can.); **1. Agcy.** p. 70  
 Naugler v. Jenkins (Can.); **21. Estpl.** p. 583  
 Navy League of Canada (Assessment of Halifax  
 Branch of), *Re* (Can.); **38. Rates,** p. 851  
 Nazzareno v. Algoma Eastern Ry. Co. (Can.);  
**8. Carr.** p. 287  
 Neare v. Walker (1842); **18. Distr.** No. 1582  
 Neave v. Barnardo's Homes National Incorporated  
 Asscn., *Re* Husband (1923); **8. Char.**  
 No. 891a  
 Nedenes, The (1924); **1. Adm.** No. 1047a; **18.**  
**Discy.** No. 1462a  
 Needham v. Ace Mill, Ltd.; (1928) **34. Mast. & S.**  
 No. 3821c  
 Needles v. Slovarp (Can.); **6. B. of Exch.** p. 258  
 Nees v. Botting (N.Z.); **6. B. of Exch.** p. 253  
 Neilsen, Andersen & Co. v. Collins (1927); **28.**  
**Inc. T.** No. 567  
 Neilson Magann Lumber Co. v. Canadian Pacific  
 Ry. Co. (Can.); **38. Rys.** p. 849  
 Nelson v. Crosby (N.Z.); **1. Agcy.** p. 64  
 — v. Grand Trunk Pacific Ry. Co. (Can.); **2.**  
**Animals,** p. 119  
 — v. Hirschborn (S. Af.); **1. Agcy.** p. 58  
 — v. Nelson (Can.); **11. Confl.** p. 364  
 — v. Pacific Great Eastern Ry. Co. (Can.); **11.**  
**Comp. Pche.** p. 358  
 — v. Person (Can.); **32. Lien,** p. 754  
 — v. R. (1928); **17. Dep.** No. 662a  
 — v. Union Bank of Canada (Can.); **3. Bank.**  
 pp. 166, 167  
 Nelson Murdoch & Co. v. Wood (1921); **3. Bailmt.**  
 No. 262a  
 — v. — (1922); **3. Bailmt.** No. 262a  
 Nemerovsky v. McBride (No. 2) (Can.); **18.**  
**Discy.** p. 534  
 Neptune, The (1919); **1. Adm.** No. 1027a  
 Nesbitt (A. & W.), Ltd. v. Mitchell (1926); **28.**  
**Inc. T.** No. 99c  
 Nesmith (Doe d.) v. Williston (Can.); **21. Exon.**  
 p. 589  
 Nesom v. Metcalfe (1921); **5. Bkpcy.** No. 8496a  
 Neuburger's Settlement, *Re, Foreshe v. Public*  
*Trustee* (1923); **2. Aliens,** No. 215g  
 Neugebauer & Co., Ltd. v. Hermann (S. Af.); **3.**  
**Auct.** p. 152  
 Neuman v. Bradshaw (Can.); **2. Aliens,** p. 113  
 Neuschild v. British Equatorial Oil Co. (1925);  
**9. Coys.** No. 3874a  
 Neve v. Leeson (Can.); **1. Agcy.** p. 59  
 Never-Stop Ry. (Wembley) v. British Empire  
 Exhibition (1924) Incorporated (1926);  
**12. Contr.** No. 2832a  
 Neville v. London "Express" Newspaper, Ltd.  
 (1919); **1. Action,** Nos. 560, 561a, 719a,  
 725  
 Neville & Green, *Re* (Can.); **4. Bkpcy.** p. 212  
 Neville Canneries, Ltd. v. Santa Maria (Can.);  
**1. Adm.** p. 14  
 New Brunswick (Receiver General of) v. Ros-  
 borough (Can.); **21. E. D.** pp. 575, 576



- New Brunswick & Nova Scotia Land Co. v. Kirk (Can.); **30. L. & T.** p. 733
- New Brunswick Electric Power Commission v. Quinton (Can.); **2. Arbn.** p. 149
- New Brunswick Gas & Oilfields, Ltd. & New Brunswick Electric Power Committee, *Re* (Can.); **2. Arbn.** p. 147
- New Brunswick Power Commission & Inglewood Pulp & Paper Co., *Re* (Can.); **11. Comp. Pche.** p. 356
- New Brunswick Power Co., *Ex p.* (Can.); **20. Electric.** p. 563
- v. Price Hatt (Can.); **17. Deeds.** p. 508
- New England Dressed Meat & Wool Co. v. Patrick Brothers (Can.); **1. Agcy.** p. 61
- New Nimrod Co., Ltd. v. Peruvian Pacific Ry., Ltd., International Construction & Finance Syndicate, Ltd. & Crankshaw (1907); **28. Injon.** No. 113a
- New South Wales (State of) v. Commonwealth (Aus.); **16. Courts.** p. 483; **17. Dep.** p. 525
- New York Life Insurance Co., *Re* (Can.); **10. Coys.** p. 351
- v. Public Trustee (1924); **2. Aliens.** No. 215m; **9. Coys.** No. 27a; **11. Confl.** No. 703a
- New Zealand Electrical Appliance & Engineering Co., Ltd., *Re* (N.Z.); **10. Coys.** p. 345
- New Zealand Gun Machine Co., Ltd. (In Liquidation), *Re* (N.Z.); **10. Coys.** p. 343
- New Zealand Hardware Co., Ltd., *Re* (N.Z.); **9. Coys.** p. 334
- New Zealand Serpentine Co., Ltd. v. Hoon Hay Quarries, Ltd. (N.Z.); **10. Coys.** p. 339
- Newburys, Ltd., *Ex p.*, *Re* A Debtor (1926); **4. Bkpcy.** No. 1177a
- Newby v. Brownlee (Can.); **33. L. G.** p. 760
- Newcastle Breweries, Ltd. v. Inland Revenue Comrs. (1927); **30. Jdgmts.** No. 714
- Newenham v. Mountcashel (Can.); **7. Bonds.** p. 270
- Newman (or Neuman) v. Bradshaw (Can.); **2. Aliens.** p. 113
- Newman v. Browne (W. R.) & Son (Can.); **6. B. of Exch.** p. 253
- v. Whitehead (Can.); **29. Inns.** p. 703
- Newport Corp'n. v. Isle of Wight Farmers' Trading Society, Ltd. (1928); **41. Ship.** No. 8564a
- Newsholme Brothers v. Road Transport & General Insurance Co., Ltd. (1928); **29. Insee.** No. 171a
- Newsome, *Re* (Can.); **4. Bkpcy.** p. 213
- Newsom, Sons & Co., Ltd. v. James (1909); **13. Cty. Cts.** No. 648a
- Newton v. Finesilver, *Re* Black & White Hat Shop, Ltd. (Can.); **5. Bkpcy.** p. 229
- v. Guest, Keen & Nettlefolds, Ltd. (1926); **30. Jdgmts.** No. 569a
- v. Hamilton, *Re* Thompson, Sons & Co. (Can.); **5. Bkpcy.** p. 216
- v. Harland (1840); **17. Damgs.** No. 574a
- v. Newton (Can.); **27. H. & W.** p. 666
- Niagara Hats, Ltd., *Re*, Trustee v. Bank of Montreal (Can.); **5. Bkpcy.** p. 229
- Niagara Public School Board v. Queenston Women's Institute (Can.); **19. Educ.** p. 557; **20. Eqty.** p. 565
- Nicholas v. Dumoulin (Can.); **1. Agcy.** p. 57
- Nicholl v. Llantwit Major Parish Council (1924); **7. Burial.** Nos. 228a, 291a
- Nichols v. North Metropolitan Railway & Canal Co. (1894); **12. Contr.** No. 3520
- Nicholson v. Cooper (1858); **4. Bkpcy.** No. 160a
- v. Debusse (Can.); **1. Agcy.** p. 58
- Nicholson Sales & Service Corp'n., *Re* (Can.); **4. Bkpcy.** p. 209
- Nickell v. Windsor (City) (Can.); **13. Corpns.** p. 431; **36. Negl.** p. 815
- Nieblo Manufacturing Co. v. Standard Co. (Can.); **36. Pats.** pp. 827, 830
- Nielsen v. Doraty (Can.); **34. Mast. & S.** p. 773
- Nielsen, Anderson & Co. v. Collins (1928); **28. Inc. T.** No. 567
- Nierhaus, *Re* (1921); **2. Aliens.** No. 236a
- Nightingale, *Re*, Hargreaves v. Shuttleworth (1927); **22. Evid.** No. 1489a
- Nightingale v. Biffen (1925); **22. Evid.** No. 5407a
- v. Ferrers (Earl) (1733); **28. Infts.** No. 669a
- Nigro v. Wilson (N.Z.); **1. Agcy.** p. 59
- Nilkanth Balwant Nattu v. Shri Satchidanand Vidya Narsinha Bharati (Ind.); **16. Courts.** p. 481
- Nilmone Chaudhuri v. Kedar Nath Daga (Ind.); **3. Barr.** p. 181
- Ningappa Marbasappa Arfeshvar v. Gyanaji Pouraji Marwadi (Ind.); **30. Jdgmts.** p. 726
- 90th Battalion, Winnipeg Rifles, *Re* (Can.); **11. Const. L.** p. 383
- Nipissing Dominion Election, *Re*, Klock v. Varin (Can.); **20. Elect.** p. 562
- Nippon Kinyn Sha, Ltd., *Re*, *Ex p.* Totaro Fujino (Can.); **10. Coys.** pp. 348, 349
- Nirso Narayan Singh v. R. (Ind.); **32. Libel.** p. 750
- Nixon v. Erith Urban Council (1924); **13. Corpns.** No. 1127a
- v. O'Callaghan (Can.); **32. Libel.** p. 750
- Noble, *Re* (Can.); **17. Dep.** p. 524; **22. Evid.** p. 599; **23. Exors.** p. 608
- Noble v. Campbellford, Lake Ontario & Western Ry. Co. (Can.); **2. Arbn.** p. 143
- v. Cass (1828); **23. Exors.** No. 3572a
- v. Cline (Can.); **16. Courts.** p. 480
- v. Esquesing (Township) (Can.); **2. Animals.** p. 119
- v. Harrison (1926); **2. Agric.** No. 970b
- v. Newfoundland Government (Nfld.); **11. Const. L.** p. 379
- v. Noble (Can.); **32. Limit. of A.** p. 757
- Noble & Province of Ontario, *Re*, *Re* Parkdale Boulevard, Ltd., & Province of Ontario, *Re* Torrance & Province of Ontario (Can.); **11. Comp. Pche.** p. 356
- Noble (B. W.), Ltd. v. Mitchell (1926); **28. Inc. T.** No. 142a
- Noble (B. W.), Ltd. v. Mitchell (1927); **28. Inc. T.** No. 222a
- Noden, Hallett & Johnston, *Re*, *Ex p.* Johnston (Can.); **4. Bkpcy.** p. 203
- Noel, *Re*, *Ex p.* Gravelbourg (Town) (Can.); **4. Bkpcy.** p. 209
- Nolan v. Russel Haverside, S.S. (S. Af.); **1. Adm.** pp. 13, 19, 36
- Nomeracsky v. Canterbury Dressing Works (1928); **34. Mast. & S.** No. 3140a
- Norfolk v. Gifford (1690); **20. Eqty.** No. 2367a
- Norfolk Coast, The (1922); **1. Adm.** No. 1723a
- Norfolk Co-operative Dairy Co., Ltd. v. Allen (N.Z.); **2. Animals.** p. 125
- Norfolk Ry. Co. v. Bayes (1849); **11. Comp. Pche.** No. 2035a
- Norfor v. Aberdeenshire Education Authority (Scot.); **19. Educ.** p. 555
- Norris v. Meadows (Can.); **35. Mtge.** p. 811
- Norske Atlas Insurance Co., Ltd. v. London General Insurance Co., Ltd. (1927); **2. Arbn.** No. 1981a
- Norske Lloyd Insurance Co., Ltd., *Re* (1928); **10. Coys.** No. 7612b
- North v. Lauweryssen (Can.); **40. S. Land.** p. 868
- v. Martin (1833); **38. Real Prop.** No. 592a



- North American Finance Co. v. Western Elevator Co. (Can.); 1. *Agcy.* p. 72
- North American Lumber Co., Ltd. v. Bank of Montreal (Can.); 3. *Bank.* p. 177; 7. *B. of Sale*, pp. 262, 265
- North British Ry. Co. v. Steel Co. of Scotland, Ltd. (Scot.); 8. *Carr.* p. 296
- North Bruce Provincial Election, *Re*, Fenton v. Mewbinney (Can.); 20. *Elect.* p. 560
- North Cowichan Corp'n. v. Gore-Langton (Can.); 11. *Comp. Pche.* pp. 356, 360
- North Eastern Ry. Co. v. Spark (1877); 5. *Bkpcy.* No. 8933c
- North Huron Election, *Re* (Can.); 20. *Elect.* p. 562
- North Pole Ice Co., Ltd., & Reduced, *Re* (1924); 9. *Coys.* Nos. 1019a, 1036a
- North Wales Produce & Supply Society, *Re* (1922); 7. *B. of Sale*, Nos. 144a, 302a
- North Western Trust Co., *Re*, *Ex p.* Pure Oil Co., Ltd. (Can.); 10. *Coys.* p. 351
- North Western Trust Co., *Re*, McAskill v. North Western Trust Co. (Can.); 9. *Coys.* p. 324
- Northard & Lowe Co. v. Durno (Can.); 35. *Mtge.* p. 812
- Northern Banking Co., Ltd. v. Newman & Calton (Ir.); 26. *Guar.* p. 643
- Northern Construction Co. v. R. (Can.); 7. *Bldg. Conts.* p. 274; 16. *Cr. Pract.* p. 487
- Northern Crown Bank v. Woodcrafts, Ltd. (Can.); 3. *Bank.* p. 179
- Northern Electric & Manufacturing Co., Ltd. v. Cordova Mines, Ltd. (Can.); 9. *Coys.* p. 329
- Northern Electric Co., Ltd. v. Canadian Pacific Ry. Co. & Fillmore Rural Telephone Co., Ltd. & Wiberg (Can.); 8. *Carr.* p. 287
- Northern Grain Co. v. Canadian National Rys. & Grand Trunk Pacific Rty. (Can.); 8. *Carr.* p. 286
- Northern Grain Co., Ltd. v. Goderich Elevator & Transit Co., Ltd. (Can.); 3. *Bailmt.* p. 158
- Northern Pipe Line Co. v. Canadian Gas Co. (Can.); 12. *Contr.* p. 406
- Northern Trust Co. v. Turner (Can.); 11. *Const. L.* p. 386
- Northern Trusts Co. v. McLean (Can.); 22. *Evid.* p. 600
- Northern Trusts Co. v. Rasmussen (Can.); 17. *Damgs.* p. 506
- Northwood v. London County Council (1926); 11. *Comp. Pche.* No. 2222a
- Northwood v. London County Council (No. 2) (1927); 11. *Comp. Pche.* Nos. 761a, 2222a
- Norton, *Re*, Pinney v. Beauchamp (1929); 40. *Sttlmts.* No. 3047a
- Norwick Union Life Insurance Society v. Embleton (1927); 28. *Inc. T.* Nos. 25b, 50a
- Notes of Official Rulings 1928 (B) (1928); 36. *Pats.* No. 700a
- Nott Brothers & Co., Ltd. v. Barkley (Aus.); 17. *Dep.* p. 521
- Nottingham Corp'n. v. Midland Ry. Co. (1922); 8. *Carr.* No. 954a
- Nouvelles Huileries Anversoises S.A. v. Mann (H. C.) & Co. (1924); 1. *Agcy.* No. 127a
- Nova Sales Co. v. Canadian Pacific Ry. (Can.); 8. *Carr.* p. 287
- Nova Scotia Dredging Co., Ltd. v. Musgrave & Co. (Can.); 1. *Agcy.* p. 73
- Nova Scotia Legislative Council, *Re* (No. 2) (Can.); 17. *Dep.* p. 526
- Nova Scotia Mining Co. v. Greener (Can.); 21. *Exon.* p. 593
- Nova Scotia Steel & Coal Co., Ltd. v. Finance & Customs Minister (Can.); 28. *Inc. T.* p. 686
- Nova Scotia Trust Co., *Ex p.*, *Re* Excel Footwear Co. (Can.); 9. *Coys.* p. 338
- Nova Scotia Trust Co. v. Bishop, *Re* Steeves (Can.); 5. *Bkpcy.* p. 229
- Nowlin v. Anderson (Can.); 21. *Exon.* p. 588
- Nowroji Rustomji Wadia v. Bombay Government (Ind.); 17. *Dep.* p. 527
- Nugent v. Davies (Can.); 12. *Contr.* p. 403
- v. McLellan (Can.); 31. *L. & T.* p. 734
- Nunan v. Southern Ry. Co. (1924); 8. *Carr.* No. 685a
- Nunneley v. Blatt (Can.); 1. *Agcy.* p. 56
- Nunnelly v. Onsum (Can.); 1. *Agcy.* p. 58
- Nur Ali v. R. (Ind.); 14. *Crim.* p. 453
- Nyberg v. Provost Municipal Hospital Board (Can.); 13. *Corpn.* p. 431; 34. *Mast. & S.* pp. 770, 772; *Med.* p. 797; 36. *Negl.* p. 817
- Nyokana v. Nyokana (S. Af.); 27. *H. & W.* p. 655
- O.
- Oakes v. Holliday (N.Z.); 34. *Mast. & S.* p. 780
- Oakey, *Ex p.*, R. v. North (1927); 19. *Eccl.* No. 1280a
- Oakley v. Whitehouse & Co. (Aus.); 8. *Carr.* p. 287
- Oakley v. Wilson (1927); 31. *L. & T.* No. 7352a
- Oamaru (Mayor) v. Clarke (N.Z.); 26. *Hghys.* p. 649
- Oblate Order of Mary Immaculate v. Pacific Great Eastern Ry. Co. (Can.); 11. *Comp. Pche.* p. 358
- O'Brien, *Ex p.*, R. v. Secretary of State for Home Affairs (1923); 16. *Cr. Pract.* Nos. 601, 801
- v. Mackintosh (Can.); 2. *Agric.* p. 91
- v. O'Brien (Can.); 22. *Evid.* p. 602
- v. R. (Can.); 30. *L. & T.* p. 733
- v. Secretary of State for Home Affairs (1923); 16. *Cr. Pract.* No. 470
- v. Stebbins & Mullen (Can.); 7. *B. of Sale*, p. 261; 12. *Contr.* p. 396
- v. Wellington (City) Corp'n. (N.Z.); 38. *Pub. Auth.* p. 845
- O'Brien & Doheny v. R. (Can.); 16. *Cr. Pract.* p. 487
- O'Callaghan v. O'Sullivan (Ir.); 17. *Dep.* p. 527; 19. *Eccl.* p. 554; 22. *Evid.* p. 605
- Ocean Coal Co. v. Davies (1926); 34. *Mast. & S.* No. 3701
- v. Davies (1927); 34. *Mast. & S.* No. 3701
- O'Cedar, Ltd. v. Slough Trading Co. (1927); 31. *L. & T.* Nos. 3035a, 5070a
- Ockerby & Co., Ltd., *Re* (Aus.); 10. *Coys.* p. 344
- v. Watson (Aus.); 1. *Agcy.* p. 63
- O'Connell v. Clausen (N.Z.); 30. *Intor.* p. 720
- v. Culley (Aus.); 34. *Med.* p. 797
- v. Harrison (Ir.); 33. *Lunat.* p. 763; 37. *Pers. Prop.* p. 836
- O'Connor v. Lemieux (Can.); 38. *Pub. Auth.* p. 845
- O'Connor & Whitlaw's Arbitration, *Re* (1919); 2. *Arbn.* Nos. 949a, 1415a
- O'Dea v. Midwives Registration Board (Aus.); 14. *Crim.* p. 439
- Odegaard v. Winnipeg Electric Co. (Can.); 8. *Carr.* p. 289
- Odams Press, Ltd., *Re* (1925); 10. *Coys.* No. 7371a
- O'Donnell v. North American Life Assurance Co. (Can.); 22. *Evid.* p. 597
- O'Donoghue v. Hembroff (Can.); 6. *B. of Each.* p. 252

- O'Donoghue v. Redmond Roche (1) (Ir.); **20. Elect.** p. 560
- Odynak v. Feschuk (Can.); **23. Exors.** p. 609
- Official Assignee v. R. (N.Z.); **5. Bkpcy.** p. 231; **16. Cr. Pract.** p. 487
- v. Sharpe (N.Z.); **5. Bkpcy.** p. 220
- v. Wairarapa Farmers Co-operative Society, Ltd. (N.Z.); **5. Bkpcy.** p. 229
- Official Receiver, *Ex p.*, *Re* Fairley (1922); **5. Bkpcy.** No. 6918a
- , *Ex p.*, *Re* Levy (1924); **5. Bkpcy.** No. 5475a
- , *Ex p.*, *Re* Mumford, Debtor v. Petitioning Creditor (1927); **4. Bkpcy.** No. 3740a; **10. Coys.** No. 6442a
- , *Ex p.*, *Re* Paget (1927); **5. Bkpcy.** No. 5495a
- , *Ex p.*, *Re* Pitchford (1924); **4. Bkpcy.** No. 2978a
- , *Ex p.*, *Re* Sarjeant (1923); **4. Bkpcy.** Nos. 1808a, 4559a
- , *Ex p.*, *Re* Scott (1921); **5. Bkpcy.** No. 8435a
- , *Ex p.*, *Re* Shaw (1920); **4. Bkpcy.** No. 434a; **5. Bkpcy.** No. 8771a
- , *Ex p.*, *Re* Whaley (1921); **5. Bkpcy.** No. 8435a
- v. Debtors, *Ex p.*, *Re* L. A. & B. F. M. (1926); **4. Bkpcy.** No. 226a
- v. Hall, *Ex p.*, *Re* Pitchford (1924); **4. Bkpcy.** No. 2978a
- Offman, *Ex p.*, *R. v.* Lantalum (Can.); **2. Aliens,** p. 114
- Ogilvie v. Barron (1925); **28. Inc. T.** No. 200a
- v. McLeod (Can.); **26. Guar.** p. 641
- Ogilvie Flour Mills Co., Ltd. v. Canadian Credit Men's Trust Asscn., Ltd. (Can.); **5. Bkpcy.** p. 220
- Ogilvie Flour Mills Co., Ltd. & Winnipeg (City), *Re* (Can.); **11. Comp. Pche.** p. 357
- O'Grady v. McCaffray (Can.); **38. Rates,** p. 851
- Ohlson v. Weiss (Can.); **34. Mines,** p. 801
- O'Kane v. Mullan (Ir.); **22. Evid.** p. 598
- O'Keefe v. London & Edinburgh Insurance Co., Ltd. (Ir.); **29. Insee.** p. 705
- O'Keefe & Lynch of Canada, Ltd. v. Toronto Insurance & Vessel Agency, Ltd. (Can.); **17. Dep.** p. 523; **29. Insee.** p. 705
- Okell Morris & Co. v. Dickson (Can.); **8. Chos.** p. 313
- Okrey v. Spangler (Can.); **16. Cr. Pract.** p. 495
- Oldfield Estate, *Re*, *Re* Succession Duty Act (Can.); **21. E. D.** p. 576
- Oldham, *Re*, Oldham v. Myles (1927); **23. Exors.** No. 5363a
- v. Sheffield Corp'n. (1927); **26. Hghys.** No. 1191a
- Oldright v. Grand Trunk Ry. Co. of Canada (Can.); **8. Carr.** p. 289
- Olivant's Claim, Haslam v. Cron (1871); **3. Basty.** No. 24a
- Olive, *Re* (1863); **28. Infts.** No. 2167a
- Oliver, *Re* (Can.); **21. E. D.** p. 576
- , *Re*, Theobald v. Oliver (1927); **32. Limit. of A.** Nos. 1568a, 1584a
- v. Dickinson (N.Z.); **1. Agcy.** p. 38
- Olmstead v. Scott (Can.); **1. Action,** p. 2
- Olsen v. Pearson (Can.); **1. Agcy.** p. 58
- Olstead v. Coal Valley School District No. 1053 (Can.); **19. Educ.** p. 557
- Olympia Cafe Co., Ltd., *Re*, *Ex p.* Bedali (Can.); **4. Bkpcy.** pp. 202, 210
- Olympic Reinsurance Co., *Re*, Pole's Case (1920); **1. Agcy.** No. 3040a
- O'Mealey v. Swartz (Can.); **2. Animals,** p. 128
- O'Neil v. Dominion Coal Co. (Can.); **17. Damgs.** p. 500
- O'Neill, *Re*, *Ex p.* Goulding (1829); **6. B. of Exch.** No. 701b
- O'Neill v. Great Western Ry. Co. (Can.); **8. Carr.** p. 287
- v. Lye (N.Z.); **6. B. of Exch.** p. 255
- O'Neill, etc., *Re* (N.Z.); **11. Confl.** p. 367
- Ontario Co-operative Stone Cutters' Asscn. v. Clarke (Can.); **13. Corpns.** p. 430
- Ontario Equitable Law & Accident Insurance Co. v. Baker (Can.); **12. Contr.** p. 409; **21. Estpl.** p. 582
- Ontario Jockey Club, Ltd. v. McBride (Can.); **9. Coys.** p. 325
- Ontario Wind Engine & Pump Co. v. Bobo (Can.); **25. Fraud. Conv.** p. 627
- Oppenheim & Co. v. Mahomed Haneef (1922); **2. Arbn.** Nos. 1857a, 1912a, 1950a, 1960b, 2056a
- v. Mahomed Haneef (Ind.) **2. Arbn.** p. 148; **11. Confl.** p. 374
- Orchiston v. Schlaepfer (N.Z.); **26. Guar.** p. 643
- Ord v. Burkus (1843); **34. Mast. & S.** No. 212a
- O'Reilly v. Doherty (Ir.); **31. L. & T.** p. 740
- O'Reilly (T. E.), Ltd., *Re* (Can.); **9. Coys.** p. 320
- O'Reilly's Will, *Re* (Aus.); **23. Exors.** p. 608
- Orenczuk v. Dolinsky (Can.); **25. Gifts,** p. 639
- Ormond Investment Co. v. Betts (1928); **28. Inc. T.** No. 450a
- Orpheum Theatrical Co. v. Vulcan Engineering Construction Co. (Can.); **12. Contr.** p. 397
- Orr, *Re* (Ir.); **4. Bkpcy.** p. 209
- v. Krepsky (Can.); **16. Cr. Pract.** p. 494
- Orzy, *Re* (Can.); **4. Bkpcy.** p. 206
- Osadchuk v. Russniak (Can.); **2. Animals,** pp. 120, 122
- Osborn v. Osborn (otherwise Ivil) (1926); **27. H. & W.** No. 6026a
- Osborne, *In the Goods of* (1855); **11. Confl.** No. 587a
- v. Automatic Bottle Makers, *Re* Automatic Bottle Makers (1926); **10. Coys.** No. 4730a
- v. Martin (1927); **19. Educ.** No. 88a
- v. Osborne (circa 1814); **2. Agric.** No. 846a
- Osbourne v. Dent (J. M.) & Sons, Ltd. (1925); **13. Coprt.** No. 325a
- Ose Gesellschaft, etc. v. Jewish Colonial Trust (1927); **3. Bank.** No. 298a
- Osman, *Re* (S. Af.); **1. Agcy.** p. 40; **4. Bkpcy.** p. 194
- Osmond v. Woolley (1917); **2. Arbn.** Nos. 1825a, 1839a
- Osram Lamp Works v. Pope's Electric Lamp Co., Ltd. (1914); **18. Discy.** No. 1631b
- Osry v. Hirsch (S. Af.); **1. Agcy.** p. 54
- Ostrom v. Benjamin (Can.); **16. Courts,** p. 480
- v. Miyako, The (Can.); **1. Adm.** p. 18
- O'Sullivan v. Harty (Can.); **24. Exors.** p. 617
- v. Loughnan (Ir.); **35. Mige.** p. 809
- Oswalt v. King (Can.); **1. Agcy.** p. 52
- Otago Farmers Co-operative Asscn. of New Zealand, Ltd. v. McGowan (N.Z.); **7. B. of Sale,** p. 265
- O'Toole v. O'Toole (1926); **27. H. & W.** No. 2765a
- Ottawa (City) v. Canadian National Rys. (Can.); **38. Rates,** p. 852
- v. Grand Trunk Ry. Co. (Can.); **17. Dep.** pp. 524, 525
- v. Ottawa & New York Ry. Co. (Can.); **17. Dep.** pp. 524, 525
- Ottawa & Gloucester Road Co. & County of Carleton, *Re* (Can.); **11. Comp. Pche.** p. 356
- Ottawa Corp'n. v. Ottawa Public School Board (Can.); **38. Rates,** p. 851
- Ottawa Valley Ry. Co. v. Central Ry. Co., 1 (Can.); **38. Rys.** p. 849

## TABLE OF CASES.

- Otte v. R. (1924); **17. Dep.** No. 108a  
 Ottokar, The (1921); **1. Adm.** No. 1613a  
 Ottoman Bank v. Jebara (1928); **1. Agcy.** No. 215c; **2. Aliens**, No. 402a  
 Outerbridge v. Outerbridge (1927); **27. H. & W.** Nos. 6230a, 6242a  
 Overseers of the Poor v. Marryatt (Can.); **14. Crim.** p. 443  
 Owen v. Campbell, *Re* Mills (Can.); **28. Infls.** p. 695  
 — v. Lavery (1900); **5. Bkpcy.** No. 8172a  
 — v. Lynch (Can.); **21. Exon.** p. 589  
 — v. Owen (1831); **21. Exon.** No. 1576a  
 — v. Robinson (otherwise Owen) (N.Z.); **11. Confl.** p. 374  
 Oxenham, *Re* (Can.); **24. Exors.** p. 615  
 Oxford (Bp.), *Ex p.*, *Re* Sneyd (1883); **30. Jdgmts.** No. 337  
 Oxford & Worcester Extension & Chester Junction Ry. Co., *Re*, *Potter's Case* (1849); **10. Coys.** No. 6137a
- P.
- P., *Re* (Can.); **3. Basty.** p. 187  
 —, *Re* (Ir.); **33. Lunat.** p. 763  
 — v. P. (1927); **27. H. & W.** No. 4354b  
 Pacific Coast Coal Freighters, Ltd. v. Westchester Fire Insurance Co. of New York (Can.); **29. Insce.** pp. 707, 709  
 — v. Western Assurance Co. (Can.); **29. Insce.** pp. 707, 709  
 Pacific Coast Coal Mines, Ltd. v. Arbuthnot (Can.); **9. Coys.** p. 332  
 Pacific Coast Coal Mines, Ltd. & Hodges, *Re* (Can.); **9. Coys.** pp. 329, 335  
 Pacific Great Eastern Ry. Co. v. Clinton, The (Can.); **1. Adm.** p. 16  
 Pacific Great Eastern Ry. Co.'s Case, *Re* National Benefit Assurance Co., Ltd. (Can.); **10. Coys.** pp. 349, 351  
 Pacific Steam Navigation Co. (Bogota (Owners)) v. Anglo Newfoundland Development Co., Ltd. (Alconda (Owners)) (Scot.); **1. Adm.** p. 28  
 Pacifico, The v. Winslow Marine Railway & Shipbuilding Co. (Can.); **1. Adm.** p. 17  
 Packer, *Re* (Can.); **5. Bkpcy.** p. 237  
 Paddington Borough Council v. Finucane (1928); **38. Pub. Hlth.** No. 502b  
 Page v. Godden (1818); **5. Bkpcy.** No. 7653a  
 — v. Liverpool Victoria Friendly Society (1927); **25. Fr. Soc.** No. 109a  
 — v. St. John's Corpn. (Can.); **3. Auct.** p. 151  
 — v. Scottish Insurance Corpn. (1929); **29. Insce.** No. 3217b  
 — v. Sully (1918); **3. Auct.** Nos. 293a, 301a  
 Page Hersey Iron Tube & Lead Co. v. Great West Natural Gas Corpn. (Can.); **18. Discy.** p. 534  
 Paget, *Re*, *Ex p.* Official Receiver (1927); **5. Bkpcy.** No. 5495a  
 Painter v. City & South London Ry. Co. (1926); **34. Mast. & S.** No. 2448a  
 Painter's Case, *Re* Great North Insurance Co. (Can.); **9. Coys.** p. 324  
 Pakenham Upper Fruit Co., Ltd. v. Crosby (Aus.); **28. Injon.** p. 700  
 Palaniandi Chetti v. Adaikalam Chetti (Ind.); **2. Arbn.** p. 130  
 Paley (Princess Olga) v. Weisz (1928); **11. Const. L.** No. 387a  
 Palmer v. Carey (1926); **8. Chos.** No. 258a  
 — v. Christie (Can.); **1. Agcy.** p. 54  
 Palmer v. Crane (1927); **18. Distr.** No. 1419a  
 — v. Harvey (Can.); **1. Agcy.** p. 60  
 Palmer & Roberts v. Knight, *Re* Drage (J.) & Sons (1926); **5. Bkpcy.** Nos. 7166a, 7237a  
 Paludina, The (1925); **1. Adm.** No. 1114a  
 Panicali & Brenni's Patent, *Re* (1927); **36. Pats.** No. 1997a  
 Panna Lal, *Re*, *Re* Dehra Dun-Mussoorie Electric Tramway Co., Ltd. (Ind.); **10. Coys.** p. 343  
 Papineau v. Guard (Can.); **17. Deeds.** p. 510  
 Pappas, *Re* (Can.); **2. Aliens**, p. 114  
 Paquet Co., *Ex p.*, *Re* Vogue Fur Shop, Ltd. (Can.); **5. Bkpcy.** p. 228  
 Paquet Co., Ltd. v. Wiese & Krant (Can.); **21. Exon.** p. 592  
 Paradis v. Federal Grain Co., Ltd. (Can.); **17. Damgs.** p. 505  
 Parak v. R. (S. Af.); **5. Bkpcy.** p. 240  
 Parashuram Dattaram Sham-Dasani v. Tata Industrial Bank, Ltd. (Ind.); **10. Coys.** p. 345  
 Parbati Charanmukherjee v. Amarendra Nath Bhattacharjee (Ind.); **12. Contr.** p. 403  
 Parenteau v. Harris (Can.); **21. Exon.** p. 587  
 Park, *Re*, Bott v. Chester (1921); **3. Barr.** No. 220a  
 — v. Austin, *Re* Saunders (N.Z.); **22. Evid.** p. 597  
 — v. Wilsons & Clyde Coal Co. (Scot.); **34. Mast. & S.** p. 770; *Mines*, p. 802  
 Park Ward & Co., Ltd., *Re* (1926); **10. Coys.** Nos. 5186a, 5841a, 6823a  
 Parkdale Boulevard, Ltd. & Province of Ontario, *Re*, *Re* Torrance & Province of Ontario, *Re* Noble & Province of Ontario (Can.); **11. Comp. Pche.** p. 356  
 Parke v. Riley (Can.); **21. Exon.** p. 589  
 Parke & Percival v. Evans (1615); **21. Exon.** No. 1579a  
 Parker, *Re* (Can.); **21. E. D.** p. 575  
 — v. Bloxam (1855); **24. Exors.** No. 7311a  
 — v. Chapman (1928); **28. Inc. T.** No. 501a  
 — v. Glover, *Re* Cozier (Can.); **24. Exors.** p. 618  
 — v. London Brick Co. & Forders, Ltd. (1927); **34. Mast. & S.** No. 3098a  
 — v. McIlwain (Can.); **21. Exon.** p. 591  
 — v. Parker (Scot.); **27. H. & W.** p. 661  
 Parker & Cooper, Ltd. v. Reading (1926); **9. Coys.** Nos. 3160a, 4037a, 4117a  
 Parker, Gaines & Co. v. Turpin (1918); **2. Arbn.** No. 402a  
 Parker Wood & Co., Ltd. v. Richards (S. Af.); **6. B. of Exch.** p. 254  
 Parker-Eakins Co. v. Royal Bank of Canada (Can.); **4. Bkpcy.** p. 205  
 Parkes Garage (Swadlincote), Ltd., *Re* (1928); **10. Coys.** No. 4699a  
 Parkinson v. College of Ambulance, Ltd., & Harrison (1925); **12. Contr.** Nos. 2011a, 2329a, 2350a  
 — v. Noel (1923); **5. Bkpcy.** Nos. 7681a, 7782b  
 Parkman v. Benoit (Can.); **30. Intox.** p. 722  
 Parlov v. Iozina & Raolovich (Can.); **36. Negl.** p. 815  
 Parr v. A.-G. (1926); **21. E. D.** No. 131  
 Parry v. Duncan (Can.); **11. Const. L.** p. 383  
 — v. Parry (Can.); **22. Evid.** p. 601; **27. H. & W.** p. 662  
 — v. Roberts (1835); **3. Bailmt.** No. 103a  
 Parsons, *Ex p.*, *Re* Till (1871); **22. Evid.** No. 4472a  
 — v. Brixham Fishing Smack Insurance Co., Ltd. (1918); **2. Arbn.** No. 1598a  
 — v. Burgess (1927); **13. Cty. Cts.** No. 70a  
 — v. Queen Insurance Co. (Can.); **29. Insce.** p. 705  
 Partab Narain v. Jute Mills (Ind.); **1. Agcy.** p. —



- Partington v. Partington (Can.); 27. *H. & W.* p. 663
- Paschena, The v. Griff, The (Can.); 1. *Adm.* pp. 26, 28, 31
- Pass v. British Tobacco Co. (Australia), Ltd. (1926); 9. *Coys.* No. 3934a; 17. *Dep.* No. 184a
- Passarini v. Martin (Can.); 18. *Distr.* p. 538
- Passey v. Oxford Local Board (1879); 36. *Nuis.* No. 134b
- Patel v. Keeler & Co. (S. Af.); 1. *Agcy.* p. 65; 8. *Carr.* p. 287
- Paterson, *Re* (N.Z.); 23. *Exors.* p. 610
- v. McCallum (N.Z.); 1. *Agcy.* pp. 46, 64
- v. MacPherson (Scot.); 25. *Gaming*, p. 636
- v. Miller (Aus.); 3. *Bailmt.* p. 160
- Paterson & Barr, Ltd. v. Otago University (N.Z.); 19. *Easmt.* p. 544
- Paterson (A. & G.), Ltd. v. Highland Ry. Co. (Scot.); 12. *Contr.* p. 388
- Pathe Freres Phonograph Co. of Canada, *Re* (Can.); 4. *Bkpcy.* p. 210
- Pathescope Union of South Africa, Ltd. v. Malinick (S. Af.); 9. *Coys.* p. 323
- Patricia Appliance Shops, Ltd., *Re* (Can.); 10. *Coys.* p. 342
- Patrick & Co. v. Russo-British Grain Export Co., Ltd. (1927); 2. *Arbn.* No. 1071a
- Patterson, *Re*, Mitchell v. Smith (1864); 25. *Gifts*, No. 337a
- v. Continental Insurance Co. (Can.); 11. *Confl.* p. 370
- v. Findlay (Scot.); 25. *Food*, p. 625
- v. Saskatchewan Creamery Co., Ltd. (Can.); 30. *Juries*, p. 729
- v. Smith (Can.); 21. *Estpl.* p. 583
- Patton, *Re*, Caughey v. Copeland (Ir.); 23. *Exors.* p. 614
- Paul v. Amy Turner, The (Aus.); 1. *Adm.* pp. 18, 27
- Paul (R. & W.), Ltd. v. London & North Eastern Ry. Co. (1927); 8. *Carr.* No. 1237c
- Pauley v. Custodian (S. Af.); 2. *Aliens*, pp. 94, 96
- Paulson v. Clements (Can.); 33. *Mal. Pros.* p. 768
- Payn v. Payn (Can.); 11. *Confl.* p. 372
- Payne v. Esdaile (1888); 19. *Eccl.* No. 3455c
- v. Gammon, *Re* Gammon Estate (Can.); 23. *Exors.* p. 606
- v. New South Wales Coal & Intercolonial Steam Navigation Co. (1854); 12. *Contr.* No. 1285b
- Peabody (Doe d.) v. McKnight (Can.); 21. *Exon.* p. 589
- Peacock v. Griffiths (1927); 8. *Clubs*, No. 111b
- v. Stephens (Can.); 36. *Negl.* p. 817
- Peagram v. Peagram (1926); 27. *H. & W.* Nos. 6233a, 6275a
- Pearce v. Wright (Aus.); 39. *Rntchgs.* p. 859
- Pearman v. Charlton (1928); 3. *Bank.* No. 112b
- Pearn v. Miller (1927); 28. *Inc. T.* No. 460a
- Pearson v. Whitfield (1888); 33. *Mags.* No. 503a
- v. Wilson (Aus.); 1. *Agcy.* p. 45
- Pearson, Kingsland Estate, *Ex p.*, R. v. Kingsland Parish Inspector of Taxes (1922); 16. *Cr. Pract.* Nos. 1141a, 2132a, 2422a
- Pease v. How (1922); 8. *Char.* No. 691a
- Pêcheres Ostendaises (Soc. Anon.) v. Merchants' Marine Insurance Co. (1928); 18. *Discy.* No. 462a
- Pederson v. Paterson (Can.); 26. *Hghys.* p. 650
- Pedley, *Re*, Wallace v. Wallace (1927); 24. *Exors.* No. 6341a
- Peek v. Shields (Can.); 17. *Dep.* p. 516
- Peel v. Inland Revenue Comrs. (Scot.); 28. *Inc. T.* p. 686
- Pegler, *Ex p.*, R. v. Customs & Excise Comrs. (1928); 31. *L. & T.* No. 4534a
- Peile, *Re*, Shea v. Boschetti (1858); 4. *Bkpcy.* No. 4772b
- Pelletier v. Opal Municipal District (Can.); 38. *Rates*, p. 853
- Pendleton v. Pendleton (Can.); 27. *H. & W.* p. 656; 38. *Real Prop.* p. 856
- Pendred v. Chambers (1591); 16. *Courts*, No. 1024a
- Penedo (Baron) v. Johnson (1873); 1. *Action*, No. 366b
- Penell v. Elgin (Scot.); 5. *Bkpcy.* p. 221
- Penelope, The (1928); 12. *Contr.* No. 3178b
- Penetanguishene Town, *Ex p.*, *Re* Adams Shoe Co. (Can.); 4. *Bkpcy.* pp. 201, 209
- Penlington v. Brownlee (Can.); 38. *Real Prop.* p. 856
- Penman v. Winnipeg Electric Ry. Co. (Can.); 17. *Damgs.* p. 502
- Penman Manufacturing Co. v. Broadhead (Can.); 12. *Contr.* p. 401
- Penney v. Clyde (Scot.); 2. *Aliens*, p. 105
- Pennington & Owen, Ltd., *Re* (1925); 10. *Coys.* No. 6455a
- Penrose v. Barr (Can.); 36. *Negl.* p. 817
- People of California State v. Skinner (Can.); 15. *Crim.* pp. 470, 471
- Peppard v. Cameron (Can.); 21. *Estpl.* p. 583
- v. Wood (Can.); 21. *Estpl.* p. 583
- Pepper v. Butler (Can.); 31. *L. & T.* p. 737
- v. Pepper & Baker (1926); 27. *H. & W.* Nos. 3783a, 4848a
- Percy v. Glasgow Corp'n. (1922); 8. *Carr.* No. 781a
- Percy's Case (1609); 2. *Agric.* No. 944a
- Perfect v. Poynter (1884); 1. *Adm.* No. 1717
- Performing Right Society v. Caryl Theatrical Syndicate (1924); 13. *Coprt.* No. 489a
- Performing Right Society, Ltd. v. Mitchell & Booker (Palais de Danse), Ltd. (1924); 13. *Coprt.* No. 489b
- v. Thompson (1918); 1. *Action*, No. 637a
- Perkins, *Ex p.*, R. v. Essex JJ. (1927); 33. *Mags.* Nos. 97a, 150a
- Perlman v. Piche (Can.); 2. *Aliens*, p. 107
- Perpetual Trustee Co., Ltd. v. Shelley (Aus.); 8. *Char.* p. 300
- Perpetual Trustees, Estate & Agency Co., Ltd. of New Zealand v. Stamp Duties Comr. (N.Z.); 21. *E. D.* p. 575
- Perrett & Bennett-Stanford, *Re* (1922); 2. *Agric.* No. 266e
- Perry, *Re* (Can.); 23. *Exors.* p. 607
- v. Espley (Can.); 17. *Deeds*, p. 511
- v. Kidd (Can.); 2. *Animals*, p. 125
- v. Perry (Can.); 11. *Confl.* p. 375
- Peters v. Perry & Co. (1894); 22. *Evid.* No. 55c
- Peterson, *Re* (1909); 36. *Parl.* No. 261
- , *Re*, *Re* Holloway (Can.); 4. *Bkpcy.* pp. 205, 206
- v. Cushman Motor Works (Can.); 1. *Agcy.* p. 73
- v. Flack (Can.); 12. *Contr.* p. 408
- Petit (Doe d.) v. Renard (Can.); 22. *Evid.* p. 594
- Petitioning Creditor, *Ex p.*, *Re* A Debtor (1920); 4. *Bkpcy.* No. 1347a
- , *Ex p.*, *Re* A Debtor (No. 4 of 1922) (1922); 4. *Bkpcy.* No. 1110a
- v. Debtor, *Re* Debtor (No. 21 of 1928) (1928); 4. *Bkpcy.* No. 1077a
- Petitioning Creditors (No. 24 of 1924), *Ex p.*, *Re* A Debtor (1924); 4. *Bkpcy.* No. 1179a
- Petitioning Creditors v. Debtor, *Ex p.*, *Re* A Bankruptcy Notice (No. 62 of 1924) (1924); 4. *Bkpcy.* No. 797a; 12. *Contr.* No. 1178a
- Petreas & Co. v. London Guarantee & Accident Co., Ltd. (S. Af.); 29. *Insec.* pp. 701, 705



- Petrie v. Rideout (Can.); 18. *Distr.* p. 538  
 Petrie (L.) Ltd. v. Frizzle (Can.); 12. *Contr.* p. 408  
 Petrie Manufacturing Co., *Re, Ex p.* Hughes (Can.); 9. *Coys.* p. 331  
 Petrotite & Challenge Heaters, Ltd. v. Bodley (N.Z.); 9. *Coys.* pp. 320, 323  
 Petschl v. Buchi (Can.); 27. *H. & W.* p. 655  
 Pettigrew v. Thomas (Can.); 21. *Exon.* p. 587  
 Pettypiece v. Holden (Can.); 1. *Agcy.* p. 59  
 Peuchen Co. v. City Mutual Fire Insurance Co. (Can.); 36. *Prtnrs.* p. 824  
 Peyrae v. Wilkinson (1924); 17. *Damgs.* No. 612  
 Phaninda Krishna Dolt v. Pramatha Nath Malia (Ind.); 22. *Evid.* p. 604  
 Pheasey v. Edmonton (Can.); 26. *Hghys.* p. 648  
 Philipps & Scarth v. London Guarantee & Accident Co., Ltd. (Can.); 21. *Exon.* p. 587  
 Phillips, *Re, Ex p.* Phillips (1900); 4. *Bkpcy.* No. 428  
 — v. Canham (No. 1) (1872); 33. *Mags.* No. 503b  
 — v. Ross (Can.); 19. *Easmt.* p. 542  
 Phillips & La Paloma Sweets, Ltd., *Re* (Can.); 9. *Coys.* p. 325  
 Phillipson v. Kerry (1863); 25. *Fraud. Conv.* No. 831a  
 Philpotts d. Philpotts v. James (1784); 18. *Descr.* No. 113a  
 Phul Singh v. Bhojraj (Ind.); 32. *Limit. of A.* p. 755  
 Pianta v. Macrow & Sons Pty., Ltd. (Aus.); 27. *H. & W.* p. 658  
 Pickering's Ltd's Application, *Re* Athey (1926); 34. *Mast. & S.* No. 3359a  
 Pickford v. Inland Revenue Comrs. (1927); 28. *Inc. T.* Nos. 114a, 591a  
 — v. Quirke (1927); 28. *Inc. T.* Nos. 114a, 591a  
 Pickup v. United Kingdom Dental Board (1928); 34. *Med.* No. 205b  
 Picton, The (Can.); 17. *Dep.* p. 517  
 Pidgeon v. Holman (Can.); 33. *Mal. Pros.* p. 768  
 — v. Milligan (Can.); 7. *B. of Sale*, p. 267  
 Pieper v. Zinkann (Can.); 22. *Evid.* p. 603  
 Piers v. Whiting (Can.); 7. *Bounds. & F.* p. 271  
 Piesse v. Tasmanian, etc. (Aus.); 1. *Agcy.* p. 37  
 Piggott v. Townsend (Aus.); 7. *Bldg. Conts.* p. 274  
 Pike v. Walker (Can.); 16. *Courts*, p. 480  
 Pinchbeck v. Gleeson (Aus.); 25. *Gaming*, p. 636  
 Pincke v. Curteis (1793); 40. *S. Land.* No. 1597a  
 Pinder v. Coqui (1866); 5. *Bkpcy.* No. 9181a  
 Pink, *Re, Elvin v.* Nightingale (1927); 24. *Exors.* No. 8484a  
 Pinney v. Beauchamp, *Re* Norton (1929); 40. *Sttlmts.* No. 3047a  
 Pinnock Brothers v. Lewis & Peat, Ltd. (1923); 2. *Arbn.* No. 165c  
 Pinsent v. Boyd & McDougall (Nfld.); 16. *Cr. Pract.* p. 494  
 Pioneer Alkali Works, Ltd. v. Amiruddin Shalebhoy Tyebji (Ind.); 9. *Coys.* p. 325  
 Pioneer Bank v. Canadian Bank of Commerce (Can.); 12. *Contr.* p. 413  
 Piper, *Re* (Can.); 33. *Lunat.* p. 763  
 — v. Canadian Bank of Commerce (Can.); 3. *Bank.* p. 177  
 — v. St. Marylebone Licensing JJ. (1928); 30. *Intox.* No. 553a  
 Pirie v. Richardson (1927); 12. *Contr.* No. 163a  
 Pirrie v. McFarlane (Aus.); 17. *Dep.* p. 521  
 Pisani v. A.-G. for Gibraltar (1874); 2. *Arbn.* No. 44a  
 Pitchford, *Re, Ex p.* Official Receiver v. Hall (1924); 4. *Bkpcy.* No. 2978a  
 Pitt, *Ex p.* (1923); 1. *Agcy.* No. 2205a  
 Pittman v. Byrne (Aus.); 3. *Basty.* p. —  
 — v. Prudential Deposit Bank, Ltd. (1896); 1. *Action*, No. 713a  
 Pittsburg Coal Co. v. Belchers S.S. (Can.); 1. *Adm.* p. 17  
 Pittzen v. Shokluk (Can.); 2. *Animals*, p. 118  
 Pixley v. Bedford (Can.); 2. *Animals*, p. 121  
 Place v. Spawn (Can.); 35. *Mtge.* p. 809  
 Plaetzer v. Raymond (Can.); 25. —. *Conv.* p. 629  
 Plant, *In the Estate of, Wild v.* Plant (1926); 23. *Exors.* No. 3127a  
 —, *Re, Wild v.* Plant (1926); 23. *Exors.* No. 3127a  
 Platt v. McFaul (Can.); 12. *Contr.* p. 407  
 Pleasants, *Re, Pleasants v.* A.-G. (1923); 8. *Char.* Nos. 73b, 213a  
 Plimmer, *Re, Ex p.* Speller (1853); 5. *Bkpcy.* Nos. 6449, 6647  
 Plowden v. Lawrence, *Re* Grove-Grady (1928); 8. *Char.* No. 204a  
 Plows v. Plows (1928); 27. *H. & W.* No. 3436a  
 Plumb v. W. C. MacDonald Registered (Can.); 1. *Agcy.* p. 39; 21. *Estpl.* p. 578  
 Plumb & Orr v. Fermanagh County Council (Ir.); 17. *Dep.* p. 523  
 Plumer v. Simonton (Can.); 7. *Bonds*, p. 269  
 Plummer, *Re, Ex p.* Trustee (1900); 5. *Bkpcy.* No. 7079  
 Plummer Wagon Co. v. Wilson (Can.); 17. *Dep.* p. 518  
 Point Abino Ass'n. v. Bertie (Township) (Can.); 26. *Hghys.* p. 646  
 Point Anne Quarries v. M. F. Whalen S.S. (Can.); 1. *Adm.* p. 26  
 Point Breeze, The (1928); 1. *Adm.* Nos. 706b, 781h  
 Pointing v. Wilson (1926); 15. *Crim.* No. 7685a  
 Pointon v. Cox (1926); 25. *Gaming*, No. 424a  
 Polar Aerated Water Works v. Winnikoff (Can.); 17. *Dep.* p. 522  
 Pole's Case, *Re* Olympic Reinsurance Co. (1920); 1. *Agcy.* No. 3040a  
 Pollard, *Re* (Can.); 4. *Bkpcy.* p. 208  
 — v. Gibson (Can.); 1. *Agcy.* p. 77; 12. *Contr.* p. 414  
 Pollock v. Williamson (J. C.), Ltd. (Aus.); 13. *Coprt.* p. 419  
 Polson, *Re, Trustee v.* Thompson & Sutherland, Ltd. (Can.); 5. *Bkpcy.* p. 213  
 Pong v. Quong (Can.); 31. *L. & T.* p. 784  
 Pong Fook Wing, *Re, Re* Immigration Act (Can.); 2. *Aliens*, pp. 113, 114  
 Ponomoroff v. Ponomoroff (Can.); 22. *Evid.* p. 602  
 Pontius v. Smith & Connaughty (Can.); 21. *Exon.* p. 592  
 Pontypriidd Union v. Drew (1927); 1. *Agcy.* No. 215b; 12. *Contr.* No. 743a; 26. *Guar.* No. 1790a; 30. *Jdgmts.* No. 525a  
 Poole v. Poole (1871); 23. *Exors.* No. 4687a  
 Pooley v. Mitchell (Can.); 8. *Carr.* p. 285  
 Pope v. Fraser (Can.); 6. *B. of Exch.* p. 248  
 — v. Pictou Steamboat Co. (Can.); 1. *Agcy.* p. 70  
 Pope Alliance Corp., Ltd., *Re* (Can.); 28. *Inc. T.* p. 678  
 Popham v. Bertrand, *Re* Skaleski (Can.); 28. *Infis.* p. 697  
 Port Huon Fruitgrowers' Co-operative Assocn., Ltd. v. Larkinson (Samuel), Ltd. (Aus.); 13. *Corps.* p. 432  
 Port of Manchester Warehouses, Ltd. v. Cheshire Lines Committee, Great Central Ry. Co. & Great Northern Ry. Co. (1922), 17 *Ry. & Can. Tr. Cas.* 54; 8. *Carr.* Nos. 1096a, 1219a  
 — v. — (1922), 17 *Ry. & Can. Tr. Cas.* 95; 8. *Carr.* Nos. 1175a, 1377a, 1377c

- Port of Manchester Warehouses v. London, Midland & Scottish Ry. Co. (1925); **8. Carr.** No. 1377g
- Portage la Prairie Rural Municipality v. Cartier Rural Municipality (Can.); **26. Hghys.** p. 654
- Portage Milling & Transfer Co. v. Grand Trunk Pacific Ry. Co. (Can.); **8. Carr.** pp. 286, 287
- Portarlington Electric Light & Power Co., Ltd., *Re* (Ir.); **17. Dep.** p. 528
- Porter, *Ex p.*, R. v. Norfolk JJ. (1926); **18. Distr.** No. 1588a
- , *Ex p.*, R. v. Smith (1927); **18. Distr.** No. 1588a
- , *Re*, Porter v. Porter (1925); **8. Char.** No. 769a
- v. Fleming School District (Can.); **19. Educ.** p. 558
- v. Porter (Ir.); **2. Arbn.** p. 142
- v. R., *Ex p.* Chin Man Yee (Aus.); **16. Cnlmpt.** p. 476; **17. Dep.** p. 521
- v. Whitbys, Ltd. (1926); **34. Mast. & S.** No. 3530a
- Portland (Duke) v. Wood's Trustees (Scot.); **36. Parl.** p. 822
- Portman (Viscount), *Re* (No. 2) (1925); **21. E. D.** No. 161a
- Porto Alexandre, The (1920); **1. Adm.** Nos. 141c, 142a
- Portstewart Urban District Council v. Hamill (Ir.); **38. Pub. Hlth.** p. 847
- Potratz v. Potratz (Can.); **11. Confl.** p. 373
- Potter v. Landen (Can.); **1. Agcy.** p. 53
- Potter's Case, *Re* Oxford & Worcester Extension & Chester Junction Ry. Co. (1849); **10. Coys.** No. 6137a
- Potticary, *In the Estate of* (1927); **23. Exors.** Nos. 924a, 931a
- Potts, *Ex p.*, *Re* Ayre (1840); **4. Bkpcy.** No. 1007a
- Potts v. Smail (Can.); **2. Animals**, p. 124
- Powell v. Cauldon Potteries, Ltd. (1926); **34. Mast. & S.** No. 3819a
- v. Edmunds (1810); **22. Evid.** No. 2544a
- Powell & Toronto Corpn., *Re* (Can.); **11. Comp. Pche.** pp. 356, 357
- Powell's Case, *Re* Ford (1928); **5. Bkpcy.** No. 6882b
- Power v. Canniff (Can.); **25. Gaming**, p. 636
- Power v. Edmonton Lumber Exchange (Can.); **9. Coys.** p. 336
- Powers v. R. (Can.); **11. Const. L.** p. 383
- Powis v. Butler (1858); **3. Bank.** No. 215a
- v. Vancouver (City) (Can.); **2. Arbn.** p. 146
- Practice Note (1920); **3. Barr.** No. 408a
- , [1925] W. N. 164; **16. Courts**, No. 352a
- (1925), 159 L. T. Jo. 95; **27. H. & W.** No. 4447a
- , [1926] W. N. 8; **27. H. & W.** No. 2189a; **28. Infts.** No. 1563a
- , [1926] W. N. 250; **28. Inc. T.** Nos. 632b, 632c
- , [1926] W. N. 308; **13. Cty. Cts.** No. 928a; **16. Cr. Pract.** Nos. 1433a, 2046a, 2326a, 3142a, 3209a, 3456a
- (1927); **2. Arbn.** No. 1069a
- (1928); **21. Exon.** No. 2547a; **30. Jdgmts.** No. 629a
- Pragdas Budhsen, *Ex p.*, Hurnandrai Fulchand v. Pragdas Budhsen (1924); **16. Courts.** No. 535a
- Prager v. Blatspiel, Stamp & Heacock, Ltd. (1924); **1. Agcy.** No. 215a
- Pramatha Nath Sanyal v. Kali Kumar Dutt (Ind.); **9. Coys.** p. 321
- Prat v. Hitchcock (Can.); **21. Exon.** p. 592
- Pratt v. British Medical Assocn. (1919); **1. Action**, No. 249a
- v. Patrick (1924); **1. Agcy.** No. 2318a
- Pratt v. Pratt (1927); **27. H. & W.** Nos. 6251a, 6255a
- v. Scheveck (Can.); **28. Injon.** p. 699
- Pratt's Case (1875); **12. Contr.** No. 4985
- Pratten v. The Labour Daily, Ltd. (Aus.); **32. Libel**, p. 749
- Premchand Hira v. Bai Galal (Ind.); **27. H. & W.** p. 662
- Premier Dairies v. Garlick (1920); **2. Agric.** No. 268a
- Premier Lumber Co. v. Grand Trunk Pacific Ry. Co. (Can.); **8. Carr.** p. 287
- Prentice v. Merrick (Can.); **1. Agcy.** p. 60
- v. Sault Ste. Marie (Can.); **38. Pub. Auth.** p. 846
- Prentice Brothers, Ltd. v. London & North Eastern Ry. Co. (1925); **8. Carr.** Nos. 1166a, 1337a
- Press v. Mathers (Aus.); **21. Estpl.** p. 583
- Preston v. Preston & Moxley (Can.); **27. H. & W.** p. 665
- v. Raphael Tuck & Sons (1926); **13. Coprt.** No. 694a
- v. Strutton (1792); **12. Contr.** No. 4770a
- Prete v. Lauzon & Fensom (Can.); **7. B. of Sale**, p. 262
- Prevedoros v. Prevedoros (Can.); **28. Injon.** p. 699
- Price, *Re* (1928); **13. Cohlds.** No. 2032a
- Price, *Re*, Price v. Price (1879); **23. Exors.** No. 165a
- v. Groom (1848); **3. Bailmt.** No. 125a
- v. Indiana-Alberta Oil Co. (Can.); **9. Coys.** p. 336
- v. Price (1927); **27. H. & W.** No. 6164a
- v. —, *Re* Price (1879); **23. Exors.** No. 165a
- v. R. (1925); **16. Cr. Pract.** No. 353a
- Price Brothers & Co., Ltd. v. R. (Can.); **17. Deeds**, p. 509
- Prichard & Constance (Wholesale), Ltd. v. Amata, Ltd. (1924); **9. Coys.** No. 3327b
- Pridie v. Bellamy, *Re*, Madge (1928); **23. Exors.** No. 3517a
- Primeau & Imperial Lumber Yards, Ltd. v. Meagher (Can.); **12. Contr.** p. 403
- Prince v. Moore (Can.); **31. L. & T.** p. 734
- Prince Albert (City), *Ex p.*, *Re* Matheson (Can.); **4. Bkpcy.** p. 209
- Principal Secretary of State for War v. Toronto Corpn. (Can.); **38. Rates**, p. 851
- Pringle v. Hales (1925); **13. Cty. Cts.** Nos. 139a, 327a
- v. McKay (N.Z.); **1. Agcy.** pp. 46, 50
- Prior, *Re*, *Ex p.* Prior (1921); **4. Bkpcy.** Nos. 40a, 1548a
- , *Re*, *Ex p.* Trustee (1922); **4. Bkpcy.** No. 454a
- Pritchard v. James Clay (Wellington), Ltd. (1926); **24. Fact.** No. 264a
- v. Pritchard (1920); **22. Evid.** No. 3422a
- Proctor v. Anderson & Northern Elevator Co., Ltd., Ekman & Proctor & Mallery (Can.); **7. B. of Sale**, pp. 262, 265
- v. Graham (Can.); **27. H. & W.** p. 656
- Produce Brokers, Ltd. v. Blyth, Greene, Jourdain & Co., Ltd. (1918); **2. Arbn.** Nos. 1799a, 1960a
- Progressive Agency v. Bennett (N.Z.); **1. Agcy.** p. 62
- Progressive Farmers, *Re*, *Re* Holden National Co.'s Claim (Can.); **5. Bkpcy.** p. 221
- Progressive Farmers Co., Ltd., *Re* (Can.); **4. Bkpcy.** p. 196
- Progressive Farmers Co., Ltd., *Re*, *Ex p.* Brown Brothers & Burnstad, Ltd. (Can.); **5. Bkpcy.** p. 229

- Prosperity, Ltd. v. Lloyds Bank, Ltd. (1923); **3. Bank.** No. 342a  
Proudfoot (Doe) v. McCrae (Can.); **25. Fraud.** *Conv.* p. 628  
Proudlock v. Canadian Bank of Commerce (Can.); **3. Bank.** p. 179  
Provincial Elections Act, *Re*, Smith v. Catherwood (Can.); **20. Elect.** pp. 560, 561  
Provincial Insurance Co. of Canada v. Connolly (Can.); **29. Insce.** p. 707  
Provincial Secretary-Treasurer v. Schofield (Can.); **21. E. D.** p. 575  
Pruce v. Davey (1926); **34. Mast. & S.** Nos. 2340a, 2460b  
Public Highways Dept., Ontario v. Canadian Pacific Ry. Co. (Clappison Bridge Case) (Can.); **26. Hghys.** p. 654  
Public Property Trustees v. Gillis (Can.); **21. Estpl.** p. 584  
Public Prosecutions Director, *Ex p.*, R. v. Daily Express (1924); **16. Cntmpt.** No. 179a  
—, *Ex p.*, R. v. Devon JJ. (1924); **14. Crim.** Nos. 1022a, 1138  
—, *Ex p.*, R. v. Evening Standard (1924); **16. Cntmpt.** No. 179a  
—, *Ex p.*, R. v. Manchester Guardian (1924); **16. Cntmpt.** No. 179a  
—, *Ex p.*, R. v. New Statesman (Editor) (1928); **16. Cntmpt.** Nos. 164a, 165a  
Public Trustee v. Aldridge, *Re* King (1928); **40. Sttlmts.** No. 1059a  
— v. A.-G., *Re* Cammell (1925); **8. Char.** No. 657a  
— v. Davidson (Scot.); **2. Aliens**, p. 100  
— v. Elder (1926); **2. Aliens**, No. 235a  
— v. Evans, *Re* Evans (1920); **5. Bkpcy.** Nos. 5932b, 5936a  
— v. Gladstone (N.Z.); **6. B. of Exch.** p. 255  
— v. Gray, *Re* Westerton (1919); **3. Bank.** No. 409a  
— v. Lancaster Duchy (1927); **19. Eccl.** No. 3465a  
— v. Lowe King, *Re* Ghee, *Ex p.* Lowe King (N.Z.); **24. Exors.** p. 618  
— v. Mountbatten, *Re* Cassel (1927); **21. E. D.** Nos. 22a, 136b, 254a  
— v. Registrar-General of Land (N.Z.); **23. Exors.** p. 606; **38. Real Prop.** p. 856  
— v. Silber, *Re* Silber's Settlement (1920); **5. Bkpcy.** Nos. 5821a, 6295a  
— v. Steele, *Re* Vosz (Aus.); **8. Char.** pp. 303, 307  
— v. Trollope, *Re* Trollope's Will Trusts (1927); **24. Exors.** Nos. 6053a, 6138a  
— v. Villar, *Re* Villar (1928); **37. Perps.** No. 66a  
— v. Wellington Society for Prevention of Cruelty to Animals Inc., *Re* Buckley (N.Z.); **8. Char.** p. 307  
— v. Williams, *Re* Williams (1927); **8. Char.** Nos. 75a, 718a  
— v. Wolf (1923); **2. Aliens**, No. 215k; **27. H. & W.** No. 906.  
Pudce v. Bellamy, *Re* Madge (1928); **23. Exors.** No. 3517a  
Pugsley v. Garson (Can.); **11. Const. L.** pp. 379, 383  
Pulkrabek v. Pulkrabek (Can.); **22. Evid.** p. 603  
Pullen v. Enthoven & Son (1927); **34. Mast. & S.** Nos. 3056a, 3701a  
Pulling v. Lidbetter, Ltd. (1924); **2. Agric.** No. 971a  
Pulsifer v. King (Can.); **32. Limit. of A.** p. 758  
Puran Das v. East Indian Ry. Co. (Ind.); **8. Carr.** p. 288  
Puran Mal v. Ford Macdonald, etc. (Ind.); **1. p.** 52  
Purcell v. Deputy Federal Taxation Comr. (Aus.); **7. B. of Sale**, p. 260  
— v. Hendricks & Marks (Can.); **11. Confl.** p. 368  
Purdy v. Colton (Can.); **21. Exon.** p. 587  
— (Doe d.) v. Peters (Can.); **31. L. & T.** p. 734  
— v. Purdy (Can.); **11. Confl.** p. 373  
Pure Oil Co., Ltd., *Ex p.*, *Re* North Western Trust Co. (Can.); **10. Coys.** p. 351  
Purna Chandra Dutt v. Indra Chandra Roy (Ind.); **1. Agcy.** p. 46  
Purnell v. Roche (1927); **32. Limit. of A.** Nos. 1286a, 1369a  
Putsman v. Taylor (1927); **12. Contr.** No. 2391a  
Puttock v. Daintry (1894); **5. Bkpcy.** No. 8276a  
Pyda Satyarazu v. Guntur Cotton & Paper Mills Co., Ltd. (Ind.); **10. Coys.** p. 342
- Q.
- Q. (An Arranging Debtor), *Re* (Ir.); **5. Bkpcy.** p. 213  
Quance v. Brown (Can.); **26. Guar.** p. 641  
Quarrell v. Lamport & Holt (1928); **34. Mast. & S.** No. 3659a  
Quay v. Sculthorpe (Can.); **26. Guar.** p. 642  
Quebec (Province of) v. Canada (Dominion of), *Re* Canada (Dominion of) & Provinces of Ontario & Quebec, *Re* Indian Claims (Can.); **17. Dep.** p. 524  
Quebec Bank v. Phillips (Can.); **3. Bank.** p. 177  
Quebec Federated Co-op. Co. v. Farmers Fence Co. (Can.); **1. Agcy.** p. 72  
Quebec Liquor Commission v. Dubois (Can.); **14. Crim.** p. 450  
Quebec, Montreal & Southern Ry. Co. v. R. (Can.); **11. Const. L.** p. 379  
Quebec Railway, Light & Power Co. v. Montcalm Land Co. (Can.); **38. Rys.** p. 850  
Quebec Timber Co., *Re* (Can.); **18. Dep.** p. 516  
Queen, *Ex p.*, R. v. Henderson (Can.); **17. Dep.** p. 519  
Queen Insurance Co. of America v. British Traders Insurance Co. (Can.); **29. Insce.** p. 704  
Queen of the Thames, The (1872); **11. Confl.** No. 1205a  
Queen Victoria Memorial Hospital v. Booth, Ltd. (Can.); **38. Pub. Hlth.** p. 847  
Queensland Mercantile & Agency Co., *Re*, *Ex p.* Australasian Investment Co., *Ex p.* Union Bank of Australia (1892); **11. Confl.** No. 417a  
Quick v. Winter (N.Z.); **1. Agcy.** p. 42  
Quinn v. Guernsey, *Re* Hotel Dunlop, Ltd. (Can.); **4. Bkpcy.** p. 212  
Quirk v. Sydney Mines Town (Can.); **7. Bldg. Conts.** p. 279  
Qun v. R. (Can.); **14. Crim.** p. 443
- R.
- R., *Ex p.*, *Re* International Metal Works, Ltd. (Can.); **4. Bkpcy.** p. 209; **10. Coys.** p. 344  
— v. A. D. Murray Tailoring, Ltd. (Can.); **25. Gaming**, p. 636  
— v. Abdy (1884); **1. Adm.** No. 1717  
— v. Abrahams & Gerstein (1928); **14. Crim.** No. 3283a  
— v. Abrahamson (S. Af.); **5. Bkpcy.** p. 240  
— v. Adams (Can.); **16. Cr. Pract.** p. 492  
— v. Ahilya (Ind.); **22. Evid.** p. 599  
— v. Ainoko, The (Can.); **1. Adm.** p. 27  
— v. Alamazoff (Can.); **2. Aliens**, p. 113  
— v. Alberts (Can.); **14. Crim.** p. 443  
— v. Alexander (1924); **14. Crim.** No. 3151a



- R. v. Allen (Can.)**; **15. Crim.** p. 466  
 — **v. Anderson (1924)**; **14. Crim.** No. 5870a  
 — **v. — (Can.)**; **9. Coys.** p. 321  
 — **v. Andrews (1927)**; **14. Crim.** Nos. 5028a, 5065a  
 — **v. — (Can.)**; **15. Crim.** pp. 472, 473  
 — **v. Archer (Can.)**; **11. Comp. Pche.** p. 356  
 — **v. Argyllshire, The (Aus.)**; **1. Adm.** p. 28  
 — **(Greenaway) v. Armagh JJ. (Ir.)**; **16. Cr. Pract.** p. 495  
 — **v. Armstrong (Can.)**; **16. Cr. Pract.** p. 495  
 — **(McDougall) v. Army & Navy Veterans Assocn. of Regina (Can.)**; **30. Intox.** p. 721  
 — **v. Arnold (Can.)**; **25. Gaming,** p. 634  
 — **v. Artu Rantra (Ind.)**; **2. Animals,** p. 118  
 — **v. Ascoli (1927)**; **14. Crim.** No. 5211a  
 — **v. Aseruddin (Ind.)**; **14. Crim.** p. 463  
 — **v. Atkinson (Can.)**; **14. Crim.** p. 460  
 — **v. A.-G. of British Columbia (1924)**; **17. Dep.** No. 98  
 — **v. Aune (Can.)**; **33. Mkts.** p. 769  
 — **v. Averill (Can.)**; **14. Crim.** p. 462  
 — **v. Axler (Can.)**; **30. Intox.** p. 721  
 — **v. Bachiu (Can.)**; **14. Crim.** p. 463  
 — **v. Baggott (1927)**; **14. Crim.** No. 3090a  
 — **v. Bagley (Can.)**; **14. Crim.** p. 451  
 — **v. Baguley (1925)**; **15. Crim.** No. 10, 906a  
 — **v. Baig (Can.)**; **30. Intox.** pp. 721, 722  
 — **v. Bailey (1924)**; **14. Crim.** No. 3156b  
 — **v. Baldwin (1925)**; **14. Crim.** Nos. 3820b, 4711a  
 — **v. Ball (1924)**; **14. Crim.** No. 3174a  
 — **v. Bandel (Can.)**; **14. Crim.** p. 455  
 — **v. Banks (1821)**; **15. Crim.** No. 9702a  
 — **v. Banniti (Can.)**; **16. Cr. Pract.** p. 488  
 — **v. Bannstead, Ex p. Hianson, Ex p. Moller (Can.)**; **2. Aliens,** pp. 113, 114  
 — **v. Barilko (Can.)**; **14. Crim.** pp. 442, 443  
 — **v. Barker (1927)**; **14. Crim.** No. 3120a  
 — **v. Barlin (S. Af.)**; **14. Crim.** p. 453  
 — **v. Barmania (S. Af.)**; **17. Dep.** p. 522  
 — **v. Barnard (Can.)**; **3. Bank.** p. 163; **14. Crim.** p. 442  
 — **v. Barry (Can.)**; **33. Mags.** p. 765  
 — **v. —, Ex p. Lindsay (Can.)**; **16. Cr. Pract.** p. 495  
 — **v. Basire (1926)**; **14. Crim.** No. 5217b  
 — **(Metcalf) v. Bat (Can.)**; **30. Intox.** p. 722  
 — **v. Bateman (1925)**; **15. Crim.** No. 8672a  
 — **v. Bath Compensation Authority (1925)**; **30. Intox.** No. 381  
 — **v. Batters (Can.)**; **28. Inc. T.** p. 690  
 — **v. Baum (Aus.)**; **30. Juries,** p. 729  
 — **v. Baxter (1924)**; **14. Crim.** No. 5303a  
 — **v. Beacall (1824)**; **15. Crim.** No. 10,200a  
 — **v. Beard (1927)**; **14. Crim.** No. 5385a  
 — **v. Beattie (1924)**; **14. Crim.** No. 5607a  
 — **v. Beebe (1925)**; **14. Crim.** Nos. 4972b, 6066b  
 — **v. Beech, Pollitt & Strudwick (1928)**; **11. Confl.** No. 1033a  
 — **v. Beckman (Can.)**; **25. Food.** p. 626  
 — **v. Bell (Can.)**; **28. Inc. T.** p. 690  
 — **v. Bellman (Can.)**; **33. Mags.** p. 767  
 — **v. Bellos (Can.)**; **14. Crim.** p. 453  
 — **v. Bennett (Can.) (1825)**; **26. Hghys.** p. 650  
 — **(Harding) v. Bennett (Can.) (1896)**; **33. L. G.** p. 760  
 — **v. Bennett (1928)**; **33. Mags.** No. 1002a  
 — **v. Berelovitch (Can.)**; **15. Crim.** p. 473  
 — **v. Berg, Britt, Carré & Lummies (1927)**; **14. Crim.** No. 4222a; **15. Crim.** No. 8128a  
 — **v. Berger (Can.)**; **14. Crim.** p. 462  
 — **v. Berry (1924)**; **15. Crim.** No. 9320a  
 — **v. — (1926)**; **14. Crim.** No. 5856c  
 — **v. Bevis (Can.)**; **15. Crim.** p. 469  
 — **v. Birch (1924)**; **14. Crim.** No. 2780a  
 — **R. v. Black (Can.)**; **26. Guar.** p. 641  
 — **v. Blank (Can.)**; **30. Intox.** p. 721  
 — **v. Blunt (1828)**; **21. Exon.** No. 1281a  
 — **v. Boak (Can.)**; **14. Crim.** pp. 448, 460, 464  
 — **v. Bonnis (Can.)**; **33. Mags.** p. 765  
 — **v. Bonter (Can.)**; **16. Cr. Pract.** p. 486  
 — **v. Booker (1924)**; **14. Crim.** No. 4351a; **15. Crim.** No. 8793a  
 — **v. Bookhalter & Lanin (Can.)**; **14. Crim.** p. 440  
 — **v. Boone (Can.)**; **30. Intox.** p. 722  
 — **v. Boreham (1928)**; **14. Crim.** No. 4998c  
 — **v. Boulton (1871)**; **14. Crim.** Nos. 1513a, 1536a  
 — **(Minister of Agriculture for Saskatchewan) v. Bourke (Can.)**; **2. Animals,** p. 126; **11. Const. L.** p. 381  
 — **v. Bourne (1925)**; **14. Crim.** No. 5049b  
 — **v. Brady (Can.)**; **2. Animals,** p. 120  
 — **v. Brandelina (Can.)**; **16. Cr. Pract.** p. 496  
 — **v. Brayden (Can.)**; **14. Crim.** p. 449  
 — **v. Brewin (1926)**; **5. Bkpcy.** No. 8633a  
 — **v. Brierley (1924)**; **14. Crim.** No. 5932c  
 — **v. Briggs (Can.)**; **14. Crim.** p. 442  
 — **v. Brinda (Can.)**; **16. Cr. Pract.** p. 491  
 — **v. Bristol (Can.)**; **14. Crim.** p. 452  
 — **v. British American Bank Note Co. (Can.)**; **11. Const. L.** p. 381  
 — **v. Brixton Prison (Governor), Ex p. Bloom (1920)**; **2. Aliens,** No. 553a  
 — **v. Brixton Prison (Governor), Ex p. Shure (1926)**; **5. Bkpcy.** No. 8534a; **16. Cr. Pract.** No. 585a  
 — **v. Brixton Prison (Governor), Ex p. Sugarman (1922)**; **2. Aliens,** No. 553b  
 — **v. Brogan (N.Z.)**; **14. Crim.** p. 450  
 — **v. Brown (Can.) (1920)**; **11. Const. L.** p. 383  
 — **(Nuttall) v. Brown (Can.) (1923)**; **16. Cr. Pract.** p. 492  
 — **v. Brown (Can.) (1925)**; **30. Intox.** p. 721  
 — **(Aldridge) v. Brown (Can.) (1927)**; **14. Crim.** p. 452; **33. Mags.** p. 765  
 — **v. Brownell (1834)**; **16. Cntmpt.** No. 46  
 — **v. Brownlee (Can.)**; **33. Mags.** p. 766  
 — **v. Buggs (1910)**; **14. Crim.** No. 4974c  
 — **v. Bunting (Can.)**; **15. Crim.** p. 471  
 — **v. Burdon (1927)**; **30. Intox.** No. 764b  
 — **v. Burke (Can.)**; **14. Crim.** pp. 439, 461  
 — **v. Burke-Roche (Can.)**; **21. E. D.** p. 576  
 — **(Clarke) v. Bury, Re Edmonton Charter (Can.)**; **33. L. G.** p. 760  
 — **(Johnston) v. Busikiewicz (Can.)**; **30. Intox.** p. 718  
 — **v. Butelezi (S. Af.)**; **15. Crim.** p. 469  
 — **v. Butler (1926)**; **14. Crim.** No. 1810c  
 — **v. Cadwell (1927)**; **14. Crim.** No. 5536b  
 — **v. Cairns (1927)**; **14. Crim.** No. 5577a  
 — **v. Caledonian Collieries (1928)**; **17. Dep.** No. 135d  
 — **v. Caledonian Insurance Co. (Can.)**; **24. Exors.** p. 615  
 — **v. Calgary 1500 Club (Can.)**; **29. Insce.** p. 715  
 — **v. Camane (S. Af.)**; **14. Crim.** p. 453  
 — **v. Campbell (Can.)**; **15. Crim.** p. 472; **16. Cr. Pract.** p. 488  
 — **v. Canada Steamship Lines, Ltd. (Can.)**; **16. Cr. Pract.** p. 486  
 — **v. Canadian Allis-Chalmers, Ltd. (Can.)**; **14. Crim.** pp. 439, 445  
 — **v. Canadian Northern Ry. Co. (Can.)**; **32. Limit. of A.** p. 758  
 — **v. Canadian Robert Dollar Co., Ltd. (Can.)**; **33. Mags.** p. 767  
 — **v. Canham (1925)**; **14. Crim.** No. 5673a  
 — **v. Canterbury Farmers Co-operative Assocn., Ltd. (N.Z.)**; **7. B. of Sale,** p. 267  
 — **v. Carswell (N.Z.)**; **15. Crim.** p. 468



- Prosperity, Ltd. v. Lloyds Bank, Ltd. (1923); **3. Bank.** No. 342a  
Proudfoot (Doc) v. McCrae (Can.); **25. Fraud.** *Conv.* p. 628  
Proudlock v. Canadian Bank of Commerce (Can.); **3. Bank.** p. 179  
Provincial Elections Act, *Re*, Smith v. Catherwood (Can.); **20. Elect.** pp. 560, 561  
Provincial Insurance Co. of Canada v. Connolly (Can.); **29. Insce.** p. 707  
Provincial Secretary-Treasurer v. Schofield (Can.); **21. E. D.** p. 575  
Pruce v. Davey (1926); **34. Mast. & S.** Nos. 2340a, 2460b  
Public Highways Dept., Ontario v. Canadian Pacific Ry. Co. (Clappison Bridge Case) (Can.); **26. Hghys.** p. 654  
Public Property Trustees v. Gillis (Can.); **21. Estpl.** p. 581  
Public Prosecutions Director, *Ex p.*, R. v. Daily Express (1924); **16. Cntmpt.** No. 179a  
—, *Ex p.*, R. v. Devon JJ. (1924); **14. Crim.** Nos. 1022a, 1138  
—, *Ex p.*, R. v. Evening Standard (1924); **16. Cntmpt.** No. 179a  
—, *Ex p.*, R. v. Manchester Guardian (1924); **16. Cntmpt.** No. 179a  
—, *Ex p.*, R. v. New Statesman (Editor) (1928); **16. Cntmpt.** Nos. 164a, 165a  
Public Trustee v. Aldridge, *Re* King (1928); **40. Stillmts.** No. 1059a  
— v. A.-G., *Re* Cammell (1925); **8. Char.** No. 657a  
— v. Davidson (Scot.); **2. Aliens**, p. 100  
— v. Elder (1926); **2. Aliens**, No. 235a  
— v. Evans, *Re* Evans (1920); **5. Bkpcy.** Nos. 5932b, 5936a  
— v. Gladstone (N.Z.); **6. B. of Exch.** p. 255  
— v. Gray, *Re* Westerton (1919); **3. Bank.** No. 409a  
— v. Lancaster Duchy (1927); **19. Eccl.** No. 3465a  
— v. Lowe King, *Re* Ghee, *Ex p.* Lowe King (N.Z.); **24. Exors.** p. 618  
— v. Mountbatten, *Re* Cassel (1927); **21. E. D.** Nos. 22a, 136b, 254a  
— v. Registrar-General of Land (N.Z.); **23. Exors.** p. 606; **38. Real Prop.** p. 856  
— v. Silber, *Re* Silber's Settlement (1920); **5. Bkpcy.** Nos. 5821a, 6295a  
— v. Steele, *Re* Vosz (Aus.); **8. Char.** pp. 303, 307  
— v. Trollope, *Re* Trollope's Will Trusts (1927); **24. Exors.** Nos. 6053a, 6138a  
— v. Villar, *Re* Villar (1928); **37. Perps.** No. 66a  
— v. Wellington Society for Prevention of Cruelty to Animals Inc., *Re* Buckley (N.Z.); **8. Char.** p. 307  
— v. Williams, *Re* Williams (1927); **8. Char.** Nos. 75a, 718a  
— v. Wolf (1923); **2. Aliens**, No. 215k; **27. H. & W.** No. 906.  
Pudce v. Bellamy, *Re* Madge (1928); **23. Exors.** No. 3517a  
Pugsley v. Garson (Can.); **11. Const. L.** pp. 379, 383  
Pulkrabek v. Pulkrabek (Can.); **22. Evid.** p. 603  
Pullen v. Enthoven & Son (1927); **34. Mast. & S.** Nos. 3056a, 3701a  
Pulling v. Lidbetter, Ltd. (1924); **2. Agric.** No. 971a  
Pulsifer v. King (Can.); **32. Limit. of A.** p. 758  
Puran Das v. East Indian Ry. Co. (Ind.); **8. Carr.** p. 288  
Puran Mal v. Ford Macdonald, etc. (Ind.); **1. cy**, p. 52  
Purcell v. Deputy Federal Taxation Comr. (Aus.); **7. B. of Sale**, p. 260  
— v. Hendricks & Marks (Can.); **11. Confl.** p. 368  
Purdy v. Colton (Can.); **21. Exon.** p. 587  
— (Doe d.) v. Peters (Can.); **31. L. & T.** p. 734  
— v. Purdy (Can.); **11. Confl.** p. 373  
Pure Oil Co., Ltd., *Ex p.*, *Re* North Western Trust Co. (Can.); **10. Coys.** p. 351  
Purna Chandra Dutt v. Indra Chandra Roy (Ind.); **1. Agcy.** p. 46  
Purnell v. Roche (1927); **32. Limit. of A.** Nos. 1286a, 1369a  
Putsman v. Taylor (1927); **12. Contr.** No. 2391a  
Puttock v. Daintry (1894); **5. Bkpcy.** No. 8276a  
Pyda Satyarazu v. Guntur Cotton & Paper Mills Co., Ltd. (Ind.); **10. Coys.** p. 342
- Q.
- Q. (An Arranging Debtor), *Re* (Ir.); **5. Bkpcy.** p. 243  
Quance v. Brown (Can.); **26. Guar.** p. 641  
Quarrell v. Lamport & Holt (1928); **34. Mast. & S.** No. 3659a  
Quay v. Sculthorpe (Can.); **26. Guar.** p. 642  
Quebec (Province of) v. Canada (Dominion of), *Re* Canada (Dominion of) & Provinces of Ontario & Quebec, *Re* Indian Claims (Can.); **17. Dep.** p. 524  
Quebec Bank v. Phillips (Can.); **3. Bank.** p. 177  
Quebec Federated Co-op. Co. v. Farmers Fence Co. (Can.); **1. Agcy.** p. 72  
Quebec Liquor Commission v. Dubois (Can.); **14. Crim.** p. 450  
Quebec, Montreal & Southern Ry. Co. v. R. (Can.); **11. Const. L.** p. 379  
Quebec Railway, Light & Power Co. v. Montcalm Land Co. (Can.); **38. Rys.** p. 850  
Quebec Timber Co., *Re* (Can.); **18. Dep.** p. 516  
Queen, *Ex p.*, R. v. Henderson (Can.); **17. Dep.** p. 519  
Queen Insurance Co. of America v. British Traders Insurance Co. (Can.); **29. Insce.** p. 704  
Queen of the Thames, The (1872); **11. Confl.** No. 1205a  
Queen Victoria Memorial Hospital v. Booth, Ltd. (Can.); **38. Pub. Hlth.** p. 847  
Queensland Mercantile & Agency Co., *Re*, *Ex p.* Australasian Investment Co., *Ex p.* Union Bank of Australia (1892); **11. Confl.** No. 417a  
Quick v. Winter (N.Z.); **1. Agcy.** p. 42  
Quinn v. Guernsey, *Re* Hotel Dunlop, Ltd. (Can.); **4. Bkpcy.** p. 212  
Quirk v. Sydney Mines Town (Can.); **7. Bldg. Confs.** p. 279  
Qun v. R. (Can.); **14. Crim.** p. 443
- R.
- R., *Ex p.*, *Re* International Metal Works, Ltd. (Can.); **4. Bkpcy.** p. 209; **10. Coys.** p. 344  
— v. A. D. Murray Tailoring, Ltd. (Can.); **25. Gaming**, p. 636  
— v. Abdy (1884); **1. Adm.** No. 1717  
— v. Abrahams & Gerstein (1928); **14. Crim.** No. 3283a  
— v. Abrahamson (S. Af.); **5. Bkpcy.** p. 240  
— v. Adams (Can.); **16. Cr. Pract.** p. 492  
— v. Ahilya (Ind.); **22. Evid.** p. 599  
— v. Ainoko, The (Can.); **1. Adm.** p. 27  
— v. Alamazoff (Can.); **2. Aliens**, p. 113  
— v. Alberts (Can.); **14. Crim.** p. 443  
— v. Alexander (1924); **14. Crim.** No. 3151a

- R. v. Allen (Can.); **15. Crim.** p. 406  
 — v. Anderson (1924); **14. Crim.** No. 5870a  
 — v. — (Can.); **9. Coys.** p. 321  
 — v. Andrews (1927); **14. Crim.** Nos. 5028a, 5065a  
 — v. — (Can.); **15. Crim.** pp. 472, 473  
 — v. Archer (Can.); **11. Comp. Pche.** p. 356  
 — v. Argyllshire, The (Aus.); **1. Adm.** p. 28  
 — (Greenaway) v. Armagh JJ. (Ir.); **16. Cr. Pract.** p. 495  
 — v. Armstrong (Can.); **16. Cr. Pract.** p. 495  
 — (McDougall) v. Army & Navy Veterans Assocn. of Regina (Can.); **30. Intox.** p. 721  
 — v. Arnold (Can.); **25. Gaming,** p. 634  
 — v. Artu Rantra (Ind.); **2. Animals,** p. 118  
 — v. Ascoli (1927); **14. Crim.** No. 5211a  
 — v. Aseruddin (Ind.); **14. Crim.** p. 463  
 — v. Atkinson (Can.); **14. Crim.** p. 460  
 — v. A.-G. of British Columbia (1924); **17. Dep.** No. 98  
 — v. Aune (Can.); **33. Mkts.** p. 769  
 — v. Averill (Can.); **14. Crim.** p. 462  
 — v. Axler (Can.); **30. Intox.** p. 721  
 — v. Bachiu (Can.); **14. Crim.** p. 463  
 — v. Baggott (1927); **14. Crim.** No. 3090a  
 — v. Bagley (Can.); **14. Crim.** p. 451  
 — v. Baguley (1925); **15. Crim.** No. 10, 906a  
 — v. Baig (Can.); **30. Intox.** pp. 721, 722  
 — v. Bailey (1924); **14. Crim.** No. 3156b  
 — v. Baldwin (1925); **14. Crim.** Nos. 3820b, 4711a  
 — v. Ball (1924); **14. Crim.** No. 3174a  
 — v. Bandel (Can.); **14. Crim.** p. 455  
 — v. Banks (1821); **15. Crim.** No. 9702a  
 — v. Banniti (Can.); **16. Cr. Pract.** p. 488  
 — v. Bannstead, *Ex p.* Hianson, *Ex p.* Moller (Can.); **2. Aliens,** pp. 113, 114  
 — v. Barilko (Can.); **14. Crim.** pp. 442, 443  
 — v. Barker (1927); **14. Crim.** No. 3120a  
 — v. Barlin (S. Af.); **14. Crim.** p. 453  
 — v. Barmania (S. Af.); **17. Dep.** p. 522  
 — v. Barnard (Can.); **3. Bank.** p. 163; **14. Crim.** p. 442  
 — v. Barry (Can.); **33. Mags.** p. 765  
 — v. —, *Ex p.* Lindsay (Can.); **16. Cr. Pract.** p. 495  
 — v. Basire (1926); **14. Crim.** No. 5217b  
 — (Metcalle) v. Bat (Can.); **30. Intox.** p. 722  
 — v. Bateman (1925); **15. Crim.** No. 8672a  
 — v. Bath Compensation Authority (1925); **30. Intox.** No. 381  
 — v. Batters (Can.); **28. Inc. T.** p. 690  
 — v. Baum (Aus.); **30. Juries,** p. 729  
 — v. Baxter (1924); **14. Crim.** No. 5303a  
 — v. Beacall (1824); **15. Crim.** No. 10,200a  
 — v. Beard (1927); **14. Crim.** No. 5385a  
 — v. Beattie (1924); **14. Crim.** No. 5607a  
 — v. Beebe (1925); **14. Crim.** Nos. 4972b, 6066b  
 — v. Beech, Pollitt & Strudwick (1928); **11. Confl.** No. 1033a  
 — v. Beekman (Can.); **25. Food,** p. 626  
 — v. Bell (Can.); **28. Inc. T.** p. 690  
 — v. Bellman (Can.); **33. Mags.** p. 767  
 — v. Bellos (Can.); **14. Crim.** p. 453  
 — v. Bennett (Can.) (1825); **26. Hghys.** p. 650  
 — (Harding) v. Bennett (Can.) (1896); **33. L. G.** p. 760  
 — v. Bennett (1928); **33. Mags.** No. 1002a  
 — v. Berelovitch (Can.); **15. Crim.** p. 473  
 — v. Berg, Britt, Carré & Lummies (1927); **14. Crim.** No. 4222a; **15. Crim.** No. 8128a  
 — v. Berger (Can.); **14. Crim.** p. 462  
 — v. Berry (1924); **15. Crim.** No. 9320a  
 — v. — (1926); **14. Crim.** No. 5856c  
 — v. Bevis (Can.); **15. Crim.** p. 469  
 — v. Birch (1924); **14. Crim.** No. 2730a  
 R. v. Black (Can.); **26. Guar.** p. 641  
 — v. Blank (Can.); **30. Intox.** p. 721  
 — v. Blunt (1828); **21. Exon.** No. 1281a  
 — v. Boak (Can.); **14. Crim.** pp. 448, 460, 464  
 — v. Bonnis (Can.); **33. Mags.** p. 765  
 — v. Bonter (Can.); **16. Cr. Pract.** p. 486  
 — v. Booker (1924); **14. Crim.** No. 4351a; **15. Crim.** No. 8793a  
 — v. Bookhalter & Lanin (Can.); **14. Crim.** p. 440  
 — v. Boone (Can.); **30. Intox.** p. 722  
 — v. Boreham (1928); **14. Crim.** No. 4998c  
 — v. Boulton (1871); **14. Crim.** Nos. 1513a, 1536a  
 — (Minister of Agriculture for Saskatchewan) v. Bourke (Can.); **2. Animals,** p. 126; **11. Const. L.** p. 381  
 — v. Bourne (1925); **14. Crim.** No. 5049b  
 — v. Brady (Can.); **2. Animal** p. 120  
 — v. Brandelina (Can.); **16. Cr. Pract.** p. 496  
 — v. Brayden (Can.); **14. Crim.** p. 449  
 — v. Brewin (1926); **5. Bkpcy.** No. 8633a  
 — v. Brierley (1924); **14. Crim.** No. 5932c  
 — v. Briggs (Can.); **14. Crim.** p. 442  
 — v. Brinda (Can.); **16. Cr. Pract.** p. 491  
 — v. Bristol (Can.); **14. Crim.** p. 452  
 — v. British American Bank Note Co. (Can.); **11. Const. L.** p. 381  
 — v. Brixton Prison (Governor), *Ex p.* Bloom (1920); **2. Aliens,** No. 553a  
 — v. Brixton Prison (Governor), *Ex p.* Shure (1926); **5. Bkpcy.** No. 8534a; **16. Cr. Pract.** No. 585a  
 — v. Brixton Prison (Governor), *Ex p.* Sugarman (1922); **2. Aliens,** No. 553b  
 — v. Brogan (N.Z.); **14. Crim.** p. 450  
 — v. Brown (Can.) (1920); **11. Const. L.** p. 383  
 — (Nuttall) v. Brown (Can.) (1923); **16. Cr. Pract.** p. 492  
 — v. Brown (Can.) (1925); **30. Intox.** p. 721  
 — (Aldridge) v. Brown (Can.) (1927); **14. Crim.** p. 452; **33. Mags.** p. 765  
 — v. Brownell (1834); **16. Cntmpt.** No. 46  
 — v. Brownlee (Can.); **33. Mags.** p. 766  
 — v. Buggs (1910); **14. Crim.** No. 4974c  
 — v. Bunting (Can.); **15. Crim.** p. 471  
 — v. Burdon (1927); **30. Intox.** No. 764b  
 — v. Burke (Can.); **14. Crim.** pp. 439, 461  
 — v. Burke-Roche (Can.); **21. E. D.** p. 576  
 — (Clarke) v. Bury, *Re* Edmonton Charter (Can.); **33. L. G.** p. 760  
 — (Johnston) v. Busikiewicz (Can.); **30. Intox.** p. 718  
 — v. Butelezi (S. Af.); **15. Crim.** p. 469  
 — v. Butler (1926); **14. Crim.** No. 1810c  
 — v. Cadwell (1927); **14. Crim.** No. 5536b  
 — v. Cairns (1927); **14. Crim.** No. 5577a  
 — v. Caledonian Collieries (1928); **17. Dep.** No. 135d  
 — v. Caledonian Insurance Co. (Can.); **24. Exors.** p. 615  
 — v. Calgary 1500 Club (Can.); **29. Insce.** p. 715  
 — v. Camane (S. Af.); **14. Crim.** p. 453  
 — v. Campbell (Can.); **15. Crim.** p. 472; **16. Cr. Pract.** p. 488  
 — v. Canada Steamship Lines, Ltd. (Can.); **16. Cr. Pract.** p. 486  
 — v. Canadian Allis-Chalmers, Ltd. (Can.); **14. Crim.** pp. 439, 445  
 — v. Canadian Northern Ry. Co. (Can.); **32. Limit. of A.** p. 758  
 — v. Canadian Robert Dollar Co., Ltd. (Can.); **33. Mags.** p. 767  
 — v. Canham (1925); **14. Crim.** No. 5673a  
 — v. Canterbury Farmers Co-operative Assocn., Ltd. (N.Z.); **7. B. of Sale,** p. 267  
 — v. Carswell (N.Z.); **15. Crim.** p. 468

- R. (Johannesson) v. Cartier Rural Municipality (Can.); 13. *Cr. Pract.* p. 490
- v. Carver (1927); 14. *Crim.* No. 1913e
- v. Carvery, *Ex p.* Howe (Can.); 14. *Crim.* p. 444
- v. Caskie (Can.); 11. *Const. L.* p. 381
- v. Cassidy (Can.); 14. *Crim.* p. 445
- v. Central Criminal Court JJ., *Ex p.* London County Council (1925); 14. *Crim.* No. 1016a; 16. *Cr. Pract.* No. 2449a
- v. Chang Song (Can.); 2. *Aliens*, p. 114
- v. Chapman (Can.); 30. *Intox.* p. 721
- v. — *Ex p.* Arlidge (1918); 1. *Agcy.* No. 1033a
- v. Charles (1927); 14. *Crim.* No. 4994h
- v. Cherry (Can.); 30. *Intox.* p. 721
- v. Chesshire, Lucas & Bottom (1927); 14. *Crim.* No. 4216a
- v. Chew (1926); 14. *Crim.* No. 5927c
- v. Chick (1925); 14. *Crim.* Nos. 5125d, 5148b
- v. Chin Ohong (Can.); 14. *Crim.* p. 462
- v. Chotem (Can.); 15. *Crim.* p. 470
- v. Chow Ben (Can.); 33. *Mags.* p. 765
- v. Chow Tong (Can.); 2. *Aliens*, p. 114
- v. Christian (S. Af.); 15. *Crim.* p. 466
- v. Chue (Can.); 14. *Crim.* p. 445
- v. Church Assembly Legislative Committee & Church Assembly, *Ex p.* Haynes Smith (1928); 19. *Eccl.* No. 1a
- v. Cieslenski (Can.); 14. *Crim.* pp. 453, 462
- v. Clark (Can.); 30. *Intox.* pp. 718, 722
- v. Clarke (1925); 14. *Crim.* Nos. 1913b, 2115a
- v. Claydon (1859); 3. *Basty.* No. 210a
- v. Coates (Can.); 8. *Clubs*, p. 317
- v. Cole (1898); 4. *Bkpcy.* No. 218a
- v. Coleman (1925); 14. *Crim.* No. 5049b
- v. (Can.); 11. *Comp. Pche.* p. 356; 14. *Crim.* p. 457
- v. Collins (Can.); 17. *Dep.* p. 517
- v. Connors (Can.); 15. *Crim.* p. 472
- v. Cooke (Can.); 14. *Crim.* p. 460
- v. Cooper (Can.); 14. *Crim.* p. 462
- v. — (N.Z.); 14. *Crim.* p. 452
- v. Cooperbloom (Can.); 14. *Crim.* p. 442
- v. Cope (1925); 14. *Crim.* No. 1798a
- v. Copestake, *Ex p.* Wilkinson (1927); 3. *Basty.* No. 366b
- v. Cory Brothers & Co. (1927); 13. *Corpn.* Nos. 1292a, 1303a
- v. Coulman (1927); 14. *Crim.* No. 3156e, 4712a
- v. Cox (1924); 14. *Crim.* No. 5125a
- v. — (Can.); 17. *Dep.* p. 520
- v. Coy (Can.); 25. *Gaming*, p. 684
- v. Coyle (Ir.); 14. *Crim.* p. 455
- v. Crawford (Can.); 14. *Crim.* p. 439; 30. *Intox.* p. 722
- v. Crew (Can.); 5. *Bkpcy.* pp. 239, 240
- v. Cronan (Can.); 14. *Crim.* p. 461
- v. Crosby (*alias* Philips) (1895); 11. *Const. L.* No. 214a
- v. Crosby (Can.); 7. *Bounds. & F.* p. 271
- v. Cross (Can.); 14. *Crim.* pp. 445, 455
- v. Crovi (Can.); 14. *Crim.* p. 445
- v. Cuddihy (Nfld.); 17. *Dep.* p. 525
- v. Cumyow (Can.); 33. *Mags.* p. 767
- v. Curtiss (1925); 14. *Crim.* No. 3180a
- v. Customs & Excise Comrs., *Ex p.* Pegler (1928); 31. *L. & T.* No. 4534a
- v. Daily Express, *Ex p.* Public Prosecutions Director (1924); 16. *Cntmpt.* No. 179a
- v. Daily Mail (Editor), *Ex p.* Factor (1928); 16. *Cntmpt.* No. 192a
- v. "Daily Mail" (Editor & Proprietors), *Ex p.* Smith (1927); 16. *Cntmpt.* No. 283a
- R. v. "Daily Mirror" (Editor & Proprietors) (1927); 16. *Cntmpt.* No. 288a
- v. Daily Mirror, *Ex p.* Smith (1927); 16. *Cntmpt.* No. 283a
- v. D'Angelo (Can.); 15. *Crim.* p. 469
- v. Daniels (1927); 14. *Crim.* No. 5840a
- v. D'Arcy (1926); 14. *Crim.* No. 4994g
- v. Darling (Can.); 14. *Crim.* p. 460
- v. Davidson (1927); 14. *Crim.* Nos. 1446a, 3129b, 5850b
- v. — (Can.); 14. *Crim.* pp. 455, 461
- v. Davies (Can.); 14. *Crim.* p. 461
- v. Davis (S. Af.); 14. *Crim.* p. 453
- v. Dawson (1926); 15. *Crim.* No. 10,878a
- v. Dean (1924); 14. *Crim.* Nos. 3165a, 5261a, 5536a
- v. De Bertoli (Can.); 14. *Crim.* pp. 460, 464
- v. De Bruge (Can.); 14. *Crim.* pp. 441, 461
- v. De Caux (1815); 16. *Cr. Pract.* No. 246a
- v. Dee (Can.); 16. *Cr. Pract.* p. 493; 30. *Intox.* p. 721
- v. Demetrio (Can.); 14. *Crim.* p. 451
- v. Denis (Can.); 33. *Mags.* p. 765
- v. Dennis (1924); 14. *Crim.* No. 2365a
- v. Denny (Can.); 16. *Cr. Pract.* p. 494
- v. Dent (1925); 14. *Crim.* No. 4994e
- v. Denyer (1926); 15. *Crim.* No. 10,487a
- v. Deo Dat (Ind.); 14. *Crim.* p. 453
- v. Derby (Can.); 14. *Crim.* p. 454
- v. Desjarlais (Can.); 14. *Crim.* p. 442
- v. Deverell (1854); 38. *Pub. Hlth.* No. 534
- v. Devon JJ., *Ex p.* Public Prosecutions Director (1924); 14. *Crim.* Nos. 1022a, 1138
- v. D'Eyncourt (1888); 15. *Crim.* No. 6496a
- v. De Young (Can.); 14. *Crim.* p. 460
- v. Diamond (Can.); 14. *Crim.* pp. 443, 450; 15. *Crim.* p. 467
- v. Digerness (Can.); 30. *Intox.* p. 718
- v. Dinsdale (1926); 14. *Crim.* No. 5290b
- v. Dipenta (Can.); 14. *Crim.* p. 443
- v. Dixon (1925); 14. *Crim.* No. 6069a
- v. Dominion Coal Co. (Can.); 34. *Mines*, p. 801
- v. Dominion General Jobbers, Ltd. (Can.); 33. *Mkts.* p. 769
- v. Donegal (Marchioness) (Can.); 17. *Dep.* p. 518
- v. Donen (Can.); 28. *Inc. T.* p. 690
- v. Donovan (1925); 14. *Crim.* No. 5290a
- v. Dorgan (Can.); 8. *Clubs*, p. 317
- v. Dorrington (1927); 5. *Bkpcy.* No. 8565a
- (McArthur) v. Doucet (Can.); 16. *Cr. Pract.* p. 492
- v. Douglas (1926); 14. *Crim.* No. 1978a
- v. Dragani (Can.); 30. *Intox.* p. 722
- v. Drake (1850); 14. *Crim.* No. 1992a
- v. Drashcovich (Can.); 30. *Intox.* p. 718
- v. Driscoll (1925); 14. *Crim.* No. 5312a
- v. Driscoll & Rowlands (1928); 14. *Crim.* Nos. 2839c, 5802c
- v. Driver (1926); 14. *Crim.* No. 5046a
- v. Druz (Can.); 30. *Intox.* p. 722
- v. Dunbar (1928); 14. *Crim.* No. 6169a
- v. Dunkley (1927); 14. *Crim.* Nos. 4705b, 4734a
- v. Dunn (Can.); 33. *Mags.* p. 765
- v. Dupras, Ltd. (Can.); 33. *Mags.* p. 765
- v. Durand (1924); 14. *Crim.* No. 4994c
- v. Dutchak (Can.); 14. *Crim.* p. 463
- v. Dwyer (1925); 14. *Crim.* Nos. 3801a, 3801c
- v. Eastern Terminal Elevator Co. (Can.); 17. *Dep.* p. 517
- v. Ed (Can.); 28. *Inc. T.* p. 690
- v. Edmonton Income Tax Comrs., *Ex p.* Thompson (1928); 28. *Inc. T.* No.
- v. Edmundson (1859); 15. *Crim.* No.
- v. Edwards (1924); 14. *Crim.* No. 8818a



- R. v. Blas** (Can.); 25. *Gaming*, p. 634  
 — **v. Elder** (Can.); 15. *Crim.* p. 469; 22. *Evid.* p. 602  
   **v. Electricity Comrs., Ex p. London Electricity Joint Committee Co.** (1920), Ltd. (1924); 16. *Cr. Pract.* No. 2303  
   **v. Electricity Comrs., Ex p. Yorkshire Electric Power Co.** (1927); 20. *Electric*, No. 111a  
   **v. Ellerton** (Can.); 14. *Crim.* p. 463  
   **v. Elliot, Hollis & Valentine** (1830); 14. *Crim.* No. 989  
 — **v. Elliot, Hollis & Valentine** (1868); 14. *Crim.* No. 989  
 — **v. Ellison** (Can.); 33. *Mags.* p. 767  
 — **v. Ely J.J., Ex p. Mann** (1928); 33. *Mags.* No. 811a  
 — **v. Emmett** (1925); 14. *Crim.* No. 5148a  
 — **v. Endler** (Can.); 22. *Evid.* p. 602  
 — **v. England** (Can.); 14. *Crim.* p. 457; 15. *Crim.* p. 474  
 — **v. Epstein** (Can.); 14. *Crim.* p. 462  
 — **v. Erasmus** (S. Af.); 15. *Crim.* p. 466  
 — **(Hanna) v. Ernst** (Can.); 30. *Intox.* p. 722  
 — **v. Errington** (1926); 15. *Crim.* No. 10,754b  
 — **v. Essex County Court Judge** (1884); 1. *Adm.* No. 1717  
 — **v. Essex J.J., Ex p. Perkins** (1927); 33. *Mags.* Nos. 97a, 150a  
 — **v. Ettridge** (1927); 14. *Crim.* No. 5049d  
 — **v. Evans** (1924); 14. *Crim.* No. 4826a  
 — **v. Evening News, Ex p. Hobbs** (1925); 16. *Cntmpt.* No. 180a  
 — **v. Evening Standard, Ex p. Public Prosecutions Director** (1924); 16. *Cntmpt.* No. 179a  
 — **v. Exeter** (Mayor) (1838); 20. *Elect.* No. 1089  
 — **v. Fairbank** (1850); 2. *Animals*, No. 328a  
 — **v. Faulds** (Can.); 15. *Crim.* p. 472  
 — **v. Ferguson** (1925); 14. *Crim.* Nos. 3801a, 3801c  
 — **v. Ferguson** (Can.); 17. *Dep.* p. 519  
 — **v. Ferrish & De Vasse** (Can.); 15. *Crim.* p. 466  
 — **v. Fielder** (1926); 14. *Crim.* No. 6177a  
 — **v. Fiesel** (Can.); 14. *Crim.* p. 447  
 — **v. 1500 Club of Calgary** (Can.); 29. *Insee.* p. 715  
 — **v. Finden** (1926); 14. *Crim.* No. 4129a  
 — **v. Finlay** (Can.); 14. *Crim.* p. 464  
 — **v. Finney** (1924); 14. *Crim.* No. 2879a  
 — **v. Fisher** (1926); 14. *Crim.* No. 3180b  
 — **v. Fitzpatrick** (1926); 14. *Crim.* Nos. 40a, 708a, 732a  
 — **v. Flavell** (1926); 14. *Crim.* No. 230a  
 — **v. Flood** (Ir.); 14. *Crim.* pp. 447, 449, 453  
 — **v. Fong Soon** (Can.); 2. *Aliens*, p. 113  
 — **v. Fordham** (1873); 18. *Distr.* No. 1870  
 — **v. Forhan** (Can.); 17. *Dep.* p. 519  
 — **v. Foulkes** (Can.); 14. *Crim.* p. 446  
 — **v. Fox** (1925); 14. *Crim.* No. 5194a  
 — **v. —** (Can.); 14. *Crim.* p. 464  
 — **v. Frampton** (1928); 14. *Crim.* No. 2988a  
 — **v. Frank A. Gillis Co., Ltd.** (Can.); 8. *Carr.* p. 296  
 — **v. Friederiksen** (1927); 14. *Crim.* No. 2585a  
 — **v. Friend** (1924); 14. *Crim.* No. 5607a  
 — **v. Frier** (1927); 14. *Crim.* No. 5246b  
   **v. Gallagher** (Can.); 14. *Crim.* pp. 440, 455, 461, 463, 464  
 — **v. Gan** (Can.); 2. *Aliens*, p. 114  
 — **v. Ganesh Chandra Goldar** (Ind.); 14. *Crim.* p. 454  
 — **v. Gans** (1928); 14. *Crim.* No. 6203a  
 — **v. Gardner** (Can.); 17. *Dep.* p. 519; 27. *H. & W.*; p. 670  
 — **v. Gasco** (Can.); 14. *Crim.* p. 464  
   **v. Gaspard** (Can.); 30. *Intox.* p. 721  
   **(Sinclair) v. Gebhardt** (Can.); 17. *Dep.* p. 518  
   **v. Gee Dew** (No. 1) (Can.); 16. *Cr. Pract.* p. 488  
   **v. Gee Dew** (No. 3) (Can.); 2. *Aliens*, p. 114  
 — **v. Geiger** (Can.); 14. *Crim.* p. 450  
 — **v. Gemmill** (Can.); 14. *Crim.* p. 455  
 — **v. Gething** (1926); 14. *Crim.* No. 5148d  
   **v. Gilbert** (1921); 2. *Aliens*, No. 543b  
 — **v. Gilchrist** (Ir.); 14. *Crim.* p. 447  
 — **v. Gillis** (Frank A.) Co., Ltd. (Can.); 8. *Carr.* p. 296  
 — **v. Ging** (Can.); 14. *Crim.* p. 461  
 — **v. Girone** (Can.); 14. *Crim.* pp. 461, 464  
 — **v. Gloucester** (Mayor) (1838); 20. *Elect.* No. 1090  
 — **v. Gobind Singh** (Ind.); 15. *Crim.* p. 474  
 — **v. Gold Comr. of Victoria District** (Can.); 17. *Dep.* p. 519  
 — **v. Goldhammer** (Can.); 4. *Blkpey.* p. 191  
 — **v. Goldstein** (Can.); 11. *Cor. v. Pche.* p. 357  
 — **(Mackay) v. Good** (Can.); 16. *Cr. Pract.* p. 492  
 — **v. Gordon** (1925); 14. *Crim.* No. 3318b  
 — **v. —** (Can.); 14. *Crim.* p. 439  
 — **v. Gosling** (Can.); 15. *Crim.* p. 470  
 — **v. Gosselin** (Can.); 15. *Crim.* p. 471  
 — **v. Gough** (Can.); 3. *Bank.* p. 163  
 — **v. Graham** (1924); 14. *Crim.* No. 5870a  
 — **v. Graham Campbell, Ex p. Ahmed Hamid Moussa** (1921); 2. *Aliens*, Nos. 553d, 558h, 558i  
 — **v. Grant** (Can.); 16. *Cr. Pract.* p. 495; 30. *Intox.* p. 721  
 — **v. Gratton** (Can.); 25. *Gaming*, p. 636  
 — **v. Gregoire** (Can.); 14. *Crim.* p. 447  
 — **v. Gregory** (1928); 14. *Crim.* No. 1411a  
 — **v. Greisman** (Can.); 15. *Crim.* p. 469  
 — **v. Grigg** (N.Z.); 14. *Crim.* p. 452  
 — **(Eddie) v. Grosney** (Can.); 30. *Intox.* p. 718  
 — **v. Gumbs** (1926); 14. *Crim.* No. 4994f  
 — **v. Guntrip** (1925); 14. *Crim.* No. 5057c  
 — **v. Gurditta** (Can.); 15. *Crim.* p. 466  
 — **v. Gurski** (Can.); 18. *Distr.* p. 540  
 — **v. Guyot** (Can.); 22. *Evid.* p. 603  
 — **v. Hackman** (Can.); 2. *Aliens*, p. 116  
 — **v. Haddad** (Can.); 14. *Crim.* p. 461  
 — **v. Hagerup** (Can.); 14. *Crim.* p. 453; 30. *Intox.* p. 721  
 — **v. Hailwood, R. v. Hailwood & Ackroyd, Ltd.** (1928); 20. *Elect.* No. 774a  
 — **v. Hale** (Can.); 30. *Intox.* p. 721  
 — **v. Halifax Electric Tramway Co.** (Can.); 17. *Dep.* p. 520  
 — **v. Hall** (Can.); 30. *Intox.* p. 722  
 — **v. Halpin** (Can.); 22. *Evid.* p. 601  
   **v. Hamilton** (Can.); 14. *Crim.* p. 457  
 — **(Thompson) v. Hammatt** (Can.); 11. *Const. L.* p. 380; 30. *Intox.* p. 721  
 — **v. Hancock** (1839); 16. *Cr. Pract.* No. 1486a  
 — **v. Handsbee** (Can.); 15. *Crim.* p. 472  
 — **v. Hanel** (Can.); 17. *Dep.* p. 515  
 — **v. Haney** (Can.); 14. *Crim.* p. 445  
 — **v. Hardy** (alias Emmett) (1925); 14. *Crim.* No. 5148a  
 — **(O'Connell) v. Hare Park Camp** (Military Governor) (Ir.); 17. *Dep.* p. 528  
 — **v. Harris** (1924); 14. *Crim.* No. 5478a; 15. *Crim.* Nos. 10,725a, 10,731a  
 — **v. Harris** (1927); 14. *Crim.* Nos. 2781a, 3172a  
 — **v. Harross** (1856); 33. *Mags.* No. 1015  
 — **v. Harry** (1928); 14. *Crim.* No. 5355b  
 — **v. Hart** (Can.); 14. *Crim.* p. 454  
 — **v. Hartle** (1863); 7. *Bldg. Soc.* No. 63a  
 — **v. Hartlepool Corpn., Ex p. Dobing** (1851); 20. *Elect.* No. 146a  
 — **v. Harvey** (1927); 14. *Crim.* No. 5190a  
 — **v. Haslam** (1925); 14. *Crim.* Nos. 2839a, 5194b, 5873a  
 — **v. —** (1926); 14. *Crim.* No. 2995a



- R. v. Haslewood, *Ex p.* Margerison (1926); **13. Crnrs.** No. 156a  
 — v. Hastie (1863); **7. Bldg. Soc.** No. 65a  
 — v. Hastings Poor Law Union Guardians (1865); **30. L. & T.** No. 1295  
 — v. Hatch & Smith (1928); **14. Crim.** No. 5739a  
 — v. Hatton (1925); **15. Crim.** No. 9023a  
 — v. Hayes (1926); **14. Crim.** No. 5352a  
 — v. Hayton (1925); **14. Crim.** No. 3129a  
 — v. Hayward (1927); **14. Crim.** Nos. 5308a, 5319a  
 — v. Healey (Can.); **30. Intox.** p. 721  
 — v. Heighton (1) (Can.); **2. Aliens**, p. 97  
 — v. Heighton (2) (Can.); **2. Aliens**, p. 97  
 — v. Heise (Can.); **25. Gaming**, p. 636  
 — v. Heisler (Can.); **17. Dep.** p. 524  
 — v. Henderson (Can.); **30. Intox.** p. 718  
 — v. Henderson, *Ex p.* Brindle (Can.); **33. Mags.** p. 765  
 — v. Henderson, *Ex p.* Queen (Can.); **17. Dep.** p. 519  
 — v. Henneberry (Can.); **30. Intox.** p. 722  
 — v. Henry (1927); **14. Crim.** No. 5373b  
 — v. Hertfordshire JJ., *Ex p.* Larsen (1926); **14. Crim.** No. 1704a  
 — v. Hewitt (1925); **14. Crim.** No. 4009a  
 — v. Hicks (1924); **14. Crim.** No. 5092a  
 — v. — (Can.); **14. Crim.** p. 464; **33. Mags.** p. 767  
 — v. Hilder (1924); **14. Crim.** No. 2102a  
 — v. Hill (1818); **16. Cr. Pract.** No. 246b  
 — v. Hill (1928); **14. Crim.** No. 5049f  
 — (Gagan) v. Hillmer (Can.); **2. Animals**, p. 120  
 — v. Hills (Can.); **14. Crim.** p. 443  
 — v. Hing Hop (Can.); **16. Cr. Pract.** p. 495  
 — v. Hinks (1927); **14. Crim.** No. 5049e  
 — v. Hirsch (Can.); **14. Crim.** pp. 457, 458  
 — v. Hislop (Can.); **14. Crim.** p. 418  
 — v. Hitchcock (1926); **14. Crim.** No. 5802a  
 — v. Hobbs (1928); **14. Crim.** No. 5238a  
 — v. Hodges (Can.); **5. Bkpcy.** p. 237  
 — v. Hodgson (1924); **14. Crim.** No. 5574a  
 — v. — (Can.); **30. Intox.** p. 722  
 — v. Hodson (1927); **14. Crim.** No. 5116a  
 — v. Holborn Licensing JJ., *Ex p.* Stratford Catering Co., Ltd. (1926); **30. Intox.** No. 299a  
 — v. Holt (Can.); **33. Mags.** p. 767  
 — v. Home Secretary, *Ex p.* Bressler (1924); **2. Aliens**, No. 553c  
 — v. Homer (1926); **14. Crim.** No. 5877a  
 — v. Hopper & Glaveen (Can.); **14. Crim.** p. 457  
 — v. How (Can.); **2. Aliens**, p. 114  
 — v. Howarth (1926); **14. Crim.** Nos. 5856b, 5926a  
 — v. Howe (Can.); **17. Dep.** p. 520  
 — (Matheson) v. Huber (Can.); **16. Cr. Pract.** p. 492  
 — v. Hubin (Can.); **30. Intox.** p. 718  
 — v. Hubley (Can.); **14. Crim.** pp. 461, 462; **22. Evid.** p. 601  
 — v. Hudson's Bay Co. (Can.); **11. Comp. Pche.** pp. 359, 362  
 — v. Hughes (1927); **14. Crim.** Nos. 2219a, 3391a; **15. Crim.** No. 9614a  
 — v. Hughes (Can.); **14. Crim.** pp. 450, 457  
 — v. Hull JJ. (1850); **2. Animals**, No. 328a  
 — v. Hunt (1847); **14. Crim.** No. 2895a  
 — v. Hunter (1817); **16. Cr. Pract.** No. 240a  
 — v. Hurrell (1926); **14. Crim.** Nos. 5125b, 5155a  
 — v. Hurt (Can.); **14. Crim.** p. 439; **15. Crim.** p. 469  
 — v. Hussey (1924); **15. Crim.** No. 9103a  
 — (Jackson) v. Hutchinson (Can.); **14. Crim.** p. 439  
 — v. Hyde (Can.); **14. Crim.** p. 439; **30. Intox.** p. 722  
 R. v. Hye (Can.); **1. Action**, p. 11; **8. Chos.** p. 312; **11. Comp. Pche.** p. 356  
 — v. Hyman (1926); **15. Crim.** No. 10,754a  
 — v. Iaci (Can.); **14. Crim.** p. 442; **16. Cr. Pract.** p. 488  
 — v. Ibrahim Meer Shikar (Ind.); **2. Animals**, p. 128  
 — v. Imperial Bank of Canada (Can.); **11. Comp. Pche.** pp. 355, 356  
 — v. Income Tax General Comrs., *Ex p.* English Crown Spelter Co., Ltd. (1925); **16. Cr. Pract.** No. 2149a  
 — v. Ing Yick Ing (Can.); **14. Crim.** p. 450  
 — v. Investors' Review, Ltd., *Ex p.* Wheeler (1928); **22. Evid.** No. 4428a  
 — v. Irving (1920); **2. Aliens**, No. 548a  
 — v. — (1927); **14. Crim.** No. 6187b  
 — v. Ismail (S. Af.); **5. Bkpcy.** p. 240  
 — v. Ivan (Can.); **30. Intox.** p. 721  
 — v. Iwanchuk (Can.); **14. Crim.** p. 446  
 — v. Jackson (1926); **14. Crim.** No. 6187a  
 — v. — (1927); **14. Crim.** No. 6209a  
 — v. — (Can.); **16. Cr. Pract.** p. 496; **20. Elect.** p. 561  
 — v. Jacobs (Can.); **30. Intox.** p. 721  
 — v. Jaeger Co. (Can.); **16. Cr. Pract.** p. 493  
 — v. Jen Jang How, *Re* Immigration Act (Can.); **2. Aliens**, p. 113  
 — v. Jobes (Can.); **14. Crim.** p. 464; **15. Crim.** p. 467  
 — v. Johnson (Can.); **14. Crim.** pp. 443, 456  
 — v. — McKenzie (Can.); **33. Mags.** pp. 765, 766  
 — (Boudrot) v. Johnston (Can.) (1923); **16. Cr. Pract.** p. 492  
 — v. Johnston (Can.) (1926); **30. Intox.** p. 722  
 — v. Jones (1924); **14. Crim.** No. 4974a  
 — v. — (1925); **14. Crim.** Nos. 5929a, 6067a  
 — v. — (1928); **14. Crim.** No. 2986a  
 — v. — (Can.); **14. Crim.** p. 447; **15. Crim.** pp. 472, 473  
 — v. Joyce, *Ex p.* Meredith (Aus.); **16. Cr. Pract.** p. 493  
 — v. Jungo Lee (Can.); **2. Aliens**, p. 114  
 — v. — (No. 2) (Can.); **16. Cr. Pract.** p. 488  
 — v. Kakelo (1923); **2. Aliens**, Nos. 558e, 558f, 558g  
 — v. Kalwa (Ind.); **14. Crim.** p. 455  
 — v. Kay (1925); **14. Crim.** No. 5938b  
 — v. Kelly (Can.); **11. Comp. Pche.** p. 356  
 — v. — (Ir.); **14. Crim.** pp. 447, 449, 453  
 — v. Kennedy (Can.); **17. Dep.** p. 517  
 — v. — (Aus.); **14. Crim.** p. 462; **15. Crim.** p. 468  
 — v. Kent JJ. (Can.); **11. Comp. Pche.** p. 357  
 — v. — *Ex p.* Smith (1928); **16. Cr. Pract.** Nos. 1466a, 3433a  
 — v. — *Ex p.* Triplow (1927); **33. Mags.** No. 1393a  
 — v. Kessler (Can.); **8. Clubs**, p. 317  
 — v. Ketteringham (1926); **15. Crim.** No. 10,878b  
 — v. King (1925); **14. Crim.** No. 4764a  
 — v. — (1927); **14. Crim.** No. 5870b  
 — v. Kingsland Parish Income Tax Comrs. & Inspector of Taxes (1922); **16. Cr. Pract.** Nos. 1141a, 2132a, 2422a  
 — v. Kingsland Parish, Inspector of Taxes, *Ex p.* Pearson, Kingsland Estate (1922); **16. Cr. Pract.** Nos. 1141a, 2132a, 2422a  
 — v. Kirby, Parker & Patrick (1927); **25. Gaming**, No. 255a  
 — v. Klein (1926); **14. Crim.** No. 3407a  
 — v. Knapp (Can.); **14. Crim.** p. 450  
 — v. Knell (1926); **14. Crim.** No. 5208a  
 — v. Knighton (1927); **14. Crim.** No. 6249a  
 — v. Kobold (Can.); **15. Crim.** p. 466  
 — v. Kohel (Can.); **15. Crim.** p. 466

- R. v. Kolomrjyc (Can.); 14. *Crim.* p. 448  
 — v. Kooten (Can.); 14. *Crim.* pp. 453  
 — v. Kopsch (1925); 14. *Crim.* No. 244a  
 — v. Kruschkovski (Can.); 15. *Crim.* p. 466  
 — v. Krutzel (Can.); 15. *Crim.* p. 474  
 — v. Kuzyck (Can.); 16. *Cr. Pract.* p. 488  
 — v. Kynaston (1926); 34. *Med.* No. 242a  
 — v. Lafond (Can.); 11. *Comp. Pche.* pp. 356, 358  
 — v. Lahay (Can.); 33. *Mags.* p. 765  
 — v. Lambassi (Aus.); 15. *Crim.* p. 474  
 — v. Lambert (1926), 19 *Cr. App. Rep.* 131; 14. *Crim.* No. 5549a  
 — v. — (Can.), [1926] 2 *D. L. R.* 362; 30. *Intox.* p. 721  
 — v. Lambton (Can.); 16. *Cr. Pract.* p. 493; 26. *Hghys.* p. 648  
 — v. Lamond (Can.); 14. *Crim.* p. 455  
 — v. Lancashire JJ., *Ex p.* Tyrer (1925); 3. *Basty.* Nos. 278a, 372a  
 — v. Langley (Can.); 14. *Crim.* p. 444  
 — v. Lantalum, *Ex p.* Offman (Can.); 2. *Aliens*, p. 114  
 — v. Lapham (Can.); 15. *Crim.* p. 473  
 — v. Latraverse (Can.); 33. *Mags.* p. 765  
 — v. Laubscher (S. Af.); 14. *Crim.* p. 417  
 — v. Lavender (1927); 14. *Crim.* No. 5355c  
 — v. Lawrence (1927); 14. *Crim.* No. 5308a  
 — v. Leaf (Can.); 14. *Crim.* p. 455  
 — v. Leatherland (1926); 14. *Crim.* No. 5148c  
 — v. LeBlanc (Can.); 15. *Crim.* p. 467; 25. *Gaming*, p. 636; 30. *Intox.*, p. 721  
 — v. Lee (1927); 14. *Crim.* No. 3157a  
 — v. — (Can.); 16. *Cr. Pract.* p. 488; 33. *Mags.* p. 766  
 — v. Lee Chow Ying (Can.); 2. *Aliens*, p. 113  
 — v. Lee Kam Way (Can.); 30. *Intox.* p. 721  
 — v. Lee Park (Can.); 2. *Aliens*, p. 114  
 — v. Lee Sow (Can.); 33. *Mags.* p. 765  
 — v. Lee Wah Dai (Can.); 16. *Cr. Pract.* p. 495  
 — v. Leicester, Deputies of Freeman (1850); 16. *Cr. Pract.* No. 1228  
 — v. Leicester JJ., *Ex p.* Allbrighton (1927); 30. *Intox.* No. 381a  
 — v. Leinster (Duke) (1924); 5. *Bkpcy.* No. 8587a  
 — v. Leman Street Police Station Inspector, *Ex p.* Venicoff (1920); 2. *Aliens*, No. 551a  
 — v. Leonard (1927); 15. *Crim.* No. 10,505a  
 — v. — (Can.); 16. *Cr. Pract.* p. 494  
 — v. Lepicki (Can.); 14. *Crim.* p. 444  
 — v. Leresche (1887); 27. *H. & W.* No. 6081a  
 — v. Lester (1927); 14. *Crim.* No. 3855a  
 — v. Lever (1746); 34. *Mast. & S.* Nos. 970a, 1173a  
 — v. Levine (Can.); 30. *Intox.* p. 718  
 — v. Lew Hing Loy (Can.); 33. *Mags.* p. 765  
 — v. Lichtman (Can.); 17. *Dep.* p. 521  
 — v. Liddiard (Can.); 14. *Crim.* p. 460  
 — v. Liddle (1928); 14. *Crim.* No. 2731b  
 — v. Lincolnshire JJ., *Ex p.* Brett (1926); 3. *Basty.* No. 403b  
 — v. Linder (Can.); 14. *Crim.* p. 443  
 — v. Lithwick & Cole (Can.); 4. *Bkpcy.* p. 209  
 — v. Little, R. v. Miller (Can.); 13. *Crnrs.* p. 426  
 — (Glover) v. Little & Armstrong (Can.); 20. *Elect.* p. 561  
 — v. Lizowyj (Can.); 15. *Crim.* p. 471  
 — v. Llewellyn (1924); 14. *Crim.* No. 5607a  
 — v. Lloyd (1923); 14. *Crim.* Nos. 2567a, 5074a, 6237a  
 — v. — (1924); 14. *Crim.* Nos. 2839b, 3158a, 5932b  
 — v. — (1927); 14. *Crim.* Nos. 3398a, 6219a  
 — v. Loftus (Can.); 14. *Crim.* pp. 441, 445  
 — v. London & Lancashire Guarantee & Accident Co. (Can.) (1926); 21. *E. D.* p. 576  
 R. v. London County JJ., *Ex p.* Locke, Lancaster & Johnson (W. W. & R.) & Sons, Ltd. (1928); 38. *Rates*, No. 1616a  
 — (A.-G. of Canada) v. London Guarantee & Accident Co., Ltd. (Can.) (1920); 17. *Damgs.* p. 506  
 — v. Long (1927); 14. *Crim.* No. 5201a  
 — v. Long Branch Racing Assocn. (Can.); 25. *Gaming*, p. 635  
 — v. Loonan (Can.); 11. *Comp. Pche.* p. 357  
 — v. Lopen (Inhabitants) (1788); 12. *Contr.* No. 1822a  
 — v. Low Quong (Can.); 14. *Crim.* p. 464  
 — v. Luberg (1926); 14. *Crim.* Nos. 2155a, 3156d  
 — v. Luciuk (Can.); 15. *Crim.* p. 472  
 — v. Lyle (1924); 14. *Crim.* No. 1079a  
 — v. Lynch (Can.); 30. *Intox.*, p. 721  
 — v. Lynch's, Ltd. & Cozzolino (Can.); 11. *Comp. Pche.* pp. 356, 357  
 — v. M. (Can.); 14. *Crim.* p. 461  
 — v. McAdam (Can.); 16. *Cr. Pract.* pp. 489, 496  
 — v. McArthur's Bail (Can.); 14. *Crim.* p. 444  
 — v. McBeth (Can.); 15. *Crim.* p. 467  
 — v. McCaffrey (Can.); 15. *Crim.* p. 472  
 — v. McCarthy (1910); 14. *Crim.* No. 5373a  
 — v. McCartney & Hansen (1928); 14. *Crim.* No. 3790a; 22. *Evid.* No. 1664a  
 — v. McCathern (Can.); 14. *Crim.* p. 464  
 — v. McCorriston (Can.); 24. *Exors.* p. 615  
 — v. McCoskey (Can.); 14. *Crim.* pp. 440, 446  
 — v. McCoy & Brown (Can.); 14. *Crim.* p. 444  
 — v. McCraig (1925); 14. *Crim.* No. 3850a  
 — v. MacDonald (1928) 14. *Crim.* Nos. 1445a, 3165d  
 — v. — (Can.); 14. *Crim.* pp. 442, 444; 30. *Intox.* p. 721  
 — v. McDonald (S. Af.); 14. *Crim.* p. 447  
 — v. McDonnell (1928); 14. *Crim.* No. 2365b  
 — (Kingsett) v. McElhinney (Can.); 33. *Mags.* p. 763  
 — v. McFarlane (Can.); 30. *Intox.* p. 722  
 — v. McIlwain (Can.); 30. *Intox.* p. 721  
 — v. McInroy, *Re* Whiteside (Can.); 16. *Cntmpt.* p. 477  
 — v. McIntyre (Can.); 14. *Crim.* p. 440; 22. *Evid.* p. 601  
 — v. McKechie (N.Z.); 14. *Crim.* p. 440  
 — v. McKenzie (Can.); 11. *Comp. Pche.* p. 361; 14. *Crim.* p. 461; 15. *Crim.* p. 467; 16. *Cr. Pract.* p. 492; 30. *Intox.* pp. 718, 721  
 — v. McLachlan (Can.); 14. *Crim.* pp. 445, 447, 453, 454, 463, 464; 17. *Dep.* p. 526  
 — v. McLane (Can.); 11. *Const. L.* p. 381  
 — v. McLatchey, *Ex p.* Stewart (Can.); 33. *Mags.* p. 767  
 — v. McLean (1926); 14. *Crim.* No. 4705a  
 — v. MacLennan (1925); 14. *Crim.* No. 3156c  
 — v. McManus (Can.); 14. *Crim.* p. 464; 15. *Crim.* p. 474  
 — v. McMaster (Can.); 17. *Dep.* p. 524  
 — v. McMillan (Can.); 17. *Dep.* p. 519  
 — v. McNamara (Can.); 14. *Crim.* p. 464  
 — v. McNeil (Aus.); 35. *Money*, p. 807  
 — v. McPherson (Can.); 11. *Comp. Pche.* p. 356; 22. *Evid.* p. 597  
 — v. McPherson & Quigley & Union Bank of Canada (Can.); 20. *Egy.* p. 566  
 — v. McTavish, *Ex p.* Brown (Can.); 14. *Crim.* p. 444  
 — v. MacWilliam (1928); 14. *Crim.* No. 5570a  
 — (Wilbur) v. Magee (Can.); 17. *Dep.* p. 519  
 — (Kelly) v. Maguire & O'Sheil (Ir.); 16. *Cr. Pract.* pp. 493, 494  
 — v. Maidstone Prison (Governor), *Ex p.* Maguire (1925); 16. *Cr. Pract.* Nos. 660a, 797a  
 — v. Mainfroid (Can.); 30. *Intox.* p. 721

# TABLE OF

- R. v. Manchester Guardian, *Ex p.* Public Prosecutions Director (1924); 10. *Cntmpt.* No. 179a
- v. Mangold (S. Af.); 14. *Crim.* p. 451
- v. Manson (Can.); 15. *Crim.* p. 470
- v. Maples (1927); 15. *Crim.* No. 10,505a
- v. Marchant (Can.); 20. *Elect.* p. 561
- (Leslie) v. Marcovich (Can.); 16. *Cr. Pract.* p. 496
- v. Marino & Crisofi (Can.); 14. *Crim.* p. 440
- v. Mark (Can.); 25. *Gaming*, p. 634
- v. Markham, *Ex p.* Marsh (1923); 3. *Basty.* No. 403a
- v. Markuss (1864); 15. *Crim.* Nos. 8666a, 8667a
- v. Marriott (1924); 14. *Crim.* No. 3145a
- v. — (Can.); 14. *Crim.* p. 444
- v. Marsh (1925); 15. *Crim.* No. 9320b
- v. Marshall (1925); 14. *Crim.* Nos. 3136a, 6072a
- v. — (Can.); 22. *Evid.* p. 597
- v. Martch (Can.); 30. *Intox.* p. 721
- v. Martin (1927); 14. *Crim.* No. 5596a
- v. — (1928); 14. *Crim.* No. 6215b
- v. Masharign (S. Af.); 14. *Crim.* p. 454; 15. *Crim.* p. 474
- v. Mason (1924); 14. *Crim.* No. 3133a
- v. Maung Ba Thaung (Ind.); 19. *Educ.* p. 558
- v. Maung Tin Saw (Ind.); 16. *Cntmpt.* p. 477
- v. May (Can.); 14. *Crim.* p. 462
- v. Mayall (Can.); 15. *Crim.* p. 467
- (McArthur) v. Maycock (Can.); 16. *Cr. Pract.* p. 492
- v. Meehan (Can.); 16. *Cr. Pract.* p. 495; 28. *Inc. T.* p. 690
- v. Meibach (Can.); 21. *E. D.* p. 576
- v. Meiring (S. Af.); 15. *Crim.* p. 469
- v. Melany (1924); 14. *Crim.* No. 3801b
- v. Merritt (Can.); 30. *Intox.* p. 721
- v. Metcalfe (Can.); 15. *Crim.* p. 470; 19. *Educ.* p. 558
- v. Middleton Church Trustees (Can.); 7. *Burial*, p. 283
- v. Midland, etc. Ry. Co., *Ex p.* Brown (1867); 11. *Comp. Pche.* No. 160
- v. Miller (1823); 1. *Adm.* No. 642a
- v. — (1926); 14. *Crim.* No. 3122a
- v. —, R. v. Little (Can.); 13. *Crnrs.* p. 426
- v. Missell (1926); 15. *Crim.* No. 10,754b
- (Jacques) v. Mitchell (Can.); 20. *Elect.* p. 562
- v. Mlaker (Can.); 14. *Crim.* p. 443; 16. *Cr. Pract.* pp. 495, 496
- v. Mohr (Can.); 17. *Dep.* p. 520
- v. Moldon (1926); 14. *Crim.* No. 5036a
- v. Mondshein (Can.); 14. *Crim.* p. 457
- v. Montemurro (Can.); 16. *Cr. Pract.* p. 489
- v. Montreal Telegraph Co. & Great North Western Telegraph Co. of Canada (Can.); 28. *Inc. T.* p. 689
- v. Moore (1924); 14. *Crim.* Nos. 8007a, 5932a
- v. — (Can.); 3. *Basty.* p. 188; 14. *Crim.* p. 442; 16. *Cr. Pract.* p. 488
- v. Moreau (Can.); 11. *Comp. Pche.* p. 357
- v. Morgan (1925); 14. *Crim.* No. 1910a; 22. *Evid.* No. 2129a
- v. Morrison (1911); 14. *Crim.* No. 5802b
- v. — (Can.); 14. *Crim.* p. 452
- v. Morriss (1926); 14. *Crim.* No. 5175a
- v. Morter (1927); 15. *Crim.* No. 10,315c
- v. Moscovitch (1924); 22. *Evid.* No. 3975a
- v. — (1927); 15. *Crim.* No. 7989a
- v. Mosley (1924); 14. *Crim.* No. 1937a
- v. Mould (Can.); 2. *Animals*, p. 128
- v. Moyle (Can.); 14. *Crim.* p. 461
- v. Murray (Can.); 14. *Crim.* p. 442
- v. — (A. D.) Tailoring, Ltd. (Can.); 25. *Gaming*, p. 636
- R. v. Murrell (Can.); 10. *Cr. Pract.* p. 488
- v. Musgrave (Can.); 11. *Comp. Pche.* p. 362; 14. *Crim.* p. 462
- v. Mutual Fire Assocn. of Canada, Ltd. (Can.); 39. *Revenue*, p. 861
- v. Nadon (Can.); 30. *Intox.* p. 722
- v. Nall (1927); 14. *Crim.* No. 5190b
- v. Nash (1927); 14. *Crim.* No. 5285a
- (Butler) v. Navan Urban District Council (Ir.); 16. *Cr. Pract.* p. 490
- v. Nazir Wazir (Ind.); 2. *Animals*, p. 128
- v. Nelson (Can.); 2. *Animals*, p. 128; 33. *Mags.* p. 765
- v. Nepp (Can.); 30. *Intox.* p. 721
- v. New Dominion Club (Can.); 30. *Intox.* p. 721
- v. New Statesman (Editor), *Ex p.* Public Prosecutions Director (1928); 16. *Cntempt.* Nos. 164a, 165a
- v. Newcastle JJ. (Can.); 33. *L. G.* p. 760
- v. Nga Ba Shein (Ind.); 14. *Crim.* p. 458
- v. Nga San Htwa (Ind.); 14. *Crim.* p. 442
- v. Nga Tin Gyi (Ind.); 14. *Crim.* p. 448
- v. Ngcobo (S. Af.); 15. *Crim.* p. 470
- v. Nicholson (Can.); 14. *Crim.* pp. 461, 462
- v. Nickerson, *Ex p.* Weston (Can.); 14. *Crim.* p. 443
- v. Noble (1928); 14. *Crim.* No. 3834a
- v. Noon (Can.); 11. *Const. L.* p. 381
- v. Norfolk JJ., *Ex p.* Davidson (1925); 16. *Cr. Pract.* No. 2142a
- v. —, *Ex p.* Porter (1926); 18. *Distr.* No. 1588a
- v. Norman (1924); 14. *Crim.* No. 5359a
- v. North, *Ex p.* Oakey (1927); 19. *Eccl.* No. 1280a
- v. Northup (Can.); 14. *Crim.* p. 464
- v. Nozaki (Can.); 14. *Crim.* p. 453
- v. Oakes (Can.); 16. *Cr. Pract.* p. 496
- v. O'Brien (Can.); 21. *Exon.* p. 587
- v. —, *Ex p.* Theriault (Can.); 16. *Cr. Pract.* p. 494
- v. O'Dare, Davis & Morton (1927); 14. *Crim.* No. 5111a
- v. O'Donnell (Can.); 3. *Basty.* p. 187
- v. O'Donoghue (1927); 14. *Crim.* No. 4357a; 15. *Crim.* No. 8266a
- v. Ogden (1702); 26. *Hghys.* No. 1330a
- (Moore) v. O'Hanrahan (Ir.); 25. *Fish.* p. 624
- v. O'Hara (Can.); 22. *Evid.* p. 597; 33. *Mags.* p. 765
- v. O'Keefe's Beverages, Ltd. (Can.); 30. *Intox.* p. 721
- v. Olholm & McPherson (Aus.); 14. *Crim.* pp. 448, 455
- v. Olney (Can.); 33. *Mags.* p. 767
- v. Olsen (Can.); 16. *Cr. Pract.* p. 494
- v. On Sing (Can.); 16. *Cr. Pract.* p. 496
- v. O'Rourke (Can.); 17. *Dep.* p. 517
- v. Ortynsky (Can.); 14. *Crim.* p. 462
- v. Osjorm (Can.); 30. *Intox.* p. 721
- v. O'Sullivan (Aus.); 14. *Crim.* p. 449; 15. *Crim.* p. 474
- v. Otty, *Ex p.* Roberts (Can.); 16. *Cntmpt.* p. 477
- v. Page (Can.); 16. *Cr. Pract.* p. 489
- v. Palangio (Can.); 2. *Aliens*, p. 118
- v. Paris (Town) (Can.); 26. *Hghys.* p. 648
- v. Parker (1924); 14. *Crim.* No. 3820a
- v. Parker, R. v. Dennis (1924); 14. *Crim.* No. 2365a
- v. Parkin (1928); 14. *Crim.* No. 5528a
- v. Paul (1925); 14. *Crim.* Nos. 5361a, 5372a
- v. Pawlett (Can.); 15. *Crim.* p. 473
- v. Payette (Can.); 14. *Crim.* pp. 460, 461, 463; 15. *Crim.* p. 469
- v. Peace (1925); 14. *Crim.* No. 5997a



- R. v. Peckham** (1927); 14. *Crim.* No. 3165c; 15. *Crim.* No. 10,927a
- **v. Pelassiers, Ltd.** (Can.); 13. *Corpns.* p. 427
- **v. Pelkey** (Can.); 15. *Crim.* p. 466
- **(Read) v. Pembina Municipal District No. 552** (Can.); 13. *Corpns.* p. 432; 16. *Cr. Pract.* p. 491
- **v. Penny** (Can.); 15. *Crim.* p. 474
- **v. Perreault** (Can.); 1. *Adm.* p. 35; 11. *Const. L.* p. 381
- **(Anderson) v. Perri** (Can.); 30. *Intox.* p. 721
- **v. Petch** (Can.); 14. *Crim.* p. 464
- **v. Peters** (Can.); 17. *Dep.* p. 517
- **v. Peterson** (Can.); 2. *Animals*, p. 120
- **v. Phillips** (1895); 11. *Const. L.* No. 214a
- **v. Phillips** (1921); 5. *Bkpcy.* No. 5499a
- **v. —** (1924); 14. *Crim.* No. 5927a
- **v. Pidgeon** (Can.); 25. *Gaming*, p. 634
- **v. Pilley** (1926); 14. *Crim.* No. 6186a
- **v. Pinno** (Can.); 22. *Evid.* p. 597
- **v. Pocock** (Can.); 33. *Mags.* p. 767
- **v. Poole** (1924); 14. *Crim.* No. 4974a
- **v. Poplar Borough Council, Ex p. London County Council** (1922); 16. *Cr. Pract.* No. 1066
- **v. —, Ex p. Metropolitan Asylums Board** (1922); 16. *Cr. Pract.* No. 1066
- **v. Portage la Prairie Rural Municipality** (Can.); 26. *Hghys.* p. 648
- **v. Porter** (1926); 14. *Crim.* No. 5057b
- **v. —** (1927); 14. *Crim.* Nos. 3137a, 5577b
- **v. Postmaster-General, Ex p. Carmichael** (1928); 16. *Cr. Pract.* No. 2736a
- **v. Poulin** (Can.); 17. *Dep.* p. 517
- **v. Powell, Ex p. Camden (Marquis)** (1925); 2. *Agric.* Nos. 29b, 29c
- **v. Powers** (Can.); 17. *Dep.* p. 517
- **v. Prairie Drug Co., Ltd.** (Can.); 17. *Dep.* p. 519
- **v. Preeper** (Can.); 22. *Evid.* p. 603
- **v. Presdee** (1927); 30. *Intox.* No. 764a
- **v. Preston** (Can.); 20. *Elect.* p. 561
- **v. Price** (1924); 14. *Crim.* No. 4994b
- **v. Price Brothers & Co.** (Can.); 22. *Evid.* p. 600
- **v. Proteau** (Can.); 14. *Crim.* pp. 452, 453.
- **v. Proud** (Can.); 27. *H. & W.* p. 655
- **v. Punch** (1927); 14. *Crim.* No. 751a
- **v. Purdy** (Can.); 30. *Intox.* p. 721
- **v. R.** (Can.); 17. *Dep.* p. 526
- **v. Railway Comrs.** (1881); 8. *Carr.* No. 1025
- **v. Rankin** (Can.); 20. *Elect.* p. 561
- **v. Rash** (Can.); 15. *Crim.* p. 474
- **v. Rasool** (S. Af.); 14. *Crim.* p. 440
- **v. Rathmines Urban District Council** (Ir.); 16. *Cr. Pract.* p. 491
- **v. Reade** (1927); 14. *Crim.* No. 6215a
- **v. Rees** (1928); 14. *Crim.* No. 3129c
- **v. Regina Wine & Spirit, Ltd.** (Can.); 17. *Dep.* p. 519
- **v. Regina Wine & Spirit, Ltd. (No. 2)** (Can.); 17. *Dep.* p. 525
- **v. Relf** (Can.); 14. *Crim.* p. 446
- **v. Renton** (1925); 14. *Crim.* No. 5938a
- **v. Revill** (1925); 14. *Crim.* No. 5246a
- **v. Reynolds** (1927); 15. *Crim.* No. 10,905a
- **v. Ricard** (Can.); 30. *Intox.* p. 721
- **v. Rice** (1927); 14. *Crim.* No. 5850a
- **v. Richards** (1924); 14. *Crim.* Nos. 5856a, 6230a
- **v. Richardson** (1861); 14. *Crim.* No. 3943a
- **v. —** (Can.); 30. *Intox.* p. 720
- **v. Riley** (Can.) (1905); 18. *Distr.* p. 540
- **(Lithgoe) v. Riley** (Can.) (1926); 30. *Intox.* p. 721
- **v. Ringle** (1926); 15. *Crim.* No. 10,754b
- **v. Roath** (1927); 14. *Crim.* No. 4998a
- **v. Roberts** (Can.); 33. *Mags.* p. 765
- R. v. Roberts & Morriss** (1926); 14. *Crim.* No. 5175a
- **v. Robinson** (1840); 15. *Crim.* No. 9773a
- **v. Rocco** (Can.); 14. *Crim.* p. 444
- **v. Roche** (Can.); 30. *Intox.* p. 722
- **v. Rock** (Can.); 8. *Clubs*, p. 817
- **v. Roderick** (Can.); 25. *Gaming*, p. 636
- **v. Rodgers** (Can.); 14. *Crim.* pp. 444, 455; 33. *Mags.* p. 765
- **v. Rogoff** (1924); 2. *Aliens*, No. 544a
- **v. Romanchuk** (Can.); 16. *Cr. Pract.* pp. 488, 489
- **v. Ronan** (Can.); 17. *Dep.* p. 519
- **v. Rookwood** (1896); 11. *Const. L.* No. 175a
- **v. Roop** (Can.); 14. *Crim.* p. 444; 15. *Crim.* p. 467
- **v. Rose** (1928); 15. *Crim.* N. 8640a
- **v. Ross** (1924); 14. *Crim.* Nos. 3156a, 5607a
- **v. —** (Can.); 14. *Crim.* pp. 445, 473
- **v. Rotterman** (Can.); 30. *Intox.* p. 718
- **v. Rovonelli** (Can.); 14. *Crim.* p. 446
- **v. Roy** (Can.), [1923] 2 D. L. R. 1182; 5. *Bkpcy.* p. 239
- **(Emery) v. Roy** (Can.), [1923] 2 W. W. R. 400; 5. *Bkpcy.* p. 240
- **v. Royal Bank of Canada** (Can.); 1. *Agcy.* p. 45; 3. *Bank.* p. 170
- **v. Royal Nova Scotia Yacht Squadron** (Can.); 11. *Comp. Pohe.* p. 356
- **v. Rozonowski** (Can.); 15. *Crim.* p. 468; 16. *Cr. Pract.* p. 496
- **v. Rumsey & Morthen No. 551. Municipal District** (Can.); 38. *Real Prop.* p. 856
- **v. Russell** (1925); 14. *Crim.* No. 4994d
- **v. Rutherford** (Can.); 33. *Mags.* p. 765
- **v. Rutt** (1928); 14. *Crim.* No. 5285b
- **v. Ryall** (Can.); 30. *Intox.* p. 718
- **v. Ryan** (Can.); 16. *Cr. Pract.* p. 495
- **v. Rye** (Mayor) (1759); 13. *Corpns.* No. 866
- **v. Sacco** (Can.); 14. *Crim.* p. 450
- **v. Safruk** (Can.); 16. *Cr. Pract.* p. 495
- **v. St. Elmo Hotel Co., Ltd.** (Can.); 30. *Intox.* p. 721
- **v. St. Mary, Newington (Governors)** (1848); 20. *Elect.* No. 1154a
- **v. St. Peters** (Can.); 19. *Educ.* p. 557
- **v. Salman** (1924); 14. *Crim.* No. 6068a
- **v. Sam Chin** (Can.); 14. *Crim.* p. 464
- **v. Sam Hing** (Can.); 33. *Mags.* p. 765
- **v. Sankey** (1836); 13. *Corpns.* No. 865
- **v. Sansome** (Can.); 14. *Crim.* p. 464
- **v. Satish Chandra Singha** (Ind.); 14. *Crim.* p. 455
- **v. Saunders** (1924); 14. *Crim.* Nos. 1913a, 5081a
- **v. Savich** (Can.); 14. *Crim.* p. 439; 30. *Intox.* p. 722
- **v. Sayward Trading & Ranching Co., Ltd.** (Can.); 11. *Const. L.* p. 381
- **v. Sayyad Habib** (Ind.); 16. *Cntmpt.* p. 476
- **v. Schemmer** (Can.); 15. *Crim.* p. 471
- **v. Schneider** (Can.); 14. *Crim.* pp. 439, 442
- **v. Schoppelrei** (Can.); 2. *Aliens*, pp. 113, 114
- **v. Schram** (Can.); 14. *Crim.* p. 444
- **v. Schwarz** (Aus.); 22. *Evid.* pp. 595, 596
- **v. Schweller** (1924); 14. *Crim.* No. 1900a
- **v. Scott** (Can.); 15. *Crim.* p. 471; 16. *Cr. Pract.* p. 492
- **v. Scott** (No. 2) (Can.); 17. *Dep.* p. 526
- **v. Scott & Williamson** (Can.); 14. *Crim.* p. 460
- **v. Seaman** (Can.); 11. *Const. L.* p. 386
- **v. Seaton & Flanagan** (1928); 14. *Crim.* No. 5119a
- **v. Secretary of State for Home Affairs. Ex p. O'Brien** (1923); 16. *Cr. Pract.* Nos. 601, 801
- **v. Secretary of State for Home Affairs, Ex p. Venicoff** (1920); 2. *Aliens*, No. 551a



- R. v. Seely (1928); **15. Crim.** No. 11,038a  
 — v. Segal (Can.); **14. Crim.** p. 440  
 — v. Selkirk (1925); **14. Crim.** No. 1436a  
 — v. Servetnyk (Can.); **33. Mags.** p. 766  
 — v. Seymour (1927); **14. Crim.** No. 2105a  
 — v. Shaffner (1920); **2. Aliens**, No. 543a  
 — v. Shaid (Can.); **14. Crim.** p. 440  
 — v. Sharman (1925); **14. Crim.** No. 6183a  
 — (Lamson) v. Sharpe & Inglis (Can.); **16. Cr. Pract.** p. 493  
 — v. Shea's Winnipeg Brewery, Ltd. (Can.); **30. Intox.** p. 721  
 — v. Sheaf (1925); **15. Crim.** Nos. 10,315a, 10,326a  
 — v. Sheffield J.J., *Ex p.* Rawson (T.) & Co., Ltd. (1927); **30. Intox.** Nos. 202a, 381b  
 — v. Shemit (Can.); **14. Crim.** p. 455  
 — v. Shendan (Can.); **17. Dep.** p. 515  
 — v. Simington (Can.); **14. Crim.** p. 440  
 — v. Simms (Can.); **14. Crim.** p. 463  
 — v. Simon (Can.); **30. Intox.** p. 722  
 — v. Simovitch (Can.); **30. Intox.** p. 721  
 — v. Sipes (Can.); **14. Crim.** p. 442  
 — v. Slee (Can.); **14. Crim.** p. 463  
 — v. Slinn (Can.); **14. Crim.** p. 460  
 — v. Smart (Can.); **15. Crim.** p. 470  
 — v. Snee (1928); **14. Crim.** No. 5243a  
 — v. Smith (1886); **3. Basti.** No. 384  
 — v. — (1924); **14. Crim.** Nos. 4878a, 4972a, 5927b, 6066a; **15. Crim.** No. 10,315b  
 — v. — (1925); **14. Crim.** Nos. 1810b, 5550a  
 — v. — (1926); **14. Crim.** No. 1913d  
 — v. — (Can.); **3. Bank.** p. 163; **14. Crim.** pp. 442, 443; **25. Gaming**, p. 636; **30. Intox.** pp. 721, 722; **34. Med.** p. 798  
 — (Parker) v. Smith (Can.); **33. Mags.** p. 765  
 — (Provincial Treasurer of Alberta) v. Smith (Can.); **18. Discy.** p. 531  
 — v. Smith, *Ex p.* Porter (1927); **18. Distr.** No. 1588a  
 — v. Smothers (Can.); **14. Crim.** p. 445  
 — v. Snare (Can.); **30. Intox.** p. 721  
 — v. Somerville Cannery Co., Ltd. (Can.); **17. Dep.** p. 516  
 — v. Soo Gong (Can.); **34. Med.** p. 798  
 — v. Southampton County Confirming Committee *Ex p.* Slade (1928); **30. Intox.** Nos. 292a, 293a  
 — v. Speirs (Can.); **16. Cr. Pract.** p. 491  
 — v. Speron (Can.); **14. Crim.** p. 462  
 — v. Stagg (Can.); **14. Crim.** p. 442  
 — (Canadian Pacific Ry. Co. & Miller) v. Standell (Can.); **8. Carr.** p. 294  
 — v. Stanley (1927); **14. Crim.** No. 4826b  
 — v. Stark (Can.); **15. Crim.** p. 470  
 — v. Stasiuk (Can.); **14. Crim.** p. 455  
 — v. Steele (Can.); **30. Intox.** p. 721  
 — v. Stephens (Can.); **33. Mags.** p. 765  
 — v. Stephenson (Can.); **16. Cr. Pract.** p. 492; **20. Elect.** p. 560  
 — (Morris) v. Stimmel (Can.); **3. Auct.** p. 151  
 — v. Stokell (1924); **14. Crim.** No. 5303b  
 — v. Stokes (1925); **14. Crim.** No. 3362a  
 — v. Stone (Can.); **17. Dep.** p. 516  
 — v. Stuart (1927); **15. Crim.** No. 10,505a  
 — v. — (Can.); **17. Dep.** p. 517  
 — v. Sullivan (Can.); **14. Crim.** p. 444; **18. Distr.** p. 537  
 — v. Sussex J.J. (1850); **4. Bkpcy.** No. 3001  
 — v. Sutherland (S. Af.); **14. Crim.** p. 448  
 — v. Swansea Income Tax Comrs., *Ex p.* English Crown Spelter Co. (1925); **16. Cr. Pract.** No. 2149a  
 — v. Swanstrom (Can.); **2. Agric.** p. 93  
 — v. Swityk (Can.); **15. Crim.** pp. 472, 473  
 — v. Switzer (Can.); **14. Crim.** p. 455  
 R. v. Sydorik & Zowatski (Can.); **14. Crim.** p. 464  
 — v. Symonds (1924); **14. Crim.** No. 3010a  
 — v. Tannen (1927); **15. Crim.** No. 10,505a  
 — v. Tanner (1910); **14. Crim.** No. 5156a  
 — v. Taylor (1924); **14. Crim.** Nos. 3165b, 4994a, 5806a  
 — v. Taylor (*alias* Saunders, *alias* Wallace) (1924); **14. Crim.** Nos. 1913a, 5081a  
 — v. Taylor (1926); **14. Crim.** Nos. 5092b, 5314a  
 — v. — (1927); **15. Crim.** No. 10,505a  
 — v. Taylor & Young (Can.); **14. Crim.** p. 460  
 — v. Taylor, Weaver & Donovan (1928); **14. Crim.** No. 3792a  
 — v. Tebbitt (1912); **14. Crim.** No. 2571a  
 — v. Teesdale (1927); **14. Crim.** No. 1031a  
 — v. Ten Chinamen (Can.); **16. Cr. Pract.** p. 489  
 — v. Terry (1924); **14. Crim.** No. 4974a  
 — v. Tessier (Can.); **4. Bkpcy.** p. 192; **11. Const. L.** p. 381  
 — v. Tews (Can.); **14. Crim.** p. 460  
 — v. Thibault (Can.); **16. Cr. Pract.** p. 492  
 — v. Thomas (otherwise Williams) (1928); **14. Crim.** No. 5369b  
 — v. Thompson (1925); **14. Crim.** No. 5585a  
 — v. — (Can.); **14. Crim.** p. 446  
 — v. Thornbert (Can.); **33. Mkts.** p. 769  
 — v. Thorne (1925); **14. Crim.** No. 5800a  
 — v. Thorne (Can.) (1926); **19. Educ.** p. 559  
 — v. Thornton (Can.); **14. Crim.** p. 440  
 — v. Thorpe (1925); **14. Crim.** Nos. 3146a, 3179a  
 — (Eustace) v. Tipperary County District Justice (Ir.); **16. Cr. Pract.** p. 495  
 — v. Townsend (1924); **14. Crim.** Nos. 2102a, 5049a, 5217a  
 — v. Trainmen's Club (Can.); **25. Gaming**, p. 634  
 — v. Transport Minister, *Ex p.* Leicestershire & Warwickshire Electric Power Co. (1928); **20. Electric**, No. 3a  
 — v. Treanor (Ir.); **14. Crim.** pp. 447, 449, 453  
 — v. Treseigne (Can.); **15. Crim.** p. 470  
 — v. Trott (1927); **14. Crim.** No. 5049c  
 — v. Tulshi Das (Ind.); **25. Gaming**, p. 635  
 — v. Turcotte (Can.); **30. Intox.** p. 721  
 — v. Turnbull (1926); **14. Crim.** No. 5369a  
 — v. Turner (1924); **14. Crim.** No. 5039a  
 — v. Turner (1926); **14. Crim.** Nos. 4129b, 4351b  
 — v. Tymko (Can.); **14. Crim.** p. 451  
 — v. Tyreman (1925); **14. Crim.** Nos. 1913b, 5283a, 5303c, 5350b  
 — (Brooks) v. Ulmer (Can.); **17. Dep.** pp. 515, 519, 520  
 — v. Umed (Ind.); **14. Crim.** p. 440  
 — v. United Profit Sharing System, Ltd. (Can.); **25. Gaming**, p. 636  
 — v. Usher (1927); **14. Crim.** No. 6209b  
 — v. Vaquier (1924); **14. Crim.** No. 6234a  
 — v. Varbeff (Can.); **15. Crim.** p. 473  
 — v. Vayle (1844); **16. Cr. Pract.** No. 1749a  
 — v. Victoria District Gold Comr. (Can.); **17. Dep.** p. 519  
 — v. Victoria Unit (Army & Navy Veterans) (Can.); **13. Corps.** p. 428  
 — v. Villars (1927); **14. Crim.** No. 3120b  
 — v. Vye (Can.); **14. Crim.** p. 461  
 — v. Wah Sing Chow (Can.); **14. Crim.** p. 462  
 — v. Wainwright (1925); **14. Crim.** No. 3817a  
 — v. Walker (1927); **14. Crim.** No. 3820c  
 — v. — (Can.); **14. Crim.** p. 462  
 — v. Wallace (1924); **14. Crim.** Nos. 1913a, 5081a  
 — v. Walls (*alias* Russell) (1925); **14. Crim.** No. 4994d  
 — v. Walsh (Can.); **17. Dep.** p. 521  
 — v. Walters (Can.); **14. Crim.** pp. 449, 450  
 — v. Warblington Overseers (1854); **38. Pub. Hlth.** No. 533  
 — v. Ward (1926); **14. Crim.** No. 5125c

- R. v. Ward** (1928); **14. Crim.** No. 3180c  
 — **v. —** (Can.); **14. Crim.** p. 453  
 — **v. Washington** (Can.); **33. Mags.** p. 767  
 — **v. Wason** (Can.); **17. Dep.** p. 520  
 — **v. Watford Licensing JJ., Ex p. Trust Houses, Ltd.** (1928); **30. Intox.** No. 340a  
 — **v. Watson** (1927); **14. Crim.** No. 4998b  
 — **v. —** (Can.); **16. Cr. Pract.** p. 486  
 — **v. Waye** (1928); **14. Crim.** No. 5049g  
 — **v. Wealdstone News & Harrow News (Editor, Printer & Publisher)** (1925); **16. Cntmpt.** Nos. 182a, 709a  
 — **v. Weale** (1927); **14. Crim.** No. 5290c  
 — **v. Weeks** (1928); **14. Crim.** No. 6112a  
 — **v. Wellings** (1924); **15. Crim.** No. 10,200a  
 — **v. West** (Can.); **14. Crim.** p. 447  
 — **v. Western Trust Co., A.-G. of Province of Saskatchewan & Shulze** (Can.); **17. Dep.** p. 515  
 — **v. Western Wine & Liquor Co.** (Can.); **30. Intox.** p. 721  
 — **v. Whelan** (Can.); **25. Gaming,** p. 634  
 — **v. Whepdale** (Can.); **14. Crim.** pp. 455, 457  
 — **v. Whitby** (1926); **14. Crim.** No. 5057d  
 — **v. White** (Can.); **14. Crim.** p. 451  
 — **v. —, Ex p. Roberts** (Can.); **16. Cntmpt.** p. 477  
 — **v. White & Shelton** (1927); **14. Crim.** Nos. 5331a, 5341a  
 — **v. Whitehead** (1928); **15. Crim.** No. 9307a  
 — **v. Whittaker** (Can.); **14. Crim.** p. 451  
 — **v. Wicklow County Court Judge (Ir.);** **17. Dep.** p. 527  
 — **v. Williams** (1925); **14. Crim.** No. 6234b  
 — **v. —** (1928); **14. Crim.** No. 5369b  
 — **v. Wilson** (1924); **14. Crim.** No. 3011a; **22. Evid.** No. 4729a  
 — **v. —** (Can.); **15. Crim.** p. 472; **20. Elect.** p. 560  
 — **v. —, Ex p. Harrington** (Can.); **14. Crim.** p. 443  
 — **v. Wing** (1925); **26. Hghys.** No. 1979a  
 — **v. Winn** (1925); **14. Crim.** Nos. 5304a, 5355a  
 — **v. Winter** (1924); **14. Crim.** No. 5057a  
 — **(Waugh) v. Wong Mah** (Can.); **33. Mags.** p. 766  
 — **v. Wong O. Sang** (Can.); **14. Crim.** p. 450  
 — **v. Wong Yuen** (Can.); **16. Cr. Pract.** p. 488  
 — **v. Woo Fong Toy** (Can.); **2. Aliens,** p. 114  
 — **v. Wood** (Can.) (1924); **16. Cr. Pract.** p. 494  
 — **v. —, Ex p. Anderson** (1928); **13. Crnrs.** No. 308a  
 — **v. Woods** (Can.) (1926); **30. Intox.** p. 722  
 — **v. Woodstock Town Assessors, Ex p. Bank of Nova Scotia** (Can.); **16. Cr. Pract.** p. 494  
 — **v. Wootten** (Can.); **30. Intox.** p. 721  
 — **v. Wright** (1925); **14. Crim.** No. 4974b  
 — **(Williams) v. Yarish** (Can.); **30. Intox.** pp. 721, 722  
 — **v. Yarwood** (1928); **14. Crim.** No. 5303d  
 — **v. Yeaman** (Can.); **15. Crim.** p. 473  
 — **v. Yelds** (N.Z.); **15. Crim.** p. 471  
 — **v. Yelle** (Can.); **17. Dep.** p. 515  
 — **v. Young** (1924); **14. Crim.** No. 5607a  
 — **v. —** (Aus.); **14. Crim.** p. 447  
 — **v. Zamphier** (Can.); **30. Intox.** p. 721  
 — **v. Zenick** (Can.); **14. Crim.** p. 443; **30. Intox.** p. 721  
 — **v. Zerebko** (Can.); **14. Crim.** p. 461  
 — **v. Zimmerman** (Can.); **14. Crim.** p. 464  
 — **v. Zizu Natanson** (Can.); **15. Crim.** p. 466  
 — **v. —** (No. 1) (Can.); **22. Evid.** p. 595  
 — **v. —** (No. 2) (Can.); **14. Crim.** pp. 456, 466  
**R. & W. Paul, Ltd. v. London & North Eastern Ry. Co.** (1927); **8. Carr.** No. 1237c  
**R. M. Buchanan Co., Ltd. v. Eby** (Can.); **1. Agcy.** p. 58  
**R. M. K. R. M. (Firm of) v. M. R. M. V. L. (Firm of)** (1926); **21. Estpl.** Nos. 575a, 577a  
**R. M. K. R. M. Somasundaram Chetty v. M. R. M. V. L. Supramanian Chetty** (1926); **21. Estpl.** No. 575a  
**Rabinovitch v. Feist** (Can.); **21. Exon.** p. 592  
**Race v. Wardsend Steel Co.** (1927); **34. Mast. & S.** No. 2079a  
**Radcliffe v. Bank of Montreal** (Can.); **3. Bank.** p. 167  
 — **v. Holt** (1927); **28. Inc. T.** No. 496a  
**Radha Kishan v. Kedar Nath** (Ind.); **22. Evid.** p. 595  
**Radhanath Sugrucharji v. Baidonath Seal** (Ind.); **19. Eusmt.** p. 544  
**Radisson Town v. Amson** (Can.); **11. Comp. Pche.** p. 360  
**Rae v. Rankin** (Can.); **2. Agri.** p. 91  
**Raeburn v. Lochgelly Iron & Coal Co., Ltd.** (Scot.); **34. Mast. & S.** p. 775  
 — **v. Raeburn** (1928); **11. Confl.** No. 918b  
**Raghunandan Nanu Kothare v. Hornasjee Bezonjee Bamjee** (Ind.); **36. Prtnrs.** p. 824  
**Raghunath Prasad v. Sarju Prasad** (Ind.); **12. Contr.** p. 391  
**Raghunath Prasad Singh v. Partabgash Deputy Comrs.** (Ind.); **17. Dep.** p. 527  
**Ragusz v. Montreal Harbour Comrs.** (Can.); **2. Aliens,** pp. 97, 98  
**Rahim v. Low** (Ind.); **1. Agcy.** p. 52; **20. Eqq.** pp. 565, 566  
**Rai Bahadur Bansilal Abirchand v. Ghulan Mahbub Khan** (1925); **17. Dep.** No. 234a  
**Railway Act, Re Arbitration under, British Columbia Permanent Loan Co. v. Canadian Northern Ry. Co. (No. 1)** (Can.); **11. Comp. Pche.** p. 360  
**Railway Asscn. of Canada & Slow Orders, Re** (Can.); **38. Rys.** p. 849  
**Railway Debenture & General Trust Co., Re, Re Glyncorwg Colliery Co.** (1926); **10. Coys.** No. 5149a  
**Railway Debenture & General Trust Co. v. Glyncorwg Colliery Co., Re Glyncorwg Colliery Co.** (1926); **10. Coys.** No. 5149a  
**Raines v. British Columbia Electric Ry. Co.** (Can.); **8. Carr.** p. 291  
**Raitblat, Re** (Can.); **4. Bkpcy.** p. 193  
**Rajah v. Suliman** (S. Af.); **12. Contr.** p. 406  
**Ralston v. Hughson** (Can.); **38. Real Prop.** p. 856  
**Ram Bahadur Sen v. Mahanath Ganesh Bhagat** (Ind.); **2. Arbn.** p. 129  
**Ram Sarup v. Hardho Prasad** (Ind.); **6. B. of Erch.** p. 252  
**Ramage v. Vancouver (City)** (Can.); **2. Arbn.** p. 146  
**Ramanatham v. R.** (Ind.); **24. Fact.** p. 620  
**Ramathan Chettiar v. Muthiah Chetty** (Ind.); **1. Agcy.** p. 52  
**Ramauandi Kuer v. Kalawati Kuer** (Ind.); **23. Exors.** p. 609  
**Ramlal Hargopal v. Kishanchand** (1923); **17. Dep.** No. 640b  
**Ramsay v. Ramsay** (Scot.); **11. Confl.** p. 372  
**Ramsden (W.) & Co. v. Jacobs** (1922); **2. Arbn.** No. 949b  
**Randall, Re** (Aus.); **23. Exors.** p. 609  
**Randfontein Estates Gold Mining Co., Ltd. v. Custodian of Enemy Property** (S. Af.); **2. Aliens,** p. 101  
**Randir Singh v. R.** (Ind.); **17. Dep.** p. 525  
**Randoll v. Bell** (1813); **12. Contr.** No. 4569a  
**Randwich Municipal Council, Re, Ex p. Bowser & Co.** (Aus.); **16. Cr. Pract.** p. 491  
**Ranga v. R.** (Ind.); **15. Crim.** p. 470  
**Rangoon Turf Club v. Rangoon Corpn.** (Ind.); **38.** p. 852

- Ranken v. Pearce (Aus.); **22. Evid.** p. 604  
 Rankin (Doe d.) v. Andrews (Can.); **5. Bkpcy.** p. 236  
 Rankin & Shiliday, *Re* (Ir.); **3. Bailmt.** p. 160  
 Ranson v. Burgess (1927); **25. Gaming**, No. 464a  
 Rapelje (Sheriff) v. Finch (Can.); **21. Exon.** p. 588  
 Raper, *Re, Ex p.* Jamieson (Can.); **7. B. of Sale**, p. 265  
 Raport, *Re*, Denison v. Union Bank of Canada (Can.); **8. Chos.** p. 315  
 Rarewell, *The* (Can.); **17. Dep.** p. 514  
 Ratcliff v. Davis (1910); **35. Mtge.** No. 72a  
 Rathbun v. Culbertson (Can.); **21. Exon.** pp. 587, 589  
 Ratinsky v. Jacobs (1929); **30. Jdgmts.** No. 642b; **31. L. & T.** No. 7358a  
 Raulin v. Fischer (1911); **11. Confl.** No. 1241a  
 Ravene Plantations, Ltd. v. Estate H. Abray (S. Af.); **9. Coys.** p. 332  
 Rawlings v. General Trading Co. (1921); **3. Auct.** No. 151a  
 Rawlinson v. Montague (Duchess) (1710); **18. Descr.** No. 132a  
 Rawson (T.) & Co., Ltd., *Ex p.*, R. v. Sheffield JJ. (1927); **30. Intox.** Nos. 202a, 381b  
 Ray, *In the Goods of* (1926); **23. Exors.** No. 931b  
 Raymond (Willis C.), Ltd. (In Liquidation), *Re* (N.Z.); **10. Coys.** p. 346  
 Rayner, *Re*, Cloutman v. Regnart (1920); **8. Char.** No. 27a  
 Raynes v. Crowder (Can.); **3. Auct.** p. 152  
 Razansoff v. Brounstein (Can.); **21. Estpl.** p. 582  
 Rea v. Minto Municipality (Can.); **26. Hghys.** pp. 647, 649  
 Read, *Re*, Galloway v. Harris (1892); **7. Burial**, No. 56a  
 — v. McLean (Can.); **26. Guar.** p. 642  
 — v. Wedge (Can.); **16. Courts**, p. 480  
 Reade, *Re* (Ir.); **4. Bkpcy.** p. 204  
 — v. Royal Bank of Ireland, Ltd. (Ir.); **3. Bank.** p. 171  
 Ready & Cass, *Re* (Can.); **5. Bkpcy.** p. 228  
 Real Estate Institute of N.S.W. v. Wood (Aus.); **13. Coprt.** p. 419  
 Reavis v. Clan Line Steamers, Ltd. (Scot.); **17. Damgs.** p. 502  
 Reberio v. Reberio (Ind.); **27. H. & W.** p. 662  
 Receiver General of New Brunswick v. Rosborough (Can.); **21. E. D.** pp. 575, 576  
 Recher & Co. v. North British & Mercantile Insurance Co. (1915); **2. Arbn.** No. 1701a  
 Reckitt v. Barnett, Pembroke & Slater, Ltd. (1928); **1. Agcy.** No. 332a  
 Record Foundry & Machine Co. v. Garson (Can.); **17. Damgs.** p. 505  
 Recsey v. Reiche (S. Af.); **35. Mistake**, p. 805  
 Red Deer (City) v. Western General Electric Co. (Can.); **20. Electric**, p. 564  
 Red Deer Milling & Elevator Co., *Re*, Stratford Mill Building Co.'s Claim (Can.); **9. Coys.** p. 336  
 Reddaway (F.) & Co. v. Hartley (1928); **18. Discy.** No. 405a  
 Reddiar & San Chien v. Secretary of State for India in Council & Collector of Rangoon (Ind.); **11. Comp. Pche.** p. 356  
 Reddy v. Johnson (S. Af.); **18. Distr.** p. 538  
 Rederi Akt. Acolus v. Hillas & Co., Ltd. (1926); **17. Custom**, No. 544a  
 Rederiakt. Argonaut v. — (1918); **1. Agcy.** No. 2609  
 Rederi Akt. Transatlantic v. Drughorn (1918); **1. Agcy.** No. 2609a  
 Redhead v. Redhead & Crothers (N.Z.); **11. Confl.** p. 376  
 Redmond v. Bouey (Can.); **25.** p. 629  
 Rednall v. Beamish (1926); **19. Educ.** No. 79a  
 Reed v. Renton & Pettinger (Can.); **21. Exon.** p. 591  
 — v. Smith (Can.); **38. Rates**, p. 853  
 Reed & Keast v. McKenzie Co., Ltd. (Can.); **1. Agcy.** p. 44  
 Reed & Roberts (*alias* McLean) v. R. (Can.); **14. Crim.** p. 450  
 Reeman v. Knapp (1925); **25. Food**, No. 218a  
 Rees, *Re*, Jones v. Evans (1920); **8. Char.** No. 702a  
 — v. Imperial Navigation Coal Co., Ltd. (1927); **34. Mast. & S.** No. 3571a  
 Rees Roturbo Development Syndicate, Ltd. v. Ducker (1928); **28. Inc. T.** No. 96a  
 — v. Inland Revenue Comrs. (1928); **28. Inc. T.** No. 96a  
 Reeve Dobie Mines, *Re*, Wage-Earners Claim (Can.); **4. Bkpcy.** p. 206  
 Reeves v. Davies (1921); **5. Bkpcy.** No. 7782a  
 — v. Hawkes (1862); **4. Bkpcy.** No. 5038a  
 Regal Phonograph Co., *Re, Ex p.* Trustee (Can.); **5. Bkpcy.** p. 231; **20. Eqty.** p. 565  
 Regina Brokerage & Investment Co. v. Kistner (Can.); **1. Agcy.** p. 61  
 Registered Title No. 213,437, *Re* (1927); **38. Real Prop.** No. 902  
 Registration of a Power of Attorney, *Re, Re* Land Titles Act (Can.); **1. Agcy.** p. 40  
 Reid v. Drake (Can.); **16. Cr. Pract.** p. 488  
 — v. Galbraith (Can.); **35. Mtge.** p. 810  
 — v. Inland Revenue (Scot.); **28. Inc. T.** p. 686  
 — v. Miller (Can.); **21. Exon.** p. 589  
 — v. — (Ir.); **21. Exon.** p. 589  
 — v. Mimico (Can.); **31. L. & T.** p. 733; **36. Negl.** p. 817  
 Reigate v. Union Manufacturing Co. (Ramsbottom) (1918); **1. Agcy.** No. 1951a  
 Reigate Corp'n. v. Surrey County Council (1928); **26. Hghys.** No. 1002a  
 Reily v. London Corp'n. (Can.); **22. Evid.** p. 597  
 Reimer v. Rosen (Can.); **1. Agcy.** p. 48  
 Reinseth v. Campbell (Can.); **2. Animals**, p. 124  
 Reitzes De Marienwert v. Austrian Property Administrator (1924); **2. Aliens**, No. 49k  
 Reliable Trading Co., *Ex p.*, *Re* Dumfermline Trading Co. (Can.); **4. Bkpcy.** pp. 204, 205  
 Reloomal v. Receiver of Revenue (S. Af.); **17. Dep.** p. 522  
 Relu Mal v. Ahmad (Ind.); **12. Contr.** p. 408  
 Renton v. Renton (Can.); **12. Contr.** p. 391  
 Republica de Guatemala v. Nunez (1927); **8. Chos.** No. 27a; **29. Intpr.** No. 462a  
 Reser v. Bewley (Can.); **7. B. of Sale**, p. 264  
 Restall, Brown & Clennell, Ltd.'s Case, *Re* Ford (1928); **5. Bkpcy.** No. 6882a  
 Reventlow-Criminil v. Streamstown Rural Municipality, No. 511 (Can.); **2. Aliens**, pp. 98, 107, 108  
 Revillon Wholesale, Ltd. v. Nemirsky (Can.); **26. Guar.** p. 642  
 Rex Co. & Rex Research Corp'n. v. Muirhead & Comptroller-General of Patents (1926); **28. Injon.** Nos. 585a, 842a; **36. Pals.** No. 727  
 Rex Grocery v. Higgs & Keen (Can.); **1. Agcy.** pp. 37, 50  
 Reynolds, *Re* (Can.); **4. Bkpcy.** p. 214  
 Rhodenizer Estate & Nova Scotia Trust Co., *Re* (Can.); **5. Bkpcy.** p. 215  
 Rhodes v. Macalister (1923); **1. Agcy.** No. 1852a  
 Rhodesia Rys. v. Taxes Comr. (S. Af.); **17. Dep.** p. 522; **28. Inc. T.** pp. 678, 680, 681  
 Rhuda Baksh v. R. (Ind.); **17. Dep.** p. 525  
 Rhys v. A.-G., *Re* Lucas (1922); **8. Char.** No. 23b  
 Rice v. Burckhardt (Can.); **12. Contr.** p. 391



# TABLE

- Rich v. Forman (Aus.); 33. *Mal. Pros.* p. 768  
 — v. Sydenham (1871); 20. *Egy.* No. 140a  
 Richard v. United National Collieries, Ltd. (1927); 34. *Mast. & S.* No. 4032a  
 Richards v. Davies (1921); 2. *Agric.* No. 164a; *Animals*, No. 342a  
 — v. Hayward (1841); 12. *Contr.* No. 487a  
 — v. Pryse (1927); 2. *Agric.* No. 2661  
 — v. Taylor (Can.); 12. *Contr.* p. 411  
 — v. Trottier (Can.); 16. *Courts*, p. 480  
 Richardson v. Abertillery Urban District Council (1928); 19. *Educ.* Nos. 14a, 302c  
 — v. Army, Navy & General Assurance Assocn., Ltd. (Ir.); 2. *Arbn.* p. 135  
 — v. Canadian National Rys. (Can.); 7. *Bounds & F.* p. 271; 36. *Negl.* p. 816  
 — v. Moncrieffe (1926); 25. *Gaming*, No. 205a  
 — v. Richardson (1927); 3. *Bank.* No. 276a; 21. *Exon.* Nos. 2084a, 2124a  
 — v. Stormont, Todd & Co. (1900); 1. *Agcy.* No. 2147a  
 — v. Sturton (1844); 20. *Egy.* No. 292a  
 Richardson's Estate, *Re* (Can.); 24. *Exors.* p. 618  
 Richardsons & Bradley & Co. v. Bernhard (1925); 2. *Arbn.* No. 630a  
 Riches v. Moose Jaw (City) (Can.); 17. *Dep.* p. 525; 21. *Estpl.* p. 584  
 Richland Farm, Ltd. v. Vermette (Can.); 7. *B. of Sale*, p. 262  
 Richmond Hill Presbyterian Church, *Re* (Can.); 19. *Eccl.* p. 554  
 Rici Lake Fur Co., Ltd. v. McAllister (Can.); 19. *Easmt.* p. 542  
 Ricker v. Ricker (Can.); 23. *Exors.* p. 614  
 Ricketts v. Gurney (1819); 2. *Arbn.* No. 830a  
 Riddiford, etc. v. Lysaght (N.Z.); 31. *L. & T.* p. 739  
 Rider v. Rider (Can.); 27. *H. & W.* pp. 664, 665  
 Ridgway Co. v. Hutchinson (1923); 13. *Coprt.* No. 513a  
 Ridings v. Elmhurst School District No. 3665 Board of Trustees (No. 2) (Can.); 19. *Educ.* p. 557  
 — v. Elmhurst School Trustees (Can.); 16. *Cr. Pract.* p. 491  
 Ridley v. Taylor (1810); 6. *B. of Exch.* Nos. 694a, 713b  
 — v. Whipp (Aus.); 3. *Basty.* p. 188  
 Riedle Brewery, Ltd. v. Merchants Fire Assurance Corp'n. of New York (Can.); 29. *Insce.* p. 710  
 Rignucette v. Hebert (Can.); 18. *Distr.* p. 538  
 Riley v. Niagara District Bank (Can.); 21. *Exon.* p. 588  
 — v. Reed (Can.); 6. *B. of Exch.* p. 252  
 Riley Brothers (Halifax), Ltd. v. Hallimond (1927); 25. *Food*, No. 243a  
 Rimalt v. Cartwright (1924); 6. *B. of Exch.* No. 2416a  
 Ring v. Hyde (1850); 21. *Exon.* No. 1581a  
 Ringende Jacob, The (1750); 2. *Aliens*, No. 419a  
 Ringstad v. Gollin & Co. Proprietary, Ltd. (Aus.); 12. *Contr.* p. 406  
 Rink v. Milos (Can.); 2. *Agric.* pp. 79, 80  
 Rinn, *Re* (Can.); 7. *B. of Sale*, p. 264  
 Ripstein Estate, *Re* (Can.); 38. *Real Prop.* p. 855  
 Rithet (R. P.) & Co. v. Scarff (Can.); 7. *B. of Sale*, p. 260  
 River Dee Drainage Board v. Hooson, *Re* Ellwood (1927); 4. *Bkpcy.* No. 4281a  
 River Fisher, The (1923); 1. *Adm.* Nos. 1152b, 1200a  
 Riversdale Mill Co. v. Hart (1927); 24. *Fact.* No. 264b; 30. *Jdgmts.* No. 679a  
 Rjukan, The (1866); 1. *Adm.* No. 1112a  
 Roach v. Hough (Aus.); 1. *Agcy.* p. 38  
 Roach v. Lappas (Can.); 18. *Distr.* p. 537  
 — v. Wright (1841); 20. *Intpr.* No. 178a  
 Robbins, *Re*, *Ex p.* Root (Can.); 5. *Bkpcy.* p. 232  
 Robert Bell Engine & Thresher Co. v. Farquharson (Can.); 1. *Agcy.* p. 47  
 Robert Dollar Co. v. Walker (Can.); 21. *Exon.* p. 587  
 Robert Koeppen, The (1926); 1. *Adm.* No. 1284b  
 Roberts, *Ex p.*, *R. v.* Otty (Can.); 16. *Cntmpt.* p. 477  
 —, *Ex p.*, *R. v.* White (Can.); 16. *Cntmpt.* p. 477  
 —, *Re* (Can.); 5. *Bkpcy.* p. 223  
 — v. Anglo-Saxon Insurance Assocn. (1927); 29. *Insce.* No. 3279a  
 — v. Gardner (William) & Sons (1928); 34. *Mast. & S.* No. 3423a  
 — v. Hanks (1926); 28. *Inc. T.* p. 545a  
 — v. Potts, Jones v. Cooke, *Re* *Lithe Act*, 1891 (1894); 12. *Contr.* No. 4358a  
 — v. Roberts (Can.); 12. *Contr.* p. 395; 27. *H. & W.* p. 660  
 — (Doe d.) v. Watson (Can.); 21. *Exon.* p. 589  
 Robertson v. Amazon Tug & Lighterage Co. (1881); 3. *Bailmt.* No. 216a  
 — v. Appalachee (Owners) (1926); 34. *Mast. & S.* Nos. 2370a, 2552a  
 — v. Daley (Can.); 21. *Estpl.* p. 581  
 — v. Duthie Steel Casement Co., Ltd. (N.Z.); 36. *Nuis.* p. 820  
 — v. Holland (Can.); 5. *Bkpcy.* p. 231  
 — v. Robertson's Executors (Scot.); 23. *Exors.* p. 613  
 Robertson (John) & Son, Ltd. v. Canadian Bank of Commerce (Can.); 3. *Bank.* p. 178  
 Robillard v. McCullough (Can.); 7. *B. of Sale*, p. 264  
 — v. St. Roch, The, & Charland (Can.); 1. *Adm.* p. 35  
 Robin, Collas & Co., Ltd. v. Theriault (Can.); 38. *Real Prop.* p. 856  
 Robins, *Re*, Holland v. Gillam (1928); 40. *Stillmts.* No. 1873  
 — v. Andrews (Can.); 2. *Arbn.* p. 147  
 — v. National Trust Co. (1927); 16. *Courts*, No. 653a; 30. *Jdgmts.* Nos. 588a, 614a, 631a  
 Robinson, *Re*, Wright v. Tugwell (1923); 8. *Char.* No. 1041a  
 — v. Assiniboia (Town) (Can.); 22. *Evid.* p. 594; 26. *Hghys.* p. 648  
 — v. Eves (Aus.); 1. *Agcy.* p. 60  
 — v. Long (Can.); 1. *Agcy.* p. 47; 2. *Agric.* p. 89  
 — v. McCauley (Can.); 5. *Bkpcy.* p. 229  
 — v. McIntosh (Can.); 21. *Exon.* p. 588  
 — v. Midland Bank, Ltd. (1925); 3. *Bank.* No. 282a  
 — v. Nesbitt (1920); 2. *Agric.* Nos. 30a, 30b  
 — v. Peters (Can.); 5. *Bkpcy.* p. 227; 7. *B. of Sale*, p. 265; 12. *Contr.* p. 402  
 — v. Randfontein Estates Gold Mining Co., Ltd. (S. Af.); 1. *Agcy.* p. 54; 9. *Coys.* p. 330  
 — v. Waters (Aus.); 2. *Animals*, p. 124  
 Robinson (J.) & Co. v. R. (1921); 1. *Action*, No. 90a  
 Robinson (R. S.) & Son, Ltd., *Re* (Can.); 4. *Bkpcy.* p. 194  
 Robinson, Fisher & Harding v. Behar (1927); 3. *Auct.* No. 280a  
 Robinson, Little & Co., *Ex p.*, *Re* Allan Grain Growers' Co-operative Assocn. (Can.); 4. *Bkpcy.* p. 204  
 Roblin Rural Credits Society v. Newton (Can.); 28. *Ind. Soc.* p. 694  
 Robson, *Ex p.*, *Re* Saffron Walden Election (1886); 20. *Elect.* No. 1075



- Robson, *Ex p.*, *Re* Sun Ray Manufacturing Co. (Can.); 9. *Coys.* p. 332
- Roch v. Roch (1926); 27. *H. & W.* No. 6042a
- Rochester & Chatham Joint Sewerage Board v. Clinch (1925); 2. *Agric.* No. 30e
- Rockingham Sisters of Charity v. R. (1922); 11. *Comp. Pche.* Nos. 216a, 323a
- Rockland Cocoa & Chocolate Co., *Re* (Can.); 4. *Bkpcy.* p. 202
- Rodda v. Godfrey (1926); 2. *Aliens*, No. 558a
- Rodden v. Goodman (Can.); 4. *Bkpcy.* pp. 209, 210
- Rodger v. Moran (Can.); 24. *Exors.* p. 615
- Rodney Case (Can.); 19. *Eccl.* p. 554
- Rodrigue v. Dostie & Vachon (Can.); 27. *H. & W.* p. 656
- Roe v. McNeil (Can.); 21. *Exon.* p. 589
- v. Russell (1928); 31. *L. & T.* No. 7254a
- Roemer, *Re* (Can.); 24. *Exors.* p. 616
- Rofe v. Smith's Newspapers, Ltd. (Aus.); 32. *Libel*, p. 750
- Roff v. British & French Chemical Manufacturing Co. & Gibson (1918); 2. *Arbn.* No. 841a
- v. Kreckler (Can.); 7. *B. of Sale*, p. 267
- Roger v. Hutcheson (Scot.); 2. *Agric.* pp. 82, 83
- Rogers, *Re* (Aus.); 5. *Bkpcy.* p. 234; 26. *Infsts.* p. 697
- v. Bathurst School District No. 2 (Trustees) (Can.); 19. *Educ.* p. 555
- v. Christchurch Rural District Council (1925); 17. *Damgs.* No. 29a
- v. Kingston (1825); 4. *Bkpcy.* No. 5039a
- v. Nanaimo Motors, Ltd. (Can.); 3. *Bailmt.* p. 160
- v. Ontario Bank (Can.); 31. *L. & T.* p. 737
- v. Weir (Can.); 22. *Evid.* p. 595
- Rogers (J. B.), Ltd. v. Harry Lesnie, Ltd. (Aus.); 39. *S. Goods*, p. 863
- Rogers Lumber Yards, Ltd. v. Jacobs (Can.); 32. *Lien*, p. 754
- Rogerson v. Reid (1830); 32. *Lien*, No. 208a
- Roman Catholic Separate School Trustees v. R. (1928); 17. *Dep.* Nos. 177a, 177c
- Ronald Frankau Productions, Ltd. v. Bell (1927); 12. *Contr.* No. 546c
- Rookwood's Case (1696); 11. *Const. L.* No. 175a
- Root, *Ex p.*, *Re* Robbins (Can.); 5. *Bkpcy.* p. 232
- Roper, *Re* (N.Z.); 11. *Confl.* p. 368
- Roray v. Nimpkish Lake Logging Co., Ltd. & Garland (Can.); 1. *Agcy.* p. 60
- Rosalind, The (1920); 1. *Adm.* No. 1483a; 3. *Bailmt.* No. 374b
- Rose v. Dilke Village (Can.); 16. *Courts*, p. 480
- Rose & Frank Co. v. Crompton (J. R.) & Brothers, Ltd. (1925); 12. *Contr.* Nos. 4, 297a, 2829a
- Rose & Laflamme, Ltd. v. Campbell, Wilson & Strathdee, Ltd. & Grand Trunk Pacific Ry. Co. (Can.); 8. *Carr.* p. 287
- Rose Street Foundry & Engineering Co., Ltd. v. India Rubber Gutta Percha & Telegraph Works Co., Ltd. (1928); 36. *Pats.* No. 688a
- Roseberry-Surprise Mining Co. v. R. (Can.); 28. *Inc. T.* p. 680
- Rosedale Produce Co., *Re, Ex p.* McGowan (Can.); 5. *Bkpcy.* p. 229
- Rosenberg, *Ex p.*, *Re* Cohen & Sweigman (Can.); 4. *Bkpcy.* p. 191
- v. The Maccabees (Can.); 16. *Cr. Pract.* pp. 493, 494
- Rosenblum, *Re*, Rosenblum v. Rosenblum (1924); 8. *Char.* Nos. 215a, 265a
- Rosenhain & Co. v. Commonwealth Bank of Australia (Aus.); 6. *B. of Exch.* p. 245
- Rosenthal v. Hess (Can.); 2. *Animals*, p. 122
- v. Hope & Hart (Can.); 5. *Bkpcy.* p. 243
- v. London County Council (1924); 8. *Carr.* No. 14a
- Roshko & Winnipeg School District No. 1, *Re, Re* Arbitration Act (Can.); 11. *Comp. Pche.* p. 361
- Ross v. Canadian Bank of Commerce (Can.); 1. *Agcy.* p. 40
- v. Creighton (Can.); 21. *Exon.* p. 588
- v. Fiset (Can.); 21. *Exon.* p. 588; 30. *Jdgmts.* p. 727
- v. Gorman (Can.); 32. *Lien.* p. 754
- v. Kobold (Can.); 1. *Agcy.* p. 68
- v. Laughton (1813); 18. *Discy.* No. 650a
- v. London County, Westminster & Parr's Bank (1919); 3. *Bank.* No. 691a
- v. Mason (Can.); 24. *Exors.* p. 618
- v. Perrault (Can.); 12. *Contr.* p. 408
- v. Rogers & Canadian National Rys. (Can.); 21. *Exon.* p. 591
- v. Ross (Can.); 23. *Exors.* p. 612
- v. — (Scot.); 11. *Confl.* p. 365; 36. *Parl.* p. 822
- v. Simpson (Can.); 21. *Exon.* p. 587
- v. Willards Chocolates, Ltd. (Can.); 34. *Mast. & S.* p. 771
- Ross (James) & Co. (Lime Wharf), Ltd. v. Stirlingshire Assessor (Scot.); 38. *Rates*, p. 852
- Ross Leaf Tobacco Co., Ltd. v. Canadian Freight Assocn. (Can.); 38. *Rys.* p. 850
- Rossetti (Owners) v. Dampskibsselskabet Magnus (Scot.); 1. *Adm.* pp. 27, 28
- Rossouw, etc. v. Hodgson (S. Af.); 4. *Bkpcy.* p. 203
- Rosyth Canadian Fund Trustees (Scot.); 8. *Char.* p. 308
- Roth (L.) & Co., Ltd. v. Taysen, Townsend & Co. & Grant & Grahame (1896); 12. *Contr.* No. 467a
- Rothschild v. Austrian Property Administrator (1923); 2. *Aliens*, No. 49f
- Rothwell v. Attwood (Can.); 1. *Agcy.* p. 70
- Rouch v. Wright (1841); 29. *Intpr.* No. 178a
- Rouleau v. Aledo S.S. (Can.); 1. *Adm.* p. 19
- Rountree v. Wood (Can.); 12. *Contr.* p. 401
- Roupell v. Haws (1863); 22. *Evid.* No. 1933a
- Rouse, *Re, Re* Ware, Ware v. Rouse (1926); 20. *Eqy.* Nos. 1873b, 2030a
- Routley v. Gorman & Coran (Can.); 6. *B. of Exch.* p. 256
- Rovira v. Appalachee (Owners) (1926); 34. *Mast. & S.* Nos. 2370a, 2552a
- Rowan & Eaton, *Re* (Can.); 38. *Real Prop.* p. 856
- Rowan S.S. v. Clan Malcolm S.S. (Scot.); 1. *Adm.* p. 28
- Rowe v. Butler (N.Z.); 1. *Agcy.* p. 59
- Rowe & Brown v. Public Trustee (N.Z.); 8. *Char.* p. 309
- Rowe Brothers & Co., Ltd. v. Lindgens (1920); 2. *Aliens*, No. 409a
- Rowland v. Air Council (1923); 11. *Const. L.* No. 348b; 30. *Jdgmts.* No. 187a
- Rowland & Mackenzie-Kennedy v. Air Council (1927); 30. *Jdgmts.* No. 187b; 36. *Pats.* No. 1673a
- Rowlands & Johnstone v. Holland (Can.); 1. *Agcy.* p. 56
- Rowlatt v. Garment (J. & G.) Manufacturing Co. (Can.); 5. *Bkpcy.* pp. 230, 231; 6. *B. of Exch.* p. 253
- Rowley v. Cook (Can.); 7. *Bldg. Contrs.* pp. 278, 279
- Rowlls, *Re*, Walters v. Treasury Solicitor, Rowlls v. Bebb (1900); 22. *Eqy.* No. 1068a
- v. Bebb, *Re* Rowlls, Walters v. Treasury Solicitor (1900); 22. *Eqy.* No. 1068a
- Rownson, Drew & Clydesdale v. Great Western, London, Midland & Scottish, London & North Eastern & Southern Ry. Cos. (1928); 8. *Carr.* No. 1245b

- Roxburgh v. Crosby & Co. (Aus.); 1. *Agcy.* p. 61  
 Roy v. Canadian Bank of Commerce (Can.); 3. *Bank.* p. 178  
 — v. St. John Lumber Co. (Can.); 1. *Agcy.* p. 49  
 Roy Wolf Brewing Co., *Re* (Can.); 31. *L. & T.* p. 737  
 Royal Agricultural Hall Co. v. Islington Assessment Committee (1918); 1. *Action*, No. 11  
 Royal Antediluvian Order of Buffaloes v. Owens (1927); 28. *Inc. T.* No. 58a  
 Royal Bank, *Ex p.*, *Re* J. Stanley Wedlock, Ltd. (Can.); 9. *Coys.* p. 331  
 Royal Bank & Rider, *Ex p.*, *Re* Longmore (Can.); 5. *Bkpcy.* p. 216  
 Royal Bank of Canada, *Ex p.*, *Re* Gaudreau (Can.); 7. *B. of Sale*, pp. 263, 265  
 —, *Ex p.*, *Re* Hamer (Can.); 5. *Bkpcy.* p. 243  
 — v. Allen (Can.); 6. *B. of Exch.* p. 252  
 — v. Doten (Can.); 3. *Bank.* p. 177  
 — v. Eastern Trust Co. (Can.); 5. *Bkpcy.* p. 220  
 — v. Frank (Can.); 12. *Contr.* p. 403  
 — v. Gold (Can.); 3. *Bank.* p. 177  
 — v. Gustafson (Can.); 8. *Chos.* p. 314  
 — v. Izen (Can.); 20. *Egy.* p. 569  
 — v. Kenward (Can.); 21. *Exon.* p. 591  
 — v. Larue (Can.); 5. *Bkpcy.* p. 241; 17. *Dep.* p. 516  
 — v. McBride (Can.); 3. *Bank.* pp. 176, 177  
 — v. R. (Can.); 30. *L. & T.* p. 733  
 — v. Van Buren & McKay (Can.); 21. *Exon.* p. 591  
 — v. Wye (Can.); 3. *Bank.* p. 177  
 Royal Commission of Wheat Supplies v. Usher & Co., Ltd. (Ir.); 2. *Arbn.* p. 145  
 Royal Commission on Sugar Supplies v. Kwik-Hoo-Tong Trading Society (1922); 2. *Arbn.* No. 949c  
 Royal Dress Co., *Ex p.*, *Re* Hudson Fashion Shoppe, Ltd. (Can.); 4. *Bkpcy.* p. 212  
 Royal Exchange Assurance v. Hope (1928); 29. *Insce.* No. 2993a  
 Royal Insurance Co., Ltd. v. Mylius (Aus.); 29. *Insce.* p. 710  
 — v. Stephen (1928); 28. *Inc. T.* No. 309a  
 Royal London Mutual Insurance Society v. Barrett (1928); 29. *Insce.* No. 2962a  
 Royal Star, The (1928); 1. *Adm.* No. 1597a  
 Royal Star, The (No. 2) (1928); 1. *Adm.* Nos. 1597a, 1604a  
 Royal Trust Co. v. Bonsall (Can.); 28. *Infsts.* p. 697  
 — v. Canadian Pacific Ry. Co. (Can.); 18. *Discy.* p. 532  
 — v. Kritzwiser (Can.); 21. *Exon.* p. 593  
 — v. Provincial Secretary, Treasurer of New Brunswick (Can.); 21. *E. D.* p. 575  
 Royal Trust Co.'s Case, *Re* Land Titles Act (Can.); 1. *Agcy.* p. 40  
 Royxel v. Royal Bank of Canada (Can.); 3. *Bank.* pp. 165, 178  
 Rozecki, *Re*, *Re* Dzydz (Can.); 28. *Infsts.* p. 697  
 Ruapehu, The (1927); 1. *Adm.* No. 579b  
 Ruapehu (Owners) v. Green (R. & H.) & Silley Weir, Ltd., The Ruapehu (1927); 1. *Adm.* No. 579b  
 Ruckmaboye v. Lulloobhoy Mottichund (1853); 17. *Dep.* No. 315b  
 — v. Lulloobhoy Mottichund (Ind.); 17. *Dep.* p. 524  
 Rudd v. Rudd (1924); 11. *Confl.* Nos. 55a, 903a, 935a, 1090a  
 Ruddell v. Georgeson (Can.); 38. *Rates*, p. 851  
 Rudder v. Lundin, *Re* Extra-Judicial Seizures Act (Can.); 7. *B. of Sale*, p. 267  
 Rudge v. Winnall (1849); 23. *Exors.* No. 5273b  
 Rudyard's Case (1670); 16. *Cr. Pract.* No. 656a  
 Ruf (T. A.) & Co. v. Pauwels (1919); 2. *Arbn.* No. 1152a  
 Rule v. Bradner (Can.); 12. *Contr.* p. 397  
 Rumsey v. Hare (Can.); 17. *Dep.* p. 515  
 Rungasamy Chetty, *Re* (S. Af.); 2. *Aliens*, pp. 114, 115  
 Rural Municipality Act, *Re*, *Re* Carrot River Rural Municipality, Minaker v. Sanderson (Can.); 20. *Elect.* p. 561  
 Rush, *Re* (1870); 21. *Exon.* No. 1882a  
 —, *Re*, Warre v. Rush (1923); 2. *Aliens*, No. 215k  
 — v. Pembina (Can.); 38. *Rates*, p. 853  
 Rushbrooke v. O'Sullivan & Hibernian Fire Insurance Co., Ltd. (Ir.); 18. *Discy.* p. 531  
 Ruskin v. Wasserman (S. Af.); 1. *Agcy.* p. 52  
 Russel v. Prat (1584); 23. *Exors.* No. 427  
 — v. — (1589); 23. *Exors.* No. 427  
 Russell v. Bates (Aus.); 33. *Mags.* p. 766  
 — v. Canada West Grain Co. (Can.); 1. *Agcy.* p. 41  
 — v. Davey (Can.); 35. *Mtge.* p. 812  
 — v. Ontario Foundation & Engineering Co. (Can.); 32. *Lien*, p. 754  
 — v. Russell (Can.) (1881); 21. *Exon.* p. 589  
 — v. — (1924); 3. *Basty.* No. 70a  
 — v. Russell & McKenna (Can.) (1927); 27. *H. & W.* p. 664  
 Russell & Harding, *Re* (1922); 2. *Agric.* No. 266r  
 Russian Commercial & Industrial Bank v. Comptoir d'Escompte de Mulhouse (1925); 10. *Coys.* No. 8523  
 Russian Mercantile Co., Ltd. v. Sloboda & Sloboda (Can.); 25. *Fraud. Conv.* p. 627  
 Russland, The (1924); 1. *Adm.* No. 781f  
 Rust v. Rust (Can.); 27. *H. & W.* p. 659  
 Rustom v. R. (Ind.); 17. *Dep.* p. 525  
 Ruthenian Catholic Mission of the Order of St. Basil the Great in Canada v. Mundare School District No. 1603 (Can.); 38. *Rates*, p. 851  
 Ruthenian Farmers Elevator Co. v. Gniazdoski (Can.); 6. *B. of Exch.* p. 247  
 Rutherford v. Inland Revenue Comrs. (Scot.); 28. *Inc. T.* pp. 692, 693  
 — v. Stovel (Can.); 26. *Guar.* p. 611  
 — v. Trust Houses, Ltd. (1926); 24. *Fact.* No. 206a  
 Rutledge v. Anderson (Can.); 35. *Misrep.* p. 804  
 Ruttan v. Weller (Can.); 21. *Exon.* p. 588  
 Rutter v. Orde (Can.); 30. *L. & T.* p. 733  
 — v. Palmer (1922); 3. *Bailmt.* No. 140a  
 Ryan v. Trask (Can.); 28. *Infsts.* p. 697  
 Ryan & Vancouver District Registrar of Titles, *Re* (Can.); 38. *Real Prop.* p. 856  
 Rye Farm Co. v. British Oak Insurance Co., Ltd. (Can.); 2. *Arbn.* p. 142
- S.
- S., *Re* (Can.); 3. *Basty.* p. 187  
 —, *Re*, *Re* Equal Guardianship of Infants Act (Can.); 3. *Basty.* p. 187  
 — v. S. & P. (1927); 27. *H. & W.* No. 4280a  
 Sabatier v. Trading Co. (1927); 13. *Corpn.* No. 1544a  
 Sabjan Bibi v. Ashanulla Bepari (Ind.); 36. *Partn.* p. 823  
 Sack v. Jones (1925); 7. *Bounds. & F.* No. 251a; 19. *Easmt.* No. 1226a  
 Sadler v. Auckland Co-operative Society, Ltd. (N.Z.); 28. *Ind. Soc.* p. 694  
 Sadler (A. L.) & Son v. Thorpe (1927); 34. *Mast. & S.* No. 3702a

- Saffron Walden Election, *Re, Ex p. Robson* (1886); 20. *Elect.* No. 1075**
- Sagaporack, The, The Hontestroom (1927); 1. *Adm.* No. 1642a**
- Saheebolay v. Woolfson (S. Af.); 31. *L. & T.* p. 736**
- Said v. Butt (1920); 35. *Misrep.* No. 445a**
- St. Anne's Well Brewery Co. v. Roberts (1928); 30. *Jdgmts.* No. 506a; 31. *L. & T.* No. 4882a; 36. *Nuis.* No. 316a**
- St. Bartholomew's Hospital (Governors), *Ex p.* (1928); 8. *Char.* No. 2353a**
- St. Boniface School District v. Macdonald (Can.); 2. *Arbn.* p. 137**
- St. Brigids (Parish), Iberville (County), P. Q. v. Canadian National Rys. (Can.); 38. *Rys.* p. 850**
- St. Charles, The (1927); 1. *Adm.* Nos. 1406a, 1422a**
- St. Clair v. Audney (Scot.); 1. *Adm.* p. 29**
- St. Denis v. Western Products, Ltd. (Can.); 12. *Contr.* p. 389**
- St. Eloi v. Eno (Can.); 27. *H. & W.* p. 657**
- St. Gregor Mercantile Co. v. Halbach & Bank of Montreal (Can.); 25. *Fraud. Conv.* p. 628**
- St. Helens Tramways Co. v. Wood (1891); 13. *Corpn.* No. 907a**
- St. Hyacinthe (Œuvre du Patronage de) v. St. Hyacinthe (City) (Can.); 38. *Rates*, p. 853**
- St. John (Doe d.) v. Hore (1799); 22. *Evid.* No. 2475a**
- St. John & Quebec Ry. Co. v. Bank of British North America & Hibbard Co. (Can.); 8. *Chos.* pp. 313, 314**
- St. John County Hospital v. Peck (Can.); 21. *Estpl.* p. 582**
- St. John River Log Driving Co., *Re* (Can.); 10. *Coys.* p. 345**
- St. John's Church, *Re* (Can.); 19. *Eccl.* p. 553**
- St. Louis Rural Municipality v. Markham (Can.); 1. *Action*, p. 2**
- St. Magnus the Martyr, London Bridge (1925); 19. *Eccl.* No. 2831**
- St. Michaels College v. Toronto City Corpn. (Can.); 11. *Comp. Pche.* p. 356**
- St. Nicholas Acons (Rector & Churchwardens) v. London County Council (1928); 7. *Burial*, Nos. 300c, 309a**
- St. Paul's Warden, etc. v. Kettle (1813); 19. *Eccl.* No. 3455b**
- St. Philip, The (1747); 2. *Aliens*, No. 419a**
- St. Tudno, The (1918); 1. *Adm.* Nos. 648a, 650b**
- Salaman (Trustee), *Ex p.*, *Re* Collins (1925); 5. *Bkpcy.* No. 6659a**
- Salaman, *Ex p.*, *Re* Wilson (1926); 4. *Bkpcy.* No. 1894b**
- Salaman's Trustee, *Ex p.*, *Re* Wethered, Trustee v. Bance (1926); 5. *Bkpcy.* Nos. 6858a, 7483a; 12. *Contr.* No. 1459a**
- Sale of Shares Act, *Re*, United Grain Growers, Ltd.'s Case (Can.); 10. *Coys.* p. 339**
- Sale of Shares Act & Municipal & Public Utility Board Act, *Re* (Can.); 17. *Dep.* p. 519**
- Saleh Mahomed Umer Doosal v. Nathoomal Kessamal (Ind.); 2. *Arbn.* p. 143**
- Salle Extension University, La v. Freeman (Can.); 10. *Coys.* p. 351**
- Salles' Application, *Re* (1927); 36. *Pats.* No. 709a**
- Salsbury v. Bagott (1677); 28. *Infsts.* No. 454a**
- Salter & Arnold, Ltd. v. Dillman (Can.); 21. *Exon.* p. 587**
- v. Dominion Bank (Can.); 1. *Agcy.* p. 67; 5. *Bkpcy.* pp. 216, 221, 228, 229, 236, 237**
- Salters (Joseph) Sons, Ltd. v. Bank of Nova Scotia (Can.); 3. *Bank.* p. 177**
- Salti et Fils v. Procurator-General (1919); 2. *Aliens*, No. 392a**
- Salveson (or von Lorang) v. Property Administrator (1927); 11. *Conf.* Nos. 926a, 944b**
- Salway v. Salway (1770); 8. *Chos.* No. 12a**
- Sammon v. Byrne (Ir.); 31. *L. & T.* pp. 745, 746**
- Sampson v. Robertson (Can.); 26. *Hghys.* p. 651**
- v. Thomas (Can.); 27. *H. & W.* p. 659**
- Samson v. Butt (N.Z.); 35. *Mistake*, p. 805**
- v. McKay (N.Z.); 1. *Agcy.* p. 63**
- Samuelson v. Schwandt (Can.); 24. *Exors.* p. 815**
- San Onofre, The (1917); 1. *Adm.* Nos. 780a, 780b**
- Sanchar's (Lord) Case (1612); 14. *Crim.* No. 961a**
- Sanderson & Son v. Armour & Co., Ltd. (Scot.); 2. *Arbn.* p. 130**
- Sandgate Urban District Council v. Kent County Council (1898); 26. *Hghys.* No. 1228a**
- Sandison v. Order of Elks (Can.); 31. *L. & T.* p. 741**
- Sandusk Creek Bridge, *Re* (Can.); 26. *Hghys.* p. 654**
- Sandwich v. Union Natural Gas Co. (Can.); 25. *Gas*, p. 638**
- Sankey v. R. (Can.); 14. *Crim.* p. 453; 22. *Evid.* p. 601**
- Sanquire's (Lord) Case (1612); 14. *Crim.* No. 961a**
- Sansar Chand v. Karam Chand (Ind.); 10. *Coys.* p. 348**
- Santa Singh, *Re* (Can.); 2. *Aliens*, p. 113**
- Sap v. Picard (Can.); 2. *Aliens*, p. 107**
- Sapera Tobacco Co. v. Royal Bank of Canada (Can.); 5. *Bkpcy.* p. 220**
- Sapiro v. Leader Publishing Co. (Can.); 32. *Libel*, p. 751**
- Sarat Chandra Chakravarti v. Tarah Chandra Chatterjee (Ind.); 9. *Coys.* p. 327**
- Sargant (W. J.) & Sons v. Paterson (Eric) & Co. (1923); 12. *Contr.* Nos. 3090a, 3094a**
- Sarjeant, *Re, Ex p.* Official Receiver (1923); 4. *Bkpcy.* Nos. 1808a, 4559a**
- Sartori v. Reynolds, Ltd. (Aus.); 2. *Animals*, p. 121**
- Saskatchewan Co-operative Elevator Co., Ltd., *Re, Re* Companies Winding Up Act (Can.); 2. *Agric.* p. 79**
- Saskatchewan Co-operative Elevator Co., Ltd. v. Canadian Pacific Ry. Co. (Can.); 7. *B. of Sale*, p. 267**
- Saskatchewan Co-operative Wheat Producers, Ltd., *Re, Re* Senger & Houck (Can.); 2. *Agric.* p. 89.**
- Saskatchewan Co-operative Wheat Producers, Ltd. v. Zurowski (Can.); 17. *Damgs.* p. 505**
- Saskatchewan General Trust Corpn., Ltd.'s Case, *Re* Land Titles Act (Can.); 5. *Bkpcy.* p. 226**
- Saskatchewan Highways Department v. Canadian National Rys. (Can.); 38. *Rys.* p. 850**
- Saskatoon Hardware Co. v. McManus (Can.); 21. *Exon.* p. 593**
- Sasson v. Sasson (1924); 16. *Courts*, No. 956a**
- Sassoon (M. A.) & Sons, Ltd. v. International Banking Corpn. (1927); 6. *B. of Each.* No. 2049a; 17. *Deeds*, No. 1678a**
- Satchidinanda Dutt v. Nriya Nath Mitter (Ind.); 1. *Agcy.* p. 59**
- Saudry v. Hampton (N. Z.); 24. *Exors.* p. 815**
- Saunders, *Re*, Park v. Austin (N. Z.); 22. *Evid.* p. 597**
- Saunders Alberta Collieries, Ltd., *Re* (Can.); 4. *Bkpcy.* p. 198**
- Sausage Manufacturers' Assocn. v. London, Midland & Scottish Ry. Co., London & North Eastern Ry. Co., Great Western Ry. Co., Southern Ry. Co., & Cheashire Lines Committee (1924); 8. *Carr.* No. 1323c**
- Savage South Africa, Ltd. v. London Exhibitions, Ltd. (1899); 28. *Injon.* No. 638a**
- Savard v. Tremblay (Can.); 6. *B. of Each.* p. 250**



# TABLE OF

- v. Laplante* (Can.); 12. *Contr.* p. 391  
*Savord v. Desjardins* (Can.); 21. *Exon.* p. 591  
*Sawezuk v. Padgett* (Can.); 30. *Intro.* p. 721  
*Sawyer-Massey v. Schley* (Can.); 36. *Prtnrs.* p. 825  
*Saxicava, The* (1924); 1. *Adm.* No. 969a  
*Sayre v. Gilfoy* (Can.); 21. *Exon.* p. 587  
*Scaife v. Public Trustee, Re Bradford City Premises* (1928); 36. *Open Sp.* No. 24a  
*Scales v. Thompson* (George) & Co., Ltd. (1927); 28. *Inc. T.* No. 112a  
*Scammell (G.), Ltd. v. Attlee* (1928); 38. *Pub. Auth.* No. 854a  
*Sceptre Hardware Co., Re* (Can.); 4. *Bkpcy.* p. 213  
*Schaffer v. Tubby, Smith & Co., Ltd.* (Can.); 6. *B. of Exch.* p. 249  
*Schaverien v. Morris* (1921); 6. *B. of Exch.* No. 213  
*Schechter v. Schnier* (Can.); 17. *Deeds*, p. 510  
*Schierhout v. Union Government* (S. Af.); 11. *Const. L.* p. 379; 17. *Dep.* p. 513  
*Schnapper, Re* (1928); 11. *Confl.* No. 548a  
*Schneider v. Heath* (1813); 39. *S. Goods*, No. 643c  
*Schnier v. Schechter* (Can.); 17. *Deeds*, p. 510  
*Schofield v. Glenn & Babb* (Can.); 2. *Animals*, p. 119  
— *v. Tummonds* (Can.); 12. *Contr.* p. 390  
*Schonberner v. Barron* (Can.); 36. *Negl.* p. 816  
*Schostall v. Johnson* (1919); 1. *Agcy.* No. 3027a  
*Schroder v. Ward* (1863); 3. *Bailmt.* No. 224  
*Schultz v. Alloway* (Can.); 38. *Rates*, pp. 853, 854  
— *v. Can. Surety Co.* (Can.); 26. *Guar.* p. 642  
*Schurr, Re* (Aus.); 2. *Aliens*, p. 105  
*Scoble v. Woodward* (Can.); 17. *Damgs.* p. 503  
*Scollick v. Scollick* (1927); 27. *H. & W.* No. 5588b  
*Scotland Woollen Mills Co., Re* (Can.); 4. *Bkpcy.* p. 202  
*Scott, Re* (Aus.); 4. *Bkpcy.* p. 190  
—, *Re, Ex p. Official Receiver* (1921); 5. *Bkpcy.* No. 8435a  
—, *Re, Scott v. Scott* (1926); 24. *Exors.* No. 8270a  
— *v. Angus* (Can.); 21. *Exon.* p. 588  
— *v. A.-G. for Canada* (1923); 17. *Dep.* No. 200b  
— *v. Berkeley* (1847); 10. *Coys.* No. 8595a  
— *v. Calgary & Riddock* (Can.); 26. *Hghys.* p. 650  
— *v. Imperial Loan Co.* (Can.); 38. *Rates*, p. 853  
— *v. McCabe* (Can.); 18. *Distr.* p. 538  
— *v. M'Donald* (Can.); 26. *Guar.* p. 642  
— *v. Montgomery* (Can.); 17. *Deeds*, p. 509  
— *v. Moose Jaw Motors, Ltd. & J. Hanna, Ltd.* (Can.); 7. *B. of Sale*, p. 267  
— *v. Scott* (Ir.); 20. *Egy.* p. 566  
— *v. Scott, Re Scott* (1926); 24. *Exors.* No. 8270a  
— *v. Supple* (Can.); 23. *Exors.* p. 614  
— *v. Winnipeg Electric Co.* (Can.); 38. *Rys.* p. 849  
— *v. Woodford Municipal District* (Can.); 18. *Distr.* p. 539  
*Scott & Beard's Patent, Re, Re Beard & Scott's Patent* (1927); 36. *Pats.* Nos. 1557b, 1687a, 1706a  
*Scott (Donald H.) & Co., Ltd. v. Barclays Bank, Ltd.* (1923); 3. *Bank.* No. 756a  
*Scott & Oshawa Town, Re* (Can.); 2. *Arbn.* p. 145; 11. *Comp. Pche.* pp. 356, 360  
*Scott & Peden v. Elliott* (Can.); 12. *Contr.* p. 408  
*Scott & Sons v. Del Sel* (Scot.); 2. *Arbn.* pp. 130, 131  
*Scott Paper Co. v. Drayton Paper Works, Ltd.* (1927); 22. *Evid.* No. 535a  
*Scottish Canadian Asbestos Co., Re, Allen v. Hanson* (Can.); 10. *Coys.* p. 351  
*Scottish Life Co. v. Donald* (Scot.); 27. *H. & W.* p. 657  
*Scottish Woollen Technical College v. Inland Revenue Comrs.* (Scot.); 28. *Inc. T.* p. 673  
*Scotton v. Bridge & Co., Ltd.* (Aus.); 3. *Bailmt.* p. 161  
*Scragg, Re* (Can.); 7. *B. of Sale*, p. 266  
*Scranton's Trustee v. Pearse* (1922); 4. *Bkpcy.* No. 1894a  
*Scrimaglio v. Thornett & Fehr* (1924); 2. *Arbn.* Nos. 135a, 1857b, 1912b  
*Sculthorpe, Re* (Can.); 23. *Exors.* p. 611  
*Scythes v. Gibsons, Ltd.* (Can.); 31. *L. & T.* p. 735  
*Scythes & Co., Ex p., Re Gold Medal Furn. Mfg. Co.* (Can.); 35. *Mistake*, p. 805  
*Seabourne v. Powel* (1686); 21. *Estpl.* No. 993a  
*Seager v. Seager* (1925); 16. *Courts.* No. 969a  
*Seaman, Re* (1808); 33. *Lunat.* No. 827b  
*Searle v. Alliance Insurance Co.* (Can.); 2. *Arbn.* pp. 129, 130  
— *v. Alliance Insurance Co.* (No. 3) (Can.); 29. *Insce.* p. 714  
*Searle, Hoare & Co., Re, Ex p. Trustee* (1924); 4. *Bkpcy.* Nos. 3210a, 4484a  
*Secret, The, The Innisfail* (1876); 1. *Adm.* No. 1280a  
*Secretary of State v. Har Kishan Das-Kura Mal* (Ind.); 8. *Carr.* p. 287  
*Secretary of State for Home Affairs v. O'Brien* (1923); 16. *Cr. Pract.* Nos. 470, 601, 682a, 801  
*Secretary of State for India v. Raja Parthasarathy Appa Rao* (Ind.); 17. *Dep.* pp. 522, 524  
*Secretary of State for India in Council v. Raja Jyoti Prashad Singh* (Ind.); 16. *Courts.* p. 482  
*Secretary of State for India in Council v. Volkart Brothers* (Ind.); 30. *L. & T.* pp. 734, 735  
*Secretary of State for War v. Middlesex County Council* (1923); 11. *Const. L.* No. 515a  
— *v. Midland Great Western Ry. Co. of Ireland* (Ir.); 8. *Carr.* p. 286  
*Secretary of State of Canada v. Greenshields, Ltd.* (Can.); 2. *Aliens*, p. 102  
— *v. Neitzke* (Can.); 2. *Aliens*, p. 100  
— *v. Wiehmayer* (Can.); 2. *Aliens*, p. 100  
*Security Lumber Co. v. Anaka* (Can.); 32. *Lien*, p. 754  
*Security Lumber Co., Ltd. v. Koskie* (Can.); 32. *Limit. of A.* p. 756  
*Seddon v. Commercial Salt Co., Ltd.* (1925); 18. *Discy.* No. 127a  
*Sedgwick Collins & Co. v. Rossia Insurance Co. of Petrograd* (1926); 10. *Coys.* No. 8527a; 11. *Confl.* No. 1307b; 21. *Exon.* No. 2170a  
*Sedgwick Collins & Co., Ltd. v. Rossia Insurance Co. of Petrograd* (1927); 10. *Coys.* No. 8527a  
*Seeley & Co. v. Brown* (Can.); 28. *Inc. T.* p. 686  
*Seguier v. Dufresne* (Can.); 5. *Bkpcy.* pp. 234, 235  
*Seignior & Wolmer's Case* (1623); 34. *Mast. & S.* No. 962a  
*Selby v. Bannigan* (Aus.); 24. *Fact.* p. 620  
*Seller v. Work* (1801); 1. *Agcy.* No. 981a  
*Sellers (E. H.) & Sons, Ltd., Ex p., Re Marsden* (1921); 4. *Bkpcy.* No. 1253a  
*Semet-Solvay Co. v. Comr. of Patents* (Can.); 36. *Pats.* pp. 827, 828  
*Semple v. Holland* (1863); 35. *Name*, No. 64a  
— *v. Sharp* (Can.); 1. *Agcy.* p. 65; 27. *H. & W.* p. 656  
*Seneca, Ship v. Macdonald* (Can.); 1. *Adm.* p. 34  
*Seng Djit Hin v. Nagurdas Purshotumdas & Co.* (1923); 12. *Contr.* No. 3101a  
*Senger & Houck, Re, Re Saskatchewan Co-operative Wheat Producers, Ltd.* (Can.); 2. *Agric.* p. 89  
*Senior v. Wolmer* (1623); 34. *Mast. & S.* No. 962a



- Co. v. Robinson (Can.); **32. Libel**, pp. 750, 751  
 Sergeant, *In the Goods of* (1872); **22. Evid.** No. 1418a; **23. Exors.** No. 734a .1418a;  
**23. Exors.** No. 734a  
 Seshgiri Shambhulingam v. Manjayya (Ind.); **17. Dep.** p. 525  
 Sethu v. Palani (Ind.); **3. Bast.** p. 184  
 Severn v. R. (Can.); **17. Dep.** p. 521  
 Sewell v. Hnatiw & Hnatiw (Can.); **35. Mtge.** p. 811  
 Sexsmith, *Re* (Can.); **20. Eqq.** p. 568  
 Seymour v. Pratt (Can.); **23. Exors.** p. 612  
 — v. Reed (1927); **28. Inc. T.** No. 502  
 Shafto, *Re*, Fawcett v. Shafto (1903); **20. Eqq.** No. 2075a  
 Shaik Abdul Karim v. Thakurdas Thakur (Ind.); **28. Infts.** p. 697  
 Shakespeare Memorial Trust, *Re*, Lytton (Earl) v. A.-G. (1923); **8. Char.** Nos. 73a, 195a, 2146a  
 Shakool & Co. v. Finlay Fleming & Co. (Ind.); **17. Damgs.** p. 506  
 Shanagan v. Shanagan (Can.); **25. Fraud. Conv.** p. 629  
 Shankey, *Ex p.*, *Re* Lawson (Can.); **7. B. of Sale**, p. 265  
 Shanks v. Inland Revenue Comrs. (1928); **28. Inc. T.** Nos. 11a, 24a, 674c  
 Shantz & Hallman, *Re* (Can.); **32. Limit. of A.** p. 757; **35. Mtge.** p. 811  
 Sharp v. Sparkes (1926); **30. Intox.** Nos. 9a, 607a  
 Sharp (John) & Sons, Ltd. v. Katherine Mackall, The (Aus.); **1. Adm.** p. 36  
 Sharpe v. Southern Ry. Co. (1925); **8. Carr.** No. 560a  
 Sharpe & Dohme Incorporated v. Boots Pure Drug Co., Ltd. (1927); **18. Discy.** No. 1631a  
 Shatford v. B. C. Wine Growers, Ltd. (Can.); **12. Contr.** p. 388  
 Shatilla v. Feinstein (Can.); **17. Damgs.** p. 506  
 Shaver v. Goldhar (Can.); **25. Fraud. Conv.** p. 627  
 Shaw, *Re* (Can.); **3. Bank.** p. 178; **5. Bkpcy.** p. 243  
 —, *Re*, *Ex p.* Official Receiver (1920); **4. Bkpcy.** No. 434a; **5. Bkpcy.** No. 8771a  
 — v. Jones (N.Z.); **12. Contr.** p. 388  
 — v. Neale (1855); **30. Jdgmts.** No. 368a  
 — v. — (1858); **30. Jdgmts.** No. 368a  
 — v. Robinson (Can.); **34. Mines**, p. 801  
 — v. Shaw (Can.); **37. Powers**, p. 841  
 Shaw (Walter W.) Co., Ltd., *Re* (Can.); **4. Bkpcy.** p. 201  
 Shaw Wallace & Co. v. Amritsar National Bank (In Liquidation) (Ind.); **3. Bank.** p. 179  
 Shea v. Boschetti, *Re* Peile (1858); **4. Bkpcy.** No. 4772b  
 Sheaf Brook, The (1926); **1. Adm.** Nos. 565a, 874a, 876a  
 Shearer v. Smoky Lake Municipal District (Can.); **38. Rates**, p. 853  
 Shears v. Mendeloff (1914); **22. Evid.** No. 55d  
 Shears & Sons, Ltd. v. Jones (1922); **7. B. of Sale**, No. 110a  
 Sheaser v. Sheaser (Can.); **11. Confl.** p. 373  
 Sheay v. Tite (B. W.) & Sons (1927); **34. Mast. & S.** No. 3530b  
 Shecomb v. Hawkins (1612); **30. L. & T.** No. 1197a  
 Shee v. Baker (1927); **28. Inc. T.** No. 442  
 Sheepwash v. Deer Mountain Lumber Co. (Can.); **32. Lien**, p. 754  
 Sheo Narain v. East Indian Ry. (Ind.); **8. Carr.** p. 288  
 — v. Bruner (Can.); **28. Infts.** p. 695  
 Shepard & Morse Lumber Co. Incorporated v. Mathers (I. H.) & Son (Can.); **1. Agcy.** p. 75  
 Shephard v. Shephard (Can.); **25. Fraud. Conv.** p. 628  
 Shepherd, *Re*, Smithem v. Shepherd (1921); **8. Char.** No. 12a  
 — v. Livingston (Can.); **8. Chos.** p. 314  
 — v. Robinson (1919); **3. Barr.** No. 323a  
 Sheppard v. Dry (1840); **6. B. of Exch.** No. 709a  
 — v. First International Bank of Sweet Grass (Can.); **3. Bank.** p. 165  
 Sherborne's (Lord) Settled Estate, *Re* (1928); **30. Land Imp.** No. 79a  
 Sherbrooke Corp'n. v. Canadian Pacific Ry. Co. (Can.); **38. Rys.** p. 849  
 Sherbrooke Machinery Co., Ltd. v. Hydraulic Co., Ltd. (Can.); **36. Pats.** p. 828  
 Sheriff v. McKeen (Can.); **7. B. of Sale**, p. 266  
 Sherrard v. Barron (Ir.); **1. Agcy.** p. 55  
 Sherrin v. Wiggins (Can.); **40. S. Land**, p. 866  
 Sheru & Gama v. R. (Ind.); **14. Crim.** p. 440  
 Sherwin Estate, *Re*, *Re* Langley Estate (Can.); **28. Infts.** p. 697  
 Sherwood v. Sherwood (1928); **27. H. & W.** No. 5498a  
 Shewchuk v. Seafred (Can.); **2. Agric.** p. 89; **38. Rates**, p. 853  
 Shinbane v. Minuk (Can.); **38. Real Prop.** p. 856  
 Shipway Iron Bell & Wire Manufacturing Co., Ltd., *Re* (Can.); **10. Coys.** pp. 341, 342  
 Shirley, *Re* (Can.); **4. Bkpcy.** p. 193  
 Short v. Edwards (1795); **22. Evid.** No. 301a  
 — v. Lambe (Ir.); **1. Agcy.** p. 52  
 — v. Poole Corp'n. (1926); **19. Educ.** No. 302a  
 — v. Taylor (1709); **36. Nuis.** No. 567a  
 Shortal v. Buchanan (N.Z.); **1. Agcy.** p. 46  
 Shrives & McKenzie Pty., Ltd., *Re* (Aus.); **10. Coys.** p. 344  
 Shtitz v. Canadian National Rys. (Can.); **1. Action**, p. 2; **36. Negl.** p. 818  
 Shubrati v. Shams-Uddin (Ind.); **33. Mal. Pros.** p. 768  
 Shukin v. Demosky (Can.); **17. Deeds**, p. 509  
 Shulman, *Re*, *Re* Grocery Specialty Co. (Can.); **5. Bkpcy.** p. 233  
 Shupe v. Langenburg Rural Municipality (Can.); **7. Bounds. & F.** p. 272  
 Shure, *Ex p.*, R. v. Brixton Prison (Governor) (1926); **5. Bkpcy.** No. 8534a; **16. Cr. Pract.** No. 585a  
 Shuter v. Graham (Can.); **21. Exon.** p. 588  
 — v. Ridgway (S. Af.); **6. B. of Exch.** p. 254  
 Shuttleworth v. Cox Brothers & Co. (Maidenhead), Ltd. (1927); **9. Coys.** No. 3704a  
 — v. Vancouver General Hospital (Can.); **36. Nuis.** pp. 819, 820  
 Sibisi v. Hermansberg Mission Society (S. Af.); **2. Aliens**, pp. 98, 107  
 Sickles v. Asselstine (Can.); **23. Exors.** p. 611  
 Sidh Gopal v. Bihari Lal (Ind.); **24. Fam. Arr.** p. 622  
 Sidney Lee (Exeter), Ltd. v. James (1928); **34. Mast. & S.** Nos. 3545a, 4012a  
 Sigerseth v. Pedersen (Can.); **34. Mast. & S.** p. 773  
 Signal Hill Oils Co., Ltd. v. London Oil Securities, Ltd. (Can.); **9. Coys.** p. 324  
 Sigurdson v. Robinson (William) Co., Ltd. (Can.); **2. Arbn.** p. 134  
 Silber's Settlement, *Re*, Public Trustee v. Silber (1920); **5. Bkpcy.** Nos. 5821a, 6295a  
 Silverman v. Imperial London Hotels, Ltd. (1927); **12. Contr.** No. 5168a; **36. Negl.** No. 267a  
 — v. Legree (Can.); **1. Agcy.** pp. 45, 56  
 Simback v. Saga, The (Can.); **1. Adm.** p. 28  
 Simeons (C.) & Co. v. Durand's Trustee (1928); **5. Bkpcy.** No. 6507a

- Simms v. Chernenkoff** (Can.); **11. Confl.** p. 370  
 — **v. Hodder** (Nfld.); **1. Adm.** p. 24  
**Simon-Carves, Ltd. & Robinson's Patent, Re** (1928); **36. Pats.** No. 412a  
**Simonin v. Philion** (Can.); **6. B. of Exch.** pp. 252, 253  
**Simonson, Re, Simonson v. Slaaten** (Can.); **28. Infts.** p. 697  
**Simpson, Re** (Can.); **23. Exors.** p. 614  
 — **v. Batey** (1924); **2. Agric.** No. 29a  
 — **v. Chamberlain** (Can.); **29. Insce.** p. 711  
 — **v. Finlayson** (Aus.); **34. Mast. & S.** p. 775  
 — **v. O'Sullivan** (1840); **35. Mtge.** No. 1279a  
 — **(Doe d.) v. Privat** (Can.); **21. Exon.** p. 587  
 — **v. Weber** (1925); **19. Easmt.** Nos. 204a, 1322a, 1322b  
**Simpson & Ors v. Cousins** (Can.); **12. Contr.** p. 413  
**Simpson Estate, Re** (Can.); **17. Dep.** p. 523  
**Sims v. Seller** (Can.); **2. Arbn.** p. 136  
**Simson v. Miatt** (1929); **31. L. & T.** Nos. 7037a, 7351a, 7352d, 7359a  
**Sinanide v. Maison Kosmeo** (1928); **13. Coprt.** Nos. 43b, 91a, 408a  
**Sinclair v. Land Settlement Board** (Can.); **7. Bldg. Conts.** p. 279  
 — **v. Rankin** (Scot.); **3. Basty.** p. 188  
 — **v. Walker** (Can.); **2. Animals**, pp. 125, 128  
**Sing Yim Hong, Re, Re Mah Shin Shong** (Can.); **2. Aliens**, p. 114  
**Singha (Dr. R. N.) v. Secretary of State for India in Council** (Ind.); **17. Dep.** p. 522; **28. Inc. T.** p. 690.  
**Singleton Abbey, S.S. v. Paludina, S.S.** (1927); **1. Adm.** No. 1114a  
**Sinwick v. Elfros** (Can.); **18. Distr.** p. 540  
**Sir W. C. Leng & Co. (Sheffield Telegraph), Ltd. v. Sillitoe** (1928); **25. Gaming**, No. 415c  
**Sissons v. Hassard** (Can.); **9. Coys.** p. 325  
**Sivier v. Harris** (1876); **18. Discy.** No. 1677a  
**Skale v. Becker** (Can.); **6. B. of Exch.** p. 251  
**Skaleski, Re, Popham v. Bertrand** (Can.); **28. Infts.** p. 697  
**Skeate v. Slaters, Ltd.** (1914); **22. Evid.** No. 55e  
**Skeele, Re** (Can.); **5. Bkpcy.** p. 221  
**Skidmore v. Bullock, Iade & Co., Ltd.** (1928); **34. Mast. & S.** No. 2179a  
**Skinner v. Sanders, Re Morris** (1927); **21. E. D.** No. 209a  
**Skipp v. Kelly** (1926); **12. Contr.** No. 2190a  
**Skipper v. Syrmis** (Aus.); **1. Agcy.** p. 38  
**Skipwith v. Skipwith** (1929); **27. H. & W.** Nos. 5531a, 5537a  
**Slack v. Leeds Industrial Co-operative Society, Ltd.** (1923); **19. Easmt.** No. 1399  
 — **v. Leeds Industrial Co-operative Society, Ltd.** (1924); **19. Easmt.** Nos. 1399, 1399a, 1444a  
**Sladden, Ex p., Re Gordean Furniture Co.** (Can.); **4. Bkpcy.** p. 210  
**Slade, Ex p., R. v. Southampton County Confirming Committee** (1928); **30. Intox.** Nos. 292a, 293a  
**Slade, Re, Crewkerne United Breweries, Ltd. v. Slade** (1921); **4. Bkpcy.** No. 4335a  
 — **v. Pattison** (1835); **38. Real Prop.** No. 159a  
**Slavonski v. Pelleterie de Roubaix Societe Anonyme** (1927); **17. Damgs.** No. 227a  
**Sletto v. Adams** (Can.); **1. Agcy.** p. 65  
**Slingerland v. Massey Manufacturing Co.** (Can.); **21. Exon.** p. 587  
**Sloan v. Ottawa Car Manufacturing Co.** (Can.); **7. B. of Sale**, p. 266  
**Sloane v. Cadogan** (1808); **8. Chos.** No. 624a  
**Slocan Municipal Election, Re** (Can.); **20. Elect.** p. 562  
**Slocomb v. Hawkins** (1612); **30. L. & T.** No. 1197a  
**Sloggett v. Sloggett** (1928); **27. H. & W.** No. 5076a  
**Small v. Packard** (Can.); **23. Exors.** p. 606  
**Small & Sons, Ltd. v. Middlesex Real Estates, Ltd.** (1921); **7. Bldg. Conts.** Nos. 129a, 147a  
**Smart v. Perthshire Education Authority** (Scot.); **19. Educ.** p. 558  
 — **v. Smart** (Scot.); **23. Exors.** p. 606  
 — **v. Wilkinson** (Scot.); **35. Misrep.** p. 804; **40. Set-off**, p. 869  
**Smeeton, Ltd. (In Liquidation), Re** (N.Z.); **10. Coys.** p. 345  
**Smiles v. Belford** (Can.); **17. Dep.** p. 516  
**Smiley v. Evans** (Can.); **20. Elect.** p. 561  
**Smith, Ex p., Re Smith** (1812); **5. Bkpcy.** No. 7089a  
 — **Ex p., R. v. "Daily Mail" (Editor & Proprietors)** (1927); **16. Cntmpt.** No. 283a  
 — **Ex p., R. v. Daily Mirror** (1927); **16. Cntmpt.** No. 283a  
 — **Ex p., R. v. Kent JJ.** (1928); **16. Cr. Pract.** Nos. 1466a, 3433a  
 — **Re, Ex p. Smith** (1812); **5. Bkpcy.** No. 7089a  
 — **Re, Re Land Titles Act** (Can.); **38. Rates**, p. 853  
 — **Re, Blyth v. A.-G.** (1920); **8. Char.** No. 841b  
 — **v. Baily** (1727); **6. B. of Exch.** No. 694d  
 — **v. Bason** (N.Z.); **1. Agcy.** pp. 52, 57  
 — **v. Benton** (Can.); **12. Contr.** p. 399  
 — **v. Bird** (S. Af.); **23. Exors.** p. 607  
 — **v. Bridger** (1853); **23. Exors.** No. 5540  
 — **v. C. N. Ry.** (Can.); **18. Discy.** p. 533  
 — **v. Catherwood, Re Dewdney Election Appeal** (Can.); **20. Elect.** p. 561  
 — **v. —, Re Provincial Elections Act** (Can.); **20. Elect.** pp. 560, 561  
 — **v. Comtois** (Can.); **1. Agcy.** p. 55  
 — **v. Dawson** (Can.); **12. Contr.** p. 396  
 — **v. Dickinson** (1844); **21. Exon.** No.  
 — **v. Everett** (1792); **8. Chos.** No. 214a  
 — **v. Fralick** (Can.); **6. B. of Exch.** p. 250  
 — **v. Gautsche** (Can.); **3. Bank.** p. 167  
 — **v. Henderson** (Can.); **9. Coys.** p. 330  
 — **v. Jerves & Baily** (1727); **6. B. of Exch.** No. 694d  
 — **v. McCutcheon** (Can.); **7. Bldg. Conts.** p. 275  
 — **v. McLean** (Can.); **22. Evid.** p. 597  
 — **v. Martin** (1925); **7. Bldg. Conts.** No. 388a  
 — **v. Moats** (Can.); **3. Bailmt.** p. 156  
 — **v. Nevilles** (Can.); **22. Evid.** p. 598  
 — **v. O'Grady** (1870); **24. Exors.** No. 7492a  
 — **v. Pawson** (1855); **35. Mistake**, No. 414a  
 — **v. R. (Ind.)**; **15. Crim.** p. 469  
 — **(Judge) v. Renfrey** (Aus.); **1. Agcy.** p. 63  
 — **v. Risley** (1639); **38. Real Prop.** No. 761a  
 — **(Doe d.) v. Roe** (1840); **19. Eccl.** No. 4034a  
 — **v. Schilling** (1928); **17. Damgs.** Nos. 721a, 751a, 784a, 832a; **30. Jdgmts.** No. 628c  
 — **v. Smith** (1854); **24. Exors.** No. 6388a  
 — **v. —** (1925); **13. Cty. Cts.** No. 147a  
 — **v. —** (Can.); **11. Confl.** p. 374  
 — **v. Torr** (1862); **3. Bailmt.** No. 131a  
 — **v. Trocadero Dansant, Ltd.** (Aus.); **13. Corpns.** p. 428  
 — **v. Union S.S. Co.** (Can.); **8. Carr.** p. 291  
 — **v. Upper Canada College** (Can.); **1. Agcy.** pp. 56, 61  
 — **v. Weguelin** (1869); **11. Confl.** No. 650a  
 — **v. Wemyss Coal Co.** (Scot.); **34. Mast. & S.** p. 778  
 — **v. Wilkins** (1838); **22. Evid.** No. 421a  
 — **v. Winter** (1838); **18. Discy.** No. 528a  
 — **v. Wood** (1928); **26. Guar.** No. 1223a  
 — **v. Wright** (Can.); **1. Agcy.** p. 60

- Smith & Dale, *Re* (Can.); **38. Real Prop.** p. 856  
 Smith & Plympton (Township), *Re* (Can.); **2. Arbn.** p. 138  
 Smith & Smith v. Dingle & Holmes (Can.); **1. Agcy.** p. 60  
 Smith (John) & Son v. Moore (1921); **30. Jdgmts.** No. 559a  
 Smith & Tatchell v. Hanson Tire & Supply Co., Ltd. (Can.); **9. Coys.** p. 324  
 Smith, etc. v. Sunday Times (Aus.); **18. Discy.** p. 531  
 Smith, Ltd. v. Vancouver Cremation Society (Can.); **21. Exon.** p. 587  
 Smith Lumber Co., Ltd., *Ex p.* (Can.); **16. Cr. Pract.** p. 495  
 Smith's Estate, *Re*, Canadian Guarantee Trust Co. v. Delisle (Can.); **21. Exon.** p. 587  
 Smith's Settlement, *Re*, Wilkins v. Smith (1902); **30. Jdgmts.** No. 787a  
 Smith's Trustees v. Macpherson (Scot.); **11. Confl.** pp. 367, 368  
 Smithem v. Shepherd, *Re* Shepherd (1921); **8. Char.** No. 12a  
 Smithfield Cold Storage & Export Co. of South Africa, Ltd. v. Lever (S. Af.); **10. Coys.** p. 342  
 Smitle v. Slattard (Aus.); **1. Agcy.** pp. 37, 54  
 Snythe (Doe d.) v. Roe (1840); **19. Eccl.** No. 4034a  
 Snarr v. Waddell (Can.); **21. Exon.** p. 586  
 Sneyd, *Re*, *Ex p.* Oxford (Bp.) (1883); **30. Jdgmts.** No. 337  
 — v. Sneyd & Burgess (1926); **27. H. & W.** Nos. 3179a, 3182a  
 Snia Viscosa Societa, etc. v. S.S. Yuri Maru (1927); **1. Adm.** No. 1794a  
 Snider v. Miller (Can.); **2. Arbn.** pp. 145, 146  
 Snider & Miller's Arbitration, *Re* (Can.); **2. Arbn.** p. 138  
 Snook v. Brantford Town Council (Can.); **26. Hghys.** p. 649  
 Snow v. Firebrass (1700); **12. Contr.** No. 5a  
 — v. R. (Can.); **25. Fish.** p. 624  
 Snow & Toronto, *Re* (Can.); **11. Comp. Pche.** p. 357  
 Snowden v. Baker, *Re* Drought Area Relief Act (Can.); **16. Cntmpt.** p. 478  
 Snowdon v. Snowdon (1928); **27. H. & W.** Nos. 595a, 2040a, 6124a  
 Snyder, *Re*, Snyder v. Snyder (Can.); **11. Confl.** p. 374  
 Sobhuza II v. Miller (1926); **17. Dep.** No. 10a  
 Société Anonyme des Grands Etablissements de Touquet Paris-Plage v. Baumgart (1927); **11. Confl.** No. 752a; **25. Gaming.** No. 245a  
 Societe Belge d'Enterprises Industrielles Immobilières v. Webster & Mill (Can.); **32. Limit. of A.** p. 756  
 Societe de la caisse de retraite de la Banque Nationale, *Re*, Trudel v. Lemoine (Can.); **3. Bank.** p. 164  
 Société du Gaz de Paris v. Société Anonyme de Navigation "Les Armateurs Français" (Scot.); **1. Adm.** p. 35  
 Société Les Affréteurs Réunis & Shipping Controller, *Re* (1921); **2. Arbn.** No. 816a  
 Society for Promoting Employment of Women, *Re* (1927); **9. Coys.** No. 4321a  
 Sokoloski v. Winiski (Can.); **21. Estpl.** p. 580  
 Solicitor, A, *Re* (1892); **16. Cntmpt.** No. 776a  
 —, *Re* (1895); **16. Cntmpt.** No. 1039a  
 Solomon v. Mussett & Bright, Ltd. (S. Af.); **38. Negl.** p. 816  
 — v. Robinson & Co., Ltd. (S. Af.); **32. Libel.** p. 752  
 Solomons Bochner Fur Co., *Re* (Can.); **4. Bkpcy.** p. 210  
 Solvang, *Re* (Can.); **2. Aliens.** p. 975a  
 Somerset's (Duke) Case (1551); **14. Crim.** No. 975a  
 Somerville v. Chapman (1779); **8. Char.** No. 1609a  
 Somerville & Barr, Ltd. v. Chalmers (Scot.); **25. Food.** p. 623  
 Somes, *Re*, Stewart v. Somes (1895); **5. Bkpcy.** No. 8306  
 Sonachalam Pillai v. Kumaravelu Chettiar (Ind.); **21. Estpl.** p. 579  
 Sonaton Pal v. Galstaun (1927); **16. Courts.** No. 427a  
 Sons of Temperance Friendly Society (Scot.); **25. Fr. Soc.** p. 631  
 Sorrell v. Carpenter (1728); **20. Eqq.** No. 193a  
 Souchette, Ltd. v. London County, Westminster & Parr's Bank, Ltd. (1920); **3. Bank.** No. 668a  
 South African Rys. v. Conradie (S. Af.); **8. Carr.** p. 288  
 South African Republic v. Compagnie Franco-Belge du Chemin de Fer du Nord (1898); **1. Action.** No. 376a  
 South American Stores (Gath & Chaves), Ltd. v. Inland Revenue Comrs. (1926); **28. Inc. T.** No. 416a  
 South British Insurance Co. v. Gauci Brothers & Co. (1928); **2. Arbn.** No. 310a & p. 137  
 South British Insurance Co., Ltd. v. Stenson (Ind.); **29. Insce.** p. 714  
 South Bruce Provincial Election, *Re*, Johnston v. McCallum (Can.); **20. Elect.** p. 560  
 South Carolina Bank v. Case (1828); **6. B. of Exch.** Nos. 696a, 713c  
 South Grimsby (Township) v. Lincoln (County) & North Grimsby (Township) (Can.); **26. Hghys.** p. 652  
 South Metropolitan Gas Co. v. Dadd (1927); **28. Inc. T.** No. 276a  
 South Rhondda Colliery Co. (1898), Ltd., *Re* (1928); **10. Coys.** No. 7043a  
 South Wales Patent Fuel Manufacturers' Assocn. v. Great Western Ry. Co. (1923); **8. Carr.** No. 1377e  
 Southby v. Southby (Can.); **27. H. & W.** p. 657  
 Southend Corpn. v. London Midland & Scottish Ry. Co. (1927); **8. Carr.** Nos. 683b, 1237a, 1237d  
 Southern Cross Motor Fuels, Ltd., *Re*, *Ex p.* Kelleway (Aus.); **10. Coys.** p. 343  
 Southern Ry. Co. v. Gosport Corpn. (1926); **26. Hghys.** No. 2719a  
 — v. — (1927); **26. Hghys.** No. 2719a  
 Southport Corpn. v. Birkdale District Electric Supply Co. (1925); **20. Electric.** No. 52  
 Soviet Republics Union v. Belajew (1925); **1. Action.** No. 376b  
 Soviet Socialist Republics Union v. Onou (1925); **1. Action.** No. 360a  
 Sowash v. R. (Can.); **14. Crim.** p. 452  
 Sowerby v. Lindsay (1928); **31. L. & T.** No. 4457a  
 Sowton v. Cutler & Clerke (1875); **16. Cr. Pract.** Nos. 3131a, 3168a  
 Soyer v. Johnson, Matthey & Co. (1927); **34. Mast. & S.** No. 8033a  
 Sparks v. Hamilton (Can.); **6. B. of Exch.** p. 253  
 Sparling v. Ward (Can.); **2. Animals.** p. 124  
 Spat v. Hogson (Can.); **2. Animals.** p. 121  
 Speal, *Re*, *Ex p.* Lucas (Can.); **5. Bkpcy.** p. 228  
 Spear v. Rowlatt (N.Z.); **19. Exemt.** p. 544  
 Speciality Bags, Ltd., *Re* (Can.); **4. Bkpcy.** p. 210  
 Speedway, The (Can.); **1. Adm.** p. 80  
 Speirs, Ltd. v. Petersen (Scot.); **7. Bldg. Contr.**  
 Speller, *Ex p.*, *Re* Plimmer (1859); **5. Nos.** 6449,



- Spencer v. Ashworth Partington & Co. (1925); 9. Coys. Nos. 2070a, 2087a, 2843a  
 — v. Kennedy (1926); 9. Nos. 2879a, 2895a, 3455a, 3882a  
 — v. Vancouver (City) (Can.); 2. Arbn. p. 187  
 Spencer & Hauser's Contract, Re (1928); 40. S. Land, No. 1104a  
 Speppard v. Kennedy (Can.); 38. Real Prop. p. 856  
 Spicer v. Londesborough (Earl), Re Londesborough (Earl) (1923); 2. Agric. Nos. 652a, 661a  
 Spiller v. Mayo (Rhodesia) Development Co. (1908), Ltd. (1926); 9. Coys. Nos. 3841a, 3881a  
 Spooner v. Taylor (Aus.); 22. Evid. p. 601  
 Sporle v. Great Northern Ry. Co. (Can.); 8. Carr. pp. 287, 288  
 Spring v. Spring (Can.); 27. H. & W. p. 662  
 — v. Young (Aus.); 2. Animals, p. 124  
 Springbank Municipality v. Walker (Can.); 18. Distr. p. 539  
 Springfield (Village) v. Michigan Central Ry. Co. (Can.); 38. Rys. p. 849  
 Squires Brothers, Re (Can.); 5. Bkpcy. p. 241  
 Sri Yogashram Pharmacy, Ltd. (In Liquidation), Re, Re Mohan Lal Mehta (Ind.); 10. Coys. p. 347  
 Srimati Jugal Kishore Debi v. Deva Prasanna Mukherji (Ind.); 39. Recrs. p. 857  
 Stacey v. Stacey (Can.); 27. H. & W. p. 660  
 Stack v. The Barge Leopold (Can.); 1. Adm. pp. 17, 18, 21, 35  
 Stadnick v. Bifrost Municipality (Can.); 26. Hghys. p. 649  
 Stahn v. Peutert (Can.); 18. Distr. p. 540  
 Staines v. Wainwright (1839); 4. Bkpcy. No. 4366a  
 Staines Reservoirs Joint Committee, Ex p., Ex p. Sunbury-on-Thames Urban District Council (1922); 11. Comp. Pche. No. 1997a  
 Stamp Duties Comr. (Queensland) v. Donaldson (Aus.); 21. E. D. p. 575  
 Stamps Comr. v. Todd (N.Z.); 9. Coys. p. 326  
 Standard Bank, Ex p., Re Gordon Store, Ltd. (Can.); 5. Bkpcy. p. 220  
 — v. Boulton (Can.); 27. H. & W. p. 656  
 — v. Van Rhyn Estate (S. Af.); 3. Bank. p. 167  
 Standard Bank of Canada v. Alberta Engineering Co., Ltd. (Can.); 3. Bank. pp. 176, 179  
 — v. Shuen Wah (Can.); 1. Action, p. 8  
 Standard Charges (Collection & Delivery—Warehousing) (1925); 38. Rys. No. 756b  
 Standard Charges (Docks, Harbours & Piers) (1927); 38. Rys. No. 756a  
 Standard Charges Schedules, Re (1923); 8. Carr. Nos. 683a, 1015a, 1323a  
 Standard Cooperage Co., Re (Can.); 4. Bkpcy. p. 191  
 Standard Hardwood Lumber Co. v. Canadian Pacific Ry. Co. & Canadian National Rys. (Coal & Coke Rates Case) (Can.); 38. Rys. p. 850  
 Standard Imports, Ltd., Re, Ex p. Canadian Express Co. (Can.); 5. Bkpcy. p. 220  
 Standard Insurance Co. v. Scandrett (Aus.); 2. Arbn. p. 181  
 Standard Pharmacy, Ltd., Re, Alberta Province's Claim (Can.); 4. Bkpcy. pp. 209, 210  
 Standard Trust Co. v. Little (Can.); 21. Estpl. p. 584  
 Standard Trust Co. v. Walter (Can.); 21. Exon.  
 — Trusts Co. v. Briggs (Can.); 21. Exon.  
 — Standard Trusts Co. v. Municipality v. Smith (1927); 34. Mast. & S. No. 2460a
- Stanfield v. Gibbon (1925); 9. Coys. No. 4104a  
 Stanford, Re, Cambridge University v. A.-G. (1924); 8. Char. No. 1457a  
 Stanlake v. Ringhand (Can.); 12. Contr. p. 403  
 Stanley & Bunting, Re (Can.); 20. Egy. p. 569  
 Stanley (G.) & Co., Re (1925); 5. Bkpcy. No. 7361a; 10. Coys. No. 6746a  
 Stanley Mills Co., Re (Can.); 4. Bkpcy. p. 210  
 Stanton v. Allport (S. Af.); 1. Agcy. p. 41  
 — v. Humphrey (S. Af.); 1. Agcy. p. 55  
 — v. Johnston (Can.); 18. Distr. p. 537; 21. Exon. p. 588  
 Stanton & Gordon, Re (Can.); 38. Pub. Auth. p. 854  
 Stanton (F. & E.), Ltd., Re (1928); 10. Coys. Nos. 4709a, 5816a  
 Staples v. Miloff (Can.); 22. Evid. p. 604  
 Staples & Co. v. Berryman (N.); 31. L. & T. p. 739  
 Staples Bell Inc., Ex p., Re Canadian Coal Supply (Can.); 4. Bkpcy. p. 199  
 Stapley v. Read Brothers, Ltd. (1924); 9. Coys. No. 4023a  
 Star Flooring Co., Re (Can.); 4. Bkpcy. p. 191  
 Stark v. Shepherd (Can.); 7. Bldg. Soc. p. 280  
 Starley v. New McDougall-Segur Oil Co. (Can.); 11. Const. L. p. 379  
 — v. New McDougall-Segur Oil Co. (No. 2) (Can.); 11. Const. L. p. 386  
 Starr v. Muncey (Can.); 21. Exon. p. 588  
 Starr Co. of Canada, Ltd. v. Merrill (Can.); 8. Chos. p. 313  
 State, The v. Purcell (Ir.); 14. Crim. p. 442  
 State of New South Wales v. Commonwealth (Aus.); 16. Courts, p. 483; 17. Dep. p. 525  
 State of Victoria v. Commonwealth (Aus.); 17. Dep. p. 522  
 Statham v. Statham (1928); 27. H. & W. Nos. 2533a, 4370a  
 Stead v. Gascoigne (1818); 5. Bkpcy. No. 7006a  
 — v. Stead (1927); 27. H. & W. No. 2718a  
 Steadfast, The (1922); 1. Adm. No. 1405a  
 Steam Saw Mills Co. v. Baring Brothers & Co. (1922); 1. Agcy. No. 2814a  
 Stearn v. Prentice Brothers, Ltd. (1919); 1. Action, No. 259a; 2. Animals, No. 325a  
 Steel v. Glendinning, Re Glendinning (1918); 3. Bank. No. 402a  
 Steel (Doe d.) v. McGill (Can.); 25. Fraud. Conv. p. 627  
 Steele v. Belfast Corpn. (Ir.); 3. Barr. p. 182  
 — v. Manton's (Lord) Trustees (1927); 28. Inc. T. Nos. 430a, 444a  
 — v. R. (Can.); 14. Crim. pp. 442, 463; 15. Crim. p. 471  
 Steeves, Re, Nova Scotia Trust Co. v. Bishop (Can.); 5. Bkpcy. p. 229  
 Staffes v. Smith (Can.); 2. Agric. p. 81  
 Stein (John G.) & Co., Ltd. v. Stirling County Council Eastern District Committee (1927); 38. Pub. Hlth. No. 509a  
 Steine v. Mathieu (Can.); 17. Deeds, p. 510  
 Steinkopff, Re, Favorke v. Steinkopff (1922); 2. Aliens, No. 215f; 8. Chos. No. 21  
 Stephen v. Black (Can.); 26. Guar. p. 643  
 — v. Cooper (Scot.); 34. Mast. & S. p. 776  
 — v. Masters & McDougall (Can.); 2. Arbn. pp. 130, 142  
 Stephens, Ex p. (1848); 22. Evid. Nos. 5676a, 6081b  
 — v. Gem Consolidated School District No. 60, Trustees (Can.); 19. Educ. p. 558  
 — v. Reynolds (1860); 6. B. of Exch. No. 702a  
 Stephenson v. E. D. & B. C. R. (Can.); 18. Discy. p. 538



- Stephenson v. Thompson (1924); 7. *B. of Sale*, Nos. 138b, 196a  
 — v. Waller (1927); 28. *Inc. T.* No. 79b  
 Stepney Borough Council & Smart's Contract, *Re* (1902); 11. *Comp. Pche.* No. 558a  
 Sterling Clothing Co. v. Men's Attire Registered (Can.); 4. *Bkpcy.* p. 205  
 Sterling Trusts Corp'n. v. Melnechuk (Can.); 22. *Evid.* p. 602  
 Sternberg, *Re* (Can.); 5. *Bkpcy.* p. 323  
 —, *Re, Ex p.* Triefus & Stripp, Ltd. (Can.); 5. *Bkpcy.* p. 231  
 Steven v. Broady Norman & Co. (Scot.); 21. *Estpl.* p. 580  
 Stevens, *Re* (1912); 20. *Egy.* No. 1581a  
 —, *Re, Imperial Canadian Trust Co., Ltd. v. North American Lumber & Supply Co., Ltd.* (Can.); 5. *Bkpcy.* p. 231  
 — v. Abbotsford Lumber Co. (Can.); 17. *Damgs.* p. 500  
 — v. Downham, Isle of Ely (Feoffees of Poor Lands) (1926); 2. *Agric.* Nos. 266w, 266x  
 — v. Merchants Bank of Canada (Can.); 1. *Agcy.* p. 39; 3. *Bank.* p. 164  
 — v. Robinson (William) Co., Ltd. (Can.); 2. *Arbn.* p. 134  
 Stevens & Dunsby's Contract, *Re* (1928); 40. *Stlmts.* No. 2679a  
 Stevens & Mitchell, *Re* (Can.); 6. *B. of Exch.* p. 245  
 Stevenson v. Florant (Can.); 17. *Dep.* pp. 525, 526; 28. *Infsts.* p. 697  
 — v. Green (Can.); 32. *Lien*, p. 754  
 — v. Taylor, *Re Canadian Cap Co., Ltd.* (Can.); 5. *Bkpcy.* pp. 227, 228  
 — v. Toronto Board of Education (Can.); 3. *Bailmt.* p. 155  
 Stevenson & Sons v. Maule & Son (Scot.); 3. *Bailmt.* p. 160  
 Stewart, *Ex p.*, *R. v. McLatchey* (Can.); 33. *Mags.* p. 767  
 —, *Re* (Can.); 5. *Bkpcy.* p. 226  
 — v. Adams (Scot.); 2. *Animals*, p. 119  
 — v. Boulton, *Re Boulton's Settlement Trust* (1928); 37. *Powers*, Nos. 187a, 872a  
 — v. Braun (Can.); 26. *Guar.* p. 642  
 — v. Clark (Can.); 26. *Guar.* p. 643  
 — v. Grand Trunk Pacific Ry. Co. (Can.); 8. *Carr.* p. 290  
 — v. Hodge (Scot.); 27. *H. & W.* p. 657  
 — v. Jones (Can.); 11. *Const. L.* p. 379  
 — v. O'Brien (N.Z.); 17. *Damgs.* p. 507  
 — v. Richardson Sons & Co., Ltd. (Can.); 1. *Agcy.* p. 45  
 — v. Somes, *Re Somes* (1895); 5. *Bkpcy.* No. 8306  
 — v. Stewart (Can.); 17. *Dep.* p. 520  
 Stewart (Alexander) & Son of Dundee, Ltd. v. Westminster Bank, Ltd. (1926); 9. *Coys.* No. 3506a  
 Stewart & Young v. Inland Revenue Comrs. (Scot.); 28. *Inc. T.* pp. 679, 680  
 Stewart Mercantile Co., Ltd., *Re* (Can.); 4. *Bkpcy.* p. 194  
 Stewart Municipal District v. Bliesner (Can.); 11. *Comp. Pche.* p. 800  
 Stewkley v. Butler (1615); 2. *Agric.* No. 736  
 Stillwater Lumber & Shingle Co. v. Canada Lumber & Timber Co. (Can.); 5. *Bkpcy.* p. 236  
 Stirling Collieries, Ltd. v. Jones (Can.); 8. *Chos.* p. 313  
 Stockbridge & Co., Ltd., *Re* (N.Z.); 10. *Coys.* p. 348  
 Stocking (Doe d.) v. Watts (Can.); 22. *Evid.* p. 599  
 Stocksbridge Ry. Co. v. Great Central Ry. Co. (1909); 8. *Carr.* No. 1049a  
 Stoeck v. Public Trustee (1921); 2. *Aliens*, Nos. 49a, 49i  
 Stokes, *Re, Bowen v. Davidson* (1928); 23. *Exors.* No. 5273a  
 Stokes-Stephens Oil Co. v. McNaught (Can.); 2. *Arbn.* p. 136  
 Stokoe v. Mickley Coal Co., Ltd. (1928); 34. *Mast. & S.* No. 2506a  
 Stollery, *Re, Weir v. Treasury Solicitor* (1926); 22. *Evid.* Nos. 3165a, 3177a  
 Stone, *Re* (Can.); 4. *Bkpcy.* pp. 190, 196  
 Stoneberg, *Re* (Can.); 4. *Bkpcy.* p. 201  
 Stonehouse v. Masson (1921); 15. *Crim.* No. 12,169a  
 Stoney v. Eastbourne Rural Council (1927); 26. *Hghys.* No. 355a  
 — v. Stoney (Ind.); 23. *Exors.* p. 608  
 Storaker v. Southouse & Long, Ltd. (Aus.); 1. *Agcy.* p. 72  
 Story v. Dunlop (Can.); 24. *Exors.* p. 615  
 Stott v. Inland Revenue Comr. (S. Af.); 28. *Inc. T.* p. 676  
 — v. Shaw & Lee, Ltd. (1928); 7. *B. of Sale*, Nos. 228a, 439a  
 Stout & Toronto (City), *Re* (Can.); 28. *Inc. T.* p. 682; 38. *Rates*, p. 851  
 Stover v. Drysdale (Can.); 19. *Eccl.* p. 549  
 — v. Marchand (Can.); 32. *Limit. of A.* p. 757  
 Strandhill v. Walter W. Hodder Co. (Can.); 1. *Adm.* p. 17  
 Strang v. Beal (Can.); 21. *Exon.* p. 592  
 Stratford Baptist Church Property, *Re* (Can.); 8. *Char.* p. 304  
 Stratford Catering Co., Ltd., *Ex p.*, *R. v. Holborn Licensing JJ.* (1926); 30. *Intox.* No. 299a  
 Stratford Mill Building Co.'s Claim, *Re Red Deer Milling & Elevator Co.* (Can.); 9. *Coys.* p. 336  
 Strathcona Cemetery Co. v. Taylor (Can.); 7. *Burial*, p. 282  
 Strathern v. Benson (Scot.); 25. *Gaming*, p. 636  
 — v. Padden (Scot.); 14. *Crim.* p. 439  
 — v. Ross (Scot.); 34. *Med.* p. 798  
 — v. Stuart (Scot.); 19. *Eccl.* p. 554  
 Stratton & Greenshields, Ltd., *Re, Re McCoubrey* (Can.); 4. *Bkpcy.* p. 204; 5. *Bkpcy.* p. 241  
 Stream Fisher, The (1927); 1. *Adm.* No. 1497c  
 Street, *Re* (1845); 22. *Evid.* No. 6081a  
 — v. Craig (Can.); 2. *Animals*, p. 122  
 — v. Glass (Can.); 21. *Exon.* p. 588  
 Streich v. Franklin (Can.); 26. *H. & W.* p. 649  
 Strelloff v. First National Bank of Joliet (Can.); 24. *Exors.* p. 617  
 Strelitz Brothers v. Britnall (Aus.); 1. *Action*, p. 1  
 Strohmer v. Attenborough (1894); 1. *Agcy.* No. 481a  
 Strong, *Re, Strong v. Meissner* (1925); 11. *Confl.* No. 621a  
 — v. Arran (Can.); 26. *Hghys.* p. 648  
 — v. Taylor, The Enterprise (1853); 34. *Mast. & S.* No. 1145a  
 Stroud v. Bath Gas Light & Coke Co. (1927); 34. *Mast. & S.* No. 2653a  
 Stuart v. Andrews (Can.); 22. *Evid.* p. 599  
 — v. Calgary & Edmonton Ry. Co. (Can.); 34. *Mines*, p. 801  
 — v. Columbia River (Aus.); 1. *Adm.* p. 29  
 — v. Pennant School District (Can.); 13. *Corpns.* p. 430  
 — v. R. (Can.); 11. *Comp. Pche.* p. 358  
 — v. Stuart (Ind.); 27. *H. & W.* p. 660  
 Studdy v. Sanders (1826); 12. *Contr.* No. 2310a  
 Sturdee v. Merritt (Can.); 31. *L. & T.* p. 734  
 Sturge v. Philpotts (1839); 39. *S. Goods*, No. 2493a  
 Sturgion v. Painter (1608); 12. *Contr.* No. 504a

- Sturt, *Re*, De Bunsen v. Hardinge (1922); **20. Eqq.** No. 1316a
- Sturton v. Richardson (1844); **20. Eqq.** No. 292a
- Suart & Steamship Alleghany of London, Ltd. v. Merchants' Marine Insurance Co., Ltd. (1898); **29. Insce.** No. 2341a
- Subba Rao v. Lakshmana Rao (Ind.); **19. Easmt.** p. 542
- Subodh Chandra Roy Chowdhry v. R. (Ind.); **14. Crim.** p. 443
- Succession Duty Act, *Re*, *Re* Hecht (Can.); **21. E. D.** pp. 575, 576
- Succession Duty Act, *Re*, *Re* Oldfield Estate (Can.); **21. E. D.** p. 576
- Succession Duty Act, *Re*, A.-G. for British Columbia v. Wilson (Can.); **21. E. D.** p. 575
- Succession Duty Act & Sproule, *Re* (Can.); **21. E. D.** p. 576
- Sugar Supply, Royal Commission on v. Kwik-Hoo-Tong Trading Society (1922); **2. Arbn.** No. 949c
- Sugarman, *Ex p.*, R. v. Brixton Prison (Governor) (1922); **2. Aliens**, No. 553b
- Sugden v. Lolley (1812); **11. Confl.** No. 947; **15. Crim.** No. 8035
- Sukhamal Bansidhar v. Babn Lal Kedin & Co. (Ind.); **2. Arbn.** p. 129
- Sullivan (Doe d.) v. Currey (Can.); **24. Exors.** p. 615
- v. Home Bank of Canada (Can.); **3. Bank.** p. 179
- v. Sullivan (1860); **39. Rntchgs.** No. 254a
- Sullivan & Bertie (Township), *Re* (Can.); **11. Comp. Pche.** p. 360
- Summers v. Hamilton (Can.); **26. Guar.** p. 642
- Sun Building Society v. Western Suburban & Harrow Road Building Society (1921); **7. Bldg. Soc.** Nos. 110a, 187a, 230a
- Sun Insurance Office v. Roy (Can.); **29. Insce.** p. 710
- Sun Life Assurance Co., *Re* (Can.); **10. Coys.** p. 349
- Sun Ray Manufacturing Co., *Re*, *Ex p.* Birkett & Sons, Ltd. (Can.); **9. Coys.** p. 324
- , *Re*, *Ex p.* Robson (Can.); **9. Coys.** p. 332
- Sunbury-on-Thames Urban District Council, *Ex p.*, *Ex p.* Staines Reservoirs Joint Committee (1922); **11. Comp. Pche.** No. 1997a
- Sunder Mull v. Satya Kinker Sahana (Ind.); **16. Courts**, No. 611a; **35. Money**, p. 807
- Sunderland Corpn. v. Gray (1928); **26. Hghys.** Nos. 2244a, 2252a, 2254a
- v. Priestman (1927); **21. Estpl.** No. 1228a; **26. Hghys.** No. 2367a
- Supplies, Ltd., *Re*, Canadian Credit Men's Trust Assocn. v. Caldwell (Can.); **9. Coys.** p. 324
- Suratee Bara Bazaar Co., Ltd. v. Municipal Corpn. of Rangoon (Ind.); **38. Pub. Auth.** p. 845
- Surendra Kumar Roy Chowdhury v. Sushil Kumar Roy Chowdhury (Ind.); **2. Arbn.** pp. 130, 135
- Surmon v. Surmon (S. Af.); **3. Basty.** p. 185
- Surrey District Corpn. v. Caine (Can.); **11. Comp. Pche.** p. 355
- Surtees v. Lister (1861); **12. Contr.** No. 1421a
- Susil Kumar Biswas v. Rasani Kanta Chakravarti (Ind.); **31. L. & T.** p. 737
- Sussex (Countess) v. Wroth (1582); **30. L. & T.** No. 1195a
- Sussex (Countess) & Worths Case (1582); **30. L. & T.** No. 1195a
- Sutherland (Duchess), *Re*, Bechoff & Co. v. Bubna (1921); **2. Aliens**, No. 156b
- Sutherland (Duke) v. British Dominions Land Settlement Corpn., Ltd. (1926); **18. Discy.** No. 1705a
- Sutherland v. Devereux (N.Z.); **31. L. & T.** p. 736
- v. Young (Can.); **22. Evid.** p. 600; **23. Exors.** p. 609
- Sutherland & Co. v. Hannevig Brothers, Ltd. (1921); **2. Arbn.** No. 1668a
- Sutherland-Innes Co. v. Grand Trunk Ry. Co. (Can.); **8. Carr.** p. 295
- Sutter v. Brown (S. Af.); **32. Libel**, p. 749
- Suttle v. Cresswell (1926); **25. Gaming**, No. 415a
- Sutton, *Re* (Can.); **4. Bkpcy.** p. 194
- v. Featherley, *Re* Swinburne (1926); **3. Bank.** No. 538a; **6. B. of Exch.** No. 14a; **25. Gifts**, No. 228
- v. Forst (Can.); **1. Agcy.** p. 37
- v. Gregory (1797); **6. B. of Exch.** No. 693a
- v. Hinch (Can.); **26. Guar.** p. 342
- v. Smith (Can.); **30. Juries**, p. 29
- Svein Jarl, The (1923); **1. Adm.** Nos. 1237a, 1298a
- Swaizie v. Swaizie (Can.); **11. Confl.** p. 372
- Swan v. Miller (Ir.); **1. Agcy.** p. 72
- v. Sinclair (1925); **19. Easmt.** Nos. 147a, 515
- Swart v. R. (S. Af.); **14. Crim.** p. 442
- Sweeney v. Gallagher (Ir.); **24. Exors.** p. 618
- Sweeny v. Manufacturers Holding Corpn. (Can.); **18. Discy.** pp. 533, 534
- Sweetland v. Smith (1833); **35. Money**, No. 101a
- Sweetnam v. Sweetnam (Can.); **35. Mtge.** p. 809
- Sweinsson v. Charleswood Rural Municipality (Can.), [1917] 3 W. W. R. 201; **2. Arbn.** p. 148
- Sweinsson & Charleswood Municipality, *Re* (Can.), [1917] 1 W. W. R. 293; **2. Arbn.** pp. 142, 147
- Sweitzer v. Granger (Can.); **12. Contr.** p. 393
- Swift v. New Zealand Insurance Co., Ltd. (Aus.); **29. Insce.** p. 710
- Swift & Co. v. Board of Trade (1925); **25. Food**, No. 558a
- v. — (1926); **11. Const. L.** No. 373a; **25. Food**, No. 558a
- Swift Current (City) v. Leslie (Can.); **2. Arbn.** p. 143
- Swim, *Ex p.* (Can.); **16. Cr. Pract.** p. 490
- Swinburne, *Re*, Sutton v. Featherley (1926); **3. Bank.** No. 538a; **6. B. of Exch.** No. 14a; **25. Gifts**, No. 228
- v. Andrews (1923); **2. Agric.** No. 266h
- Swinson (John) Co., Ltd. v. Crystal Palace, Ltd. (N.Z.); **12. Contr.** pp. 412, 413
- Swiss Bank Corpn. v. Boehmische Industrial Bank (1923); **11. Confl.** Nos. 1272a, 1307a
- Swyripa v. Vaculchik (Can.); **27. H. & W.** p. 655
- Sydney Municipal Council v. Australian Metal Co., Ltd. (Aus.); **2. Aliens**, pp. 110, 111
- v. Campbell (1925); **11. Comp. Pche.** No. 116a
- v. Hughes Motor Service, Ltd. (1925); **11. Comp. Pche.** No. 116a
- v. Troy (Aus.); **11. Comp. Pche.** p. 361
- Sydney, Cape Breton & Montreal S.S. Co. v. Montreal Harbour Comrs. (Can.); **38. Pub. Auth.** p. 846
- Syed Khan v. Syed Ebrahim (Ind.); **17. Dep.** p. 527
- Syer, *Re*, *Ex p.* Workmen's Compensation Board (Can.); **4. Bkpcy.** p. 209
- Sykes v. Geck (Can.); **6. B. of Exch.** p. 259
- Sylvan Arrow, The (1923); **1. Adm.** Nos. 141d, 668b
- Symington & Co. v. Union Insurance Society of Canton (1927); **2. Arbn.** No. 1071b
- v. — (1928); **29. Insce.** Nos. 237a, 855a, 1719a
- Symons v. Callil (Aus.); **1. Agcy.** p. 58
- v. Winnipeg Electric Co. (Can.); **36. Negl.** p. 816

Synod of Huron v. Ferguson (Can.); 2. *Arbn.* p. 137  
 Synthetic Drug Co., *Re* (Can.); 2. *Aliens*, p. 100

## T.

T. E. O'Reilly, Ltd., *Re* (Can.); 9. *Coys.* p. 320  
 T. McAvity & Sons, Ltd. v. Walsh (Can.); 32. *Lien*, p. 754  
 Taba Singh v. R. (Ind.); 17. *Dep.* p. 525  
 Tabor, *Re, Ex p.* Cork (1920); 5. *Bkpcy.* Nos. 6516a, 6881a, 6890a  
 —, *Re, Ex p.* Trustee (1920); 5. *Bkpcy.* No. 6516a  
 Tabram v. Freeman (1834); 4. *Bkpcy.* No. 5352a  
 Tagalon v. Inspector of Police (N.Z.); 17. *Dep.* p. 522  
 Tallack v. Tallack & Broekema (1927); 11. *Confl.* No. 873a; 27. *H. & W.* Nos. 5542a, 5543a, 5543b, 5543c  
 Tamara Te Angiangi v. Treadwell (N.Z.); 22. *Evid.* p. 603  
 Tamboli v. Great Indian Peninsula Ry. Co. (Ind.); 8. *Carr.* p. 288  
 Tannas v. Bank of Montreal (Can.); 21. *Exon.* p. 587  
 Tanner v. Carter (1856); 23. *Exors.* No. 4154a  
 Tarasoff v. Zielinsky (Can.); 2. *Animals*, p. 122  
 Tarn v. Scanlan (1927); 28. *Inc. T.* No. 567  
 — v. — (1928); 28. *Inc. T.* No. 567  
 Tasman Fruit Packing Assocn., Ltd. v. R. (N.Z.); 10. *Coys.* p. 346  
 Tasmania, Deputy Federal Comr. of Taxation for v. Thomas (Aus.); 16. *Courts*, p. 479  
 Tata Iron & Steel Co. v. Bombay Chief Revenue Authority (1923); 17. *Dep.* No. 640a  
 Tataurangi, Taiuakena v. Mua Carr (N.Z.); 13. *Corpn.* p. 429  
 Tate & Lyle, Ltd. v. London & North Eastern Ry. Co. & London Midland & Scottish Ry. Co. (1926); 8. *Carr.* No. 13771  
 Tatham, *Ex p.*, *Re* London Bridge Acts (1838); 11. *Comp. Pche.* No. 1614a  
 Tattersall v. Sladen (1928); 34. *Med.* No. 205a  
 Taubman v. Pacific Steam Navigation Co. (1872); 8. *Carr.* No. 851b  
 Tauranga Borough Corpn. v. A.-G. (N.Z.); 13. *Corpn.* p. 429  
 Taxation Comr. v. Commercial Banking Co. of Sydney (Aus.); 28. *Inc. T.* p. 680  
 Taxation Comrs. v. English, Scottish & Australian Bank (1920); 3. *Bank.* Nos. 292a, 692a  
 Taylder v. Lambton, Hetton & Joicey Collieries, Ltd. (1928); 34. *Mast. & S.* No. 3056c  
 Taylor, *Re* (Can.); 5. *Bkpcy.* p. 231  
 — v. British Legal Life Assurance Co. (1925); 31. *L. & T.* No. 1810a  
 — v. Brodie (Can.); 24. *Exors.* p. 618  
 — v. Burpee (Can.); 18. *Distr.* p. 538  
 — v. Leveys (Can.); 4. *Bkpcy.* p. 208; 5. *Bkpcy.* p. 238  
 — v. Mackintosh (Can.); 1. *Action*, p. 12; 17. *Dep.* pp. 519, 520  
 — v. Minister of Health (1928); 37. *Poor L.* No. 1672b  
 — v. Rabbitts (Can.); 1. *Agcy.* p. 57  
 — v. Reed (1815); 7. *Bounds. & F.* No. 271a  
 — v. Regis (Can.); 24. *Exors.* p. 617  
 — v. Smith (Aus.); 1. *Agcy.* p. 63  
 — v. Taylor (1926); 27. *H. & W.* No. 5780a  
 — v. Taylor, *Re* Wilford's Estate (1879); 37. *Pers. Prop.* No. 94a  
 — v. Turner (Can.); 17. *Damgs.* p. 504  
 Tayside Floorecloth Co., Ltd., *Re* (Scot.); 9. *Coys.* p. 336

Teahon v. Leamey (Can.); 24. *Exors.* p. 615  
 Teasdale v. Sun Life Assurance Co. of Canada (Can.); 29. *Insee.* p. 710  
 Tecalemit, Ltd. v. Ewarts, Ltd. (1927); 36. *Pats.* Nos. 3120b, 3212a  
 — v. Wakefield (O. C.) & Co., Ltd. (1927); 36. *Pats.* No. 3120a  
 Telephone Manufacturing Co., Ltd. v. Abel (1928); 34. *Mast. & S.* No. 2968a  
 Temperance Loan Fund v. Erwood (1927); 35. *Money*, No. 442a  
 Temple, *Re, Ex p.* Temple (1814); 5. *Bkpcy.* No. 5482  
 — v. Elvery (Can.); 2. *Animals*, p. 122  
 Templeton v. Waddington (Can.); 3. *Bailmt.* p. 157  
 Tenenbein, *Re, Re* Bankruptcy Act (Can.); 4. *Bkpcy.* p. 193  
 Tenold & Tannas v. Canadian Pacific Ry. Co. (Can.); 22. *Evid.* p. 600  
 Terminal Grain Co. v. Soderberg (Can.); 21. *Exon.* p. 588  
 Terry v. Automobile Owners Assocn. (Can.); 8. *Carr.* pp. 285, 299  
 Tervaele, The (1922); 1. *Adm.* No. 142c  
 Tetley, *Re, A.-G. v.* National Provincial & Union Bank of England (1924); 8. *Char.* No. 740b  
 —, *Re, National Provincial & Union Bank of England, Ltd. v.* Tetley (1923); 8. *Char.* No. 740b  
 Tetrault v. Vaughan (Can.); 38. *Rates*, p. 853  
 Tetreault v. Montreal Harbour Comrs. (1926); 17. *Dep.* No. 378a  
 Tevlin v. Gilseman (Ir.); 24. *Exors.* p. 618  
 Texas Co. v. Bombay Banking Co., Ltd. (Ind.); 1. *Agcy.* p. 72  
 Texas Co. (S. A.), Ltd. v. Webb & Tomlinson (S. Af.); 26. *Guar.* p. 642  
 Thacker v. Smoky Lake Municipal District (Can.); 38. *Rates*, p. 853  
 Thain, *Re, Thain v.* Taylor (1926); 28. *Infis.* No. 1156a  
 Thames Steam Tug & Lighterage Co. v. Ingram (1927); 34. *Mast. & S.* No. 3766a  
 Thatcher v. Bowman (Can.); 30. *L. & T.* p. 732  
 Thebault, *Re, Re* Khattar (Can.); 30. *Intox.* p. 722  
 Thellusson v. Woodford (1799); 18. *Desct.* No. 165c  
 — v. Woodford (1805); 18. *Desct.* No. 165c  
 Theobald v. Oliver, *Re* Oliver (1927); 32. *Limit. of A.* Nos. 1568a, 1584a  
 — v. Winnipeg Musicians Assocn. (Can.); 25. *Fr. Soc.* p. 630  
 Theriault, *Ex p.*, R. v. O'Brien (Can.); 16. *Cr. Pract.* p. 494  
 — v. R. (Can.); 11. *Const. L.* p. 380  
 Thiessen, *Re* (Can.); 4. *Bkpcy.* p. 213  
 Thiselton v. Commercial Union Assurance Co. (1926); 10. *Coys.* No. 7482a  
 Thomas v. Abertillery Urban District Council (1928); 19. *Educ.* Nos. 14a, 302c  
 — v. Alderton, Ltd. (1928); 16. *Courts*, No. 840a  
 — v. Bolton (Thomas) & Son, Ltd. (1928); 24. *Fact.* No. 68a  
 — v. Davis, *Re* Davis (1928); 8. *Char.* No. 724a  
 — v. Evans (Richard) & Co. (1927); 28. *Inc. T.* No. 307a; 30. *Jdgmts.* No. 569b  
 — v. Gale (Can.); 1. *Agcy.* p. 60; 9. *Coys.* p. 380  
 v. Great Mountain Collieries Co., Ltd. (1921); 1. *Action*, No. 116a  
 v. Guay (Can.); 38. *Real Prop.* p. 856  
 v. Haliburton (Can.); 17. *Dep.* p. 520  
 v. Hughes (1928); 19. *Educ.* No. 78a  
 v. Jones (1921); 3. *Basty.* No. 325a  
 v. Jones (1928); 23. *Exors.* No. 3127b  
 In the Estate of Jones (1928); 23. No. 3127b



## TABLE OF CASES.

- Thomas v. Lawson, Re Alberni Pacific Lumber Co.** (Can.); **10. Coys.** p. 345
- **v. Marine Insurance Co. (Nfld.)**; **17. Deeds**, p. 511
- **v. Morgan (1835)**; **2. Animals**, No. 301a
- **v. Newington Licensing JJ. (1926)**; **30. Intox.** No. 141a
- **v. Pemberton (1816)**; **5. Bkpcy.** No. 7648a
- **v. Thomas (Aus.)**; **27. H. & W.** p. 663
- **v. — (No. 2) (Aus.)**; **27. H. & W.** p. 662
- **v. Todd (1926)**; **10. Coys.** Nos. 4979a, 5184a, 6904a
- Thomas Withers & Sons, Ltd. v. Samuel Withers & Co., Ltd. (1926)**; **32. Libel**, No. 1638a
- Thompson, Ex p., R. v. Edmonton Income Tax Comrs. (1928)**; **28. Inc. T.** No. 631a
- , **Re (Can.)**; **24. Exors.** p. 617
- , **Re, Ex p. Trustees (Can.)**; **5. Bkpcy.** pp. 228, 232
- **v. Barclay (1828)**; **11. Const. L.** No. 388
- **v. — (1831)**; **11. Const. L.** No. 388
- **v. Bruce (1927)**; **28. Inc. T.** No. 539a
- **v. Canadian Pacific Ry. Co. (Can.)**; **8. Carr.** p. 288
- **v. Ellis (Can.)**; **21. Exon.** p. 587
- **v. Fraser (Can.)**; **21. Exon.** p. 591
- **v. Jefferson (1928)**; **36. Pats.** No. 1534a
- **v. Lynne (Can.)**; **1. Agcy.** pp. 42, 49, 50
- **v. Milliken (Can.)**; **35. Mtgc.** p. 812
- **v. North Battleford (Can.)**; **17. Deeds**, p. 509
- **v. Reynolds (Ir.)**; **1. Agcy.** p. 71
- **v. Ryall & Cunningham (Can.)**; **1. Action**, p. 4
- Thompson, Meggitt & Co., Ltd. v. Moody (Aus.)**; **2. Arbn.** p. 143
- Thompson Powder Co., Re, Re Winding-up Act (Can.)**; **4. Bkpcy.** p. 191
- Thompson Sons & Co., Re. Newton v. Hamilton (Can.)**; **5. Bkpcy.** p. 216
- Thomson, Re (Can.)**; **26. Guar.** pp. 641, 642
- , **Re, Ex p. M'Lintock (Scot.)**; **2. Aliens**, p. 104
- **v. Bruty, Re Thomson's Mortgage Trusts (1920)**; **1. Action**, Nos. 48a, 64a
- **v. Cushing (Can.)**; **21. Exon.** p. 593
- **v. Drysdale (Scot.)**; **10. Coys.** p. 342
- **v. Galloway (Scot.)**; **2. Agric.** p. 83
- **v. Hamilton (N.Z.)**; **34. Mast. & S.** p. 772
- **v. Harrison (Can.)**; **32. Lien**, p. 754; **35. Mtgc.** p. 811
- **v. Thomson (Can.)**; **27. H. & W.** p. 658
- Thomson & Co. v. McNulty (Scot.)**; **32. Libel**, p. 749
- Thomson's Mortgage Trusts, Re, Thomson v. Bruty (1920)**; **1. Action**, Nos. 48a, 64a
- Thoreson v. Blairmore School District Board of Trustees (Can.)**; **12. Contr.** p. 390; **19. Educ.** p. 558; **21. Exon.** p. 591
- Thorndyke-Trenholme Realty Co. v. Lyall Ship-building Co. (Can.)**; **1. Agcy.** p. 63
- Thorne v. Canadian Steering Wheel Co. (Can.)**; **5. Bkpcy.** p. 237
- **v. Williams (Can.)**; **12. Contr.** p. 403
- Thornton Davidson & Co., Re, Finlayson v. Balfour, White & Co. (Can.)**; **5. Bkpcy.** p. 237
- Thornycroft (J. I.) & Co., Ltd. v. Thornycroft (1927)**; **9. Coys.** No. 3988a
- Thorpe v. Gisbourne (1825)**; **16. Cntmpt.** No. 698
- **v. Linney (1885)**; **20. Elect.** No. 1025a
- **v. Sadler (A. L.) & Son (1927)**; **34. Mast. & S.** No. 3702a
- **'s Case (1918)**; **14. Crim.** No. 5241a (Can.); **5. Bkpcy.** p. 244
- , **The (1899)**; **1. Adm.** No. 1603a
- , **Grays & Tilbury Joint Sewerage Board v. Thames Land Co., Ltd. (1925)**; **2203a**
- Tickner v. Clifton (1928)**; **31. L. & T.** Nos. 7107a, 7225a
- Ticonderoga Pulp & Paper Co. v. Cowans (Can.)**; **9. Coys.** p. 332
- Tieman v. McKenzie (Can.)**; **17. Dams.** p. 502
- Tierney, Re (1855)**; **22. Evid.** Nos. 5873a, 5880a, 6561a
- , **Re (Can.)**; **38. Real Prop.** p. 855
- Tiffany (Doe d.) v. McEwan (Can.)**; **21. Estpl.** p. 581
- Tildesley v. Lodge (1857)**; **20. Eqq.** No. 760a
- Till, Re, Ex p. Parsons (1871)**; **22. Evid.** No. 4472a
- Tilley v. Cleary & Henderson (Nfld.)**; **12. Contr.** p. 395
- Tillicum Athletic Club v. Burick (Can.)**; **21. Exon.** p. 592
- Tilking-Stevens Motors, Ltd. v. Kent County Council & Minister of Transport (1929)**; **39. Revenue**, No. 140a
- Tilmanstone (Kent) Collieries, Ltd., Re (1928)**; **34. Mines**, No. 327a
- Tilton v. McKay (Can.)**; **22. Evid.** p. 605
- Timaru Borough Council v. Boulton (N.Z.)**; **3. Bailmt.** p. 155
- Timmings v. Treadgold (N.Z.)**; **5. Bkpcy.** p. 238
- Timoney v. Timoney (Ir.)**; **27. H. & W.** p. 670
- Tinant v. Simon (Can.)**; **7. B. of Sale**, p. 268
- Tindall v. Barnetts & Hoare (1887)**; **3. Bank**, No. 846a
- **v. Wright (1922)**; **16. Courts**, No. 33b
- Tinkowri, etc. v. Ram, etc. (Ind.)**; **19. Easmt.** pp. 542, 543, 545
- Tiny Separate School Trustees v. R. (Can.)**; **17. Dep.** p. 515
- Tithe Act, 1891, Re, Roberts v. Potts, Jones v. Cooke (1894)**; **12. Contr.** No. 4358a
- Toates v. Toates (1926)**; **23. Exors.** No. 3818a
- Tocher v. Johnson (Can.)**; **2. Agric.** pp. 81, 89
- Tocock v. Honyman (1802)**; **21. Exon.** No. 817a
- Todd, In the Estate of (1926)**; **23. Exors.** Nos. 1388a, 1398a, 1410a
- **v. Egyptian Delta Land & Investment Co. (1928)**; **28. Inc. T.** No. 144a
- **v. Potvin (Can.)**; **1. Agcy.** p. 56
- **v. Taylor, Re Gray (1925)**; **8. Char.** No. 199a
- Todd & North Riding of Yorkshire Agricultural Executive Committee, Re (1921)**; **2. Agric.** Nos. 266n, 266o, 266p
- Tola Ram v. R. (Ind.)**; **14. Crim.** p. 439
- Tolerton v. Cunard S.S. Co. (Can.)**; **8. Carr.** p. 292
- Tollemache v. Inland Revenue Comrs. (1926)**; **28. Inc. T.** No. 674a
- Tolley v. Guerin (Can.)**; **32. Lien**, p. 754
- Tolley & Co. v. Skuce (Can.)**; **1. Agcy.** p. 57
- Tombs v. Turvey (1923)**; **2. Agric.** No. 266s
- Tomes, Re (Can.)**; **22. Evid.** p. 597
- Tone's (Wolfe) Case (1798)**; **11. Const. L.** No. 384a
- Tong Street Local Board v. Seed (1874)**; **2. Animals**, No. 332a
- Tonner v. William Baird & Co., Ltd. (Scot.)**; **34. Mast. & S.** p. 789
- Toovey v. Brock & Brock (Can.)**; **26. Guar.** p. 642
- Topham v. Constantine (1829)**; **32. Lien**, No. 553a
- Topper Grain Co. v. Mantz (Can.)**; **1. Agcy.** p. 65
- Toronto (City) v. Consumers' Gas Co. of Toronto (Can.)**; **9. Coys.** p. 321
- Toronto & Hamilton Navigation Co. v. Silcox (Can.)**; **12. Contr.** p. 387
- Toronto Corp'n. v. Roman Catholic Separate Schools Trustees (1926)**; **17. Dep.** No. 177d; **19. Educ.** p. 557
- Toronto (City) Corp'n. v. Toronto Railway Corp'n. (Can.)**; **2. Arbn.** p. 142; **11. Comp. Pche.**
- Toronto Electric Comrs. v. Snider (1925)**; **17. Nos.** 130a, 179a



- Toronto General Trusts Corp'n. & McConkey, (Can.); **2. Arbn.** p. 140
- Toronto Hamilton & Buffalo Ry. Co. v. Steel Co. of Canada (Can.); **8. Carr.** p. 296
- Toronto Hockey Club v. Arena Gardens, Ltd. (Can.); **17. Damgs.** pp. 500, 501
- Toronto Metal & Waste Co., *Re* (Can.); **4. Bkpcy.** pp. 201, 202, 209, 210
- Toronto Radiator Manufacturing Co. v. Alexander (Can.); **7. Bldg. Confs.** p. 275
- Toronto Ry. Co. v. Grinstead (Can.); **17. Damgs.** p. 501
- v. King (1908); **36. Negl.** No. 765a
- Torrance & Province of Ontario, *Re*, *Re* Noble & Province of Ontario, *Re* Parkdale Boulevard, Ltd. & Province of Ontario (Can.); **11. Comp. Pche.** p. 356
- Torrens, *Re* (Ir.); **5. Bkpcy.** p. 224
- Totaro Fujino, *Ex p.*, *Re* Nippon Kinyn Sha, Ltd. (Can.); **10. Coys.** pp. 348, 349
- Totten v. Truax (Can.); **38. Rates**, p. 853
- Tourangeau v. Sandwich West Township (Can.); **2. Arbn.** p. 148
- Tournier v. National Provincial & Union Bank of England (1924); **3. Bank.** Nos. 986a, 990a
- Tower's Contract, *Re* (1924); **2. Agric.** No. 352a
- Towers v. Solomon (Can.); **5. Bkpcy.** pp. 225, 242
- Townsend v. Elliott (Can.); **38. Rates**, p. 853
- v. Moon Motor Co. (Can.); **12. Contr.** p. 402
- Traders Trust Co. v. Cohen (Can.); **5. Bkpcy.** pp. 221, 226
- v. Crawford (Can.); **7. B. of Sale**, p. 267
- Transvaal Provincial Administration v. Coley (S. Af.); **19. Educ.** p. 555
- Transvaal United Trust & Finance Co., Ltd., *Re*, *Re* Empire Builders, Ltd. (1919); **10. Coys.** No. 7014a
- Tranter v. Tranter & Lamb (N.Z.); **27. H. & W.** p. 665
- Travis v. Glasier (Can.); **6. B. of Exch.** p. 259
- Travis Investment Co. v. Power (Can.); **19. Easmt.** p. 544
- Travis-Barker v. Reed (Can.); **38. Real Prop.** p. 855
- Treasury, The v. Hanf (S. Af.); **2. Aliens**, p. 98
- Treaty of Versailles, *Re*, *Re* Hours of Labour (Can.); **17. Dep.** p. 520
- Tredegan v. Harwood (1929); **31. L. & T.** No. 5069a
- Tregaskes v. Meikle (S. Af.); **1. Agcy.** p. 58
- Tremain v. Manawatee Drainage Board (N.Z.); **17. Dep.** p. 527
- Tremblay v. Canadian Pacific Ry. Co. (Can.); **38. Rys.** p. 849
- Trenwith, *Re* (Can.); **5. Bkpcy.** p. 221
- Triefus & Stripp, Ltd., *Ex p.*, *Re* Sternberg (Can.); **5. Bkpcy.** p. 231
- Triggs v. English (Can.); **6. B. of Exch.** p. 254
- Trimble v. Capling (Can.); **17. Dep.** p. 517
- Trinder v. Great Western Ry. Co. (1919); **2. Agric.** No. 970a
- Trinea v. Duleba (Can.); **1. Action**, p. 2
- Trinity College v. Levinter (Can.); **18. Discy.** pp. 534, 536
- Triplow, *Ex p.*, *Re* v. Kent JJ. (1927); **33. Mags.** No. 1393a
- Trollope's Will Trusts, *Re*, Public Trustee v. Trollope (1927); **24. Exors.** Nos. 6053a, 6138a
- Troner v. Hassold (1670); **11. Const. L.** No. 487c
- Troop & Lewis v. Merchants' Marine Insurance Co. (Can.); **29. Insee.** p. 709
- Trotter v. Pedlar (Can.); **5. Bkpcy.** p. 229
- Trout's Case, *Re* Essex Land & Timber Co. (Can.); **10. Coys.** p. 340
- Trower v. The Commonwealth (Aus.); **11. Const. L.** p. 379
- Trudel v. Lemoine, *Re* Societe de la caisse de retraite de la Banque Nationale (Can.); **3. Bank.** p. 164
- Truman v. Ford Motor Co. of Canada, Ltd. (Can.); **12. Contr.** p. 406
- Trust & Loan Co. v. Monk (Can.); **13. Corpns.** p. 430
- Trust Houses, Ltd., *Ex p.*, *Re* v. Watford Licensing JJ. (1928); **30. Intox.** No. 340a
- Trustee, *Ex p.*, *Re* Bower Williams (1927); **5. Bkpcy.** No. 7096b
- , *Ex p.*, *Re* Bueb (1927); **4. Bkpcy.** No. 3365a
- , *Ex p.*, *Re* Canadian Cap Co. (Can.); **4. Bkpcy.** p. 193
- , *Ex p.*, *Re* Charters (1923); **5. Bkpcy.** No. 7119a
- , *Ex p.*, *Re* Chlandetti (1921); **5. Bkpcy.** Nos. 6912a, 6916a, 7113a
- , *Ex p.*, *Re* Cohen (1924); **4. Bkpcy.** No. 4665a; **5. Bkpcy.** No. 7225a
- , *Ex p.*, *Re* Davies (1921); **5. Bkpcy.** No. 7339a
- , *Ex p.*, *Re* Dent (1923); **4. Bkpcy.** No. 2902a; **5. Bkpcy.** Nos. 7153a, 7161a
- , *Ex p.*, *Re* Dollar Taxi Co. (Can.); **5. Bkpcy.** p. 219
- , *Ex p.*, *Re* Dombrowski (1923); **5. Bkpcy.** No. 5775b
- , *Ex p.*, *Re* Gunsbourg (1920); **5. Bkpcy.** No. 5775a
- , *Ex p.*, *Re* Hoyle (1924); **5. Bkpcy.** Nos. 7172a, 7267a
- , *Ex p.*, *Re* Kaufman Segal & Domb (1923); **5. Bkpcy.** Nos. 6802a, 6879a
- , *Ex p.*, *Re* Lavey (1920); **5. Bkpcy.** No. 7603a
- , *Ex p.*, *Re* Mathieson (1927); **5. Bkpcy.** No. 7096a
- , *Ex p.*, *Re* Plummer (1900); **5. Bkpcy.** No. 7079
- , *Ex p.*, *Re* Prior (1922); **4. Bkpcy.** No. 454a
- , *Ex p.*, *Re* Regal Phonograph Co. (Can.); **5. Bkpcy.** p. 231; **20. Eqq.** p. 565
- , *Ex p.*, *Re* Searle, Hoare & Co. (1924); **4. Bkpcy.** Nos. 3210a, 4484a
- , *Ex p.*, *Re* Tabor (1920); **5. Bkpcy.** No. 6516a
- , *Ex p.*, *Re* Wigzell (1921); **4. Bkpcy.** No. 1893a
- , *Ex p.*, *Re* Wiskemann (1923); **2. Aliens**, No. 237a
- , *Ex p.*, *Re* Wombwell (1921); **5. Bkpcy.** No. 5859a
- v. Bance, *Re* Wethered, *Ex p.* Salaman's Trustee (1926); **5. Bkpcy.** No. 6858a; **12. Contr.** No. 1459a
- v. Bank of Montreal, *Re* Niagara Hats, Ltd. (Can.); **5. Bkpcy.** p. 229
- v. Barclays Bank, Ltd., *Ex p.*, *Re* Wigzell (1921); **4. Bkpcy.** No. 1893a
- v. Canada Metal Co., Ltd., *Re* McIntyre (Can.); **7. B. of Sale**, p. 261; **21. Estpl.** p. 584
- v. Halland, *Re* Demry & Demry (Can.); **4. Bkpcy.** p. 205; **5. Bkpcy.** p. 229
- v. Restell, Brown & Co., *Re* Ford (1928); **5. Bkpcy.** No. 6882a
- v. Snow (W. R.) & Co., *Ex p.*, *Re* Cohen (1924); **4. Bkpcy.** No. 4665a; **5. Bkpcy.** No. 7225a
- v. Thompson & Sutherland, Ltd., *Re* Polson (Can.); **5. Bkpcy.** p. 243
- Trustee, etc. v. Paruk (S. Af.); **5. Bkpcy.** p. 237
- Trustees, *Ex p.*, *Re* Morant (1924); **5. Bkpcy.** Nos. 7183a, 7414a
- , *Ex p.*, *Re* Thompson (Can.); **5. Bkpcy.** pp. 228, 232

Trusts & Guarantee Co., Ltd. v. Drumheller Power Co. (Can.); 10. *Coys.* p. 340  
 Trusts & Guarantee Co. v. Smith (Can.); 9. *Coys.* p. 323  
 Tshabalala v. Van Der Merwe (S. Af.); 31. *L. & T.* p. 741  
 Tshoba Colliery (Natal), Ltd. v. Tshoba Coal Syndicate, Ltd. (S. Af.); 35. *Mistake*, p. 805  
 Tubantia, The (1924); 1. *Adm.* Nos. 82a, 594a, 650a  
 Tucker, *Re, Ex p.* Marine Insurance Club. (Nfld.); 29. *Insce.* p. 715  
 — v. Bennett (Can.); 26. *Guar.* p. 642  
 — v. Guest, Keen & Nettlefolds, Ltd. (1928); 34. *Mast. & S.* No. 3243a  
 — v. Hennessey (Aus.); 2. *Animals*, p. 121  
 — v. Powell (Can.); 19. *Educ.* pp. 557, 558  
 Tully v. Andrews (Can.); 7. *B. of Sale*, p. 267  
 — v. Bradbury (Can.); 35. *Mtge.* p. 811  
 Tunley v. Federal Comr. of Taxation (Aus.); 8. *Char.* p. 305  
 Tunnell, Ltd., *Re* (Can.); 4. *Bkpcy.* p. 204  
 —, *Re, Ex p.* Wills & Anderson (Can.); 4. *Bkpcy.* p. 194  
 Tupper v. Crowe (Can.); 26. *Guar.* p. 641  
 — v. Newton (1853); 33. *L. G.* No. 27a  
 Turf Publishers, Ltd. v. Davies (1927); 25. *Gaming*, No. 415b  
 Turid, The (1921); 17. *Custom*, No. 543  
 Turketine's Estate, *Re* (Ir.); 4. *Bkpcy.* pp. 206, 207  
 Turnbull's Estate (Official Assignee) v. Goldstein (Aus.); 5. *Bkpcy.* p. 216  
 Turner, *Re* (Can.); 4. *Bkpcy.* p. 205  
 — v. Beaton (Can.); 1. *Agcy.* p. 39  
 — v. British Columbia Mutual Benefit Assocn. (Can.); 29. *Insce.* p. 710  
 — v. Canadian Pacific Ry. Co. (Can.); 2. *Animals*, p. 126; 8. *Carr.* p. 292  
 — v. Civil Service Supply Assocn., Ltd. (1926); 8. *Carr.* Nos. 4a, 12a  
 — v. Richardson (1806); 5. *Bkpcy.* No. 7649a  
 — v. Schomberg (1745); 4. *Bkpcy.* No. 5424a  
 — v. Waterloo Manufacturing Co. (Can.); 21. *Exon.* p. 591  
 — v. Watts (1927); 31. *L. & T.* Nos. 4167a, 6636a, 7037c  
 Turner & Canadian Order of Foresters, *Re* (Can.); 29. *Insce.* p. 712  
 Turner & Jones v. Curran (Can.); 12. *Contr.* p. 399  
 Turner, Meakin & Co. v. Caledonia & British Columbia Mortgage Co., Ltd. (Can.); 1. *Agcy.* p. 61  
 Turner, Meakin & Co. v. Field (Can.); 1. *Agcy.* p. 59  
 Turrill v. Turrill (Can.); 38. *Rates*, pp. 853, 854  
 Turton v. Mitchell (1927); 28. *Inc. T.* No. 317a  
 Tussaud (Madame) & Sons, Ltd., *Re* (1927); 10. *Coys.* No. 6989a  
 Tuttle, *Ex p.* (Can.); 20. *Elect.* p. 561  
 Twaites v. Morrison (Can.); 2. *Animals*, p. 125  
 251 Bars of Silver v. Canadian Salvage Assocn. (No. 2) (Can.); 1. *Adm.* p. 23  
 251 Bars of Silver & Sea Insurance Co. v. Canadian Salvage Assocn. (Can.); 1. *Adm.* p. 35  
 Tyler v. Cork County Council (Ir.); 1. *Action*, p. 8  
 Tynan v. A'Beckett (Aus.); 1. *Agcy.* pp. 62, 77  
 — v. Forbes (N.Z.); 2. *Arbn.* p. 148  
 Tyrer, *Ex p.*, R. v. Lancashire JJ. (1925); 3. *Basty.* Nos. 278a, 372a  
 Tyrer Co. v. Eureka Lumber Co. (Can.); 6. *B. of Exch.* p. 255  
 Tyrrell v. Tyrrell (1928); 27. *H. & W.* Nos. 6085b, 6188a  
 Tyson v. Abercrombie (Can.); 17. *Deeds*, p. 510

## U.

U. K. Advertising Co. v. Glasgow Bag-Wash Laundry (Scot.); 30. *L. & T.* p. 733  
 U.S.A. v. Mammoth Oil Co. (Can.); 18. *Discy.* p. 536  
 — v. Motor Trucks, Ltd. (1924); 12. *Contr.* No. 900b  
 Udaichand Panna Lall v. Debibux Jewanram (Ind.); 2. *Arbn.* p. 138  
 Udoychand Pannalal v. Guzdar (P. E.) & Co. (1925); 17. *Dep.* No. 485a  
 U Gunawa v. U Pyinnyadipa (Ind.); 2. *Arbn.* pp. 146, 147  
 Ulivi v. Miller (Scot.); 25. *Gaming*, p. 634  
 Umar Hajee v. R. (Ind.); 14. *Crim.* p. 449  
 Umra v. R. (1924); 17. *Dep.* No. 49b  
 Underhills, Ltd. v. Barber, & Davies Footwear Co. (Can.); 4. *Bkpcy.* p. 201  
 Underwood (A. L.), Ltd. v. Bank of Liverpool (1924); 3. *Bank.* Nos. 387a, 479b, 691b  
 — v. Barclays Bank (1924); 3. *Bank.* Nos. 387a, 479b, 691b  
 Union, The (1928); 41. *Ship.* No. 5748a  
 Union, *Re*, Indian Sugar Mills Co., Ltd. v. Brij Lal, Jagannath (Ind.); 4. *Bkpcy.* p. 204  
 Union Bank v. Benedict (Can.); 27. *H. & W.* p. 656  
 — v. Farmer (Can.); 3. *Bank.* pp. 176, 178  
 — v. Lohmann (Aus.); 2. *Aliens*, p. 108  
 Union Bank of Australia, *Ex p.*, *Re* Queensland Mercantile & Agency Co., *Ex p.* Australasian Investment Co. (1892); 11. *Confl.* No. 417a  
 — v. McClintock (1922); 1. *Agcy.* No. 989a  
 Union Bank of Canada v. Antoniou (Can.); 6. *B. of Exch.* p. 250  
 — v. Dutczak (Can.); 8. *Chos.* p. 314  
 — v. Makepeace (Can.); 5. *Bkpcy.* p. 244  
 — v. Nettleton (Can.); 3. *Bank.* p. 169  
 — v. Tattersall (Can.); 6. *B. of Exch.* pp. 251, 252  
 — v. Wood (Can.); 3. *Bank.* p. 175  
 Union Bank of Scotland v. Taylor (Scot.); 3. *Bank.* p. 164  
 Union Government (Minister of Justice) v. Bolam (S. Af.); 21. *Exon.* p. 589  
 Union Government v. Chappell (S. Af.); 1. *Agcy.* p. 55  
 — v. Fakir (S. Af.); 2. *Aliens*, p. 115  
 Union Government (Minister of Railways) v. Lee (S. Af.); 36. *Negl.* p. 818  
 Union Share Agency & Investment, Ltd. (Liquidators) v. Spain (S. Af.); 12. *Contr.* p. 407  
 Union Share Agency Liquidators v. Hatton (S. Af.); 9. *Coys.* p. 326  
 Union S.S. Co. of New Zealand, Ltd. v. Federal Comr. of Taxation (Aus.); 28. *Inc. T.* p. 679  
 Union Trustee Co. of Australia, Ltd. v. A.-G. for Commonwealth of Australia, *Re* Mitchner (Aus.); 2. *Aliens*, p. 102  
 Unique Properties, Ltd. v. Endean (N.Z.); 10. *Coys.* p. 337  
 United Church, *Re* (Can.); 19. *Eccl.* p. 554  
 United Exhibitors, *Re* (Can.); 5. *Bkpcy.* p. 219  
 United General Commercial Insurance Corpn., *Re* (1927); 10. *Coys.* No. 7485a  
 United Grain Growers, Ltd. v. Mabey (Can.); 1. *Agcy.* p. 51  
 United Grain Growers, Ltd.'s Case, *Re* Sale of Shares Act (Can.); 10. *Coys.* p. 339  
 United Manufacturing Co. v. St. Maurice Power Co. (1926); 17. *Dep.* No. 24a  
 United States v. Snyder (Can.); 15. *Crim.* pp. 466, 467  
 Unity Manufacturing Co., *Re*, Moore's Claim (Can.); 5. *Bkpcy.* p. 228

- Universal Negro Improvement Asscn. Incorporated v. Morte (1928); **8. Char.** No. 272a  
 Universal Steam Navigation Co. v. McKelvie (J.) & Co. (1923); **1. Agcy.** No. 2549a  
 University College, Oxford (Master & Fellows) v. Garton (1847); **19. Eccl.** No. 3475a  
 Upham v. Bardebs (N.Z.); **40. S. Land,** p. 867  
 Upper (Doe d.) v. Edwards (Can.); **38. Rates,** p. 853  
 Upton (Doe d.) v. Witherwick (1825); **21. Exon.** No. 1658a  
 Urquhart v. Stracey (Ir.); **9. Coys.** p. 321  
 Urquhart Lindsay & Co. v. Eastern Bank, Ltd. (1922); **3. Bank.** No. 756b  
 Ussan Kasim Sait v. Secretary of State for India (Ind.); **19. Easmt.** pp. 541, 542, 547  
 Utah State v. Jones (Can.); **24. Extradn.** p. 619  
 Uttam Chand Saligram v. Jewa Mamooji (Ind.); **2. Arbn.** p. 131  
 Uys v. Uys (S. Af.); **36. Negl.** p. 816
- V.
- Vacuum Oil Co. v. Union Insurance Society of Canton, Ltd. (1926); **29. Insee.** No. 2286a  
 Vahey & Carleton County, *Re* (Can.); **2. Arbn.** p. 147  
 Vaillancourt v. R. (Can.); **34. Mast. & S.** p. 771  
 Vajesingji Joravarsingji v. Secretary of State for India (1924); **17. Dep.** No. 265a  
 Vale v. Rockman, *Re* Kimber (1928); **3. Bank.** No. 112c; **39. Revenue,** No. 843a  
 Vale (J.) & Co. v. Van Oppen & Co., Ltd. (1921); **1. Agcy.** No. 1208a  
 Valiantes v. Bell (Can.); **20. Elect.** p. 562  
 Valli, etc. v. Berthold Reif (Ind.); **2. Aliens,** p. 110  
 Vancouver Harbour Comrs. v. R., *Re* Kitsilano Indian Reserve (Can.); **11. Comp. Pche.** p. 360  
 Vancouver Ice & Storage Co. v. British Columbia Electric Ry. Co. (Can.); **36. Negl.** p. 816  
 Vanderburgh v. Vanalstine (Can.); **40. S. Land,** p. 868  
 Van Der Byl Estate v. Swanepoel (S. Af.); **34. Mast. & S.** p. 772  
 Van der Walt v. Hofmeyr (S. Af.); **1. Agcy.** p. 59  
 Vanevery v. Buffalo & Lake Huron Ry. Co. (Can.); **1. Agcy.** p. 52  
 Van Every v. Grant (Can.); **21. Exon.** p. 587  
 Van Hemelryck v. New Westminster Construction & Engineering Co. (Can.); **1. Agcy.** pp. 67, 68  
 — v. New Westminster Construction & Engineering Co. (No. 2) (Can.); **16. Courts,** p. 482  
 — v. Northern Construction Co. (Can.); **1. Agcy.** pp. 67, 68  
 — v. Pacific Construction Co. (Can.); **1. Agcy.** pp. 67, 68  
 Vann, *Ex p.*, *Re* Marks (1923); **5. Bkpcy.** No. 8104b  
 Van Wassenac v. Adams (Can.); **21. Exon.** p. 592  
 Varey v. Muirhead (Can.); **21. Exon.** p. 589  
 Varson v. Vegreville (Town) (Can.); **38. Rates,** p. 852  
 Vasauji Moolji v. Karsondas Tejpal (Ind.); **1. Agcy.** p. 59  
 Vaselenak v. Vaselenak (Can.); **1. Agcy.** p. 39  
 Vatsavaya Venkata Jagapati v. Poosapati Venkatapati (Ind.); **8. Chos.** p. 312  
 Vaughan v. Grindell (1921); **2. Agric.** No. 975a  
 Vaughn v. A.-G. for Alberta (Can.); **21. E. D.** p. 575  
 Veerabadra Pillai, *Re* (Ind.); **15. Crim.** p. 466  
 Vellasawmy Servai v. L. Sivaraman Servai (Ind.); **17. Dep.** p. 527  
 Venicoff, *Ex p.*, *R. v.* Leman Street Police Station Inspector (1920); **2. Aliens,** No. 551a  
 —, *Ex p.*, *R. v.* Secretary of State for Home Affairs (1920); **2. Aliens,** No. 551a  
 Verge v. Somerville (1924); **8. Char.** Nos. 1a, 199b, 1252a  
 Verney v. Verney (1920); **22. Evid.** No. 2757a  
 Vernon Hardware Co. v. Reid & Reinhard (Can.); **8. Chos.** p. 315; **21. Exon.** p. 592  
 Vernon-Jeffreys v. Pinto (1928); **35. Money,** Nos. 381a, 410a, 456a  
 Verratt v. McAulay (Can.); **26. Guar.** p. 642  
 Versailles Treaty, *Re*, *Re* Hours of Labour (Can.); **17. Dep.** p. 520  
 Vertannes v. Robinson (Ind.); **30. L. & T.** p. 732  
 Vickers, Ltd. v. Miners (1927); **34. Mast. & S.** No. 3766a  
 Victoria (State of) v. Commonwealth (Aus.); **17. Dep.** p. 522  
 Victoria Lumber & Manufacturing Co., Ltd. v. Thomsen & Clark (Can.); **21. Estpl.** p. 581  
 Victoria Street Properties, Ltd. (In Voluntary Liquidation), *Re* (N.Z.); **10. Coys.** p. 346  
 Victors, Ltd. v. Lingard (1927); **9. Coys.** No. 3419a  
 Victory v. Saskatchewan Guarantee & Fidelity Co., Ltd. (Can.); **29. Insee.** p. 714  
 Vidal v. Robinson (William) Co., Ltd. (Can.); **2. Arbn.** p. 134  
 Vigneron-Dahl (British & Colonial), Ltd. v. Pettit (1925); **18. Discy.** No. 805a  
 Viking Municipal Hospital District No. 10, *Re* (Can.); **16. Cr. Pract.** p. 490  
 Villar, *Re*, Public Trustee v. Villar (1928); **37. Perps.** No. 66a  
 Villiers v. A.-G., *Re* Child Villiers' Application (1922); **8. Char.** No. 2137  
 Vince v. Abel & Imray (1928); **34. Mast. & S.** No. 2768a  
 Vincent v. St. Magnus the Martyr, etc. (Rector & Churchwardens) (1925); **19. Eccl.** Nos. 2764a, 2825, 2831, 2873, 2896, 2906, 2916, 3113a  
 — v. Southern Ry. Co. (1927); **38. Rys.** No. 598a  
 Vipond v. Sisco (Can.); **39. S. Goods,** p. 865  
 Viscount Grain Growers Co-Operative Asscn.'s Trustee v. Brumwell & Royal Bank (Can.); **5. Bkpcy.** p. 236  
 Vishnu Jagannath Joshi v. Vasudep Raghunath Oka (Ind.); **2. Agric.** p. 90  
 Vishwanath v. Rankrishua (Ind.); **31. L. & T.** p. 737  
 Visser, *Re*, Queen of Holland v. Drukker (1928); **11. Confl.** No. 6a  
 Vitaly v. Bryan (Can.); **12. Contr.** p. 390  
 Vivian v. Cochran (1855); **19. Eccl.** No. 3455a  
 Vlassopoulos v. British & Foreign Marine Insurance Co., Ltd. (1928); **41. Ship.** Nos. 4248a, 4253a, 4260a, 4283a  
 Voge v. Kerr (Aus.); **1. Agcy.** p. 42  
 Vogue Fur Shop, Ltd., *Re*, *Ex p.* Paquet Co. (Can.); **5. Bkpcy.** p. 228  
 Volhoffer v. Volhoffer (Can.); **27. H. & W.** p. 663  
 Von Lorang v. Austrian Property Administrator (1927); **11. Confl.** Nos. 926a, 944b  
 Vosper v. Great Western Ry. Co. (1928); **8. Carr.** No. 827a  
 Vosz, *Re*, Public Trustee v. Steele (Aus.); **8. Char.** pp. 303, 307  
 Vrouw Dorothea, The (1754); **1. Adm.** No. 1799a  
 Vrouw Henrietta, The (1803); **37. Prize L.** No. 1189a  
 Vulcaan Coal Co., *Re*, Harrison v. Harbottle (1922); **2. Aliens,** Nos. 228c, 223f



## W.

- W., Re* (Can.); **3. Bast.** p. 186  
 — *v. W.* (1926); **27. H. & W.** No. 5792a  
 — *v. W.* (Aus.); **27. H. & W.** p. 664  
*W. H. Randall, The* (1928); **1. Adm.** No. 672a  
*Wackrow v. Takapuna Jockey Club* (N.Z.); **2. Animals**, p. 119  
*Waddell v. Howat* (Scot.); **2. Agric.** p. 82  
*Waddell's Trustees v. Crawford* (Scot.); **23. Exors.** p. 612  
*Wadgery v. Fall* (Can.); **12. Contr.** pp. 397 398  
*Wadsley, Re, Bettinson's Representative v. Trustee* (1925); **2. Agric.** No. 226a; **5. Bkpcy.** No. 7756a  
*Wadsworth v. Minister of Health* (1927); **37. Poor L.** No. 1672a  
*Wage-Earners Claim, Re Reeve Dobie Mines* (Can.); **4. Bkpcy.** p. 206  
*Wagner v. Hartows* (Can.); **5. Bkpcy.** p. 228  
*Wagstaff v. Clinton* (1883); **2. Agric.** No. 175a  
 — *v. Gutta Percha Co.* (1927); **34. Mast. & S.** No. 3226a  
*Wahl v. Nugent* (Can.); **21. Estpl.** p. 580  
*Wahn Estate, Re* (Can.); **32. Limit. of A.** p. 755  
*Wainio v. Beaudreault* (Can.); **1. Agcy.** p. 71; **3. Bailmt.** p. 162  
*Wairakei, Ltd. v. Cleave* (N.Z.); **9. Coys.** pp. 326, 330  
*Wait & James v. Midland Bank* (1926); **3. Bailmt.** No. 304b  
*Waitomo County Council v. Miles* (N.Z.); **38. Rates**, p. 851  
*Wakaruk v. Wakaruk* (Can.); **27. H. & W.** p. 659  
*Wakefield & Co., Ltd. v. Board* (Trading as J. P. Board & Co.) (1928); **18. Discy.** No. 87a  
*Wakely v. Triumph Cycle Co.* (1924); **11. Confl.** No. 1243a  
*Waker v. Snowe* (1622); **38. Real Prop.** No. 628a  
*Walch v. Nordquist* (Can.); **24. Exors.** p. 616  
*Walden v. Gramophone Co., Ltd.* (1927); **34. Mast. & S.** No. 3954a  
*Wales v. Iron Trades Employers' Assocn., Ltd.* (1928); **29. Insee.** Nos. 3205a, 3213a  
*Walford (Leopold) (London) v. Affréteurs Réunis Société Anonyme* (1918); **1. Agcy.** No. 1786a  
*Walkeam, Re* (Can.); **4. Bkpcy.** p. 209  
*Walker, Re* (Can.); **2. Aliens**, p. 105  
 — *Re, Ex p. Hinkey* (N.Z.); **4. Bkpcy.** p. 190  
 — *v. Brander* (Scot.); **2. Animals**, p. 123  
 — *v. Hendry* (Scot.); **1. Agcy.** p. 39  
 — *v. Howard* (1927); **28. Inc. T.** No. 317b  
 — *v. Hyman* (Can.); **21. Estpl.** p. 583  
 — *v. Kelly* (Can.); **30. L. & T.** p. 732  
*Walker (John) & Sons, Ltd. v. Kilmarnock Assessor* (Scot.); **38. Rates**, p. 852  
*Wall v. Exchange Investment Corp.* (1926); **9. Coys.** Nos. 3787a, 3811a, 3847a  
 — *v. Southern Cross Assurance Co., Ltd.* (N.Z.); **29. Insee.** p. 710  
*Wallace v. Fogarty* (Ir.); **31. L. & T.** p. 744  
 — *v. Wallace, Re Podley* (1927); **24. Exors.** No. 6341a  
*Wallace Huestis Grey Stone Co., Re* (Can.); **17. Dep.** p. 517  
*Wallbridge v. Brown* (Can.); **16. Courts**, p. 480  
 — *v. Follett* (Can.); **6. B. of Exch.** p. 250  
 — *v. Gilmour* (Can.); **32. Limit. of A.** p. 757  
*Wallen, Re* (N.Z.); **23. Exors.** p. 607  
*Waller v. Waller* (1927); **27. H. & W.** No. 6250b  
*Waller & Petty v. Sands* (1632); **2. Agric.** No. 633a  
*Wallinder v. Imperial Bank of Canada* (Can.); **3. Bank.** p. 166  
*Wallis v. Burton* (Can.); **27. H. & W.** p. 656  
 — *v. Hodson* (1740); **18. Descr.** No. 165b  
*Walliss v. Broadbeant* (1836); **22. Evid.** No. 2476a  
*Walpole v. Canadian Northern Ry. Co.* (Can.); **11. Confl.** p. 371  
*Walsh, Ex p., Re Yates*; **17. Dep.** pp. 521, 522  
 — *v. Ballina Urban District Council* (Ir.); **36. Negl.** p. 818  
 — *v. Brown* (Can.); **12. Contr.** p. 407  
 — *v. Peat* (Can.); **36. Negl.** p. 818  
 — *v. R.* (Aus.); **19. Educ.** p. 558  
 — *v. Walsh & Kirkland* (Can.); **27. H. & W.** p. 661  
 — *v. Wightman* (Ir.); **31. L. & T.** p. 742  
*Walstead v. Canadian Pacific Ry. Co.* (Can.); **8. Carr.** p. 291  
*Walter v. Culbertson* (Scot.); **3. Bast.** p. 187  
 — *v. Davies, Ex p. Glamorgan* (former Sheriff) (1858); **21. Exon.** No. 380  
 — *v. Seibel* (Can.); **17. Dnm.** p. 503  
*Walters, Re* (Can.); **23. Exors.** p. 611  
 — *v. Allison* (S. Af.); **2. Arbn.** p. 133  
 — *v. Mitton* (Aus.); **25. Food**, p. 625  
 — *v. Treasury Solicitor, Rowlls v. Bebb, Re Rowlls* (1900); **22. Eqq.** No. 1068a  
*Walters (Stephen) & Sons, Ltd., Re* (1926); **9. Coys.** Nos. 839a, 1080a; **10. Coys.** No. 7382a  
*Walton, Re* (Can.); **5. Bkpcy.** p. 220  
 — *v. Vancouver Board of School Trustees* (Can.) **19. Educ.** p. 555  
 — *v. York County Corp.* (Can.); **26. Hghys.** p. 649  
*Walwyn v. Awberry* (1677); **19. Eccl.** Nos. 472a, 2599a  
*Warblington Overseers, Ex p.* (1854); **38. Pub. Hlth.** No. 533  
*Ward v. Archer* (Can.); **21. Exon.** p. 589  
 — *v. British American Oil Co., Ltd.* (Can.); **11. Confl.** p. 371  
 — *v. Devlin* (Ir.); **34. Mast. & S.** pp. 794, 795  
 — *v. Maber, Re Maber* (1928); **28. Infts.** No. 831a; **37. Perps.** No. 652a  
 — *v. Rosser* (Can.); **2. Animals**, p. 126  
 — *v. Sneiman* (1925); **13. Cty. Cts.** No. 776a  
 — *v. Stocking* (Can.); **21. Exon.** p. 590  
*Ward (Robert) & Co., Ltd. v. Wilson* (Can.); **21. Exon.** p. 592  
*Wardfold Manufacturing Co., Re* (Can.); **4. Bkpcy.** p. 205  
*Ware, Re, Re Rouse, Ware v. Rouse* (1926); **20. Eqq.** Nos. 1873b, 2030a  
*Warman v. Seaman* (1677); **38. Real Prop.** No. 584a  
*Warner v. Linahan* (Can.); **2. Agric.** p. 80  
*Warner Quinlan Asphalt Co. v. R.* (Can.); **11. Const. L.** p. 384  
*Warre v. Rush, Re Rush* (1923); **2. Aliens**, No. 215k  
*Warren, Re* (Can.); **28. Infts.** p. 606  
 — *v. Heslop* (S. Af.); **12. Contr.** p. 401  
 — *v. National Surety Co.* (Can.); **26. Guur.** p. 641  
 — *v. Warren* (1925); **3. Bast.** No. 65c  
*Warren & Co. v. Agdeshman* (1922); **1. Agcy.** No. 1947a  
*Warren Gzowski & Co. v. Forst & Co.* (Can.); **22. Evid.** p. 598  
*Warsawa v. Watsness (Owners)* (1921); **34. Mast. & S.** No. 2690a  
*Wartling Tithe Redemption, Re* (1924); **19. Eccl.** Nos. 3513a, 3513b  
*Wartnaby v. Shuttleworth & Taylor* (1837); **36. Printrs.** No. 945a  
*Warwick v. Butler & Lauritzen* (1925); **13. Cty. Cts.** Nos. 750a, 763a  
*Waryam Singh v. R.* (Ind.); **14. Crim.** p. 440  
*Washington State v. Fletcher* (Can.); **24. Extrdn.** p. 619

- Wasserman v. Blackburn (1926); **29. Insce.** No. 3260a  
 Waterhouse v. Barker (1924); **3. Bank.** No. 1012a  
 — v. Clout, *Ex p.* Booker (1871); **23. Exors.** No. 5864a  
 Waterhouse (Thomas) & Co., *Re* (Can.); **4. Bkpcy.** p. 196  
 Waterloo v. Barnard (Can.); **38. Real Prop.** p. 856  
 Waterloo Insurance Co. v. Hind (1862); **24. Exors.** No. 6074a  
 Waterside Workers' Federation of Australia v. Gilchrist, Watt & Sanderson, Ltd. (Aus.); **16. Cr. Pract.** p. 493  
 Waterson v. Low (N.Z.); **30. Intox.** p. 720  
 Watkins v. Coombes (Aus.); **25. Fraud. Conv.** p. 629  
 — v. Guest, Keen & Nettlefolds, Ltd. (1928); **34. Mast. & S.** No. 3243a  
 — v. Washburn (Can.); **23. Exors.** p. 612  
 Watkins (J. R.) Co. v. Cafferky (Can.); **22. Evid.** p. 604  
 — v. Hannah (Can.); **26. Guar.** p. 644  
 — v. Nobert (Can.); **26. Guar.** p. 641; **27. H. & W.** pp. 657, 658  
 Watkyns v. Watkyns (1740); **7. Bonds,** No. 950a  
 Watson, *Re* (Can.); **4. Bkpcy.** p. 202  
 — v. Aleppo (Owners) (1927); **34. Mast. & S.** No. 2602a  
 — v. Birmingham Government Instructional Centre (1926); **34. Mast. & S.** No. 2057a  
 — v. Cadillac Motor Sales Co., Ltd. (Can.); **1. Agcy.** p. 45  
 — v. Cully (1926); **8. Clubs,** No. 111a  
 — v. Dowser (Can.); **35. Mtge.** p. 811  
 — v. Government Instructional Centre, Birmingham (1926); **34. Mast. & S.** No. 2057a  
 — v. Guillaume (Can.); **2. Animals,** p. 119  
 — v. Haggitt (1928); **17. Deeds,** No. 815a; **36. Prtnrs.** No. 1841a  
 — v. Howard (Can.); **11. Const. L.** p. 381  
 — v. Motor Livery Co. (Can.); **18. Discy.** p. 534  
 — v. Powell (Can.); **1. Agcy.** p. 72  
 — v. Severn (Can.); **16. Courts,** p. 480  
 Watson & Cobourg Town, *Re* (Can.); **16. Cr. Pract.** p. 490  
 Watt v. Adams Brothers Harness Manufacturing Co. (Can.); **31. L. & T.** p. 735  
 — v. MacLaughlin (Ir.); **8. Clubs,** p. 316  
 Watters v. Hunter (Scot.); **2. Agric.** p. 79  
 Watts v. Battersea Corpn. (1928); **38. Pub. Hlth.** No. 502a  
 Way, *In the Goods of* (1901); **23. Exors.** No. 63a  
 — v. Leland Hotel Co. (Can.); **29. Inns,** p. 703  
 Weathered v. Fitzgibbon (N.Z.); **25. Gaming,** p. 634  
 Weatherell v. Watson (1822); **14. Crim.** No. 1678b  
 Weaver, *Ex p.*, *Re* Cobourg Felt Co. (Can.); **5. Bkpcy.** p. 243  
 Webb, *Re* (1846); **33. Lunat.** No. 778a  
 —, *Re* (Can.); **5. Bkpcy.** pp. 229, 232  
 — v. H.M. Advocate (Scot.); **14. Crim.** p. 461  
 — v. Queensland Insurance Co., Ltd. (N.Z.); **2. Arbn.** p. 134  
 Webb (H. J.) & Co. (Smithfield, London), Ltd., *Re* (1922); **10. Coys.** Nos. 6460, 6936  
 Webber v. Copeman (Can.); **12. Contr.** p. 401  
 Webster v. McIntosh (Can.); **7. Bldg. Conts.** p. 275  
 — v. Toronto Corpn. (Can.); **18. Discy.** p. 534  
 — v. Webster & Williamson (1926); **27. H. & W.** No. 5588a  
 — v. Western Australia Taxation Deputy Comr. (Aus.); **28. Inc. T.** p. 680  
 Webster (A. G.) & Sons, Ltd. v. Cotton (Aus.); **1. Agcy.** pp. 58, 59  
 Weddall v. Nixon (1853); **18. Eccl.** No. 2105a  
 Wedley v. Wedley (Can.); **27. H. & W.** p. 666  
 Wedlock (J. Stanley), Ltd., *Re* (Can.); **3. Bank.** p. 177; **4. Bkpcy.** p. 201  
 —, *Re, Ex p.* Royal Bank (Can.); **9. Coys.** p. 331  
 Weeden v. Turner (Can.); **1. Agcy.** pp. 56, 62  
 Weegan v. McDiarmid (Can.); **38. Rates,** p. 853  
 Wegg, *Re, Ex p.* Banbury (1843); **5. Bkpcy.** No. 7735  
 —, *Re, Ex p.* Hanbury (1843); **5. Bkpcy.** No. 7735  
 Weicker v. Mortimer (Can.); **6. B. of Exch.** p. 250  
 Weidman v. McClary (Can.); **21. Exon.** p. 587  
 Weiler Brothers & Victoria (City) Corpn., *Re* (Can.); **2. Arbn.** p. 137  
 Weinberger v. Inglis (1919); **2. Aliens,** No. 140a  
 Weingarden, *Re* (Can.); **22. Evid.** p. 604  
 Weir v. Treasury Solicitor, *Re* Stollery (1926); **22. Evid.** Nos. 3165a, 3177a  
 Weiss v. Schieschel (Can.); **18. Discy.** p. 534  
 Weist v. Smith (Can.); **2. Agric.** p. 80  
 Wekusko Mines, Ltd. v. May (Can.); **34. Mines,** p. 800  
 Welch v. Myers (1816); **5. Bkpcy.** No. 7648b  
 Weld v. Petre (1928); **32. Limit. of A.** No. 1709a; **35. Mtge.** No. 1091a  
 Weld-Blundell v. Stephens (1920); **1. Agcy.** No. 1243a  
 Welden v. Smith (Aus.); **11. Const. L.** p. 380  
 Welland (City) v. Electric Steel & Metals Co., Ltd. (Can.); **20. Electric.** p. 564  
 Wellaway v. Courtier (1918); **2. Agric.** No. 311a  
 Wellband v. Walker (Can.); **21. Estpl.** p. 584  
 Wellington Racing Club v. Symons (N.Z.); **3. Bailmt.** p. 155  
 Wells v. Blain (Can.); **12. Contr.** p. 414  
 — v. Masterman (1799); **6. B. of Exch.** No. 701a  
 Wellwood v. King (Alexander), Ltd. (Ir.); **3. Bailmt.** p. 161  
 Welsh Navigation Steam Coal Co. v. Evans (1927); **34. Mast. & S.** No. 2120a  
 Welton v. Welton (1927); **27. H. & W.** Nos. 4063a, 4098a  
 Welzel v. Kain (Aus.); **36. Prtnrs.** p. 825  
 Wentworth Orchard Co., Ltd. v. Merchants Consolidated, Ltd. (Can.); **39. S. Goods,** p. 865  
 Wentzall v. Perks (Can.); **2. Animals,** p. 119  
 Wernham v. M'Lean, Baird & Neilson (Scot.); **1. Agcy.** p. 51  
 Werrin v. United National Collieries, Ltd. (1926); **34. Mast. & S.** No. 2331a  
 West v. Accidental Fire Insurance Co. (Can.); **12. Contr.** p. 407; **35. Mtge.** pp. 812, 813  
 — v. Conway (Aus.); **18. Discy.** pp. 534, 535  
 — v. Dillican (N.Z.); **1. Agcy.** pp. 50, 73  
 — v. O'Leary (Can.); **21. Estpl.** p. 583  
 — v. Rotherham (1836); **29. Intpr.** No. 503c  
 West (F. E.) & Co., *Re* (Can.); **4. Bkpcy.** pp. 209, 210  
 West Friesland, The (1859); **1. Adm.** No. 352a  
 — (1860); **1. Adm.** Nos. 336, 352a  
 West Rand Estates, Ltd. v. New Zealand Insurance Co., Ltd. (S. Af.); **29. Insce.** p. 710  
 West Wales Joint Board for Mentally Defective v. Evans (1928); **31. L. & T.** Nos. 7103b, 7301a  
 Westen v. Fairbridge (1923); **7. B. of Sale,** Nos. 708a, 723a  
 Westerman v. Pantlin (1900); **40. S. Land,** No. 1944a

- Western Australian Insurance Co., Ltd. v. A.-G. & Minister for Industry & Commerce (Ir.); **10. Coys.** p. 349
- Western Canada Auto Tractor Co., Ltd. v. Bjarnason (Can.); **1. Action**, p. 2
- Western Canada Flour Mills Co., Ltd. v. White Bakery (Can.); **5. Bkpcy.** p. 243
- Western Canada Loan & Savings Co. v. Court (Can.); **29. Intpr.** p. 716
- Western Canada Loan Co. v. Garrison (Can.); **32. Limit. of A.** p. 757
- Western Dominion Investment Co. v. McMillan (Can.); **7. Bonds**, p. 270
- Western Electric Co., Ltd.'s Patents, *Re* (1927); **36. Pats.** No. 2062b
- Westerton, *Re*, Public Trustee v. Gray (1919); **3. Bank.** No. 409a
- Westhill Crossing Case, Canadian National Rys. v. Hydro Electric Power Commission & Department of Highways for Ontario (Can.); **38. Rys.** p. 849
- Westlake v. Adams (1858); **22. Evid.** No. 2583a
- Westlake v. Page (1926); **2. Agric.** Nos. 266j, 266k
- Westminster Bank, Ltd. v. Hilton (1926); **3. Bank.** No. 589a
- Weston, *Ex p.*, R. v. Nickerson (Can.); **14. Crim.** p. 443
- Westwood v. Barnett (Scot.); **2. Agric.** p. 81
- v. McMillan (Can.); **2. Animals**, p. 126
- Wethered, *Re*, *Ex p.* Salaman's Trustee, Trustee v. Bance (1926); **5. Bkpcy.** Nos. 6858a, 7483a; **12. Contr.** No. 1459a
- Wetmore, *Re*, *Ex p.* Baird & Peters (Can.); **5. Bkpcy.** p. 229
- Weymberg v. Touch (1669); **11. Const. L.** No. 487d
- Whaley, *Re*, *Ex p.* Official Receiver (1921); **5. Bkpcy.** No. 8435a
- Whalley v. Vandergrand (Can.); **2. Animals**, pp. 120, 121
- v. Williamson (1836); **21. Exon.** No. 1580a
- v. — (1843); **4. Bkpcy.** No. 4772a
- Wheat Supplies, Royal Commission of v. Usher & Co., Ltd. (Ir.); **2. Arbn.** p. 145
- Wheater, *Re* (1928); **33. Lunat.** Nos. 1378a, 1391a
- Wheatley v. Anderson & Miller (Scot.); **32. Eibel**, p. 751
- v. Howard (Can.); **3. Basty.** p. 189
- Wheeler, *Ex p.*, R. v. Investors' Review, Ltd. (1928); **22. Evid.** No. 4428a
- , *Re*, Jameson v. Cotter (1928); **21. E. D.** No. 271a
- v. Atkinson (Aus.); **35. Misrep.** p. 804
- v. Bramah (1813); **5. Bkpcy.** Nos. 7649c, 7652a
- v. Hisey (Can.); **1. Agcy.** p. 49
- Wheeler (M.) & Co., Ltd. v. Warren (1928); **10. Coys.** No. 5067b
- Wheton, *Re* (Can.); **33. Mags.** p. 766
- While, *Re*, Wilford v. While (1928); **25. Gifts.** No. 330a
- Whimbey v. Hyde (Can.); **38. Real Prop.** p. 855
- Whipp v. Mackey (Ir.); **19. Easmt.** p. 541
- Whistle Co., *Re* (Can.); **4. Bkpcy.** p. 104
- Whitbread & Co., Ltd. v. Edinburgh Assessor (Scot.); **38. Rates**, p. 852
- White, *Re* (1928); **23. Exors.** No. 1431b
- , *Re* (Can.); **4. Bkpcy.** p. 202
- v. Gardner (1835); **1. Action**, No. 617a
- v. Miller (Can.); **22. Evid.** p. 600
- v. Royal Bank of Canada (Can.); **3. Bank.** pp. 166, 170
- v. Smith (1927); **35. Money**, No. 434a
- v. Witcher (1928); **28. Inc. T.** No. 545c
- White & Co., Ltd. v. Ionia, The (Can.); **4. Bkpcy.** p. 206; **5. Bkpcy.** pp. 215, 237
- White & Elliott, *Ex p.*, *Re* Gadsby (Can.); **5. Bkpcy.** p. 221
- White & Gray's Patent, *Re* (1927); **36. Pats.** No. 1681a
- White & Toronto (City), *Re* (Can.); **2. Arbn.** p. 145
- White, Child & Beney, Ltd. v. Eagle Star & British Dominions Insurance Co. (1922); **11. Confl.** No. 17a
- v. Simmons (1922); **11. Confl.** No. 17a
- Whiteford v. McLeod (Can.); **12. Contr.** p. 407
- Whitehead v. Whitehead (Can.); **27. H. & W.** p. 657
- Whitehouse v. Midland Ry. Co. (1866); **8. Carr.** No. 579a
- Whitehurst Appellant, *Re* Kearney's Estate (Aus.); **21. Estpl.** p. 584
- Whiteside, *Re*, R. v. McInroy (Can.); **16. Cntmpt.** p. 477
- v. Wallace Shipyards, Ltd. (Can.); **1. Agcy.** p. 61
- Whitlock v. Whitlock (1924); **18. Descr.** No. 134a
- Whitlock's Case (1725); **4. Bkpcy.** No. 223a
- Whitmore v. Inland Revenue Comrs. (1925); **28. Inc. T.** No. 664a
- Whitrod, *Re*, Burrows v. Base (1926); **23. Exors.** No. 5340a
- Whittaker v. Taylor (Can.); **1. Agcy.** p. 39
- Whittle v. Henley (S. Af.); **9. Coys.** p. 324
- Whitworth, *Re* (1928); **33. Lunat.** No. 529b
- Wholesale Grocers, Ltd., *Re* (Can.); **5. Bkpcy.** p. 240
- Warton Lumber Co., *Re*, *Ex p.* Bank of Commerce (Can.); **3. Bank.** p. 178
- Wick Case (Can.); **19. Eccl.** p. 554
- Wickes v. Tanner (1848); **22. Evid.** No. 2513a
- Wickett v. Port of London Authority (1928); **41. Ship.** No. 8715a
- Wigg v. A.-G. of Irish Free State (1927); **17. Dep.** No. 714b; **38. Pub. Auth.** p. 846
- Wiggins v. Lavy (1928); **1. Action**, No. 689a
- Wigzell, *Re*, *Ex p.* Hart (1921); **4. Bkpcy.** Nos. 1579a, 1893a
- , *Re*, *Ex p.* Trustee v. Barclays Bank, Ltd. (1921); **4. Bkpcy.** No. 1893a
- , *Re*, Hart v. Barclays Bank (1921); **4. Bkpcy.** No. 1893a
- Wijeyewardene v. Jayawardene (1924); **17. Dep.** No. 271a
- Wilcock v. Pinto & Co. (in the name of Kummer) (1925); **28. Inc. T.** No. 633a
- Wild v. Plant, *In the Estate of* Plant (1926); **23. Exors.** No. 3127a
- v. Plant, *Re* Plant (1926); **23. Exors.** No. 3127a
- v. Simpson (1919); **1. Action**, No. 598a
- Wilde v. Crow (Can.); **22. Evid.** p. 603
- Wilderman v. Berk (F. W.) & Co. (1925); **2. Aliens**, No. 280a
- Wiles v. Ellerman's Wilson Line (1928); **34. Mast. & S.** Nos. 2849a, 2949a
- Wiley, *Re*, *Re* Anthony Salt Co., *Re* Crown's Customs Duties Claim (Can.); **4. Bkpcy.** p. 210
- Wilford v. While, *Re* While (1928); **25. Gifts**, No. 330a
- Wilford's Estate, *Re*, Taylor v. Taylor (1879); **37. Pers. Prop.** No. 94a
- Wilgress v. Ritchie (Can.); **2. Animals**, p. 119
- Wilhelm Schmidt, The (1871); **11. Confl.** No. 645a
- Wilkin v. Brown (Can.); **40. S. Land.** p. 867
- Wilkins v. Miner (Can.); **21. Exon.** p. 587; **32. Limit. of A.** p. 756
- v. New Saville Securities, Ltd. & Hawkings (G. F.) & Son (1922); **7. B. of Sale**, No. 283a



- Wilkins v. Reeves (1855); **35. Mtge.** No. 2897b  
 — v. Smith, *Re* Smith's Settlement (1902); **30. Jdgmts.** No. 787a  
 Wilkinson, *Ex p.*, *R. v.* Copestake (1927); **3. Bastj.** No. 366b  
 — v. Oshawa Corpn. (Can.); **17. Damgs.** p. 506  
 Willard v. McNab (Can.); **17. Deeds**, p. 510  
 Willasey v. Mashiter (1834); **4. Bkpcy.** No. 4771a  
 Willcocks v. New Zealand Insurance Co. (N.Z.); **29. Insee.** p. 714  
 Willcox, *Re* (N.Z.); **23. Exors.** pp. 609, 610  
 Willetts v. Chaplin & Co. (1923); **3. Bailmt.** No. 339a  
 William, The (1795); **2. Aliens**, p. 419a  
 William Baird & Co. v. Campbell (Scot.); **21. Exon.** p. 591; **34. Mast. & S.** p. 789  
 William Bean & Sons, Ltd. v. Flaxton Rural District Council (1928); **38. Pub. Hlth.** Nos. 121a, 333a, 509b  
 William Hamilton Manufacturing Co. v. Victoria Lumbering & Manufacturing Co. (Can.); **22. Evid.** p. 603  
 Williams, *Ex p.*, *Ex p.* Holder, *Re* Madrid Bank, Ltd. (1866); **10. Coys.** No. 6368a  
 —, *Ex p.*, *Re* Winter (1927); **5. Bkpcy.** No. 8448a  
 —, *Re* (Can.); **24. Exors.** p. 615  
 —, *Re*, Public Trustee v. Williams (1927); **8. Char.** Nos. 75a, 718a  
 — v. Brown (Can.); **32. Libel**, p. 749  
 — v. Cadbury (1867); **5. Bkpcy.** No. 7867a  
 — v. Curzon Syndicate, Ltd. (1919); **3. Bailmt.** No. 50a  
 — v. Cwmaman Coal Co., Ltd. (1927); **34. Mast. & S.** No. 3239a  
 — v. Hughes (1857); **23. Exors.** No. 5723a  
 — v. Jones (1928); **2. Aliens**, No. 558b  
 — v. Jones (Stanley) & Co. (1926); **2. Arbn.** No. 2355a  
 — v. Larsen, Ltd. (1928); **34. Mast. & S.** No. 2213a  
 — v. London Guarantee & Accident Co., Ltd. (Can.); **18. Discy.** p. 532  
 — v. Manissalian Frères (1923); **2. Arbn.** No. 1039a  
 — v. Rapelje (Can.); **25. Fraud. Conv.** p. 627  
 — v. Rice (Can.); **5. Bkpcy.** p. 220  
 — v. Richards (Can.); **13. Crnrs.** p. 426  
 — v. Rodgers (Can.); **21. Estpl.** p. 580  
 — v. Sanders (1927); **28. Inc. T.** No. 25a  
 — v. Stewart & Cameron, Ltd. (Can.); **7. Bldg. Confs.** p. 275  
 — v. Tredegar Iron & Coal Co., Ltd. (1927); **34. Mast. & S.** No. 3531a  
 — v. Waters (1845); **38. Real Prop.** No. 509a  
 — v. West (S. Af.); **1. Agcy.** p. 72  
 — v. Williams (1817); **28. Injon.** No. 730a  
 Williams & Mordey v. Muller (W. H.) & Co. (London), Ltd. (1924); **2. Arbn.** No. 302a  
 Williams & Sears v. Richards (Can.); **21. Estpl.** p. 580  
 Williams & Wigmore Steamship Corpn. v. R., *Re* Gaston, Williams & Wigmore & Gaston (Can.); **11. Const. L.** p. 384  
 Williams & Williams v. Fraser (Can.); **22. Evid.** p. 604  
 Williams Machine Co. of Winnipeg, Ltd. v. Winnipeg Storage, Ltd. (Can.); **30. L. & T.** p. 732  
 Williams (A. R.) Machinery Co., Ltd. v. Moore (Can.); **8. Chos.** p. 313  
 Williamson, *Re* (Can.); **5. Bkpcy.** p. 236  
 — v. Ah On (Aus.); **17. Dep.** p. 522  
 — v. North of Scotland, etc. Navigation Co. (Scot.); **8. Carr.** p. 291  
 Willie v. Delisle (Can.); **32. Lien**, p. 754  
 Willis v. Bagge & Salt (1925); **12. Contr.** 418a, 448a  
 Willis C. Raymond, Ltd. (In Liquidation), *Re* (N.Z.); **10. Coys.** p. 346  
 Wills & Anderson, *Ex p.*, *Re* Tunnell, Ltd. (Can.); **4. Bkpcy.** p. 194  
 Wills (George) & Sons, Ltd. v. Cunningham (R. S.) Son & Co. (1924); **12. Contr.** No. 2505a  
 Wilmot v. Maitland (Can.); **28. Injon.** p. 701  
 v. Wilkinson (1827); **19. Eccl.** No. 2104a  
 Wilson, *Re* (Can.); **5. Bkpcy.** p. 220  
 —, *Re*, *Ex p.* Salaman (1926); **4. Bkpcy.** No. 1894b  
 — v. Atlas Coal Co., Ltd. (Can.); **1. Agcy.** p. 63  
 — v. Cameron (Can.); **21. Estpl.** p. 578  
 — v. Fleming (Can.); **13. Corpns.** p. 432; **21. Exon.** p. 592  
 — v. Hogarth (N.Z.); **25. Gaming**, p. 633  
 — v. Kemp (1815); **4. Bkpcy.** No. 5424b  
 — v. Kent (George) & Sons, Ltd. (N.Z.); **36. Negl.** p. 818  
 — v. Mason (Can.); **12. Contr.** pp. 409, 411  
 — v. New Zealand Express Co., Ltd. (N.Z.), [1923] N. Z. L. R. 201; **8. Carr.** p. 285  
 — v. New Zealand Express Co., Ltd. (No. 2) (N.Z.), [1924] N. Z. L. R. 465; **8. Carr.** p. 286  
 — v. New Zealand Express Co., Ltd. (No. 3) (N.Z.), [1924] N. Z. L. R. 890; **8. Carr.** p. 286  
 — v. R. (Can.); **17. Deeds**, p. 509  
 — v. Simpson (1926); **28. Inc. T.** No. 549a  
 — v. Wilson (1895); **11. Confl.** No. 1348a  
 — v. Winnipeg Electric Ry. Co. (Can.); **8. Carr.** p. 289  
 v. Yates (1927); **2. Animals**, No. 705a  
 — v. York (Can.); **33. L. G.** p. 760  
 Wilson & Co., Ltd. v. Farquharson (Can.); **12. Contr.** p. 388  
 Wilson Co. v. Mayflower Bottling Co. (Can.) **6. B. of Exch.** p. 251  
 Wilson's Case, *Re* Land Tax Acts (Aus.); **30. Land Tax.** p. 731  
 Wilt (Doe d.) v. Jardine (Can.); **38. Real Prop.** p. 856  
 Wilton Farmers' Co-operative Assocn. v. Burgess (Can.); **16. Cr. Pract.** p. 493  
 Wilts & Somerset Farmers, Ltd., *Re* (1928); **28. Ind. Soc.** No. 45a  
 Winding-up Act, *Re*, *Re* Great West Permanent Loan Co. (Can.); **10. Coys.** p. 342  
 —, *Re*, *Re* Thompson Powder Co. (Can.); **4. Bkpcy.** p. 191  
 Winding-up Act & Franco-Canadian Mortgage Co., Ltd., *Re*, *Re* Bank of Montreal (Can.); **26. Guar.** p. 644  
 Windover & Great West Life Assurance Co., *Re* (Can.); **35. Mtge.** p. 811  
 Windsor v. Commercial Bank of Windsor (Can.); **17. Dep.** p. 518  
 — v. Turner (Can.); **19. Educ.** p. 557  
 Windsor & Annapolis Ry. Co., *Re* (Can.); **17. Dep.** p. 519  
 Windsor Corpn. v. Canadian Pacific Ry. Co. (Wyandotte Street Bridge Case) (Can.); **38. Rys.** p. 849  
 Windsor (City) Corpn. v. McLeod (Can.); **17. Dep.** p. 518  
 Windsor Steam Coal Co. (1901), Ltd., *Re* (1928); **10. Coys.** No. 6857a  
 Wing v. Burn (1928); **8. Clubs**, No. 39a; **28. Injon.** No. 808a  
 Wing v. O'Connell (Ir.); **28. Inc. T.** p. 676  
 Wing Kee v. Butt (Can.); **34. Mast. & S.** p. 772  
 Winkler & Martin v. Hutton (Can.); **12. Contr.** p. 391

- Winmill & Thomas v. Collins (Can.) ; 2. *Animals*, p. 119  
Winn v. London County Council (1923) ; 13. *Cty. Cts.* No. 497a  
Winnipeg v. Cross (Can.) ; 11. *Comp. Pche.* pp. 356, 360 ; 17. *Dep.* p. 517  
Winnipeg Charter, *Re, Re* Community of Sisters of the Holy Names of Jesus & Mary (Can.) ; 16. *Courts*, p. 481  
Winnipeg Charter, *Re, Re* Fraser's Appeal (Can.) ; 2. *Arbn.* p. 129 ; 38. *Rates*, p. 853  
Winnipeg Electoral District, *Re, Re* Manitoba Election Act (Can.) ; 20. *Elect.* p. 561  
Winnipeg Golf Club v. Hutchings (Can.) ; 2. *Arbn.* p. 137  
Winnipeg Laundry v. Caverley (Can.) ; 28. *Injon.* p. 701  
Winnipeg Rifles, 90th Battalion, *Re* (Can.) ; 11. *Const. L.* p. 383  
Winnipeg Savings Bank (Trustee) v. Kenny (Can.) ; 3. *Bank.* p. 171  
Winslow v. Verner (Can.) ; 26. *Guar.* p. 642  
Winslow Marine Railway & Shipbuilding Co. v. Pacifico, The (Can.) ; 1. *Adm.* p. 30  
Winston v. Pinkney (1872) ; 31. *L. & T.* No. 3590  
Wintemute v. Taylor (Can.) ; 5. *Bkpcy.* p. 234  
Winter, *Re, Ex p.* Williams (1927) ; 5. *Bkpcy.* No. 8448a  
— v. Capilano Timber Co. (Can.) ; 4. *Bkpcy.* p. 212 ; 31. *L. & T.* p. 742  
— v. Dibdin (1844) ; 11. *Const. L.* No. 266a  
— v. Toronto (City) (Can.) ; 11. *Comp. Pche.* p. 360  
Wintermute v. Moulton (Can.) ; 1. *Agcy.* pp. 70, 77  
Wirral Highway Board v. Newell (1895) ; 26. *Hghys.* No. 1852a  
Wisbech Rural District Council v. Ward (1928) ; 7. *Bldg. Conts.* No. 425a  
Wise v. Kerr (Can.) ; 1. *Agcy.* p. 72  
— v. Lansdell (1921) ; 5. *Bkpcy.* Nos. 7689a, 7789a  
Wiskemann, *Re, Ex p.* Trustee (1923) ; 2. *Aliens*, No. 237a  
Withers (Thomas) & Sons, Ltd. v. Samuel Withers & Co., Ltd. (1926) ; 32. *Libel*, No. 1638a  
Witts v. Mackay (1927) ; 19. *Educ.* No. 288a  
Wix, *Re, Ex p.* Chatterby (1881) ; 5. *Bkpcy.* No. 7601  
Woffington v. Sparks (1754) ; 7. *Bonds*, No. 796a  
Wolf v. Dadyba (Ind.) ; 2. *Aliens*, p. 104  
Wolfe v. Clearpool, S.S. (Can.) ; 1. *Adm.* p. 35  
— v. Croft (Can.) ; 17. *Deeds*, p. 512  
— v. Smith & Bruer (Can.) ; 5. *Bkpcy.* p. 228  
Wolfe Co. v. R. (Can.) ; 11. *Const. L.* p. 383  
Wolfe Tone's Case (1798) ; 11. *Const. L.* No. 384a  
Wolff, *Ex p.* (1863) ; 14. *Crim.* No. 3751a  
Wolff v. The Treasury (S. Af.) ; 2. *Aliens*, p. 94  
Wollaston v. Hakewill (1841) ; 38. *Real Prop.* No. 885a  
Wolsely Tool & Motor Car Co. v. Jackson Potts & Co. (Can.) ; 1. *Agcy.* p. 51  
Wolsey v. Pethick Brothers (1927) ; 34. *Mast. & S.* No. 3129b  
Wolverhampton, Chester & Birkenhead Junction Ry. Co., *Re, Ex p.* Cottle (1850) ; 1. *Agcy.* No. 646  
Wombwell, *Re, Ex p.* Trustee (1921) ; 5. *Bkpcy.* No. 5859a  
Wong Sit Kit, *Re* (Can.) ; 2. *Aliens*, p. 114  
Wong Suey Mong, *Re* (Can.) ; 2. *Aliens*, pp. 113, 114  
Wood, *Re* (1928) ; 33. *Lunat.* No. —, *Re* (Can.) ; 16. *Cr. Pract.* p. 489  
— v. Allan (Can.) ; 8. *Carr.* p. 292  
Wood v. Birtle (Can.) ; 38. *Rates*, p. 853  
— v. Garscube Colliery Co., Ltd. (Scot.) ; 34. *Mast. & S.* p. 778  
— v. Leeming (Can.) ; 21. *Exon.* p. 590  
— v. Little (Aus.) ; 1. *Agcy.* p. 64 ; 12. *Contr.* p. 398  
— v. Taranaki Electric-Power Board (N.Z.) ; 20. *Electric*, p. 564  
— v. Vaughan (Can.) ; 2. *Animals*, p. 122  
Wood, Weiller & McCarthy, Ltd. v. Valcour (Can.) ; 2. *Animals*, p. 128  
Woodall v. Pearl Assurance Co. (1919) ; 2. *Arbn.* No. 147a  
Woodarra, The (1921) ; 1. *Adm.* No. 1152a  
Woodcock v. Eames (1925) ; 6. *B. of Exch.* No. 2318a  
— v. Vancouver (Can.) ; 26. *Hghys.* p. 649  
Wooderman v. Baldock (1819) ; 5. *Bkpcy.* No. 8933b ; 21. *Exon.* No. 118a  
Woodham v. Baldock (1819) ; 5. *Bkpcy.* No. 8933b  
Woodland v. Woodland (otherwise Belin or Barton) (1928) ; 27. *H. & W.* No. 4767a  
Woodlands v. Woodlands (Aus.) ; 27. *H. & W.* p. 660  
Woodroof, *Re* (Can.) ; 16. *Cr. Pract.* p. 493  
Woods, *Re, Re* Arbitration Act (Can.) ; 11. *Comp. Pche.* p. 360  
— v. Aboukir (Owners) (1928) ; 34. *Mast. & S.* No. 2552b  
— v. Woods (Can.) ; 27. *H. & W.* p. 658  
Woodstock Electric Railway, Light & Power Co. v. Dominion Tanneries, Ltd. (Can.) ; 8. *Chos.* p. 314  
Woodward v. Oldfield (1928) ; 19. *Educ.* No. 99a  
Woodward's, Ltd. v. United States Fidelity & Guarantee Co. (Can.) ; 29. *Insce.* p. 714  
Woollatt v. Stanley (1928) ; 6. *B. of Exch.* No. 2513a  
Woolley v. Idle (1766) ; 13. *Corpns.* No. 700a  
Woolwich Borough Council v. Roberts (1927) ; 33. *L. G.* No. 84  
Woolworth (F. W.) Co., Ltd. v. Pooley (Can.) ; 1. *Agcy.* p. 55 ; 18. *Discy.* p. 534  
Worddington v. Bush (Can.) ; 12. *Contr.* p. 394  
Work & Day Estate, *Re* (Can.) ; 5. *Bkpcy.* p. 235  
Workmen's Compensation Board, *Ex p., Re* Syer (Can.) ; 4. *Bkpcy.* p. 209  
— v. Bathurst Lumber Co. (Can.) ; 16. *Cr. Pract.* p. 494  
— v. Edgar (Can.) ; 4. *Bkpcy.* p. 209  
Woron, The, The Yuri Maru (1927) ; 1. *Adm.* Nos. 1794a, 1811a  
Worrell v. Johns, *Re* Johns (1928) ; 5. *Bkpcy.* No. 5861a  
Worth v. Davie (Can.) ; 21. *Exon.* p. 586  
Worthington v. Tipperary County Council (Ir.) ; 2. *Animals*, p. 124  
Wrangell v. Steel Scientist, The (Can.) ; 1. *Adm.* p. 26  
Wrench v. Lord (1837) ; 19. *Eccl.* No. 3579a  
Wright v. Bell Telephone Co. (Can.) ; 36. *Pats.* p. 830  
— v. Curless (Can.) ; 12. *Contr.* p. 410  
— v. Pulham (1816) ; 6. *B. of Exch.* No. 698a  
— v. Ritchie (Can.) ; 9. *Coys.* p. 331  
— v. Simpson (1802) ; 11. *Confl.* No. 1292a  
— v. Tugwell, *Re* Robinson (1923) ; 8. *Char.* No. 1041a  
Wright (John) & Eagle Range, Ltd. v. General Gas Appliances, Ltd. (1928) ; 36. *Pats.* No. 308c  
Wrightson v. McArthur & Hutchisons (1921) ; 7. *B. of Sale*, No. 93a  
Wrightson v. Pullan (1816) ; 6. *B. of Exch.* No. 698a

- Wroblewski v. McLaren (Aus.); **38. Pub. Hth.** p. 847  
 Wrubleski v. Loff (Can.); **2. Animals**, p. 119  
 Wyandotte Street Bridge Case, Windsor Corpn. v. Canadian Pacific Ry. Co. (Can.); **38. Rys.** p. 849  
 Wyatt v. Metropolitan Board of Works (1862); **36. Parl. Nos.** 256a, 263a  
 — v. Rockfort (1837); **22. Evid.** No. 1633a  
 Wythe, *Re* (Can.); **29. Insce.** p. 710
- X.
- Re* (Can.); **4. Bkpcy.** p. 195
- Y.
- Y. P. Barley Producers, Ltd. v. E. C. Robertson Pty., Ltd. (Aus.); **12. Contr.** p. 402  
 Yamike Kweku v. Annor Adjaye (Gold Coast); **2. Arbn.** p. 146  
 Yarmie v. Yarmie (Can.); **28. Injon.** p. 701  
 Yates, *Re, Ex p.* Johnson (Aus.); **17. Dep.** pp. 521, 522  
 —, *Re, Ex p.* Walsh (Aus.); **17. Dep.** pp. 521, 522  
 — v. R. (Can.); **11. Comp. Pche.** p. 357; **Const. L.** p. 380  
 — v. Yates (Can.); **11. Confl.** p. 373  
 Yawoski, *Re* (Can.); **4. Bkpcy.** p. 210  
 Yeates v. Barrett (Can.); **17. Custom**, p. 498  
 Yee Foo, *Re* (Can.); **2. Aliens**, p. 113  
 Yeok Kuk v. R. (Ind.); **14. Crim.** p. 450  
 Yew v. A.-G. for British Columbia (Can.); **11. Confl.** p. 371; **21. E. D.** p. 575  
 York Corpn. v. Leetham (Henry) & Sons, Ltd. (1924); **13. Corpns.** No. 935a  
 York County Registrar, *Re* (Can.); **17. Deeds**, p. 508  
 York Public School Board v. Toronto Board of Education (Can.); **19. Educ.** p. 557  
 York Township & North York (Township), *Re* (Can.); **33. L. G.** p. 760
- Yorkshire, East Riding, County Council v. Selby Bridge Co. of Proprietors (1925); **24. Ferries**, No. 8  
 Yorkshire Electric Power Co., *Ex p.*, R. v. Electricity Comrs. (1927); **20. Electric**, No. 111a  
 Yost v. Adams (Can.); **24. Exors.** p. 615  
 Young, *Re* (Can.); **28. Infts.** p. 696  
 — v. Baby (Sheriff) (Can.); **21. Exon.** p. 589.  
 — v. Campbell (Scot.); **31. L. & T.** p. 735  
 — v. Canadian Pacific Ry. Co. (No. 2) (Can.); **36. Negl.** p. 818  
 — v. Dencher (Can.); **3. Bank.** p. 177  
 — v. Denton (Can.); **22. Evid.** p. 602  
 — v. Keeble, Ltd. (1928); **34. Mast. & S.** No. 3821b  
 — v. Magee (Can.); **7. B. of Sale**, p. 266  
 — v. Tassell (N.Z.); **1. Agcy.** p. 51  
 Young Men's Christian Assocn. of Melbourne v. Federal Comr. of Taxation (Aus.); **28. Inc. T.** p. 685  
 Young Sid, The (1928); **1. Adm.** No. 1696a  
 Young Sue Hing, *Re* (Can.); **2. Aliens**, p. 113  
 Youngs, Crawshay & Youngs, Ltd. v. Brooke (1912); **28. Inc. T.** No. 292a  
 Yukon Gold Co. & Moreau, *Re* (Can.); **2. Arbn.** p. 139  
 Yuri Maru, The, The Woron (1927); **1. Adm.** Nos. 1794a, 1811a
- Z.
- Zambaco v. Cassavetti (1871); **28. Infts.** No. 731a  
 Zawojowska v. Zawojowska (Can.); **14. Crim.** p. 460  
 Zeidman & Lamarre v. American Furniture Co. & Lavery (Can.); **5. Bkpcy.** p. 224  
 Zeigler v. Victoria (City) Can.; **33. L. G.** p. 760  
 Zerebesky v. Powell (Can.); **1. Agcy.** p. 49  
 Zimmerman v. Andrew Motherwell of Can., Ltd. (Trustee) (Can.); **10. Coys.** p. 337  
 — v. Archer (Can.); **2. Animals**, p. 125  
 Zodiack, The (Can.); **37. Prize L.** p. 844  
 Zornes v. R. (Can.); **11. Const. L.** p. 380  
 Zurouvinski v. Duke (Can.); **18. Distr.** p. 538



## ACTION.

## Part I.—Definitions.

11. *Add. Citation* :—on appeal, *sub nom.* ROYAL AGRICULTURAL HALL CO. v. ISLINGTON ASSESSMENT COMMITTEE, [1918] A. C. 525, H. L.
30. *Add. Annotations* :—*Refd.* Graigola Merthyr Co. v. Swansea Corpn., [1928] Ch. 235. *Mentd.* The Wilhelmina, [1923] P. 112; Bhagchand Dagdusa Gujrathi v. Secretary of State for India in Council (1927), 43 T. L. R. 617.
31. *Add. Annotations* :—*Consd.* Ware & De Freville v. Motor Trade Assocn., [1921] 3 K. B. 40. *Mentd.* Bhagchand Dagdusa Gujrathi v. Secretary of State for India in Council (1927), 43 T. L. R. 617; Graigola Merthyr Co. v. Swansea Corpn., [1928] Ch. 235.
38. *Add. Annotations* :—*Mentd.* Banbury v. Bank of Montreal, [1918] A. C. 626; Neville v. London Express Newspaper (1918), 88 L. J. K. B. 282.
41. *Add. Annotation* :—*Mentd.* Civil Service Co-op. Soc. v. McGrigor's Trustee, [1923] 2 Ch. 347.
42. *Add. Annotation* :—*Dbtd.* *Re* Thomson's Mortgage Trusts, Thomson v. Bruty, [1920] 1 Ch. 508.
45. *Annotation* :—*Mentd.* McCreagh v. Cox & Ford (1923), 92 L. J. K. B. 855.
- 48a. **Summons—Real Property Limitation Act, 1833 (c. 27).**—A summons by a second mtgee. against the first mtgee. & other persons interested in the surplus proceeds of sale to have it determined whether he is entitled to repayment of the principal moneys owing on the second mtge. & all arrears of interest & costs, & to obtain payment accordingly, is in substance an action by a beneficiary for execution of the trusts of the surplus proceeds & is not an "action or suit" for the recovery of "interest in respect of money charged upon or payable out of land" within sect. 42 of the above Act.—*Re* THOMSON'S MORTGAGE TRUSTS, THOMSON v. BRUTY, [1920] 1 Ch. 508; 89 L. J. Ch. 213; 123 L. T. 138; 64 Sol. Jo. 375.
64. *Add. Annotation* :—*Refd.* Thomson's Mortgage Trusts, Thomson v. Bruty, [1920] 1 Ch. 508.
- 64a. **Summons—Real Property Limitation Act, 1833 (c. 27).**—*Re* THOMSON'S MORTGAGE TRUSTS, THOMSON v. BRUTY, No. 48a. *ante*.
71. *Add. Annotation* :—*Consd.* *Re* Keystone Knitting Mills Trade Mk. (1928), 97 L. J. Ch. 316.
74. *Add. Annotation* :—*Consd.* *Re* Keystone Knitting Mills Trade Mk. (1928), 97 L. J. Ch. 316.
82. *Add. Annotations* :—*Consd.* *Re* Jauncey, Bird v. Arnold, [1926] Ch. 471. *Refd.* Weld v. Petre (1928), 97 L. J. Ch. 399. *Mentd.* *Re* Jordison. Raine v. Jordison [1922] 1 Ch. 440.
87. *Annotations* :—*Consd.* Robinson v. R., [1921] 3 K. B. 183. *Refd.* Chester v. Bateson, [1920] 1 K. B. 829. *R. v. Hammer*, [1923] 2 K. B. 786. *Mentd.* R. v. Cannon Row Police Station, Inspector, *Ex p.* Brady (1921), 91 L. J. K. B. 98.
89. *Annotations* :—*Refd.* First National Reinsurance v. Greenfield, [1921] 2 K. B. 260. *Mentd.* The Saxicava (1924), 40 T. L. R. 284.
90. For "under the above sect." read "under Married Women's Property Act, 1893 (c. 63), s. 2."
- Add. Annotation* :—*Appld.* *Re* Emery, Emery v. Emery, [1923] P. 184.
- 90a. ]—The Food Controller requisitioned certain cattle feeding stuffs under Defence of the Realm Regulations, but whether under reg. 2 B. or reg. 2 F. was doubtful. By reg. 2 B. the price to be paid for goods taken thereunder was to be determined by the tribunal by which claims for compensation under Defence of the Realm Regulations were determined, but was not to exceed a certain maximum price fixed by an Ord. in Council. By reg. 2 F. compensation for goods taken thereunder was to be paid as determined by an arbitrator, taking into account the cost of production of the goods & a reasonable profit. The maximum price fixed by the Ord. in Council had been paid. The Defence of the Realm Lawes Commission having refused to entertain a claim for compensation, the owners of the goods presented a petition of right, claiming that the Food Controller had acted under reg. 2 F., & that they were entitled to compensation fixed by arbn. thereunder. At the trial the judge held that the Controller had acted under reg. 2 B., & dismissed the petition. On July 22, 1920, suppliants gave notice of appeal. On Aug. 16, 1920, Indemnity Act, 1920 (c. 48), was passed :—*Held* : (1) the appeal was not a "proceeding instituted"

## PART I. SECT 1, SUB-SECT. 5.

aa. *Action—Claim for damages & injunction—Transfer of Land Act, 1893 (No. 14), s. 117.*—The term "action at law" in the above sect. embraces an action of the nature of a suit in equity, e.g. a claim for an injunction & damages in respect of trespass to & interference with a right of way.—STRELITZ BROTHERS v. BRITNALL (1912), 15 W. A. L. R. 12.—AUS.

ab. — *Divorce petition—Insolvency Act, 1915 (No. 2671), s. 174.*—The word "action" in the above sect. does not include a proceeding by petition in divorce.—*Re* HARVEY, [1920]

V. L. R. 142.—AUS.

ac. — *Petition of right.*—A petition of right is not an "action." The definitions of "actions" in Judicature Act & rules are merely a conventional method of interpreting the statute & rules, adopted for the sake of brevity & simplicity, & not for the purpose of changing the true nature of things.—MILLAR v. R., [1921] 49 O. L. R. 93; 19 O. W. N. 458; 58 L. L. R. 585.—CAN.

ad. *Proceeding in action—Application relief against distraint—War Relief Act.*—The above Act empowers a judge of the Supreme Ct. to dispense with the restrictions therein contained.

Applt. distrained against resp. under a mtge. notwithstanding that resp. was within the protection of the Act. Resp. applied to a county ct. judge as "local judge" of the Supreme Ct. for relief, who made an order against resp. dispensing with the restrictions of the Act :—*Held* : the local judge had no jurisdiction, as the proceeding was not a proceeding in an "action," as required under the wording of the Ord. in Council, June 16, 1906. Resp.'s proper remedy against applt. was by injunction to restrain applt. from invading his rights under the Act.—HANNA v. COSTERTON, [1919] W. W. R. 930; 44 D. L. R. 478.—CAN.

within sect. 1 of the Act; (2) those words do not include a final judgment given before the passing of the Act, & therefore the appeal well lay.—*ROBINSON (J.) & Co. v. R.*, [1921] 3 K. B. 183; 90 L. J. K. B. 1177; 125 L. T. 675; 37 T. L. R. 698, C. A.

*Annotations*:—As to (1) *Refd. Bowling v. Camp* (1922), 128 L. T. 342. *Generally, Mentd. Fort Frances Pulp & Power Co. v. Manitoba Free Press Co.*, [1923] A. C. 696; *Swift v. Board of Trade* (1924), 93 L. J. K. B. 529; *Commercial & Estates Co. of Egypt v. Board of Trade*, [1925] 1 K. B. 271; *France Fenwick v. R.*, [1927] 1 K. B. 458.

90b. ———.]—A person who has lodged a caveat against probate of a will is not, though his action compels the exors. to take proceedings, so much the actor in the proceedings as to be liable to give security for costs.—*Re EMERY, EMERY v. EMERY*, [1923] P. 184; 92 L. J. P. 138; 39 T. L. R. 713; *sub nom. In the Goods of EMERY, EMERY v. EMERY*, 130 L. T. 127.

104. *Add. Annotation*:—*Refd. Goldrei, Foucard v. Sinclair & Russian Chamber of Commerce in London*, [1918] 1 K. B. 180.

106. *Add. Annotations*:—*Refd. Goldrei, Foucard v. Sinclair & Russian Chamber of Commerce in London*, [1918] 1 K. B. 180; *Cheshire County Council v. Hopley* (1923), 130 L. T. 123; *The Kursk*, [1924] P. 140; *Venn v. Tedesco*, [1926] 2 K. B. 227.

107. *Add. Annotations*:—*Apld. Cheshire County Council v. Hopley* (1923), 130 L. T. 123. *Refd. Goldrei, Foucard v. Sinclair & Russian Chamber of Commerce in London*, [1918] 1 K. B. 180; *The Kursk*, [1924] P. 140; *Venn v. Tedesco*, [1926] 2 K. B. 227. *Mentd. Re Pain, Gustavson v. Haviland*, [1919] 1 Ch. 38.

114. *Add. Annotation*:—*Refd. Huyton & Roby Gas Co. v. Liverpool Corpn.*, [1926] 1 K. B. 146.

116a. ——— Claim for damages—Right to prior

general declaration.]—Where the substantial object of an action is damages & not the ascertainment of a common right for future guidance, plffs. ought not to be allowed to split up a cause of action & first obtain a declaration, & then in a second action work out its result.—*JONES v. CORY BROTHERS & Co., LTD., THOMAS v. GREAT MOUNTAIN COLLIERIES Co., LTD.* (1921), as reported in 152 L. T. Jo. 70, C. A.

117. For "new subsidence" read "recurring tort."

118. *Add. Annotations*:—As to (1) *Refd. Boynton v. Ancholme Drainage & Navigation Comrs.*, [1921] 2 K. B. 213; *Kennard v. Cory*, [1922] 1 Ch. 265; *Huyton & Roby Gas Co. v. Liverpool Corpn.* (1925), 42 T. L. R. 116. *Generally, Refd. Conquer v. Boot*, [1928] 2 K. B. 336.

122. *Add. Annotations*:—*Apld. Wilson v. United Counties Bank*, [1920] A. C. 102. *Consd. Ord v. Ord*, [1923] 2 K. B. 432. *Apld. The Kursk*, [1924] P. 140. *Consd. Conquer v. Boot*, [1928] 2 K. B. 336. *Refd. Goldrei, Foucard v. Sinclair & Russian Chamber of Commerce in London*, [1918] 1 K. B. 180; *Debenham v. Perkins* (1925), 133 L. T. 252.

125. *Add. Annotation*:—*Generally, Refd. Conquer v. Boot*, [1928] 2 K. B. 336.

129. *Add. Annotations*:—As to (1) *Refd. Ord v. Ord*, [1923] 2 K. B. 432. As to (2) *Refd. Mackenzie Kennedy v. Air Council*, [1927] 2 K. B. 517.

136. *Add. Annotation*:—*Refd. Ord v. Ord* (1923), 92 L. J. K. B. 859.

144. *Add. Annotation*:—*Consd. Fishwick v. Gyani*, [1925] 1 K. B. 617.

145. *Add. Annotation*:—*Refd. Goldrei, Foucard v. Sinclair & Russian Chamber of Commerce in London*, [1918] 1 K. B. 180.

153a. ———.]—In the ordinary case of pos-

#### PART I. SECT. 2, SUB-SECT. 1.

104 II. ———.]—The expression "a cause of action" in Supreme Ct. Act, 1915 (No. 2733), s. 141, means the particular act or omission occasioning the injury complained of, & so giving rise to plff.'s claim, not every fact material to be proved in order to entitle plff. to succeed.—*CHIDZEY v. BRECKLER*, [1920] V. L. R. 558.—AUS.

104 III. ———.]—The "cause of action" in District Cts. Act, R. S. S., 1920 (c. 40), s. 29, means the whole cause of action, including every material fact which plff. must allege & prove to give him a right to judgment, & therefore if the whole cause of a district ct. action did not arise in one judicial district the action should be brought in that district where deft. or one of several defts. resides or carries on business. Notwithstanding sect. 2, sub-sect. 2 (2), of the Act providing that in the Act unless there is something in the subject or context repugnant thereto the expressions "cause" & "action" shall respectively have the same meaning as the same expressions have in King's Bench Act, the words "the cause of action" in sect. 29 should not be construed in the same way as in King's Bench Act, s. 35, because in sect. 29 "there is something in the subject or context repugnant thereto," namely, the fact that sect. 29 confers jurisdiction on an inferior ct. & therefore must be strictly construed, jurisdiction not being assumed beyond what is clearly conferred, whereas a different principle applies in sect. 35 which does not affect to deal with jurisdiction but simply deals with practice & pro-

cedure in a superior ct.—*HOWELL v. WARNER*, [1921] 3 W. W. R. 537.—CAN.

106 III. *S. P. SHITZ v. CANADIAN NATIONAL RY. Co.*, [1927] 1 D. L. R. 951; [1927] 1 W. W. R. 193; 21 Sask. L. R. 345.—CAN.

#### PART I. SECT. 2, SUB-SECT. 2.—A.

sl. *Sale of goods*—To be delivered at place named—Payment to be made elsewhere.—Deft., in Perth, gave to B., who was agent for plff., a written order for certain goods at a price. This order B. transmitted to his principal in Melbourne, who declined it, but authorised B. to inform deft. that plff. would accept the order at increased prices, added in ink on the original order. These new prices were subsequently submitted by B. to deft., who agreed to take certain of the good at the increased prices. By the contract the goods were to be delivered f.o.b. Melbourne, payment to be by draft payable at Perth, cost of exchange to be added. Plff. shipped the goods to deft. in Perth, who refused to accept the draft, alleging inferiority of the goods.—*Held*: the contract was made in Perth; & the only breach of the contract took place in Perth; & although delivery had to be made f.o.b. Melbourne, there was not a cause of action arising within Victoria.—*CHIDZEY v. BRECKLER*, [1920] V. L. R. 558.—AUS.

sg. ———.]—A "cause of action" on a breach of contract includes the contract & its breach. If a purchaser of machinery promises to pay the purchase price to the vendor at M., but signs the agreement & receives the machinery at W. the

vendor's cause of action for the purchaser's failure to pay cannot be said to arise at M.—*WESTERN CANADA AUTO TRACTOR Co., LTD. v. BJARNASON*, [1920] 1 W. W. R. 621.—CAN.

sk. ———.]—Plff. sold & delivered a motor car to deft. at Prince Albert, & deft. gave lien notes therefor signed at Prince Albert but payable at Saskatoon:—*Held*: the suit for balance due thereon was properly entered in the Saskatoon judicial district as the "cause of action" arose there.—*OLMSTEAD v. SCOTT*, [1921] 1 W. W. R. 1033.—CAN.

sl. *Contract*—Where act or omission giving cause of complaint occurs.—A "cause of action" as applied to actions in the Ct. of King's Bench & for the purposes of King's Bench Act, R. S. S., 1920 (c. 39), s. 35, arises where, with regard to a contract, the act or omission of deft. occurs which gives plff. his cause of complaint, although the term may have a different construction in cases involving the local jurisdiction of inferior ctas.—*ST. LOUIS RURAL MUNICIPALITY v. MARKHAM*, [1921] 1 W. W. R. 950.—CAN.

#### PART I. SECT. 2, SUB-SECT. 5.—B.

141 II. ———.]—Though deft. on conviction for a common assault, instead of being fined or imprisoned, was merely bound over to keep the peace, under the magistrates' powers under Criminal Code, s. 748:—*Held*: deft. was under s. 734 of the Code released from any subsequent civil proceedings for the same cause.—*TRINER v. DULEBA*, [1924] 3 D. L. R. 636; 2 W. W. R. 1177; 20 Alta. L. R. 493.—CAN.

sible controversy between parties, but where no specific right has been asserted & no claim formulated, it is not open to one of the parties, because he apprehends a claim against him, to serve a writ or other process upon the other party in order to obtain a determination that such claim cannot be made.

Where the sole exor. under a will never made any claim against the beneficiaries for repayment of certain costs which he had been ordered to pay to them, all he did having been to reserve his right to claim such repayment under a deed of indemnity that the beneficiaries had executed in his favour:—*Held*: the ct. had no jurisdiction to make a declaratory judgment under R. S. C., Ord. 25, r. 5, & Ord. 54A, r. 1, on the application of the beneficiaries, their duty being to wait until they were attacked & then to raise

their defence.—*Re* CLAY, CLAY v. BOOTH, *Re* A DEED OF INDEMNITY, [1919] 1 Ch. 66; 88 L. J. Ch. 40; 119 L. T. 754; 63 Sol. Jo. 23, C. A.

*Annotation*:—*Consd.* Jaeger v. Jaeger Co. (1927), 44 R. P. C. 437.

Declaratory judgments generally, *see* JUDGMENTS.

176. *Add. Annotation*:—*Reid.* Aksionairnoye Obshchestvo, A. M. Luther v. Sagor, [1921] 1 K. B. 456.

179. *Add. Annotations*:—*Consd.* Lowe v. Bentley (1928), 44 T. L. R. 388. *Mentd.* Gill v. Carson (1917), 25 Cox, C. C. 774.

180. *Add. Annotations*:—*Consd.* Lowe v. Bentley (1928), 44 T. L. R. 388. *Mentd.* Hemmings v. Stoke Poges Golf Club, [1920] 1 K. B. 720.

## Part II. In respect of what Acts and Omissions an Action will Lie.

187. *Add. Annotations*:—*Consd.* Neville v. London "Express" Newspaper, [1919] A. C. 368. *Distd.* Everett v. Ryder (1926), 135 L. T. 302. *Reid.* Weld-Blundell v. Stephens, [1920] A. C. 956; Simmonds v. Newport Abercarn Black Vein Steam Coal Co., [1921] 1 K. B. 616; Manton v. Brocklebank, [1923] 2 K. B. 212.

191. *Add. Annotations*:—*Reid.* Manton v. Brocklebank, [1923] 1 K. B. 406. *Mentd.* Butterworth v. Butterworth & Englefield, Collins v. Collins & Harrison, Barratt v. Barratt & Fox, Howell v. Howell & Walker, Adams v. Adams & Ward, Ellworthy v. Ellworthy & Ledgard, [1920] P. 126.

193. *Annotation*:—*Reid.* Manton v. Brocklebank, [1923] 1 K. B. 406.

194. *Add. Annotations*:—*Consd.* Banbury v. Bank of Montreal, [1918] A. C. 626. *Reid.* Janvier v. Sweeney, [1919] 2 K. B. 316. *Mentd.* Guaranty Trust Co. of New York v. Hannay, [1918] 2 K. B. 623.

197. *Add. Annotation*:—*Appld.* R. v. Poplar B. C. (No. 1), [1922] 1 K. B. 72.

198. *Add. Annotations*:—*Reid.* Winsford Entertainments v. Winsford U. D. C. (1924), 23 L. G. R. 254; Layzell v. Thompson (1926), 43 T. L. R. 58.

205. *Add. Annotations*:—*Folld.* Janvier v. Sweeney, [1919] 2 K. B. 316. *Consd.* Hambrook v. Stokes (1924), 41 T. L. R. 125. *Reid.* Shapiro v. La Motta (1923), 130 L. T. 622.

205a. *Injury to health caused by false statement.*—The wilful making of a false statement with the knowledge that it is calculated to cause injury to the health of the person to whom it is made constitutes a good cause of action, if in fact such injury is thereby caused.—*JANVIER v. SWEENEY*, [1919] 2 K. B. 316; 88 L. J. K. B. 1231; 121 L. T. 179; 35 T. L. R. 860; 63 Sol. Jo. 430, C. A.

*Annotation*:—*Consd.* Hambrook v. Stokes, [1925] 1 K. B. 141.

205b. *Mental shock caused by negligence.*—Defts.' servant had a motor lorry at the top of an incline in a street, with the handbrake on, the engine running, & the wheels straight.

The lorry began to run down the incline & it struck & injured pltf.'s daughter, a child, & pltf.'s wife suffered a severe shock & died in hospital about ten days later. Pltf. claimed damages under Fatal Accidents Act, 1846 (c. 93), for negligence causing the death of his wife:—*Held*: pltf. would establish a cause of action if he established that the death of his wife resulted from the shock occasioned by negligence involved in the running away of the lorry, that the shock resulted from what pltf.'s wife either saw or realised by her unaided senses & not from something which some one told her, & that the shock was due to a reasonable fear of immediate personal injury either to herself or to her children.—*HAMBROOK v. STOKES BROTHERS*, [1925] 1 K. B. 141; 94 L. J. K. B. 435; 132 L. T. 707; 41 T. L. R. 125, C. A.

206a. ———.—If the law casts any public duty upon a person which he refuses or fails to perform, he is answerable in damages to those whom his refusal or failure injures.—*FERGUSON v. KINNOULL (EARL)* (1842), 9 Cl. & Fin. 251; 4 State Tr. N. S. 785; 8 E. R. 412, H. L.

*Annotations*:—*Reid.* Heriots Hospital, Feoffees v. Ross (1846), 12 Cl. & Fin. 507; Rogers v. Rajendro Dutt (1860), 8 Moo. Ind. App. 103; Sinclair v. Broughton & Government of India (1882), 47 L. T. 170; Allen v. Flood, [1898] A. C. 1. *Mentd.* A.-G. v. Murdoch (1850), 14 Jur. 588; Everett v. Griffiths, [1921] 1 A. C. 631.

215. *Add. Annotations*:—*Reid.* Turpin v. Victoria Palace, [1918] 2 K. B. 539; Neville v. London "Express" Newspaper, [1919] A. C. 368; Wilson v. United Counties Bank, [1920] A. C. 102. *Mentd.* *Re* Thellusson, *Ex p.* Abdy, [1919] 2 K. B. 735.

217. *Add. Annotation*:—*Consd.* Neville v. London "Express" Newspaper Ltd., [1919] A. C. 368.

223. *Add. Annotations*:—*Mentd.* Pratt v. British Medical Assocn., [1919] 1 K. B. 244; Said v. Butt, [1920] 3 K. B. 497.

224. *Add. Annotations*:—*Reid.* Boynton v. Ancholme Drainage & Navigation Comrs., [1921] 2 K. B. 213; Kennard v. Cory, [1922] 1 Ch. 265; Huyton & Roby Gas Co. v. Liverpool Corpn., [1926] 1 K. B. 146.



# ENGLISH AND EMPIRE DIGEST SUPPLEMENT.

231. *Annotation* :—*Distd. The Zelo*, [1922] P. 9.
232. *Add. Annotations* :—*Mentd. Weinberger v. Inglis*, [1919] A. C. 606; *R. v. Housing Appeal Tribunal*, [1920] 3 K. B. 334; *R. v. Leman Street Police Station, Inspector, Ex p. Vinicoff*, *R. v. Secretary of State for Home Affairs, Ex p. Same* (1920), 89 L. J. K. B. 1200.
235. *Add. Annotation* :—*Apld. Sorrell v. Smith*, [1925] A. C. 700.
238. *Add. Annotations* :—*Mentd. Yorkshire East Riding County Council v. Selby Bridge Co.*, [1925] Ch. 841; *Layzell v. Thompson* (1926), 43 T. L. R. 58.
239. *Add. Annotations* :—*Refd. Everett v. Griffiths*, [1920] 3 K. B. 163; *More v. Weaver*, [1928] 2 K. B. 520.
240. *Add. Annotation* :—*Refd. Ilford U. D. C. v. Beal*, [1925] 1 K. B. 671.
241. *Add. Annotation* :—*Refd. Valentine v. Hyde*, [1919] 2 Ch. 129, *Sorrell v. Smith*, [1925] A. C. 700.
242. *Add. Annotations* :—*Refd. Pratt v. British Medical Assocn.*, [1919] 1 K. B. 244; *Ware & De Freville v. Motor Trade Assocn.*, [1921] 3 K. B. 40.
246. *Add. Annotations* :—*Consd. Winsford Entertainments v. Winsford U. D. C.* (1924), 23 L. G. R. 254. *Refd. Yorkshire East Riding County Council v. Selby Bridge Co.*, [1925] Ch. 841. *Mentd. Layzell v. Thompson* (1926), 43 T. L. R. 58; *Jaeger v. Jaeger Co.* (1927), 44 R. P. C. 437.
247. *Add. Annotation* :—*Refd. Goddard v. Watford Co-op. Soc.* (1924), 41 R. P. C. 218.
248. *Add. Annotation* :—*Mentd. Hemmings v. Stoke Poges Golf Club*, [1920] 1 K. B. 720.
249. *Add. Annotations* :—*Consd. Pratt v. British Medical Assocn.*, [1919] 1 K. B. 244; *Valentine v. Hyde*, [1919] 2 Ch. 129; *Ware & De Freville v. Motor Trade Assocn.*, [1921] 3 K. B. 40; *Sorrell v. Smith*, [1924] 1 Ch. 506. *Apld. Reynolds v. Shipping Federation*, [1924] 1 Ch. 28; *Thompson v. British Medical Assocn. (N.S.W. Branch)*, [1924] A. C. 764. *Apld. Sorrell v. Smith*, [1925] A. C. 700. *Refd. Evans v. Heathcote*, [1918] 1 K. B. 418; *Thomas v. Moore*, [1918] 1 K. B. 555; *Davies v. Thomas*, [1920] 2 Ch. 189; *Rawlings v. General Trading Co.*, [1921] 1 K. B. 635; *Brimelow v. Casson*, [1924] 1 Ch. 302; *British Oxygen Co. v. Liquid Air*, [1925] Ch. 383. *Mentd. Montefiore v. Menday Motor Components Co.*, [1918] 2 K. B. 241; *Re Wallace, Champion v. Wallace*, [1920] 2 Ch. 274.
- 249a. ——— *Unlawful means used.*—A single person or a body of persons commits an actionable wrong if he or they inflict actual pecuniary damage upon another by the in-

tentional employment of unlawful means, such as threats of coercive action, to injure that person's business, even though the unlawful means may not comprise any specific act which is *per se* actionable & actual malice is not proved. The element of conspiracy in a case of this kind is of importance only in considering the weight of the acts alleged & the extent of the damage resulting therefrom.

Defts., the British Medical Association, a body incorporated for the purpose of maintaining "the honour & interests of the medical profession," & other defts., who were members of the Association, instituted & pursued a system of professional & social ostracism or boycott against plffs., who were medical men, by means of threats & widely extended coercive action. Defts. sought to justify the boycott on the ground that the conduct of plffs. in acting as the medical officers of a certain medical dispensary was detrimental to the honour & interests of the profession. As a result of the boycott plffs. suffered pecuniary loss in the exercise of their profession :—*Held* : plffs. had a good cause of action against all defts. for damages.—*PRATT v. BRITISH MEDICAL ASSOCN.*, [1919] 1 K. B. 244; 88 L. J. K. B. 628; 120 L. T. 41; 35 T. L. R. 14; 63 Sol. Jo. 84.

*Annotations* :—*Consd. Ware & De Freville v. Motor Trade Assocn.*, [1921] 3 K. B. 40. *Refd. Valentine v. Hyde*, [1919] 2 Ch. 129; *Davies v. Thomas*, [1920] 1 Ch. 217; *Hodges v. Webb*, [1920] 2 Ch. 70; *Said v. Butt*, [1920] 3 K. B. 497; *Sorrell v. Smith*, [1925] A. C. 700. *Mentd. British Ry. Traffic & Electric Co. v. C. R. C. Co. & L. C. C.*, [1922] 2 K. B. 260.

250. *Annotations* :—*Consd. Valentine v. Hyde*, [1919] 2 Ch. 129. *Refd. Pratt v. British Medical Assocn.*, [1919] 1 K. B. 244; *Ware & De Freville v. Motor Trade Assocn.*, [1921] 3 K. B. 40.
251. *Add. Annotation* :—*Refd. Spalding v. Gamage* (1918), 35 R. P. C. 101.
253. *Add. Annotations* :—*Consd. Pratt v. British Medical Assocn.*, [1919] 1 K. B. 244; *Valentine v. Hyde*, [1919] 2 Ch. 129. *Apld. Davies v. Thomas*, [1920] 2 Ch. 189. *Consd. Hodges v. Webb*, [1920] 2 Ch. 70; *Ware & De Freville v. Motor Trade Assocn.*, [1921] 3 K. B. 40; *White v. Riley*, [1921] 1 Ch. 1; *Sorrell v. Smith*, [1923] 2 Ch. 32. *Apld. Sorrell v. Smith*, [1925] A. C. 700. *Consd. Hardie & Lane v. Chilton*, [1928] 2 K. B. 306. *Refd. Wolstenholme v. Ariss*, [1920] 2 Ch. 403; *Sorrell v. Smith*, [1924] 1 Ch. 506.
255. *Annotation* :—*Refd. Conron v. L. C. C.*, [1922] 2 Ch. 283.
256. *Add. Annotations* :—*Distd. The Zelo*, [1922] P. 9. *Apld. Federated Coal & Shipping Co. v. R.*, [1922] 2 K. B. 42. *Consd. McColl v. Canadian Pacific Ry.*, [1923] A. C. 126.

## PART II. SECT. 3, SUB-SECT. 1.

237 iii. ———.]—Plffs. complained that defts. dug holes in the beach upon their lands on the shore of a lake, where the sand met the grass-covered bank, that sand swept from plffs.' lands by storms was carried by the wind across defts.' beach, & came to rest in these holes, & that, when the next storm came, the sand remained in the holes & was not blown back to plffs.' lands. Plffs. contended that it was wrongfully detained by defts. :—*Held* : plffs. had no cause of action, as the sand could not be considered a

from its original situs, if shifting sand could be said to have a situs.—*BREMNER v. BLEAKLEY*, [1924] 2 D. L. R. 202; 54 O. L. R. 23; *reversd.*, [1923] 2 D. L. R. 576; 52 O. L. R. 124.—CAN.

## PART II. SECT. 3, SUB-SECT. 2.—B.

253 ii. ———.]—If a person who, by virtue of his position or influence, has power to carry out his design, attempts, without justification, to prevent, & succeeds in preventing by threats to or special influence upon a workman's employers, or would-be employers,

such workman from obtaining or holding employment in his calling, & such workman suffers damage thereby, then that person is liable to the workman for such damage.—*THOMPSON v. RYALL & CUNNINGHAM*, [1924] 4 D. L. R. 778; 3 W. W. R. 524.—CAN.

257 i. ———.]—Where a workman who has been suspended by his employers suffers damage as a result of two or more persons conspiring without justification, to induce the employers not to reinstate him, he has a right of action against them.—*THOMPSON v. RYALL & CUNNINGHAM*, [1924] 4 D. L. R. 778; 3 W. W. R. 524.—CAN.

**Refd.** Elliott Steam Tug Co. v. Shipping Controller, [1922] 1 K. B. 127.

- 257a.** —.]—A number of discharged sailors entered into a partnership according to the terms of which the sailors were to perform together at certain music halls & were not to appear during the terms of the partnership in any other theatre or music hall. Pltfs., who were members of the co., complained that the deft. had induced certain of the sailors to break the contract by promising to get them employment & by obtaining other engagements for them. By amendment it was further alleged that deft. had wrongfully continued persons in her employment with the knowledge that by being in her employment those persons were breaking a contract with pltfs.:—**Held**: assuming an action lies to recover damages on the latter ground, the foundation of this action is that there shall be notice to deft. of a subsisting contract which one party, at all events, is still willing & able to perform; & there being sufficient evidence before the county ct. judge that the partnership had for all practical purposes come to an end, no action lay.—**LONG v. SMITHSON** (1918), 88 L. J. K. B. 223; 118 L. T. 678; 62 Sol. Jo. 472, D. C.

**Annotation**:—**Refd.** Said v. Butt, [1920] 3 K. B. 497.

- 258.** **Annotations**:—**Refd.** Stearn v. Prentice, [1919] 1 K. B. 394; Edwards v. Birmingham Navigations, [1924] 1 K. B. 341.

- 259a.** **Damage by rats.**]—A firm of artificial manure manufacturers had on their premises, for the purposes of their business, a heap of bones which attracted rats. The occupier of adjoining premises was a farmer. The rats made runs between the factory & the fields & entered the farmer's land, & damaged his crops. The business had been carried on for at least thirty years, & there was no evidence to show that the bone heap had been increased beyond what it had been in past years, or anything to show that an increase which had actually taken place in the numbers of the rats was due to anything done by the manufacturers. In an action by the farmer against the manufacturers:—**Held**: in the absence of evidence showing that there had been an unusual & excessive collection of bones on the factory premises, or of anything unusual or excessive done by defts., or of any duty neglected by defts., pltf. could not maintain an action for damages.—**STEARNS v. PRENTICE BROTHERS, LTD.**, [1919]

1 K. B. 394; 88 L. J. K. B. 422; 120 L. T. 445; 35 T. L. R. 207; 63 Sol. Jo. 229; 17 L. G. R. 142, D. C.

- 261.** **Add. Annotation**:—**Refd.** Ware & De Freville v. Motor Trade Assocn., [1921] 3 K. B. 40.
- 262.** **Add. Annotations**:—**Apld.** The Molière (1924), 41 T. L. R. 154. **Refd.** Kent v. Atkinson, [1923] P. 142.
- 263.** **Add. Annotation**:—**Refd.** Kent v. Atkinson, [1923] P. 142.
- 264.** **Add. Annotations**:—**Refd.** Barnett v. Cohen, [1921] 2 K. B. 461; Kent v. Atkinson, [1923] P. 142.
- 265.** **Add. Annotations**:—**Refd.** N. van v. Southern Ry., [1924] 1 K. B. 223. **Mentd.** Flannagan v. Shaw, [1920] 3 K. B. 96; Starr Estate Co. v. Blackpool Corpn. (1920), 19 L. G. R. 9; Nicolle v. Nicolle, [1922] 1 A. C. 284; Harper v. Hedges, [1923] 2 K. B. 314; Parry v. Harding (1924), 88 J. P. 194; Venn v. Tedesco, [1926] 2 K. B. 227.
- 266.** **Add. Annotations**:—**Consd.** Bradford Corpn. v. Webster, [1920] 2 K. B. 135. **Apld.** The Molière (1924), 41 T. L. R. 154. **Refd.** Baker v. Dalgleish S.S. Co., [1922] 1 K. B. 36.
- 268.** **Annotation**:—**Consd.** Weld-Blundell v. Stephens, [1919] 1 K. B. 520.
- 270.** **Add. Annotation**:—**Mentd.** Pryce v. Pioneer Press (1925), 42 T. L. R. 29.
- 283.** **Add. Annotation**:—**Refd.** Friern Barnet U. C. v. Adams, [1927] 2 Ch. 25.
- 296.** **Annotation**:—**Apld.** Webster v. Harrison, Townsend (1920), 89 L. J. K. B. 1077.
- 304.** **Add. Annotation**:—**Refd.** Everett v. Ryder (1926), 135 L. T. 302.
- 310.** **Annotations**:—**Generally**, **Refd.** A.-G. v. Sewell (1918), 88 L. J. K. B. 425; Boulwood v. Paignton U. D. C. (1928), 92 J. P. 98.
- 320.** **Add. Annotations**:—**Refd.** James v. British General Insce., [1927] 2 K. B. 311; Royal Exchange Assce. v. Hope, [1928] Ch. 170. **Mentd.** Re Engelbach's Estate, Tibbetts v. Engelbach, [1924] 2 Ch. 348.
- 326.** **Add. Annotations**:—**Apld.** Wild v. Simpson, [1919] 2 K. B. 544. **Consd.** Lipton v. Powell, [1921] 2 K. B. 51.
- 328.** **Add. Annotation**:—**Refd.** British Oxygen Co. v. Liquid Air, [1925] Ch. 383.
- 332.** **Add. Annotation**:—**Refd.** Weld-Blundell v. Stephens, [1920] A. C. 956.
- 333.** **Add. Annotation**:—**Refd.** Weld-Blundell v. Stephens, [1920] A. C. 956.

### Part III.—Who may Sue and be Sued.

- 338.** **Add. Annotation**:—**Refd.** Rex Co. & Rex Research Corpn. v. Muirhead & Comptroller-General of Patents (1926), 44 R. P. C. 38.
- 340.** **Add. Annotations**:—**Refd.** The Coaster (1922), 91 L. J. P. 145. **Mentd.** Edwards v. Motor Union Insce., [1922] 2 K. B. 249; Elliott Steam Tug Co. v. Shipping Controller, [1922] 1 K. B. 127; McColl v. Canadian Pacific Ry. [1923] A. C. 126.
- 345.** **Add. Annotation**:—**Mentd.** Johnson v. Stephens & Carter & Golding, [1923] 2 K. B. 857.
- 354.** **Add. Annotation**:—**Refd.** Soviet Republics Union v. Belaiew (1925), 42 T. L. R. 21.
- 360.** **Add. Annotations**:—**Refd.** Aksionairnoy Obschestvo A. M. Luther v. Sagor, [1921-1 K. B. 456. **Mentd.** Commonwealth Shipping Representative v. P. & O. Branch Service, [1923] A. C. 191.
- 360a.** **Recognised, if acknowledged here.**]—Where a revolution has taken place in a foreign country & the new Govt. has been recognised as the *de jure* Sovereign of that country by our Govt., that new Govt. is entitled to the

possession & custody in England of records & State archives deposited here before the revolution by the old Govt.—**SOVIET SOCIALIST REPUBLICS UNION v. ONOU** (1925), 69 Sol. Jo. 676.

362. *Add. Annotation*:—**Mentd. Slack v. Leeds Industrial Co-op. Soc.**, [1923] 1 Ch. 431.

363. *Add. Annotation*:—**Refd. Aksionairnoye Obshchestvo A. M. Luther v. Sagor**, [1921] 1 K. B. 456; **Soviet Republics Union v. Belaiew** (1925), 42 T. L. R. 21.

366a. — **Action by procurator—Validity of appointment.**—Pltf., the Spanish ambassador, brought an action, as procurator for all the King of Spain's subjects, to recover two ships & other goods seized by deft.:—**Held**: (1) no man can make a procurator for another; therefore the King could not make a procurator for all or any of his subjects; (2) the office of ambassador did not include a procuration private, but public for the King, nor for any several subject, otherwise than as it concerned the King.—**ACUNA v. BINGLEY** (1616), Hob. 78, 113; 80 E. R. 263.

*Annotations*:—As to (2) **Consd. Hullett v. Spain** (1828), 2 Bl. N. S. 31. **Folld. Penedo v. Johnson** (1873), 22 W. R. 103. **Generally, Refd. Brunswick v. Hanover** (1844), 13 L. J. Ch. 107. **Mentd. Radley v. Eggesfield** (1870), 2 Saund. 259; **The Hercules** (1819), 2 Dods. 353.

366b. — **Claim under unregistered bill of sale.**—To a bill filed by the **Chargé d'Affaires** of the Brazilian Govt. in this country, in his own name, to restrain judgment creditors from issuing execution against certain furniture, etc., upon which a sum of money had been advanced, as was alleged, by the Brazilian Govt. secured by an unregistered bill of sale of the furniture, etc., a demurrer on the ground that the minister could not sue in his own name was allowed.—**PENEDO (BARON) v. JOHNSON** (1873), 29 L. T. 452; 22 W. R. 103.

368. *Annotation*:—**Consd. Duff Development Co. v. Kelantan Government**, [1923] 1 Ch. 385.

372. *Add. Annotation*:—**Refd. Duff Development Co. v. Kelantan Government**, [1924] A. C. 797.

375. *Annotations*:—**Refd. The Tervaele** (1922), 128 L. T. 176; **Duff Development Co. v. Kelantan Government**, [1923] 1 Ch. 385; **Duff Development Co. v. Kelantan Government**, [1924] A. C. 797; **Re Bjornstad & Ouse Shipping Co.**, [1924] 2 K. B. 673.

376. *Add. Annotation*:—As to (2) **Folld. Soviet Republics Union v. Belaiew** (1925), 42 T. L. R. 21.

376a. — — — — — **A foreign Sovereign suing in the cts. of this country submits to the jurisdiction to the extent only that he must give discovery, & cross proceedings in mitigation of the relief claimed by him can be taken against him.**

A foreign State sued to restrain dealing with, & for the appointment of a new trustee of, funds lodged in England in the names of a trustee for pltf. & a trustee for defts. who held a concession from pltf. for the construction of a railway in their territory. A counterclaim for damages in respect of alleged breaches of the terms of the concession was struck out.—**SOUTH AFRICAN REPUBLIC v. COMPAGNIE FRANCO-BELGE DU CHEMIN DE FER DU NORD**, [1898] 1 Ch. 190; 77 L. T.

555; 46 W. R. 151; 14 T. L. R. 65; 42 Sol. Jo. 66.

—**Consd. Duff Development Co. v. Kelantan Government**, [1924] A. C. 797. **Refd. Re Suarez, Suarez v. Suarez**, [1918] 1 Ch. 176; **The Tervaele**, [1922] P. 259; **Soviet Republics Union v. Belaiew** (1925), 42 T. L. R. 21.

376b. — — — — — **In 1916 a Russian Govt. Committee, of which deft. was a member, was set up in London by the Imperial Russian Govt. & continued by its successor, the Russian Provisional Govt., & the committee, which incurred large financial obligations, had possession of certain documents, which related to those obligations & were the property of those Govts. The committee ceased to operate in 1918, & the documents were handed over to a board of trustees appointed by the **Chargé d'Affaires** of the Russian Provincial Govt., & deft. became president of the board. The documents had become the property of pltf., the present Russian Govt., whose sovereignty had been recognised by the British Govt., but they were still in the possession of deft. Certain actions were pending against deft. as a member of the Russian Govt. Committee with regard to the transactions to which the documents related. Pltf. claimed the delivery up of the documents, & deft. contended that he was entitled to a lien on the documents until he had received an indemnity in respect of the other actions, & he set up the contention by way of defence & counterclaim:—**Held**: although where a sovereign state was a pltf. a counterclaim could be maintained against it, yet the counterclaim must be in respect of matters immediately connected with the claim, & as the indemnity sought by deft. was not in respect of any liability incurred by him in & about the custody of the documents, & was not in respect of matters immediately connected with the claim, the action succeeded & the counterclaim failed.—**SOVIET REPUBLICS UNION v. BELAIEW** (1925), 134 L. T. 64; 42 T. L. R. 21.**

383. *Add. Annotation*:—**Refd. Soviet Republics Union v. Belaiew** (1925), 42 T. L. R. 21.

387. *Add. Annotations*:—**Consd. Compania Mercantil Argentina v. United States Shipping Board** (1924), 93 L. J. K. B. 816. **Refd. Re Suarez, Suarez v. Suarez**, [1918] 1 Ch. 176; **The Gagara**, [1919] P. 95; **The Porto Alexandre**, [1920] P. 30; **Duff Development Co. v. Kelantan Government & Colonies Crown Agents** (1922), 39 T. L. R. 96; **Duff Development Co. v. Kelantan Government**, [1924] A. C. 797.

387a. — **Notwithstanding restrictions on exercise of sovereign rights.**—(1) It is the settled practice of the ct. to take judicial notice of the status of any foreign Govt., & for that purpose, in any case of uncertainty, to seek information from a Secretary of State; & the information so received is conclusive.

(2) A Govt. recognised as sovereign by His Majesty's Govt. is not the less exempt from the jurisdiction of our cts. because it has agreed to restrictions on the exercise of its sovereign rights.

By a deed dated in July, 1912, the Govt. of Kelantan granted to applt. co. certain mining & other rights to be exercised in that State, & the deed contained an arbn. clause, which incorporated Arbn. Act, 1880 (c. 49),



far as applicable. Disputes having arisen as to the effect of the deed, they were referred to an arbitrator, who made an award in favour of the co. & directed the Govt. to pay the costs of the arbn. In Dec. 1921, the Govt. applied to the Ch. Div., under Arbn. Act, 1889, s. 11, to set aside the award, but the application was refused. In June, 1922, the co. obtained from the K. B. Div., under sect. 12 of the Act, an order giving leave to enforce the award, but the order was set aside, on the application of the Govt., on the ground that Kelantan was a sovereign independent State. Before setting aside the order the master asked the Secretary of State for the Colonies for information as to the status of Kelantan, & received in reply an official letter stating that Kelantan was an independent State & its Sultan the sovereign ruler thereof, & that the King did not exercise or claim any rights of sovereignty over Kelantan, & enclosing an agreement regulating the relations between the Sultan & the King. By this agreement the Sultan agreed to have no political relations with any foreign power except through the medium of the King, & in all matters of administration, other than those touching the Mohammedan religion & Malay custom, to follow the advice of an adviser appointed by the King:—*Held*: (1) the statement in the letter as to the sovereignty of Kelantan & its rulers was not intended to be qualified by the terms of the agreement, & the letter was conclusive; (3) the Govt. of Kelantan had not submitted to the jurisdiction of the ct. for the purpose of the proceedings to enforce the award, either by assenting to the arbn. clause or by applying to the ct. to set aside the award.—*DUFF DEVELOPMENT CO. v. KELANTAN GOVERNMENT*, [1924] A. C. 797; 93 L. J. Ch. 343; 131 L. T. 676; 40 T. L. R. 566; 68 Sol. Jo. 559, H. L.

*Annotations*:—*As to* (1) *Appld.* Engelke v. Musmann, [1928] A. C. 433. *Refd.* Musmann v. Engelke (1927), 96 L. J. K. B. 824.

388. *Annotation*:—*Refd.* Duff Development Co. v. Kelantan Government, [1924] A. C. 797.

389. *Add. Annotation*:—*Consd.* Soviet Republic Union v. Belaiew (1925), 42 T. L. R. 21.

390. *Add. Annotations*:—*Refd.* The Tervae, [1922] P. 259; Duff Development Co. v. Kelantan Government, [1923] 1 Ch. 385. *Mentd.* Aksionairnoye Obschestvo A. M. Luther v. Sagor, [1921] 3 K. B. 532.

392. *Add. Annotations*:—*Refd.* Aksionairnoye Obschestvo A. M. Luther v. Sagor, [1921] 3 K. B. 532; The Tervae, [1922] P. 259; Duff Development Co. v. Kelantan Government, [1923] 1 Ch. 385; The Jupiter (1924), 93 L. J. P. 156; The Jupiter (No. 3) (1927), 137 L. T. 333.

392a. ———.]—(1) In proceedings in the cts. of this country by or against the ruler of a colonial State whose status is disputed a written statement by the Secretary of State for the Colonies that the ruler is an independent foreign sovereign is equivalent to a communication from the Crown & therefore, conclusive, & the ct. will accept it without considering whether it is borne out by documents which are appended to it.

In an arbn. in this country between pltf. co. & the Govt. of Kelantan an award was made in favour of the co. with costs. The

Govt. of Kelantan then moved to set aside the award & this motion was dismissed with costs. An appeal from this decision was also dismissed with costs. No portion of these costs had been paid. The co. obtained a garnishee order nisi to attach money in the hands of the Crown agents of the Colonies on behalf of the Govt. of Kelantan. Upon an application by the co. for payment by the garnishees the Govt. of Kelantan & the Crown agents appeared together & contended that Kelantan was an independent sovereign State & the ct. had no jurisdiction to execute the orders for costs by a levy on the property of that State:—*Held*: (2) although the Govt. of Kelantan had, by initiating proceedings to set aside the award of the arbitrator, submitted to the jurisdiction of the ct., (3) that submission had not the effect of rendering liable to execution any property belonging to the Govt. within the jurisdiction.—*DUFF DEVELOPMENT CO. v. KELANTAN GOVERNMENT*, [1923] 1 Ch. 385; 92 L. J. Ch. 273; 129 L. T. 290; 39 T. L. R. 187; 67 Sol. Jo. 260, C. A.

393. *Add. Annotations*:—*Refd.* The Porto Alexandre (1919), 89 L. J. P. 97; Compania Mercantil Argentina v. United States Shipping Board (1924), 93 L. J. K. B. 816. *Mentd.* Aksionairnoye Obschestvo A. M. Luther v. Sagor, [1921] 1 K. B. 456; Duff Development Co. v. Kelantan Government, [1923] 1 Ch. 385; Duff Development Co. v. Kelantan Government, [1924] A. C. 797.

393a. ———.]—A sovereign independent State does not, by entering into a trading contract with a foreigner, lose its immunity from process in foreign cts. as regards matters arising out of the contract; nor does a sovereign independent State, by making a submission to arbn. in a foreign country, lose its immunity from being impleaded in the cts. of the foreign country.—*COMPANIA MERCANTIL ARGENTINA v. UNITED STATES SHIPPING BOARD* (1924), 93 L. J. K. B. 816; 131 L. T. 388; 40 T. L. R. 601; 68 Sol. Jo. 666, C. A.

393b. ———.]—*DUFF DEVELOPMENT CO. v. KELANTAN GOVERNMENT*, No. 392a, *ante*.

393c. ———.]—*DUFF DEVELOPMENT CO. v. KELANTAN GOVERNMENT*, No. 387a, *ante*.

394. *Add. Annotations*:—*Refd.* *Re* Suarez, Suarez v. Suarez, [1918] 1 Ch. 176; The Gagara, [1919] P. 95; The Porto Alexandre, [1920] P. 30; Duff Development Co. v. Kelantan Government (1922), 39 T. L. R. 96; Duff Development Co. v. Kelantan Government, [1924] A. C. 797; Compania Mercantil Argentina v. United States Shipping Board (1924), 93 L. J. K. B. 816. *Mentd.* Aksionairnoye Obschestvo A. M. Luther v. Sagor, [1921] 3 K. B. 532.

403. *Add. Annotation*:—*Generally*, *Refd.* Soviet Republics Union v. Belaiew (1925), 134 L. T. 64.

406. *Add. Annotations*:—*Consd.* Duff Development Co. v. Kelantan Government, [1924] A. C. 797. *Refd.* *Re* Suarez, Suarez v. Suarez, [1918] 1 Ch. 176; The Gagara, [1919] P. 95; The Porto Alexandre, [1920] P. 30; Duff Development Co. v. Kelantan Government (1922), 39 T. L. R. 96; Compania Mercantil Argentina v. United States Shipping Board (1924), 93 L. J. K. B. 816.

407. *Add. Annotation* :—Mentd. *The Fagernes*, [1927] P. 311.
- 407a. ———. ———.]—*DUFF DEVELOPMENT CO. v. KELANTAN GOVERNMENT*. No. 392a, *ante*.
- 407b. ———. ———.]—*DUFF DEVELOPMENT CO. v. KELANTAN GOVERNMENT*, No. 387a, *ante*.
409. *Add. Annotations* :—*Refd. Aksionairnoye Obshchestvo A. M. Luther v. Sagor*. [1921] 1 K. B. 456 ; *Duff Development Co. v. Kelantan Government*, [1923] 1 Ch. 385 ; *Duff Development Co. v. Kelantan Government*, [1924] A. C. 797.

## Part IV.—Conditions Precedent to Action.

413. *Add. Annotation* :—Mentd. *R. v. Canadian N. Ry.*, [1923] A. C. 714.
425. *Add. Annotations* :—*Consd. Joachimson v. Swiss Bank Corpn.*, [1921] 3 K. B. 110. *Refd. Bradford Old Bank v. Sutcliffe*, [1918] 2 K. B. 833.
428. *Add. Annotation* :—*Refd. Bradford Old Bank, Ltd. v. Sutcliffe* (1918), 34 T. L. R. 619.
430. *Add. Annotations* :—*Consd. Joachimson v. Swiss Bank Corpn.*, [1921] 3 K. B. 110. *Refd. Bradford Old Bank v. Sutcliffe*, [1918] 2 K. B. 833.
434. *Add. Annotations* :—*Refd. Bradford Old Bank v. Sutcliffe*. [1918] 2 K. B. 833 ; *Joachimson v. Swiss Bank Corpn.*, [1921] 3 K. B. 110.
436. *Add. Citation* :—11 L. J. Q. B. 87.
448. *Add. Annotations* :—*Refd. Bradford Old Bank v. Sutcliffe*, [1918] 2 K. B. 833. *Mentd. Joachimson v. Swiss Bank Corpn.*, [1921] 3 K. B. 110.
461. *Add. Annotations* :—*Consd. Joachimson v. Swiss Bank Corpn.*, [1921] 3 K. B. 110. *Refd. Bradford Old Bank v. Sutcliffe*, [1918] 2 K. B. 833.
462. *Add. Annotation* :—*As to (1) Refd. Bradford Old Bank v. Sutcliffe*, [1918] 2 K. B. 833.
463. *Add. Annotation* :—*Consd. Bradford Old Bank v. Sutcliffe*, [1918] 2 K. B. 833.
480. *Add* "For full anns., see S. C., No. 176, *ante*."

## Part V.—Suspension of Right of Action.

496. *Add. Annotation* :—*Refd. Admiralty Comrs. v. S.S. Amerika*, [1917] A. C. 38.
507. *Add. Annotation* :—*Refd. Admiralty Comrs. v. S.S. Amerika*, [1917] A. C. 38.
516. *Add. Annotation* :—*Refd. Canvey Island Comrs. v. Preedy* (1921), 91 L. J. Ch. 203.
540. *Add. Annotations* :—*Refd. Weld-Blundell v. Stephens*, [1919] 1 K. B. 520 ; *Samuel v. Dumas*, [1924] A. C. 431 ; *Pailin v. Northern Employers Mutual Indemnity Co.*, [1925] 2 K. B. 73.

### PART V. SECT. 4, SUB-SECT. 1.

498 ii. ———. ———.]—*Claim under Criminal Injuries Code of Ireland*.]—The rule or doctrine that no civil remedy will lie against the perpetrators of a felonious act until they have been prosecuted to conviction is not applicable to a claim for compensation under Criminal Injuries Code of Ireland for goods stolen in the course of rioting.—*TYLER v. CORK COUNTY COUNCIL*, [1921] 2 I. R. 8.—IR.

499 i. ———. ———.]—A criminal charge was laid by pltf. bank against deft. in respect of \$1,800 which the bank alleged it had overpaid deft. Before decision in the criminal trial had been given, pltf. instituted an action to recover the money. It was contended on behalf of deft. that immediately the evidence disclosed a criminal offence on the part of deft., which had not been prosecuted to conviction or acquittal, pltf. should not have been allowed to proceed with the action, but should have been non-suited :—*Held* : as a criminal prosecution had actually been carried through, even though the decision was under advisement, the action could be maintained.—*STANDARD BANK OF CANADA v. SHUEN WAH*, [1919] 1 W. W. R. 586 ; 26 B. C. R. 441.—CAN.

504 iii. ———. ———.]—The rule that where pltf. sues in respect of a wrong which is a tort & also a felony, deft. should be prosecuted in respect of the felony before the civil action is heard, does not make such criminal prosecution an indispensable condition precedent to the right to maintain the civil action. In its modern application the rule is merely suspensory of the civil rights, & is subject to the exercise of judicial discretion. In exercising such discretion the ct. may consider circumstances, such as the infancy, ignorance, or poverty of pltf., which may afford excuse for the failure to prosecute in respect of the felony. Where pltf. has obtained a verdict in the civil action the ct., on motion for a new trial or for judgment, may consider the circumstance that between verdict & motion deft. has been prosecuted in respect of the felony.—*CARLISLE v. ORR* (No. 2), [1918] 2 I. R. 442.—IR.

504 iv. ———. ———.]—On Aug. 12, 1920, an information for theft was laid by defts. against pltf. On Aug. 23, 1920, pltf. began an action in a division ct. against defts. to recover \$99 for wages ; on Aug. 30, defts. counter-claimed in the division ct. action for money & tickets amounting to \$202.74, "fraudulently & without colour of right" converted by pltf. to his own

use, the subject of conversion being the same as that in respect of which the criminal charge was made ; on Sept. 22 pltf. was committed for trial on the criminal charge, & on Sept. 30, a true bill was found against him in the sessions. On a subsequent day the judge of the division ct. heard argument as to whether the action should be proceeded with before the criminal charge was taken up ; he decided that it should, & fixed a day for trial, but on Dec. 10, 1920, neither the action nor the criminal proceeding having been tried, an order was made by a judge of the Supreme Ct. of Ontario, upon the application of defts., prohibiting the judge of the division court from proceeding in the action until after the final disposition of the criminal prosecution. Pltf. appealed from this order, & before the completion of the argument of the appeal pltf. was tried upon the criminal charge & acquitted :—*Held* : the division ct. judge had the right, the claim & counterclaim being within the jurisdiction of the ct., to stay proceedings or otherwise deal with the case ; & prohibition did not lie, even if the judge erred in the conclusion to which he came.—*Re BRYANT v. CITY DAIRY CO.* (1921), 64 D. L. R. 283 ; 37 Can. Crim. Cas. 405 ; 50 O. L. R. 40.—CAN.

## Part VIII.—Maintenance and Champerty.

549. *Add. Annotations* :—Expld. *Neville v. London "Express" Newspaper*, [1919] A. C. 368. *Refd. Ford v. Radford* (1920), 36 T. L. R. 658.
551. *Add. Annotation* :—Consd. *Neville v. London "Express" Newspaper*, [1919] A. C. 368.
552. *Add. Annotation* :—*Refd. Neville v. London "Express" Newspaper*, [1919] A. C. 368.
556. *Add. Citation* :—After "[1917] 2 K. B. 564, C. A." add "*On appeal*, [1919] A. C. 368, H. L.," & after "560" add "561a, 719a." *Add. Annotation* :—*Refd. Wiggins v. Lavy* (1928), 44 T. L. R. 721.
557. *Add. Annotation* :—*Refd. Neville v. London "Express" Newspaper*, [1919] A. C. 368.
558. *Add. Annotation* :—Consd. *Neville v. London "Express" Newspaper*, [1919] A. C. 368.
559. *Add. Annotations* :—Consd. *Neville v. London "Express" Newspaper*, [1919] A. C. 368. *Refd. Weld-Blundell v. Stephens*, [1919] 1 K. B. 520; *Hickman v. Kent or Romney Marsh Sheepbreeders' Assocn.* (1920), 36 T. L. R. 528.
560. For the existing paragraph substitute the following paragraph :—  
 success of the maintained litigation, whether an action or a defence, is not a bar to the right of action for maintenance.  
 (2) An action for damages for maintenance will not lie in the absence of proof of special damage.—*NEVILLE v. LONDON "EXPRESS" NEWSPAPER, LTD.*, [1919] A. C. 368; 88 L. J. K. B. 282; 120 L. T. 299; 35 T. L. R. 167; 63 Sol. Jo. 213, H. L.  
*Annotations* :—As to (2) *Folld. Hickman v. Kent or Romney Marsh Sheepbreeders' Assocn.* (1920), 37 T. L. R. 163. *Apld. Wiggins v. Lavy* (1928), 44 T. L. R. 721. *Generally, Refd. Wild v. Simpson*, [1919] 2 K. B. 544; *Ellis v. Torrington*, [1920] 1 K. B. 399. *Mentd. Weld-Blundell v. Stephens*, [1920] A. C. 956.
561. *Annotations* :—As to (2) *Refd. Mackey v. Monks (Preston)*, [1918] A. C. 59. *Generally, Mentd. Turner v. Kingsbury Collieries*, [1921] 3 K. B. 169.
- 561a. *Special damage—Necessity to prove.*—*NEVILLE v. LONDON "EXPRESS" NEWSPAPER, LTD.*, No. 560, *ante*.
- 561b. ———.]—Pltf., a member of deft. assocn., brought an action against C., the secretary, & W., the president, of the assocn., for libel in the conduct of the business of the assocn., & in the same action C. counter-claimed against pltf. for damages for libel in respect of the same business. The action resulted in judgment for defts. on the claim, with damages for £75 for C. on the counter-claim. The assocn. before the hearing of the action had passed resolutions to indemnify C. & W. against any liability or costs arising from the action against them, & that the indemnity should extend to the costs of any counterclaim that counsel might advise should be made, provided that any costs of the action for which the assocn. would be liable should be paid *pro tanto* out of any moneys recovered in the action. Pltf. then brought an action against the assocn. for maintenance & champerty, & other relief :—*Held* : (1) champerty being a form of maintenance, a decision which applies to the *genus* must also apply to the *species*; (2) pltf. had not proved any special damage, & his claim in champerty failed equally with his claim in maintenance.—*HICKMAN v. KENT OR ROMNEY MARSH SHEEPBREEDERS' ASSOCN.* (1920), as reported in 151 L. T. Jo. 5, C. A.
566. *Add. Annotation* :—*Refd. Neville v. London "Express" Newspaper*, [1919] A. C. 368.
567. *Add. Annotation* :—*Mentd. Weld-Blundell v. Stephens*, [1920] A. C. 956.
569. *Add. Annotation* :—Consd. *Neville v. London "Express" Newspaper*, [1919] A. C. 368.
576. *Annotations* :—For "For full anns., see" read "*Mentd. Williams v. Page* (No. 4) (1859), 28 Beav. 148."
577. *Add. Annotation* :—Consd. *Neville v. London "Express" Newspaper*, [1919] A. C. 368.
583. *Add. Annotations* :—*Refd. County Hotel & Wine Co. v. L. & N. W. Ry.*, [1918] 2 K. B. 251; *Ford v. Radford* (1920), 36 T. L. R. 658.
- 584a. *Special damage—Necessity to prove.*—*HICKMAN v. KENT OR ROMNEY MARSH SHEEPBREEDERS' ASSOCN.*, No. 561b, *ante*.
585. *Add. Annotation* :—*Refd. Ford v. Radford* (1920), 36 T. L. R. 658.
589. *Add. Annotation* :—*Refd. Parkinson v. College of Ambulance & Harrison*, [1925] 2 K. B. 1.
590. *Add. Annotations* :—*Apld. Ford v. Radford* (1920), 36 T. L. R. 658. *Refd. Neville v. London "Express" Newspaper*, [1919] A. C. 368.
592. *Add. Annotation* :—*Refd. Ford v. Radford* (1920), 36 T. L. R. 658.
594. *Add. Annotation* :—*Refd. Wild v. Simpson*, [1919] 2 K. B. 544.
- 598a. ——— *Percentage.*]—Pltf. was retained by deft. to act as his solr. in an action brought against him. Deft. had a counterclaim, & while the action was proceeding, an agreement was made that in the event of deft.'s recovering more than sufficient to pay his creditors in full & all legal expenses he would pay his solr. a percentage on the amount. the solr. agreeing to conduct the counterclaim on the above terms, & not to look to deft. for any costs of the counterclaim except out-of-pocket expenses in the event of the success of pltf. in that action. Deft. lost the action, & his solr. sued him for the costs :—*Held* : pltf. could not recover as (1) (*BANKES, L.J.*) the agreement was champertous, & its effect was to make it an essential part of pltf.'s

## PART VIII. SECT. 1, SUB-SECT. 3.

594 vii. ———.]—The English law of champerty is not in force in India & fair agreements to share property in litigation with others in consideration of their supplying the funds for carrying on suits are not

opposed to public policy, & such agreements should receive effect except when extortionate or inequitable.—*INDAR SINGH v. MUNSHI* (1919), 1 L. R. 1 Lah. 124.—IND.

594 viii. —

—.]—An agreement

to contribute towards the costs of a law suit in consideration of receiving a share in the result of the suit :—*Held* : on the facts to be champertous.—*FELLOWS-SMITH v. SHANKS* (1925), 46 N. L. R. 168.—S. AF.



cause of action on his original retainer that he should negative the event in which he was to get no costs, namely, the event of the success of pltf. in the previous action; (2) (ATKIN, L.J.) the champertous nature of the agreement prevented pltf. from completing his services lawfully, & consequently he could not recover on a *quantum meruit*.—*WILD v. SIMPSON*, [1919] 2 K. B. 544; 88 L. J. K. B. 1085; 121 L. T. 326; 35 T. L. R. 576; 63 Sol. Jo. 625, C. A.

599a. ———.]—Pltf. carried on business as the "Turf Register," which in a prospectus issued by him was called a "society"; but he was the sole proprietor of the business, though he described himself in the prospectus as secretary. In consideration of a subscription, & of a commission on the amount recovered, he undertook to collect for the subscribers betting debts which, under the provisions of Gaming Acts, were not recoverable. It was agreed between him & deft. in the terms of the prospectus, "that in consideration of pltf. putting up all the necessary disbursements for the institution & conduct of legal or other proceedings, the net profits accruing directly or indirectly is to be equally divided between claimant & the society." Pltf. brought an action to recover the amounts of debts alleged to have been wrongfully collected by deft. in breach of the agreement:—*Held*: the agreement was illegal & void, being contrary to public policy, & champertous, as there was no community of interest between the parties, except such as was created by the agreement itself, & pltf. could not recover.—*FORD v. RADFORD* (1920), 36 T. L. R. 658; 64 Sol. Jo. 571.

601. *Add. Annotations*:—*Reid*. County Hotel & Wine Co. v. L. & N. W. Ry., [1918] 2 K. B. 251; *Neville v. London "Express" Newspaper*, [1919] A. C. 368; *Ellis v. Torrington*, [1920] 1 K. B. 399.

602. *Add. Annotations*:—*Reid*. County Hotel & Wine Co. v. L. & N. W. Ry., [1918] 2 K. B. 251; *Ellis v. Torrington*, [1920] 1 K. B. 399.

603. *Annotation*:—*As to* (1) *Reid*. County Hotel & Wine Co. v. L. & N. W. Ry., [1918] 2 K. B. 251.

604. *Annotations*:—*Reid*. County Hotel & Wine Co. v. L. & N. W. Ry., [1918] 2 K. B. 251; *Marsden v. Heyes*, [1927] 2 K. B. 1.

604a. ——— Assignment of option to take lease.]—In 1853 the L. & C. Ry. Co., the predecessors of deft. co., leased land adjacent to the station at Carlisle to H. for 999 years, for the purpose of erecting an hotel thereon. The lease contained a covenant by the co. with H., his exors., administrators & limited assigns that "the co. & their successors & assigns shall permit the tenant or occupier of the hotel for the time being & his servants to have access to the platforms of the station & that the tenant or occupier of the hotel shall have the option of renting the refreshment rooms" at a rent to be fixed as there mentioned, "in preference to any other party." In 1860 H. granted a sub-lease of the hotel premises to B. for 21 years, & the co. also granted to B. a lease of the refresh-

ment rooms for 21 years. In 1866 pltf. co. obtained an assignment from B. of his interest under these two documents, & an assignment from H. of the land comprised in the lease of 1853 & "All & singular other premises comprised in & demised by the said recited indenture of lease of Aug. 1, 1853." From 1866 onwards pltf. managed & conducted both hotel & refreshment rooms, & after the expiration of the 21 years' term granted by the sub-lease of 1860 to B., they continued in occupation of the rooms upon such terms of that sub-lease as were applicable. In 1879 defts. succeeded by statute to the contracts of the L. & C. Ry. Co. On April 2, 1891, defts. & the Caledonian Ry. Co. demised to pltf. a plot of land adjacent to the hotel for 992 years. The deed recited the lease of 1853 & referred to it as the "principal indenture"; & it also provided that these presents are without prejudice to any of the covenants conditions & agreements contained in the principal indenture, which were to remain & be in full force. On Nov. 24, 1916, defts. gave six months' notice to pltf. to determine their occupation of the refreshment rooms. Pltf. gave up possession, & then served a written notice on defts. stating their desire to exercise the option contained in the lease of 1853, & requesting to be informed as to terms. Defts. having refused to do so, pltf. on Oct. 16, 1916, obtained an express assignment from the personal representatives of H., who had died in 1876, of "all that the benefit right title & interest, if any, now remaining outstanding of or otherwise vested in them or any or either of them of & in the railway obligations." Pltf. claimed (a) a declaration that defts. by the lease of 1853 were under an obligation to put & keep the occupier of pltf.' hotel in occupation of the refreshment rooms, upon the terms of paying therefor a fixed market rent; (b) to have such rent fixed under the direction of the ct.; (c) damages for the breach of such obligation by defts.:—*Held*: (1) the option clause did not run with the land, & pass *ipso facto* by the assignment of the lease of 1853, as it did not touch or concern the thing demised; (2) the option clause was assignable, & was not a covenant merely personal to the covenantor; (3) the benefit of this clause was not assigned by the deed of 1866, inasmuch as the word "premises" therein referred to the land & buildings demised, & not to the option clause; (4) the deed of 1891 was not a fresh grant of the option rights to pltf., & did not constitute a binding recognition of pltf. as the assignees of the option clause; (5) the assignment of Oct. 16, 1916, by the personal representatives of H., of the option clause in the lease of 1853, being an assignment of a right of property, was not invalid for champerty; (6) the option clause was void for uncertainty; (7) the option clause was *ultra vires* of the railway co., as it fettered injuriously & gravely their obligations of performing efficiently their public duties.—*COUNTY HOTEL & WINE CO. v. LONDON & NORTH WESTERN RY. CO.*, [1918] 2 K. B.

## PART VIII. SECT. 2, SUB SECT. 1.

601 H. ——— *Payment of consideration dependent on success of action—Assignment void.*—*FIRST MORTGAGE CO. v. NOUD*, [1925] 4 D. L. R. 221.—CAN.

251; 87 L. J. K. B. 849; 119 L. T. 38; 34 T. L. R. 393; 17 L. G. R. 274; *affd.* on other grounds, [1921] 1 A. C. 85, H. L.

607. *Add. Annotations*:—*As to* (1) *Distd. Ford v. Radford* (1920), 36 T. L. R. 658. *Refd.* County Hotel & Wine Co. v. L. & N. W. Ry., [1918] 2 K. B. 251.

615. *Annotation*:—*Refd.* County Hotel & Wine Co. v. L. & N. W. Ry., [1918] 2 K. B. 251.

617. *Add. Annotations*:—*Refd.* County Hotel & Wine Co. v. L. & N. W. Ry., [1918] 2 K. B. 251; *Ellis v. Torrington*, [1920] 1 K. B. 399.

617a. *Lease of tithes—With covenant to take legal proceedings for recovery of tithes.*—Agreement to lease the rectorial tithes of a parish, including the tithes of ninety acres supposed to be within the parish, but which had not paid tithes to the lessor during his incumbency with a stipulation that the intended lessee would, within a given time, take such legal proceedings for the recovery of the tithes of the ninety acres as his counsel should advise:—*Held*: not to be within of Maintenance, 1540 (c. 9).—*WHITE v. GARDNER* (1835), 1 Y. & C. Ex. 385; 160 E. R. 157.

621. *Add. Annotations*:—*Consd.* County Hotel & Wine Co. v. L. & N. W. Ry., [1918] 2 K. B. 251. *Apld.* *Ellis v. Torrington*, [1920] 1 K. B. 399.

621a. ——— *Dilapidations.*—A freehold messuage & tenement were the subject of the following leases: (a) a head lease which expired on Dec. 25, 1917; (b) an underlease which expired on Dec. 18, 1917; (c) a sub-underlease which expired on Dec. 15, 1917. All three leases contained onerous covenants to repair the premises & to keep them & yield them up in good repair. The sub-underlease became vested by assignment in deft. On Dec. 18, 1917, pltf. who had been a tenant to deft. of the same premises, & was liable to him under a covenant to repair less onerous than those in the three leases above mentioned, agreed to purchase, & on May 1, 1918, took a conveyance of the fee simple of the premises together with the benefit of the covenants in the head lease. At the expiration of all the leases the premises were out of repair & deft. was threatening pltf. with an action on his covenant. Thereupon pltf. obtained an assignment of the full benefit of the lessee's covenants to repair contained in the sub-underlease, & commenced an action against deft. as assignee of the sub-underlease for breaches of the lessee's covenants therein:—*Held*: the assignment was free from objection on the ground of maintenance or champerty, the right of action on the covenants being so connected with the enjoyment of property as to be more than a bare right to litigate.—*ELLIS v. TORRINGTON*, [1920] 1 K. B. 399; 89 L. J. K. B. 369; 122 L. T. 361; 36 T. L. R. 82, C. A.

*Annotations*:—*Refd.* *Rye v. Purcell*, [1926] 1 K. Mentd. *Cole v. Kelly*, [1920] 2 K. B. 106.

#### PART VIII. SECT. 2, SUB-SECT. 4.

634 II. ——— *Subject to litigation—Conveyance valid.*—By reason of the erection of the Quinze Lake Dam, & the consequent raising of the level of the water in the lake, parts of certain properties in the neighbourhood were flooded. The Crown expropriated the

right so to flood these properties including the one in question herein, which at the time of the expropriation belonged to V. Subsequently V. sold the property to H. together with V.'s right to recover the compensation from the Crown for all damages caused him by the flooding & expropriation.

The Crown exhibited an information acknowledging liability & seeking to have the amount of the compensation fixed, & made H. deft.:—*Held*: the assignment from V. to H. was not an assignment of litigious rights.—*R. v. HYE* (1921), 21 Exch. C. R. 76.—CAN.

626. *Add. Annotation*:—*Generally*, Mentd. *Re Jordison, Raine v. Jordison*, [1922] 1 Ch. 440.

634. *Add. Annotation*:—*Consd.* *Ellis v. Torrington*, [1920] 1 K. B. 399.

635. *Add. Annotations*:—*As to* (1) *Refd.* *Ellis v. Torrington*, [1920] 1 K. B. 399. *As to* (2) *Consd.* County Hotel & Wine Co. v. L. & N. W. Ry., [1918] 2 K. B. 251. *Generally*, *Refd.* *Earle v. Hemsworth R. D. C.* (1928), 44 T. L. R. 758. Mentd. *Re Pain, Gustavson v. Haviland*, [1919] 1 Ch. 38.

636. *Add. Annotations*:—*Apld.* *Ellis v. Torrington*, [1920] 1 K. B. 399. *Refd.* County Hotel & Wine Co. v. L. & N. W. Ry., [1918] 2 K. B. 251.

637. *Add. Annotations*:—*As to* (1) *Apld.* *Ellis v. Torrington*, [1920] 1 K. B. 399. *Refd.* County Hotel & Wine Co. v. L. & N. W. Ry., [1918] 2 K. B. 251.

637a. ——— *Actions for infringement of copyright—Society for protection of copyright interests of members.*—Pltf. society was formed as a limited co. to protect the copyright interests of members, who assigned their copyrights to the society. By the rules of the society fees & damages recovered were pooled, & the fund so formed was divided among the member after the deduction of expenses. The assignments were real & substantial transactions & the provision as to the division of the damages was only subsidiary. In an action by the society for the infringement of copyrights which had been assigned to the society by two members:—*Held*: the arrangement between the society & its members was made for legitimate business reasons & was not champertous, & pltf. were entitled to succeed.—*PERFORMING RIGHTS SOCIETY, LTD. v. THOMPSON* (1918), 34 T. L. R. 351.

637b. *Assignment of judgment.*—In an action of assumpsit to pay money in consideration of the assignment of a judgment:—*Held*: this was good consideration & might be assigned without maintenance.—*LODER v. CHESLEYN* (1664), 1 Sid. 212; 82 E. R. 1063.

*Annotations*:—Mentd. *Master v. Miller* (1791), 4 Term Rep. 320; *Price v. Seaman* (1825), 7 Dow. & Ry. K. B. 14.

640. *Add. Annotation*:—*Consd.* *Neville v. London "Express" Newspaper*, [1919] A. C. 368.

641. *Add. Annotation*:—*Refd.* *Neville v. London "Express" Newspaper*, [1919] A. C. 368.

642. *Add. Annotation*:—*Refd.* *Neville v. London "Express" Newspaper*, [1919] A. C. 368.

644. *Add. Annotations*:—*Consd.* *Neville v. London "Express" Newspaper*, [1919] A. C. 368. *Distd.* *Ford v. Radford* (1920), 36 T. L. R. 658.

645. *Add. Annotation*:—*Refd.* *Neville v. London "Express" Newspaper*, [1919] A. C. 368.

646. *Add. Annotations*:—*Refd.* *Neville v. London "Express" Newspaper*, [1919] A. C. 368; *Weld-Blundell v. Stephens*, [1919] 1 K. B. 520; *Hickman v. Kent or Romney Marsh Sheepbreeders' Assocn.* (1920), 36 T. L. R. 528.

648. *Add. Annotations*:—*As to* (1) *Apld.* *Ford v. Radford* (1920), 36 T. L. R. 658. *Generally*,

- Refd.** *Neville v. London "Express" Newspaper*, [1919] A. C. 368.
655. *Add. Annotations*:—**Refd.** *Neville v. London "Express" Newspaper*, [1919] A. C. 368; *Ford v. Radford* (1920), 36 T. L. R. 658.
661. *Add. Annotations*:—**Distd.** *Ford v. Radford* (1920), 36 T. L. R. 658. **Refd.** *Neville v. London "Express" Newspaper*, [1919] A. C. 368.
665. *Add. Annotation*:—**Refd.** *Neville v. London "Express" Newspaper*, [1919] A. C. 368.
669. *Add. Annotations*:—**Refd.** *Neville v. London "Express" Newspaper*, [1919] A. C. 368; *Ford v. Radford* (1920), 36 T. L. R. 658.
671. *Add. Annotation*:—**Consd.** *Neville v. London "Express" Newspaper*, [1919] A. C. 368.
679. *Add. Annotation*:—**Refd.** *Neville v. London "Express" Newspaper*, [1919] A. C. 368.
681. *Add. Annotation*:—**Refd.** *Neville v. London "Express" Newspaper*, [1919] A. C. 368.
683. *Add. Annotations*:—**Refd.** *Neville v. London "Express" Newspaper*, [1919] A. C. 368; *Weld-Blundell v. Stephens*, [1919] 1 K. B. 520; *Hickman v. Kent or Romney Marsh Sheepbreeders' Asscn.* (1920), 36 T. L. R. 528.
685. *Add. Annotations*:—*As to* (1) **Distd.** *Ford v. Radford* (1920), 36 T. L. R. 658. **Refd.** *Neville v. London "Express" Newspaper*, [1919] A. C. 368. *Generally*, **Refd.** *Wiggins v. Lavy* (1928), 44 T. L. R. 721.
687. *Add. Annotation*:—*As to* (2) **Refd.** *Wild v. Simpson*, [1919] 2 K. B. 544.
- 689a. ———.]—Observations as to the circumstances in which a solr. may take up a speculative case on behalf of a poor client, & as to the terms on which he may do so.—*WIGGINS v. LAVY* (1928), 44 T. L. R. 721, C. A.
692. *Add. Annotations*:—**Refd.** *Neville v. London "Express" Newspaper*, [1919] A. C. 368; *Ford v. Radford* (1920), 36 T. L. R. 658.
695. *Annotation*:—**Refd.** *Wild v. Simpson*, [1919] 2 K. B. 544.
696. *Add. Annotation*:—**Refd.** *Wild v. Simpson*, [1919] 2 K. B. 544.
699. *Add. Annotation*:—*As to* (2) **Refd.** *Wild v. Simpson*, [1919] 2 K. B. 544.
702. *Add. Annotation*:—**Refd.** *Wild v. Simpson*, [1919] 2 K. B. 544.
707. *Annotation*:—**Mentd.** *Re A Solicitor* (No. 2) (1924), 93 L. J. K. B. 761.
- 711a. ———.]—A solr. will never be permitted to deal with his client for the property in question in the cause.—*DOWLIN v. —* (1823), as reported in 1 L. J. O. S. Ch. 169.
- 713a. ———.]—*PITTMAN v. PRUDENTIAL DEPOSIT BANK, LTD.* (1896), 13 T. L. R. 110; 41 Sol. Jo. 129, C. A.
716. *Add. Annotation*:—**Refd.** *Neville v. London "Express" Newspaper*, [1919] A. C. 368.
719. *Add. Annotation*:—**Refd.** *Neville v. London "Express" Newspaper*, [1919] A. C. 368.
- 719a. ——— *Necessity of proving special damage.*]—*NEVILLE v. LONDON "EXPRESS" NEWSPAPER, LTD.*, No. 560, *ante*.
720. *Add. Annotation*:—**Consd.** *Neville v. London "Express" Newspaper*, [1919] A. C. 368.
725. This paragraph was in effect reversed by the House of Lords, *see NEVILLE v. LONDON "EXPRESS" NEWSPAPER, LTD.*, No. 560, *ante*.
726. *Annotation*:—**Refd.** *Neville v. London "Express" Newspaper*, [1919] A. C. 368.
731. *Add. Annotations*:—**Apld.** *Ford v. Radford* (1920), 36 T. L. R. 658. **Refd.** *Neville v. London "Express" Newspaper*, [1919] A. C. 368.

## PART VIII. SECT. 4, SUB-SECT. 2.—A.

695 III. ——— *Legal Professions Act*, 1911 (c. 136), s. 97.]—An agreement between pltf. & deft. made under

the above sect., as to payment for deft.'s services as solr., was rescinded on the ground that the provincial statute authorising such an agreement was *ultra vires*.—*TAYLOR v. MACKIN-*

*TOSH*, [1924] 3 D. L. R. 926; 3 W. W. R. 97; 34 B. C. R. 56; *affg.*, [1924] 1 D. L. R. 877; 1 W. W. R. 859; 33 B. C. R. 383.—CAN.



## ADMIRALTY.

## Part I.—Origin and General Characteristics of the Jurisdiction of the Admiralty Division of the High Court of Justice.

1. *Add. Annotation*:—*Consd.* The Fagernes, [1926] P. 185.
- 12a. ———.]—DORRINGTON'S CASE (1615), Moore, K. B. 916; 72 E. R. 995.
- 12b. ———.]—MARTIN v. GREEN (1664), 1 Keb. 730; 83 E. R. 1210.
25. *Citations*:—For "THE LORD COCHRANE" read "DUNCAN v. M'CALMONT."
36. *Add. Annotation*:—*Mentd.* The Regina d'Italia, [1925] P. 123.
37. *Add. Annotation*:—*Mentd.* The Sheaf Brook, [1926] P. 61.
38. *Annotations*:—For "For full anns., see SHIPPING & NAVIGATION" read "*Mentd.* The Hanna (1866), L. R. 1 A. & E. 283; General Steam Navigation Co. v. British & Colonial Navigation Co. (1869), L. R. 4 Exch. 238; The Warsaw, [1898] P. 127."
39. *Add. Citations*:—(1862), 15 Moo. P. C. C. 304; 5 L. T. 558; 10 W. R. 124; 1 Mar. L. C. 177; 15 E. R. 509, P. C. *Annotations*:—For "For full anns., see SHIPPING & NAVIGATION" read "*Mentd.* The Stettin (1863), Brown. & Lush. 199; The Hanna (1866), L. R. 1 A. & E. 283; General Steam Navigation Co. v. British & Colonial Navigation Co. (1869), L. R. 4 Exch. 238; The Moselle (1874), 32 L. T. 570; The Vesta (1882), 7 P. D. 240; The Bristol City, [1902] P. 10; The Cayo Bonito, [1903] P. 203."
40. *Citations*:—Add after the words "on another point" "*sub. nom.* THE ARGOS (CARGO EX), GAUDET v. BROWN, THE HEWSONS, GEIPEL v. CORNFORTH." *Annotations*:—For "For full anns., see SHIPPING & NAVIGATION" read "*Mentd.* Purkis v. Flower (1873), 43 L. J. Q. B. 33; Flower v. Bradley (1874), 44 L. J. Ex. 1; G. N. Ry. v. Swaffield (1874), L. R. 9 Exch. 132; Gunnestad v. Price, Fullmore v. Wait (1875), L. R. 10 Exch. 65; The Alina (1880), 5 Ex. D. 227; Allen v. Garbutt (1880), 6 Q. B. D. 165; The Rona (1882), 7 P. D. 247; R. v. Southend County Court Judge (1884), 13 Q. B. D. 142; The County of Durham, [1891] P. 1; R. v. City of London Court Judge, [1892] 1 Q. B. 273; The Theodora, [1897] P. 279."
41. *Add. Annotations*:—*Refd.* Ellerman Lines v. Grayson, [1919] 2 K. B. 514; Admiralty Comrs. v. S.S. Volute, [1922] 1 A. C. 129; Dew v. United British S.S. Co. (1928), 139 L. T. 628.
46. *Add. Annotation*:—*Refd.* The Fagernes, [1926] P. 185.
51. *Add. Annotation*:—*Mentd.* The Kursk, [1924] P. 140.
53. *Add. Annotation*:—*Mentd.* The Rosalind (1920), 90 L. J. P. 126.
56. *Add. Annotation*:—*Mentd.* The Mogileff, [1921] P. 236.
65. *Add. Annotations*:—*Mentd.* The Mogileff, [1921] P. 236; The Ambatielos, The Cephalonia, [1923] P. 68; The Stream Fisher, [1927] P. 73.
66. *Add. Annotations*:—*Refd.* The Llandoverly Castle, [1920] P. 119; The Jupiter, [1924] P. 236.
70. *Add. Annotations*:—*Consd.* The St. George, [1926] P. 217. *Refd.* The Tervaeete, [1922] P. 259; The Colorado, [1923] P. 102; The Sylvan Arrow, [1923] P. 220. *Mentd.* Pocahontas Fuel Co. v. Ambatielos (1922), 27 Com. Cas. 148; The Goulondris, [1927] P. 182; The Stream Fisher, [1927] P. 73.
- 82a. ———.]—THE TUBANTIA, No. 594a, *post*.

## PART I. SECT. 4, SUB-SECT. 1.

sa. *Equitable jurisdiction*.]—M. obtained judgment for wages, etc., against the A., the owners having made default to appear. D. & Co., the owners of the cargo, intervened. The vessel was duly seized, sold at auction by the sheriff, & purchased by D. & Co., who made the necessary deposit. Money had been wired by applt. to discharge pltf.'s claim, but arrived too late to stop the sale. D. & Co. afterwards tendered the balance of the price, which was refused on account of an application to set aside the sale, & to redeem the vessel. D. & Co., on purchasing the vessel, made arrangements for repairs thereto, & at the time the application was originally made, they were negotiating for the sale thereof. The application was refused:—*Held*: while the Admty. Ct. exercised an unquestionable equitable jurisdiction, inasmuch as applt. had failed to show a superior equity to those arising in favour of the purchasers, the order refusing the application should

not be interfered with.—MCBRIDE v. DARRELL (1920), 20 Exch. C. R. 274.—CAN.

## PART I. SECT. 5.

sb. *Action in rem—Tort committed by master—Recovery of damages*.]—No maritime lien attaches in the case of an assault by the captain on a seaman on board ship, & an action *in rem* does not lie against the vessel to recover damages due to such assault.—LOUPIDES v. THE SCHOONER CALIMERIS (1921), 69 D. L. R. 138; 20 Exch. O. R. 331.—CAN.

sc. ———.]—If a tort is committed within the jurisdiction of the ct. by the master of a ship, *betw. a peregrinus*, against a member of his crew, also a *peregrinus*, the ct. has jurisdiction to arrest the tortfeasor or his goods, & to try an action based upon the tort; but the commission of such a tort is not a ground for attaching the ship to found jurisdiction unless the master has an interest in the ship.—NOLAN v. S.S. RUSSEL HAVERSIDE, [1921] C. P. D. 136.—S. AF.

sd. ——— *Master's claim for damages & interest on wages in arrear—Whether enforceable by action in rem*.]—A British ship was attached to satisfy various creditors *in rem*, including the master of the vessel. She was subsequently sold, any liens of the creditors being transferred to the proceeds. The master's claim included damages against the owners for wrongful dismissal calculated from a date subsequent to the sale:—*Held*: (1) the master was entitled to damages *pari passu* with his claim for wages, which he could enforce by an action *in rem*; (2) the master was not entitled to claim *in rem* for interest upon arrear wages.—*Re GWYDYR CASTLE* (1920), 41 N. L. R. 231.—S. AF.

## PART I. SECT. 6, SUB-SECT. 1.—B. (b).

82 i. *Torts committed on high seas*.]—The Exch. Ct. of Canada in Admty. has jurisdiction to entertain an action against a ship arrested in Canadian waters for a tort committed on the high seas.—COMMERCIAL PACIFIC CABLE CO.

87a. —.]—*Held*: barges, fitted with rudders & not propelled by oars, were "ships" within M. S. Act, 1894 (c. 60), ss. 503, 742.—*THE HARLOW*, [1922] P. 175; 91 L. J. P. 119; 126 L. T. 763; 38 T. L. R. 375; 15 Asp. M. L. C. 498.

*Annotations*:—*Consd. Merchants' Marine Insce. v. North of England Protecting & Indemnity Asscn.* (1926), 42 T. L. R. 724. *Mentd. The Alde*, [1926] P. 211.

89. *Add. Annotations*:—*As to* (1) *Apld. The Harlow*, [1922] P. 175. *Distd. Merchants' Marine Insce. v. North of England Protecting & Indemnity Asscn.* (1926), 42 T. L. R. 724.

125. *Add. Annotations*:—*Refd. The Fagernes*, [1926] F. 185. *Mentd. Johnstone v. Pedlar* (1921), 90 L. J. P. C. 181.

126. *Add. Annotation*:—*Refd. The Fagernes*, [1926] P. 185.

130. *Add. Annotation*:—*Apld. The Porto Alexandre* (1919), 89 L. J. P. 97.

130a. *Yacht authorised to fly White Ensign.*—By the Dockyard Port of Dover Order in Council of June 10, 1912, Sched. 1, reg. 9, all vessels other than His Majesty's ships are forbidden to use the eastern entrance to the Admlty. Harbour between one hour after sunset & one hour before sunrise, without the special authority of the King's Harbour Master. While using the entrance during the prohibited hours without the authority of the King's Harbour Master pltf.'s yacht ran upon a wreck, which was said to have been unlighted at the time:—*Held*: the fact that a yacht of the Royal Yacht Squadron is authorised to fly the White Ensign does not confer upon her the status of one of His Majesty's ships within reg. 9.—*H.M.S. GLATTON*, [1923] P. 215; 93 L. J. P. 12; 39 T. L. R. 690.

131. *Add. Annotations*:—*Apld. The Crimdon* (1918), 35 T. L. R. 81. *Refd. The Gagara*, [1919] P. 95; *The Porto Alexandre* (1919), 89 L. J. P. 97; *The Tervaete*, [1922] P. 197; *France Fenwick v. R.* (1926), 43 T. L. R. 18.

131a. —.]—A privately owned vessel used by a sovereign State for public purposes is immune from arrest in a collision action.—*THE CRIMDON* (1918), 35 T. L. R. 81.

*Annotation*:—*Consd. The Porto Alexandre* (1919), 89 L. J. P. 97.

134. *Add. Annotation*:—*Refd. Pyman S.S. Co. v. Admiralty Comrs.*, [1919] 1 K. B. 49.

135. *Add. Annotation*:—*Refd. The Tervaete*, [1922] P. 197.

140. *Add. Annotations*:—*Apld. The Crimdon*, (1918), 35 T. L. R. 81; *The Gagara*, [1919] P. 95. *Folld. The Porto Alexandre*, [1920] P. 30. *Apld. The Tervaete*, [1922] P. 259. *Consd. Compania Mercantil Argentina v. United States Shipping Board* (1924), 93 L. J. K. B. 816. *Refd. Duff Development Co. v. Kelantan Government*, [1923] 1 Ch. 385; *The Jupiter* (1923), 93 L. J. P. 156; *The Sylvan Arrow*, [1923] P. 220; *Re Bjornstad & Ouse Shipping Co.*, [1924] 2 K. B. 673; *Duff Development Co. v. Kelan-*

*Government*, [1924] A. C. 797; *The Jupiter* (No. 3) (1927), 137 L. T. 333; *Engelke v. Musmann*, [1928] A. C. 433. *Mentd. Re Suarez*, *Suarez v. Suarez*, [1918] 1 Ch. 176; *Aksionairnoye Obschestvo A. M. Luther v. Sagor*, [1921] 3 K. B. 532; *The Edna*, [1921] 1 A. C. 735; *The Mogileff* (No. 2), [1922] P. 122.

141. *Add. Annotations*:—*Refd. The Crimdon* (1918), 35 T. L. R. 81; *The Porto Alexandre* (1919), 89 L. J. P. 97.

141a. —.]—*THE CRIMDON*, No. 131a, *ante*.

141b. *Government not formally recognised.*

—*Pltfs.*, Esthonian subjects, the owners of two sailing vessels, with the approval & support of the Esthonian Govt., issued writs *in rem* claiming possession of the vessels, which had been requisitioned or sequestered by the Provisional Govt. of Northern Russia, & by them hired to a partnership assocn. for the purposes of trading, subject to the control of the director of naval transports. The Provisional Govt. entered appearances under protest, & motions were set down to set aside the writs & all subsequent proceedings on the grounds (*inter alia*) that the vessels were in the service of the Provisional Govt. & therefore immune from arrest; & that the dispute was between foreigners as to the possession of foreign ships, & therefore that, even if the ct. had jurisdiction, it should decline to exercise it. The judge invited the assistance of the Foreign Office as to the status of the Provisional Govt. of Northern Russia, & was informed by the Secretary of State for Foreign Affairs that, while the Allied Powers were co-operating with the Provisional Govt. in the opposition which that Govt. was making to the forces of the Russian Soviet Govt., the Provisional Govt. had not been "formally recognised either by H.M. Govt. or by the Allied Powers as the Govt. of a sovereign independent State:—*Held*: (1) although under the control of an official of the Provisional Govt. the vessels were not in the possession or service of the Govt.; (2) even under the older decisions, the ct. in its discretion would entertain a possession suit between foreigners if the representative of the foreign State to which the vessel belonged requested the intervention of the ct.—*THE ANNETTE*, *THE DORA*, [1919] P. 105; 88 L. J. P. 107; 35 T. L. R. 288.

*Annotations*:—*As to* (2) *Refd. The Jupiter*, [1924] P. 236; *The Jupiter* (No. 2), [1925] P. 69. *Generally, Mentd. Aksionairnoye Obschestvo A. M. Luther v. Sagor*, [1921] 1 K. B. 456; *Duff Development Co. v. Kelantan Government*, [1924] A. C. 797.

141c. — *Trading.*—A vessel owned or requisitioned by a sovereign independent State & earning freight for the State, is not deprived of the privilege, decreed by international comity, of immunity from the process of arrest, by reason of the fact that she is being employed in ordinary trading voyages carrying cargoes for private individuals.—*THE PORTO ALEXANDRE*, [1920] P. 30; 89

*v. THE PRINCE ALBERT* (B.C.), [1926] 4 D. L. R. 543; [1926] 3 W. W. R. 309.

PART I. SECT. 6, SUB-SECT. 1.—C.

*st. Vessel built for show.*—A vessel built for show & not for transporta-

tion is a "ship" within admlty. law & is subject to seizure for towage.—*NEVILLE CANNERIES, LTD. v. SANTA MARIA* (1917), 16 Exch. C. R. 481; 36 D. L. R. 619—CAN.

*sg. Conservatory attachment of barge—Concurrent jurisdictions of Superior Court & Admiralty Court.*—*GIRARD v.*

*GARIEPY* (1916), Q. R. 49 S. C. 284.—CAN.

PART I. SECT. 6, SUB-SECT. 3.—B.

141i. *Ship requisitioned by foreign Government.*—*Held*: not liable to arrest.—*THE EOLO*, [1918] 2 I. R. 78.—IR.

L. J. P. 97; 122 L. T. 661; 36 T. L. R. 66; 15 Asp. M. L. C. 1, C. A.

*Annotations*.—*Reid*. The Tervaete, [1922] P. 259; Compania Mercantil Argentina v. United States Shipping Board (1924), 93 L. J. K. B. 816.

141d. —.]—While under requisition by, & manned & operated by, the United States Govt., defts.' steamship was in collision with & did damage to pl'tfs.' steamship. After the vessel had been released from requisition pl'tfs. commenced an action *in rem* for their collision damage. In that action defts. pleaded (*inter alia*) that "at the time when the collision is alleged to have taken place the *Sylvan Arrow* was under requisition by & under the sole control & management of the Govt. of the United States & was being navigated by persons who were the servants of the Govt. & for whose negligence defts. were & are in no wise responsible. . . . Defts. say that the action is not maintainable *in rem* by reason of the facts set out" above. On the hearing of this question as a preliminary point of law:—*Held*: defts. had surrendered their vessel to the United States Govt. under compulsion; in no sense could it be said that the master & crew derived their authority from defts., & in the circumstances no maritime lien attached to the vessel by reason of the collision, & her owners were not, either through their vessel or otherwise, liable to pl'tfs.—*THE SYLVAN ARROW*, [1923] P. 220; 92 L. J. P. 119; 130 L. T. 157; 39 T. L. R. 655; 16 Asp. M. L. C. 244.

142. *Add. Annotations*.—*Reid*. The Porto Alexandre (1919), 89 L. J. P. 97; Compania Mercantil Argentina v. United States Shipping Board (1924), 92 L. J. K. B. 816. *Mentd.* Aksionairnoye Obschestvo A. M. Luther v. Sagor, [1921] 1 K. B. 456; Duff Development Co. v. Kelantan Government, [1923] 1 Ch. 385; Duff Development Co. v. Kelantan Government, [1924] A. C. 797.

142a. —.]—*THE PORTO ALEXANDRE*, No. 141c, *ante*.

142b. —.]—On a motion to set aside a writ *in rem* claiming possession of a vessel in the possession of the Esthonian Govt. the ct. invited the assistance of the Foreign Office as to the status of the Esthonian National Council. The A.-G. on behalf of the Foreign Office stated that His Majesty's Govt. had, for the time being, & with all necessary reservations as to the future, recognised the Esthonian National Council as a *de facto* independent body & had received an informal diplomatic representative of the Provisional Govt.:—*Held*: to permit the arrest of the vessel would be contrary to principles of international comity, as it would compel the Esthonian Govt., whose sovereignty was entitled to be respected, to submit to the jurisdiction of the British cts.; & the writ & all subsequent proceedings must be set aside.—*THE GAGARA*, [1919] P. 95; 88 L. J. P. 101; 122 L. T. 498; 35 T. L. R.

1. *Vessel of foreign Sovereign—Trading*.]—The *I.* was the property of the Govt. of Indo-China, a French possession, administered by a Governor-General for & in the name of the French Republic. Her officers & crew were in the service & pay of that Govt., & at the time of the accident

she was on a voyage in the interest of the Govt. of Indo-China:—*Held*: the *I.* could not be lawfully arrested. *Semble*: a sovereign State cannot be impleaded indirectly by proceedings *in rem* against its property. That immunity from arrest of a foreign

259; 63 Sol. Jo. 301; 14 Asp. M. L. C. 547; C. A.

*Annotations*.—*Folld.* The Jupiter, [1924] P. 236. *Reid*. The Annette, The Dora, [1919] P. 105; *Mentd.* Duff Development Co. v. Kelantan Government, [1923] 1 Ch. 385; Duff Development Co. v. Kelantan Government, [1924] A. C. 797; Musmann v. Engelke (1927), 96 L. J. K. B. 824.

142c. — Subsequent sale to private owner.]—Damage occasioned by collision with a foreign state-owned vessel does not impose a maritime lien upon the vessel, & if the vessel be subsequently sold into private ownership she is not then liable to arrest in an action *in rem*.—*THE TERVAETE*, [1922] P. 259; 91 L. J. P. 213; 128 L. T. 176; 38 T. L. R. 825; 67 Sol. Jo. 98; 16 Asp. M. L. C. 48, C. A.

*Annotations*.—*Reid*. The Colorado, [1923] P. 102; The Meandros, [1925] P. 61; The Strear Fisher, [1927] P. 73. *Mentd.* The Goulandris, [1927]

142d. —.]—Pl'tfs., a foreign co., issued a writ *in rem* claiming possession of the steamship *J.* The writ was directed against "the steamship *J.* & all persons claiming any right or interest in the said steamship." The Union of Socialist Soviet Republics entered an appearance under protest & moved to set the writ aside on the ground that the ship was the property of the Union, a recognised independent sovereign State:—*Held*: the issue of a writ *in rem* against a vessel in which a foreign sovereign State claimed an interest was in effect impleading the sovereign State, & although the right of the sovereign State to possession of the vessel was in dispute, the ct. could not investigate the facts, & the writ must be set aside.—*THE JUPITER*, [1924] P. 236; 93 L. J. P. 156; 132 L. T. 624; 40 T. L. R. 815; 16 Asp. M. L. C. 447, C. A.

143. *Add. Annotations*.—*Generally*, *Mentd.* The Porto Alexandre (1919), 89 L. J. P. 97; Aksionairnoye Obschestvo A. M. Luther v. Sagor, [1921] 1 K. B. 456; Duff Development Co. v. Kelantan Government, [1923] 1 Ch. 385; Compania Mercantil Argentina v. United States Shipping Board (1924), 93 L. J. K. B. 816; Duff Development Co. v. Kelantan Government, [1924] A. C. 797.

143a. Vessel alleged to belong to foreign Government under decree of nationalisation.]—*THE JUPITER* (No. 2), No. 171a, *post*.

147. *Add. Annotations*.—*As to* (1) *Apld.* The Meandros, [1925] P. 61. *Generally*, *Mentd.* Pyman S.S. Co. v. Admiralty Comrs., [1919] 1 K. B. 49.

147a. Owners liable though possession of vessel transferred—Ship requisitioned.]—A Greek steamship owned by defts., a Greek co., was requisitioned by the Greek Govt.; during the war in 1922 between Greece & Turkey. Under the terms of requisition the possession or control of the vessel passed to the Greek Govt., & the master & crew ceased to be employed by defts. & were conscripted into the Greek forces. At the end of the period of requisition the vessel had to be returned to defts. in the same condition as at the beginning of the period. While under requisition the vessel stranded, & was saved from possible total loss by the services of

state-owned ship is not affected by the vessel being used for trading purposes & as a cargo carrier, nor does it matter how the vessel is being employed.—*BROWN, JR. v. S.S. INDO-CHINE* (1921), 21 Exch. C. R. 406.—*CAN.*



pltfs.' salvage ship. After the vessel had been returned to her owners she was arrested by pltfs. in an action *in rem*:—*Held*: the terms of requisition did not dispossess defts. of their property in the vessel; the services were of benefit to defts., as thereby they had their vessel instead of merely a claim against the Greek Govt.; as the services were not those of the crew of the Greek vessel, it was immaterial that the crew were the servants of the Greek Govt., & defts. were liable to

pltfs. for salvage.—*THE MEANDROS*, [1925] P. 61; 94 L. J. P. 37; 132 L. T. 750; 41 T. L. R. 236; 16 Asp. M. L. C. 476.

*Annotation*:—*Reid*. *France Fenwick v. R.*, [1927] 1 K. B. 458.

149. *Add. Annotations*:—*As to* (1) & (2) *Apld*. *The Meandros*, [1925] P. 61. *Generally*, *Mentd*. *Pyman S.S. Co. v. Admiralty Comrs.*, [1919] 1 K. B. 49.

150. *Add. Annotation*:—*Reid*. *The Sylvan Arrow*, [1923] P. 220.

## Part II.—Jurisdiction in Particular Cases.

170. *Add. Annotation*:—*Reid*. *The Annette, The Dora*, [1919] P. 105.

170a. ———.]—*THE ANNETTE, THE DORA*, No. 141b, *ante*.

171. *Add. Annotation*:—*Reid*. *The Annette, The Dora*, [1919] P. 105.

171a. ———.]—By a contract of sale made in London, an English co. on behalf of the Soviet Govt. purported to sell the *J.* to defts., an Italian co. The vessel had belonged to a Russian co., but the Soviet Govt. asserted that by a decree of nationalisation all vessels of the Russian mercantile marine had become State property, & that the co. had ceased to exist. The Russian co. had moved its business to France, & an action *in rem* was brought in its French name, & in the name of the persons appointed by the French cts. to administer its affairs, against "the *J.*" claiming possession. The Italian co. entered an appearance & moved to set aside the writ:—*Held*: (1) there is no established rule that the Admlty. Ct. will not entertain possession suits in respect of foreign vessels except at the request of both parties or with the consent of the accredited representative of the country to which the vessel belongs; the matter is one for the discretion of the ct.; (2) the proceedings did not implead the Soviet Govt. directly or indirectly; (3) the question of authority to institute the action was a matter which should be referred to the judge at the trial; (4) the motion to set aside the writ failed.—*THE JUPITER* (No. 2), [1925] P. 69; 94 L. J. P. 59; 133 L. T. 85; 16 Asp. M. L. C. 491, C. A.

213. *Add. Annotation*:—*Reid*. *The Annette, The Dora*, [1919] P. 105.

248a. ———.]—(1) The Admlty. Ct. has jurisdiction, under sect. 3 of the above Act, to take cognisance of mtge. claims relating to a ship if the ship or proceeds are under arrest of the ct. at the time when the proceedings are instituted, notwithstanding that the mtge. is not a legal mtge.

(2) A party who intervenes in, & defends, an action *in rem* cannot set up defences which

the owners of the ship could not have set up had they appeared & defended.—*THE BYZANTION* (1922), 127 L. T. 756; 38 T. L. R. 744; 16 Asp. M. L. C. 19.

254. *Add. Annotation*:—*As to* (2) *Consd*. *The Lord Strathcona*, [1925] P. 143.

254a. ——— *Right of charterer—To dispute validity of mortgage.*]—Pltfs. were mtgees. of a vessel which had been chartered by her owners, the mtgors., for a succession of seasons with options for a renewal which did not expire until 1932. Pltfs. brought an action *in rem* against the shipowners, claiming judgment for the validity of the mtges. & an order for sale of the vessel by the marshal. No appearance was entered by defts. & judgment was given condemning the vessel & ordering her sale. Thereupon the charterers intervened & claimed (a) a declaration that the charterparty was binding on the mtgees., who had notice of its existence when the mtges. were executed, & (b) an injunction to restrain pltfs. from exercising their right to an order for sale of the vessel except subject to the terms of the charterparty. The interveners also alleged that the mtges. were invalid:—*Held*: the interveners had no *locus standi* to dispute the validity of the mtge., but were only entitled to be heard on these question whether pltfs. ought to be restrained from exercising their rights in such a way as to interfere with the interveners' contractual rights under the charterparty.—*THE LORD STRATHCONA*, [1925] P. 143; 95 L. J. P. 5; 133 L. T. 765; 41 T. L. R. 638; 69 Sol. Jo. 762; 16 Asp. M. L. C. 536.

262. *Add. Annotation*:—*Reid*. *The St. George*, [1926] P. 217.

267. *Add. Annotation*:—*Reid*. *The James W. Elwell*, [1921] P. 351.

269. *Add. Annotation*:—*Consd*. *The St. George*, [1926] P. 217.

276. *Add. Annotation*:—*Reid*. *The James W. Elwell*, [1921] P. 351.

277. *Add. Annotation*:—*Reid*. *The St. George*, [1926] P. 217.

### PART II. SECT. 1, SUB-SECT. 2.

182 i. *Wrongdoer.*]—Where a ship has been wrongfully seized by her crew the ct. will order the marshal to deliver possession of it to the owner upon giving security.—*PACIFIC GREAT EASTERN RY. CO. v. THE CLINTON* (1918), 21 Exch. C. R. 169; 27 B. C. R. 400; [1919] 1 W. W. R. 947.—CAN.

### PART II. SECT. 3, SUB-SECT. 2.—A.

250 i. *Admiralty Court Act*, 1861 (c. 10)—*Mortgage registered abroad.*]—Action *in rem*, to recover the balance due on a deed of mtge., executed at Buffalo & registered there according to the law & regulations of the State of New York. The ship was arrested & released on bail. Deft. moved for an order to set aside the writ of summons, etc., for want of jurisdiction. On the hearing F. moved to amend,

which amendment was in substance an allegation that deft. undertook to have the ship placed under Canadian register & to mtge. the ship, which he failed to do. The ship was not under arrest or seizure at the time of the institution of the action:—*Held*: (1) the ct. was without jurisdiction to entertain the claim; (2) the amendment could not be allowed.—*FINNIGAN v. S.S. NORTHWEST* (1920), 20 Exch. C. R. 180.—CAN.

278. *Add. Annotation*:—*Refd.* The James W. Elwell, [1921] P. 351.
279. *Add. Annotations*:—*Mentd.* The Russland [1924] P. 55; The Stream Fisher, [1927] P. 73.
283. *Add. Annotation*:—*Refd.* The James W. Elwell, [1921] P. 351.
284. *Add. Annotation*:—*Generally, Mentd.* The James W. Elwell, [1921] P. 351.
286. *Add. Annotation*:—*Refd.* The James W. Elwell, [1921] P. 351.
288. *Add. Annotation*:—*Refd.* The James W. Elwell, [1921] P. 351.
289. *Add. Annotation*:—*Refd.* The St. George, [1926] P. 217.
291. *Add. Annotations*:—*Generally, Refd.* The St. George, [1926] P. 217. *Mentd.* The James W. Elwell, [1921] P. 351.
300. *Add. Annotation*:—*Refd.* The St. George, [1926] P. 217.
304. *Add. Citation*:—166 E. R. 973; *on appeal* (1851), 8 Moo. P. C. C. 459, P. C.  
*Add. Annotations*:—*Fold.* The Hamburg (1864), 2 Moo. P. C. C. N. S. 289. *Consd.* The Gaetano & Maria (1881), 7 P. D. 1. *Refd.* Segredo (otherwise Eliza Cornish) (1853), 1 Ecc. & Ad. 36; The Rajah of Cochin (1859), Sw. 473; Lloyd v. Guibert (1865), L. R. 1 Q. B. 115; The St. George, [1926] P. 217. *Mentd.* Sieveking v. Maas (1856), 27 L. T. O. S. 264; Sultan (Cargo Ex.) (1859), Sw. 504; The Lizzie (1868), L. R. 2 A. & E. 254; Australasian Steam Navigation Co. v. Morse (1872), 8 Moo. P. C. C. N. S. 482; Acatos v. Burns (1878), 3 Ex. D. 282.
315. *Add. Annotations*:—*Refd.* N. V. Kwik Hoo Tong Handel Maatschappij v. Finlay, [1927] A. C. 604. *Mentd.* Matthey v. Curling, [1922] 2 A. C. 180.
322. *Add. Annotations*:—*Refd.* Pocahontas Fuel Co. v. Ambatielos (1922), 27 Com. Cas. 148. *Mentd.* The Mogileff, [1921] P. 236.
- 328a. ——— *Default of appearance.*—A firm of ship repairers commenced an action *in rem* against the owners of a vessel which they

had repaired. It appeared from the statement of claim that the ship was registered in an English port. No appearance was entered:—*Held*: it not being shown to the satisfaction of the ct. that at the time of the institution of the cause any owner or part owner of the ship was domiciled in England or Wales, the ct. would not refuse jurisdiction under sect. 5 of the above Act.—THE MAGGIE A (1922), 128 L. T. 480; 16 Asp. M. L. C. 117.

329. *Add. Annotation*:—*Refd.* Pocahontas Fuel Co. v. Ambatielos (1922), 27 Com. Cas. 148.
331. *Add. Annotations*:—*Refd.* The Mogileff, [1921] P. 236. *Mentd.* Pocahontas Fuel Co. v. Ambatielos (1922), 27 Cor. Cas. 148.
333. *Add. Annotation*:—*Mentd.* The Mogileff, [1921] P. 236.
334. *Add. Annotation*:—*Refd.* The Mogileff, [1921] P. 236.
335. *Add. Annotation*:—*Refd.* The Mogileff, [1921] P. 236.
336. *Add. Citation*:—*sub nom.* THE WEST FRIESLAND, Sw. 456, P. C.  
*Add. Annotations*:—*Refd.* Laws v. Smith, The Rio Tinto (1884), 9 App. Cas. 356; Northcote v. Henrich Bjorn, The Henrich Bjorn (1886), 11 App. Cas. 270; The Mogileff, [1921] P. 236. *Mentd.* The Riga (1872), L. R. 3 A. & E. 516; The Stream Fisher, [1927] P. 73.
337. *Add. Annotation*:—*As to* (5) *Refd.* The Mogileff, [1921] P. 236.
338. *Add. Annotation*:—*Refd.* The Mogileff, [1921] P. 236.
- 338a. ——— ———.]—THE MOGILEFF, No. 352c, *post*.
343. *Add. Annotations*:—*Refd.* The Mogileff, [1921] P. 236; The Ambatielos, The Cephalonia, [1923] P. 68.
346. *Add. Annotation*:—*Refd.* The Colorado, [1923] P. 102.
347. *Add. Annotation*:—*Consd.* The British Trade, [1924] P. 104.

PART II. SECT. 5, SUB-SECT. 1.—A.

327 i a. ———.]—A vessel was seized by a mtgee. when it was being repaired by pltf. in pltf.'s yard. Pltf. brought action in the Admty. Ct. claiming a lien for repairs done at the time the vessel was in possession & repairs previously executed on her last trip:—*Held*: the ct. had no jurisdiction to entertain the action, as the vessel was not "under arrest" at the time the writ was issued.—MARTIN v. THE SEA FOAM (1921), 68 D. L. R. 750; 30 B. C. R. 398; [1922] 2 W. W. R. 1181.—CAN.

327 i b. ———.]—THE PACIFIC CO. v. WINSLOW MARINE RAILWAY & SHIPBUILDING CO., [1925] 2 D. L. R. 162; [1925] Exch. C. R. 32; *affg.*, [1924] 2 D. L. R. 190; [1924] Exch. C. R. 90; [1924] 1 W. W. R. 930; 34 B. C. R. 1.—CAN.

327 i c. ———.]—STACK v. THE BARGE LEOPOLD (1919), 18 Exch. C. R. 325.—CAN.

327 iii. ———.]—*Held*: work done in making alterations in & addition to the pilot-house, rig, spars, sails, tanks, etc., of a gasoline boat necessitated by her intended new employment in outside waters, was for the "building" or "equipping" of a ship within s. 4 of the above Act.—ERIKSEN BROTHERS v. THE MAPLE LEAF, [1923] 4 D. L. R. 1201; [1923] Exch. C. R.

39; 31 B. C. R. 443; [1923] 1 W. W. R. 76.—CAN.

327 iv. ——— "Building" any ship.]—ERIKSEN BROTHERS v. THE MAPLE LEAF, No. 327 iii., *ante*.—CAN.

329 ii. ——— *Ship on colonial register—Actual owner foreigner.*—The C. was registered at Vancouver, B.C., & was owned by a co., having its head office at the same port. The co. was practically A., who was domiciled in San Francisco, U.S.A., being the owner of 995 shares of a total of 1,000 shares, capital stock of the co. In an action for the price of necessities:—*Held*: as the home port of the C. was really San Francisco where the true owner was domiciled, she was a foreign vessel, & the ct. had jurisdiction.—HALEY v. S.S. COMOX, [1920] 3 W. W. R. 325; 20 Exch. C. R. 86.—CAN.

a i. ———.]—Pltf. claimed \$1,562.99 for work done & materials furnished for the S. while at Amos, P.Q. The vessel was arrested, & J., of Amos, who had an interest therein under an agreement to purchase, filed an appearance under reserve. The vessel was registered at the Port of Montreal, & at the date of institution of the action the registered owner was S., of Smiths Falls, Ont. The vessel was not under arrest of the ct. at the time of the institution of the cause:—

*Held*: the ct. had no jurisdiction to entertain the claim.—CIE DES BOIS DU NORD v. S.S. ST. LOUIS (1920), 20 Exch. C. R. 232.—CAN.

a ii. ——— *Ship under arrest.*—THE PACIFIC CO. v. WINSLOW MARINE RAILWAY & SHIPBUILDING CO., [1925] 2 D. L. R. 162; [1925] Exch. C. R. 32; *affg.*, [1924] 2 D. L. R. 190; [1924] Exch. C. R. 90; [1924] 1 W. W. R. 930; 34 B. C. R. 1.—CAN.

a iii. ———.]—*Held*: the ship not being a foreign vessel & its owner being domiciled in Canada, the ct. had no jurisdiction on a claim for necessities.—PITTSBURG COAL CO. v. S.S. BELCHERS, [1926] Exch. C. R. 24.—CAN.

PART II. SECT. 5, SUB-SECT. 1.—B.

343 i. *No maritime lien.*—A claim for the supply of necessities to a ship does not constitute a maritime lien thereon.—CIE DES BOIS DU NORD v. S.S. ST. LOUIS (1920), 20 Exch. C. R. 232.—CAN.

348 i. *Maritime lien—Created by foreign law—Whether enforceable in Exchequer Court of Canada.*—PITTSBURG COAL CO. v. S.S. BELCHERS, [1926] Exch. C. R. 24.—CAN.

348 ii. ———.]—STRANDHILL v. WALTER W. HODDER CO., [1926] 4 D. L. R. 801.—CAN.

352. *Add. Annotation*:—*Reid*. The Mogileff, [1921] P. 236.

352a. —.]—The agent for a foreign ship, being also part owner, may recover against the ship for necessities supplied.—THE WEST FRIESLAND (1859), Sw. 454; 5 Jur. N. S. 658; 166 E. R. 1213; *on appeal* (1860), Sw. 456, P. C.

*Annotations*:—*Apld.* The Underwriter (1868), 25 L. T. 279. *Consd.* Laws v. Smith, The Rio Tinto (1884), 9 App. Cas. 356. *Dbtd.* Northcote v. The Henrich Björn, The Henrich Björn (1886), 11 App. Cas. 270. *Consd.* The Mogileff, [1921] P. 236. *Reid.* The Riga (1872), L. R. 3 A. & E. 516; The El Salto (1908), 25 T. L. R. 99; Foong Tai v. Buchholster, [1908] A. C. 458; The Stream Fisher, [1927] P. 73.

—A person who has made advances in order to supply necessities to a ship on the credit of the ship may sue *in rem* to recover those advances, although the *res* may belong to a person or persons who are not liable *in personam* as debtor or debtors for the sum so sought to be recovered.

An agent may sue for necessities supplied under Admlty. Ct. Act, 1861 (c. 10), s. 5, & does not lose his right so to sue by giving credit in the account furnished to his principal for sums received.—FOONG TAI & Co. v. BUCHHEISTER & Co., [1908] A. C. 458; 78 L. J. P. C. 31; 99 L. T. 526; 11 Asp. M. L. C. 122, P. C.

*Annotations*:—*Consd.* The Mogileff, [1921] P. 236. *Reid.* El Salto (1908), 25 T. L. R. 99.

352c. —.]—*Prima facie*, persons who have advanced money for necessities on behalf of a foreign ship are entitled to sue *in rem*; &, although it may be inferred from the course of business between the principal & agent that the agent has agreed to look to the personal liability of the principal, & that the advances must be treated as items of a mercantile account to be adjusted in accordance with the terms of the agency agreement between the parties, the mere fact that pltf's. are the shipowners' regular agents does not deprive them of their rights *in rem* under Admlty. Ct. Acts, 1840 (c. 65), & 1861 (c. 10). The test to apply in each case is whether at the date of the suit pltf. could maintain an independent action *in assumpsit* in the subject-matter of the claim.—THE MOGILEFF, [1921] P. 236; 90 L. J. P. 329; 37 T. L. R. 549; 65 Sol. Jo. 581.

*Annotation*:—*Reid.* Pocahontas Fuel Co. v. Ambatielos (1922), 27 Com. Cas. 148.

—.]—BAKER, CARVER & MORELL INC. v. ASTORIA, [1927] 4 D. L. R. 1022.—CAN.

#### PART II. SECT. 5, SUB-SECT. 2.

357i. *Action by default—Proof of claim—Right to proceed ex parte.*—PAUL v. THE AMY TURNER, [1922] V. L. R. 740.—AUS.

#### PART II. SECT. 6.

358i. *Extent of jurisdiction—Towage performed in connection with repairs—Not at owner's special request.*—Towage performed in connection with repairs, not at the owner's special request, is not within the purview of "claims & demands for services in the nature of towage" within Admlty. Ct. Act, 1840 (c. 65), s. 6, as would give the ct. jurisdiction over the claim; neither a claim for towage nor for necessities is the subject of a maritime lien.—STACK v. THE BARGE LEOPOLD (1919), 18 Exch. C. R. 325.

#### PART II. SECT. 7, SUB-SECT. 1.—C.

386ii. —.] *Claim by master for*

*wages & damages—Payable pari passu.*—A British ship was attached to satisfy various creditors *in rem* including the master of the vessel. She was subsequently sold, any liens of the creditors being transferred to the proceeds. The master's claim included damages against the owners for wrongful dismissal calculated from a date subsequent to the sale:—*Held*: the master was entitled to damages *pari passu* with his claim for wages, which he could enforce by an action *in rem*.—RE GWYDYR CASTLE (1920), 41 N. L. R. 231.—S. AF.

#### PART II. SECT. 7, SUB-SECT. 2.—A (b).

*sk. Shipping Act, 1906, s. 191—Limits of jurisdiction.*—A seaman sued for \$134:—*Held*: this being under \$200, the action must be dismissed under the above sect., with costs.—OSTROM v. THE MIYAKO, [1924] 2 D. L. R. 200; [1924] Exch. C. R. 96; 1 W. W. R. 1098; 34 B. C. R. 4.—CAN.

#### PART II. SECT. 7, SUB-SECT. 2.—B.

*sl. Assignee of wages.*—The maritime

357. *Add. Annotation*:—*Mentd.* The Mogileff, [1921] P. 236.

368a. *Wrongful dismissal.*—(1) A shipmaster or seaman suing under Admlty. Ct. Act, 1861 (c. 10), on a special contract of service has no maritime lien in respect of damages for wrongful dismissal, inasmuch as such a suit could not have been brought under the ancient jurisdiction of the High Ct. of Admlty.

(2) *Semhle*: the maritime lien which a seaman suing under the ordinary mariner's contract has in respect of wages is not limited to the wages earned while actually on board the ship, but extends to wages due after a wrongful determination of the contract of service.—THE BRITISH TRADE, [1924] P. 104; 93 L. J. P. 33; 130 L. T. 827; 40 T. L. R. 292; 16 Asp. M. L. C. 296.

398. *Add. Annotation*:—*Reid.* *Ex p.* Guinness, *Ex p.* Murray (1926), 42 T. L. R. 766.

401. *Add. Annotation*:—*Reid.* The British Trade, [1924] P. 104.

415. *Add. Annotation*:—*Reid.* The British Trade, [1924] P. 104.

417a. —.]—THE BRITISH TRADE, No. 368a, *ante*.

429. *Add. Annotation*:—*Reid.* The Ambatielos, The Cephalonia, [1923] P. 68.

430. *Add. Annotation*:—*Reid.* The Ambatielos, The Cephalonia, [1923] P. 68.

430a. —.] *Pilotage Act, 1913 (c. 31), s. 49.*—The High Ct. of Admlty. & its successor, the present Admlty. Div. of the High Ct., have always had jurisdiction to entertain an action *in rem* for pilotage dues, & the pilot is not restricted to his right under the above sect., of taking proceedings in a ct. of summary jurisdiction. *Qu.*: whether there is a maritime lien in respect of pilotage dues.—THE AMBATIELOS, THE CEPHALONIA, [1923] P. 68; 92 L. J. P. 45; 128 L. T. 699; 39 T. L. R. 183; 16 Asp. M. L. C. 120.

433. *Add. Annotation*:—*Reid.* The Ambatielos, The Cephalonia, [1923] P. 68.

435. *Add. Annotation*:—*Reid.* *Ex p.* Guinness, *Ex p.* Murray (1926), 42 T. L. R. 766.

437. *Add. Annotation*:—*Reid.* *Ex p.* Guinness, *Ex p.* Murray (1926), 42 T. L. R. 766.

449. *Add. Annotation*:—*Reid.* The Stream Fisher, [1927] P. 73.

lien attaching to a seaman's wages is personal to the seaman & not transferable.—McCULLOUGH v. THE SAMUEL MARSHALL, ELIASOPH v. STEEL CO. OF CAN. (QUE.), [1924] Exch. C. R. 53; *affg.*, [1923] Exch. C. R. 110.—CAN.

*sm. Person not having signed articles—Nor having lived on board.*—*Held*: claimant not having signed the ship's articles, not having lived on board, & the sum sued for not having been earned on board, he was not a seaman.—McCULLOUGH v. THE SAMUEL MARSHALL, ELIASOPH v. STEEL CO. OF CAN. (QUE.), [1924] Exch. C. R. 53; *affg.*, [1923] Exch. C. R. 110.—CAN.

*sn. Person voluntarily paying wages.*—No one voluntarily paying the wages of one or more of the crew can claim a lien against the ship for the amount so paid.—McCULLOUGH v. THE SAMUEL MARSHALL, ELIASOPH v. STEEL CO. OF CAN. (QUE.), [1924] Exch. C. R. 53; *affg.*, [1923] Exch. C. R. 110.—CAN.



1. *Add. Annotation*:—As to (1) *Consd.* The Colorado, [1923] P. 102.
460. *Add. Annotation*:—As to (1) *Refd.* The Colorado, [1923] P. 102.
469. *Add. Annotation*:—*Mentd.* Weld-Blundell v. Stephens, [1920] A. C. 956.
470. *Add. Annotation*:—*Refd.* The Sylvan Arrow, [1923] P. 220.
471. *Add. Annotation*:—*Refd.* The Sylvan Arrow, [1923] P. 220.
483. *Add. Annotations*:—*Consd.* The Rosalind (1920), 90 L. J. P. 126; The Joannis Vatis, [1922] P. 92. *Refd.* Elliott Steam Tug Co. v. Shipping Controller, [1922] 1 K. B. 127; G. N. Ry. v. L. E. P. Transport & Depository, [1922] 2 K. B. 742; The Zelo, [1922] P. 9. *Mentd.* Mersey Docks & Harbour Board v. Hay, [1923] A. C. 345.
489. *Add. Annotations*:—*Consd.* Mersey Docks & Harbour Board v. Hay, [1923] A. C. 345. *Refd.* The Stream Fisher, [1927] P. 73.
490. *Add. Annotation*:—*Generally, Refd.* The Carlgarth, The Otarama, [1927] P. 93.
491. *Add. Annotation*:—*Refd.* G. W. Ry. v. S.S. Mostyn, [1928] A. C. 57.
494. *Add. Annotations*:—*Refd.* The Sylvan Arrow, [1923] P. 220. *Mentd.* The Penrith Castle, [1918] P. 142.
504. *Add. Annotation*:—*Refd.* The Tervaete, [1922] P. 259.
508. *Add. Annotation*:—*Mentd.* Mersey Docks & Harbour Board v. Hay, [1923] A. C. 345.
510. *Add. Annotation*:—As to (2) *Appld.* The Goulondris, [1927] P. 182.
511. *Add. Annotation*:—*Mentd.* Gore-Booth v. Manchester (Bp.), [1920] 2 K. B. 412.
516. *Add. Annotation*:—*Mentd.* Gore-Booth v. Manchester (Bp.), [1920] 2 K. B. 412.
518. *Add. Annotations*:—*Refd.* McColl v. Canadian Pacific Ry., [1923] A. C. 126; The Molière (1924), 41 T. L. R. 154. *Mentd.* Parry v. Harding, [1925] 1 K. B. 111.
- 518a. ———.]—In a collision between Swedish & British steamships, for which both ships were held to blame, a seaman on the former vessel was drowned. Under Swedish law the Swedish shipowners paid compensation to the relatives of the seaman. At the reference to assess the collision damage the Swedish shipowners claimed to recover from the owners of the British vessel a moiety of the compensation so paid. The registrar allowed the item. On appeal:—*Held*: the decision of the registrar was wrong for apart from Maritime Conventions Act, 1911 (c. 57), the Ct. of Admlty. had no jurisdiction to entertain an action *in rem* for loss of life, & the Admlty. rules as to division of loss had no application to such a claim, & sect. 3 of

that Act, which provided for contribution between the owners of wrongdong vessels in respect of (*inter alia*) damages for loss of life or personal injuries, only applied to damages recoverable by action, & not to claims for compensation arising out of some statute & independently of fault on the part of the shipowner.—THE MOLIERE, [1925] P. 27; 94 L. J. P. 28; 132 L. T. 733; 41 T. L. R. 154; 16 Asp. M. L. C. 470.

- 518b. Application of Maritime Conventions Act, 1911 (c. 57).]—THE MOLIERE, No. 518a; *ante*.
519. *Add. Annotations*:—As to (1) *Refd.* The Kursk, [1924] P. 140. As to (2) *Refd.* The Molière (1924), 41 T. L. R. 154. *Generally, Mentd.* Ellerman Lines v. Grayson, [1919] 2 K. B. 514; Weld-Blundell v. Stephens, [1920] A. C. 956; Anchor Line v. Dundee Harbour Trustees, Ellerman Lines v. Same, Thomson, Shepherd v. Same (1922), 38 T. L. R. 299.
521. *Add. Citation*:—[1909] P. 176.
- Add. Annotation*:—As to (2) *Refd.* The Molière (1924), 41 T. L. R. 154.
523. *Add. Annotation*:—As to (2) *Refd.* The Molière (1924), 41 T. L. R. 154.
- 523a. ———.]—THE MOLIERE, No. 518a, *ante*.
528. *Add. Annotation*:—*Refd.* The Sheaf Brook, [1926] P. 61.
536. *Add. Annotations*:—*Generally, Refd.* Ireland v. Southdown S.S. Co. (1926), 136 L. T. 412; Lewis v. Dreyfus (1926), 31 Com. Cas. 239. *Mentd.* Michalinos v. Dreyfus (1924), 131 L. T. 177; Van Nievelt Goudrian, Stoomvaart Maatschappij v. Forshind (1925), 133 L. T. 457.
541. *Add. Annotation*:—*Mentd.* Australia (Owners) v. Nautilus (Owners), The Australia (1926), 95 L. J. P. 145.
- 541a. ———.]—Indorsee of document acknowledging receipt of goods for shipment.]—A document whereby the receipt of goods is acknowledged for shipment on board a named ship, or on some other ship for carriage by sea & delivery to the shipper's order, the document being signed on behalf of the master, is a bill of lading for the purposes of Bills of Lading Act, 1855 (c. 111), & the above sect.
- Parcels of goods were accepted in N. for delivery at S. to the shippers' order, there being given to each shipper a document of the above-mentioned character. Upon the named ship arriving at S. the goods were not delivered. Resps., twenty firms, each being indorsees of one of the documents, issued a joint writ *in rem* claiming severally to recover damages. The writ stated that pliffs. claimed as consignees or indorsees of bills of lading

PART II. SECT. 7, SUB-SECT. 3.—A.

452 iii. ———.]—*Contract made abroad.*]—The ct. will not interfere in a dispute as to wages arising out of a contract made abroad between the master of a foreign ship & the members of his crew.—NOLAN v. S.S. RUSSEL HAVERSIDE, [1921] O. P. D. 136.—S. AF.

454 vi. ———.]—A seaman who had signed on an American ship instituted an action in Quebec against the ship for wages. No notice of the institution of the action was given by him to the United States consul, & the affidavit to lead to warrant omitted to state the national character of the

ship. Deft. moved to dismiss for defects in the affidavit, & the consul filed a protest against the action being allowed to proceed:—*Held*: (1) the protest of the American consul did not deprive the ct. of its jurisdiction; (2) the ct., in proper circumstances, might exercise its discretion to decline to proceed with such an action.—ROULEAU v. S.S. ALEDO, [1923] Exch. C. R. 10.—CAN.

PART II. SECT. 7, SUB-SECT. 3.—B.

458 i. *Conflict of laws—Application of law of litigants' country.*]—Admlty. Ct. Act, 1861 (c. 10), s. 10, permits the application by the ct. of the law of the

country of the litigants.—JACOBSON v. FORT MORGAN (1919), 19 Exch. C. R. 165; 49 D. L. R. 123.—CAN.

PART II. SECT. 8, SUB-SECT. 2.—A.

512 v. ———.]—Pltf., a seaman, brought an action *in rem* for damages against a barge for bodily injuries sustained by him in an accident alleged to have been occasioned by negligence for which the ship was liable:—*Held*: the damage done was not "by" the barge, but "on" the barge, & was not such damage as gave pltf. a remedy *in rem*.—MULVEY v. THE BARGE NEOSHO (1919), 19 Exch. C. R. 1; 47 D. L. R. 437.—CAN.

for non-delivery of goods agreed to be carried by the named ship, or agreed to be shipped within a reasonable time by some other vessel of the same line. On affidavits sworn separately by pltfs., alleging that the goods were either lost or not shipped on any other vessel within a reasonable time, the ship was arrested. The owners of the ship took out a summons to set aside the writ & all proceedings thereunder:—*Held*: (1) the documents in question were bills of lading within the above sect., & the proceedings being to set aside the writ & it not being denied that some of the goods were received on board, the action should proceed; (2) the action being *in rem* & the joinder of pltfs. convenient, the view of the full Bench of the Supreme Ct. that pltfs. could properly be joined under the rules locally applicable should not be interfered with.—*MARLBOROUGH HILL, SHIP v. COWAN & SONS*, [1921] 1 A. C. 444; 90 L. J. P. C. 87; 124 L. T. 645; 37 T. L. R. 190; 15 Asp. M. L. C. 163; 26 Com. Cas. 121, P. C.

*Annotation*:—As to (1) *Distd. Diamond Alkali Export Corp'n. v. Bourgeois*, [1921] 3 K. B. 443.

546. *Add. Annotation*:—*Refd. Marlborough Hill. Ship v. Cowan*, [1921] 1 A. C. 444.

562. *Add. Annotation*:—*Refd. The Sheaf Brook*, [1926] P. 61.

565a. *Judicature (Consolidation) Act, 1925 (c. 49), ss. 22, 58 (2)—Owner domiciled in England—Application to transfer action to King's Bench Division.*—(1) Pltfs., as owners of cargo on board defts.' ship, brought an action *in personam* in the Admlty. Div. for damages for breach of the contract of carriage. Defts. were domiciled in England. On an application by them to transfer the cause to the King's Bench Div., the judge held that he had a discretion to retain it in the Admlty. Div.:—*Held*: s. 58 (2) of the above Act did not give the ct. discretion to retain a cause in respect of which the Act expressly provided that the Div. had no jurisdiction, & the action must be transferred to the King's Bench Div.

(2) The note to R. S. C., Ord. 49, r. 3, that the Ct. of Appeal cannot order a transfer without the consent of the presidents of both the Divs. from & to which the transfer is proposed to be made, does not apply to cases where the Ct. of Appeal has held that the one Div. has no discretion to retain the cause in that Div. In such cases the transfer is made subject only to the consent of the president of the Div. to which the cause is to be transferred (*ATKIN, L.J.*).—*THE SHEAF BROOK*, [1926] P. 61, 95 L. J. P. 113; 134 L. T. 534; 17 Asp. M. L. C. 14, C. A.

571. *Add. Annotation*:—*Mentd. The Rosalind* (1920), 90 L. J. P. 126.

578. *Add. Annotation*:—*Refd. The Wilhelmina*, [1923] P. 112.

PART II. SECT. 9, SUB-SECT. 1.—B.

564 i. *Admiralty Court Act, 1861 (c. 10), s. 6—No breach of duty—Contract with shippers imposing no obligation on ship.*—Pltfs. agreed to purchase goods, the shippers to deliver same at an agreed point. The contract did not purport to be made by or on behalf of the ship, but by the shippers, with pltfs., who claimed damages for breach of contract for non-delivery, & at their request a

warrant to arrest the ship & her cargo was issued:—*Held*: (1) pltfs. not having been shown to be "the owners, or consignees or assignees" of the bill of lading of the cargo, the ct. had no jurisdiction in the matter, & the warrant of arrest should be set aside; (2) the contract referred to in the above sect. contemplated an obligation on the part of the ship, & the contract sued on imposed no such obligation.—*LAVALLEE v. THE ISTAR*, [1923] Exch. C. R. 212.—CAN.

[1923] Exch. C. R. 212.—CAN.

564 ii. — *Goods shipped from Canadian port.*—The jurisdiction the above sect. confers upon the ct. is clearly confined to cases of damage to goods carried by ships into a Canadian port, & does not extend to the case of goods shipped from Canada to foreign ports.—*HARRIS ABATTOIR Co. v. ALEDO (OWNERS)*, [1923] 4 D. L. R. 1196; [1923] Exch. C. R. 217.—CAN.

579a. *Ship injured in dock—Dockowners repairing ship—in dock belonging to others.*—By the negligence of pltfs.' servants while engaged on work on a steamship in the Hornby Dock, belonging to the Mersey Docks & Harbour Board, the vessel & her cargo were damaged by fire, & pltfs. were held liable in damages. Pltfs. sought to limit their liability under M. S. Act, 1900 (c. 32), s. 2, on the ground that they were the owners of a dry dock at Garston:—*Held*: the liability being in no way connected with the fact that pltfs. were dockowners, they were not entitled to a decree of limitation of liability.—*THE CITY OF EDINBURGH*, [1921] P. 274; 90 L. J. P. 304; 125 L. T. 375; 37 T. L. R. 468; 15 Asp. M. L. C. 234, C. A.

*Annotations*:—*Distd. The Ruapehu* (1926), 42 T. L. R. 708. *Expld. S.S. Ruapehu v. Green & Silley Weir*, [1927] A. C. 523.

579b. — *Pltfs., owners of a dry dock, sought to limit their liability under M. S. Act, 1900 (c. 32), s. 2, in respect of damage caused by a fire which broke out on defts.' vessel owing to the negligence of pltfs.' servants while the vessel was being repaired by them in the dry dock.*—*Held*: while some limitation must be put upon the general language of the sect., which, if applied in its strict literal sense would lead to an absurdity, the limitation to be put was not in respect of the nature of the act done but in respect of area, *i.e.*, the damage must be in some way connected with the ownership of the dock.—*THE RUAPEHU*, [1927] P. 47; 96 L. J. P. 18; 136 L. T. 146; 42 T. L. R. 708; 17 Asp. M. L. C. 138, C. A.; *affd. sub nom. RUAPEHU (OWNERS) v. GREEN (R. & H.) & SILLEY WEIR, LTD., THE RUAPEHU*, [1927] A. C. 523; 96 L. J. P. 99; 137 L. T. 353; 43 T. L. R. 402; 71 Sol. Jo. 330; 32 Com. Cas. 323; 17 Asp. M. L. C. 270, H. L.

*Annotations*: *Refd. Gosse Millard v. Canadian Government Merchant Marine, American Can Co. v. Same* (1927), 97 L. J. K. B. 193. *Mentd. Buerger v. New York Life Assce.* (1927), 96 L. J. K. B. 930.

593. *Citations*:—For "36 L. T. 361" read "6 L. T. 361."

594a. — *Rival salvors—Injunction to restrain act on high seas.*—In 1922 pltfs. fitted out an expedition to salvage cargo from the wreck of a Dutch steamship which had sunk in 1916 in the North Sea in over one hundred feet of water. Pltfs. worked at the scene of the wreck whenever the weather & tides permitted during the summer of 1922 & from Apr. to July, 1923. During that time they had succeeded in cutting a hole into No. 4 hold, had buoyed the wreck, & had extracted some portions of cargo of little value at a cost of over £40,000. In July, 1923, defts., British subjects & partners in a rival salvage co., arrived on the scene in a British registered ship, & by sending down their own divers & interfering with pltfs.' diving operations, tried to secure possession

of the wreck & cargo, & either prevent further work on the part of plffs. or establish themselves with plffs. in concurrent occupation:—*Held*: (1) an action in respect of injurious acts done on the high seas had always been within the jurisdiction of the High Ct. of Admlty.; (2) plffs. were sufficiently in occupation of the wreck to exclude third parties from interfering with the property; (3) as defts.' interference was high-handed & deliberate they would be restrained until further order from doing any acts at or near the wreck whereby p tfs. might be prevented or hindered in the carrying on of their salvage operations.—*THE TUBANTIA*, [1924] P. 78; 93 L. J. P. 148; 131 L. T. 570; 40 T. L. R. 335; 16 Asp. M. L. C. 346.

595a. — Services on land.] — *THE LAPWING* (1839), 8 L. T. 440.

598. After this case insert, "Prize salvage, see PRIZE LAW."

603. *Add. Annotation*:—*Refd.* *Pyman S.S. Co. v. Admiralty Comrs.*, [1919] 1 K. B. 49.

606. *Add. Annotations*:—*Consd.* *The Meandros*, [1925] P. 61. *Refd.* *Pyman S.S. Co. v. Admiralty Comrs.*, [1919] 1 K. B. 49.

611. *Add. Annotation*:—*Refd.* *Pyman S.S. Co. v. Admiralty Comrs.*, [1919] 1 K. B. 49.

613. *Add. Annotations*:—*Consd.* *The Meandros*, [1925] P. 61. *Refd.* *Pyman S.S. Co. v. Admiralty Comrs.*, [1919] 1 K. B. 49.

617. *Add. Annotation*:—*Consd.* *Bradley v. Newsom*, [1919] A. C. 16.

619. *Add. Annotation*:—*As to* (1) *Refd.* *Bradley v. Newsom*, [1919] A. C. 16.

622. *Add. Annotation*:—*Refd.* *The Fagernes*, [1926] P. 185.

642a. —.]—*R. v. MILLER* (1823), 1 Hag. Adm. 197; 166 E. R. 71.

648a. Ship not entitled to be registered as British ship—Ship under jurisdiction of Prize Court.]

—A ship registered as a British ship, & nominally owned by a duly registered British co., was in fact owned & controlled by the Hamburg-Amerika Line, of Hamburg, which, in the person of its nominees, owned all the shares in the British co. & appointed its directors. Accordingly, after the outbreak of war with Germany, the ship was seized as prize, & on July 28, 1916, the Prize Ct. pronounced her to have belonged at the time of seizure to enemies of the Crown, & ordered her to be detained by the marshal until further order. Meanwhile on Jan. 11, 1916, under Prize Ct. Rules, Ord. 29, the ship had been requisitioned by the Lords Comrs. of the Admlty. & she remained in their possession. On Apr. 5, 1917, the writ in the present action was issued claiming a declaration under M. S. Acts, 1894 (c. 60), & 1906 (c. 48), that the ship was forfeited to the Crown on the ground that she was not entitled to be registered as a British ship:—*Held*: as the Lords Comrs. of the Admlty. had merely temporary possession of the ship & had to return her into the custody of the Prize Ct. which had at some time to make a final decree either of condemnation or release, the Admlty. Ct. had no jurisdiction to entertain the forfeiture action & to make the usual order for appraisement & sale, & the action must be dismissed.—*THE ST. TUDNO*, [1918] P. 174; 87 L. J. P. 105; 34 T. L. R. 357; 62 Sol. Jo. 521.

650. *Add. Annotation*:—*Generally, Mentd.* *The Stream Fisher*, [1927] P. 73.

650a. — Injunction.] — *THE TUBANTIA*, No. 594a, *ante*.

650b. Res under jurisdiction of Prize Court.] — *THE ST. TUDNO*, No. 648a, *ante*.

## Part III.—Present and Former Practice of the Admiralty Division of the High Court of Justice and of Courts other than English County and local Courts.

668a. — Issue—Res not within jurisdiction.]—

(1) It is not necessary that, at the time of the issue of a writ *in rem*, the *res* should be within the jurisdiction of the ct.; & Maritime Conventions Act, 1911 (c. 57), s. 8, which provides that in the case of collision or salvage actions the proceedings must be commenced within two years of the cause of action, is complied with if the writ is issued within two years; the sect. does not contemplate that the arrest of the *res* constitutes the commencement of the proceedings.

(2) In general, the ct. will not grant an

extension of time for the renewal of an unserved writ, which has not been renewed within the period of one year as provided by R. S. C., Ord. 8, r. 1, if, but for the extension of time, the claim would be barred by a statute of limitation. But, inasmuch as Maritime Conventions Act, 1911 (c. 57), s. 8, contains provisos for extension of time unknown to any other statutes of limitation, the application to renew a writ in an action which comes within the operation of sect. 8 must be considered on its merits, & if, under the circumstances, the ct. would give leave to issue a writ notwithstanding the lapse of

### PART II. SECT. 11, SUB-SECT. 2.—B.

608i. *Action in rem—Or in personam.*]—The first & most proper remedy for the recovery of salvage is *in rem*.—*HATTON v. AKT. DURBAN HANSEN*, [1919] S. O. 154; 56 Sc. L. R. 100.—SCOT.

### PART II. SECT. 16.

654i. *Exception to jurisdiction—Made after trial.*]—An objection to the

jurisdiction will hold good even if made after the trial.—*STACK v. THE BARGE LEOPOLD* (1919), 18 Exch. C. R. 325.—CAN.

### PART III. SECT. 1, SUB-SECT. 1.—A. (a).

668i. — *Amendment—Increase of amount.*]—Plffs. claimed \$4,000 damages, by reason of a collision between one of their barges & the *B. The B.* was arrested & the bail fixed at \$4,000,

the then estimated cost of repairs. Before the trial of the action, it was found that the actual cost of the repairs amounted to \$5,512.94. Plffs. moved to amend their writ by adding to the amount claimed:—*Held*: the ct. might direct measures to be taken to do full justice to plffs. & to that end permit the amendment.—*HALL COAL CO. v. THE BAYUSONA*, [1923] Exch. C. R. 128.—CAN.



two years, the ct. will allow an extension of time for the renewal of a writ, the time for the renewal of which has expired.—*THE ESPANOLETO*, [1920] P. 223; 90 L. J. P. 32; 125 L. T. 121; 36 T. L. R. 554; 15 Asp. M. L. C. 287.

**668b. — Motion to set aside—Facts in dispute.]**

—In an action *in rem* for damage by collision *defts.* moved to set aside the writ & all subsequent proceedings on the ground that their vessel at the time of the collision was under requisition to, & in the sole control & possession of, the United States Navy Department, & that accordingly no maritime lien attached to her. *Pltfs.* did not admit the facts set out in *defts.*' affidavit in support of the motion:—*Held*: the facts being in dispute the ct. could not try the issue on motion by affidavit & the motion must be dismissed, but without prejudice to the right of *defts.* to apply, when the issues were defined by pleadings, for the question of law to be tried as a preliminary point.—*THE SYLVAN ARROW*, [1923] P. 14; 92 L. J. P. 23; 128 L. T. 448; 39 T. L. R. 25; 16 Asp. M. L. C. 115.

**669. Add. Annotation:—As to (1) *Consd.* The Joannis Vatis, [1922] P. 92.**

**672a. — Defendant blaming another ship.]**

—*Pltfs.* claimed damages from *defts.*, owners of the *W.*, in respect of a collision between the *W.* & barges belonging to *pltfs.* The owners of the *W.* denied liability, alleging by letter to *pltfs.* that the collision was caused by the negligence of the *A.* An action was commenced between the owners of the *W.* & the owners of the *A.*, in which the owners of the *A.* admitted liability for the collision. The owners of the *A.* agreed *pltfs.*' damages, but refused to pay the costs of the action by *pltfs.* against the *W.*, which had then been prosecuted to the stage of filing *pltfs.*' preliminary act:—*Held*: *pltfs.* were entitled to amend their writ by adding the owners of the *A.* as *defts.* The case came within the principle of *R. S. C.*, Ord. 16, r. 11, that no cause should be defeated by the non-joinder of parties, & in the circumstances it would have been a misuse of the discretion of the ct. to refuse to allow a party to exercise that right. The proper course would have been for *pltfs.* to have added both parties as *defts.* in the alternative.—*THE W. H.*

**673 i. Parties—Joinder of plaintiffs**

—*After judgment.*—In the course of a trial in the Admty. Ct. *pltf.* was allowed to amend by adding a party *pltf.*, but failed to amend formally pursuant to the order & entered the formal judgment with only the original *pltf.* named therein, & proceeded to assess damages before the registrar:—*Held*: in the circumstances *pltf.* had not elected to abandon the order for amendment & should be allowed to have the judgment & prior proceedings amended in accordance therewith.—*EVANS, COLEMAN & EVANS, LTD. v. THE ROMAN PRINCE*, [1924] 3 D. L. R. 95; [1924] Exch. C. R. 133; 2 W. W. R. 465; 34 B. C. R. 155.—CAN.

**PART III. SECT. 1, SUB-SECT. 2.—A. (a).**

**701 iii. — Creditor's action—Claim for building, equipping or repairing**—As soon as a creditor finds a ship under arrest of the ct., he may bring his action for, & the Admty. Ct. acquires immediate & irrevocable jurisdiction over any claim for building, equipping,

or repairing the ship. That jurisdiction is established without the litigant having to show that the original action under which the ship was arrested must eventually succeed, & notwithstanding that the arrest was made without particulars being given to prove without doubt the status of *pltf.* in that original action.—*ERIKSEN BROTHERS v. THE MAPLE LEAF* (1922), 67 D. L. R. 261; [1922] 3 W. W. R. 41.—CAN.

**701 iv. — Repairs continued after arrest.**—*Resps.* contracted with the owner of a ship to do certain repairs, & it was delivered to them for the purpose. When the repairs were going on the ship was arrested at the suit of *appls.*, who claimed for earlier repairs & necessities. After the arrest the ship was left in the actual possession of *resps.*, who continued to do the repair work contracted for without the sanction of the ct. but in good faith:—*Held*: *resps.* should have priority for repairs made after the arrest so far as the selling value of the ship was thereby increased.—*MONTEAL DRY DOCKS & SHIP REPAIRING*

P. 41; 97 L. J. P. 42; 138 L. T. 459; 17 Asp. M. L. C. 397; O. A.

**Add. Annotations:—***Consd.* *The Creteforest*, [1920] P. 111; *Marlborough Hill, Ship v. Cowan*, [1921] 1 A. C. 444.

**682a. — Motion to set aside acceptance & undertaking to appear & put in bail—Mistake as to authority.]**—Motion dismissed.—*THE GERTRUD* (1927), 138 L. T. 239; 44 T. L. R. 1; 17 Asp. M. L. C. 343.

**683a. Renewal of writ—Extension of time for—Maritime Conventions Act, 1911 (c. 57), s. 8.]**—*THE ESPANOLETO*, No. 668a, *ante*.

**697. Add. Annotation:—***Reid. The Point Breeze*, [1928] P. 135.

**700a. Right to arrest—Ship under requisition.]** *Pltfs.*' steamship & *defts.*' steamship, the *L.L.*, collided in Sept. 1917. The *L.L.* was at the time under requisition:—*Held*: there could be no effective arrest of the vessel while she was under requisition.—*THE LARGO LAW* (1920), 123 L. T. 560; 15 Asp. M. L. C. 104.

**700b. — Ship seized under writ of fieri facias.]**

A foreign ship was seized under a sheriff's writ of *fi. fa.* in execution of a judgment obtained by the charterers of the ship against the owners of fifty-six sixty-fourth shares in the ship. Subsequently the ship was arrested by the Admty. marshal in an action *in rem* for necessities. Various other writs *in rem* were issued against the ship, including a writ by the master in respect of wages. The sheriff was unable to effect a sale, & the ship was sold by the marshal without prejudice to the rights of the various claimants:—*Held*: the fact that the sheriff was in possession did not deprive the marshal of his power to arrest the ship in actions *in rem.*—*THE JAMES W. ELWELL*, [1921] P. 351; 90 L. J. P. 132; 37 T. L. R. 178.

**701. Add. Annotation:—***Consd.* *The James W. Elwell*, [1921] P. 351.

**706. Add. Annotations:—***Generally, Mentd.* *The Crimdon* (1918), 35 T. L. R. 81; *The Porto Alexandre* (1919), 89 L. J. P. 97.

**706a. Re-arrest—Damage in excess of bail—Second action—Right to bring action in personam.]**—In an action *in rem* in respect of damage by collision *defts.* gave bail in the sum of £100,000 as representing the full

*Co., LTD. v. HALIFAX SHIPYARDS, LTD.*, [1920] 3 W. W. R. 25; 54 D. L. R. 185; 80 S. C. R. 359.—CAN.

d. Read now "706a i."

**706a ii. — Mistake in sum claimed—Cost of repairs exceeding estimate.]**—*Pltfs.* claimed \$4,000 damages, by reason of a collision between one of their barges & the *B.* The *B.* was arrested & the bail fixed at \$4,000, the then estimated cost of repairs. Before the trial of the action, it was found that the actual cost of the repairs amounted to \$5,512.94. *Pltfs.* moved to amend their writ by adding to the amount claimed & for the issue of a warrant to re-arrest the *B.*:—*Held*: the ct. might direct measures to be taken to do full justice to *pltfs.*, & to that end permit the issue of a warrant for the re-arrest of the ship, but with costs of the motion & of the re-arrest against *pltfs.*—*HALL COAL CO. v. THE BAYUSONA*, [1923] Exch. C. R. 128.—CAN.

**706a iii. — Dismissal of claim for salvage—Appeal.]**—Where a claim for salvage against a ship has been

value of their vessel & the limit of their liability according to French law. In the Admlty. Ct. both plffs.' & defts.' vessels were held to blame, but the Ct. of Appeal held defts.' vessel alone to blame & this decision was upheld by the House of Lords. The £100,000 being insufficient to satisfy plffs.' judgment, plffs. who admitted that *quid* damages they could not recover more than the £100,000, threatened to arrest defts.' vessel in respect of interest & costs; & under protest, defts. provided bail in a further sum to avoid arrest:—*Held*: having received bail in the full value of defts.' vessel, plffs. could not arrest her *in rem*, but could proceed *in personam*, & were entitled to a declaration that the amounts due in respect of interest & costs were enforceable by seizure & sale of the vessel by a sheriff under a writ of *fi. fa.* —*THE JOANNIS VATIS* (No. 2), [1922] P. 213; 91 L. J. P. 196; 127 L. T. 494; 38 T. L. R. 566; 10 Asp. M. L. C. 13.

*Annotation*:—*Reid*. The Point Breeze, [1928] P. 135.

708b. ———.]—In a damage action *in rem* plffs. demanded & obtained bail from defts. in the sum of £3,500. After judgment had been given pronouncing defts.' ship alone to blame, plffs. demanded further bail in the sum of £3,000, on the ground that the original sum demanded was insufficient to cover their damages. On the refusal of defts.' solrs. to give an undertaking to provide additional bail, plffs. extracted a warrant of arrest from the Admlty. registry under which defts.' ship was arrested. On a motion to set aside the warrant of arrest:—*Held*: the effect of taking bail was to release the ship altogether, & the warrant of arrest must be set aside.—*THE POINT BREEZE*, [1928] P. 135; 97 L. J. P. 88; 139 L. T. 48; 44 T. L. R. 390; 17 Asp. M. L. C. 462.

715. *Add. Annotation*:—*Mentd*. The St. George, [1926] P. 217.

742. *Add. Annotations*:—*Consd*. The Point Breeze, [1928] P. 135. *Reid*. The Joannis Vatis (No. 2), [1922] P. 213.

746. *Add. Annotation*:—*Consd*. The Joannis Vatis (No. 2), [1922] P. 213.

747. *Add. Annotation*:—*Apld*. The Point Breeze, [1928] P. 135.

dismissed, there is no general right, in case of appeal, to hold the bail bond or after its cancellation to re-arrest the ship, nor will such right be granted without good reason therefor, such as that it appears to the ct. that the ship will not be within the jurisdiction to answer the appeal should it go against it.—*THE FREYA v. THE R. S.* (1921), 63 D. L. R. 687; 21 Exch. C. R. 147; 30 B. C. R. 132; [1921] 2 W. W. R. 749.—CAN.

*sp. Attachment to found jurisdiction—Both parties domiciled outside jurisdiction—Res within jurisdiction.*—Where a co. alleged that it intended to bring an Admlty action *in rem* for damage occasioned to its vessel through the negligent handling of resp. co. whilst in the territorial waters of the Union, & it appeared that both the cos. were domiciled outside the Union, the attachment of the vessel was ordered, such order to be suspended on security being provided in an amount greater than the sum claimed as damages.—*S.S. KKRATOS v. S.S. FABIAN*, [1921] C. P. D. 148.—S. AF.

PART III. SECT. 1, SUB-SECT. 2.—A. (b).

*st. Mala fide arrest—Abuse of process of court—Rights of other claimants.*—A ship was arrested at the suit of a member of a firm. His independent claim for wages as a "ship's carpenter on board the ship," was in fact only a part of his firm's claim, & immediately after the ship was arrested his firm's action was instituted:—*Held*: these facts so obviously disclosed *mala fides* & an abuse of the process of the ct. that the arrest could be viewed as a sham proceeding & as not having any legal existence as regards the firm, but other claimants could support their suits on its existence in fact, because in good faith they instituted their suits relying upon the records of the ct. which on their face showed that its jurisdiction could be invoked.—*ERIKSEN BROTHERS v. THE MAPLE LEAF*, [1923] 4 D. L. R. 1201; [1923] Exch. C. R. 39; 31 B. C. R. 443; [1923] 1 W. W. R. 76.—CAN.

PART III. SECT. 1, SUB-SECT. 3.—A. a i. ——— *Court without jurisdiction.*—In the absence of jurisdiction

760. *Add. Annotation*:—*Reid*. Melanie S.S. v. San Onofre S.S., [1925] A. C. 246.

764. *Add. Annotation*:—*Reid*. The Annette, The Dora, [1919] P. 105.

766. *Add. Annotation*:—*Mentd*. The Joannis Vatis (No. 2), [1922] P. 213.

768a. ——— *Waiver of right to plead Maritime Conventions Act, 1911 (c. 57), s. 8.*—By entering an unconditional appearance to a writ issued more than two years after the date of salvage services, defts. do not waive the right of pleading the protection of the above Act in their defence & raising it at the trial of the action.—*THE LLANDOVERY CASTLE*, [1920] P. 119; 89 L. J. P. 141; 124 L. T. 383; 15 Asp. M. L. C. 153.

*Effect of Maritime Conventions Act, 1911 (c. 57), see, generally, SHIPPING.*

768a. *Appearance by person interested—Position of intervener.*—*THE BYZANTION*, No. 248a, *ante*.

780. *Add. Annotation*:—*Reid*. The Consul Olsson, [1920] P. 43.

780a. ———.]—*THE SAN ONOFRE*, No. 780b, *post*.

780b. ——— *Effect of contractual arrangement between owner & charterer.*—(1) The Admlty. marshal appraised a salved steamship at the sum of £369,841. On an application to vary or set aside the appraisement on the ground that the ship had been appraised at her market value instead of at her value to her owners, which, owing to the fact that she had been chartered to time charterers at a low rate of hire in 1914 for a period which did not expire until 1930, was less than £160,000:—*Held*: for purposes of appraisement of a salved vessel contractual arrangements between the owners & charterers are immaterial, & the marshal's valuation was properly arrived at & was based on the right principle.

(2) The general rule is that an appraisement by the marshal is conclusive, & it is only in very exceptional cases that an application to vary or set aside the appraisement will be allowed.—*THE SAN ONOFRE*, [1917] P. 96; 86 L. J. P. 103; 116 L. T. 800; 14 Asp. M. L. C. 74.

*Annotation*:—*As to* (2) *Consd*. The Consul Olsson, [1920] P. 43.

existing by law, the filing of an appearance & the giving of bail by deft. do not give jurisdiction to the ct. in a proceeding *in rem*. Jurisdiction is not a matter of procedure & cannot be derived from the consent of parties.—*MULVEY v. THE BARGE NEOSHO* (1910), 19 Exch. C. R. 1; 47 D. L. R. 437.—CAN.

a ii. ———.]—A mere technical objection to an informality or irregularity in procedure may be waived by appearance, by the giving of bail or by taking a step in the action; but if, in fact, the ct. has no jurisdiction over the subject-matter of the claim, no delay on the part of deft. & no step in the action taken by him can give the ct. jurisdiction.—*HARRIS ABATTOIR CO. v. ALEDO (OWNERS)*, [1923] 4 D. L. R. 1196; [1923] Exch. C. R. 217.—CAN.

PART III. SECT. 1, SUB-SECT. 4.—A. *sw. Bail—Who accepted as bail—Company carrying on business of suretyship.*—*Re* 251 BARS OF SILVER v. CANADIAN SALVAGE ASSOCN. (No. 2) (1915), 15 Exch. C. R. 370.—CAN.



781a. Nature of bail.]—THE BORRE, No. 781b, *post*.

781b. Undertaking to put in bail—Afterwards withdrawn—Effect of subsequent arrest of vessel.]—On June 22, 1920, defts.' solrs. gave an undertaking to enter an appearance & put in bail in respect of a writ *in rem* claiming damages in respect of loss by collision. In consequence defts.' vessel was not arrested. On Feb. 17, 1921, defts.' solrs. wrote to pl'ts.' solrs. that their clients were unable to make arrangements for bail, that accordingly the undertaking for bail was withdrawn, & that, as the vessel was within the jurisdiction of the ct., pl'ts. could arrest her. Pl'ts.' solrs. arrested the vessel, but wrote to defts.' solrs. that they reserved all their clients' rights under the undertaking for bail. On Mar. 16, 1921, the vessel was appraised as being at that time of a value of £600. Defts. provided bail in that sum & the vessel was released. On Apr. 12, pl'ts. applied for an order that defts.' solrs. should forthwith provide good & sufficient bail, pursuant to their undertaking. It appeared that in June, 1920, the value of the vessel was much in excess of £600, & pl'ts. estimated her value at £4,500 :—*Held* : (1) the undertaking to give bail could not be withdrawn by substituting the vessel for the bail ; (2) pl'ts. had not waived their rights under the undertaking by arresting the vessel ; (3) defts.' solrs. must complete their undertaking by putting in bail to the value of the vessel as on June 22, 1920 ; (4) nature of bail discussed.—THE BORRE, [1921] P. 390 ; 91 L. J. P. 1 ; 125 L. T. 576 ; 37 T. L. R. 668 ; 55 Sol. Jo. 715 ; 15 Asp. M. L. C. 334.

781c. — When value of ship ascertained.]—THE BORRE, No. 781b, *ante*.

781d. Liability limited to amount of bail—No second action if bail insufficient—Action in personam—For interest & costs.]—THE JOANNIS VATIS (No. 2). No. 706a, *ante*.

781e. Benefit of bail—Action in name of cargo owners—Some owners not joining in proceedings.]—The steamships *W.* & *J.* came into collision & the *W.* & her cargo were damaged. Before the issue of the writ an undertaking to put in bail to the amount of £100,000, had been given on behalf of the owners of the *J.* The writ was in the names of "The owners of the steamship *W.* & cargo v. the owners of the steamship *J.*," but at that time no authority from any of the cargo owners had been received. While the litigation was proceeding the owners of the *W.* asked the various underwriters on the cargo, subrogated to the rights of the respective cargo owners, to join in the proceedings or share in the costs. Some assented & some declined. The litigation proceeded to the House of Lords, where the *J.* was held alone to blame. The sum of £100,000 being insufficient to satisfy all the claims, the owners of the *W.* contended that having sued as owners of the ship & bailees of the cargo they were entitled to receive the whole of the bail for which the undertaking had been given. pay themselves the amount of their own damage as shipowners in priority to all other claimants, & that the non-assenting

cargo owners had no right to share in the fund :—*Held* : (1) although, as bailees of the cargo, the shipowners were entitled to recover the full value of the damage to the cargo, represented by the bail, they must account to all the owners of the damaged parcels of cargo for their share ; (2) it was the duty of the ct., when the bail was recovered, to see that all persons having a claim on the fund, including the non-assenting cargo owners, shared in the distribution.—THE JOANNIS VATIS, [1922] P. 92 ; 91 L. J. P. 182 ; 126 L. T. 718 ; 15 Asp. M. L. C. 506, C. A.

781f. Several salvage actions.]—A vessel which had stranded on rocks & sustained heavy damage got off with the assistance of various salvors & was placed in dock for temporary repairs. In respect of these services various salvage actions & an action by the ship repairers for salvage &/or necessities were instituted. No defence was put in, but in the first action an appearance was entered & an undertaking given to put in bail for ship, cargo & freight in the sum of £1,000. The cargo & freight were valued at £327. Before the other actions were instituted the cargo had been landed & dispersed. After some temporary repairs had been effected the vessel was sold by the marshal. She only realised £889 :—*Held* : the bail for cargo & freight did not constitute a fund in which all the salvors could share ; the undertaking was given in one action only, & pl'ts. in that action, in which the total values were £1,217, could treat <sup>327</sup> of £1,000 as bail representing the cargo & freight.—THE RUSSLAND, [1924] P. 55 ; 93 L. J. P. 18 ; 130 L. T. 763 ; 40 T. L. R. 232 ; 68 Sol. Jo. 324 ; 16 Asp. M. L. C. 288.

781g. Amount of bail—Value of ship & freight—Limit of liability—Facts disputed by plaintiffs.]—If, in an action of damage by collision, the amount for which the action is brought exceeds the statutory limit provided by M. S. Act, 1894 (c. 60), s. 503, deft. shipowners on filing an affidavit in the damage action stating the tonnage of their ship & that the collision happened without their actual fault or privity, will, if these facts are not denied by pl'tf. shipowners, be entitled to have the ship released on bail being given to an amount sufficient to cover the statutory limit, together with interest & costs. But if pl'ts. dispute the facts on which the right to limit liability depends, bail must be given to the full value of defts.' ship.—THE CHARLOTTE, [1920] P. 78 ; 89 L. J. P. 62 ; 123 L. T. 685 ; 36 T. L. R. 204 ; 64 Sol. Jo. 276 ; 15 Asp. M. L. C. 98.

781h. Effect of bail—Release of ship.]—THE POINT BREEZE, No. 706b, *ante*.

796. *Add. Annotation* :—*Refd.* The Consul Olsson, [1920] P. 43.

806. *Add. Annotation* :—*Refd.* The Joannis Vatis (No. 2), [1922] P. 213.

808. *Add. Annotation* :—*Consd.* The Joannis Vatis (No. 2), [1922] P. 213.

810. *Add. Annotations* :—*Refd.* Canadian Pacific

PART III. SECT. 1, SUB-SECT. 5.—B.



- Ry. v. Kelvin Shipping Co. (1927), 138 L. T. 369. **Mentd.** The San Onofre, [1922] P. 243.
829. **Add. Annotation:**—As to (1) **Distd.** Bradley v. Newsom, [1919] A. C. 16.
834. **Add. Annotation:**—As to (1) **Refd.** The Joannis Vatis (1921), 91 L. J. P. 182.
837. **Add. Annotations:**—As to (1) **Refd.** Swedish Central Ry. v. Thompson, [1924] 2 K. B. 255. As to (2) **Refd.** New York Life Insce. v. Public Trustee, [1924] 2 Ch. 101.
839. **Add. Annotations:**—**Refd.** The Fagernes, [1926] P. 185. **Mentd.** The Clan Sutherland (1918), 88 L. J. P. 26.
840. **Add. Annotation:**—**Refd.** The Fagernes, [1926] P. 185.
842. **Add. Annotation:**—**Refd.** The Fagernes, [1926] P. 185.
843. **Add. Annotation:**—As to (2) **Refd.** Johnson v. Taylor, [1920] A. C. 144.
855. **Add. Annotation:**—**Refd.** The Creteforest, [1920] P. 111.
- 856a. ———.]—(1) In a consolidated salvage action the tender by defts. of a lump sum to answer several claims of salvors is a valid tender; but, where defts. have adopted this course, they run the risk that the ct. may hold that it was reasonable for pltfs. to proceed to trial although the tender is upheld.
- In a consolidated salvage suit where the owners of two tugs, separately owned, joined in one writ, & the masters & crews in another, defts. tendered a lump sum which the ct. upheld, but as defts.' affidavit of values was only handed to pltfs. on the day of the trial:—**Held:** (2) pltfs., the tug owners, who had been given the conduct of the consolidated action, were entitled to their costs; (3) the interests of the masters & crews being identical with those of the owners, the masters & crews were not entitled to be separately represented at the expense of defts. Observations on the desirability, except in very special circumstances, of masters & crews joining in one action with the owners.—**THE CRETEFOREST**, [1920] P. 111; 89 L. J. P. 136; 123 L. T. 591; 36 T. L. R. 367; 15 Asp. M. L. C. 48.
857. **Add. Annotation:**—**Refd.** The Creteforest, [1920] P. 111.
864. **Add. Annotation:**—**Refd.** The Creteforest, [1920] P. 111.
- 874a. ———.]—**THE SHEAF BROOK**, No. 565a, *ante*.
- 876a. **Transfer by Court of Appeal—Necessity for consent of presidents of both Divisions.]—THE SHEAF BROOK**, No. 565a, *ante*
885. **Add. Annotations:**—**Mentd.** The James W. Elwell, [1921] P. 351; Mersey Docks & Harbour Board v. Hay, [1923] A. C. 345; The Stream Fisher, [1927] P. 73.
890. **Add. Annotation:**—As to (1) & (2) **Consd.** The El Oso (1925), 133 L. T. 269.
892. **Add. Annotation:**—As to (1) & (2) **Expld.** The El Oso (1925), 133 L. T. 269.
893. **Add. Annotation:**—**Refd.** The El Oso (1925), 133 L. T. 269.

894a. **Action between parties whose vessels have not been in collision with each other.]—**Where the parties to a damage action are the owners of vessels which have not been in collision with each other the practice as to requiring preliminary acts under R. S. O., Ord. 19, r. 28, is a matter for the discretion of the ct. In such cases the proper course is that there should be the communication between the solrs. which commonly takes place in admty. cases, & that the solrs. should ascertain whether the parties are ready to file preliminary acts under Ord. 19, r. 28. If both parties are not ready to deliver preliminary acts, or one of them declares himself unable or unwilling, then the matter should be raised by summons. If in such a case an order is made for preliminary acts to be filed, such order is not properly complied with by the party whose vessel has not been in collision filing a blank preliminary act.—**THE EL Oso** (1925), 133 L. T. 269; 16 Asp. M. L. C. 530.

**Annotation:**—**Consd.** The Carlston & The Balcombe, [1926] P. 82.

894b. **Who entitled to — Co-defendant.]—**A collision took place between the C. & the B., & subsequently the C. collided with pltfs.' vessel. Pltfs. issued a writ *in rem* against the owners of the C., & the usual preliminary acts were filed by both parties. In their defence the owners of the C. blamed the B., & pltfs. added the owners of the B. as second defts. Thereupon the owners of the C. obtained an order that the owners of the B. should forthwith file a preliminary act:—**Held:** (1) the only parties entitled as against second defts. to a preliminary act were pltfs., & they would be so entitled when they had filed a preliminary act against second defts.; first defts. were not entitled to require second defts. to file a preliminary act unless they chose to become pltfs. & issue a writ against second defts., & the order must be set aside; (2) if it were a matter of discretion, the guiding principle, that of mutuality, would be infringed by the order made, as second defts. would be bound by a preliminary act which they had filed, & the parties at whose instance it had been filed would not be bound, as against second defts., by the judgment in the present action.—**THE CARLSTON. THE BALCOMBE**, [1926] P. 82; 95 L. J. P. 51; 134 L. T. 766; 42 T. L. R. 312; 17 Asp. M. L. C. 33.

897a. ——— **Course & speed of vessel.]—**In cases of collisions between ships at anchor it is not sufficient in answer to par. 7 of the preliminary act, which asks the course & speed of the vessel when the other was first seen, to reply "at anchor." The heading of the vessel should also be given.—**THE MACROOM** (1927), 137 L. T. 418; 71 Sol. Jo. 472; 17 Asp. M. L. C. 288.

908. **Add. Annotation:**—As to (1) **Distd.** The Woodarra v. Admiralty (1921), 66 Sol. Jo. 183.

**PART III. SECT. 3, SUB-SECT. 1.**

**sz. Joinder of actions in rem & in personam—Propriety of.]—ATLANTIC COAST S.S. CO. v. MONTREAL TRANSPORTATION CO. & THE MARY ELLEN, MONTREAL TRANSPORTATION CO. v.**

**THE BUOKEYE STATE** (1909), 12 Exch. C. R. 429.—CAN.

**PART III. SECT. 5, SUB-SECT. 1.**

**sa. Object.]—**The object of a preliminary act is to obtain a statement recento

*facto* of the circumstances, to prevent parties shaping their case to meet the one put forward by the other at trial.—**LE BLANC v. THE EMILIEN BURKE** (1919), 19 Exch. C. R. 24; 46 D. L. R. 59.—CAN.

**Cases 914a-1047a. ENGLISH AND EMPIRE DIGEST SUPPLEMENT.**

**914a.** Raising new claim—Effect of.]—THE HIGHLAND GLEN (1927), 164 L. T. Jo. 480, C. A.

**916.** Add Annotation:—Distd. The Woodarra v. Admiralty (1921), 66 Sol. Jo. 183.

**936.** Add. Cuation:—on appeal (1853), 8 Moo P. C. C. 482 P. C.

**939.** Add Annotation:—Mentd. The Refrigerant, [1925] P. 130

**952.** Add Annotation:—Reid The San Onofre (1922) 92 L. J. P. 17.

**969.** Add Annotation:—Reid. The Saxicava, [1924] P. 131.

**969a.** — Action stayed, discontinued or dismissed—Counterclaim raised in correspondence.]—A notice of counterclaim contained in correspondence passing between pltf.'s & deft.'s solrs. is not sufficient to "set up" a counterclaim within R. S. C., Ord. 21. r. 16, so that the counterclaim may be proceeded with if pltf.'s action is stayed, discontinued or dismissed.

The counterclaim must at least be set up by some proceeding which is either directed by or recognised by the rules & in respect of which there is a record on the files of the ct.—THE SAXICAVA, [1924] P. 131; 93 L. J. P. 66; 131 L. T. 342; 40 T. L. R. 334; 68 Sol. Jo. 666; 16 Asp. M. L. C. 324, C. A.

**970a.** — — —.]—Two foreign vessels, a barque & a ship, came into collision, when the barque was sunk. The ship was arrested in a cause of damage by the owners of the barque, & when the cause was ready for hearing, the owners of the ship commenced a cross action against them, to which they gave no appearance. On a motion to dismiss the original action unless an appearance & bail were given by the owners of the barque:—Held: the barque being sunk, the ct. had no jurisdiction to compel the owners to give bail, & must reject the motion.—THE CARLYLE (1858), 30 L. T. O. S. 278; 6 W. R. 197.

Annotation:—Reid. Chapman v. Royal Netherlands Steam Navigation Co. (1879), 4 P. D. 157.

**979a.** — — — Consolidated salvage action.]—THE CRETEFOREST, No. 856a, ante.

**1001.** Add. Annotation:—Reid. The Creteforest, [1920] P. 111.

**1001a.** — Tender of lump sum—Consolidated salvage action.]—THE CRETEFOREST, No. 856a, ante.

**1023.** Add. Annotations:—Apld. Re Bjornstad & Ouse Shipping Co., [1924] 2 K. B. 673. Reid. The Tervaete (1922), 128 L. T. 176; Duff Development Co. v. Kelantan Government, [1923] 1 Ch. 385; Duff Development

Co. v. Kelantan Government, [1924] A. C. 797.

**1027a.** — — —.]—Pltfs.' & defts.' vessels came into collision & both received damage. Pltfs. brought an action in rem against defts., "the owners of the steamship N." Defts. counterclaimed, & applied to pltfs. for security to answer the counterclaim. Security was given, but on pltfs. making a similar application defts. refused to give security on the ground that the N. was owned by the French Govt., & was not subject to arrest:—Held: the ct. had no power to order security to be given or, in default thereof, to stay defts.' counterclaim.—THE NEPTUNE, [1919] P. 17; 88 L. J. P. 94.

**1029.** Add. Annotation:—Mentd. The Sylvan Arrow, [1923] P. 220.

**1032.** Add. Annotation:—Reid. The Joannis Vatis (No. 2), [1922] P. 213.

**1042.** Add. Annotations:—Mentd. The Porto Alexandre (1919), 89 L. J. P. 97; Aksionairnoye Obschestvo A. M. Luther v. Sagor, [1921] 1 K. B. 456; Duff Development Co. v. Kelantan Government, [1923] 1 Ch. 385; Compania Mercantil Argentina v. United States Shipping Board (1924), 93 L. J. K. B. 816; Duff Development Co. v. Kelantan Government, [1924] A. C. 797.

**1046.** Add. Annotation:—Reid. The Shropshire (1922), 127 L. T. 487.

**1047a.** — For disposing fairly of cause—For saving costs.]—The owners of the steamship N., one of two ships found jointly to blame in a collision action, limited their liability & paid the amount into ct. Claims against the fund were in due course filed by the owners of the N. & the owners of the other ship, the S., & also by the owners of cargo on the S. The same solrs. presented the claims on behalf of the owners of both ships. The owners of cargo on the S., who were not parties to the collision action, then sought leave to administer four interrogatories to the owners of the S. Nos. 1 & 2 asked whether there had been, as between the owners of the two ships, a mutual abandonment of claim or a settlement on other terms. No. 3 inquired whether there had been any assignment of the claim of the owners, master, & crew of the S.; & No. 4 asked by whom the particular solrs. were instructed to present the claim of the owners of the S. The registrar allowed Nos. 1 & 2, but disallowed Nos. 3 & 4. On appeal by both sides:—Held: the first three interrogatories were necessary either for disposing fairly of the cause or matter or for saving

**PART III. SECT. 8, SUB-SECT. 2.—A.**

**998 ii.** — Rejection of tender—Acceptance of increased tender after amendment of claim at trial.]—In an action for salvage services, pltf. claimed \$20,000 & in his statement of claim such amount of salvage remuneration as to the ct. might seem meet. The defence was delivered on Mar. 17, when deft. paid into ct. \$2,000 & tendered it to pltf., who rejected it. Pltf. at the trial applied for leave to amend to set up an additional claim. The amendment was made, & deft. increased his tender to \$4,000, which was accepted:—Held: (1) deft. should in any event have the costs of & consequent upon the amendment granted at the trial; as to the accepted tender, the in-

creased tender must be regarded as having been made & accepted on Mar. 17, & all the costs subsequent to that tender should be borne by pltf.; (3) the circumstances were not quite sufficient to deprive pltf. of costs before tender.—THE PASCHENA v. THE GRIFF, [1925] 2 W. W. R. 676.—CAN.

**PART III. SECT. 9, SUB-SECT. 1.**

sb. Plaintiff resident out of jurisdiction—Foreignship.]—Where pltf. is resident out of the jurisdiction & his ship is a foreign one, security for costs may be ordered, even at an advanced stage of the action & though the delaying in applying therefor is unaccounted for, in the absence of any prejudice to the other side occasioned by such delay.—

WRANGELL v. THE STEEL SCIENTIST, [1924] 3 D. L. R. 49; [1924] Exch. C. R. 136; 2 W. W. R. 493; 34 B. C. R. 114.—C.

**PART III. SECT. 10, SUB-SECT. 1.—A. (a).**

so. Examination for discovery—In lieu of interrogatories—When ordered—Use of.]—While an examination for discovery may be ordered by the judge as a matter of convenience, in place of the delivery of interrogatories, especially where the opposite party is in ignorance of the facts, such examination cannot be read as evidence at the trial.—POINT ANNE QUARRIES v. S.S. M. F. WHELEN (1921), 68 D. L. R. 627; 20 Exch. C. R. 488.—CAN.

costs, within R. S. C., Ord. 31, r. 2. & must be allowed. No. 4 was not pressed.—**THE NEDENES** (1924), 41 T. L. R. 243.

**1062a. — Confidential report by master.]—**Defts., the Port of London Authority, arranged with their underwriters that, in all cases of claims for collision in which their vessels were concerned, the management of the claim should be put in the hands of certain solrs. Defts. directed that a report on a printed form headed "Confidential report for the information of the Authority's solr." should be made by the master of the vessel. The report was subsequently passed through various departments in defts.' offices until it reached the solr.'s hands. It was then dealt with by the solr. in the course of his professional conduct. A report was made in these circumstances by the master of a vessel belonging to defts. in respect of a collision with pltf.' vessel. Pltfs. claimed to have this report produced to them:—*Held*: the report having been obtained for the solr., in the sense of being procured as materials upon which professional advice should be taken in proceedings pending or threatened or anticipated, it was privileged from production.—**THE HOPPER** No. 13, [1925] P. 52; 94 L. J. P. 45; 132 L. T. 736; 41 T. L. R. 189; 16 Asp. M. L. C. 473, D. C.

*Annotation*:—*Distd.* **THE CITY OF BARODA** (1926), 134 L. T. 576.

**1062b. — Officers' reports.]—**Pltfs. claimed for short delivery of certain parcels of bristles, in respect of which they were holders of bills of lading, loaded at Shanghai upon defts.' steamship. Defts. denied liability alleging that the loss was due to pilferage by an organised band of thieves. Defts. had called for reports from the first, second, third, & fourth officers of the steamer, in order to investigate the question of the management of the vessel & the conduct of their officers in the prevention of theft, which reports were in due course obtained through defts.' agents in China. Defts. claimed that these reports were privileged from discovery:—*Held*: (1) the reports were not privileged. (2) Observations upon the form & contents of an affidavit claiming privilege from discovery for deponent's documents.—**THE CITY OF BARODA** (1926), 134 L. T. 576; 70 Sol. Jo. 1044; 17 Asp. M. L. C. 27.

**1078a. Taking evidence on commission—Discouraged.]—****THE AUGUSTA** (1909), 26 T. L. R. 98.

**1112a. Right of reply.]—**Allowed in all cases.—**THE RJUKAN** (1866), 14 W. R. 973.

**1114. Add. Annotation:—Mentd.** **Australia (Owners) v. Nautilus (Owners), The Australia** (1926), 95 L. J. P. 145.

**1114a. — Damage due to collision.]—**In an action of damage by collision the *onus* of proving that damage directly flows from deft.'s negligence causing the collision is on pltf.; & the dicta in *The Mellona* (1847), 3

Wm. Rob. 7, 13; *The Pensher* (1857), Sw. 211, & similar cases, to the effect that where damage follows a collision the presumption is that the damage is the result of the collision, unless deft. proves the contrary, must not be taken as laying down a principle, but as having reference only to the particular circumstances of those cases, where the damage, stranding, so obviously followed on the collision that it *prima facie* was to be regarded as a consequence of the negligence causing the collision.—**THE PALUDINA**, [1925] P. 40; 132 L. T. 724; 16 Asp. M. L. C. 453, O. A.; *affd. sub nom.* **S.S. SINGLETON ABBEY v. S.S. PALUDINA**, [1927] A. C. 16; 17 Asp. M. L. C. 117, H. L.

*Annotation*:—*Reid.* **Canadian Pacific Ry. v. Kelvin Shipping Co.** (1927), 138 L. T. 369.

**1119. Add. Annotation:—Mentd.** **Melanie S.S. v. San Onofre S.S.**, [1925] A. C. 246.

**1152a. Log of defendants' vessel—Right of plaintiffs to put in—After admission of facts by defendants.]—**Defts. to an action of salvage by their defence admitted that all pltfs. had rendered salvage services & that the allegations of the facts of such services set out in the respective statements of claim were in substance correct, but they denied that the various inferences sought to be drawn from those facts were accurate or well founded, & that their vessel was ever in any real danger. They also pleaded certain soundings which differed from those pleaded by certain of pltfs. Pltfs. by their reply joined issue upon the defence save in so far as the same consisted of admissions:—*Held*: pltfs. were entitled to put in the logs of defts.' vessel with a view to proving that the ship was in real danger, & also a graphic representation of the soundings based on sketches in defts.' log, but not to call evidence as to the facts, *e.g.* the displacement of certain tugs.—**THE WOODARRA** (1921), 38 T. L. R. 160; 66 Sol. Jo. 183.

**1152b. Oral evidence dispensed with—Salvage—Amount in dispute small—Discretion of court.]—**In a case where salvage services had been requisitioned & the amount in dispute was small, by agreement the case was tried on the pleadings & statements of the witnesses, no oral evidence being called & the attendance of the Elder Brethren being dispensed with:—*Held*: the course taken was a mode of procedure useful to the shipping world, & one for which the ct. would endeavour to give proper facilities, the power of the ct. being, of course, discretionary.—**THE RIVER FISHER** (1923), 39 T. L. R. 233.

**1167. Before this case insert "See, further, EVIDENCE, Vol. XXII., p. 94."**

**1196. Add. Annotations:—Reid.** **Australia (Owners) v. Nautilus (Owners), The Australia** (1926), 95 L. J. P. 145. *Mentd.* **S.S. Mendip Range v. Radcliffe**, [1921] 1 A. C. 556.

**PART III. SECT. 11, SUB-SECT. 1.**  
*sd.* *Proof of claim—Right to proceed ex parte—Order for sale of res.]—***PAUL v. THE AMY TURNER**, [1922] V L. R. 740.—AUS.

**PART III. SECT. 14, SUB-SECT. 3.—A.**  
*sd.* *Log books—Independent log kept by mate.]—Held*: not admissible.—**R. v. THE AINOKO** (1894), 4 Exh. C. R. 1.—CAN.

*sd.* *Manuscript notes made by master.]—*In the circumstances rejected as evidence as part of the ship's log.—**THE ANDREW KELLY v. THE COMMODORE**, [1919] 1 W. W. R. 1059; 19 Exch. C. R. 70; 48 D. L. R. 213.—CAN.

*sd.* *Salvage action—Attendance of master & crew.]—*It is proper to have the master & crew before the ct. in an action for salvage.—**JOHNSON & MAC-**

**KAY v. S.S. CHARLES S. NEFF** (1918), 18 Exch. C. R. 168.—CAN.

**PART III. SECT. 14, SUB-SECT. 4.—A.**  
**1196 III. — — —.]—**Two ships collided on a very bad night. The collision was caused by the *M.*, which was light, dragging her anchors, & coming down on the *R.*, which was holding to her moorings. When the *M.* was dragging her anchors she had



1198a. — Between assessors advising lower court & appellate court—Duty of appellate court.]—In a case in which there has been a difference of opinion between the nautical assessors advising the respective cts., the Ct. of Appeal is not bound to pay more attention to the opinion of its own assessors than to that of those who advised the ct. below. The assessors occupy much the same position as do skilled witnesses, & if they differ the ct. must make its own choice. In every case the responsibility is with the ct., which has to make up its mind alike on questions of nautical skill & on the value of the advice given upon them.—AUSTRALIA (OWNERS) v. NAUTILUS (OWNERS), THE AUSTRALIA, [1927] A. C. 145; 95 L. J. P. 145; 135 L. T. 576; 42 T. L. R. 614; 32 Com. Cas. 82; 17 Asp. M. L. C. 86, H. L.

1198b. — — — — —.] — ARTEMISIA (OWNERS) v. DOUGLAS (OWNERS) (1925), [1927] A. C. 164, H. L.

Annotation:—Consd. Australia (Owners) v. Nautilus (Cargo Owners), [1927] A. C. 145.

1199. Add. Annotation:—Consd. Australia (Owners) v. Nautilus (Owners), The Australia (1926), 95 L. J. P. 145.

1200a. Presence of — Dispensed with — Salvage action — Amount in dispute small.] — THE RIVER FISHER, No. 1152b, ante.

1201. Add. Annotations:—Refd. Australia (Owners) v. Nautilus (Owners), [1927] A. C. 145. Mentd. Hontestroom (Owners) v. Sagaporack (Owners), Hontestroom (Owners) v. Durham Castle (Owners) (1926), 95 L. J. P. 153.

1204. Add. Annotation:—Refd. Australia (Owners) v. Nautilus (Owners), The Australia (1926), 95 L. J. P. 145.

1206. Add. Annotation:—Refd. Australia (Owners) v. Nautilus (Owners), The Australia (1926), 95 L. J. P. 145.

steam up but did not use it, by which failure she omitted to take a reasonable measure which might have avoided the accident. In an action for damages by the *R.* against the *M.* there was uncontradicted evidence to the effect that the steam had not been used because those in charge of the *M.* did not & could not know owing to the darkness & the weather that they were dragging their anchors. The Lord Ordinary, without expressing any opinion as to whether he credited that evidence or not, accepted an opinion expressed by the nautical assessor to the effect that it would not have been difficult for those on the *M.* to know that they were dragging their anchors:—*Held*: it was for the Lord Ordinary & not for the nautical assessor to pronounce upon the trustworthiness of that evidence, & to say whether or not the master of the *M.* ought to have known when his anchor began to drag, & on the ground that the evidence did not establish the fault, the *M.* absolved.—CAMRO SHIPPING CO., LTD. (ROSKETTI (OWNERS)) v. DAMPSKIBSELSKABET MAGNUS, [1920] S. C. 26; 57 Sc. L. R. 59.—SCOT.

1201 iii. — — — — —.]—*Held*: evidence of experiments with water in a lock without any steamer being in it was of the nature of expert evidence, & as the ct. had the assistance of a nautical assessor to advise upon any matters requiring nautical or other professional knowledge, such expert evidence was inadmissible.—FRASER v. S.S. AZTEC (1920), 20 Exch. C. R. 39.—CAN.

1201 iv. — — — — —.]—In Admty. cases where the ct. has the assistance of nautical assessors, evidence involving questions of nautical skill & experience is not admissible.—PACIFIC STEAM NAVIGATION CO. (BOGOTA (OWNERS)) v. ANGLO NEWFOUNDLAND DEVELOPMENT CO., LTD. (ALCONDA (OWNERS)), [1923] S. C. 526; 60 Sc. L. R. 333.—SCOT.

sl. Duty of judge to keep note of questions submitted to & answers given by nautical assessor.—Nautical Assessors (Scotland) Act, 1894 (c. 40), s. 3.]—S.S. ROWAN v. S.S. CLAN MALCOLM, [1923] S. C. 317.—SCOT.

#### PART III. SECT. 16, SUB-SECT. 3.—A.

bi. — — — — —.]—GRAND TRUNK PACIFIC COAST S.S. CO. v. THE B.R. (1914), 17 D. L. R. 757; 15 Exch. C. R. 389; 6 W. W. R. 711.—CAN.

sm. Expenses of bail bond.—Not recoverable as costs.]—The expense of procuring a bail bond incurred by an arrestee in order to liberate his ship, which had been arrested as a preliminary to an unsuccessful action *in rem*, cannot be charged against the opposite party, such expense not being part of the expenses of process.—ELLERMANS WILSON LINE, LTD. v. NORTHERN LIGHTHOUSES COMRS. (1920), 58 Sc. L. R. 29.—SCOT.

sn. Awarded to salvors.]—Where salvors of a ship arrested her as an initiatory step in an action *in rem* to recover the salvage due, they were allowed to recover the expenses of arresting the ship from her owners.—HATTON v. AKT. DURBAN HANSEN, [1919] S. C. 154; 56 Sc. L. R. 100.—SCOT.

1224. Add. Annotation:—As to (2) Refd. The Disperser, [1920] P. 228.

1231. Add. Annotation:—Mentd. The Oranje Nassau, [1921] P. 190

1237a. — Action against two separate parties—One party only held to blame—Costs of plaintiff.]—(1) A pltf. who, being in reasonable doubt as to which of two parties has been negligent, sues both parties & fails against one, is entitled to add the costs which he has to pay to the successful deft. to his costs against the unsuccessful deft., notwithstanding that the unsuccessful deft. has not put the blame upon the other. But if he brings separate actions, unless he acts reasonably in so doing, he will not be allowed the costs of two actions. (2) Similarly, if one of defts. sets up a counterclaim against pltf. & the other deft. & fails against pltf., he is entitled to recover from deft. against whom he succeeds the costs which he has to pay pltf.—THE SVEIN JARL (1923), 129 L. T. 255; 16 Asp. M. L. C. 159.

Annotation:—Distd. The W. H. Randall, [1928] P. 41.

1258. Add. Annotation:—Refd. The Joannis Vatis (No. 2), [1922] P. 213.

1261. Add. Annotation:—Refd. Re Letters Patent No. 139,207, Re Carbonit Akt., [1924] 2 Ch. 53.

1262. For "see S. C. No. 1266, post," read "see S. C. No. 131, ante."

1265. Add. Annotation:—Mentd. The Disperser, [1920] P. 228.

1277. Add. Citation:—sub nom. THE COMMODORE, 1 Ecc. & Ad. 175, n.

1280a. — — — — —.]—THE INNISFAIL, THE SECRET (1876), 35 L. T. 819; 3 Asp. M. L. C. 337.

1283. Add. Annotation:—Refd. The Modica, [1926] P. 72.

1284. Add. Annotation:—Consd. The Modica, [1926] P. 72.

so. Fees of appraiser acting as marshal's substitute—Special arrangement.]—THE PASCHENA v. THE GRIFF (1925), 36 B. C. R. 30.—CAN.

sb. Possession fees—Marshal in possession under several warrants.]—Where a marshal is in possession of a ship simultaneously under warrants issued in different actions, more than one set of possession fees will not be allowed.—SIMBACK v. THE SAGA, CARLSSON v. THE SAGA (1899), 6 B. C. R., 522.—CAN.

#### PART III. SECT. 16, SUB-SECT. 4.—A.

1279 i. Inevitable accident—Costs follow event.]—The rule as to costs is the same in the Exchequer Ct. of Canada in Admty. as it is in the Admty. Div. of the High Ct. in England, & costs follow the event, even in cases of inevitable accident, where no special circumstances require a departure from such rule.—THE JESSIE MAC v. THE SEA LION, [1919] 2 W. W. R. 411.—CAN.

1283 iii. — — — — —.]—Where two vessels came into collision & both vessels were held to blame, no costs were granted to either party.—R. v. THE ARGYLLSHIRE, [1922] St. R. Qd. 186.—AUS.

1283 iv. — — — — —.]—Where the ct. found that both parties were to blame:—*Held*: each delinquent should bear his own costs.—B. W. B. NAVIGATION CO. v. THE KILTUIGH, BARNET LIGHTERAGE CO. v. THE KILTUIGH (1922), 67 D. L. R. 525; [1922] 2 W. W. R. 959.—CAN.

**1284a.** —.] — Although it has been the practice since the above Act to make no order as to costs in collision cases in which both vessels have been held to blame in unequal degrees, the ct. must be guided by the circumstances in each case. In a proper case it will feel itself at liberty to give to the party which is held to blame in the smaller degree such a proportion of that party's costs as on the particular facts appears just.—*THE MODICA*, [1926] P. 72; 95 L. J. P. 100; 135 L. T. 61; 17 Asp. M. L. C. 30.

**1284b.** — — — —.] — Where defts. were three-fourths to blame & plths. one-fourth to blame, the ct. ordered defts. to pay one-half of plths.' costs.—*THE ROBERT KOEPPE*, [1926] P. 81, n.

*Annotation* :—*Refd.* *The Modica*, [1926] P. 72.

**1286.** *Add. Annotations* :—*Refd.* *The Modica*, [1926] P. 72. *Mentd.* *Campbell v. Pollak*, [1927] A. C. 732.

**1286a.** Neither to blame—Delay in commencing proceedings—Costs of claim to defendants—Costs of counterclaim to plaintiffs.]—Plths. & defts.' vessels, navigating without lights in accordance with Admlty. directions, came into collision & both received damage. The ct. held that there was no negligence on the part of either vessel, & gave judgment for defts. on the claim & for plths. on the counterclaim. On the question of costs :—*Held* : as nearly eighteen months had elapsed before plths. commenced proceedings, during which time defts. had taken no steps to recover their damages from plths., it appeared that there would have been no litigation if plths. had not issued their writ, & therefore, there must be judgment for defts. on the claim with costs, & for plths. with costs on the counterclaim, & not, as contended by plths., no costs on either side.—*THE CARDIFF HALL*, [1918] P. 56; 87 L. J. P. 113; 119 L. T. 156; 14 Asp. M. L. C. 328.

**1297.** *Add. Annotation* :—*Mentd.* *The Penrith Castle*, [1918] P. 142.

**1297a.** — — —.] — *THE HOPPER* No. 21, [1903] W. N. 114.

**1298a.** — — — Unsuccessful counterclaim.] *THE SVEIN JARL*, No. 1237a, *ante*.

**1299.** *Add. Annotation* :—*Refd.* *The Modica*, [1926] P. 72.

**1300a.** *S. P.* *THE ELEANOR & NANCY* (1837), 5 L. T. 241.

**1304a.** *S. P.* *THE ARGO v. THE EMMA HEYN* (1850), 5 L. T. 122.

**1309.** *Add. Annotation* :—*Refd.* *The Modica*, [1926] P. 72.

**1332.** *Add. Annotation* :—*Mentd.* *Melanie S.S. v. San Onofre S.S.*, [1925] A. C. 246.

**1351a.** — Judgment for less than amount of

offer refused by salvors.]—*THE HEDWIG* (1853), 1 Ecc. & Ad. 19; 164 E. R. 11; *sub nom.* *THE HÆDWIG*, 17 Jur. 977.

*Annotation* :—*Mentd.* *The Racer* (1874), 30 L. T. 904.

**1379.** *Add. Annotation* :—*Mentd.* *Bradley v. Newson*, [1919] A. C. 16.

**1405a.** — — — — Expert evidence.]—On a reference to assess the damage arising out of a collision the registrar & merchants are not bound to accept the opinions of experts, even though they be all one way, but are entitled to test those opinions by their own experience & bring their own judgment to bear upon the evidence.—*THE STEADFAST* (1922), 39 T. L. R. 96.

**1406a.** Reasons should be stated.]—(1) In cases of collisions in which foreign ships are involved, the report of the registrar should state the reasons which have actuated the tribunal in allowing or disallowing large amounts, in order that the foreign interests concerned may appreciate what has been done.

(2) The registrar & merchants are in very much the same position as a jury except that they give their reasons. So far as their reasons involve legal considerations they can be questioned. So far as they are findings of fact it takes a strong case to disturb them, but where it is clear that they have made mistakes or that the evidence does not support their conclusions, the ct. has always retained the power to alter their report, & it is obviously right that the ct. should maintain such a control (*SCRUTTON, L.J.*).—*THE ST. CHARLES* (1927), 138 L. T. 456; 17 Asp. M. L. C. 399, C. A.

**1413.** *Add. Annotation* :—*Refd.* *The Kingsway*, [1918] P. 344.

**1418.** *Add. Annotation* :—*Mentd.* *Sheppy Glue & Chemical Works v. Medway (River) Conservators* (1926), 24 L. G. R. 457.

**1422a.** — — —.] — *THE ST. CHARLES*, No. 1406a, *ante*.

**1423.** *Add. Annotation* :—*Mentd.* *Australia (Owners) v. Nautilus (Owners)*, *The Australia* (1926), 95 L. J. P. 145.

**1428.** *Add. Citations* :—*Brown. & Lush.* 436; 34 L. J. P. M. & A. 113; 12 L. T. 819; 2 Mar. L. C. 221.

*Add. Annotations* :—*Consd.* *The Thuringia* (1871), 41 L. J. Adm. 26. *Refd.* *The Kingsway*, [1918] P. 344; *Canadian Pacific Ry. v. Kelvin Shipping Co.* (1927), 138 L. T. 369.

**1433.** *Add. Annotations* :—*Refd.* *The Kingsway*, [1918] P. 344; *Re Mersey Docks & Admiralty Comrs.*, [1920] 3 K. B. 223; *Admiralty Comrs. v. S.S. Valeria*, [1922] 2 A. C. 242; *Admiralty Comrs. v. S.S. Chekiang*, [1926] A. C. 637; *Admiralty Comrs. v. S.S. Susquehanna*, [1926] A. C. 655. *Mentd.* *The Chekiang*, [1925] P. 80.

*sf. Costs of arrest.*]—Where salvors of a ship arrested her as an initiatory step in an action *in rem* to recover the salvage due, they were allowed to recover the expenses of arresting the ship from her owners.—*HATTON v. AKT. DURBAN HANSEN*, [1919] S. C. 154; 58 Sc. L. R. 100.—SCOT.

**PART III. SECT. 17, SUB-SECT. 2.**—C. (c).

**14371.** *Correction of report—Registrar proceeding on wrong principle.*]—*CANADIAN VICKERS CO., LTD. v. THE SUSQUEHANNA* (1919), 18 Exch. C. R. 210; 44 D. L. R. 716.—CAN.

### PART III. SECT. 16, SUB-SECT. 5.—A. (a).

**13221.** *General costs—Excessive claim.*]—In a suit claiming remuneration for salvage services rendered, the claim was excessive & the case was such as to warrant a small award only. The ct. made an award of £25 in favour of plths., & ordered defts. to pay the costs of the suit. On a subsequent application for directions, the ct. refused to exercise its discretion & to make a special order for costs.—*STUART v. COLUMBIA RIVER* (1921), 21 S. R. N. S. W. 674.—AUS.

**1323 iii.** — — —.]—Salvors arrested a ship against which they were claiming salvage amounting to £47,500, & they refused to release the ship except upon obtaining security to the extent of £37,500. The arresters ultimately obtained decree for £4,800 as salvage, with modified expenses against defenders, but they were found liable in the expense incurred by defenders in obtaining security in excess of £8,000 :—*Held* : the arresters were rightly found liable for the expense of obtaining security in excess of £8,000.—*ST. CLAIR v. AUDNEY*, [1922] S. C. 85.—SCOT.



1489. *Citation*:—For "[1916] A. C. 38," read "[1917] A. C. 38."

*Add. Annotations*:—Mentd. Bradford Corp'n. v. Webster, [1920] 2 K. B. 135; Baker v. Dalgleish S.S. Co., [1922] 1 K. B. 361; The Molière (1924), 41 T. L. R. 154.

1452. *Add. Annotation*:—As to (1) Refd. Mersey Docks & Harbour Board v. Hay, [1923] A. C. 345.

1472. *Add. Annotation*:—Mentd. The Kingsway, [1918] P. 344.

1478. *Add. Annotation*:—Refd. The Glenfinlas, [1918] P. 363, n.

1482. *Add. Annotations*:—Refd. The Rosalind (1920), 90 L. J. P. 126. Mentd. The Joannis Vatis (No. 2), [1922] P. 213.

1483a. —.]—While on hire by the Admty. a steam trawler was sunk through a collision with the R. The value of the trawler was agreed between the parties, but the Admty. claimed, as bailees in possession, to recover as part of their damages interest from the date of the loss. The owners of the R. contended that interest was only payable from the date when the Admty. paid the value of the trawler to her owners:—*Held*: under the Admty. rule a bailee in possession was entitled to recover from a wrongdoer a complete equivalent of the chattel deteriorated or lost, namely, its value at the time of the deterioration or loss, with interest from that date; but, inasmuch as there was an agreement between the parties that defts. should pay what the Admty. had to pay to the owners of the trawler, interest on that payment only ran from the date of payment. —THE ROSALIND (1920), 90 L. J. P. 126; 37 T. L. R. 116.

1484. *Add. Annotation*:—Refd. The Joannis Vatis (No. 2), [1922] P. 213.

1489. *Add. Annotation*:—Generally, Mentd. The Joannis Vatis (No. 2), [1922] P. 213.

1489a. —. —. Claim by foreign Government.]—(1) By Finnish law 2½ per cent. of the sale price of a Finnish vessel sold out of Finnish nationality is taken by the Finnish Govt.:—*Held*: the Finnish Govt. had no claim upon the proceeds of sale of a Finnish ship sold by the marshal under the powers of the ct. in a default action *in rem*.

(2) A party moving for payment out in a default action *in rem* must give notice to all persons who have intervened or entered *caveats*, & if persons wish to resist an application for payment out they must intervene or enter *caveats*, otherwise they are not entitled to be heard.—THE EVA, [1921] P. 454; 91 L. J. P. 17; 126 L. T. 223; 37 T. L. R. 920; 15 Asp. M. L. C. 424.

1492. *Add. Annotation*:—Generally, Refd. The Stream Fisher, [1927] P. 73.

1492a. —. After postponement—Decrease in value of ship—Liability of intervener causing postponement to give further security.]—In a mtge. action *in rem* pl'ts., mtgees., in Jan., 1925, recovered judgment by default condemning the ship & ordering her sale by the marshal. Thereupon certain charterers, to whom the mtgors. had chartered the ship for a term of years, intervened, claiming a declaration that the charterparty was binding on the mtgees.; & by an order of Mar. 3 the sale of the ship stood over pending the trial of the issue, upon the interveners giving security in an amount satisfactory to the registrar for loss arising from delay & any loss on sale due to a fall in shipping values. On July 15 the ct. gave judgment that pl'ts. were not bound by the charterparty, that they were entitled to the judgment they had obtained, & that the costs of & occasioned by the intervention should be paid by the interveners. On Oct. 14 the ship was sold by the marshal for £20,000 less than she had been valued at nine months previously. Pl'ts. took out a summons for further security:—*Held*: although judgment had been given against the interveners & they were not appealing against that decision, the matter was still at large, as they were contesting pl'ts.' claims before the registrar, & the interveners could be ordered to give further security in respect of possible loss of capital & interest & for the marshal's expenses; the case must be referred to the registrar to find what amount should be given & what was the amount of pl'ts.' damages under each head.—THE LORD STRATHCONA (No. 2), [1926] P. 18; 95 L. J. P. 168; 134 L. T. 511; 17 Asp. M. L. C. 24.

1493. *Add. Annotations*:—Consd. The Kronprinz Olav, [1921] P. 52. Refd. Mersey Locks & Harbour Board v. Hay, [1923] A. C. 345.

1493a. —. Unascertained liability—Right of court to delay distribution.]—THE KRONPRINZ OLAV, No. 1551a, *post*.

1495. *Add. Annotation*:—Mentd. The Mogileff, [1921] P. 236.

1496. *Add. Annotation*:—Consd. The Stream Fisher, [1927] P. 73.

1497a. —. Motion for payment in default action —Necessity for notice.]—THE EVA, No. 1489a, *ante*.

Damage to ship whilst under arrest—Payment of damages into court—Cross-claim for damages for breach of charterparty.]—A vessel whilst under arrest in a necessities action was damaged by the negligent naviga-

#### PART III. SECT. 18, SUB-SECT. 2.

1480 i. *Awarded from date of loss*.]—Interest in Admty. cases will be calculated on the damages allowed from the date of the collision; & on payments made in respect of wages, & payments made by reason of the collision, from the dates of such payments.—CANADIAN DREDGING CO. v. NORTHERN NAVIGATION CO. (ONT.), [1924] Exch. C. R. 163.—CAN.

sq. *Work done—From date of rendering bill*.]—In the Admty. Ct., in an action to recover for work done & material supplied, the ct. will allow interest from the time of rendering of the bill

after completion, in the absence of legal excuse for non-payment.—WINSLOW MARINE RT. & SHIP-BUILDING CO. v. THE PACIFICO, [1924] 2 D. L. R. 190; [1924] Exch. C. R. 90; 1 W. W. R. 930; 34 B. C. R. 1.—CAN.

#### PART III. SECT. 18, SUB-SECT. 3.

st. *Sale of ship—By marshal—Not licensed as auctioneer—Right to fees*.]—The marshal, though not licensed as an auctioneer, is entitled to a double fee on the gross proceeds in selling a vessel at auction by order of ct.—HERNANDEZ v. THE BAMFIELD (1921), 21 Exch. C. R. 166; 30 B. C. R. 161; [1921] 3 W. W. R. 69.—CAN.

#### PART III. SECT. 18, SUB-SECT. 4.

1495 iv. —. *Claim by assignee of foreign shipowner*.]—After sale of a ship & payment of all costs & charges there remained in ct. a balance to the credit of the ship. On an application for payment out by a resident of Vancouver, who claimed to be the assignee of the reputed owner who lived in California:—*Held*: the application should be adjourned & published in Victoria & Vancouver by notice & advertisement for one month, the notice to be posted in the registry & served upon the collector of customs & the American Consul at Vancouver.—THE SPEEDWAY (1925), 35 B. C. R. 319.—CAN.



tion of another vessel belonging to a party who had recovered judgment for damages for breach of charterparty in an action in the county ct. Liability for the damage to the extent of £21 12s. was admitted. On a motion by pl'ts. in the necessities action for payment out of the proceeds, the owners of the vessel which had caused the damage claimed to deduct £21 12s. by way of set-off for such damage from their claim in respect of the judgment recovered in the county ct.:—*Held*: claimants could not credit themselves with £21 12s., but must pay that sum into the fund in ct.—*THE MAGGIE A.* (1923). 155 L. T. Jo. 191.

1497c. — *Priorities—Several collisions.*—Where there has been more than one collision with the same vessel the maritime liens arising thereout, apart from laches, rank *pari passu* & not in the order of the dates of the respective collisions.—*THE STREAM FISHER*, [1927] P. 73; 96 L. J. P. 29; 136 L. T. 189; 17 Asp. M. L. C. 159.

Maritime liens generally, see SHIPPING.

1499. *Add. Annotations*:—As to (2) *Refd.* The Joannis Vatis (No. 2), [1922] P. 213; The Point Breeze, [1928] P. 135. *Generally, Mentd.* The Llandovery Castle, [1920] P. 119; The Tervaete, [1922] P. 259; The Jupiter, [1924] P. 236.

1500. *Add. Annotations*:—As to (2) *Refd.* The Joannis Vatis (No. 2), [1922] P. 213; The Point Breeze, [1928] P. 135. *Generally, Mentd.* The Llandovery Castle, [1920] P. 119; The Jupiter, [1924] P. 236.

1501. *Add. Annotation*:—*Refd.* The Joannis Vatis (No. 2), [1922] P. 213.

1502. *Add. Annotation*:—*Refd.* The Joannis Vatis (No. 2), [1922] P. 213.

1503. *Add. Annotation*:—*Mentd.* The Joannis Vatis (No. 2), [1922] P. 213.

1504. *Add. Annotations*:—N.F. The Volant (1842), 1 Wm. Rob. 383. *Consd.* The Mary Caroline (1848), 6 Notes of Cases, 536. *Refd.* The Mellona (1848), 3 Wm. Rob. 16; The Benares (1850), 14 Jur. 581; The Milan (1861), 5 L. T. 560.

1505. *Add. Annotation*:—*Refd.* The Point Breeze, [1928] P. 135.

1507. *Add. Annotation*:—*Refd.* The Joannis Vatis (No. 2), [1922] P. 213.

1508. *Add. Annotation*:—*Refd.* The Joannis Vatis (No. 2), [1922] P. 213.

1519a. *Expenses of witnesses—Though not called.*—Where a charge for the attendance of such a witness was allowed, because counsel in advising on evidence thought that the witness was necessary:—*Held*: that was a dangerous ground on which to proceed, & one upon which an allowance or disallowance ought not to be founded.—*THE LORD STRATHCONA* (No. 3), [1926] W. N. 270, C. A.

1520a. — *Measure of compensation.*—While it has always been the practice, owing to the nature of their calling, to allow seafaring witnesses to be detained on shore to give evidence, & to allow them reasonable compensation for their detention, it is a question for the taxing master whether a party who seeks to charge his opponent with the cost of detaining an expensive witness has acted

reasonably in incurring the expense or whether he ought not to have examined the witness on commission.

A taxing master should bear in mind that a witness duly summoned is bound to attend, & the witness is not entitled to receive, as the measure of his compensation, the exact sum he may prove he has lost by reason of the detention. He is, however, entitled to some compensation, & not merely to the conduct money given him with his *subpoena*; & the wages he is earning may afford an important indication of what is fair compensation. But although this is correct in the case of seamen, as regards captains & other officers, as in the case of professional witnesses, their earnings cannot be taken as a fair criterion on which to base the allowance.—*THE IBIS VI*, [1921] P. 255; 90 L. J. P. 289; 125 L. T. 378; 37 T. L. R. 557; 65 Sol. Jo. 514; 15 Asp. M. L. C. 237, C. A.

1520b. *Substitute for witness.*—The expenses of a substitute to join a vessel from which a witness is necessarily taken are not allowable on taxation as a matter of course.—*THE MASSILIA*, [1926] P. 180; 95 L. J. P. 109; 135 L. T. 671; 42 T. L. R. 551; 17 Asp. M. L. C. 109.

1521a. *Costs of obtaining statements from independent witnesses—Discontinuance of action.*—In a collision action, before pl'ts. had filed their preliminary act or statement of claim, defts. took statements from independent witnesses on other vessels. Pl'ts. shortly afterwards discontinued the action. On the taxation of defts.' bill of costs the assistant registrar disallowed the costs of obtaining these statements, on the ground that there was "a well-settled principle of taxation that a party is only entitled as against his opponent to incur such costs or expenses as will enable him to conduct his case at the stage which the proceedings have reached, & not incur expenses in anticipation of matter, which, as events turn out, never arise":—*Held*: R. S. C., Ord. 65, r. 27 (29), was not limited in the way stated by the assistant registrar; if solrs. could compel the discontinuance of an action by collecting the necessary evidence, they were entitled to do so, & the costs in question were not prematurely incurred, & defts. were entitled to recover them from pl'ts. on taxation.—*THE CHANNEL QUEEN*, [1928] P. 157; 97 L. J. P. 97; 139 L. T. 336; 44 T. L. R. 505.

1526. *Add. Annotation*:—*Expld.* The Ibis VI [1921] P. 255.

1527. *Add. Annotation*:—*Expld.* The Ibis VI, [1921] P. 255.

1536a. — "To persons claiming to have sustained damage"—*Appearance at trial—Right to be heard.*—In an action of limitation of liability pl'ts., the owners of the steam tug *H.*, addressed their writ in the usual manner: "To the owners of the steamship *D.* & all other persons claiming to have sustained damage by reason of the collision or collisions between the *H.* & her tow & the *D.* on the morning of Jan. 2, 1921." Notice of the action was inserted in the press. At

**Cases 1536a—1553b. ENGLISH AND EMPIRE DIGEST SUPPLEMENT.**

the trial the owners of the steamship *T.*, who claimed to have sustained damage by reason of the collision or collisions between the *H.* & her tow & the *D.*, appeared by counsel & claimed to be heard. The owners of the *T.* had commenced an action against *ptfs.*, but had taken no step other than appearance at the trial in the limitation suit:—*Held*: the writ made the owners of the *T.* parties to the action, & was served upon them by insertion in the press.—*CORY LIGHTERAGE, LTD. v. DALTON (OWNERS), THE HARLOW (1922)*, 153 L. T. Jo. 121.

1538. *Add. Citation*:—4 Asp. M. L. C. 27, n.

*Add. Annotation*:—*Refd. The Vigilant*, [1921] P. 512.

1541a. ——— *Waiver of.*—In an action of limitation of liability under M. S. Act, 1894 (c. 60), s. 503, *ptfs.* did not file the usual affidavit verifying their statement of claim. The owners & crew of the vessel injured in the collision, in respect of which judgment had been given against *ptfs.* in the previous action, & some cargo owners appeared by counsel at the trial & consented to a decree of limitation:—*Held*: a decree might be granted without requiring *ptf.* to file the usual affidavit.—*THE COIMBRA (1923)*, 130 L. T. 512; 16 Asp. M. L. C. 288.

1542. *Add. Annotation*:—*Mentd. Brierley v. Brierley & Williams (1918)*, 34 T. L. R. 458.

1544. *Add. Annotations*:—*As to (2) Refd. Mersey Docks & Harbour Board v. Hay*, [1923] A. C. 345. *Mentd. The Kronprinz Olav*, [1921] P. 52; *The Coaster (1922)*, 91 L. J. P. 145.

1546. *Add. Annotation*:—*Mentd. Weld-Blundell v. Stephens*, [1920] A. C. 956.

1547. *Add. Annotation*:—*As to (2) Refd. Mersey Docks & Harbour Board v. Hay*, [1923] A. C. 345.

1548. *Add. Annotations*:—*As to (2) Consd. The Coaster (1922)*, 91 L. J. P. 145. *Generally, Mentd. The Kronprinz Olav*, [1921] P. 52.

1548a. ——— ———.]—*Ptf.* in an action of limitation of liability, who has paid to claimants a sum in satisfaction of a liability arising out of the collision, is under M. S. Act, 1894 (c. 60), s. 503, entitled, in respect of such payment, to share ratably with other claimants in the distribution of the limitation fund, even though such payment has been enforced by action in a foreign ct.—*THE COASTER (1922)*, 91 L. J. P. 145; 127 L. T. 153; 38 T. L. R. 511; 15 Asp. M. L. C. 500.

1551a. ——— *Unascertained liability — Right of plaintiffs in limitation suit to claim against fund.*—In Feb. 1917, two Norwegian vessels, the *C.* & the *O.*, came into collision & the *C.* sank. In Mar. 1917, the owners of the cargo laden on board the *C.* began an action against the owners of the *O.* in the Admty. Ct. The action was heard in May, 1919, when both vessels were pronounced to blame, & accordingly it was adjudged that *ptfs.* were entitled to receive a moiety of the amount of their damage from *defts.* Thereupon *defts.*, the owners of the *O.*, commenced a limitation action against the

owners of the *C.*, the owners of her cargo, & all persons claiming to have received damage by reason of the collision. This action was heard in Feb. 1920, when a decree was pronounced limiting the liability of the owners of the *O.* to £8 per ton on the registered tonnage of the *O.* calculated in accordance with M. S. Act, 1894 (c. 60). The decree provided that all claims were to be brought in within three months & that claims not so brought in would be excluded from sharing in the limitation fund. Claims were filed by the owners of the cargo on the *C.*, but although the owners of the *C.* entered an appearance they took no further steps in the limitation proceedings. Meanwhile, however, in Feb. 1919, the owners of the *C.* had commenced an action in Norway against the owners of the *O.* & in June, 1920, when the reference was held in the limitation proceedings & the registrar made his report, the trial of the Norwegian action was still pending. The owners of the *O.* accordingly took out a summons asking that the report be not confirmed & that they might have leave to file a claim against the fund in respect of any liability they might incur under the Norwegian proceedings. The judge declined to postpone the distribution of the fund & dismissed the summons. *Ptfs.*, the owners of the *O.*, appealed:—*Held*: (1) *ptfs.* had no absolute right under the limitation sects. of M. S. Act, 1894 (c. 60), to have the distribution of the fund stayed & to bring forward a claim when ascertained; (2) limitation proceedings do not contemplate claims by *ptfs.*, & the owners of the *O.* could not file a claim against the fund in their own right; (3) had an application been made in proper form the ct. would have had a discretion to extend the time before distributing the fund, in order to allow *ptfs.* to ascertain their liability under the pending Norwegian judgment & to apply to the ct. to adjust the distribution of the fund so that *ptfs.* might obtain credit for the amount payable under the Norwegian judgment; but, having regard to the lapse of time & to the fact that limitation proceedings contemplate that claims shall be brought in promptly & the distribution of the fund not be unreasonably delayed, the ct. had rightly exercised its discretion in refusing to postpone the distribution of the fund.—*THE KRONPRINZ OLAV*, [1921] P. 52; 90 L. J. P. 398; 125 L. T. 684; 15 Asp. M. L. C. 312, C. A.

*Annotation*:—*As to (3) Consd. The Coaster (1922)*, 91 L. J. P. 145.

1553a. ——— ———.]—The usual rule by which the successful *ptfs.* in a limitation suit are required to pay the costs should not be departed from, notwithstanding that the litigation has been much more expensive than is usual in limitation actions by reason of the issues raised by *defts.* Nor ought *ptfs.* to recover their costs of giving bail in excess of the amount of their statutory liability.—*CHARLOTTE (OWNERS) v. THEORY (LATE) (OWNERS), THE CHARLOTTE (1921)*, 153 L. T. Jo. 69.

1553b. *S. P. THE KATHLEEN (1925)*, [1927] P. 63, n.; 69 Sol. Jo. 574.

## Part IV.—Appeals.

**1581. Citations:**—For “(1878)” read “(1877).”

*Add. Annotation:*—*Mentd. Wickins v. Wickins*, [1918] P. 265.

**1596. For “No appeal” read “Right of appeal.”**

*Add. Annotation:*—*Consd. The Royal Star* (1927), 97 L. J. P. 49.

**1597a. — Master censured but certificate not dealt with.**—A master, who has been censured in respect of a casualty to his ship by a colonial ct. of inquiry, but has not had his certificate (British) cancelled or suspended, probably has a right of appeal under M. S. Act, 1894 (c. 60), s. 478, but certainly has the right under M. S. Act, 1906 (c. 48), s. 66, as being “a person having an interest” in the inquiry, who has appeared at the hearing, & is “affected by the decision of the ct.”—*THE ROYAL STAR*, [1928] P. 48; 97 L. J. P. 49; 138 L. T. 558; 44 T. L. R. 163; 17 Asp. M. L. C. 417, D. C.; *subsequent proceedings*, [1928] P. 144, D. C.

**1600a. —**—A British master holding a Board of Trade certificate received a notice of investigation calling upon him to appear before a Wreck Comr.’s Ct. appointed “to inquire into the causes which led to the casualty [the stranding of his vessel] & into all the facts connected therewith.” The notice contained no other statement of the questions intended to be raised, & no charges were specifically formulated against the master before or at the inquiry that he was in fault in connection with any of the matters on which he was examined. The ct. found the master guilty of an error of judgment in taking wrong helm action & in failing to stop & take soundings, & suspended his certificate for three months. The master appealed:—*Held*: the master, having had no notice of the charges on which he had been found in fault, had not had an opportunity of making his defence, & the decision of the Wreck Comr.’s Ct. must be quashed & the certificate restored free from suspension.—*THE CHELSTON*, [1920] P. 400; 90 L. J. P. 77; 124 L. T. 223; 36 T. L. R. 688; 15 Asp. M. L. C. 158, D. C.

**1603a. —**—*THE THROSTLEGARTH* (1899), cited, [1906] P. at p. 312.

*Annotation:*—*Consd. The Carlisle*, [1906] P. 301.

**1603b. —**—*THE GRECIAN* (1902), [1928] P. 146, n., D. C.

**1604a. — Preliminary motion—As to right of appeal.**—The governor of a colony ordered an inquiry to be held into the stranding of a British ship. The ct. found the master guilty of negligence & severely censured him, but did not deem it necessary to deal with his certificate. The master served notice of appeal on the Board of Trade, but the Board took the view that no appeal lay unless the officer’s certificate had been suspended or

cancelled. A motion to determine, as a preliminary point, the question of the right to appeal was decided by the Div. Ct. in the master’s favour, & at the subsequent hearing of the appeal the master was held not to have been guilty of the acts of negligence attributed to him:—*Held*: (1) as a matter of principle, as the Board of Trade had not ordered the inquiry, & merely appeared on the appeal in discharge of a public duty, costs ought not to be awarded against the Board; (2) the question of the right to appeal, contested by the Board, raised a matter of public interest, & the master was entitled to the costs of the preliminary motion.—*THE ROYAL STAR* (No. 2), [1928] P. 144; 97 L. J. P. 107; 44 T. L. R. 408; 17 Asp. M. L. C. 417, D. C.

**1610. Add. Annotation:**—*Refd. Campbell v. Pollak*, [1927] A. C. 732.

**1613a. — Appeal out of time—Discretion of court to extend time—Objection that appeal out of time not taken promptly.**—Where an appeal from a decision confirming the report of the registrar & merchants in an action of damage by collision was out of time:—*Held*: as the objection that the appeal was out of time had not been taken at the earliest possible moment, the ct. would, in its discretion, hear the appeal.—*THE OTTO-KAR*, [1921] W. N. 266, C.A.

*Annotation:*—*Appld. London S.S. & Trading Corp. v. Russian Volunteer Fleet* (1926), 135 L. T. 607.

**1619. Add. Annotation:**—*Mentd. Australia (Owners) v. Nautilus (Owners), The Australia* (1926), 95 L. J. P. 145.

**1620a. — Advice to be in writing.**—Where the Ct. of Appeal sits with nautical assessors it is convenient that the advice of the assessors should be elicited by written questions, so that these questions & the answers may be available in the House of Lords.—*MELANIE (OWNERS) v. SAN ONOFRE (OWNERS)* (1919), 35 T. L. R. 507; 63 Sol. Jo. 552; [1927] A. C. 162, n.; *subsequent proceedings*, [1925] A. C. 246, H. L.

*Annotations:*—*Mentd. S.S. Artemisia v. S.S. Douglas* (1921), [1927] A. C. 164, n.; *S.S. Australia v. S.S. Nautilus*, [1927] A. C. 115.

**1622. Add. Annotation:**—*Refd. Australia (Owners) v. Nautilus (Owners), The Australia* (1926), 95 L. J. P. 145.

**1627. Add. Annotations:**—*Mentd. The Kingsway*, [1918] P. 344; *Admiralty Comrs. v. S.S. Susquehanna*, [1926] A. C. 655.

**1630. Add. Annotation:**—*Mentd. The Joannis Vatis* (No. 2), [1922] P. 213.

**1635. Add. Annotation:**—*Consd. Re Article X of Articles of Agreement for Treaty between Great Britain & Ireland* (1928), 45 T. L. R. 57.

**1638. Add. Annotations:**—*Mentd. The Clan Sutherland*, [1918] P. 332; *The Kenora*, [1921] P. 90.

## PART IV. SECT. 4, SUB-SECT. 1.

**aa. In estimating weight of evidence—Witnesses not heard in court below.**—Where the trial judge did not hear or see the witnesses, an appellate ct. is as competent to appreciate the facts & estimate the credibility of the evidence as the ct. of first instance.—

J.S.

CANADIAN Co., LTD. v. THE (1919), 19 Exch. C. R. 116; 48 D. L. R. 461.—CAN.

**ab. — Witnesses heard in court below.**—Where the local judge in Admiralty has seen & heard the witnesses & was assisted by two assessors, the Exchequer Ct. of Canada, sitting as a ct.

of appeal, should not interfere with the decision of the judge of first instance as regards pure questions of fact, unless it is firmly of the opinion that such decision is clearly erroneous.—*FRASER v. S.S. AZTEC* (1920), 20 Exch. C. R. 39; 56 D. L. R. 440; (1921), 20 Exch. C. R. 450; 63 D. L. R. 543.—CAN.



1640. *Add. Annotation* :—*Refd.* Hontestroom (Owners) v. Sagaporack (Owners), Hontestroom (Owners) v. Durham Castle (Owners) (1926), 95 L. J. P. 153.
1642. *Add. Annotation* :—*Refd.* Hontestroom (Owners) v. Sagaporack (Owners), Hontestroom (Owners) v. Durham Castle (Owners) (1926), 95 L. J. P. 153.
- 1642a. ———.]—Observations of LORD SUM-  
on the practice of the Ct. of Appeal  
in reviewing decisions of the Admlty. Ct.  
depending on the credibility of witnesses.—  
S.S. HONTESTROOM v. S.S. SAGAPORACK, S.S.  
HONTESTROOM v. S.S. DURHAM CASTLE,  
[1927] A. C. 37; 95 L. J. P. 153; 136 L. T.  
33; 17 Asp. M. L. C. 123; *sub nom.* THE  
SAGAPORACK, THE HONTESTROOM, 42 T. L. R.  
741, H. L.
- Annotation* :—*Refd.* The Backworth, [1927] P. 256.
- 1644a. Decision of court below not interfered with  
—Joinder of plaintiffs convenient—& within  
rules locally applicable—Action in rem.]—  
MARLBOROUGH HILL, SHIP v. COWAN & SONS,  
No. 541a, *ante*.
1646. *Add. Annotations* :—*Apld.* The Kingsway,  
[1918] P. 344. *Refd.* Admiralty Comrs. v.  
S.S. Chekiang, [1926] A. C. 637; Admiralty  
Comrs. v. S.S. Susquehanna, [1926] A. C. 655.
1648. *Add. Annotations* :—*Refd.* Hontestroom  
(Owners) v. Sagaporack (Owners), Hontest-  
room (Owners) v. Durham Castle (Owners)  
(1926), 95 L. J. P. 153. *Mentd.* Australia  
(Owners) v. Nautilus (Owners), The Australia  
(1926), 95 L. J. P. 145.
1649. *Add. Annotation* :—*Consd.* S.S. Hontestroom  
v. S.S. Sagaporack, S.S. Hontestroom v.  
S.S. Durham Castle, [1927] A. C. 37.
- 1655a. ——— Failure to consider important matter  
—Maritime Conventions Act, 1911 (c. 57).]—  
Where a judge sitting in Admlty. has appor-  
tioned the blame between two wrongdoing  
vessels in accordance with sect. 1 of the above  
Act, the Ct. of Appeal, if it finds that he has  
not taken into consideration at all an  
obviously important matter, is bound to  
review his decision as to the apportionment  
of blame in the same way as it would if it  
had differed with him on the facts & had  
found that one of the vessels was more blame-  
worthy as regards matters in respect of which  
she was not held to blame in the ct. below.—  
THE CLARA CAMUS (1925), 134 L. T. 50; 16  
Asp. M. L. C. 570, C. A.; *revid.* on other  
grounds (1926), 136 L. T. 291; 17 Asp. M. L. C.  
171, H. L.
1666. *Add. Annotation* :—*Mentd.* Bradley v. New-  
son, [1919] A. C. 16.
1674. *Add. Annotations* :—*Mentd.* The Clan  
Sutherland, [1918] P. 332; The Kenora,  
[1921] P. 90.
1682. *Add. Annotation* :—*Refd.* The Modica, [1926]  
P. 72.
1691. *Add. Annotation* :—*As to* (1) *Refd.* The  
Modica, [1926] P. 72.
1694. *Citations* :—For "P. D. 218" read "8  
P. D. 218."  
*Add. Annotation* :—*Refd.* The Modica, [1926]  
P. 72.
- 1695a. ———.]—CANTON (OWNERS)  
v. RHEBUS (OWNERS), [1928] W. N. 214, H. L.  
*Annotation* :—*Distd.* The Young Sid (1928), 45 T. L. R. 138.
- 1696a. ———.]—In a county ct.  
action for damage by collision the judge  
pronounced pl'tfs.' vessel two-thirds to blame  
& defts.' vessel one-third to blame. Pl'tfs.  
appealed, & the Div. Ct. pronounced the  
vessels equally to blame :—*Held* : the matter  
of costs was in the control of the appellate  
ct., & appl'ts., having succeeded on a sub-  
stantial ground of appeal, were entitled to the  
costs of the appeal.—THE YOUNG SID (1928),  
45 T. L. R. 138, D. C.
1708. *Add. Annotation* :—*Apld.* The Young Sid  
(1928), 45 T. L. R. 138.

## Part V. Jurisdiction and Practice of other Courts having Admiralty Jurisdiction.

1710. *Add. Citation* :—14 Asp. M. L. C. 21.
1717. *Add. Citations* :—*sub nom.* Re PERFECT v.  
POYNTER, R. v. ESSEX COUNTY COURT JUDGE,  
53 L. J. Q. B. 423; *sub nom.* R. v. ABDY, 32  
W. R. 754.
1719. *Add. Annotation* :—*Mentd.* Leopold Walford  
(London) v. Les Affreteurs Reunis Soc.  
Anon., [1918] 2 K. B. 498.
1722. *Add. Annotation* :—*Apld.* The Norfolk Coast  
(1922), 153 L. T. Jo. 450.
- 1723a. ———.]—A collision took place in the  
Thames between the dumb barge *H.* & the  
steamer *C.* Proceedings were commenced by  
the owners of *H.* in the High Ct., but the  
action was subsequently settled, the owners  
of the *H.* accepting £48 10s. in satisfaction  
of their claim. Defts. objected to payment  
of pl'tfs.' costs on the High Ct. scale, on the  
ground that the matter was within the  
Admlty. jurisdiction of the county ct., where  
the action should have been commenced :—  
*Held* : pl'tfs. were warranted in commencing  
proceedings in the High Ct. & were entitled  
to have their costs taxed on the High Ct.  
scale.—THE NORFOLK COAST (1922), 153  
L. T. Jo. 450.
1729. *Add. Annotation* :—*Mentd.* Mancomunidad  
Del Vapor Frumiz v. Royal Exchange  
Asce., [1927] 1 K. B. 567.
1732. *Add. Annotation* :—*Apld.* The Norfolk  
Coast (1922), 153 L. T. Jo. 450.
1740. *Add. Annotation* :—*Mentd.* Hontestroom  
(Owners) v. Sagaporack (Owners), Hontest-  
room (Owners) v. Durham Castle (Owners)  
(1926), 95 L. J. P. 153.
1745. *Add. Annotation* :—*Mentd.* Hontestroom

PART IV. SECT. 4, SUB-SECT. 3.—A. discretion of the ct., & unless the same  
1660 B. ———.]—The is excessive, an appellate tribunal  
amount of salvage reward is in the ought not to interfere.—SHIP SENECA  
v. MACDONALD, [1923] Exch. C. R.  
177; *affo.*, [1923] Exch. C. R. 13.—  
CAN.

(Owners) v. Sagaporack (Owners), Hontestroom (Owners) v. Durham Castle (Owners) (1926), 95 L. J. P. 153.

1750. *Add. Annotation*:—*Refd.* The British Trade, [1924] P. 104.

1751. *Add. Annotation*:—*As to* (2) *Refd.* The Ambatielos, The Cephalonia, [1923] P. 68.

1752. *Add. Annotation*:—*Refd.* The Ambatielos, The Cephalonia, [1923] P. 68.

1766. *Add. Annotation*:—*Refd.* Australia (Owners) v. Nautilus (Owners), The Australia (1926), 95 L. J. P. 145.

1769. *Add. Annotation*:—*Generally, Mentd.* The Ambatielos, The Cephalonia, [1923] P. 68.

1793. *Add. Annotation*:—*Mentd.* The Tervaeete, [1922] P. 259.

1794. *Add. Citation*:—13 Moo. P. C. C. 132; 15 E. R. 50.

*Add. Annotation*:—*Refd.* The Yuri Maru, The Woron [1927] A. C. 906.

1794a. — That of High Court before 1890.]—(1) The effect of Colonial Cts. of Admty. Act, 1890 (c. 27), s. 2 (2), is to limit the jurisdiction of colonial cts. of admty. established under

the Act to the admty. jurisdiction of the High Ct. of England as it existed at the passing of the Act; the extension of the admty. jurisdiction of the High Ct. by Jud. (Consolidation) Act, 1925 (c. 49), s. 22, does not apply to colonial cts. of admty.

(2) The Exch. Ct. of Canada has not, under sect. 22 (1) (xii) of the above Act of 1925, jurisdiction *in rem* to try an action for damages for breach of a charterparty.—THE YURI MARU, THE WORON, [1927] A. C. 906; 43 T. L. R. 698; *sub nom.* SNIA VISCOSA SOCIETA, ETC. v. S.S. YURI MARU, CANADIAN AMERICAN SHIPPING CO. v. S.S. WORAN, 96 L. J. P. C. 137; 137 L. T. 747; 71 Sol. Jo. 649; 17 Asp. M. L. C. 322, P. C.

1795. *Add. Annotation*:—*Refd.* The Yuri Maru, The Woron, [1927] A. C. 906.

1796. *Add. Annotation*:—*Generally, Mentd.* The British Trade, [1924] P. 104.

1799a. —.]—THE VROUW DOROTHEA (1754), cited 2 Ch. Rob. at p. 246; 165 E. R. at p. 304.

1811a. — Action in rem for damages for breach of charterparty.]—THE YURI MARU, THE WORON, No. 1794a, *ante*.

#### PART V. SECT. 5.

a i. — *Plea of forum non conveniens.*]—Circumstances in which plea sustained.—LA SOCIÉTÉ DU GAZ DE PARIS v. LA SOCIÉTÉ ANONYME DE NAVIGATION "LES ARMATEURS FRANÇAIS," [1926] S. C. (H. L.) 13.—SCOT.

#### PART V. SECT. 7, SUB-SECT. 1.

c i. — *Necessaries.*]—A claim for necessities can be enforced in a colonial admiralty ct. by a suit *in rem*.—THE HEIWA MARU v. BIRD & Co. (1923), 1 L. R. 1 Ran. 78.—IND.

#### PART V. SECT. 7, SUB-SECT. 2.

c (p. 253) i. —.]—Although the Exch. Ct. of Canada on its Admty. side sits in Canada, it administers the maritime law of England in like manner as if the cause of action were being tried & disposed of in the English Ct. of Admty.—ROBILLARD v. THE ST. ROCH & CHARLAND (1921), 62 D. L. R. 145; 21 Exch. C. R. 132.—CAN.

c (p. 253) ii. — *Necessaries.*—*Ship not "under arrest."*]—Where a ship is not under arrest & its owner is domiciled in Canada, the Exch. Ct. of Canada has no jurisdiction over an action for repairs or necessities supplied to the ship.—STACK v. THE BARGE LEOPOLD (1919), 18 Exch. C. R. 325.—CAN.

f (p. 253) i. —.]—Subject to the exceptions mentioned in Canada Shipping Act, 1906 (c. 113), s. 191, in an action for seaman's wages earned on a ship registered in Canada, where the amount of recovery is less, although the amount sued on is more than \$200, the Exch. Ct. in Admty. is without jurisdiction.—KOUAME v. S.S. MAPLE COURT (1921), 21 Exch. C. R. 226.—CAN.

sg. — *Stevedores' claims.*]—Pltfs., stevedores, entered into a contract to load a vessel on its arrival at Montreal. The captain of the ship refused to allow them to load the vessel, & thereupon the ship was arrested on a claim for damages arising out of breach of the contract:—*Held*: (1) the admty. jurisdiction of the ct. was no greater than the admty. jurisdiction of the High Ct. of England; (2) upon the facts the ct. had no jurisdiction to entertain the action.—WOLFE v. S.S. CLEARPOOL (1920), 20 Exch. C. R. 153.—CAN.

—.]—The Exch. Ct. of Canada has jurisdiction over stevedores claims.—J. P. FERNS v. THE INGELBY, [1923] Exch. C. R. 208.—CAN.

— *Maritime lien*—Created by foreign law.]—See Nos. 348 i-iii, *ante*.

st. — *Appellate jurisdiction.*—*Necessity for leave to appeal.*—*Interlocutory judgment.*]—The Exch. Ct., sitting in appeal, cannot entertain an appeal from an interlocutory decree without leave having previously been obtained from either the local judge in admty. or from the Judge of the Exch. Ct.—JOHNSON & MACKAY v. S.S. CHARLES S. NEFF (No. 1) (1918), 17 Exch. C. R. 155.—CAN.

sg. S. P. Re 251 BARS OF SILVER & SEA INSURANCE CO. v. CANADIAN SALVAGE ASSOCN. (1915), 15 Exch. C. R. 367.—CAN.

sk. —.]—(1) Where by statute an appeal is given to the Exch. Ct. of Canada from an interlocutory judgment or order, upon permission so to appeal having been previously obtained, & when no such permission has been obtained, the ct. has no jurisdiction to hear the appeal.

(2) The judgment of a local judge of admty. confirming a taxation by the district registrar of the marshal's bill for services, etc., relating to the care of the ship whilst in his custody is an interlocutory judgment.—McCULLOUGH v. THE SAMUEL MARSHALL, ELIASOPH v. STEEL CO. OF CAN. (QUE.) (1922), 68 D. L. R. 729; 21 Exch. C. R. 351.—CAN.

sl. — *Appeal as to costs.*]—*Semble*: appeals involving merely a question of costs should not be entertained, more particularly when the appeal is from the decision of the trial judge confirming the findings of the taxing master, or when the matter is only one of *quantum* involving the exercise of his discretion.—McCULLOUGH v. THE SAMUEL MARSHALL, ELIASOPH v. STEEL CO. OF CAN. (QUE.) (1922), 68 D. L. R. 729; 21 Exch. C. R. 351.—CAN.

— *No jurisdiction to hear appeal from Commissioner's Court*

*under Canada Shipping Act.*]—R. v. PERREAULT (1922), 66 D. L. R. 671; 21 Exch. C. R. 355.—CAN.

— *Transfer of action from one admiralty district to another.*]—See cases ti, wi, *post*.

sn. — *Exercise of jurisdiction.*—*Appellate jurisdiction.*—*Questions of fact.*]—Where the local judge in admty. has seen & heard the witnesses & was assisted by two assessors, the Exch. Ct. of Canada, sitting as a ct. of appeal, should not interfere with the decision of the judge of first instance as regards pure questions of fact, unless it is firmly of opinion that such decision is erroneous.—FRASER v. S.S. AZTEC (1920), 20 Exch. C. R. 39; 56 D. L. R. 440; (1921), 20 Exch. C. R. 450; 63 D. L. R. 543.—CAN.

sp. — *Dismissal of appeal for want of prosecution.*]—There is no distinction in principle to be drawn between the inherent authority of the ct. to order the dismissal of a case on appeal for want of prosecution, & the dismissal of one at first instance.—McCULLOUGH v. THE SAMUEL MARSHALL, ELIASOPH v. STEEL CO. OF CAN. (QUE.) (1922), 70 D. L. R. 16; 21 Exch. C. R. 426.—CAN.

st. — *Application for retention of bail bond in court or for re-arrest of ship.*]—Application dismissed.—EMPIRE STEVEDORING CO., LTD. v. THE EMPRESS OF JAPAN, [1927] 2 D. L. R. 985; 38 B. C. R. 438.—CAN.

ti. — *Transfer of action.*—*Convenience.*]—(1) It is in the discretion of the ct. to order the removal of a suit from one district to another upon cause shown.

(2) The determining factor in granting such an order is that of general convenience to the parties.—JOHNSON v. THE CHARLES S. NEFF (1918), 21 Exch. C. R. 171.—CAN.

wi. —.]—On the ground of comity, the Exch. Ct. will not entertain an application for the transfer of a cause from one admty. district to another without the application having first been made before the local judge.—JOHNSON & MACKAY v. S.S. CHARLES S. NEFF (No. 2) (1918), 17 Exch. C. R. 1.—CAN.

## ENGLISH AND EMPIRE DIGEST SUPPLEMENT.

### PART V. SECT. 7, SUB-SECT. 3.

sw. *High Court.*]—The High Ct. is a colonial ct. of Admty. & has jurisdiction in an action by consignees against a ship, the owner of which is not domiciled in Australia, for delivery in a damaged condition of goods for which the consignees hold a bill of lading issued by the master of the ship.—SHARP (JOHN) & SONS, LTD. v. THE KATHERINE MACKALL (1924), 34 C. L. R. 420.—AUS.

### PART V. SECT. 7, SUB-SECT. 5.

rl. ——— *Tort of master within jurisdiction.*]—If a tort is committed within the jurisdiction of the ct. by the master of a ship, being a *peregrinus*, against a member of his crew, also a *peregrinus*, the ct. has jurisdiction to arrest the tortfeasor or his goods, & to try an action based upon the tort; but the commission of such a tort is not a ground for attaching the ship to found jurisdiction unless the master has an interest in the ship.—NOLAN v. S.S. RUSSEL HAVERSIDE,

[1921] C. P. D. 136.—S. AF.

sz. ——— *Action in rem—Necessaries—What law applicable.*]—In a claim *in rem* against the proceeds of a vessel for a sum of money alleged to have been expended for repairs & necessities in priority to prior mtgees. of the vessel the law to be applied is English admty. law & not Roman-Dutch Law.—CROOKS & CO. v. AGRICULTURAL CO-OPERATIVE UNION, LTD., [1922] App D. 423; 42 N. L. R. 216.—S. AF.



# AGENCY.

## Part I.—The Relation of Agency.

1. *Add. Annotation*:—**Consd.** Clayton-Greene v. De Courville (1920), 36 T. L. R. 790.
3. *Add. Annotations*:—**Mentd.** Keen v. Mear, [1920] 2 Ch. 574; Jones (Holloway) v. Woodhouse, [1923] 2 K. B. 117; Prager v. Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566; Tarn v. Scanlan, Neilsen, Andersen v. Collins, Muller (London) v. Lethem, Muller v. I. R. Comrs. (1927), 44 T. L. R. 53.
7. *Add. Annotations*:—**Mentd.** London Joint Stock Bank v. Macmillan & Arthur, [1918] A. C. 777; Joachimson v. Swiss Bank Corpn., [1921] 3 K. B. 110.
8. *Add. Annotations*:—**Mentd.** *Re* Richardson, Pole v. Pattenden, [1920] 1 Ch. 423; Taylor v. Davies, [1920] A. C. 636; Dominion Coal Co. v. Maskinonge S.S. Co., [1922] 2 K. B. 132.
14. *Add. Annotation*:—**Mentd.** Boynton v. Richardson (1924), 69 Sol. Jo. 107.
15. *Add. Annotation*:—**Refd.** Wisbech R. C. v. Ward, [1927] 2 K. B. 556.
16. *Add. Annotations*:—**Consd.** Wisbech R. D. C. v. Ward (1927), 91 J. P. 200. **Refd.** Brightman v. Tate, [1919] 1 K. B. 463; Boynton v. Richardson (1924), 69 Sol. Jo. 107; Wisbech R. C. v. Ward, [1928] 2 K. B. 1.
17. *Add. Annotations*:—**Mentd.** Folkes v. King, [1923] 1 K. B. 282; Lowther v. Harris, [1927] 1 K. B. 393.
19. *Add. Annotations*:—**As to** (2) **Refd.** A.-G. v. De Keyser's Royal Hotel, [1920] A. C. 508. **Generally, Mentd.** Oakley v. Wilson, [1927] 2 K. B. 279.
21. *Add. Citation*:—8 T. L. R. 94. *Add. Annotations*:—**Refd.** Taylor v. Davies, [1920] A. C. 636. **Mentd.** Weld v. Petre (1928), 97 L. J. Ch. 399.
23. *Annotation*:—**Mentd.** Williams v. Page (No. 4) (1859), 28 Beav. 148.
28. *Add. Annotations*:—**Refd.** Simeons v. Durand's Trustee, [1928] 2 K. B. 66. **Mentd.** Lamb v. Wright, [1924] 1 K. B. 857.
29. *Add. Annotations*:—**Consd.** Simeons v. Durand's Trustee, [1928] 2 K. B. 66. **Refd.** *Re* Kaufman Segal & Domb, *Ex p.* The Trustee, [1923] 2 Ch. 89. **Mentd.** Lamb v. Wright, [1924] 1 K. B. 857.
31. *Add. Annotations*:—**Mentd.** Robinson v. Marsh, [1921] 2 K. B. 640; Bradford v. Price (1923), 92 L. J. K. B. 871.
35. *Add. Annotation*:—**Mentd.** Akt. Dampskibs Steinstad v. Pearson (1927), 137 L. T. 533.

## Part II. Competency of Parties—Acts which can be done by an Agent.

37. *Add. Annotation*:—**Refd.** Dodd v. Amalgamated Marine Workers' Union, [1924] 1 Ch. 116.
40. *Add. Annotation*:—**Refd.** Dodd v. Amalgamated Marine Workers' Union, [1924] 1 Ch. 116.
53. *Add. Annotation*:—**Mentd.** L. & N. E. Ry. v. Easington Union Assmt. Com. & Easington-with-Thorpe Parish Council (1925), 95 L. J. K. B. 255.
68. *Add. Annotations*:—**Generally, Refd.** *Re* Ellis, [1925] 1 Ch. 564; Huddersfield Fine Worsted v. Todd (1925), 42 T. L. R. 52. **Mentd.** *Re* Lee, *Ex p.* Grunwaldt (1919), 89 L. J. K. B. 364; *Re* Bankruptcy Notice, [1924] 2 Ch. 76.
69. For "Dramatic Copyright Act, 1888," read "Dramatic Copyright Act, 1833."
87. *Add. Annotation*:—**Mentd.** Banbury v. Bank of Montreal, [1918] A. C. 626.
88. *Add. Annotation*:—**Refd.** Banbury v. Bank of Montreal, [1918] A. C. 626.
90. *Add. Annotation*:—**Mentd.** Veasey v. Beard-sley (1924), 23 L. G. R. 118.
91. *Add. Annotations*:—**Refd.** Wigg v. A.-G. of the Irish Free State (1927), 96 L. J. P. C. 88. **Mentd.** Cayzer, Irvine v. Board of Trade (1925), 95 L. J. K. B. 134; *Re* Mason (1928), 97 L. J. Ch. 321.

### PART I.

1 ii. ———.]—The relation of principal & agent only arises when the person called the agent has authority expressed or implied to act on behalf of the other called the principal, & consents so to act.—SMITH v. SLATTARD (1919), 21 W. A. L. R. 19.—AUS.

21. ———.]—*Held*: in the circumstances despite the designation of deft. as agent by pltf., the real relationship between the parties was that of purchaser & seller.—BRIDGEFORD v. DIXON, [1918] E. D. L. 156.—S. AF.

22. *Agent distinguished from—Joint adventurer.*—The distinction between

the position of a joint adventurer & an ordinary agent buying for his principal with the understanding that he is to be remunerated for his services, pointed out.—SUTTON v. FORST (1924), 55 O. L. R. 281.—CAN.

ai. ———.]—Where a consignee of goods for sale is authorised to sell them at a certain minimum price & told that whatever amount he obtains above that price will be his commission, the relationship between consignor & consignee is that of principal & agent.—REX GROCERY v. HIGGS & KEEN, [1925] 3 D. L. R. 565; [1925] 2 W. W. R. 402; 19 Sask. L. R. 492.—CAN.

26 iv. ———.]—GIER v. VAN AALST (Alta.) (1914), 28 W. L. R. 876.—CAN.

27 xii. ———.]—Defts. gave to pltf. a written order to ship goods from England on account of defts., & pltf. ordered goods from a manufacturer in England to be shipped in performance of this order:—*Held*: the relationship between the parties was that of principal & agent, not of vendor & purchaser.—BULTERS v. ROOPE, [1922] N. Z. L. R. 549.—N. Z.

27 xiii. ———.]—PIESSE v. TASHMANIAN, ETC. (1919), 15 Tas. L. R. 67.—AUS.

## Part III.—Classes of Agents.

105. *Add. Annotation* :—*Mentd. Collins v. Hopkins*, [1923] 2 K. B. 617.

127a. —.]—Pltfs. bought from the first defts. a quantity of seed under a written contract, which stated that the first defts., through the agency of the second defts., acting as *del credere* agents, sold the seed to pltfs. The second defts. were paid a commission by the first defts., & received nothing from pltfs. The first defts. were unable to deliver the

goods. In an action for damages :—*Held* : as the second defts. were not in fact the agents of pltfs. but only of the first defts., & as the mere description of the second defts. as *del credere* agents, without any further words making them *del credere* agents of either party in particular, did not make them agents of pltfs., the action failed as against the second defts.—*NOUVELLES HUILLERIES ANVERSOISES S. A. v. MANN (H. C.) & Co.* (1924), 40 T. L. R. 804.

## Part IV.—Formation and Evidence of the Contract of Agency.

143. *Add. Annotation* :—*Generally, Mentd. Ariadne S.S. Co. v. McKelvie*, [1922] 1 K. B. 518.

156. *Add. Annotation* :—*Refd. Thirkell v. Cambi*, [1919] 2 K. B. 590.

157. *Add. Annotations* :—*Apld. Grindell v. Bass*, [1920] 2 Ch. 487. *Refd. Thirkell v. Cambi*, [1919] 2 K. B. 590. *Mentd. North v. Loomes*, [1919] 1 Ch. 378.

164a. *Counsel — Signing pleadings.*] — B., the owner of freehold premises, agreed to sell them to E., but there was no memorandum

in writing to satisfy Stat. Frauds. B. then agreed to sell the premises to G., & a valid contract was executed, which B. did not perform. G. brought an action for specific performance against B., who by her defence signed by counsel pleaded the contract with E. in terms that made the pleading a valid memorandum within the statute. G. added E. as a deft. to the action; & E., by a counterclaim, claimed specific performance of his agreement :—*Held* : counsel was the duly authorised agent of B. to sign the

### PART III.

108 i. *Broker.*]—A broker is an agent of a special kind. A broker who approaches a buyer or seller acts in the first instance as agent of the person who employs him, but directly the other party is aware of the fact that he is a broker, he becomes the agent of both parties, not with a plenary power to bind both parties as he chooses, but to communicate between them until they are *ad idem*.—*JACOBS LEVITATZ & BRAUDE v. KROONSTAD ROLLER MILLS*, [1921] O. P. D. 38.—S. AF.

### PART IV. SECT. 2, SUB-SECT. 1.

149 iii. — *Statute of Alberta*, 1906 (c. 27).]—It is merely the terms of the agency agreement, whether they may be meagre or detailed, that must be in writing under the above Act. The price & the other terms of the proposed sale may or may not be mentioned. If they are, in the circumstances, an essential part of the agency agreement they ought to be in writing. But it is a question of interpretation, even since the statute, whether the terms mentioned as those of the proposed sale are intended merely as a basis on which the agent may negotiate or are intended to bind the agent strictly to a sale on the named terms before he can claim his commission.—*KING v. SCHON*, [1918] 3 W. W. R. 892; 44 D. L. R. 111.—CAN.

149 iv. — *Real Estate Commission Act, R.S.A.*, 1922 (c. 139), s. 2.]—The fact that a written instrument evidencing an agreement for the sale of land does not contain all the terms of the agreement does not prevent it being sufficient to satisfy the proviso to the above sect., if it is one which the ct. will order to be rectified to include the terms agreed on but omitted by mutual mistake, & which when so rectified will be enforceable by the parties thereto subject to such legal or equitable defences available to either of them as the agent who

effected the agreement cannot be held accountable for.—*HANTON v. STEDMAN*, [1925] 1 W. W. R. 642.—CAN.

149 v. — *Auctioneers & Commission Agents' Act*, 1922, s. 23—*Sufficiency of agency contract.*]—So long as the relationship of principal & agent in respect of the transaction is evidenced in writing, the mischief aimed at by the above sect. has been duly met & the requirements of the sect. satisfied, & the other terms of the agency contract may be effectively made & effectively varied verbally.—*CANNIFFE v. HOWIE*, [1925] S. R. Q. 121; 19 Q. J. P. 57.—AUS.

149 vi. — — — — —.]—So long as the relation of principal & agent in respect of the transaction in question has been evidenced in writing, the requirements of the above sect. have been complied with, & any document signed by pltf. at any time before action brought, which evidences the essential fact, the existence of the relationship in respect of the transaction in question, is sufficient to comply with the Act. It is sufficient if the writing manifests a present intention of engaging or appointing the agent in respect of a transaction by any suitable words, whether contained in one document signed by deft., or in several documents, sufficiently interconnected by internal reference, either direct or inferential, one or more of which are signed by deft., manifesting such intention on his part.—*SKIPPER v. SYRMIS*, [1925] S. R. Q. 129; 19 Q. J. P. 47.—AUS.

149 vii. — — — — —.]—*ROACH v.* [1926] S. R. Q. 24; 20 Q. J. P. —AUS.

Necessity for contract to pay commission for services in reference to the sale of land to be in writing, see Nos. 1664 xiva—1664 xivl, *post*.

§1. — *Land Agents Act*, 1912—*When applicable.*]—Dft. intimated to pltf. that he had been instructed to sell a property by private sale. Pltf.,

an accountant, told deft. that he could introduce a probable purchaser, & would do so if deft. would pay pltf. half the commission payable by the owner of the property to deft. in the event of a sale being effected. Dft. agreed, & on the same day pltf. introduced B. to deft. with whom a sale was arranged. Pltf. in his evidence stated that he was not a land agent, & for the preceding five years had had no transactions for the sale of land except the one in question :—*Held* : the arrangement between the parties was not one of a series nor the commencement of a series of transactions, but a solitary transaction, & pltf. was not a land agent within the above Act.—*COOKE v. WALLACE* (1914), 33 N. Z. L. R. 1054.—N.Z.

§ ii. — — — — —.]—*Land Agents Act*, 1912, s. 13, applies only to persons carrying on land agency as a business, & does not extend to casual agency outside the scope of the agent's business.—*CLIFTON v. JOHNSTONE*, [1921] N. Z. L. R. 35.—N.Z.

§ iii. — *Effect of.*]—The effect of *Land Agents Act*, 1912, s. 13, is not to make the contract of agency illegal by reason of the want of written authority, but merely to prevent the agent from recovering his commission by action.—*GLASGOW v. HOOD*, [1920] N. Z. L. R. 586.—N.Z.

§ iv. — — — — — *Form of appointment.*]—An appointment of a land agent under s. 13 of the above Act must be signed by the principal himself & is not sufficient if signed by an agent on his behalf.—*BUCHANAN v. SAMSON*, [1922] N. Z. L. R. 558.—N.Z.

§ v. — *Land Agents Act*, 1921 *Form of appointment.*—*Need not be in writing.*]—*OLIVER v. DICKINSON*, [1927] N. Z. L. R. 411.—N.Z.

Necessity for contract to pay commission for services in reference to the sale of land to be in writing, see Nos. 1664 xiva—1664 xivl, *post*.

pleading & to plead the contract with E., & although the signing of a memorandum within Stat. Frauds was not in the minds of either counsel or client, the pleading, as signed by counsel before E. was a party to the action, was a valid memorandum to satisfy the statute, & E. was entitled to judgment on his counterclaim, & G.'s action against B. must be dismissed.—GRINDELL v. BASS, [1920] 2 Ch. 487; 89 L. J. Ch. 591; 124 L. T. 211; 36 T. L. R. 867.

*Annotation*.—Consd. Farr, Smith v. Messers (1927), 44 T. L. R. 48.

165. *Add. Annotations*.—Consd. Keen v. Mear, [1920] 2 Ch. 574. Distd. Lewcock v. Bromley (1920), 127 L. T. 116.

166. *Add. Annotation*.—Refd. Cohen v. Roche (1926), 95 L. J. K. B. 945.

171. *Add. Annotation*.—Mentd. Clayton-Greene v. De Courville (1920), 36 T. L. R. 790.

182. *Add. Annotations*.—As to (1) Refd. Falcon v. Famous Players Film Co. (1925), 42 T. L. R. 91. Generally, Mentd. Performing Right Soc. v. Mitchell & Booker, [1924] 1 K. B. 762.

189. *Add. Citation*.—21 J. P. 4. *Add. Annotations*.—As to (1) Consd. Kemp v. Elisha, [1918] 1 K. B. 228. As to (2) Refd. Bygraves v. Dicker, [1923] 2 K. B. 585.

190. *Add. Annotation*.—Generally, Mentd. Cohen v. Rothfield, [1919] 1 K. B. 410.

192. *Add. Annotations*.—As to (1) Consd. Performing Right Soc. v. Caryl Theatrical Syndicate, [1924] 1 K. B. 1. Refd. Performing Right Soc. v. Mitchell & Booker, [1924] 1 K. B. 762.

196. *Add. Annotations*.—Distd. Keeling v. Pearl Assce. (1923), 129 L. T. 573. Consd. Paxman v. Union Assce. Soc. (1923), 39 T. L. R. 424. Folld. Newsholme v. Road Transport & General Insce. (1928), 45 T. L. R. 123.

203. *Add. Annotations*.—Consd. Brooke v. Bool, [1923] 2 K. B. 578. Refd. Pratt v. Patrick, [1924] 1 K. B. 488.

210. *Add. Annotation*.—Mentd. Yorke v. Yorkshire Insce., [1918] 1 K. B. 662.

#### SECT. 4.—AGENCY OF NECESSITY (Vol. I., p. 293).

For "See HUSBAND & WIFE; SHIPPING & NAVIGATION," substitute as follows:—

##### PART IV. SECT. 3, SUB-SECT. 1.

171 iv. —.]—The onus of establishing the authority of an agent is upon the person who seeks to bind the principal.—STEVENS v. MERCHANTS BANK OF CANADA, [1920] 1 W. W. R. 52; 49 D. L. R. 528; 30 Man. L. R. 46.—CAN.

176 v. —.]—*Claim to goods of principal—in possession of third party.*—If a person other than the owner makes a demand for return of goods in possession of a third party, he should present credentials or some written authority to show that he is acting as agent of the owner.—CRAIG v. MOCREATH, [1922] 2 W. W. R. 1276.—CAN.

176 vi. —.]—PLUMB v. W. C. MACDONALD REGISTERED, LATIMER v. FOSTER TOBACCO CO. LTD. (1924), 27 O. W. N. 365.—CAN.

ri. —.]—Possession solely cannot be evidence of both agency & authority, & the fact that one man is

with another does not necessarily make one the agent for the other.—TURNER v. BEATON (P. E. I.) (1908), 4 E. L. R. 325.—CAN.

177 v. —.]—If A has entered into a contract to purchase land it is open to B. to show by parol evidence that A. did so as his agent & to ask for a declaration of that agency.—VASELENAK v. VASELENAK, [1921] 1 W. W. R. 889; 57 D. L. R. 37; 16 Alta. L. R. 256.—CAN.

177 vi. —.]—A husband obtained from his wife authority to act on her behalf.—*Held*: It was competent to prove the authority by parol evidence.—WALKER v. HENDRY, [1926] S. C. 855.—SCOT.

177 vii. —.]—Where a contract is entered into by a person in his own name, but as agent of another, if in the contract itself there is no special or assertion of property the

215a. *Extent of doctrine.*—An agency of necessity can arise in other cases than that of carriers by land or sea or the acceptor of a bill of exchange for the honour of the drawer. Extraordinary circumstances, such as war conditions, which make it impossible for a buyer of goods on behalf of a principal abroad either to despatch them or to communicate with him, would entitle the buyer to sell the goods as an agent of necessity. But in order to establish an agency of necessity the agent must prove that there was an actual & definite commercial necessity for the sale, & that the transaction was *bond fide* in the interest of the principal.

Where an agent in London bought skins in 1915 & 1916 to be forwarded to his principal in Roumania as the principal might direct, & in consequence of the occupation of Roumania by the Germans in 1916, the agent was unable to send the skins to his principal or communicate with him, & the agent thereupon sold the skins without authority.—*Held*: the agent had failed to establish agency of necessity because (a) the deterioration of the furs might have been prevented by putting them in cold storage at a comparatively small expense, & moreover, they had steadily increased in value, & (b) the agent had not acted *bond fide* in selling the skins.—PRAGER v. BLATSPIEL, STAMP & HEACOCK, LTD., [1924] 1 K. B. 566; 93 L. J. K. B. 410; 130 L. T. 672; 40 T. L. R. 287; 68 Sol. Jo. 460.

*Annotation*.—Consd. Jebara v. Ottoman Bank, [1927] 2 K. B.

See, also, original volume, p. 319, No. 390.

215b. *Repayment to agent of necessity.*—PONTYPRIDD UNION v. DREW, [1927] 1 K. B. 214; 95 L. J. K. B. 1030; 136 L. T. 83; 90 J. P. 169; 42 T. L. R. 677; 70 Sol. Jo. 795; 24 L. G. R. 405, C. A.

215c. —.]—Observations by SCRUTTON, L.J., on the limits of the doctrine.—JEBARA v. OTTOMAN BANK, [1927] 2 K. B. 254; 96 L. J. K. B. 581; 137 L. T. 101; 43 T. L. R. 369; 32 Com. Cas. 228, C. A.; on appeal, sub nom. OTTOMAN BANK v. JEBARA, [1925] A. C. 269, H. L.

Power to delegate in cases of supervening necessity.—See original volume, pp. 390, 391, Nos. 939-942.

Authority of carrier of goods—Land carrier.—

agency may be proved by parol.—MUSSON v. HEAD, [1926] 1 D. L. R. 965; 58 O. L. R. 219.—CAN.

qi. —.]—ANDERSON v. CAMERON (1857), 6 Gr. 285.—CAN.

qii. —.]—WHITTAKER v. TAYLOR (Alta.) (1911), 19 W. L. R. 662; 1 W. W. R. 259.—CAN.

qiii. —.]—CROWN LUMBER CO. v. SAULSBERRY (Alta.) (1913), 23 W. L. R. 877; 11 D. L. R. 17; 4 W. W. R. 168.—CAN.

##### PART IV. SECT. 3, SUB-SECT. 2.

sb. *Person entering into contract "acting on behalf of another."*—To say that a man entered into a contract "acting on behalf of another" is to allege in the absence of any qualifying statement that he entered into it as the agent of that other.—LIND v. SPICER BROTHERS (AFRICA), LTD., [1917] App. D. 147. S. AF.



See CARRIERS, Vol. VIII., pp. 26, 35, Nos. 151, 201.

Master of ship.]—See SHIPPING & NAVIGATION.

Authority of wife to pledge husband's credit.]—See HUSBAND & WIFE.

Acceptance of bill of exchange for honour of drawer.]—See BILLS OF EXCHANGE, Vol. VI., pp. 415, 416.

## Part V.—Authority of the Agent.

246. *Add. Annotation*:—*Refd. Ralli v. Compania Naviera Sota y Aznar*, [1920] 2 K. B. 287.

272. *Add. Annotation*:—*Refd. Reckitt v. Barnett, Pembroke & Slater*, [1928] 2 K. B. 244.

281. *Add. Annotations*:—*Consd. Reckitt v. Barnett, Pembroke & Slater*, [1928] 2 K. B. 244. *Refd.*

*Underwood v. Bank of Liverpool, Same v. Barclays Bank*, [1924] 1 K. B. 775.

288. *Add. Annotation*:—*Refd. Reckitt v. Barnett, Pembroke & Slater*, [1928] 2 K. B. 244.

294. *Add. Annotation*:—*Refd. Reckitt v. Barnett, Pembroke & Slater*, [1928] 2 K. B. 244.

### PART V. SECT. 2, SUB-SECT. 1.

240 v. — *Effect of ratification clause.*—Where the whole object of a ratification clause is to carry on business in the principal's name, & the acts to be ratified, even when excessive, are specifically said to be acts done in the principal's name, the clause cannot be construed to change the whole nature of the power by making the attorney the universal agent of his principal.—*BANK OF TORONTO v. MATHESON*, [1927] 3 W. W. R. 10.—CAN.

247 i. *General powers—Limited by recital.*—A power of attorney enabling an agent to grant a lease is not revoked by the return of the landlord to the United Kingdom, even though the document containing the power of attorney states that it is granted owing to the grantor being about to depart from the United Kingdom.—*GRAHAM v. MANDERS* (1918), 53 I. L. T. 5.—IR.

258 iii. — — — — —.]—There is no power in an agent, acting under general power of attorney, to present an insolvency petition on behalf of his principal, unless the power expressly authorises such act.—*Re OSMAN* (1919), 40 N. L. R. 17.—S. AF.

277 iv. — — — — —.]—Power to borrow money & secure its repayment by mtge. is not to be inferred merely from general powers added to an enumeration of specific powers in a power of attorney, unless the exercise of such a power is strictly necessary to carry out the express purpose of the instrument or the acts specifically authorised thereby.—*ANDREWS v. SINCLAIR*, [1923] 2 D. L. R. 903; 2 W. W. R. 166.—CAN.

277 v. — — — — —.]—A bare power of attorney to make & indorse notes, cheques, etc., does not authorise the attorney to raise loans on his principal's credit for the principal himself or for the attorney's own accommodation or for a third party; nor is such authority conferred by a general power given the attorney to do all "other acts & things for the purpose of carrying on any business in my name." The power to borrow money must be conferred in express terms, & when this power is alleged to be based on a power of attorney, the document must be read strictly.—*BANK OF TORONTO v. MATHESON* (Sask.), [1927] 4 D. L. R. 328; [1927] 3 W. W. R. 10.—CAN.

283 ii. — — — — —.]—Applt. co. gave to H., customs broker, a power of attorney "to transact all business which" applt. co. "may have with the Collector of the Port of Montreal or relating to the Department of the Customs of the said Port . . . ratifying & confirming all that . . . said attorney & agent shall do . . ." Cheques to the order of the collector of Customs were given to H. on his requisition for the payment of duties

on goods imported by applt. co., these cheques being made by the latter for fixed amounts corresponding to the invoices. Afterwards, through fraudulent devices, H., having succeeded in passing entries for much smaller sums than the quantity of goods required, induced the Customs House cashier to take the cheques thus issued by applt. co. for a higher amount than the one apparently due, & either to apply the surplus in payment of duties owing by third parties or to reimburse him in cash.—*Held*: (1) It was within the scope of the power of attorney given to H. by applt. co. that he should receive, in cash from the custom officials, balances of cheques delivered by him to them, after deducting the duties payable in respect of entries made by H. on behalf of applt. co.; (2) it was not within the scope of the power of attorney that he should direct the application of balances of applt. co.'s cheques in payment of duties owing by H.'s other customers.—*CANADIAN PACIFIC RY. CO. v. R.* (1917), 55 S. C. R. 374; 37 D. L. R. 719.—CAN.

283 iii. — — — — —.]—*Power to withdraw from bank.*—A joint savings account with a bank was opened in the names of plff. & her husband. After the death of the husband plff. gave her solr. a power of attorney, by which he was authorised to withdraw money from banks or individuals & to deposit same in any other bank or other place. In pursuance of the oral instructions of the solr., & on production of the power of attorney & a certified copy of letters probate of the husband's will, the bank paid over the balance of the account to the husband's exors.—*Held*: the bank had acted rightly.—*ROSS v. CANADIAN BANK OF COMMERCE (Alta.)*, [1927] 3 D. L. R. 1056; [1927] 3 W. W. R. 182.—CAN.

287 i. *See, also*, No. 287 vi., *post*.

287 iv. — — — — —.]—*Power to discharge.*—A power of attorney appointed the grantor's wife his agent for the purpose of all dealings with his property, real or personal, in Canada. In the specific clause granting the power to execute instruments in connection with his real property, a discharge of mtge. was not named as one of the instruments.—*Held*: the very general words used in the power of attorney covered the right of the agent to execute a discharge of mtge.—*Re LAND TITLES ACT, Re REGISTRATION OF A POWER OF ATTORNEY*, [1918] 2 W. W. R. 947.—CAN.

287 v. — — — — —.]—The discharge of a mtge. was executed under a power which, after authorising the attorney to sell the principal's lands & give receipts for the consideration money, gave power, upon payment of all or any debts, to give proper & sufficient acquittances & discharges for same.—*Held*: sufficient authority to sign the statutory certificate.—*LEE*

*v. MORROW* (1866), 25 U. C. R. 604.—CAN.

287 vi. — — — — —.]—*Power to give—To secure unpaid purchase-money.*—A transaction whereby an agent purchased land for cash on behalf of his principal & subsequently gave a mtge. on the land & a conveyance of other lands in satisfaction of the amount remaining unpaid.—*Held*: authorised by the agent's power of attorney.—*DINSMORE v. PHILIP*, [1918] 3 W. W. R. 457.—CAN.

287 vii. — — — — —.]—*Power to invest on second mortgage.*—A power of attorney authorised the attorney "to lend on mtge., charge or lien of real estate any money belonging to" the principal.—*Held*: the attorney was authorised by the power to lend money on the security of a second mtge.—*MCCUTCHEON v. REGISTRAR OF TITLES*, [1927] V. L. R. 93; 48 A. L. T. 137.—AUS.

287 viii. — — — — —.]—*Property—Power to transfer to himself.*—A husband had certain property put in his wife's name. He held a general power of attorney from her. Subsequently the husband, as his wife's attorney, had the property transferred into his own name.—*Held*: the wife was entitled to have the transfer to her husband set aside.—*ELFORD v. ELFORD* (1922), 69 D. L. R. 284; 64 S. C. R. 125; [1922] 3 W. W. R. 339; *affg.* 61 D. L. R. 40; 14 Sask. L. R. 363.—CAN.

295 vii. — — — — —.]—*Power to sign contract.*—Resp. co. having sold land to applt. gave to its agent in the Transvaal a general power of attorney conferring upon him "full power to act on our behalf in all matters & things that do or may affect or concern us in S. Africa." The power then proceeded in the following words "& in particular but without prejudice to the foregoing generality" to give particular instances of acts that the agent was empowered to perform.—*Held*: under the power the agent was authorised to sign the written contract of sale.—*MEASROCK v. LIQUIDATOR, ETC.*, [1922] App. D. 237.—S. AF.

295 viii. — — — — —.]—*Trading licence—Power to apply for.*—A., a storekeeper, by general power of attorney appointed H. to manage & transact his business in Natal. At the date of appointment A. was trading under a licence *ex facto* good, but which later was declared void. H. applied for a new licence, but it was objected that he had no authority to make the application.—*Held*: the power of attorney was sufficient authority to H. for the purpose.—*HAFFIZ v. JACOBSON* (1919), 40 N. L. R. 322.—S. AF.

295 ix. — — — — —.]—*Power granted by corporation to officials for time being—Registrar entitled to require proof that persons exercising power hold office.*—*Re LAND TITLES ACT, ROYAL TRUST CO.'S CASE*, [1921] 3 W. W. R. 246.—CAN.

*Add. Annotation :—Generally, Mentd. North v. Loomes, [1919] 1 Ch. 378.*

307. *Add. Annotation :—Mentd. London Joint Stock Bank v. Macmillan & Arthur, [1918] A. C. 777.*

308a. *Salesman—Authority to cancel sale.*—A salesman employed at a salary of £3 a week & 1½ per cent. on sales effected by him is not authorised to cancel sales made on behalf of his principal.—*LECKENBY v. WOLMAN, [1921] W. N. 100.*

313. *Add. Annotation :—Mentd. Bradford v. Price (1923), 92 L. J. K. B. 871.*

315. *Add. Annotation :—Mentd. Lowther v. Harris, [1927] 1 K. B. 393.*

324. *Add. Annotations :—Mentd. Weigall v. Runciman (1916), 85 L. J. K. B. 1187; Manbre Saccharine Co. v. Corn Products Co., [1919] 1 K. B. 198; Gould v. S. E. & C. Ry., [1920] 2 K. B. 186; Johnson v. Taylor, [1920] A. C. 144; Wilson, Holgate v. Belgian Grain & Produce Co., [1920] 2 K. B. 1; Diamond Alkali Export Corp'n. v. Bourgeois, [1921] 3 K. B. 443; Weiss, Biheller & Brooks v. Farmer, [1923] 1 K. B. 226; Finn v. Shelton Iron, Steel & Coal Co (1924), 131 L. T. 213; Westminster Bank v. Hilton (1926), 136 L. T. 315; Sassoon v. International Banking Corp'n., [1927] A. C. 711.*

332a. ———.]—Pltf. gave a power of attorney to T. & authorised him, in relation to pltf.'s affairs, to draw cheques on pltf.'s account at the bank without restriction. T. in fraud of pltf. drew a cheque on pltf.'s account, in favour of defts. in part-payment for a motor-car which T. had obtained from them for his own purposes on the hire-purchase system. Defts. knew that the cheque was drawn by T. as agent for pltf. In an action by pltf. to recover from defts. the proceeds of the cheque :—*Held* : as defts. knew that T. was paying his own debt to them with pltf.'s money, & as T. had no authority to pay his own debts therewith, pltf. was entitled to recover.—*RECKITT v. BARNETT, PEMBROKE & SLATER, LTD. (1928), 45 T. L. R. 36, H. L.*

*Annotation :—Refd. Lloyds Bank v. Chartered Bank of India, Australia & China (1928), 97 L. J. K. B. 609.*

338. *Add. Annotation :—Refd. Reckitt v. Barnett, Pembroke & Slater, [1928] 2 K. B. 244.*

338a. ——— *Authority to sign for business purposes.*—Resps. had two accounts with applt. bank at Sydney in connection with a business which they there carried on. They informed the bank in writing that the two managers of their business had authority together to

sign & indorse cheques, to draw & indorse promissory notes & bills of exchange, & to transact on their behalf all business connected with the accounts. Banks in Australia frequently issue to a customer, in exchange for a cheque in favour of the bank, a cheque, described as a "bank cheque," drawn by the bank on itself in favour of a person designated by him, or to bearer. In exchange for cheques drawn in favour of applt. bank by the managers, the bank issued to one of the managers bank cheques payable to a name designated by him; these cheques he fraudulently appropriated :—*Held* : applt. bank was not entitled to debit the bank cheques against resps. The manager had not implied authority to receive bank cheques, & the circumstances in which on certain previous occasions the manager had been allowed to give instructions to the application of the amount of cheques drawn, made the evidence fall far short of the strong case needed to show an ostensible authority prevailing over written instructions.—*AUSTRALIAN BANK OF COMMERCE v. PEREL, [1926] A. C. 737; 95 L. J. P. C. 185; 135 L. T. 586, P. C.*

341. *Add. Annotation :—Mentd. Bradford v. Price (1923), 92 L. J. K. B. 871.*

369. *Add. Annotation :—Mentd. London Joint Stock Bank v. Macmillan & Arthur, [1918] A. C. 777.*

370. *Add. Annotations :—As to (1) Consd. Jones v. Waring & Gillow, [1926] A. C. 670. Refd. London Joint Stock Bank v. Macmillan & Arthur, [1918] A. C. 777.*

371. *Add. Annotations :—As to (1) Refd. London Joint Stock Bank v. Macmillan & Arthur, [1918] A. C. 777; Guildford Trust v. Goss (1927), 136 L. T. 725.*

373. *Add. Annotation :—As to (1) Consd. London Joint Stock Bank v. Macmillan & Arthur, [1918] A. C. 777.*

379. *Add. Annotation :—Consd. London Joint Stock Bank v. Macmillan & Arthur, [1918] A. C. 777.*

382. *Add. Annotation :—Refd. Underwood v. Liverpool Bank, Same v. Barclays Bank, [1921] 1 K. B. 775.*

386. *Add. Annotations :—As to (3) Refd. Liggett (Liverpool) v. Barclays Bank, [1928] 1 K. B. 48. Generally, Refd. Lloyds Bank v. Chartered Bank of India, Australia & China (1928), 97 L. J. K. B. 609. Mentd. Underwood v. Bank of Liverpool, Same v. Barclays Bank, [1924] 1 K. B. 775.*

#### PART V. SECT. 3, SUB-SECT. 1.

*eg. Agent obtaining transfer of property to principal—Authority to transfer property to third party.*—Applt. sold to D. land, a portion of which he had not obtained transfer. Applt. instructed resp., an attorney, to put the matter through; resp. thereupon obtained transfer of the piece of land in question into applt.'s name, & then gave transfer of the whole to D. :—*Held* : resp.'s authority was wide enough to cover the costs incurred by him in obtaining transfer of the piece of land into applt.'s name.—*STANTON v. ALLPORT, [1923] E. D. L. 155.—S. AF.*

#### PART V. SECT. 3, SUB-SECT. 2.

*eg. Grain market usage—Right of broker to close out customer.*—*RUSSELL v. CANADA WEST GRAIN CO., [1925] 3 W. W. R. 508.—CAN.*

#### PART V. SECT. 3, SUB-SECT. 4.—A.

340 iii. ——— *Authority to draw cheques in principal's name—Agent drawing cheques to repay personal losses.*—If a co.'s branch manager, whose powers include receiving money depositing it in a bank in the co.'s name, & drawing cheques against such funds in the co.'s name for the purposes of its business but not for his own personal business, misappropriates its funds by drawing cheques in the co.'s name to repay his own personal loans, the co. can recover the sums thus paid from those to whom they were paid, although the latter received them honestly & believing, as told them by the person paying them, that he had money coming to him from the co. for commission & that he was authorised to draw cheques for these commissions.—*LONDON GUARANTEE, ETC., CO. v. ABRAMS & KOVSKY, [1923]*

2 W. W. R. 1006.—CAN.

#### PART V. SECT. 3, SUB-SECT. 5.

379 ii. ———.]—Where a principal entrusts an agent with indicia of title & a signed transfer, the transferee's name being left blank, for the purpose of raising a certain sum on such securities, & the agent borrows a larger sum & fraudulently appropriates the difference, the lender being in ignorance of the amount specified by the principal, the principal cannot redeem the securities without paying the lender the amount lent. The fact that the transfer states a certain sum as consideration does not necessarily impose upon the lender the duty of inquiring as to the limitations of the agent's authority.—*MAHAN v. MANNESS, [1918] 2 W. W. R. 191; 28 Man. L. R. 470; 40 D. L. R. 136.—CAN.*



387. *Add. Annotations*:—*Reid. Underwood v. Bank of Liverpool, Same v. Barclay's Bank*, [1924] 1 K. B. 775; *Liggett (Liverpool) v. Barclays Bank*, [1928] 1 K. B. 48; *Lloyds Bank v. Chartered Bank of India, Australia & China* (1928), 97 L. J. K. B. 609.
388. *Add. Annotations*:—*Consd. Lloyds Bank v. Chartered Bank of India, Australia & China* (1928), 97 L. J. K. B. 609. *Reid. Liggett (Liverpool) v. Barclays Bank*, [1928] 1 K. B. 48.
390. *Add. Annotations*:—*Consd. Prager v. Blatspiel, Stamp & Heacock*, [1924] 1 K. B. 566; *Reid. Jebara v. Ottoman Bank*, [1927] 2 K. B. 254.
407. *Add. Annotation*:—*Generally, Mentd. Isaacs v. Cook* (1925), 134 L. T. 286.
426. *Add. Annotations*:—*Consd. Keen v. Mear*, [1920] 2 Ch. 574. *Apld. Lewcock v. Bromley* (1920), 127 L. T. 116.
427. *Add. Annotation*:—*Reid. Thirkell v. Cambi*, [1919] 2 K. B. 590.
432. *Add. Annotation*:—*Mentd. Johnstone v. Pedlar*, [1921] 2 A. C. 262; *Commercial & Estates Co. of Egypt v. Board of Trade*, [1925] 1 K. B. 271.
433. *Add. Annotation*:—*Consd. Re Bebington's Tenancy, Bebington v. Wildman*, [1921] 1 Ch. 559.
434. *Add. Annotation*:—*Reid. Re Bebington's Tenancy, Bebington v. Wildman*, [1921] 1 Ch. 559.
436. *Add. Annotation*:—*Reid. Re Bebington's Tenancy, Bebington v. Wildman*, [1921] 1 Ch. 559.
442. *Add. Annotation*:—*Reid. Re Knight & Hubbard's Underlease, Hubbard v. Highton*, [1923] 1 Ch. 130.
464. *Add. Annotations*:—*As to* (1) *Reid. Poland v. Parr*, [1927] 1 K. B. 236. *Generally, Mentd. Pratt v. British Medical Assocn.*, [1919] 1 K. B. 244; *Prager v. Blatspiel, Stamp & Heacock*, [1924] 1 K. B. 566.
465. *Add. Annotation*:—*As to* (1) *Reid. Savill v. Harben* (1919), 89 L. J. K. B. 47.
467. *Add. Annotation*:—*Mentd. Lowther v. Harris*, [1927] 1 K. B. 393.
468. *Add. Annotation*:—*Reid. Lowther v. Harris* (1926), 43 T. L. R. 24.
469. *Add. Annotations*:—*As to* (1) *Consd. Folkes v. King*, [1923] 1 K. B. 282. *Reid. Lowther v. Harris* (1926), 43 T. L. R. 24.
472. *Add. Annotation*:—*As to* (1) *Reid. Lowther v. Harris*, [1927] 1 K. B. 393.
474. *Add. Annotation*:—*Mentd. Lowther v. Harris*, [1927] 1 K. B. 393.
475. *Add. Annotation*:—*Mentd. The Parchim*, [1918] A. C. 157.
477. *Add. Annotations*:—*Consd. Folkes v. King*, [1923] 1 K. B. 282.

## PART V. SECT. 3. SUB-SECT. 6.—A.

397 ii. — *Authority as such—Contract not completed.*—*KERSHAW v. UNITED ARTISTS (Man.)*, [1926] 1 D. L. R. 738.—CAN.

398 ii. — *Authority to sign contract—Contract providing for payment of price by instalments.*—*Defts. signed & gave to an agent a document in the following terms:—"We hereby agree to sell the property for £6,700 nett, provided a sale takes place within fourteen days from date hereof. The above price to be clear of all commission charges." The agent, within the fourteen days, signed a contract of sale by which the property was sold to pltf. for £6,700, payable £1,000 deposit (£50 preliminary deposit, to be increased to £1,000 within one month), £2,250 within three months, & £3,450 within six months, possession to be given after the second payment £2,250 at the end of the three months. There was no provision for interest on the balance:—Held: the document signed by defts. was not an authority to the agent to sign a contract containing the above terms as to payment.*—*BOYD v. O'CONNOR*, [1923] V. L. R. 603.—AUS.

398 iii. — *Contract containing penalty clause.*—*Held: the existence of the penalty clause, which was not covered by the agent's instructions, & was not separable from the remainder of the contract, justified the principal in repudiating the agent's action, & the contract must be set aside.*—*DUPREZ v. LAIRD*, [1927] App. D. 21.—S. AF.

q i. — *General authority.*—*Pltf. contracted with defts. to purchase & deliver potatoes at an agreed price per bushel. The farmers from whom the potatoes were to be purchased required cash payments, & defts. agreed to make advances to put pltf. in funds for this purpose. Defts. were not prompt in providing funds, & pltf. complained of the delay which hampered him in buying, & in order to induce him to carry out the contract, defts.' agent offered an advance of 25 cents per bushel on the contract*

*price for four cart loads of potatoes:—Held: the agent on the spot, looking after defts.' interests, had a general authority sufficiently broad to cover the making of the contract for the advanced price.*—*LEGACY v. DAVISON* (1919), 52 N. S. R. 543.—CAN.

r. This case was reversed (1916), 22 C. L. R. 307. Delete the words "no actual or apparent" in the sentence, "*Held: O. had no actual or apparent authority to vary the written contract by substituting a later date for delivery.*"

sk. *Agent agreeing to payment of compensation to purchaser if transaction not completed—Authority to sell.*—*A claim by a proposed purchaser for damages on the ground of an agreement by the vendor's agent for compensation to the purchaser should the contract not be made by the vendor, disallowed in the absence of any authority from the vendor to make such an agreement.*—*THOMPSON v. LYNNE*, [1921] 1 W. W. R. 238; 56 D. L. R. 729.—CAN.

sl. *Salesman making reduction in price.*—*Held: principal not bound.*—*MASON & DEAN, LTD. v. UDWIN*, [1925] 1 D. L. R. 353; 57 N. S. R. 445.—CAN.

sm. *Solicitor's clerk giving undertaking as to withdrawal of Registrar-General's caveat—Authority as such.*—*Held: the solr. was personally bound by the undertaking.*—*HAWKINS v. GADEN* (1925), 37 C. L. R. 183; 26 S. R. N. S. W. 382; [1926] Argus L. R. 109.—AUS.

## PART V. SECT. 3. SUB-SECT. 8.—A.

423 iv. — *Express authority to let on weekly tenancy—Lease granted for long term.*—*Pltf. was the owner of premises let to a weekly tenant. When the tenant left she recommended deft. to pltf. as a tenant. Pltf. never saw deft., but pltf.'s husband arranged some form of lease with him, & thereafter collected the rent, which was paid monthly, on behalf of pltf. & with her authority. In an action of ejectment deft. alleged that pltf.'s husband had*

*given him a lease for four years from Dec. 1913, & that he was a tenant from year to year. Pltf. denied any knowledge of a lease for a term, or that she had given authority to her husband to make such a lease:—Held: the fact that pltf.'s husband had collected her rent was no evidence that he had authority to make a lease for four years on her behalf.*—*VOGE v. KERR* (1919), 19 N. S. W. L. R. 34; 36 N. S. W. W. N. 19.—AUS.

427 ii. — *Authority to find purchaser or tenant.*—*Deft. wrote to a land agent as follows:—"Re sale of hotel. I will take £2,500 for the freehold, & stock & furniture at valuation, or will lease for a term of five years, rent £5 per week. £1,000 walk in, walk out." The agent submitted the property to pltf., who elected to take a lease. The agent drew up an agreement to lease the property upon the terms mentioned by deft., & signed it on deft.'s behalf:—Held: deft.'s letter did not authorise the agent to bind him by a concluded contract, but merely amounted to an authority to find a purchaser.*—*QUICK v. WINTER*, [1920] N. Z. L. R. 98.—N.Z.

sn. *Law agent—Authority to collect rents & manage property.*—*A law agent, even though he may be employed to collect the rents & attend to the repairs of a property has no general authority to grant leases on behalf of his employer. The existence of such an authority must be proved by the person who requires to found upon it.*—*DANISH v. GILLESPIE*, [1922] S. C. 666.—SCOT.

## PART V. SECT. 3. SUB-SECT. 9.

so. *Bank manager consenting to addition of bank as plaintiff—General authority as such.*—*A local manager of a bank has authority to give consent in writing for the adding of pltf. If there be any reasonable doubt whether the signature to the consent is in reality his signature, the order should be that the bank be added as a party pltf. on filing the necessary consent.*—*KRECH v. PEAT* (1927), 63 D. L. R. 408; 15 Sask. L. R. at p. 326; [1922] 2 W. W. R. 174; *revers. 15 Sask. L. R. 324.*—CAN.



[1928] 1 K. B. 282; *Lowther v. Harris* (1926), 43 T. L. R. 24.

478. *Add. Annotation*:—Mentd. *Lowther v. Harris*, [1927] 1 K. B. 393.

480. *Add. Annotation*:—Mentd. *Re Wait*, [1927] 1 Ch. 606.

481a. — Person living in house of hirer of goods.] —*STROHMENGER v. ATTENBOROUGH* (1894), 11 T. L. R. 7, D. C.

482. *Add. Annotation*:—Generally, Mentd. *Lake v. Simmons* (1926), 95 L. J. K. B. 586.

483a. — Agent intrusted with motor car—To sell to specified person.]—*HEAP v. MOTORISTS' ADVISORY AGENCY, LTD.*, No. 495b, *post*.

484. *Add. Annotation*:—As to (1) *Reid. Lowther v. Harris* (1926), 43 T. L. R. 24.

485. *Add. Annotation*:—As to (2) *Consd. Lowther v. Harris* (1926), 43 T. L. R. 24.

485a. Improper sale.]—Pltf. was the owner of the A. tapestry & the L. tapestry, & he gave to P., a dealer in antiques, a limited authority to obtain & submit offers from possible purchasers. P. falsely represented to pltf. that he could obtain £525 for the A. tapestry, & pltf. allowed him to take it away for delivery to a purchaser, who in fact did not exist. P. then sold the A. tapestry to deft. for £250. Subsequently P., who never had authority to sell the L. tapestry, stole it from pltf. & sold it to deft. In an action for conversion deft. contended that P. had been in possession of the tapestries as a mercantile agent within the Act of 1889, & that as he had bought them from P. in good faith he had acquired the property in them. He also contended that pltf. had held out P. as a person with authority to sell & was estopped from saying that P. had no such authority in fact:—*Held*: (1) although P.'s authority was limited, & although he was not acting for any principal other than pltf., yet these facts did not prevent him from being a mercantile agent & in the circumstances he was a mercantile agent & in possession of the A. tapestry with the consent of pltf., & as to that tapestry the defence under the Act of 1889 was established; (2) as to the L. tapestry, as P. was never in possession of it with pltf.'s consent, the defence under the Act failed, & as pltf. had never represented to deft. that P. had authority to sell it, there was no estoppel, & pltf. was entitled to recover the value of the L. tapestry alone.—*LOWTHER v. HARRIS*, [1927] 1 K. B. 393; 96 L. J. K. B. 170; 136 L. T. 377; 43 T. L. R. 24.

487. *Add. Annotations*:—As to (1) *Distd. Kempler v. Bravingtons* (1925), 133 L. T. 680. *Reid. Lowther v. Harris* (1926), 43 T. L. R. 24. As to (2) *Distd. Kempler v. Bravingtons* (1925), 133 L. T. 680.

488. *Add. Annotation*:—*Reid. Lowther v. Harris* (1926), 43 T. L. R. 24.

492. *Add. Annotation*:—As to (1) *Distd. Laurie & Morewood v. Dudin*, [1925] 2 K. B. 883.

495. *Add. Annotations*:—As to (1) *Consd. Folkes v. King*, [1923] 1 K. B. 282; *Lake v. Simmons*,

[1926] 2 K. B. 51. *Reid. Heap v. Motorists' Advisory Agency*, [1923] 1 K. B. 577; *Lowther v. Harris* (1926), 43 T. L. R. 24.

495a. — Agent obtaining possession by trick—Authority to sell—At specified price.]—The owner of a motor car delivered it to a mercantile agent for sale. The owner stipulated & the agent agreed that the car should not be sold at less than a specified price without the owner's permission. The agent intended from the beginning to sell the car immediately for the best price he could get & to use the proceeds for his own purposes. On the day on which he got the car he sold it for less than the specified price to a purchaser who bought it in good faith & without notice of the agent's fraud. The agent misappropriated the proceeds. The car was subsequently purchased by deft. In an action of detinue by the owner of the car against deft.:—*Held*: (1) deft. acquired a good title by virtue of 1889 Act, s. 2; (2) the mercantile agent had not rendered himself liable to be convicted of larceny by a trick, inasmuch as he was authorised by pltf. to pass the property in the car to a purchaser; (3) as pltf. in fact consented to the mercantile agent having possession of the car, it was immaterial whether the latter committed larceny by a trick.—*FOLKES v. KING*, [1923] 1 K. B. 282; 92 L. J. K. B. 125; 128 L. T. 405; 39 T. L. R. 77; 67 Sol. Jo. 227; 28 Com. Cas. 110; 86 J. P. Jo. 552, C. A.

*Annotations*:—As to (2) *Distd. Heap v. Motorists' Advisory Agency*, [1923] 1 K. B. 577. *Consd. Lake v. Simmons*, [1926] 2 K. B. 51; *Lowther v. Harris*, [1927] 1 K. B. 393.

495b. To specified person—Sale to third party.]—Pltf., desiring to sell his motor car for £210, & being informed by N. that he had a friend H., who would probably buy it for that price, allowed N. to have possession of the car for the sole purpose of showing it & endeavouring to sell it to H. There was no such person as H., & N. represented that there was with the intention of obtaining the car for his own benefit. N. afterwards through an intermediary sold the car to defts. for £110. Before N. got possession of the car he had been convicted of theft & other offences, but that was not known to any of the parties. While N. was in possession of the car he obtained an appointment as car salesman to a firm of motor engineers. In an action by pltf. against defts. for the return of the car or its value & damages for its detention:—*Held*: (1) N. had obtained the car from pltf. by larceny by a trick, pltf. never having given any real consent to his having or passing the property therein, & pltf. should succeed in the action unless defts. had some valid defence thereto; (2) defts. could not rely upon the defence that under 1889 Act, s. 2 (1), the sale to them was as valid as if the seller had been expressly authorised by pltf. to make the same, inasmuch as N. was not a "mercantile agent," & if he was, the sale by him was not a sale in the ordinary course of his business as a mercantile agent, within that sub-section; & further, because defts. had failed to

PART V. SECT. 3, SUB-SECT. 10.—  
A. (a) vii.

*sp. Act of 1889*—"When acting in ordinary course of business" defined.]—The expression "when acting in the ordinary course of business of a mercantile agent," means when acting

within business hours, at a proper place of business, & in other respects in the ordinary way in which a mercantile agent would act, so that there is nothing to lead the pledgee to suppose that anything wrong is being done, or to give him notice that the

disposition is one which the mercantile agent had no authority to make.—*ACME STEEL GOODS CO. OF CANADA, LTD. v. WALSH CONSTRUCTION CO., LTD.*, [1922] 1 W. W. R. 689; 63 D. L. R. 529; 30 B. C. R. 539.—*CAN.*

satisfy the proviso to that sub-section by showing that they had not at the time of the disposition notice that N. had not authority to sell the car; & defts. had no defence to the action.

(3) Under 1889 Act, s. 2 (1), proviso, the *onus* is on the person taking under the disposition of the goods made by the mercantile agent of proving that he acted in good faith & without notice of the agent's want of authority, & is not upon the person whose goods have been disposed of by the agent of proving the contrary.—*HEAP v. MOTORISTS' ADVISORY AGENCY, LTD.*, [1923] 1 K. B. 577; 92 L. J. K. B. 553; 129 L. T. 146; 39 T. L. R. 150; 67 Sol. Jo. 300.

*Annotation*:—*As to* (1) *Consd. Lake v. Simmons* (1926), 95 L. J. K. B. 586.

498. *Add. Annotations*:—*As to* (1) *Refd. Lake v. Simmons*, [1926] 2 K. B. 51. *Generally. Mentd. Lowther v. Harris*, [1927] 1 K. B. 393.

500. *Add. Annotations*:—*Consd. Folkes v. King*, [1923] 1 K. B. 282. *Mentd. Lowther v. Harris*, [1927] 1 K. B. 393.

505a. — Agent intrusted with motor car to sell to specified person—Sale to third party.]—*HEAP v. MOTORISTS' ADVISORY AGENCY, LTD.*, No. 495b, *ante*.

507a. — Onus of proof.]—*HEAP v. MOTORISTS' ADVISORY AGENCY, LTD.*, No. 495b, *ante*.

510. *Add. Annotation*:—*Generally, Mentd. Lowther v. Harris*, [1927] 1 K. B. 393.

515. *Add. Annotation*:—*Generally, Mentd. Lowther v. Harris*, [1927] 1 K. B. 393.

516. *Add. Annotation*:—*Generally, Mentd. Lowther v. Harris*, [1927] 1 K. B. 393.

517. *Add. Annotation*:—*Generally, Refd. Lake v. Simmons*, [1926] 2 K. B. 51.

520. *Add. Annotations*:—*As to* (1) *Refd. Folkes v. King*, [1923] 1 K. B. 282. *Generally, Mentd. Lowther v. Harris*, [1927] 1 K. B. 393.

523. *Add. Annotation*:—*Generally, Mentd. Muller (London) v. Lethem, Same v. I. R. Comrs.*, [1927] 1 K. B. 780.

529. *Add. Annotation*:—*Refd. Lake v. Simmons*, [1926] 2 K. B. 51.

530. *Add. Annotations*:—*Consd. Lloyds Bank v. Chartered Bank of India, Australia & China* (1924), 97 L. J. K. B. 609. *Refd. Reckitt v. Barnett, Pembroke & Slater*, [1928] 2 K. B. 244. *Mentd. Lowther v. Harris*, [1927] 1 K. B. 393.

#### PART V. SECT. 3, SUB-SECT. 10.

##### A. (a) viii.

*st. Act of 1889—Necessity for proof of mala fides of purchaser.*]—Where an owner of goods, who has placed them with a mercantile agent, sues an alleged purchaser thereof from the agent for wrongful conversion, & deft. relies on [the above Act] the actual payment of money by deft. to the agent will not destroy the fact of *mala fides*, but the fact that the transaction is found not to have been an ordinary sale, i.e. a sale to one desirous of either using the goods or disposing of them to advantage, can of itself have a bearing only on the question of good faith, & proof of the dishonesty of the agent is not sufficient; it must be shown that deft. acted in bad faith, & the evidence should be such as to prove to the hilt the *mala fides* of the alleged sale.—*ACME STEEL GOODS CO. OF CANADA, LTD. v. WALSH CONSTRUCTION CO., LTD.*, [1922] 1 W. W. R. 689; 63 D. L. R. 529; 30 B. C. R. 539.—CAN.

#### PART V SECT. 3, SUB-SECT. 11.

573 i. *Agent—Authority to buy at discretion—Secret limitations.*]—If a person desiring to buy grain arms his agent with contract forms for the purpose & sends him out to have these forms executed by vendors & with authority to sign them on his behalf subject to the verbal condition that the agent must stipulate that the contracts are not to come into effect until his principal has approved of the samples, this is a holding out that the agent has authority to make the contracts, & the principal is bound thereby though no such stipulation is made therein & no samples approved by the principal, if the vendors have no notice of such limitation of the agent's authority.—*REED & KEAST v. MCKENZIE CO., LTD.*, [1921] 3 W. W. R. 72.—CAN.

*sa. Manager of branch office—Authority as such.*]—When a co. so conducts its business that a person who sells & delivers goods to a branch office thereof on an order received from such office

538. *Add. Annotation*:—*Mentd. Lowther v. Harris*, [1927] 1 K. B. 393.

582. *Add. Annotation*:—*Refd. Pearl Mill Co. v. Ivy Tannery Co.*, [1919] 1 K. B. 78.

586. *Add. Annotation*:—*As to* (1) *Refd. Clayton-Greene v. De Courville* (1920), 36 T. L. R. 790.

590. *Add. Annotation*:—*Refd. Coldingham Parish Council v. Smith*, [1918] 2 K. B. 90.

591. *Add. Annotation*:—*Refd. Bradford v. Price* (1923), 92 L. J. K. B. 871.

605. *Add. Annotation*:—*Refd. Miss Gray, Ltd. v. Cathcart* (1922), 38 T. L. R. 562.

608a. *Tenant of public-house—Not being licensee—Holding out.*]—Deft. was the licensee of a public-house at which meals were served. In 1917, an agreement was entered into between deft. & the general manager of the owners & a third person, whereby the latter became the tenant of the licensed premises & deft. was released from all obligations under the tenancy. The licence, however, was not transferred, & deft.'s name remained painted up over the doorway. During the continuance of the new tenancy liquor as well as food was sold on the premises. Pltfs., during this period, supplied fish, fruit & vegetables to the tenant. The accounts were not fully met, & pltfs., on discovering that deft. was the licensee, which discovery was made after the goods had been supplied, sought to make him liable for the price on the ground that the tenant was either the agent of deft. by operation of law, or that deft. was estopped from denying such agency:—*Held*: where two people agreed that one should illegally & improperly occupy a position which could only be lawfully occupied by the other, that did not necessarily make the person occupying the position the agent for all purposes of the person who ought to be occupying it; the tenant was not in fact deft.'s agent; & as between himself & pltfs., deft. was not estopped from setting up the true state of affairs, because, whatever misrepresentations were made, they did not reach pltfs. nor cause them to act to their detriment.—*MACFISHERIES, LTD. v. HARRISON* (1924), 93 L. J. K. B. 811; 132 L. T. 22; 88 J. P. 154; 40 T. L. R. 709; 69 Sol. Jo. 89.

627. *Add. Annotation*:—*Refd. Pennington v. Reliance Motor Works*, [1923] 1 K. B. 127.

is reasonably led to suppose that the branch has authority to give the order, the co. will not be permitted to escape liability for the purchase price on the ground that such branch office had no authority to buy the goods.—*FARM PRODUCTS, LTD. v. MACLEOD FLOURING MILLS, LTD.*, [1918] 3 W. W. R. 1035; 14 Alta. L. R. 128; 43 D. L. R. 770.—CAN.

#### PART V. SECT. 3, SUB-SECT. 12.—A.

*sb. Member of syndicate acting for syndicate.*]—Pltf. sought to recover from defts., members of a syndicate formed for the purpose of exploring & testing certain mining properties, the price of goods supplied upon the order of one of the defts., C., & upon his credit. At the time the goods were supplied, pltf. did not know that C. was a member of a syndicate or was acting for others:—*Held*: defts. other than C. were not liable to pltf.—*MCLAUGHLIN v. GENTLES* (1920), 46 O. L. R. 477; 51 D. L. R. 383; 17 O. W. N. 245.—CAN.



645a. —.]—**BEALE v. MOULS** (1847), 10 Q. B. 976; 5 Ry. & Can. Cas. 105; 16 L. J. Q. B. 410; 11 Jur. 845; 116 E. R. 370.

Annotation:—**Refd.** *Newton v. Belcher* (1818), 6 Ry. & Can. Cas. 38.

646. *Add. Citation*:—*sub nom, Re WOLVERHAMPTON, CHESTER & BIRKENHEAD JUNCTION RY. CO., Ex p. COTTLE*, 14 Jur. 703.

*Add. Annotation*:—**Apld.** *Re Direct Exeter, Plymouth & Devonport Ry. Co., Ex p. Roberts* (1850), 2 H. & Tw. 392.

656. After this case insert "See, also, COMPANIES, Vol. IX., p. 53, Nos. 116 *et seq.*"

664. After this case insert "See, also, COMPANIES, Vol. IX., pp. 44, 53, Nos. 61–63, 110."

665. *Add. Annotation*:—**Mentd.** *Nichol v. Fearby, Nichol v. Robinson*, [1923] 1 K. B. 480.

704a. **Mess committee—Goods ordered by secretary.**—Pltf. supplied goods to the officers' mess of a brigade of which deft. was at the time commanding officer, the orders for the goods being given by the secretary of the mess committee. Pltf. sued deft. for the price, alleging that under the King's Regulations deft. was liable or that he was liable as principal for the acts of the mess secretary:—**Held**: the Regulations did not create any liability between the commanding officer & tradesmen, & as deft. neither gave nor authorised the orders, & pltf. did not give deft. credit, the action failed.—**LASCELLES v. RATHBUN** (1919), 35 T. L. R. 347; 63 Sol. Jo. 410, C. A.

710a. *S.P. BONHAM v. MAYCOCK* (1928), 138 L. T. 736; 44 T. L. R. 387; 72 Sol. Jo. 254.

711. *Add. Annotation*:—**Dbtd.** *Butwick v. Grant*, [1924] 2 K. B. 483.

712. *Add. Annotation*:—**Expld.** *Butwick v. Grant*, [1924] 2 K. B. 483.

714. *Add. Annotation*:—**Consd.** *Butwick v. Grant*, [1924] 2 K. B. 483.

714a. —.]—**Authority to an agent to sell goods does not of necessity imply authority to receive payment of the price.**—**BUTWICK v. GRANT**, [1924] 2 K. B. 483; 93 L. J. K. B. 972; 131 L. T. 476, D. C.

718. *Add. Annotation*:—**Apld.** *Bonham v. Maycock* (1928), 138 L. T. 736.

738. *Add. Annotation*:—**Refd.** *Bonham v. Maycock* (1928), 138 L. T. 736.

740. *Add. Annotation*:—**Refd.** *Bonham v. Maycock* (1928), 138 L. T. 736.

741. *Add. Annotation*:—**Refd.** *Bonham v. Maycock* (1928), 138 L. T. 736.

744. *Add. Annotations*:—**Apld.** *Bradford v. Price* (1923), 92 L. J. K. B. 871. **Refd.** *Australian Bank of Commerce v. Perel*, [1926] A. C. 737.

747. *Add. Annotation*:—**Generally, Mentd.** *Bradford v. Price* (1923), 92 L. J. K. B. 871.

747a. — **Authority to receive cash for goods—Notice to purchaser to draw cheques to seller's order.**—Pltfs., who were coal factors, engaged W. to manage a branch business for them. W. was authorised to receive payment in cash for coal supplied by pltfs. to their customers. Pltfs. had notified their customers, including defts., that all cheques must be made payable to pltfs.' order, & not to that of W. Defts. nevertheless paid for coal supplied to them by pltfs. by cheques made payable to W. or order. All these cheques were duly honoured on presentation. W. paid seven of defts.' cheques into his own private account & embezzled the proceeds:—**Held**: as W. was authorised by pltfs. to receive payment in cash for coal supplied, & defts. had paid W. by cheques payable to his order, & the cheques were duly honoured, defts. were discharged, notwithstanding that pltfs. had notified them that all cheques must be made payable to pltfs.' order.—**BRADFORD & SONS v. PRICE BROTHERS** (1923), 92 L. J. K. B. 871; 129 L. T. 408; 39 T. L. R. 272.

750. *Add. Annotation*:—**Consd.** *Bradford v. Price* (1923), 92 L. J. K. B. 871.

751. *Add. Annotation*:—**Refd.** *Bradford v. Price* (1923), 92 L. J. K. B. 871.

752. *Add. Annotations*:—**As to (3) Refd.** *Robinson v. Marsh*, [1921] 2 K. B. 640; *Bradford v. Price* (1923), 92 L. J. K. B. 871.

#### PART V. SECT. 3, SUB-SECT. 12.—B. (c).

so. **Committee of unincorporated association—Employment by.**—**Held**: the committee were under no personal liability to the employee for his salary.—**GRAHAM v. CARPENTER** (1926), 28 W. A. L. R. 66.—**AUS.**

#### PART V. SECT. 3, SUB-SECT. 13.—A.

sd. **Agent—Holding out.**—If a debtor gives money to another to pay to his, the debtor's, creditor, but the third party fails to pay the same over, the debtor is liable for the amount, unless the third party was the creditor's agent. The *onus* is on the debtor to prove either that there was an express agency, or to show, by the acts of the creditor, that these were sufficient to establish agency by holding out or estoppel.—**CARR v. FRY & MCCUNE**, [1924] 4 D. L. R. 735.—**CAN.**

v. — **Right to receive deposit.**—An agent for sale has no implied authority as such to receive a deposit.—**PEARSON v. WILSON** (1917), Q. W. N. 49; 11 Q. J. P. 105.—**AUS.**

—.]—Pltf. made an offer to D., as agent for L., to purchase land of L. for \$5,000, & with the offer paid \$200 to D. as a deposit. In an action for return of the \$200, the offer not having been accepted, the trial judge found that L. when approached by pltf. sent him to D.

& told him to make an offer through D.; that D. procured from pltf. a written offer to purchase at \$5,000, paying part only in cash, & that offer was refused by L.; that D. obtained from pltf. a second offer to pay all cash, & this L. also refused:—**Held**: D. had authority to receive an offer, & as the making of a deposit was a part of that offer, D. was not going beyond his authority in receiving it.—**SILVERMAN v. LEGREE** (1919), 45 O. L. R. 107; 47 D. L. R. 713; 15 O. W. N. 278.—**CAN.**

se. **Person obtaining possession of bill of lading—Intervention between shipper & consignee.**—Mere possession of a bill of lading in the hands of a person who has intervened between the original shipper & the consignee & is in no way identified with the transaction except by possession of the document, does not give him any authority to give a valid discharge of the money payable by the consignee.—**STEWART v. RICHARDSON SONS & CO., LTD.**, [1920] 3 W. W. R. 134; 53 D. L. R. 625; 30 Man. L. R. 481.—**CAN.**

#### PART V. SECT. 3, SUB-SECT. 13.—B.

746 i. **Agent.**—An agent authorised to receive money for his principal may not receive anything but money; but, if he receives a cheque on a bank, & the amount of the cheque is paid

to the agent before his authority is revoked, that is a good payment to his principal.—**DELORY v. GUYETT** (1920), 47 O. L. R. 137; 52 D. L. R. 506; 17 O. W. N. 474.—**CAN.**

746 ii. —.]—If one is authorised to sell anything for another, the presumption is that he is to sell for cash, unless there is something to show to the contrary.—**WATSON v. CADILLAC MOTOR SALES CO., LTD.**, [1920] 3 W. W. R. 107.—**CAN.**

st. — **Authority to collect debts—Cashing cheques received.**—A clerk employed in the business of the Canadian Govt. elevators, whose express duties were to collect amounts due from grain dealers for freight charges, etc., & on presentation of bills of lading & payment of charges to hand out warehouse receipts, & deposit all money collected to the credit of the Receiver-General in a designated bank & at certain intervals to remit by draft to the head office of the business, & which charges were almost always paid to him by accepted cheque, although they might have been received in cash if so tendered:—**Held**: to have no authority to cash any cheques paid to him or any ostensible authority justifying any bank giving him the cash for any such cheque.—**R. v. ROYAL BANK OF CANADA**, [1920] 1 W. W. R. 198; 50 D. L. R. 293; 30 Man. L. R. 104.—**CAN.**



754. *Add. Annotation*:—*Refd.* Allen v. Royal Bank of Canada (1925), 41 T. L. R. 625.
768. *Add. Annotation*:—*Refd.* Bradford v. Price (1923), 92 L. J. K. B. 871.
769. *Add. Annotation*:—*Refd.* Bradford v. Price (1923), 92 L. J. K. B. 871.
773. *Add. Annotation*:—*As to* (1) *Refd.* Bradford v. Price (1923), 92 L. J. K. B. 871.
778. *Add. Annotation*:—*As to* (2) *Refd.* Bradford v. Price (1923), 92 L. J. K. B. 871.
781. *Add. Annotations*:—*Refd.* Bradford v. Price (1923), 92 L. J. K. B. 871; Butwick v. Grant, [1924] 2 K. B. 483.
786. *Add. Annotations*:—*Refd.* Fettes v. Robertson (1921), 37 T. L. R. 581. *Mentd.* Spencer v. Hemmerde (1922), 128 L. T. 33.
798. *Add. Annotations*:—*Consd.* Cheshire v. Vaughan, [1920] 3 K. B. 240; Maskell v. Hill, [1921] 3 K. B. 157. *Mentd.* Cohen v. Hall, [1922] 2 K. B. 37.
807. *Add. Annotation*:—*Mentd.* Lowther v. Harris, [1927] 1 K. B. 393.
809. *Annotations*: For "For full anns., see LANDLORD & TENANT," read "For full anns., see SALE OF LAND."  
*Add. Annotation*:—*As to* (3) *Refd.* Chillingworth v. Esche (1923), 92 L. J. Ch. 461.
810. *Annotations*:—For full anns., see S. C. No. 1192, post.
822. *Add. Annotation*:—*Generally*, *Mentd.* Lowther v. Harris, [1927] 1 K. B. 393.
828. *Add. Annotations*:—*As to* (1) *Distd.* Commonwealth Trust v. Akotey (1925), 94 L. J. P. C. 167. *Refd.* Bradford v. Price (1923), 92 L. J. K. B. 871. *Generally*, *Refd.* Jones v. Waring & Gillow, [1926] A. C. 670.
829. *Add. Annotation*:—*Refd.* Lowther v. Harris (1926), 43 T. L. R. 24.
833. *Add. Annotations*:—*Consd.* Keen v. Mear, [1920] 2 Ch. 574. *Apld.* Lewcock v. Bromley (1920), 127 L. T. 116.

PART V. SECT. 3, SUB-SECT. 15.

804 i. *Agent—Implied authority from circumstances—Husband authorised to purchase stock for wife.*—The fact that a husband was authorised to act, & has acted as his wife's agent in the purchase of stock through brokers does not in itself justify the brokers in assuming that he is her agent to direct a sale of it; & even assuming that the rules of the stock exchange subject to which the order to purchase was placed confer on the husband authority to direct such sale, the brokers' responsibility to the wife for the proceeds of the sale is not discharged by payment to the husband unless they show that he had authority, either express or implied, to receive the money.—*AIKMAN v. BURDICK BROTHERS*, [1923] 4 D. L. R. 852; 3 W. W. R. 785; *varying*, [1923] 1 D. L. R. 1165; 31 B. C. R. 478.—CAN.

808 v. ——— *Break in market.*—Instructions by an owner of wheat to his agent to "sell" without more means "sell as soon as possible," unless there is something in the circumstances or the custom of a particular trade known to both parties to give the words a different meaning. Where instructions to sell, without stipulating any price, were given after the close of the market on May 3:—*Held*: the agent was justified in selling without further instructions at the opening of the market on May 4, though the market had broken by reason of the Grain Exchange having withdrawn option trading & the possibility of the Govt. fixing the price.—*GEARHART v. QUAKER OATS CO.*, [1919] 3 W. W. R. 888.—CAN.

809 ii a. ——— *Deft.* wired to S., a land agent: "Bed-rock, £13,250 net, £400 down, stock & furniture at valuation." S. replied, "Your wire says £400 down; suppose you mean £4,000, wire us giving authority to sell if we can get your net price." Deft. then wired, "Four thousand down. Sell if you can get my net price." S. replied, "Have sold in accordance with your wire, freehold for £13,750, stock & furniture at valuation, showing you £13,250 net, £4,000 to be paid down, balance to be arranged on mtge. by you. Possession as soon as license granted, not later than Aug. 20, £500 deposit paid"; —*Held*: S. had no authority to sell on the terms on which he did sell.—*PRINGLE v. MCKAY*, [1922] N. Z. L. R.

815 iii a. ——— *GEARHART v. QUAKER OATS CO.* (1918), 43 D. L. R. 791.—CAN.

815 iii b. ——— *A land agent, whom pltf. had informed of his willingness to sell a property for £900, obtained an offer of £825*

& telegraphed it to pltf., but through a mistake in transmission the message as delivered to pltf. mentioned £925 as the amount of offer. Pltf. telegraphed his acceptance without naming an amount. The offer having been withdrawn, the agent agreed to sell the property to deft. for £825, & let him into possession. On the tender of the formal contract to pltf. for execution a month later he learned about the mistake in the telegram for the first time & refused to complete:—*Held*: the specific authority originally given to the agent did not authorise the sale of pltf.'s property for less than £900, & no land agent as such is held out as having a general authority on behalf of his client to sell on any terms or at any price.—*SHORTAL v. BUCHANAN*, [1920] N. Z. L. R. 103.—N.Z.

v. ——— *Pltfs., an incorporated co., owning lots of land, appointed C. their general manager to supervise the sale of the lots. In the agreement between pltfs. & C. it was provided that he had no authority to make any representation as to pltfs.' properties other than those contained in their printed matter, & that he should have authority to accept offers for the purchase of lots according to pltfs.' price-list. Pltfs. employed G. to sell their lots. G., in Mar. 1914, telephoned to deft. from pltfs.' office & induced deft. to buy two of the lots, upon the express agreement that pltfs. would resell the lots not later than Aug. 1914, at a profit of \$100 on each lot; G. informed deft. that he was authorised by C. to make this arrangement. C. was present when G. was telephoning, & heard what G. said; C. told G. that he should not have said that pltfs. would resell the lots; but, according to the testimony of G., C. himself was not called as a witness, C. ratified the representation made in his name & ostensibly by his authority:—*Held*: C., as general manager, had ostensible authority to make or ratify the collateral agreement, & any secret restriction of his authority would not affect deft., who relied upon his being the general manager.—*CANADIAN GENERAL SECURITIES CO., LTD. v. GEORGE* (1918), 42 O. L. R. 560; 13 O. W. N. 355; 14 O. W. N. 71; 43 D. L. R. 20.—CAN.*

817 ii. ——— *Implied authority.* A broker who had purchased corn on margin for a customer:—*Held*: justified in selling on the customer failing to forward margin money when a slump occurred in the market-price, a general condition of the broker transacting such business being that he reserved the right to close transactions without further notice when margins

were unsatisfactory, which condition the ct. inferred must have been known to the customer who had been for some time a "room trader" & dealer on a larger scale in the broker's office.—*MALOOF v. BICKELL*, [1920] 1 W. W. R. 407; 50 D. L. R. 590; 17 O. W. N. 294; 59 S. C. R. 429.—CAN.

817 iii. ——— *Authority to find purchaser.*—On Jan. 20, 1920, deft. handed to his brokers a letter in these terms: "I authorise you to procure a buyer of the above premises for Rs. 45,000 & on your sending same, I shall pay you as remuneration at 1 per cent. on the purchase-money. The same will be paid at the registration of the conveyance, otherwise not." The offer contained in the letter was accepted by pltf. & thereupon the fact of such acceptance was communicated on the same day to deft.:—*Held*: the offer contained in the letter amounted only to an offer to be put into touch with intending buyers of the premises & it was in no sense an authority to the brokers to sell deft.'s property or an offer on the part of the vendor to sell the premises to whoever might be brought in touch with the vendor by the brokers.—*PURNA CHANDRA DUTT v. INDRA CHANDRA ROY* (1921), 1 L. R. 49 Calc. 389.—IND.

821 i. ——— *General authority—Sale in own name.*—*Held*: position of pltf. being that of brokers, in selling in their own name they acted beyond the scope of their authority.—*PATERSON v. MCCALLUM*, [1921] N. Z. L. R. 869.—N.Z.

833 xiii a. ——— *Instructions to procure purchaser at specified sum.*—In negotiations for the sale of property a notification by a principal to his agent that he will accept a purchaser at a specified sum will not authorise the agent to conclude a contract.—*CARNEY v. FAIR* (1920), 54 I. L. T. 61.—IR.

sk. *Solicitor—Authority to receive tenders—Tenders to be sent either to agent or principal.*—Exors. gave instructions to solrs. to advertise for tenders for a property & they told the solrs. to insert in the advertisement a notice to the effect that tenders might be sent either to the solrs. or to either of the exors.; this latter the solrs. did not do. A tender was received by the solrs. & forwarded by them to the exors. & they wrote acknowledging the receipt thereof. Some days later the tenant of the property forwarded a tender to one of the exors., who did not communicate with his co-exor. or the solrs. about it. The solrs., having heard no more from the exors. entered into a contract to sell the property to the person who

834. *Add. Annotation*:—As to (1) *Consd. Keen v. Mear*, [1920] 2 Ch. 574.

834a. ———.]—A general authority to an agent to find a purchaser of a house does not authorise the agent to sign a contract binding on the vendor. There must, to justify such a signing, be a special & express authority to sign.—*LEWCOCK v. BROMLEY* (1920), 127 L. T. 116; 37 T. L. R. 48; 65 Sol. Jo. 75.

834b. ———.]—The mere employment of an estate agent by an owner to dispose of a house confers no authority to make a contract. The agent is solely employed to find some one to negotiate with the owner. But if the agent is definitely instructed to sell at a certain price, those instructions involve authority to make a binding contract & to sign an agreement.

But the authority is limited to signing an open contract & does not authorise the agent to sign a contract with special conditions, *e.g.* as to title with which it is no part of an estate agent's duty to deal.—*KEEN v. MEAR*, [1920] 2 Ch. 574; 89 L. J. Ch. 513; 124 L. T. 19.

836. *Add. Annotations*:—*Consd. Keen v. Mear* [1920] 2 Ch. 574. *Distd. Lewcock v. Bromley* (1920), 127 L. T. 116.

836a. ———.]—*KEEN v. MEAR*, No. 834b, *ante*.

836b. ———.]—*Authority alleged to be limited to state price.*—Action for specific performance of a contract alleged to have been entered into by letters between pltfs. & H. & R., estate agents, whom pltfs. alleged were agents for the first deft. for the sale to pltfs. of freehold premises. The defence was that the agents had a limited authority to state a price only. The premises had been offered for sale by auction by order of the mtgees. under particulars & conditions of sale referred to in the correspondence on Jan. 18. H. & R. inclosed plan & auction particulars to pltfs. stating in their letter that their client would be willing to sell the freehold at £550. On Jan. 27, pltfs. offered £400. On the 28th H. & R. submitted that offer to the first deft., & asked for her instructions. On Feb. 8, the first deft.'s husband communicated with H. & R. over the telephone, & on Feb. 10, they wrote to pltfs. stating that their client would not accept £400, & that

"we are now authorised to close with you if you will increase your offer to £450." Pltfs., on Feb. 14, wrote to H. & R. referring to the letter of Feb. 10, & stating "we are prepared to accept your offer of this property agreeing to the price of £450. Kindly forward the contract in due course." On Feb. 17, H. & R. wrote informing the first deft. that, as instructed by her husband, they had offered the property to pltfs. for £450, & that pltfs. had agreed to buy. The second deft. was prepared to purchase the property from the mtgees. at a price more than £450:—*Held*: the agents had authority to conclude the contract, & pltfs. were entitled to judgment for specific performance of it.—*ALLEN & CO., LTD. v. WHITEMAN* (1920), 89 L. J. Ch. 534; 123 L. T. 773; 64 Sol. Jo. 727.

837. *Add. Annotation*:—*Reft. Banque Belge Pour L'Etranger v. Hambrouck* (1920), 37 T. L. R. 76.

845a. ———.]—*Authority to discount bill.*—If an agent employed by the indorsees of a bill to get it discounted warrant it to be a good one, his employers are bound by his act, & are liable to refund if the bill be afterwards dishonoured by the acceptor.—*FENN v. HARRISON* (1791), 4 Term Rep. 177; 100 E. R. 959.

*Annotations*:—*Reft. Fyde v. Clark* (1796), 1 Esp. 447; *Lyon v. Mells* (1804), 1 Smith, K. B. 478; *Re Acraman, Ex p. Bushell* (1844), 3 Mont. D. & De G. 615; *Royal Albert Hall Corpn. v. Winchelsea* (1891), 7 T. L. R. 362.

850. *Add. Annotation*:—*Reft. Collins v. Hopkins*, [1923] 2 K. B. 617.

860. *Add. Annotation*:—*Reft. Collins v. Hopkins*, [1923] 2 K. B. 617.

872. *Add. Citations*:—*affd.*, [1918] A. C. 626; 87 L. J. K. B. 1158; 119 L. T. 446; 34 T. L. R. 518; 62 Sol. Jo. 665, H. L.

*Add. Annotations*:—*Mentd. Calmenson v. Merchants' Warehousing Co.* (1920), 125 L. T. 129; *Dey v. Mayo*, [1920] 2 K. B. 346; *Everett v. Griffiths*, [1921] 1 A. C. 631. *Hearn v. Southern Ry.* (1925), 41 T. L. R. 305.

883a. *Salesman — Authority to cancel sale.*—*LECKENBY v. VOLMAN*, No. 308a. *ante*.

897. For "For full anns., *see* ESTOPPEL," read "For full anns., *see* DEEDS, Vol. XVII., p. 216, No. 285."

## Part VI.—Delegation.

906. *Add. Annotations*:—*Appld. Tarn v. Scanlan, Neilsen, Andersen v. Collins, Muller* (London) *v. Lethem, Muller v. I. R. Comrs.* (1927), 44

T. L. R. 53. *Reft. Prager v. Blatspiel, Stamp & Heacock*, [1924] 1 K. B. 566.

922. *Add. Annotations*:—*Appld. Tarn v. Scanlan*,

made the first tender:—*Held*: the solrs. had no authority to give notice to the person making the first offer that his tender was accepted.—*DEANS v. ORR* (1922), 63 D. L. R. 720.—CAN.

### PART V. SECT. 3, SUB-SECT. 16.

a. Transpose lines 5 & 6 of this paragraph.

### PART V. SECT. 3, SUB-SECT. 17.

al. *Agent forbidding purchaser to use machinery only partly paid for*—*Authority as such.*—Where a letter, sent to a buyer of a farm machine under a conditional sale contract before he is in default, forbidding him, under a threat of serious consequences, to use the machine, is written by an agent

of the seller, with authority to sell & collect the purchase-money & make settlements therefor, as an assertion of a right which is to continue until the buyer makes a settlement, it will be held to be written within the apparent scope of such agent's authority.—*ROBERT BELL ENGINE & THRESHER CO. v. FARQUHARSON*, [1918] 1 W. W. R. 924; 11 Sask. L. R. 81; 39 D. L. R. 625.—CAN.

### PART VI. SECT. 1.

906 *III.* ———.]—*Mother managing daughter's property.*—Where a person employs another relying upon his peculiar aptitude for the work entrusted to him, it is not competent for that person to delegate the trust to another.

Where the authority which a mother had to manage her daughter's property involved a certain trust or discretion for the exercise of which she was selected:—*Held*: she could not delegate that trust & appoint her husband to perform the duties of her agency.—*ROBINSON v. LONG*, [1923] 3 D. L. R. 918.—CAN.

906 *IV.* ———.]—*Manager of property.*—A lease is invalid if it is granted by a person as attorney for one who is a manager of the property leased, & who did not negotiate or consider the lease or know of it until after its execution.—*BONNERJI v. SITANATH DAS* (1921), 49 L. R. Ind. App. 46; 1 L. L. R. 49 Cal. 325.—IND.

- , Andersen v. Collins, Muller v. Lethem, Muller v. I. R. Comrs. (1927), 44 T. L. R. 53. **Refd.** Prager v. Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566.
926. *Add. Annotations*:—**Refd.** Prager v. Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566; Tarn v. Scanlan, Neilsen, Andersen v. Collins, Muller (London) v. Lethem, Muller v. I. R. Comrs. (1927), 44 T. L. R. 53.
941. *Add. Annotations*:—*As to* (1) **Refd.** Prager v. Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566. *Generally.* Mentd. Jebara v. Ottoman Bank, [1927] 2 K. B. 254.
942. *Add. Annotation*:—**Refd.** Prager v. Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566.
944. *Add. Annotations*:—**Refd.** Prager v. Blatspiel, Stamp v. Heacock, [1924] 1 K. B. 566; Tarn v. Scanlan, Neilsen, Andersen v. Collins, Muller (London) v. Lethem, Muller v. I. R. Comrs. (1927), 44 T. L. R. 53.
955. *Add. Annotation*:—*Generally.* **Refd.** (London) v. Lethem, Same v. I. R. Comrs., [1927] 1 K. B. 780.
966. *Add. Annotation*:—**Consd.** Howard Houlder v. Manx Isles S.S. Co., [1923] 1 K. B. 110.
975. *Add. Annotation*:—**Consd.** Belvedere Fish Guano Co. v. Rainham Chemical Works, Feldman & Partridge, Ind, Coope v. Same, [1920] 2 K. B. 487.
- 981a. — **Failure to give proper instructions to sub-agent.**—SELLER v. WORK (1801), Marshall on Marine Insurance, 4th ed., p. 243.

## Part VII.—Ratification.

987. *Add. Annotation*:—**Consd.** *Re* Becket, Purnell v. Paine, [1918] 2 Ch. 72.
- 989a. — — —.]—**Resps.** manager, without their authority & fraudulently, obtained from their bankers, in exchange for cheques drawn by resps. upon the bankers, drafts for equivalent amounts drawn by the bankers upon themselves, payable to bearer, & crossed "not negotiable." These drafts the manager paid to an account which he had with applts., & they collected the amounts. Resps. sued applts. for damages for conversion of the drafts:—**Held**: the action failed, since resps. could not ratify the act of their manager in obtaining the drafts, so as to have a title to sue, without also ratifying his subsequent dealing with the drafts, the form of which made collection through a bank necessary.—UNION BANK OF AUSTRALIA v. MCCLINTOCK, [1922] 1 A. C. 240; 91 L. J. P. C. 108; 126 L. T. 588, P. C.
- Annotation*:—**Refd.** Australian Bank of Commerce v. Perel, [1926] A. C. 737.
- Compare* No. 338a, ante.
995. *Add. Annotation*:—**Refd.** Bow's Emporium v. Brett (1927), 44 T. L. R. 194.
998. *Add. Annotation*:—**Refd.** Lake v. Simmons (1926), 95 L. J. K. B. 586.
1002. *Add. Annotations*:—**Mentd.** McMillan v. Canadian Northern Ry., [1923] A. C. 120; Walpole v. Canadian Northern Ry., [1923] A. C. 113.
1005. *Add. Annotation*:—**Refd.** The Joannis Vatis (1921), 91 L. J. P. 182.
1009. *Add. Annotations*:—**Refd.** Drughorn v. Rederiaktiebolaget Trans-Atlantic, [1919] A. C. 203; The Joannis Vatis (1921), 91 L. J. P. 182; Underwood v. Bank of Liverpool, Same v. Barclays Bank, [1924] 1 K. B. 775; Robinson v. Midland Bank (1925), 41 T. L. R. 402.
1022. *Add. Annotation*:—**Consd.** Reynolds v. Atherton (1921), 125 L. T. 690.
1026. *Add. Annotation*:—**Refd.** Reynolds v. Atherton (1921), 125 L. T. 690.
1027. *Add. Annotation*:—**Refd.** *Re* Bebington's Tenancy, Bebington v. Wildman, [1921] 1 Ch. 559.
1028. *Add. Annotation*:—**Refd.** *Re* Bebington's Tenancy, Bebington v. Wildman, [1921] 1 Ch. 559.
1029. *Add. Annotation*:—**Refd.** *Re* Bebington's Tenancy, Bebington v. Wildman, [1921] 1 Ch. 559.
1033. *Add. Annotation*:—**Refd.** Bowyer, Philpott & Payne v. Mather, [1919] 1 K. B. 419.
- 1033a. — **After issue of notice to abate—Before institution of proceedings.**—By a bye-law of the city council of W., which was the

### PART VI. SECT. 3, SUB-SECT. 1.

943 iii. — — —.]—If an agent for sale of grain to whom the goods are consigned or delivered, consigns the same to a sub-agent for sale, & the bill of lading & such other documents & circumstances as there are support the inference of the agent's right to deal with the goods, then in the absence of anything showing a contrary intention the sub-agent has only to account in respect of the proceeds to the first agent & not to the original principal.—HINCHCLIFFE v. BAIRD & BOTTERELL, [1920] 3 W. W. R. 159; 53 D. L. R. 451; 30 Man. L. R. 620.—CAN.

### PART VI. SECT. 3, SUB-SECT. 2.

964 v. — — —.]—**Contract with sub-agent approved by principal.**—Where a co. had engaged an agent to sell its shares, had intended him to employ sub-agents, & had approved of the contract made by the agent on its

behalf with a sub-agent:—**Held**: the co. was liable to the sub-agent for commission due under his contract.—BERGMAN v. CANADIAN FARM IMP. CO., 1 D. L. R. 350.—CAN.

### PART VII. SECT. 3.

1006 v a. — — —.]—A contract made on behalf of a person, but without his authority, by a person who does not profess to be acting for a principal cannot be ratified.—REIMER v. ROSEN, [1918] 1 W. W. R. 425.—CAN.

1006 v b. — — —.]—A person does not become a principal by any act of so-called ratification, unless at the time of the contract the so-called agent was not acting for himself but was intending to bind an ascertainable principal; even if it is intended that some unnamed principal shall benefit, if the so-called agent purports to be acting for himself & not for another, the rule applies.—MCCALLUM v. COHOR

(1918), 44 O. L. R. 497; 46 D. L. R. 733; 15 O. W. N. 262.—CAN.

1006 v c. — — —.]—Pltf. & F. were customers of defts.' bank & F. was, unknown to pltf., largely indebted to the bank. K., a branch manager, drew up a promissory note for \$2,500 which was signed by F. & made payable to the order of pltf. on demand. Pltf. was induced to advance the \$2,500 before the undertaking by K., written on the note, "this note will be paid when demanded," but K. did not sign this statement as branch manager. The bank received the money by pltf.'s cheque payable to order of F. & indorsed by him, which sum was then used to liquidate F.'s debt to the bank. Pltf. claimed that deff. bank had ratified the acts of K. & were liable:—**Held**: it was not the intention of K. as shown by the evidence to act as agent of defts. in the transactions.—BRASSETT v. ROYAL BANK OF CANADA (1922), 67 D. L. R. 740.—CAN.



sanitary authority of W., it was provided that whenever the council was in vacation the mayor & the chairmen of the respective committees of the council might give such instructions as were requisite with respect to any matter of an urgent nature, provided that all such acts were in due course reported to the council. The council of W. held no meeting between July 26, 1917, & Oct. 18, 1917—the summer vacation, & the public health committee of the council did not sit between July 17, 1917, & Oct. 9, 1917. On July 17, 1917, the public health committee passed a resolution appointing its chairman, & in his absence the acting vice-chairman, to deal with all urgent matters on behalf of the committee during the summer vacation. This resolution was reported to the council & approved by them on July 26, 1917. About the middle of Sept. 1917, the medical officer of health, being satisfied that a nuisance existed upon certain premises in the district of the council & city of W., caused a written notice of the fact of its existence to be served on the owner of the premises under Public Health London Act, 1891 (c. 76), s. 3. As the nuisance was not abated, the matter was reported by the medical officer to the chairman of the public health committee, & the latter, considering that the matter was urgent, & acting under the authority conferred upon him by the resolution of the public health committee, which had been confirmed by the council, as before stated, directed that a notice should be served upon the owner of the premises requiring him to abate the nuisance in accordance with the provisions of sect. 4 of the Act. This notice, which was issued in due form, was served upon the owner on Sept. 25, 1917. This action of the chairman was reported to the public health committee at their first meeting after the summer vacation, on Oct. 9, 1917, & approved by them, & the matter was later on, on Oct. 18, 1917, reported to & approved by the council. As

the nuisance still continued, proceedings were taken against the owner by the sanitary inspector, & on Dec. 5, 1917, an order was made for its abatement by the magistrate who heard the complaint. The owner thereupon applied for & was granted a rule *nisi* for *certiorari* to quash the order of the magistrate on the ground that the same was made without jurisdiction, the notice of Sept. 25, 1917, not having been given by the authority or direction of the council or of the public health committee, or after consideration by them in pursuance of Public Health London Act, 1891 (c. 76), s. 4 (1):—*Held*: as the act of the duly authorised agent of the council, namely, the chairman of the public health committee, appointed to act in urgent matters during the vacation under the bye-law & in pursuance of the resolution of the committee subsequently ratified by the council, was reported to & approved & ratified by the council prior to the institution of proceedings against the owner of the premises, the ratification related back to the time of the doing of the act in question, namely, the serving of the notice of Sept. 25, 1917, & the magistrate had jurisdiction to make the order of Dec. 5, 1917.—*R. v. CHAPMAN, Ex p. ARLIDGE*, [1918] 2 K. B. 298; 87 L. J. K. B. 1142; 119 L. T. 59; 82 J. P. 229; 16 L. G. R. 525, D. C.

*Annotation*:—*Reid. Bowyer, Philpott & Payne v. Mather*, [1919] 1 K. B. 419.

1040. *Add. Annotations*:—*Reid. Prager v. Blat-spiel, Stamp & Heacock*, [1924] 1 K. B. 566; *Tarn v. Scanlan, Neilson, Andersen v. Collins, Muller (London) v. Lethem, Muller v. I. R. Comrs.* (1927), 44 T. L. R. 53.

1079. *Add. Annotation*:—*As to* (1) *Reid. Re Bebington's Tenancy, Bebington v. Wildman*, [1921] 1 Ch. 559.

1080. *Add. Annotation*:—*Mentd. Re Witham, Chadburn v. Winfield*, [1922] 2 Ch. 413.

1098. *Add. Annotation*:—*Apld. Bonham v. Maycock* (1928), 138 L. T. 736.

#### PART VII. SECT. 5.

1037 vii. —.]—In order that a person may be deemed to have ratified an act done without his authority, it is necessary that at the time of the ratification he should have full knowledge of all the material circumstances in which the act was done, unless he intends to ratify the act & take the risk whatever the circumstances may have been.—*WHEELER v. HISEY* (1918), 42 O. L. R. 654; 14 O. W. N. 150; 43 D. L. R. 92.—CAN.

1037 viii. —.]—The agent of debts hired plts., but exceeded his authority in regard to the terms of hire:—*Held*: debts were not estopped by accepting plts.' services, from disputing plts.' claim for wages, debts having repudiated the agent's authority as soon as the terms of the contract were brought to their attention.—*ROY v. ST. JOHN LUMBER CO., FISHER v. ST. JOHN LUMBER CO.* (1919), 46 N. B. R. 120.—CAN.

1037 ix. —.]—The burden of proving ratification rests on the person alleging it, who must prove full knowledge of the facts.—*THOMPSON v. LYNNE*, [1921] 2 W. W. R. 635; 56 D. L. R. 729; 14 Sask. L. R. 282.—CAN.

#### PART VII. SECT. 6, SUB-SECT. 1.

1044 vii. —.]—In considering whether a person is bound by the acts of an ostensible agent which are alleged

to have been ratified, the distinction is to be observed between a ratification to be implied from conduct showing an intention to ratify & an estoppel to deny ratification, the case, that is, where, without a conscious intention to ratify, the so-called principal is estopped from denying that his conduct must be treated as a ratification.—*MCKAY v. TUDHOPE ANDERSON CO., LTD.*, [1918] 3 W. W. R. 994; 44 D. L. R. 100; 14 Alta. L. R. 131.—CAN.

1044 viii. —.]—Ratification by a principal of the acts of an alleged agent must be evidenced either by clear adoptive acts or by acquiescence equivalent thereto, & the act or acts of adoption or acquiescence must be accompanied by full knowledge of all the essential facts.—*THOMPSON v. LYNNE*, [1921] 2 W. W. R. 635; 56 D. L. R. 729; 14 Sask. L. R. 282.—CAN.

1044 ix. —.]—If an agent executes on behalf of a former principal a contract for the sale of land, although his authority to execute such contracts has terminated, then if the purchaser seeks to hold the principal liable thereunder he must show that the principal has placed himself by some act or omission of his own in a position which compels him to accept the contract & carry out its terms; & this is not shown where there does not appear to have been any holding out of such agent by the principal either to the

purchaser directly or by circumstances of publicity which reached him & upon which he acted.—*ZEREBESKY v. POWELL*, [1921] 3 W. W. R. 528.—CAN.

1044 x. —.]—*ABBOTT v. McDougall & Cowans (Man.)*, [1928] 1 D. L. R. 295; [1927] 3 W. W. R. 816.—CAN.

#### PART VII. SECT. 6, SUB-SECT. 2.

1086 i. *Purchase — Acceptance of goods bought.*—Where an agent, authorised to buy goods of a certain kind, buys goods of a different kind, if the principal for whom they are bought, though repudiating the contract & returning most of the goods, keeps part of them, he thereby does an act in relation to the goods which is inconsistent with the ownership of the seller, & so accepts them, & in so doing ratifies the purchase.—*BONTEX IMPORTING CO. v. PANAR* (1922), 63 D. L. R. 200; [1922] 1 W. W. R. 128.—CAN.

1100 iv. — *Paid by cheque of unauthorised agent.*—S. took part in the negotiations for the sale of an engine by applt. to resp., but was not applt.'s agent either to effect the sale or to collect the purchase-money. After the sale resp. paid the money to S., thinking that he was applt.'s agent, & a few days later S. told applt. that he had received the money but could

1102. *Add. Annotations*:—*Consd. Re Bankruptcy Notice*, [1924] 2 Ch. 76. *Reid. Edwards v. Motor Union Insee.*, [1922] 2 K. B. 249. *Mentd. Huddersfield Fine Worsteds v. Todd* (1925), 42 T. L. R. 52.

1104a. ———.]—If goods in the city of London are sold by a broker, to be paid by a bill of exchange, the vendor has a right, within a reasonable time, if he is not satisfied with the sufficiency of the purchaser, to annul the contract. But the vendor must intimate his dissent as soon as he has had an opportunity to inquire into the solvency of the purchaser. Five days considered too long a period for this purpose.—*HODGSON v. DAVIES* (1810), 2 Camp. 530; 170 E. R. 1241, N. P.

*Annotations*:—*Reid. Maxwell v. Deare* (1854), 23 L. T. O. S. 1; *Humfrey v. Dale* (1857), 7 E. & B. 266. *Mentd. Trueman v. Loder* (1840), 11 Ad. & El. 589; *Scott v. Barclays Bank*, [1923] 2 K. B. 1.

1105. *Add. Annotation*:—*Reid. The Yuri Maru, The Woron*, [1927] A. C. 906.

1109. *Add. Annotation*:—*As to* (2) *Reid. Koenigsblatt v. Sweet*, [1923] 2 Ch. 314.

1128. *Add. Annotation*:—*Reid. Koenigsblatt v. Sweet*, [1923] 2 Ch. 314.

1129. *Add. Annotation*:—*Reid. Robinson v. Midland Bank* (1925), 41 T. L. R. 402.

1137. *Add. Annotation*:—*Generally, Mentd. Hartley v. Hymans*, [1920] 3 K. B. 475.

1138. *Add. Annotation*:—*As to* (2) *Reid. Commercial & Estates Co. of Egypt v. Board of Trade*, [1925] 1 K. B. 271.

1153. *Add. Annotation*:—*Reid. Koenigsblatt v. Sweet*, [1923] 2 Ch. 314.

1160. *Add. Annotations*:—*As to* (1) *Reid. The Joannis Vatis* (1921), 91 L. J. P. 182. *Generally, Mentd. Sutters v. Briggs*, [1922] 1 A. O. 1.

1168. *Add. Annotation*:—*Mentd. Goldrei, Foucard v. Sinclair & the Russian Chamber of Commerce in London* (1917), 87 L. J. K. B. 261.

## Part VIII.—Relations between Principal and Agent.

1175. *Add. Annotation*:—*Reid. Cheshire v. Vaughan*, [1920] 3 K. B. 240.

1176. *Add. Annotations*:—*Reid. Cheshire v. Vaughan*, [1920] 3 K. B. 240; *Maskell v. Hill*, [1921] 3 K. B. 157. *Mentd. Rawlings v. General Trading Co.*, [1921] 1 K. B. 635.

1186. *Add. Annotation*:—*Generally, Mentd. Bradford v. Price* (1923), 92 L. J. K. B. 871.

1196. *Add. Annotation*:—*Reid. Re City Equitable Fire Insee.*, [1925] Ch. 407.

1206. *Add. Annotations*:—*Consd. Gould v. S. E. & C. Ry.*, [1920] 2 K. B. 186. *Apld. Finn v. Shelton Iron, Steel & Coal Co.* (1924), 131 L. T. 213; *Westminster Bank v. Hilton* (1926), 136 L. T. 315. *Reid. Weigall v. Runciman* (1916), 85 L. J. K. B. 1187; *Weiss,*

*Biheller & Brooks v. Farmer*, [1923] 1 K. B. 226. *Mentd. Manbre Saccharine Co. v. Corn Products Co.*, [1919] 1 K. B. 198; *Johnson v. Taylor*, [1920] A. C. 144; *Wilson, Holgate v. Belgian Grain & Produce Co.*, [1920] 2 K. B. 1; *Diamond Alkali Export Corp. v. Bourgeois*, [1921] 3 K. B. 443; *Sassoon v. International Banking Corp.*, [1927] A. C. 711.

1208. *Add. Citation*:—13 Asp. M. L. C. 463.

1208a. ———.]—*VALE (J.) & Co. v. VAN OPPEN & Co., LTD.* (1921), 37 T. L. R. 367.

1211. *Add. Annotations*:—*Apld. Weigall v. Runciman* (1916), 13 Asp. M. L. C. 463. *Reid. Finn v. Shelton Iron, Steel & Coal Co.* (1921), 131 L. T. 213. *Mentd. Spencer v. Ashworth, Partington* (1925), 94 L. J. K. B. 447.

not pay it over then, & offered to pay interest on it, to which applt. agreed. After several applications from applt. S. handed him a cheque for the balance shown to be due in an accompanying statement, in which S. debited himself with interest & took credit for commission. Applt. accepted the cheque & paid it into his account, but it was dishonoured & he then sued resp. for the purchase-money:—*Held*: applt.'s acceptance of the cheque was a clear adoptive act evidencing his ratification of S.'s unauthorised act in receiving the money.—*McEWAN v. JOHNSTONE*, [1918] N. Z. L. R. 49.—N.Z.

am. ——— *Demand for payment over of deposit.*]—Where an agent had no authority to sell on the terms on which he did sell:—*Held*: a letter of the principal, demanding payment of the money received by the agent as a deposit, did not ratify the action of the agent in selling.—*PRINGLE v. M'KAY*, [1922] N. Z. L. R. 818.—N.Z.

1104 iii a. ———.]—Where principal, knowing the full circumstances of the signing of an agreement for sale & purchase of land by an agent on his behalf, does not notify the purchaser of his repudiation for nearly three years he is estopped by his acts & conduct from objecting to the agreement.—*WEST v. DILLICAN*, [1921] N. Z. L. R. 617.—N.Z.

### PART VII. SECT. 6, SUB-SECT. 3.

1127 i. *On person alleging ratification.*]—The burden of proving ratification rests on the person alleging it, who must prove full knowledge of the facts.—*THOMPSON v. LYNNE*, [1921] 2 W. W. R. 835; 56 D. L. R. 729; 14 Sask. L. R. 282.—CAN.

### PART VII. SECT. 7, SUB-SECT. 1.

1122 iii. ———.]—An act done by a person on behalf of another person, but without that other person's authority or knowledge, & subsequently ratified by that other creates the relationship of principal & agent between the parties in respect of that act.—*GREAT WEST FARMS, LTD. v. HANSBERGER*, [1924] 1 D. L. R. 185.—CAN.

### PART VII. SECT. 7, SUB-SECT. 2.

am. *Trading goods—Agent for sale.*]—If an agent for sale of goods trades them for other goods & the principal ratifies the transaction, the goods received in exchange become the principal's property.—*REX GROCERY v. HIGGS & KEEN*, [1925] 3 D. L. R. 565; [1925] 2 W. W. R. 402; 19 L. L. R. 492.—CAN.

### PART VIII. SECT. 2, SUB-SECT. 1.—A.

1184 v. ———.]—*Goods not in accordance with order.*]—Defts. gave to pltf. a written order to ship from

England on account of debts, one thousand two-gallon & two hundred & fifty three-gallon stoneware jars. Pltf. ordered jars from a manufacturer in England to be shipped in performance of this order. Two lots were shipped & delivered to debts, who paid for them. Delivery of the last lot, which comprised thirty-nine three-gallon & three hundred & forty-two two-gallon jars, was refused by debts on the ground that there were twenty-three more of the three-gallon jars & twenty-five less of the two-gallon jars than had been ordered, & also that the mouths of a large number of the jars were not of the specified size:—*Held*: pltf. was under a duty to purchase goods for debts, of the description ordered, & his failure to do so amounted to a breach of duty.—*BULTERS v. ROOPE*, [1922] N. Z. L. R. 549.—N.Z.

1188 ii. ———.]—Wheat held by debts, for pltf. was on pltf.'s order shipped by debts, from M. to A. Pltf. telegraphed instructing debts to sell at once. Defts. wrote saying that until the cars arrived at A. they were unable to sell. They at once, however, tried to sell & after ten days did so:—*Held*: they were justified in selling at the price then obtainable & without receiving further instructions.—*JACKSON v. SASKATCHEWAN CO-OPERATIVE ELEVATOR CO.*, [1919] 3 W. W. R. 572.—CAN.



**1243a. — Extent of liability.]—**Pltf. employed deft., a chartered accountant, to investigate the affairs of a co. in which he was interest-d. In a letter of instructions to deft. pltf. inserted libellous statements concerning two officials of the co. Deft. handed the letter to his partner, who negligently left it at the co.'s office. The manager found it, read it, & communicated its contents to the two persons defamed, each of whom sued pltf. for libel & obtained judgment against him for damages & costs. Pltf. then sought to recover from deft. the amount which he had paid for damages & costs in the libel actions as damages for breach of an implied duty to keep secret the letter of instructions:—*Held*: pltf.'s liability for damages in the libel actions did not result from deft.'s breach of duty, & deft. was liable for nominal damages only.—**WELD-BLUNDELL v. STEPHENS**, [1920] A. C. 956; 89 L. J. K. B. 705; 123 L. T. 593; 36 T. L. R. 640; 64 Sol. Jo. 529, H. L.

*Annotations*:—**Consd. Re Polemis & Furness Withy**, [1921] 3 K. B. 560; **A. & B. Taxis v. Secretary of State for Air**, [1922] 2 K. B. 328; **Harnett v. Bond**, [1924] 2 K. B. 517. **Reid. Proops v. Chaplin** (1920), 37 T. L. R. 112; **Elliott Steam Tug Co. v. Shipping Controller**, [1922] 1 K. B. 127; **The San Onofre**, [1922] P. 243; **Adelaide S.S. Co. v. R.**, [1923] 1 K. B. 59; **Tournier v. National Provincial & Union Bank of England**, [1924] 1 K. B. 461; **Harnbrook v. Stokes**, [1925] 1 K. B. 141; **Britannia Hygienic Laundry Co. v. Thornycroft** (1925), 135 L. T. 83; **Singleton Abbey (Owners) v. Paludina (Owners)**, *The Paludina* (1926), 95 L. J. P. 135.

**1243b. — ———.]—**Accountants, employed to prepare balance-sheets from the books of a firm, stated the amount of "cash at the

bank" as it appeared in the books, without examining the bank pass-book, or obtaining any statement in reference thereto from the bank, or informing the firm that they had not done so. The entries in the books were falsely made by a fraudulent clerk, whose defalcations were not discovered, as they would have been if the entries in the books had been checked by reference to the pass-book:—*Held*: (1) the accountants were negligent; (2) they were liable in damages for the amount of the defalcations of each year which would have been discovered if the proper steps had been taken as to the pass-book.—**FOX & SON v. MORRISH, GRANT & Co.** (1918), 35 T. L. R. 126; 63 Sol. Jo. 193.

**1250. Add. Annotation:—***Appl. Re City Equitable Fire Insce.*, [1925] Ch. 407.

**1251. Add. Annotation:—***Appl. Re City Equitable Fire Insce.* (1924), 40 T. L. R. 853.

After this case add "*See, generally, COMPANIES*, Vol. IX., pp. 553 *et seq.*"

**1263a. ———.]—**Agents employed to sell land are generally employed to obtain the best purchase price reasonably obtainable. Their duty to their principal does not cease when they have procured an offer to purchase which he accepts subject to contract. It is still their duty to inform him of any offer which they receive at a higher price than that so accepted, & they remain subject to this duty until final contracts of sale & purchase have been signed & exchanged.—**KEPPEL v. WHEELER**, [1927] 1 K. B. 577; 96 L. J. K. B. 433; 136 L. T. 203, C. A.

**PART VIII. SECT. 2, SUB-SECT. 2.—**  
**A. (a).**

**1214 iv. — Negligent misrepresentation.]—**An agent who in breach of his duty to his principal induces him by negligent misrepresentation to enter into a contract is liable to make good to his principal the loss arising therefrom.

In such a case the principal may recover either in tort or in contract, & it is no answer to his claim that he is also entitled to recover from the other party to the contract induced by his agent.—**YOUNG v. TASSILL**, [1918] N. Z. L. R. 924.—N. Z.

**1214 v. ———.]—**The duty of a paid agent to his principal is to exercise care, skill, & honesty, & if he takes on himself to convey information which he considers it material that his principal should know, & which he recommends & intends his principal to adopt, it is his duty to use reasonable care & skill in ensuring the accuracy of that information.—**BROWN v. THORNES**, [1920] N. Z. L. R. 306.—N. Z.

**PART VIII. SECT. 2, SUB-SECT. 2.—**  
**B. (b).**

**1245 iv. — ———.]—**A law-agent, to whom a client entrusted money for investment on heritable security to yield 5 per cent., invested £1,000 of the amount in 1903 on a heritable bond which bore to be secured over tenement property, & £200 on a postponed bond over other subjects. These properties both belonged to another client of the agent's firm, who, in 1905, died insolvent, & heavily indebted to the firm. He had granted an *ex facie* absolute disposition of the tenement property in favour of the firm prior in date to the bond for £1,000, which loan was accordingly not validly secured; & the postponed bond for £200 was worthless, as the prior bond exhausted the value of the security subjects. None of these facts were

communicated to the lender:—*Held*: while the agents were not guilty of negligence in investing the money as they did in 1903, in view of the fact that they were called upon to obtain a 5 per cent. investment, they were guilty of negligence upon the death of the borrower in 1905, in respect that, a conflict of interest having then arisen between them & the lender in connection with the £1,000 bond, they failed to inform their client of the position, failed to realise her investments, & failed to advise her to seek independent legal advice.—**WERNHAM v. M'LEAN, BAIRD & NEILSON**, [1925] S. C. 407.—SCOT.

**so. Customs broker.]—****WOLSELY TOOL & MOTOR CAR CO. v. JACKSON POTTS & Co.** (1915), 7 O. W. N. 617; 8 O. W. N. 311; 33 O. L. R. 96, 587.—CAN.

**1260 i. Factor.]—**Where advances are made by a factor on the security of a world commodity, such as grain, consigned to him for sale, it is his duty to deal with the goods in such a way as to guard, not only himself, but the principal also, against loss. There is implied in every such transaction a right on the part of the factor to realise on his security whenever the exigency of the case demands it.—**UNITED GRAIN GROWERS, LTD. v. MABEY**, [1925] 1 D. L. R. 301; [1925] 1 W. W. R. 19.—CAN.

**1262 ii. — Extent of duties.]—**If a local agent is entrusted by an absent owner with looking after & renting a furnished house, then, although he is not an insurer of the safety of the property, he must use reasonable care & diligence in its protection & preservation, & if he fails to do so he will be liable for the resulting loss. If furniture disappears or is damaged beyond reasonable wear & tear, he is *prima facie* liable to account for it. Evidence sufficient to excuse him from liability would in

some instances be quite light, in others more burdensome, depending on such questions as the checking over or not of the articles of the furniture, the character of the tenants & the constituents of the tenant's family, the value & nature of the missing articles, etc.

When the owner claims damages against the agent for lost or damaged articles the question of liability may be directly involved in regard to each article, & that liability is a question for the judge, & in such case the value of any article or the damage done to it can be most conveniently determined by the judge when deciding the question of liability, rather than by a referee.—**CARLILE v. NORTHERN TRUSTS CO.**, [1924] 2 W. W. R. 961.—CAN.

**1262 iii. — ———.]—**A house agent, employed to look after the renting of a furnished house, must keep a proper inventory of the furniture & check it over carefully with each incoming & outgoing tenant, & he must exercise care in seeing that tenants to whom he rents the house are the proper sort of persons to occupy it; but, in the absence of a special contract, the agent is not a guarantor of the rent, or bound to pay the taxes, or to notify the owner so as to prevent a sale of the house for non-payment thereof.—**HYLAND v. COSTERTON (B. C.)**, [1927] 1 D. L. R. 1166; [1927] 1 W. W. R. 340.—CAN.

**1264 ii. — Acting for vendor & purchaser—Payment of rents to vendor after notice of claim by purchaser.]—**Where an agent who acted for both parties in connection with a sale of immovable property on the terms of "cash against transfer," received the rents &, after notice that they were claimed by the purchaser, paid them over to the seller as having, in his opinion, the better title thereto:—*Held*: he was personally liable to the



- Add. Annotation:—Refd. Rawlings v. General Trading Co., [1921] 1 K. B. 635.*

1396 II. —.]—Assuming a transaction between brokers & their principal was an illegal one, & the brokers paid the proceeds to a person as being

1409. *Add. Annotation*:—*Mentd. Spencer v. Hemmerde*, [1922] 2 A. C. 507.

1422. *Add. Annotation*:—*As to (1) Refd. Baker v. Lloyd's Bank*, [1920] 8 K. B. 322.

1425. *Add. Annotation*:—*As to (2) Refd. Lawrence v. Hayes*, [1927] 2 K. B. 111.

1426a. *Proceeds of sale of goods—Goods consigned by commission agents for principal—Right of agent to set off claims against consignors.*—In 1917 *pltf. & F.*, merchants at Odessa in the Russian Ukraine, consigned large quantities of pigs' bristles to a Russian bank at Odessa, as commission agents, to send the goods to England for sale & remit the proceeds to the consignors. The bank, as principals, sent the goods to *defts.*, as their agents, who knew that *pltf. & F.* were the original consignors. Afterwards the revolution broke out in Russia, & in Dec. 1917, all private banks in Russia were abolished by decree of the Govt., & in 1918 their assets & liabilities were taken over by the People's Bank of the Russian Socialist Federal Soviet Republic. In 1920 the People's Bank was by further decree abolished & its assets & liabilities were transferred to the Central Budget & Accounts Administration of the Russian Socialist Federal Soviet Republic. One result of this legislation was that the head office of the Odessa bank in Petrograd was raided & its shares were confiscated, but the Odessa bank was allowed to carry on its business as usual until 1920, when it was closed by a local soviet. This permission was the result of the establishment of an independent republican Govt. over the Ukraine—the Ukrainian Soviet Govt., over which the Russian Soviet Govt. claimed neither a *de facto* nor *de jure* jurisdiction, & which was also recognised by foreign powers as an independent Govt. Later on a full federation was entered into between the Ukraine Republic & the Russian Soviet Republic & recognised as a *de facto* & recently, as a *de jure* Govt. by the Govt. of this country. During transit of the goods to England some of the goods respectively consigned by *pltf. & F.* became inextricably mixed, with the result that *F.* assigned all his rights in his consignment to *pltf.*, & notice of the assignment was given to *defts.* Before the closing of the bank at Odessa the bank ceded all their rights in the bristles consigned to them to *pltf. & F.* The bristles consigned to *defts.* were sold by them in 1920, & *pltf.* demanded payment of the amount of the proceeds, less the amount of *defts.* commission, but *defts.* refused payment, alleging (*inter alia*) that the goods belonged to the bank at Odessa & that *defts.* were entitled to set off against *pltf.*'s claim a debt due to them from the People's Bank in Russia & the Russian Soviet Govt., & *pltf.* in 1923 brought this action:—*Held*: (1) assuming that the bank at Odessa was an effective bank up to the time when the bank

was closed, the bank's instructions to *defts.*, followed by the transfer of the bank's rights to *pltf. & F.* & the transfer of *F.*'s rights to *pltf.*, made it clear that the bank's title to the bristles had gone; (2) assuming that the bank was non-existent & that some other person or persons had given the instructions to sell, the sale by *defts.* was without the authority of the bank, & in that case the bank's title had gone. In either case *pltf.* as a disclosed or undisclosed principal was entitled to the proceeds, less *defts.* commission with interest from the date of the demand.—*DORF v. NEUMANN, LUEBECK & Co.* (1924), 40 T. L. R. 405.

1437. *Add. Annotation*:—*Refd. Re Achilopoulos, Johnson v. Mavromichali*, [1928] Ch. 433.

1459. *Add. Annotations*:—*Gen. ally, Refd. Dominion Coal Co. v. Maskinonge S.S. Co.* [1922] 2 K. B. 132. *Mentd. Re Richardson, Pole v. Pattenden*, [1920] 1 Ch. 423; *Taylor v. Davies*, [1920] A. C. 636.

1460. *Add. Annotation*:—*Refd. Dominion Coal Co. v. Maskinonge S.S. Co.*, [1922] 2 K. B. 132.

1467. *Add. Annotation*:—*Refd. Rawlings v. General Trading Co.*, [1920] 3 K. B. 30.

1482. *Add. Annotations*:—*Appld. Mortimer v. Beckett*, [1920] 1 Ch. 571; *Prosperity v. Lloyds Bank* (1923), 39 T. L. R. 372. *Consd. Rely-A-Bell Burglar & Fire Alarm Co. v. Eisler*, [1926] Ch. 609.

1484. *Add. Annotation*:—*Refd. Prosperity v. Lloyds Bank* (1923), 39 T. L. R. 372.

1486. *Add. Annotation*:—*Consd. Davey v. Robinson*, [1923] 1 K. B. 563.

1490. *Add. Annotations*:—*Refd. Dutton, Massey (Liverpool) v. Dutton, Massey* (1923), 40 R. P. C. 413; *Harrods v. Harrod* (1924), 40 T. L. R. 195; *Motor Manufacturers' & Traders' Soc. v. Motor Manufacturers' & Traders' Mutual Insee.* [1925] Ch. 675.

1491. *Add. Annotation*:—*Mentd. Macmillan v. Cooper* (1923), 93 L. J. P. C. 113.

1500. *Add. Annotation*:—*Mentd. Lowther v. Harris*, [1927] 1 K. B. 393.

1501a. *Agent wrongfully acting for other principals—Liability of party inducing agent to commit breach of duty.*—*Resps.* employed *D.* as their agent to buy tobacco from growers, the total bought not to exceed 300,000 lbs., & supplied him with forms of contract bearing their firm name as buyers. *D.* agreed not to act as buying agent for anybody except *resps.* & another firm. *Applt.*, who knew the position as between *D.* & *resps.*, induced him to buy in the names of the two firms a total of 1,100,000 lbs., arranging with him to take over the surplus not required for them. Out of that total weight *D.* handed 300,000 lbs. to *resps.*, & tendered the balance to *applt.*, but he repudiated the arrangement, the market having fallen heavily. *Resps.* having also repudiated liability, one of the vendors, with whom *D.* had contracted upon *resps.*'

the agent of their principal to receive it:—*Held*: the principal could recover such proceeds from the agent.—*AIKMAN v. BURDICK BROTHERS*, [1923] 4 D. L. R. 852; 3 W. W. R. 785; *varying*, [1923] 1 D. L. R. 1165; 31 B. O. R. 478.—CAN.

PART VIII. SECT. 2, SUB-SECT. 5. *so. General rule.*—Where money is recoverable by a principal from

an agent as having been received by the agent on the principal's behalf, the agent is not as a rule liable for interest unless by virtue of an express agreement or of some mercantile usage.—*LALMAN v. CHINTAMANI* (1918), 1 L. R. 41 All. 254.—IND.

PART VIII. SECT. 2, SUB-SECT. 7.—A. 1464 *v. a.* ———.—*Pltf. supplied money for the purchase of land of which*

*deft.* took the deed in his own name. In an action to have *deft.* declared a trustee & for the recovery of mesne profits the defence was that the purchase price was furnished by *pltf.* with the intention that the land should be *deft.*'s & that *pltf.* should have a home with *deft.* during her lifetime:—*Held*: *pltf.* was entitled to judgment.—*ENNOS v. MCLEAN* (1919), 52 N. S. R. 485.—CAN.



form, was held to be entitled to damages from resps. as having held out D. as their agent. Resps. claimed to recover over from applt. :—*Held*: resps. were so entitled, applt. having knowingly induced D. to commit a breach of his duty to them, whereby they had suffered the damage.—JASPERSON v. DOMINION TOBACCO CO., [1923] A. C. 709; 92 L. J. P. C. 190; 129 L. T. 771, P. C.

1505. *Add. Annotation*:—As to (1) *Reid*. Spencer v. Hemmerde, [1922] 2 A. C. 507.

1508. *Add. Annotations*:—*Reid*. *Re* Richardson, Pole v. Pattenden, [1920] 1 Ch. 423; Taylor v. Davies, [1920] A. C. 636.

1509. *Add. Annotations*:—*Reid*. Taylor v. Davies, [1920] A. C. 636; *Re* Claridge's Patent Asphalte Co., [1921] 1 Ch. 543. *Mentd*. Weld v. Petre (1928), 97 L. J. Ch. 399.

1513. *Add. Annotations*:—*Reid*. *Re* Richardson, Pole v. Pattenden, [1920] 1 Ch. 423; Taylor v. Davies, [1920] A. C. 636.

1517. *Citations*:—For "[1894] 1 Ch. 416" read "[1894] 1 Ch. 616."

*Add. Annotation*:—*Reid*. *Re* Windsor Steam Coal Co. (1901), Ltd., [1928] Ch. 609.

1518. *Add. Annotation*:—*Reid*. Albemarle Supply Co. v. Hind, [1928] 1 K. B. 307.

1526. *Add. Annotation*:—As to (2) *Reid*. Wright v. Morgan, [1926] A. C. 788.

1529a. Unless full disclosure—Sufficiency of disclosure.]—Deft. bought shares in the Co. on the recommendation of T., who was in the office of E. & Co., stockbrokers. E. & Co. carried through the transaction & sent deft. two contract notes, on which were the words "bought of ourselves as principals," & no commission was charged. By arrangement deft. paid 25 per cent. of the price of the shares, the balance being carried over. E. & Co. subsequently became bkpt. & their trustee in bkpcy. claimed the balance then due on the account from deft. :—*Held*: E. & Co. had made a sufficiently full & accurate disclosure to deft. that they were selling as principals & deft. with full knowledge gave his assent to their position, & the trustee's claim succeeded.—ELLIS & CO.'S TRUSTEE v. WATSHAM (1923), 155 L. T. Jo. 363.

#### PART VIII. SECT. 2, SUB-SECT. 9.—A.

ii. — Agent lending money to persons to whom agent not authorised to lend.]—A suit by a principal against an agent for the recovery of money lent to persons to whom the agent was not authorised to lend, is a suit for an ordinary money account & is governed by art. 89 & not art. 90 of Limitation Act (ix. of 1908).—MUTHIAH CHETTY v. ALAGAPPA CHETTY (1917), 1 L. L. R. 41 Mad. 1.—IND.

#### PART VIII. SECT. 2, SUB-SECT. 10.

1530 i. — Remedies of principal—Principal may repudiate or adopt transaction.]—A principal who discovers that he has purchased his agent's own property may elect either to repudiate the contract or to affirm it. If he wishes it to stand & also claims the resulting profit, he must show that such profit arises from transactions completely covered by the prohibitive operation of the relationship between him & the agent.—ROBINSON v. RANDFONTEIN, ETC., App. D. 168.—S. AF.

#### PART VIII. SECT. 2, SUB-SECT. 11.

1542 vi. —.]—An agent employed to sell goods cannot himself purchase

such goods at a sale by public auction.—OSRY v. HIRSCH, [1922] C. P. D. 531.—S. AF.

1542 vii. —.]—JARVIS v. JARVIS, [1926] 3 D. L. R. 897.—CAN.

1550 ii. —.]—PALMER v. CHRISTIE (Y. T.) (1905), 2 W. L. R. 1.—CAN.

1555 i. —.]—No confirmation without knowledge.]—In order to establish acquiescence or ratification on the part of pltf. it must be shown that he has, either by word or deed, & with a full knowledge of the circumstances abandoned his rights.—OSRY v. HIRSCH, [1922] C. P. D. 531.—S. AF.

#### PART VIII. SECT. 2, SUB-SECT. 13.

1572 ii. —.]—In pursuance of an agreement defts. obtained for pltf. a mtgo. of £100,000 at 5 per cent., but without pltf.'s knowledge entered into an agreement with the mtgoe. by which, in consideration of a commission of 1 per cent. per annum to be paid to them by the mtgoe. out of the interest payable by pltf., they agreed to guarantee the payment of principal & interest, & under that agreement defts. were paid by the mtgoe. £2,500, being £250 each half-year during the

1532. *Add. Annotation*:—*Mentd*. Collins v. Hopkins, [1923] 2 K. B. 617.

1533. *Add. Annotations*:—*Reid*. *Re* Jubilee Mills, [1922] 1 Ch. 100; *Re* Etic, [1928] Ch. 861. *Mentd*. *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853.

1550a. — Broker.]—Applt. employed a broker to make speculative purchases of cotton for him, & became heavily indebted to him owing to the fall of prices in the cotton market. The broker, as he was entitled to do by the terms of his agency, closed the account by selling the cotton which he had bought for applt. He sold (*inter alia*) two lots of foreign cotton to different jobbers at the respective market prices of the day & immediately bought back from the same jobbers at the same prices equivalent amounts of cotton of the same description. The broker having assigned his property for the benefit of his creditors, resp. as trustee of the deed of assignment, sued applt. to enforce the broker's claim to be indemnified. The trial judge found that there was a real sale & a real purchase of the cottons in question, & the Ct. of Appeal accepted this finding :—*Held*: the simultaneous re-sale to the broker did not vitiate the sale by the broker & the account was effectually closed.—CHRISTOFORIDES v. TERRY, [1924] A. C. 566; 93 L. J. K. B. 481; 131 L. T. 84; 40 T. L. R. 485, H. L.

1552. *Add. Annotation*:—*Generally*, *Reid*. Christoforides v. Terry, [1924] A. C. 566.

1553. *Add. Annotation*:—*Appld*. Christoforides v. Terry, [1924] A. C. 566.

1558a. —.]—IMESON v. LISTER (1920), 149 L. T. Jo. 446.

1561. *Add. Annotations*:—As to (1) *Reid*. Prager v. Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566. *Generally*, *Reid*. Tarn v. Scanlan, Neilson, Andersen v. Collins, Muller (London) v. Lethem, Muller v. I. R. Comrs. (1927), 44 T. L. R. 53. *Mentd*. Keen v. Mear, [1920] 2 Ch. 574; Jones (Holloway) v. Woodhouse, [1923] 2 K. B. 117.

1571. *Add. Annotation*:—*Reid*. Inche Noriah Binte Mohamed Tahir v. Shaik Allie Bin Omar Bin Abdullah Bahashuan (1928), 45 T. L. R. 1.

term of the mtgo. In an action by pltf. against defts. to recover the £2,500 as being a secret profit made by them while acting as his agent :—*Held*: pltf. was entitled to payment to him of the £2,500.—KEOGH v. DALGITY & CO. (1916), 22 C. L. R. 402.—AUS.

1572 iii. —.]—An agent has no right to receive remuneration other than from his principal, unless there is a contract express or implied to that effect.—SMITH v. SLATTARD (1919), 21 W. A. L. R. 19.—AUS.

1572 iv. —.]—Where one man stands to another in a position of confidence involving a duty to protect the interests of that other, he is not permitted to make a secret profit at the other's expense or to place himself in a position where his interests conflict with his duty.—ROBINSON v. RANDFONTEIN, ETC., [1921] App. D. 1, AF.

1572 v. —.]—A. authorised B., his agent, to sell property for a certain sum, A. agreeing to take a portion of the purchase price in cash & a mtgo. bond on the property for the balance. B. sold the property for the stipulated amount, but without the knowledge



1580. *Add. Annotation*:—*Refd.* Hocker v. Waller (1924), 29 Com. Cas. 296.

1584. *Add. Annotations*:—*Generally, Mentd.* London County & Westminster Bank v. Tompkins, [1918] 1 K. B. 515; Ellis' Trustee v. Dixon-Johnson, [1924] 1 Ch. 342.

1598. *Add. Annotation*:—*Mentd.* Glicksman v. Lancashire & General Assce., [1925] 2 K. B. 598.

1600. *Add. Annotation*:—*Generally, Mentd.* Ford v. Radford (1920), 36 T. L. R. 658.

1603. *Add. Annotation*:—*Appld.* *Re* A Debtor, [1927] 2 Ch. 367.

1607. *Add. Annotation*:—*Appld.* *Re* A Debtor, [1927] 2 Ch. 367.

1608a. ———.]—A hotel broker, who is acting as the vendor's agent for reward, is not entitled to enter into a second agency of the like kind on behalf of the purchaser, unless

or consent of A. obtained & retained a commission from the purchaser for raising the bond:—*Held*: such commission was a secret profit, & B. in concealing it had acted dishonestly towards A.—*LEVIN v. LEVY*, [1917] T. P. D. 702.—S. AF.

*sd.* ——— *Agent receiving present.*—Disclosure, after completion of a sale of land, by the vendor to certain directors of a purchasing co., who were concerned in the negotiations for the purchase, of his intention, afterwards carried out, to make a money present to the purchaser's manager & agent, who took the principal part in the negotiations, & assent thereto by such directors, is not effective to prevent rescission on the basis of secret profit to the agent if the vendor has, prior to the completion, secretly led the agent to expect that he would receive a substantial sum in the event of the sale being completed, & it is immaterial that the vendor's motive was to a large extent to recoup the agent for out-of-pocket expenses.—*BENDIGO, ETC. CO. v. CUNNINGHAM*, [1919] V. L. R. 387.—AUS.

*sl.* ——— *Agent entering into contract with principal.*—If an agent, without disclosing that he is the person dealing, himself enters into a contract with his principal, the latter on discovering the fact can have the transaction set aside, & it is immaterial whether there has been fraud or not, or whether the transaction is advantageous or otherwise to the principal.—*ACHUTHA, ETC. v. OAKLEY* (1922), 1 L. R. 45 Mad. 1005.—IND.

*sg.* ——— *Agent for sale artificially inflating rates.*—An agent for sale of goods cannot, while actually selling or making settlements on foot of such transactions, make any secret profit for himself, or for persons with whom he is associated, by artificially inflating the rates & then settling on the basis of those rates.—*MATHRA DAS-JAGAN NATH v. JIWAN MAL-GIAN CHAND* (1927), 1 L. R. 9 Lah. 7.—IND.

1581 iii. ———.]—There are cases where an agent is entitled to retain profits, such as (1) where the connection between the agency & the profit is accidental, (2) where the transaction producing the profits is outside the scope of the agency & no conflict between duty & interest arises, (3) where the principal on account of his clear knowledge is deemed to waive his right to profits by his implied consent.—*UNION GOVERNMENT v. CHAPPELL*, [1918] C. P. D. 462.—S. AF.

1581 iv. ———.]—Pltf. signed a written agreement by which he agreed to pay deft. 2½ per cent. on £2,500 if deft. sold property for that sum, & authorised deft. to keep any amount

paid for the property in excess of that sum. Pltf. claimed a refund of the commission retained by the agent on the ground that he had secretly obtained a commission from the purchaser. The commission obtained by deft. from the purchaser, who had to pay cash to pltf., was for raising loans to enable her to pay the seller:—*Held*: as the commission obtained from the purchaser by deft. was not a commission on the price, but in respect of an entirely different transaction, his conduct was perfectly honest, & he had not forfeited his right to be paid a commission by pltf.—*STANTON v. HUMPHREY*, [1923] E. D. L. 419.—S. AF.

1589 i. ——— *Remedies of principal—Principal may repudiate transaction—Not after affirming transaction.*—*UNION GOVERNMENT v. CHAPPELL*, [1918] C. P. D. 462.—S. AF.

#### PART VIII. SECT. 2, SUB-SECT. 14.

1594 iii. ———.]—*Held*: pltf. could not recover any commission, because he was in a position where his interest was opposed to that of his principal, so that he had a temptation not to perform faithfully his duty, & failed to disclose the facts.—*D'ARCY v. LAND* (1920), 47 N. B. R. 203; 52 D. L. R. 660.—CAN.

*sj.* ——— *Agent to raise money advancing sum himself.*—Under a contract between a principal & a financial agent, by which the agent agrees to raise sums of money for the principal upon first & second mtges., at stated rates of interest, of the principal's land, it is not illegal for the agent to find the money himself, unless there is a special stipulation to the contrary; the fact of the rates of interest being specified prevents a conflict of interest & duty in the agent.—*DALGETY v. GRAY*, [1919] V. L. R. 586.—AUS.

*mi.* ———.]—The rules applicable to agents for the sale of land do not apply to a middleman employed merely to bring the vendor & purchaser together to enable them to make their own bargain; neither such a middleman nor the vendor is obliged to inform the purchaser of the payment by the vendor of a commission for introducing the purchaser.—*CLARK v. HEPWORTH*, [1918] 1 W. W. R. 147; 39 D. L. R. 396; 55 S. C. R. 614.—CAN.

*m ii.* ———.]—*SMITH v. COMTOIS*, [1927] 4 D. L. R. 832; [1927] S. C. R. 590.—CAN.

*m iii.* ———.]—The fact that an agent employed by one person to effect an exchange of properties is, after bringing it about, rewarded by the other party for doing so does not in

this arrangement is assented to with full knowledge by the original principal.—*FULLWOOD v. HURLEY*, [1928] 1 K. B. 498; 96 L. J. K. B. 976; 138 L. T. 49; 43 T. L. R. 745, O. A.

1621. *Add. Annotation*:—*Generally, Mentd.* Clarkson v. Davies, [1923] A. C. 100.

1626. *Add. Annotations*:—*Consd.* Rhodes v. Macalister (1923), 29 Com. Cas. 19. *Refd.* *Re* Hall & Pim (1927), 137 L. T. 585. *Mentd.* Slater v. Hoyle & Smith, [1920] 2 K. B. 11.

1632. *Add. Annotations*:—*As to* (1) *Consd.* Rhodes v. Macalister (1923), 29 Com. Cas. 19. *Refd.* Taylor v. Oakes, Roncoroni (1922), 127 L. T. 267. *As to* (2) *Refd.* Adams v. Morgan, [1923] 2 K. B. 234.

1635. *Add. Annotations*:—*Ap'* Alexander v. Webber, [1922] 1 K. B. 642; *Re* A Debtor, [1927] 2 Ch. 367.

itself constitute him the agent of the latter, though it may be some evidence that he was.—*BROVEY v. BULL* (Alta.), [1927] 4 D. L. R. 992; [1927] 3 W. W. R. 513.—CAN.

*sk.* ——— *Agent having option to purchase.*—*GUNNING v. LUSBY* (No. 1) (1922), 68 D. L. R. 89; 55 N. S. R. 84; *affd.*, [1925] 1 D. L. R. 101.—CAN.

*sl.* *Partner of agent to buy one of trustee vendors—Purchaser suffering no damage.*—*WOOLWORTH (F. W.) CO., LTD. v. POOLEY* (1925), 35 B. C. R. 386.—CAN.

#### PART VIII. SECT. 2, SUB-SECT. 15.—A.

1601 i a. ———.]—If the agent for the vendor in a sale of real property receives commission from the purchaser also, the vendor is entitled to recover the amount of such commission from the agent, notwithstanding that the sale of the property has been completed.—*FOSTER v. REAUME*, [1924] 2 D. L. R. 951; *revg.*, [1923] 4 D. L. R. 51; 54 O. L. R. 245.—CAN.

#### PART VIII. SECT. 2, SUB-SECT. 15.—B.

*sm.* *Agent to do repairs—Agent doing work himself.*—Defts., house-agents, acted as agents for pltf. to collect the rents & to do the necessary repairs to her property. Defts. were originally appointed in 1908, & up to 1911 had the repairs executed by outside contractors. In 1911 defts. opened their own repair yard, did the repairs themselves, & charged the "usual trade prices," which included a profit. Quarterly statements of account were regularly furnished by defts. to pltf. from the commencement of the agency. Pltf. claimed to have the accounts reopened on the ground that she had been charged a secret profit by defts. on the repairs executed by them in addition to their commission:—*Held*: as pltf. knew & approved of the repair work being executed by defts., & defts. had made sufficient disclosure to pltf. that they were charging a profit, & the charges were not shown to have been unfair or unusual, pltf. was not entitled to have the accounts reopened.—*SHERARD v. BARRON*, [1923] 1 I. R. 21.—IR.

#### PART VIII. SECT. 2, SUB-SECT. 15.—D.

1635 iii. ———.]—Any secret benefit given by one contracting party to the agent of another with the intention of influencing his mind in favour of the donor is a bribe, which entitles the other contracting party to claim to set aside the contract.—*DAVIES v. DONALD*, [1923] C. P. D. 296.—S. AF.



1718. *Add. Annotation:—As to (2) Held, Howard Houlder v. Manx Isles S.S. Co., [1928] 1 K. B. 110.* 1726. *Add. Annotation:—Held, Houlder Howard v. Manx Isles S.S. Co., [1928] 1 K. B. 110.*

to the trustees of C.'s estate, in which A.'s family was interested, & the purchase-money was paid by the trustees at the instance of A. Deft. alleged that another agent, though aware of A.'s inspection of the house, obtained B.'s signature to the contract of sale:—*Held*: the verdict should be entered for pltf.—WEBSTER (A. G.) & SONS, LTD. v. COTTON, 15 Tas. L. R. 17.—AUS.

1706 xiv. — — —.]—An agent is entitled to commission on a sale brought about by his action in putting the purchaser in touch with the principal, even though the purchase is subsequently completed through another agent.—PETTYPIECE v. HOLDEN (1920), 40 D. L. R. 388.—CAN.

1706 xv. — — —.]—The commission on a sale of real estate was given by the ct. to the agent who found the purchaser & put the vendor in motion to meet him, rather than to another who performed services in connection with the effecting & carrying out of the sale.—BATEMAN v. SNELGROVE & GARDEN, [1921] 1 W. W. R. 305; 14 Sask. L. R. 69; 57 D. L. R. 283.—CAN.

1706 xvi. — — —.]—A. promised B. a commission if B. sold a ship. B. employed a broker as sub-agent, who mentioned the matter to another agent, & it was passed on through others until, about nine months after the agreement with B., a broker to whom the matter was mentioned came to A. & made an arrangement directly with him resulting in a purchaser being obtained. B. continued his services, which were accepted by A., up to the time of sale, & was of assistance in procuring the Govt.'s consent to a transfer of the ship to a foreign registry:—*Held*: B. entitled to commission.—GREER v. GODSON, [1921] 2 W. W. R. 209; 60 S. C. R. 653; 56 D. L. R. 696.—CAN.

1706 xvii. — — —.]—Pltf. endeavoured to effect a sale of deft.'s land to a co., of which H. was a director, & introduced H. to deft. The parties failed to agree upon terms & the negotiations ended, & pltf. made no further effort to sell the land. Subsequently deft. through another agent sold the land to H., who purchased it on behalf of another co.:—*Held*: pltf. was not entitled to commission.—NEVE v. LEESON, [1921] 1 W. W. R. 904.—CAN.

1706 xviii. — — —.]—After pltf., with whom a house had been listed, introduced a prospective purchaser to the vendor, the purchaser endeavoured to induce the vendor to reduce the price. The vendor was unwilling to fix a figure agreeable to the purchaser, & the latter then negotiated through other agents, with whom the house had also been listed, & finally bought it:—*Held*: pltf. were entitled to commission.—BROOK & ALLISON v. HENDRICKS (1922), 66 D. L. R. 825; 15 Sask. L. R. 439; [1922] 2 W. W. R. 580.—CAN.

1706 xix. — — —.]—Deft. listed a property with pltf. with instructions to find a purchaser at the price of \$6,000. A month later deft. listed the property with another broker at \$4,750, the second broker having his offices across the hall from pltf.'s offices in the same building. Pltf. interested S. in the property & brought her to view it. Shortly after S. went to pltf.'s offices with a view to purchasing, & when about to enter the offices saw a picture of the property in the window across the hall marked for sale at \$4,750. She went into pltf.'s offices, discussed the sale but went out without making the purchase,

crossed the hall & purchased the property from the second broker at \$4,750:—*Held*: pltf. were entitled to their commission.—TURNER MEAKIN & CO. v. FIELD (1923), 33 B. C. R. 56.—CAN.

1706 xx. — — —.]—CARR v. LA DRECHE, [1927] 2 D. L. R. 480; [1927] 1 W. W. R. 574; 38 B. C. R. 97.—CAN.

1706 xxi. — — —.]—Pltf. received written authority from deft. to enter into a contract with a purchaser for the sale of his farm & stock. The rate of remuneration was stated to be a certain percentage on the value of the land sold. Pltf. introduced the property to a prospective buyer, who ultimately purchased the property, but through the instrumentality of another agent. Pltf. claimed from deft. £171 19s. in respect of the land sold, & £65 in respect of the stock & implements. The jury found that the sale had resulted from the introduction of the purchaser from pltf.:—*Held*: pltf.'s right to commission depended on the terms of his authority, & this did not authorize any commission on the sale of the stock.—ROWE v. BUTLER, [1921] N. Z. L. R. 437.—N.Z.

1706 xxii. — — —.]—Deft. agreed to pay pltf. commission if a sale of deft.'s house to X., who was introduced by pltf., went through. Deft. also agreed to let pltf. know should he be prepared to sell his house for a smaller amount than he had mentioned to pltf. Deft. subsequently instructed another attorney to offer the house to X. at a reduced price, & a sale was thereupon concluded:—*Held*: pltf. was entitled to the commission agreed upon.—VAN DER WALT v. HOFMEYER, [1920] C. P. D. 50.—S. AF.

1706 xxiii. — — —.]—A agreed to give B. a commission in case of a sale of certain premises. B. introduced C., but no sale resulted. C., of his own motion & not as an agent of B., subsequently introduced D., & A. sold the premises to D.:—*Held*: B. was not entitled to commission.—GONDARD v. ARNOLD, [1922] T. P. D. 167.—S. AF.

1707 ii. — — —.]—In a dispute as to which of two real-estate agents was entitled to the commission on a sale:—*Held*: the one who first through his advertisement attracted & interviewed the purchaser & directed him to the owner was the efficient cause of the sale & entitled to the commission, rather than the other who subsequently discussed the property with the purchaser & whose agent first showed it to him.—BUFFET v. WALLER & LAZARNICK, [1920] 2 W. W. R. 404; 52 D. L. R. 499; 30 Man. L. R. 437.—CAN.

1707 iii. — — —.]—*Loan broker.*—The office of a loan broker is to bring together the borrower & the lender who is willing to open negotiations on a reasonable basis, & when he has done that, he has done all that is necessary for him to do & earn his commission.—VASAUJI MOOLJI v. KARSONDAS TEJPAL (1927), 1 L. R. 52 Bom. 627.—IND.

#### PART VIII. SECT. 3, SUB-SECT. 1.—B. (c).

i. S. P. SATCHIDINANDA DUTT v. NRITYA NATH MITTER (1923), 1 L. R. 50 Calc. 878.—IND.

ii. — — —.]—Where a land agent is employed to sell or exchange the property of his client, & commission is to be paid to him when he has "effected" a sale or exchange of such property, his right to commission accrues when he procures a valid

contract for the sale or exchange of such property.—NIGRO v. WILSON, [1924] N. Z. L. R. 834.—N.Z.

1722 i. *Completion of entire contract.*—GREER v. GODSON (1918), 40 D. L. R. 218.—CAN.

ei. — — —.]—Pltf. found a purchaser for deft.'s land, the amount of commission was agreed on, & an agreement of sale executed. The purchaser subsequently refused to carry out the sale:—*Held*: pltf. was entitled to the commission.—DONER v. LOOSK, [1920] 2 W. W. R. 388; 53 D. L. R. 39; 30 Man. L. R. 350.—CAN.

sq. — — —.]—*Commission payable on receipt of purchase-money—Payment by promissory notes.*—An agreement provided that commission was "to become due & payable when the purchase-money or any part thereof has been paid":—*Held*: defts. having accepted promissory notes in lieu of a cash payment, the promissory notes must be treated as a cash payment so far as pltf. was concerned.—CROSS v. WOOD (1921), 64 D. L. R. 105; 50 O. L. R. 15.—CAN.

st. — — —.]—*Commission payable for services already rendered.*—When it has been definitely agreed to pay an agent commission for his services in negotiating a sale, & the payment was to be made for services already rendered & was not to be dependent upon the payment of the purchase price, the agent can recover the commission under the agreement, although the purchaser has failed to make any payment after the first one.—CARMICHAEL v. BOWERS (1922), 67 D. L. R. 515.—CAN.

#### PART VIII. SECT. 3, SUB-SECT. 1.—C. (a).

1729 iii. — — —.]—*Sale of remainder of land.*—Pltf. employed deft. to sell a house & portion of the block of land on which it stood. Deft. found a purchaser & a contract of sale was signed under which pltf. gave the purchaser certain provisional rights over the unsold portion. Afterwards pltf. endeavoured to obtain from the purchaser a modification of the contract with regard to the rights over the unsold portion, & deft. did considerable work in trying to induce the purchaser to vary the contract in this respect. During the negotiations deft. repeatedly urged pltf. to sell the whole of the land. Negotiations having failed pltf. behind the back of deft. sold the remainder of the land to the original purchaser & the whole was included in a single transfer:—*Held*: deft. was not entitled to commission on the sale.—MCANDREW v. GRAY (1920), 20 S. R. N. S. W. 635.—AUS.

#### PART VIII. SECT. 3, SUB-SECT. 1.—C. (b).

sw. *Transaction similar—Further sale.*—A. in 1911 employed pltf. to sell a Crown lease, & an agreement was entered into which provided that if pltf. sold the lease for \$25,000 he was to receive \$5,000. In 1914 through the instrumentality of pltf. the lease was transferred to S. & on payment by S. of \$5,000, pltf. received \$1,000 as commission. In 1919 A. & S. sold the lease to T. for \$14,000. Some years prior to this sale pltf. had submitted full particulars of the lease to T., who would not then buy. L., who was employed for that purpose by A. & S., had brought about the sale to T. Pltf. claimed commission in respect of the sale to T.:—*Held*: pltf. was not entitled to commission.—DEWDNEY v. MATHESON, [1923] S. A. S. R. 105.—AUS.



1738. *Add. Annotation*:—*Consd. Bow's Emporium v. Brett* (1927), 44 T. L. R. 194.

1739. *Citations*:—For the existing citations substitute as follows:—  
(1887), as reported in 58 L. T. 96; 3 T. L. R. 836, H. L.

*Annotations*:—For "*Mentd. Barnett v. Isaacson* (1888), 4 T. L. R. 595," read "*Refd. Barnett v. Isaacson* (1888), 4 T. L. R. 595."

*Add. Annotations*:—*Generally, Refd. Keppel v. Wheeler*, [1927] 1 K. B. 577. *Mentd. Banbury v. Bank of Montreal*, [1918] A. C. 626; *Howard Houlder v. Manx Isles S.S. Co.*, [1923] 1 K. B. 110.

1740. *Add. Annotation*:—*Refd. Howard Houlder v. Manx Isles S.S. Co.*, [1923] 1 K. B. 110.

1741. *Add. Annotation*:—*Refd. Howard Houlder v. Manx Isles S.S. Co.*, [1923] 1 K. B. 110.

1746. *Add. Annotation*:—*Refd. Howard Houlder v. Manx Isles S.S. Co.*, [1923] 1 K. B. 110.

1746a. *Agent to sell property—Agent himself buying property—With consent of principal.*—Where an agent has been instructed to sell property on commission &, after failing to find a purchaser, agrees with his principal to buy the property himself, he is not entitled to commission on the purchase by himself unless his principal has expressly agreed that such commission shall be payable.—*HOCKER v. WALLER* (1924), 29 Com. Cas. 296.

1751. *Add. Annotation*:—*As to* (2) *Refd. Howard*

*Houlder v. Manx Isles S.S. Co.*, [1923] K. B. 110.

1751a. —.]—Pltfs., who were shipbrokers, negotiated on behalf of defts., the owners of a steamship, a charterparty of the steamship which was to be in force from Oct. 1920 for five years, & which contained a clause providing that the charterers should have the option of purchasing the steamship at any time between the signing of the charter & the completion of the charter period for £125,000. On the day when the charterparty was signed defts. signed & gave to pltfs. a commission note in these terms: "We hereby agree to pay you . . . 5 per cent. brokerage on hire. . . . Should the option of purchase contained in the charter be availed of, the brokerage on purchase to be 3½ per cent. . . ." The charterparty was acted upon until June, 1921, when defts. sold the steamship to the charterers for £65,000. Pltfs. brought an action against defts., claiming (*inter alia*) 3½ per cent. commission on £65,000, the price paid by the charterers for the steamship, &, in the alternative, a *quantum meruit* for their alleged services in effecting the same:—*Held*: (1) the former of these claims failed, the option of purchase mentioned in the commission note never having been exercised, & the sale effected being a sale at a different price from that upon which alone the brokerage of 3½ per cent. was to become payable; (2) the latter

PART VIII. SECT. 3, SUB-SECT. 1.—D.

sa. *Agent to obtain money for project—Expansion & modification of proposal.*—*Held*: the agent was entitled to recover commission.—*THOMAS v. GALE*, [1927] 1 D. L. R. 593; S. C. R. 314; *varying*, [1925] 3 D. L. R. 757.—CAN.

sb. *Agent to sell—Third party entering into partnership with principal.*—A., an agent employed by P. to obtain a purchaser for a mill, introduced M. to P. The sale did not go through. P. eventually entered into a contract of partnership to work the mill, the partners being P., M. & C.:—*Held*: as the transaction resulting from the agency differed substantially from that which A. had been employed to procure, he was not entitled to any remuneration.—*BORDER v. EDLEY*, [1920] O. P. D. 19.—S. AF.

pi. —.]—Pltfs. claimed for commission on sale of timber holdings of deft. co. The shareholders had passed a resolution authorising a sale at a fixed minimum price upon terms agreeable to the directors, & a letter from the co.'s managing director to pltfs. offered \$35,000 commission should pltfs. make a sale at a certain named price, which price would net the co. such minimum price. A sale was made through other agents, not for a lump sum, but for a price based on board measurement to be paid for as the timber was taken, with an additional sum to be paid when the timber had been logged:—*Held*: the sale was not a sale within the contract.—*RORAY v. NIMPKISH LAKE LOGGING CO., LTD., & GARLAND*, [1919] 2 W. W. R. 105.—CAN.

yi. —.]—E. requested S., a servant of pltf., to obtain a buyer for his property. E. told S. that he wanted £850, & would pay commission. S. then asked E. if he would consider an offer. E. replied he wanted £800 clear. S. introduced K. to E., but the price offered was too low, & after various negotiations no sale took place. Six months later E. sold the property to K. for £600:—

*Held*: as the buyer offered less than £800, pltf. was not entitled to commission.—*ROBINSON v. EVES*, [1917] S. A. L. R. 71.—AUS.

y ii. —.]—*Held*: as the employment was a general one, the price mentioned being intended not as a hard & fast one, but as a basis of negotiations, pltf. was entitled to the agreed commission on the price obtained.—*PRENTICE v. MERRICK*, [1917] 3 W. W. R. 1060; 24 B. C. R. 432; 38 D. L. R. 388.—CAN.

y iii. —.]—An owner in Apr. listed with an agent certain land for sale at \$35 an acre with a fixed cash payment, the price to include the crop. In Nov., after the owner had taken off & sold the crop, the agent sold the land for \$30 an acre on a small cash payment:—*Held*: in order to earn his commission the agent had to obtain a purchaser for the land & crop at \$35 per acre.—*FITCHELL v. LAWTON*, [1919] 3 W. W. R. 728; 49 D. L. R. 185.—CAN.

y iv. —.]—Deft. listed his farm with pltfs. for sale at \$38 an acre. Deft. sold the land at \$37 an acre to one introduced by pltfs.:—*Held*: pltfs. were entitled to commission.—*SMITH v. WRIGHT*, [1919] 3 W. W. R. 1094; 49 D. L. R. 408; 12 Sask. L. R. 491.—CAN.

y v. —.]—When a proprietor goes to an agent & requests him to find a purchaser, naming at the same time the sum which he is willing to accept, that will constitute a general employment, & should the estate be eventually sold to a purchaser introduced by the agent, the latter will be entitled to his commission, although the price paid should be less than the sum named at the time the employment was given. The mention of a specific sum prevents the agent from selling at a lower price without the consent of his employer, but it is given merely as the basis of future negotiations, leaving the actual price to be settled in the course of those negotiations.—*PALMER v. HARVEY* (1922), 65 D. L. R. 769; 15 Sask. L. R.

152; 1 W. W. R. 231; *affg.* (1920), 55 D. L. R. 703; 14 Sask. L. R. 19.—CAN.

y vi. —.]—Where the contract is that the agent is not to be paid a commission unless he procures a purchaser at a specified figure, the fact that a sale is made by the owner at a lower price does not entitle the agent to remuneration by way of *quantum meruit*.—*GRIFFITH v. FREDERICKSON*, [1926] 4 D. L. R. 50; [1926] 2 W. W. R. 680; 36 Man. L. R. 54.—CAN.

sc. — *Third party taking land in a trade.*—Agents who had been promised a commission should they obtain a purchaser for land at a certain price:—*Held*: not entitled to commission, as they only introduced a party who took the land in a trade & with whom the principal had previously discussed a trade.—*BROWN v. PATCHELL*, [1919] 3 W. W. R. 701; 49 D. L. R. 158.—CAN.

sd. *Agent to exchange—Exchange of other properties.*—A real estate agent is entitled to his commission on an exchange of properties where he brings the parties together & engages actively in negotiating the exchange, which eventually falls through owing to the objection of his principal to include certain stock & implements in the transaction, the principal soon afterwards completing the exchange without the stock & implements but with the same purchaser for other property owned by him.—*DUNN v. SINCLAIR*, [1923] 1 D. L. R. 426.—CAN.

st. *Agent to obtain signature of wife—Obtaining signature of husband.*—Defts. agreed with pltfs. that if the latter obtained Mrs. M. to sign a building contract for a house they would pay pltfs. the usual commission as on a sale of land. Pltfs. obtained the signature of the husband:—*Held*: as it was immaterial to defts. whether the contract was signed by Mrs. M. or by the husband, pltfs. were entitled to the commission agreed to.—*SMITH & SMITH v. DINGLE & HOLMES*, [1923] 3 D. L. R. 68; 3 W. W. R. 49.—CAN.

claim also failed inasmuch as the parties having reduced their bargain into writing in the commission note, there was no scope for the operation of the principle of *quantum meruit*.—HOWARD-HOULDER & PARTNERS, LTD. v. MANX ISLES S.S. Co., [1923] 1 K. B. 110; 92 L. J. K. B. 233; 128 L. T. 347; 38 T. L. R. 757; 66 Sol. Jo. 682; 16 Asp. M. L. C. 95; 28 Com. Cas. 15.

1755. *Add. Annotation*:—*Refd.* Howard Houlder v. Manx Isles S.S. Co., [1923] 1 K. B. 110.

1763. *Add. Annotation*:—*Refd.* Howard Houlder v. Manx Isles S.S. Co., [1923] 1 K. B. 110.

1768a. *Principal selling ship to charterers—During currency of charter.*—Shipbrokers employed to effect a charter of a steamship procured a charter for eighteen months, but after four

months of the charter had run the owner sold the vessel to the charterers & the charterparty was cancelled. The charterparty provided for payment of a commission of 2½ per cent. on the hire paid & earned under the charterparty & on any continuation thereof. In an action by the brokers to recover commission for the remainder of the charter period:—*Held*: it was not an implied term of the contract that the ship-owners should not agree to put an end to the charterparty by the sale of the ship to the charterers, & the action failed.—FRENCH (L.) & Co. v. LEESTON SHIPPING Co., [1922] A. C. 451; 91 L. J. K. B. 655; 127 L. T. 169; 38 T. L. R. 459; 15 Asp. M. L. C. 544; 27 Com. Cas. 257, H. L.

*Annotation*:—*Fold.* Howard Houlder v. Manx Isles S.S. Co., [1923] 1 K. B. 110.

#### PART VIII. SECT. 3, SUB-SECT. 1.— E. (a).

1754 xix. — *Principal altering date for giving possession.*—An agent with whom land has been listed for sale has earned his commission when he has introduced to the owner a purchaser who is ready, willing & able to buy at the price & terms stated by the owner, though the sale does not go through by reason of the owner insisting on a date for giving of possession later than that at first stated.—HIGGINS v. MITCHELL, [1921] 1 W. W. R. 252; 57 D. L. R. 288; 31 Man. L. R. 60.—CAN.

1754 xx. — *Deft.*:—*Held*: liable to pltf. for an agreed commission for a sale of land procured by pltf. & which was not carried out because of deft.'s refusal, without sufficient reason, to carry it out.—BALLS v. MCGREGOR (1922), 68 D. L. R. 718; 32 Man. L. R. 196; [1922] 2 W. W. R. 1247; *affg.*, 66 D. L. R. 696.—CAN.

1754 xxi. — *Where a real-estate agent had found a purchaser who had accepted the seller's proposition for the sale or exchange of his land, & the acceptance was made within the time limited by the seller, but the seller refused to complete the transaction & alleged that the purchaser was not ready, willing or able to complete the transaction:—Held*: the onus of proof was on the agent suing for commission.—REGINA BROKERAGE & INVESTMENT Co. v. KISTNER (1922), 70 D. L. R. 75; [1922] 3 W. W. R. 657.—CAN.

1754 xxii. — *Agent taking undue advantage of principal.*—A real estate dealer, who acted for a foreigner with an imperfect knowledge of English, took an undue advantage of his principal in representing an improvident transaction to be a very desirable one, which he should enter into in substitution for an exchange which had fallen through. The principal having repudiated the second transaction, the ct. refused to allow the agent the commission he would have obtained thereunder had it been completed, but allowed him commission on a *quantum meruit* based on the amount of commission contemplated by the first transaction.—BURNS v. MINCHAU (Alta.), [1926] 3 W. W. R. 791.—CAN.

1754 xxiii. — *TURNER MEAKIN & Co. v. CALEDONIA & BRITISH COLUMBIA MORTGAGE Co., LTD.*, [1927] 2 D. L. R. 395; 38 B. C. R. 103.—CAN.

sk. *Principal refusing to compete with other buyers.*—Pltf. engaged deft. to purchase lambs in a large specified area. He was to receive a commission on all lambs bought by him, the price to be the highest market price at the time of delivery. Deft. proceeded to canvass farmers & secure options on the lambs they had for sale. When the time for taking the delivery was at hand pltf. advanced deft. \$2,000 to

buy lambs. When the time for taking delivery of the lambs arrived, pltf. refused to advance the price to the level of that of competing buyers & deft. was unable to procure the lambs which he had agreed for:—*Held*: pltf. had defaulted & were estopped from saying that deft. did not complete his contract.—NEW ENGLAND DRESSED MEAT & WOOL Co. v. PATRICK BROTHERS, [1923] 1 D. L. R. 153.—CAN.

1763 i. *Principal declining to accept loan.*—Where an agent performed his part in obtaining a loan, & was in no way responsible for the non-payment of the money under the loan:—*Held*: he was entitled to his commission.—WHITESIDE v. WALLACE SHIPYARDS, LTR (1919), 27 B. C. R. 40; 45 O. L. R. 434.—CAN.

1760 v. — *SMITH v. UPPER CANADA COLLEGE* (1920), 48 O. L. R. 120; 54 D. L. R. 548; 18 O. W. N. 370.—CAN.

1766 vi. — *Pltf., a ship & general broker, sold to N. a ship on deft.'s behalf. The purchase price was \$140,000 payable by N. to deft. in instalments, & deft. agreed to pay pltf. \$20,000 of the purchase price when he received the second instalment. Before that instalment was paid N., with deft.'s consent, cancelled the contract:—Held*: upon the cancellation of the contract of sale, pltf.'s right under his special contract with deft. was determined & his claim for commission failed.—GOWAN v. BOWERN, [1924] App. D 550.—S. AF.

sl. *Principal not negotiating in good faith.*—Where under an agreement to pay an agent commission on a sale of real estate, the agent is to be entitled to the commission only when the principal concludes a sale to a purchaser found by the agent, the law implies an agreement by the principal to negotiate in good faith with the purchaser proposed & to demand only such terms as, considering all the circumstances, might be conceivably demanded in perfect good faith. Where the principal does not negotiate in good faith & the sale is thereby prevented, the agent is entitled to damages.—MCINTYRE & Co. v. LAW, [1918] 2 W. W. R. 359; 13 Alta. L. R. 273; 40 D. L. R. 231.—CAN.

sm. *Principal selling ship to charterers—Commission payable under charter.*—Pltf. negotiated a charterparty, which contained a clause providing for payment of commission on the estimated gross amount of hire as earned & paid. Subsequently the owners & the charterers entered into a contract of sale, which contained a clause cancelling the charter & so cancelling the clause therein providing for the commission:—*Held*: pltf. were entitled to the amount of commission which would have been payable if the charterparty had not been cancelled, but,

especially having regard to the fact that the action was brought before the period of hiring under the charterparty had expired, subject to a fair deduction in view of the risk of the hire ceasing apart from any voluntary action by the owners.—ROXBURGH v. CROSBY & Co., [1918] V. L. R. 118.—AUS.

#### PART VIII. SECT. 3, SUB-SECT. 1.— E. (b).

bi. — *Deft.*:—*Held*: the agent was not entitled to commission.—FLANAGAN v. CHAPMAN, [1926] 1 D. L. R. 159; 58 O. L. R. 94.—CAN.

ci. — *Deft., who was authorised to procure a purchaser & accept a deposit & retain from the deposit his commission for procuring a purchaser then ready & willing & apparently able to fulfil his obligations to the extent at least of making the down payment, procured a purchaser, who made the agent a deposit of \$250. & the vendor entered into a written memorandum to sell to him. The principals afterwards by arrangements between themselves cancelled the contract on the ground that the purchaser found himself unable to make the first payment, & the purchaser agreed to forfeit the \$250:—Held*: deft. was entitled to retain the \$250, but was not entitled to anything further.—DE WOLF v. DELMARE (1922), 65 D. L. R. 42; 17 Alta. L. R. 441; [1922] 1 W. W. R. 1129.—CAN.

ci. — *A broker, commissioned to obtain a purchaser for a piece of land, found a purchaser, who failed to complete the sale within a fixed period owing to his inability to pay ready money. The principal entered into a new arrangement direct with the purchaser, & such new arrangement was subsequently rescinded by the principal:—Held*: the broker was not entitled to commission.—FOUCAR & Co. v. MUDALIAR (1923), 1 L. R. 2 Kan. 45.—IND.

fi. — *W., having agreed to sell shares to a co., entered into a contract to pay C. a commission for services in effecting the sale. The purchase price of the shares was to be paid by instalments & the commission was to be paid out of the respective instalments. The contract provided that if the payments were not made by the purchasers W. would be under no liability to pay the commission. The initial payment was made & the commission thereon paid to C. When the next payment fell due the purchasers defaulted & shortly after the co. was placed in liquidation. The liquidator offered the assets for sale & accepted the tender of W. & H. The successful tenderers received all the assets of the estate including the stock sold by C. There was no evidence that the assets had a cash value*



1771. *Add. Annotation*:—*Refd.* Howard Houlder v. Manx Isles S.S. Co., [1923] 1 K. B. 110.

1775. *Add. Annotation*:—*Refd.* Howard Houlder v. Manx Isles S.S. Co., [1923] 1 K. B. 110.

1776a. — "Private treaty" sale.]—Where an estate agent is employed to find a purchaser of an estate, the terms of the agent's employment being that commission is payable to him on the purchase price on sales by "private treaty," his principals are liable for his remuneration only when a sale has been completed & the purchase price has been paid on completion, except where the non-completion is due to some default or omission on the part of his principals. When, therefore, the agent has been employed simply on the above terms, he is not entitled to commission on the purchase price if he has merely brought about a purchase agreement which, without default or omission on the part of his principals, has not been completed.—*KNIGHT, FRANK & RUTLEY v. GORDON* (1923), 39 T. L. R. 399.

1782. *Add. Annotation*:—*Generally*, *Mentd.* Hughes v. Satchell (1925), 134 L. T. 93.

1783. *Add. Annotation*:—*Refd.* Howard Houlder v. Manx Isles S.S. Co., [1923] 1 K. B. 110.

1785. *Add. Annotation*:—*Apprvd. & Apld.* French

equivalent to the amount of the unpaid purchase price of the shares:—*Held*: W. had not received payment for the shares, & the commission was not earned.—*CECIL v. WETTLAUFRER*, [1923] S. C. R. 69; 1 D. L. R. 352; *affd.* 20 O. W. N. 260.—*CAN.*

ii. —.]—*PROGRESSIVE AGENCY v. BENNETT*, [1928] N. Z. L. R. 100.—*N.Z.*

sn. *Third party repudiating contract.*—Where a contract for sale was entered into between A. & B., & A. accepted B. as the purchaser, but B. did not pay any portion of the purchase-money, & subsequently repudiated the contract:—*Held*: the agent who negotiated the contract was entitled to commission on the sale.—*BOND v. DAWSON*, [1923] St. R. Qd. 63.—*AUS.*

sp. —.]—Where a purchaser repudiated the agreement of sale, the vendor acquiescing:—*Held*: plffs. as agents were not entitled to commission.—*MOTOR FARMING & DEVELOPMENT CO. & DAVIDSON v. SMITH*, [1923] 2 D. L. R. 1178; 1 W. W. R. 1409.—*CAN.*

st. —.]—Pltf. employed deft. to find a purchaser for certain land, & agreed to pay him commission if he succeeded. Dft. found persons willing to take an option, & he prepared an option agreement which was entered into by the parties. The purchase price was \$3,000, & the cash payment was \$300 which was to be forfeited if the purchasers failed to go further in the purchase. They paid this \$300 to deft., who paid pltf. \$150, retaining the balance, \$150, as his commission on the whole purchase price. The purchasers refused to carry out the purchase:—*Held*: pltf. was entitled to the \$150 retained by deft. as commission.—*CARLSON v. THOMPSON*, [1923] 3 W. W. R. 869.—*CAN.*

sa. —.]—Pltf. entered into the following sale agreement with deft.:—"I hereby authorise you to negotiate a sale, & agree to pay you commission provided you sell or furnish me either directly or indirectly with the name of a party to whom I may sell. Commission to be due & payable when sale is made." Dft. found a purchaser, entered into an agreement of sale with him, & a deposit of \$200

was paid by the purchaser to deft. The purchaser subsequently refused to complete the purchase, & the sale was never completed:—*Held*: the sale never having been completed, deft. was not entitled to any commission.—*LEAMAN v. LAWTON* (1923), 51 N. B. R. 110.—*CAN.*

PART VIII. SECT. 3, SUB-SECT. 1.—  
E. (c).

sb. *Agent himself paying deposit*—To prevent sale of land until definite purchaser secured.]—Where an agent for sale of land paid his principal \$200, leading the principal to believe it was paid as a deposit on behalf of P., whereas it was really paid to hold the land until a definite purchaser could be secured:—*Held*: the agent was not entitled to any commission.—*CRERER & PATTERSON v. BRAYBROOK*, [1919] 3 W. W. R. 422.—*CAN.*

1780 ix. — *Agreement to pay commission on work done.*—Pltf., who was employed by deft. to sell a station property & to find a lease for another, found A., who was ready & willing to purchase the one & to lease the other, & with him deft. entered into a contract. Subsequently the contract having fallen through, pltf. was employed by deft. to raise money for him which it was hoped would enable the purchase & lease by A. to be carried through, & a written agreement was entered into between pltf. & deft., by which it was provided that in the event of the completion of the sale & lease deft. should pay to pltf. a certain sum "representing commission due to" pltf. "on these transactions." The sale & leasing were never completed. In an action to recover the sum mentioned in the agreement, the trial judge found that when the agreement was entered into pltf. had a right to recover a reasonable sum for commission in respect of the work he had then done, & that the contract did not deprive him of that right:—*Held*: pltf. was entitled to recover a sum made up of 1 per cent. of the purchase-money & 5 per cent. of a year's rent.—*FRY v. BYRNE* (1917), 23 C. L. R. 589.—*AUS.*

1784 iv. —.]—Dft. placed a property in the hands of pltf., a commission

v. Leeston Shipping Co., [1922] 1 A. C. 451.

1786. *Add. Citation*:—23 Com. Cas. 121.

*Add. Annotation*:—*Consd.* Affréteurs Réunis Soc. Anon. v. Leopold Walford (London), [1919] A. C. 801.

1786a. — No hire earned—Special clause in charterparty.]—A clause in a time charterparty provided that "a commission of 3 per cent. on the estimated gross amount of hire is due to L. on signing this charter ship lost or not lost." No hire was in fact earned under the charterparty:—*Held*: (1) the charterers, as trustees for the brokers, could enforce the clause against the shipowners; (2) a custom by which commission was payable only if hire was earned under the charterparty could not be set up by the shipowners as an answer to the brokers' claim, inasmuch as it was inconsistent with the terms of the clause.—*AFFRÉTEURS RÉUNIS SOCIÉTÉ ANONYME v. LEOPOLD WALFORD* (LONDON), LTD., [1919] A. C. 801; 88 L. J. K. B. 861; 121 L. T. 393; 35 T. L. R. 542; 14 Asp. M. L. C. 451; 24 Com. Cas. 268, H. L.; *affg.* S. C. *sub nom.* LEOPOLD WALFORD (LONDON) v. AFFRÉTEURS RÉUNIS SOCIÉTÉ ANONYME, [1918] 2 K. B. 498, C. A.

*Annotation*:—*As to* (1) *Consd.* French v. Leeston Shipping Co. (1921), 37 T. L. R. 453.

agent, for sale upon prescribed conditions. Pltf. found A., who was ready & willing to purchase upon all the prescribed conditions except two, to which at all material times he expressed his unwillingness to agree. Dft. thinking that A. had agreed to all the prescribed conditions, submitted to A.'s solr. a contract of sale containing all the prescribed conditions. A. refused to sign the contract unless the two prescribed conditions were struck out.—*Held*: pltf. was not entitled to any commission or other remuneration from deft.—*TYNAN v. A'BECKETT*, [1923] V. L. R. 412.—*AUS.*

1784 v. —.]—In the absence of an exclusive listing, or of a special arrangement that he is to be remunerated if he does not find a purchaser, the agent is not entitled to anything if he does not find the purchaser.—*GREENWOOD & GREENWOOD v. WELFORD* (1922), 70 D. C. R. 107; [1922] 3 W. W. R. 388.—*CAN.*

HALES v. THOMSON (Man.), [1927] 3 so. *Agent abandoning negotiations.*—*Held*: not entitled to commission.—*W. W. R.* 156.—*CAN.*

PART VIII. SECT. 3, SUB-SECT. 1.—  
E. (d).

1787 ii. —.]—A claim upon a *quantum meruit* for services as agent in respect of certain properties, disallowed on the ground that it was not the understanding of the parties that payment should be made except as commission on a sale being effected; in suing upon a *quantum meruit*, in order to rely upon the acceptance by deft. of something pltf. has done he must have done it in circumstances which led deft. to know that if he accepted what had been done it was on the terms he must pay for it.—*WEEDEN v. TURVER* (1922), 68 D. L. R. 743; [1922] 3 W. W. R. 623.—*CAN.*

1789 i. *No right where express contract.*—Where a contract of agency stipulates the circumstances in which the agent will be entitled to a commission, compensation by way of *quantum meruit* will not be allowed in circumstances where no commission can be claimed; so to allow it would be to declare a contract existing between the parties different from the one they have made themselves.—



1790. *Add. Annotation*:—*Reid. Howard Houlder v. Manx Isles S.S. Co.*, [1923] 1 K. B. 110.

1791a. —. —. —.]—*HOWARD HOULDER & PARTNERS, LTD. v. MANX ISLES S.S. Co.*, No. 1751a, ante.

1798. *Add. Annotation*:—*Reid. Howard Houlder v. Manx Isles S.S. Co.*, [1923] 1 K. B. 110.

1820. *Add. Annotation*:—*Consd. Cramb v. Goodwin* (1919), 35 T. L. R. 314.

& *MACLEAN v. SAWYER MASSEY CO.*, [1918] 1 W. W. R. 727; 13 Alta. L. R. 126; 38 D. L. R. 333.—CAN.

1789 ii. —. —. —.]—*Claim based on usage.*—Where an agent's claim was based on a usage:—*Held*: a special contract arose between the parties, & a *quantum meruit* was excluded.—*SAMSON v. MCKAY*, [1923] N. Z. L. R. 4.0—N.Z.

1789 iii. —. —. —.]—*ELLIOTT v. WARBURTON*, [1925] 4 D. L. R. 1070.—CAN.

1793 ii. —. —. —.]—*Deft. employed pltf. as agent to sell land & equipment of cattle, horses, implements, etc., & furniture, at a price on a basis of \$80 an acre with a certain cash payment. Pltf. found a purchaser who wanted the land alone, but could not make a cash payment. Deft. & the purchaser came to an agreement for sale on crop payments at \$60 an acre, & signed an agreement prepared by pltf., which was crude & improvident but one from which the rights of the parties could be defined. Subsequently a more elaborate agreement was drawn by deft.'s solr., which because of certain onerous additions therein for the protection of deft. the purchaser refused to sign, & the transaction was broken off:—Held: there was in effect a sale of which pltf. was the *causa causans*, & he was entitled to payment for his services, on a *quantum meruit* basis.—*BANNERMAN v. BRADLEY*, [1919] 3 W. W. R. 952.—CAN.*

#### PART VIII. SECT. 3, SUB-SECT. 1.—F.

w i. —. —. —.]—Where an agreement as to commission is that the agent is to receive all over & above a certain figure, but nothing is said as to when the commission is to be paid, the agent is not entitled to his commission until the vendor has received in full the amount stipulated, & a promise made by the principal after the sale to pay the commission at once does not render him liable to make immediate payment.—*CLAVELLE v. RUSSELL*, [1918] 1 W. W. R. 900; 40 D. L. R. 61; 11 Sask. L. R. 111.—CAN.

w ii. —. —. —.]—*Agreement as to payment of commission obtained by agent by misrepresentation as to nature of document.*—*Held*: the principal was not bound by such agreement.—*TAYLOR v. SMITH*, [1926] V. L. R. 100; 47 A. L. T. 122; *affd.*, [1926] V. L. R. 271.—AUS.

ad. *Commission payable out of purchase-money—Total purchase-money paid into bank—Disclaimer by seller of interest in sum agreed to be paid to agent.*—An agent for the sale of goods was authorised to ask a price which would give him a certain amount for his own benefit. The buyer paid the total purchase price into a bank to be paid over to the seller, & the latter disclaimed any interest in the amount which he had agreed to let the agent have. The buyer then claimed that amount as his:—*Held*: the money belonged to the agent.—*DEVAL v. GORMAN*, [1918] 3 W. W. R. 221; 42 D. L. R. 573.—CAN.

se. —. —. —.]—*No purchase-money paid.*—Where a principal incurred no contractual obligation to pay commission except out of the purchase-money as received, & no part of the purchase-money had been received:—*Held*: the principal was not liable.—*THORN-*

*DYKE-TRENHOLME REALTY CO. v. LYALL SHIPBUILDING CO.*, [1921] 3 W. W. R. 333; 59 D. L. R. 490.—CAN.

st. *Commission payable out of profit on resale—Resale at large nominal profit—No part of purchase-money paid.*—B. & C. through pltf. purchased certain land, agreeing to pay pltf. a commission of \$1 per acre, which was to be paid, however, only out of a profit on a resale. B. & C. assumed to make a sale at a purchase price showing a large nominal profit, which purchase price was to be paid by crop payments. The purchasers had three crop failures, paid nothing on account of principal, interest or taxes, & finally abandoned the agreement of purchase & went out of possession of the land:—*Held*: the sale was a resale at a profit within the contemplation of the parties, & pltf. was entitled to commission.—*HANTON v. ROYAL TRUST CO.*, [1923] 3 D. L. R. 809; 2 W. W. R. 1046.—CAN.

sk. *Commission payable out of specified instalment—Instalment not paid.*—Where it was an express stipulation of a contract as to commission that the balance of commission due was to be paid out of a specified instalment of the purchase price payable on a specified date:—*Held*: the instalment not having been paid by the purchaser, who had abandoned the land, no commission was payable.—*BILODEAU v. MCLEAN*, [1924] 3 D. L. R. 410; 2 W. W. R. 631; 34 Man. L. R. 239.—CAN.

#### PART VIII. SECT. 3, SUB-SECT. 1.—G.

1808 ix. —. —. —.]—*Option to purchase.*—A. held an option for the sale of land, his remuneration to be the excess of the price obtained over \$29,000. After the option had lapsed he introduced to the owner a purchaser of the land at \$35,000:—*Held*: A. was not entitled to the excess over \$29,000, but could only recover *quantum meruit*.—*ACKLES v. BEATTY* (1919), 59 S. C. R. 640; 52 D. L. R. 691.—CAN.

#### PART VIII. SECT. 3, SUB-SECT. 1.—K.

agent has no right to remuneration unless he succeeds in obtaining a tenant or purchaser, as the case may be, on the appointed terms, for the property put in his hands for the purpose of being sold or let. The contract is revocable at the will of the principal at any time before the agent has actually procured a person ready to take or to purchase on the terms arranged.—*SMITH (JUDGE) v. RENFREY*, [1920] 22 W. A. L. R. 61.—AUS.

ii. —. —. —.]—Where a real estate agent receives an exclusive listing of land it may be revoked by the sale of the property by the owner, in which case the real estate agent will only be entitled to recover on a *quantum meruit*.—*GREENWOOD & GREENWOOD v. WELFORD* (1922), 70 D. L. R. 107; [1922] 3 W. W. R. 388.—CAN.

ni. —. —. —.]—Pltf., by writing signed by deft. on Sept. 16, 1919, was authorised "from this date until withdrawn by me in writing," to offer for sale land for \$7,500, & deft. thereby agreed to pay pltf. a commission "on this or the selling price, should you effect a sale." Later on the same day, deft.

1829. *Add. Annotation*:—*As to* (2) *Folld. Cramb v. Goodwin* (1919), 35 T. L. R. 314.

1829a. —. —. —.]—*Deft. engaged pltf. as a commercial traveller on a salary & commission on all business obtained by pltf., including repeat orders from all firms in the ground allotted to pltf., it being stipulated that pltf. was to have the commission on all accounts that he opened, including all repeat*

himself sold the property to M. for \$7,000. On Sept. 18, pltf. obtained a written offer under seal from B. to buy the property for \$7,500 cash, & the offer was accompanied by a cheque for \$1,000; the offer & cheque reached deft. on Sept. 19. No notice in writing of the sale to M. was given to pltf. until Sept. 20, when deft. wrote advising pltf. of that sale & returning the offer & cheque:—*Held*: pltf. was entitled to recover the agreed payment for his services.—*GORMAN v. YOUNG* (1921), 64 D. L. R. 51; 49 O. L. R. 162.—CAN.

sp. *Sub-agent—Appointed by person expecting appointment as agent.*—A co. which expected to be appointed agents for the Govt. of Western Australia, agreed to employ W. as sub-agent. The co. failed to secure the appointment & terminated W.'s employment:—*Held*: the co. warranted that they would be appointed govt agents, & they were liable to W.—*OCKERBY & CO., LTD. v. WATSON* (1918), 25 C. L. R. 431.—AUS.

#### PART VIII. SECT. 3, SUB-SECT. 1.—L. (a).

1818 i. *Insurance agent—Commission on premiums paid after termination of agency.*—In the absence of a definite agreement to that effect, an agent of an insurance co., who has secured policy-holders for the co. & whose duties as agent do not cease with the first introduction of the customer, has no right to commission on subsequent premiums paid in by such policy-holders, after he ceased to be agent.—*EMPIRE OF INDIA LIFE ASSURANCE CO., BOMBAY v. NANU AYYAR* (1920), 1 L. R. 44 Mad. 170.—IND.

1818 ii. —. —. —.]—The question whether an insurance agent, who is compensated by commissions on renewal premiums, is entitled to commissions on such premiums paid after the termination of his agency, depends to a great extent on the language of his contract with his employer. If such contract contains no provisions on the subject & the agency is terminated without his fault, the agent is entitled to commissions on renewal premiums paid thereafter; if, however, the agent voluntarily resigns his agency, or is discharged for good cause, the rule seems to be otherwise.—*BERRY v. CONFEDERATION LIFE ASSOCN. (CAN.)*, [1927] 3 D. L. R. 945.—CAN.

ui. —. —. —.]—*Commission on sales made before termination of agency—Deliveries & payments made after termination.*—Under an agreement pltf. was appointed defts.' sole & exclusive salesman for the sale of coal, at a commission "on the gross amount of all sales made by" defts. "under this agreement":—*Held*: pltf. was entitled to commission upon sales contracted before termination of the agreement, but in respect of which deliveries of coal were made & paid for after it.—*WILSON v. ATLAS COAL CO., LTD.*, [1923] 2 W. W. R. 890.—CAN.

sq. *Agent to obtain permit to sell beer in certain area—Entitled to commission on subsequent sales in area.*—*JOHNSON v. MEDICINE HAT BREWING CO., LTD.*, [1927] 2 D. L. R. 231; [1927] 1 W. W. R. 486; 22 Alta. L. R. 476.—CAN.

orders, whether they were actually handed to pltf. or posted direct to deft.:—*Held*: the intention of the parties was that commission should be paid only on orders obtained during the engagement, & pltf. was not entitled to commission on repeat orders received after the termination of his engagements.—*CRAMB v. GOODWIN* (1919), 35 T. L. R. 477; 63 Sol. Jo. 496, C. A.

1832. *Add. Annotation*:—*Folld. Schostall v. Johnson* (1919), 36 T. L. R. 75.

1833. *Add. Citations*:—*Affd.*, [1918] A. C. 239; 87 L. J. K. B. 416; 118 L. T. 126; 34 T. L. R. 206; 62 Sol. Jo. 290, H. L.

*Add. Annotations*:—*Refd. Ertel Bieber v. Rio Tinto Co.*, [1918] A. C. 260; *Naylor, Benzon v. Krainische Industrie Gesellschaft*, [1918] 1 K. B. 331; *Fried Krupp Akt. v. Orconera Iron Ore Co.* (1919), 88 L. J. Ch. 304; *Rodriguez v. Speyer*, [1919] A. C. 59. *Mentd. Re Munster*, [1920] 1 Ch. 268; *Re Ferdinand, Ex-Tsar of Bulgaria*, [1921] 1 Ch. 107; *Re Rush, Warre v. Rush*, [1923] 1 Ch. 56.

1834. *Add. Annotation*:—*Distd. Schostall v. Johnson* (1919), 36 T. L. R. 75.

1835. *Add. Annotations*:—*Refd. Anderson v.*

*Daniel*, [1924] 1 K. B. 138. *Mentd. Cornelius v. Phillips*, [1918] A. C. 199; *Kensington & Knightsbridge Electric Lighting Co. v. Notting Hill Electric Lighting Co.* (1918), 87 L. J. K. B. 565; *Re Mahmond & Ispahani*, [1921] 2 K. B. 716.

1848a. —.]—Pltf. was employed by deft., a music seller, to find a purchaser of the lease of deft.'s business premises, which were held under a covenant against carrying on any other business. Several tailors expressed to deft. their willingness to buy the lease for £2,500, but deft., believing that the landlords would not consent to the carrying on of a tailoring business, did not approach the landlords. Pltf., however, having found a tailoring co. who wanted to purchase the lease, received an assurance from the landlords that they would consent to a tailoring business, & he, by concealing this fact from deft., induced him to agree to sell the lease to the tailoring co. for £2,250 in ignorance of the fact that the proposed purchasers carried on a tailoring business. In an action for commission for finding a purchaser:—*Held*: as pltf. had taken advantage of the false position to persuade deft. to agree to take a lower price than deft. could have got else-

PART VIII. SECT. 3, SUB-SECT. 1.—  
M. (a).

st. *Land agent—Land Agents Act*, 1912.]—A person who, not being licensed as a land agent, obtains an appointment from a vendor to act as such is guilty of an offence under s. 14 of the above Act, & cannot maintain an action against his principal for commission; & the defect is not cured either by the expiry of the period of limitation or by the fact that the agent has obtained a licence before performing the services in respect of which the commission is claimed.—*NELSON v. CROSBY*, [1919] N. Z. L. R. 369.—N.Z.

sa. —.]—*Land Agents Act*, 1912, s. 13 (a), ought to be construed as meaning that the land agent must possess a licence at the time the work is done, & the fact that after the work is done the land agent fails to take out a further licence does not destroy a right to bring an action for commission, where the cause of action arose at the time the agent was in possession of a licence.—*JOHNSTONE v. GOODSON*, [1920] N. Z. L. R. 883.—N.Z.

xi. —.]—*Real Estate Agents Licensing Act*.]—Pltf., a store-keeper, brought about the sale of deft.'s land to another person. In an action for commission:—*Held*: s. 21 of the above Act did not apply to individual transactions.—*GOODALL v. COUSINS*, [1923] 3 D. L. R. 718; 32 B. C. R. 440.—CAN.

xii. —.]—*Licence obtained before completion of sale*.]—Agent entitled to commission.—*CUDWORTH v. EDDY*, [1927] 1 W. W. R. 583; 37 B. C. R. 407.—CAN.

PART VIII. SECT. 3, SUB-SECT. 1.—  
M. (b).

sb. *Member of Parliament effecting sale—Sale to Government*.]—Pltfs., land agents, were employed by deft. to bring about a sale of deft.'s property to the Govt. of Victoria. Services were to be rendered by D., a member of the Parliament of Victoria, who was employed by pltfs. as their representative on the terms that he should receive a share of their commission on the sale. D.'s services were an effective cause of the sale. In an action by pltfs. against deft. to recover commission on the sale:—*Held*: the transaction was contrary to public policy, & pltfs.' action

failed.—*HORNE v. BARBER* (1920), 27 C. L. R. 493.—AUS.

sc. —.]—*Consent of Government necessary*.]—A member of the Dominion Parliament brought about a sale, it being his duty under agreement with the vendor to use his influence with the minister in charge to secure the Govt.'s consent which was necessary to complete the sale:—*Held*: he was not entitled to a commission for his services, the agreement being void on the ground of public policy.—*CLEMENTS v. COUGHLAN* (1924), 34 B. C. R. 401.—CAN.

sd. *Sale under Discharged Soldiers Settlement Act*, 1919 (No. 3039).]—*Member of advisory committee agent of vendor*.]—A land agent, who was also a member of an advisory committee, constituted under s. 36 of the above Act, to the Lands Purchase & Management Board, entered into a contract with the owner for effecting the sale to the board of certain land, as to which the committee had certain powers & duties to advise the board. The contract did not refer to the use by the agent of any influence as a member of the committee in effectuating the sale; the agent took no part in the discussion by the committee of the report of a sub-committee as to the expediency of the purchase by the board of such land, & acted throughout *bona fide* & without concealment of the fact of his agency, & he was not at any time a member of any valuation sub-committee:—*Held*: the contract was void as being against public policy, & the agent's claim for commission failed.—*WOOD v. LITTLE*, [1922] V. L. R. 11.—AUS.

PART VIII. SECT. 3, SUB-SECT. 1.—  
M. (c).

se. *Agent returning deposit to purchaser*.]—Resps. were employed as agents to sell property belonging to applt. They found a purchaser but applt. failed to complete the sale on the day fixed, & resps., on the application of purchaser, paid him back the deposit without communicating with applt.:—*Held*: resps. had been guilty of a wilful breach of the duty which, under Land Agents Act, 1912, s. 8, they owed to applt., & such breach deprived them of their right to recover any commission at all.—*BUCHANAN*

*v. NEALE*, [1920] N. Z. L. R. 889.—N.Z.

sf. *Failure to make binding contract*.]—Where pltfs., acting as brokers, failed to make a contract binding on both parties:—*Held*: they were not entitled to commission.—*PATERSON v. MCCALLUM*, [1921] N. Z. L. R. 869.—N.Z.

1841 iva. —.]—*MACK v. McLEOD*, [1925] 2 D. L. R. 1201.—CAN.

1841 vi. —.]—*Secret agreement to pool commissions*.]—On a proposed exchange of properties, if the agents, unknown to either of the principals, agree to pool their respective commissions & to divide equally, so that under such pooling agreement one agent receives more than the commission payable by his principal, that agent cannot recover any commission from his principal, as such an agreement gave him an interest adverse to the interest of his principal.—*DALY v. KELHER*, [1921] 2 W. W. R. 192.—CAN.

1841 vii. —.]—*Agent acting for both parties—Rules of Real Estate Exchange*.]—Where the owner of property listed with a real estate agent for sale exchanged the property with the assistance of the agent for other property listed, to the knowledge of the owner, with the agent for exchange, but had not agreed to pay him a commission on the exchange & had not been informed by him that he still intended to act as her agent & to charge her a commission:—*Held*: (1) she was not liable for commission; (2) a rule of a Real Estate Exchange to which the agent belonged, that an agent who acted for both parties in an exchange could collect from each one-half the usual commission on a sale, did not legally entitle the agent to recover such half from her.—*HACKNEY v. LYNN*, [1925] 4 D. L. R. 861; [1925] 3 W. W. R. 614.—CAN.

1841 viii. —.]—If a vendor with full knowledge of the facts agrees to pay commission to a purchaser's agent, he will be bound by his contract, but the *onus* is on the agent to show clearly that the vendor knew that he was acting in a dual capacity & assented to that state of affairs.—*MOILER v. FORGE* (1927), 27 S. R. N. S. W. 69; 44 N. S. W. W. N. 42.—AUS.



where, the action failed.—**HEATH v. PARKINSON** (1926), 136 L. T. 128; 42 T. L. R. 693; 70 Sol. Jo. 798.

**1849. Add. Annotation:—Mentd. Re Morris, Mayhew v. Halton**, [1921] 1 Ch. 172.

**1852. Add. Annotation:—Consd. Rhodes v. Macalister** (1923), 29 Com. Cas. 19.

**1852a. —**—Pltfs., a firm of mining engineers, were employed by defts. to negotiate the purchase of mining properties. Defts. were willing to give £9,000 for the properties, & agreed with pltfs. that if they made a bargain for less than £9,000, the difference between the £9,000 & the lesser sum could be taken by pltfs. as remuneration. Before the purchase was effected, pltfs. had arranged with the vendors to take commission from them on the sale:—**Held**: pltfs. had committed a breach of duty as agents for defts. & were not entitled to any remuneration from defts.—**RHODES v. MACALISTER** (1923), 29 Com. Cas. 19, C. A.

**1862. Add. Annotation:—Appld. Adams v. Morgan**, [1923] 2 K. B. 234.

**1872a. Promise to indemnify vendor of business to company—Vendor retained as agent for limited period—Assessment of vendor to super-tax on profits made within period.]—**Pltf., who was the owner of a stationery business, sold it in Aug. 1919, to defts., a

limited co. One of the terms on which the business was sold was that as from Dec. 31, 1918, until Sept. 15, 1919, pltf. should be deemed to have been carrying on the business on account of & for the benefit of the purchasers, & that pltf. should account & be entitled to be indemnified accordingly. For his services until the date of completion pltf. was to be paid a fixed sum monthly. Pltf. was assessed for super-tax on the profits of the business from Apr. 6, 1919, to Aug. 22, 1919. He paid the amount demanded & claimed to recover an indemnity from defts.:—**Held**: pltf., as agent of defts., was entitled to be indemnified by them in respect of the amount of super-tax paid by him, although defts. as a limited co. would not be liable to pay super-tax.—**ADAMS v. MORGAN & Co.**, [1924] 1 K. B. 751; 93 L. J. Ch. B. 382; 130 L. T. 792; 40 T. L. R. 70; 68 Sol. Jo. 348, C. A.

**1875. Add. Annotation:—Consd. Weddle, Beck v. Hackett** (1928), 45 T. L. R. 67.

**1878. Add. Annotation:—As to (2) Refd. Weld-Blundell v. Stephens**, [1919] 1. K. B. 520.

**1886. Add. Annotation:—Refd. Adams v. Morgan**, [1923] 2 K. B. 234; **Britannia Hygienic Laundry Co. v. Thornycroft** (1925), 94 L. J. K. B. 858.

**1908. Add. Annotation:—Mentd. Weld-Blundell v. Stephens**, [1920] A. C. 956.

**1850 iiii. Fraudulent representations inducing listing.]—**Agent not entitled to commission.—**SLEETO v. ADAMS**, [1927] 1 D. L. R. 547; [1927] 1 W. W. R. 12; 22 Alta. L. R. 333.—**CAN.**

**1850 vii. — Agent to sell acting for other principals—Breach of contract.]—**A contract, entered into in Feb. 1914, between a firm & a commission agent, whereby the latter was appointed agent for the sale of certain cotton goods dealt in by the firm, contained a clause prohibiting the agent from selling such goods supplied by others than his principals. From July 10, 1916, onwards the agent regularly sold goods of that class on behalf of another firm, & he also bought & sold such goods on his own account:—**Held**: the agent was not entitled to an accounting for the period subsequent to July 10, 1916, as he was then in material breach of his contract, but he was entitled to an accounting for the period prior to that date during which he had duly obtempered the contract.—**GRAHAM & Co. v. UNITED TURKEY RED, ETC. Co., LTD.**, [1922] S. C. 533; 59 Sc. L. R. 420.—**SCOT.**

**1852 vii. —**—Where an agent acts improperly & unfaithfully in the performance of his duties towards his principal, he forfeits any remuneration or commission to which he would otherwise have been entitled if his improper or unfaithful conduct is connected with the duty he had to perform. The mere fact of an agent receiving & retaining a secret profit or commission arising out of & in connection with the performance of his duty constitutes unfaithfulness & dishonesty & disentitles him to any remuneration or commission.—**LEVIN v. LEVY**, [1917] T. P. D. 702.—**S. AF.**

#### PART VIII. SECT. 3, SUB-SECT. 1.— M.

**sj. Agent selling at less than listed price.]—**An agent for the sale of goods is not entitled to a commission for introducing a purchaser where the goods are sold at a reduction from the listed

price greater than the commission, & the agency contract provides that if any goods are sold for less than the current price list by the agent, the acceptance of such sale shall not entitle the agent to the commissions set forth, but such reduction in price shall be deducted from the agent's commission.—**LAW & MACLEAN v. SAWYER MASSEY Co.**, [1918] 1 W. W. R. 727; 13 Alta. L. R. 126; 38 D. L. R. 333.—**CAN.**

**sk. No commission on land not sold.]—**Deft.'s land having been listed with pltf., an estate agent, the latter claimed commission on the proceeds of a subsequent sale, but failed to show that he brought about a sale of deft.'s land, or that deft. made a sale thereof to a person introduced to him by pltf.:—**Held**: pltf. had not shown the performance of any services which entitled him to commission.—**DUNN v. GRAF** (1922), 66 D. L. R. 713.—**CAN.**

**sl. No commission on goods "taken back."]—****Held**: goods "taken back" included goods "repossessed" on default.—**COWIE v. SAWYER-MASSEY Co.** (1916), 34 W. L. R. 274; 10 W. W. R. 254.—**CAN.**

**sm. Sale of homestead—Necessity for wife's consent.]—****SEMPLE v. SHARP**, [1927] 1 W. W. R. 965; 21 Sask. L. R. 435.—**CAN.**

#### PART VIII. SECT. 3, SUB-SECT. 2.— O. (a).

**bi. — Loss through delay in delivery.]—****E. & Co.**, commission agents, entered into a contract with defts. under which they undertook to purchase & ship goods "on account & risk" of defts., & **E. & Co.** shipped the goods under a c.i.f. contract on board a German ship. Owing to the outbreak of war during transit the goods did not arrive at their destination until long after due time. On defts.' refusal to accept the goods they were sold:—**Held**: **E. & Co.** were entitled to recover damages for breach of contract.—**MEREDITH v. ABDULLA (SAHIB)** (1918), 1. L. R. 41 Mad. 1060.—**IND.**

**sn. Broker buying wheat to meet deliveries.]—**Brokers were instructed by their principal to sell wheat for future delivery:—**Held**: when the principal could not deliver the wheat he instructed the brokers to buy the wheat necessary to cover his contracts, which they did, & he must repay to them the amount so expended.—**CANADIAN GRAIN Co., LTD. v. NICHOL**, [1920] 3 W. W. R. 127; 53 D. L. R. 375; 13 Sask. L. R. 30.—**CAN.**

**so. Dealings in grain futures—Broker with knowledge of illegality of transactions—Broker not entitled to recover balance due from customer.]—****TOPPER GRAIN Co. v. MANTZ (Alta.)**, [1926] 2 D. L. R. 712; [1926] 2 W. W. R. 140.—**CAN.**

#### PART VIII. SECT. 3, SUB-SECT. 2.— C. (b).

**sp. Forwarding agent acting in accordance with ordinary duty.]—**Defts., forwarding agents in Durban, who acted as the agents of pltf. in clearing & forwarding goods consigned to him from India, on Oct. 21, received a letter from a firm in India informing them that they had shipped a consignment of goods on behalf of pltf. The goods arrived on Oct. 20, & on Oct. 22 defts. cleared & trucked the goods to Johannesburg & sent pltf. a consignment note which he received on Oct. 26. Immediately on receipt of the note pltf. telegraphed to defts. instructing them to keep the goods for sale in Durban. Defts. on the instructions of pltf. had the trucks stopped & returned to Durban. Defts. in order to obtain delivery of the goods paid the railway charges & upon pltf.'s refusal to reimburse them declined to hand the goods over to pltf.:—**Held**: defts. in ralling the goods without awaiting special instructions had acted in accordance with their ordinary duty as forwarding agents, & in the absence of special instructions to the contrary defts. were justified in so ralling the goods.—**PATEL v. KEFLER & Co.**, [1923] App. D. 506.—**S. AF.**



1941. *Add. Annotation* :—*Reid. Christoforides v. Terry*, [1924] A. C. 566.
1944. *Add. Annotations* :—*Distd. Reigate v. Union Manufacturing Co. (Ramsbottom)*, [1918] 1 K. B. 592. *Consd. Warren v. Agdeshman* (1922), 38 T. L. R. 588.
1945. *Add. Annotations* :—*Apld. French v. Leeston Shipping Co.* (1921), 37 T. L. R. 453. *Reid Reigate v. Union Manufacturing Co. (Ramsbottom)*, [1918] 1 K. B. 592.
1946. *Add. Annotations* :—*As to (2) Consd. Warren v. Agdeshman* (1922), 38 T. L. R. 588. *Reid. Turpin v. Victoria Palace*, [1918] 2 K. B. 539. *Generally, Reid. Reigate v. Union Manufacturing Co. (Ramsbottom)*, [1918] 1 K. B. 592; *Re Rubel Bronze & Metal Co. & Vos*, [1918] 1 K. B. 315. *Mentd. Blackburn Bobbin Co. v. Allen*, [1918] 2 K. B. 467; *Re Comptoir Commercial Anversois & Power*, [1920] 1 K. B. 868; *Sweet v. Williams* (1922), 128 L. T. 379.
1947. *Add. Annotation* :—*Reid. Warren v. Agdeshman* (1922), 38 T. L. R. 588.
- 1947a. —.]—By a contract in writing deft. appointed pltf. to be sole agents for the United Kingdom, with certain exceptions, for a period of three years. Pltf. were to be paid a commission at the rate of 22 per cent. on all goods sold throughout the United Kingdom, with the exceptions above referred to, whether the goods were sold through the instrumentality of pltf. or not, & deft. agreed with pltf. that he would keep them fully supplied with samples, & would execute all orders with due diligence, & would not, directly or indirectly, canvass orders or in any manner approach or solicit any of the customers, or potential customers, of pltf. in respect of the sales of his goods. Before the expiry of the three years deft. broke these undertakings & then wrote to pltf. cancelling the agreement :—*Held* : as it was a necessary implication from the terms of the contract that pltf. would not decline reasonably to introduce customers, the agreement was not void for lack of mutuality, & although the mere appointment of an agent on commission for a term of years does not carry with it the necessary implication that the business shall be carried on for that term, yet, as deft. had undertaken certain obligations to facilitate the earning of the commission & had broken his undertakings, he could not, by a purported cancellation of the contract, limit his liability for damages to the period prior to such purported cancellation.—*WARREN & Co. v. AGDESHMAN* (1922), 38 T. L. R. 588.
1949. *Add. Annotation* :—*Mentd. Reigate v. Union Manufacturing Co. (Ramsbottom)*, [1918] 1 K. B. 592.
1950. *Add. Annotation* :—*As to (2) Reid. Payzu v. Saunders*, [1919] 2 K. B. 581.
- 1951a. —.]—By an agreement made between pltf. & a limited co., which carried on business

in Lancashire, in consideration of pltf. subscribing for £1,000 in shares of the co., & of introducing to the co. certain new classes of goods to be manufactured by them, the co. appointed him their sole agent in the United Kingdom, India. & the Colonies for the sale of those goods for the term of seven years, if the agent should so long live, & thereafter until the agreement should be determined by six months' notice on either side. The agent was to use his best endeavours to obtain orders for the co.'s goods at prices to be from time to time agreed upon, & all orders obtained by the agent were at once to be communicated to the co., who upon approving or rejecting the same were to inform the agent thereof & who were to carry out such orders as were accepted without undue delay; & the agent was not definitely to accept orders for the co., but only subject to confirmation & acceptance by the co., such confirmation or acceptance not to be unreasonably withheld. The co. were to pay the agent a commission upon the invoiced prices of all goods delivered by the co., & duly paid for by the respective purchasers. A few months afterwards the co. required fresh capital, & they applied to pltf. to assist them in finding it, telling him that otherwise they would have to close down. Pltf. tried to do so, but failed. The co. then asked pltf. to give up the agency for the Manchester district, telling him that he would have to stand down so far as that district was concerned, in which case they thought that they could find the necessary capital, but he refused. The co. thereupon being insolvent passed resolutions for voluntary winding up & ceased to do business through pltf. & eventually sold their business. In an action to recover damages for breach of the agreement to employ pltf. as their agent for the seven years :—*Held* : the agreement was to employ pltf. as agent for the seven years & a term could not be implied to the effect that the co. could terminate the agency at any time by ceasing to carry on their business; & the circumstances coupled with the voluntary winding up showed a repudiation by the co. of the agreement, & they were therefore liable in damages for the breach.—*REIGATE v. UNION MANUFACTURING CO. (RAMSBOTTOM)*, [1918] 1 K. B. 592; 87 L. J. K. B. 724; 118 L. T. 479; C. A.

*Annotations* :—*Reid. Thomas v. Todd*, [1926] 2 K. B. 511; *Livock v. Pearson* (1928), 33 Com. Cas. 188.

1952. *Add. Annotation* :—*Reid. Warren v. Agdeshman* (1922), 38 T. L. R. 588.
1953. *Add. Annotations* :—*Reid. Reigate v. Union Manufacturing Co. (Ramsbottom)*, [1918] 1 K. B. 592; *Warren v. Agdeshman* (1922), 38 T. L. R. 588.
1957. *Add. Annotations* :—*Reid. Reigate v. Union Manufacturing Co. (Ramsbottom)*, [1918] 1 K. B. 592; *Warren v. Agdeshman* (1922), 38 T. L. R. 588.

PART VIII. SECT. 3, SUB-SECT. 2.—  
C. (e).

*sq. Contract for delivery of grain—Actual delivery necessary—Duty of broker to prove contract not illegal.*—*HANSEN v. LECHTZIER*, [1925] 4 D. L. R. 1008.—CAN.

PART VIII. SECT. 3, SUB-SECT. 2.—  
D. (a).

*sr. Agent assuming liability to third*

*party.*—Where a superintendent of road construction for a municipality ordered supplies on its behalf, & which were charged to it :—*Held* : as he was not legally liable on the accounts he had no cause of action against the municipality in respect thereof whether for payment or indemnity, although he had paid one of the accounts & judgment had been obtained against him for another.—*DICKINSON v. RURAL*

*MUNICIPALITY OF STONEHAGUE*, [1920] 1 W. W. R. 235; 50 D. L. R. 383; 13 Sask. L. R. 1.—CAN.

PART VIII. SECT. 3, SUB-SECT. 3.—  
B.

1959 H. For this number read

1961. *Add. Annotations*:—*Reid. Taylor v. Oakes, Roncoroni* (1922), 127 L. T. 267. *Mentd. Moriarty v. Regent's Garage Co.*, [1921] 1 K. B. 423.
1968. *Add. Annotation*:—*Generally, Mentd. Re Rubel Bronze & Metal Co. & Vos*, [1918] 1 K. B. 315.
1974. *Add. Annotations*:—*As to* (1) *Consd. Mortimer v. Beckett*, [1920] 1 Ch. 571. *As to* (2) *Appld. Mortimer v. Beckett*, [1920] 1 Ch. 571.
1979. *Add. Annotation*:—*Mentd. Hamilton v. Caldwell* (1919), 88 L. J. P. O. 173.
1980. *Add. Annotation*:—*As to* (2) *Consd. Martin v. Stout*, [1925] A. C. 359.
1999. *Add. Annotation*:—*Generally, Mentd. Lowther v. Harris*, [1927] 1 K. B. 393.
2005. *Add. Annotation*:—*As to* (2) *Reid. Wrightson v. McArthur & Hutchisons*, [1921] 2 K. B. 807.
2025. *Add. Annotation*:—*Mentd. Lowther v. Harris*, [1927] 1 K. B. 393.
2029. *Add. Annotation*:—*Reid. Re Gunsbourg, Ex p. Trustee* (1920), 89 L. J. K. B. 725.
2056. *Add. Annotation*:—*Reid. Booth S.S. Co. v. Cargo Fleet Iron Co.* (1916), 13 Asp. M. L. C. 451.
2092. *Add. Annotation*:—*Generally, Mentd. Re Eyre-Williams, Williams v. Williams*, [1923] 2 Ch. 533.

## Part IX.—Relations between Principal and Third Parties.

2094. *Add. Annotation*:—*Mentd. Banque Belge Pour L'Etranger v. Hambrouck*, [1921] 1 K. B. 321.
2095. *Add. Annotation*:—*Mentd. Banque Belge Pour L'Etranger v. Hambrouck*, [1921] 1 K. B. 321.
2096. *Add. Annotation*:—*Reid. Banque Belge Pour L'Etranger v. Hambrouck*, [1921] 1 K. B. 321.
2098. *Add. Annotation*:—*Consd. Jones v. Waring & Gillow*, [1925] 2 K. B. 612.
2106. *Add. Annotations*:—*Reid. Re Hodgson's Trusts, Public Trustee v. Milne*, [1919] 2 Ch. 189; *Banque Belge Pour L'Etranger v. Hambrouck*, [1921] 1 K. B. 321; *Re Wait*, [1927] 1 Ch. 606.
2109. *Add. Annotation*:—*As to* (1) *Reid. Underwood v. Bank of Liverpool, Same v. Barclays Bank*, [1924] 1 K. B. 775.
2113. *Add. Annotation*:—*Mentd. Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669.
2118. *Add. Annotation*:—*Reid. Muller (London) v. Lethem, Same v. I. R. Comrs.*, [1927] 1 K. B. 780.
2120. *Add. Annotation*:—*Consd. Rederi Akt. Transatlantic v. Drughorn*, [1918] 1 K. B. 394.

1967 ii. ———.]—In a five years' agreement between a selling agent & a firm of merchants it was provided that, if at the end of the first three years the agent had not realised a certain turnover, the merchants should be entitled to terminate the agreement. The agreement further provided that the merchants undertook to supply goods to the agent, who was bound to buy exclusively from them. At the end of the three years the value of the goods sold & delivered by the agent failed to reach the stipulated turnover, & the merchants terminated the agreement. The value of the sales effected by the agent had in fact materially exceeded the stipulated figure, but the value of the goods actually delivered by him fell short of it, owing to the failure of the merchants to supply him with the full amount of goods ordered by him. The merchants, who were not manufacturers, were dependent on delivery to themselves by the manufacturers, & owing to war conditions, they were themselves unable to obtain the full supplies they required. They had, however, obtained sufficient goods to have implemented the agent's orders, but they preferred to distribute these goods ratably among all their agents & customers, the agent in question receiving his full share. In an action by the agent against the merchants concluding for damages for unjustifiable termination of the agreement:—*Held*: debts were not entitled to terminate the agreement.—*DOWLING v. MATHVEN, SONS & CO., LTD.*, [1921] S. O. 948; 59 Sc. L. R. 7.—SCOT.

1978 iii. ———.]—Pltf. & debts., an English business house, entered into an agreement by correspondence by which pltf. was to be the selling agent of debts' goods in British Columbia. In the letter from debts. setting out the proposed terms of agreement were the words, "this offer to be firm for one year." Debts. broke the agency agreement during the first year:—

*Held*: pltf. was entitled to damages on the basis of loss of profits on two years' contract, as being reasonable in all the circumstances.—*MACDONALD v. CASHIN, LTD.*, [1919] 1 W. W. R. 293.—CAN.

1978 iv. ———.]—In 1911 resps. agreed to employ applts. as under-brokers for the business of a co. during the subsistence of an agreement which they themselves had as brokers to the co.; the latter agreement was for five years. In Aug. 1912, resps. wrongfully determined the agreement with applts. On Dec. 2, 1912, resps., *bona fide* & not as a means of limiting the damages, made a new agreement with the co., the terms of which were inconsistent with, & thus put an end to, the original agreement between resps. & the co. In Jan. 1913, applts. sued resps. for damages:—*Held*: the damages recoverable were limited to the amount which applts. would have earned as under-brokers down to Dec. 2, 1912.—*LACHMANDAS, ETC. v. RAGHUMULL* (1919), L. R. 46 Ind. App. 314; 24 C. W. N. 577.—IND.

### PART VIII. SECT. 4, SUB-SECT. 2.

st. *Liability of principals to indemnify agent—Release of co-principal.*—The release of one co-principal does not release another co-principal from his obligation to exonerate & contribute to the extent to which he would have been ultimately liable had the one co-principal not been released.—*MALOWANY v. PASEMKO*, [1919] 1 W. W. R. 553.—CAN.

### PART IX. SECT. 2, SUB-SECT. 1.

b i. ——— *Goods sold—Knowledge of purchaser.*—M. left two hundred & fifty cattle with B., a cattle dealer. He gave B. written authority to sell forty-eight, & B. was to graze the rest. B. sold one hundred cattle to C., purporting to act as M.'s agent, showing the written authority & alleging further

oral authority. At B.'s request C. made a cheque for the purchase price payable to him. C. bought in good faith & for value. M. repudiated the sale & sued to vindicate the cattle sold without authority:—*Held*: the written authority & the request for personal payment should have put the purchaser upon inquiry.—*MULLER v. CHENNELLS* (1923), 44 N. L. R. 69.—S. AF.

2106 i. *Agent holding principal's funds—Money paid into agent's banking account—Agent in fiduciary character.*—Money received by a commission agent from sales of his customers' property, is, after deduction therefrom of the agent's commission & expenses, money held by him in a fiduciary capacity, & if it is mixed by the agent with his own money in his general banking account & he becomes bkpt., the money can be followed if it is still traceable.—*SALTER & ARNOLD, LTD. v. DOMINION BANK* (1923), 4 C. B. R. 379; [1923] 3 W. W. R. 257.—CAN.

### PART IX. SECT. 3, SUB-SECT. 1.—A.

2120 viii. ———.]—J., as agent of pltf., advanced sums to debt. in consideration of debt.'s going to work on a sugar estate, on behalf of K., who supplied money for the advance, to whom J. had to account, & to whom J. stated that he had accounted. Debt. stated that J. had recruited him to work for some person whose name was not given. Debt. contended in an action for refund of the advance that pltf. could not sue without cession of action from K.:—*Held*: pltf. had a right of action against debt.—*GADLELA v. MOUNTJOY*, [1921] E. D. L. 151.—S. AF.

sa. *Action for money paid under contract.*—Pltf., desiring to have ten vessels constructed in Canada, entered into a preliminary agreement with A., whereby A. was to enter into contracts with three builders for the con-



**2125a. Action for specific performance—Effect of non-disclosure of principal.]—**Pltf. procured C. to enter into an agreement to purchase land from defts. C. never disclosed to defts. that he was acting as the agent of pltf. Subsequently C. explained to defts. that he was acting as agent for pltf., & at his request the agreement was cancelled. In an action for specific performance:—*Held*: the agreement not being one in which any personal qualification by C. was a material factor, the mere non-disclosure of the person actually entitled to the benefit of the contract for the sale of real estate did not amount to misrepresentation.—*DYSTER v. RANDALL & SONS*, [1926] Ch. 932; 95 L. J. Ch. 504; 135 L. T. 596; 70 Sol. Jo. 797; [1926] B. & C. R. 113, C. A.

**2126a. Sold by agent—Effect of misrepresentation as to being principal.]—**G., employed as a traveller by a firm of builders, owed debt. £17 for goods sold. He asked debt. to buy timber from him, telling him that he had left the employment of the builders & had set up as a timber merchant on his own account, & debt. agreed to order timber from him on the terms that G.'s debt of £17 should be set off against the price. G. had not set up in business on his own account, but was employed by pltf. as an agent for sale on commission. Timber was delivered to debt. with invoices & letters bearing the name, address, & description of pltf., which G. told debt. were his own trade name, address, & description. Pltf. brought an action in the county ct. for the price of the timber, & the county ct. judge found that debt. honestly believed that the name, address, & description on the invoices & letters were those of G., but that debt. was put upon inquiry by the invoices & letters, & had notice that G. was not selling as a principal but only as an agent for pltf., & he gave judgment for pltf. for the price of the timber:—*Held*: debt. had no more than constructive notice that pltf. was the principal of G., & in the circumstances constructive notice was not equivalent to actual notice; debt. had made no contract with pltf., & was entitled to judgment.—*GREER v. DOWNS*

struction of the vessels, called "building contracts," & at the same time into contracts with pltf., called the "vessel contracts" providing for the payment for vessels, the nature of their construction & due delivery thereof. The "building contract" & the "vessel contract" each expressly stated that a copy of the other was attached to & made a part of it. By the "building contract" debt. covenanted to build the vessels according to the terms of the "vessel contract," & this contract was expressed to be made with pltf. as well as with A., & debt. also confirmed provisions of the "vessel contract" for payment of the instalments of the purchase price to A. & appointed A. his agent to receive payments. Upon the signing of the contracts a first payment made by pltf. to A. was distributed by A. between the three "builders," who proceeded with the construction of the vessels. Upon pltf.'s failure to make the next deposit as provided for in the "vessel" contract, debt. gave notice terminating the contract. Pltf. having brought action for repayment by debt. of money paid on account of the vessels, less such expenses as debt. had

incurred by virtue of the contract:—*Held*: pltf. had no right of action.—*VAN HEMELRYCK v. NEW WESTMINSTER CONSTRUCTION & ENGINEERING CO.*, *VAN HEMELRYCK v. NORTHERN CONSTRUCTION CO.*, *VAN HEMELRYCK v. PACIFIC CONSTRUCTION CO.* (1920), 29 B. C. R. 39; 55 D. L. R. 589.—CAN.

**PART IX. SECT. 3, SUB-SECT. 1.—B.**  
**2134 i. General rule.]—***BOLUS & Co., LTD. v. INGLIS BROTHERS, LTD.*, [1924] N. Z. L. R. 164.—N.Z.

**2135 ii. —.]—**Deft., owner of a theatre, entered into a contract with W., an advertising manager, under which W. was to conduct an advertising campaign relative to the theatre. The campaign was to take the form of a contest for prizes to be offered for selling tickets of admission to the theatre. Pltf. was assignee for value of a prize-winner's rights:—*Held*: the agent's promises to the contestants were the promises of debt. as principal, & debt. was liable as principal.—*ROSS v. KOBOLD*, [1924] 1 D. L. R. 750; 1 W. W. R. 428; 34 Man. L. R. 111.—CAN.

*sb. Contract in agent's name—Under*

*SUPPLY Co.*, [1927] 2 K. B. 28; 96 L. J. K. B. 534; 137 L. T. 174, C. A.

**2139a. Agent acting in his own interest.]—**Where an agent, in contracting on behalf of his principal, has acted within the terms of a written authority given to him by the principal, but the existence of which was not known to the other party to the contract, the principal cannot, if the other party has acted *bonâ fide*, repudiate liability on the contract on the ground that the agent, in making it, acted in his own interests, & not in those of his principal.—*HAMBRO v. BURNAND*, [1904] 2 K. B. 10; 73 L. J. K. B. 669; 90 L. T. 803; 52 W. R. 583; 20 T. L. R. 398; 48 Sol. Jo. 369; 9 Com. Cas. 251, C. A.; *reversg.*, [1903] 2 K. B. 399.

*Annotations:—*Consd. *Willis, Faber v. Joyce* (1911), 104 L. T. 576; *Underwood v. Bank of Liverpool & Martins*, *Underwood v. Barclays Bank*, [1924] 1 K. B. 775. *Distd. Reckitt v. Barnett, Pembroke & Slater* (1928), 45 T. L. R. 36. *Refd. British Marine Mutual Inacc. Assocn. v. Draffen, Read & Morgan* (1903), 47 Sol. Jo. 672; *Ruben v. Great Fingall Consolidated*, [1904] 2 K. B. 712; *Malcolm, Brunner v. Waterhouse* (1908), 24 T. L. R. 854; *Lloyd v. Grace, Smith*, [1912] A. C. 716; *Lloyds Bank v. Chartered Bank of India, Australia & China* (1928), 97 L. J. K. B. 609. *Mentd. Cuthbert v. Roberts, Lubbock*, [1909] 2 Ch. 226.

**2139b. Account stated & signed by agent.]—**In Mar. 1918, a tank steamer was damaged by fire & her repairs were entrusted to a firm of ship repairers at A. The steamer was insured. The owners sent out an agent from L. to expedite the repairs & authorised him to sign the repair account with the Lloyds' surveyor as "approved subject to adjustment & conditions of insurances." In Jan. 1919, the repairers delivered to the owners an account of the repairs signed by the owners' agent & by Lloyds' surveyor in the above form after a detailed examination of the account. The owners paid part of the amount due on this account but declined to pay the balance on the ground that the charges were excessive. The repairers sued the owners for the balance of amount due for work & labour done by pltf. & materials supplied at the request of defts., & in the alternative, claimed the balance as being the amount found due from defts. to pltf. on accounts stated between them & contained in an account signed by defts. by their

*seal.]—*Defts. made an agreement with B. for conditional sale to him of a large quantity of land, the intention of the parties being for its subdivision & sale for fruit-farming purposes. All surveys & sales were to be approved by defts., a minimum price per acre in selling was stipulated, & the proceeds of sales were to be paid into a bank to defts.' credit, & title to be retained by defts. until the full purchase price of the sale to B. was realised. On certain amounts of sales being made, defts. agreed to do certain clearing, irrigating & tree-planting, B. acting as their agent in the supervision thereof. B. was to receive commission on sales made, should he not succeed in carrying out the agreement. B. made an approved agreement with pltf. for sale of a lot to be selected by pltf. who sought to recover from defts. the amount of payments made by him:—*Held*: the fact that pltf.'s agreement was with B., in B.'s own name & under seal, did not prevent recovery from defts. as for money had & received.—*HITCHCOCK v. COLUMBIA VALLEY LAND CO., LTD.*, [1919] 2 W. W. R. 969; 48 D. L. R. 737.—CAN.



agent, less the sums since paid by defts. in respect thereof. Defts. denied that the agent was authorised to agree the amounts due from defts. to pltfs., or that he in fact purported to agree such amount, or that the account constituted an account stated:—*Held*: the signature of defts.' agent was an agreement by him, with their authority, that the amount charged for the repairs was correct, & there being no ground for re-opening the account, pltfs. were entitled to judgment.—**CAMILLO TANK S.S. CO., LTD. v. ALEXANDRIA ENGINEERING WORKS** (1921), 38 T. L. R. 134, H. L.

**2147a.** ———.]—A member of the Stock Exchange was indebted to defts. He became a defaulter on the Stock Exchange, & the liquidation of his affairs was undertaken by pltf. as official assignee. For the purposes of the liquidation he was authorised by pltf. to sell, & accordingly sold, certain shares standing in his name to defts., who were not members of the Stock Exchange, but who knew his position & that of pltf. as official assignee. Pltf. having sued defts. for the price of the shares:—*Held*: the action was maintainable, & defts. were not entitled to a set-off in respect of their debt.—**RICHARDSON v. STORMONT, TODD & CO.**, [1900] 1 Q. B. 701; 69 L. J. Q. B. 369; 82 L. T. 316; 48 W. R. 451; 16 T. L. R. 224; 5 Com. Cas. 134, C. A.

*Annotations*:—**Apld.** *Lomas v. Graves*, [1904] 2 K. B. 557. *Refd.* *Re Halstead, Ex p. Richardson*, [1917] 1 K. B. 695.

**2162.** *Add. Annotation*:—*Generally, Mentd.* *Muller (London) v. Lethem, Same v. I. R. Comrs.*, [1927] 1 K. B. 780.

**2168.** *Add. Annotation*:—*Refd.* *Bradford v. Price* (1923), 92 L. J. K. B. 871.

**2172.** *Add. Annotations*:—*Refd.* *Norbury Natzio v. Griffiths*, [1918] 2 K. B. 369; *Rodriguez v. Speyer*, [1919] A. C. 59; *Bennett v. Whitehead*, [1926] 2 K. B. 380; *Pirie v. Richardson* (1926), 70 Sol. Jo. 1023; *R. M. K. R. M. (Firm of) v. M. R. M. V. L. (Firm of)*, [1926] A. C. 761.

**2176.** *Add. Annotation*:—*Mentd.* *Universal Steam Navigation Co. v. McKelvie*, [1923] A. C. 492.

**2177.** *Add. Annotation*:—*Refd.* *R. M. K. R. M. (Firm of) v. M. R. M. V. L. (Firm of)*, *R. M. K. R. M. Somasundaram Chetty v. M. R. M. V. L. Supramanian Chetty* (1926), 95 L. J. P. C. 197.

**2183.** *Add. Annotations*:—*Refd.* *Bennett v. Whitehead*, [1926] 2 K. B. 380; *R. M. K. R. M. (Firm of) v. M. R. M. V. L. (Firm of)*, [1926] A. C. 761.

**2184.** *Add. Annotation*:—*Refd.* *R. M. K. R. M. (Firm of) v. M. R. M. V. L. (Firm of)*, *R. M. K. R. M. Somasundaram Chetty v. M. R. M. V. L. Supramanian Chetty* (1926), 95 L. J. P. C. 197.

**PART IX. SECT. 3, SUB-SECT. 2.—**  
F. (a).

**2172 H.** ———.]—*GLADUE v. WALCH*, No. 2510 xiv., *post.*—CAN.

**PART IX. SECT. 3, SUB-SECT. 2.—**  
F. (c).

**2194 v.** ———.]—*M.*, without disclosing the fact that he was acting as agent for the Crown, purchased hay from *A.*, & was sued for a balance of the purchase price. At the trial that fact became known to *A.*, but he nevertheless proceeded with the case & recovered judgment against *M.*:—

*Held*: *A.*, having elected to proceed to judgment against *M.*, could not afterwards sue the Crown.—*DESROISERS v. R.* (1919), 18 Exch. C. R. 1.—CAN.

**2194 vi.** ———.]—Engineers brought an action against shipowners for payment of the balance of the contract price of two boilers for a steamship. The shipowners denied liability, & also brought a counter-action for damages in respect of breach of contract. The actions were conjoined & a proof was led, in the course of which it transpired that the shipowners were

**2188.** *Add. Annotation*:—*As to* (3) *Refd.* *Bennett v. Whitehead*, [1926] 2 K. B. 380.

**2193.** *Add. Annotation*:—*Consd.* *Bennett v. Whitehead*, [1926] 2 K. B. 380.

**2194.** *Add. Annotation*:—*Refd.* *R. M. K. R. M. (Firm of) v. M. R. M. V. L. (Firm of)*, [1926] A. C. 761.

**2195.** *Add. Annotations*:—*Apld.* *Parr v. Snell*, [1923] 1 K. B. 1; *R. M. K. R. M. (Firm of) v. M. R. M. V. L. (Firm of)*, [1926] A. C. 761. *Refd.* *Goldrei, Foucard v. Sinclair & Russian Chamber of Commerce in London*, [1918] 1 K. B. 180; *Moore v. Flanagan*, [1920] 1 K. B. 919; *Clarkson v. Davies*, [1923] A. C. 100; *Duffner v. Bowyer* (1924), 40 T. L. R. 700; *The Kursk*, [1924] P. 140; *Pirie v. Richardson* (1926), 70 Sol. Jo. 1023. *Mentd.* *Norbury Natzio v. Griffiths*, [1918] 2 K. B. 369; *Rodriguez v. Speyer*, [1919] A. C. 59; *Re Pennington & Owen* (1925), 95 L. J. Ch. 93; *Bennett v. Whitehead*, [1926] 2 K. B. 380; *Hardie & Lane v. Chiltern* (1927), 96 L. J. K. B. 773.

**2197.** *Add. Annotations*:—*Folld.* *Moore v. Flanagan & Wife*, [1920] 1 K. B. 919. *Apld.* *London General Omnibus Co. v. Pope* (1922), 38 T. L. R. 270. *Refd.* *Duffner v. Bowyer* (1924), 40 T. L. R. 700; *Debenham v. Perkins* (1925), 133 L. T. 252; *Bennett v. Whitehead*, [1926] 2 K. B. 380; *R. M. K. R. M. (Firm of) v. M. R. M. V. L. (Firm of)*, *R. M. K. R. M. Somasundaram Chetty v. M. R. M. V. L. Supramanian Chetty* (1926), 95 L. J. P. C. 197.

**2198.** *Add. Annotation*:—*As to* (1) *Dlstd.* *Debenham v. Perkins* (1925), 133 L. T. 252.

**2199.** *Add. Annotations*:—*As to* (1) *Refd.* *Moore v. Flanagan & Wife*, [1920] 1 K. B. 919; *Parr v. Snell*, [1923] 1 K. B. 1; *Pirie v. Richardson*, [1927] 1 K. B. 448.

**2201.** After this case insert "Res judicata generally, see ESTOPPEL, Vol. XXI., pp. 159 *et seq.*, 198 *et seq.*"

**2205a.** ——— *Acceptance of payment from principal* —After receiving order against agent.]—*Resp.* was employed by the debtor, who was acting for a co., but who was himself personally liable on the contract. While the contract was running, a receiving order was made against the debtor, but he was not adjudicated bkpt., the receiving order being discharged & an order being made approving a composition of 20s. in the pound. After the breach of contract by the debtor *resp.* took the salary offered to him by the co., & a proof put in by *resp.* for damages for the breach was rejected by the trustee of the composition on the ground that *resp.* had elected to look to the co. for the fulfilment of the contract:—*Held*: *resp.* had not, by his conduct, finally elected in law to look to the co. for the fulfilment of the contract, & the

not the registered owners of the steamship, as had up to that time been assumed, but merely acted as managers for a co. which owned her. Both parties thereupon amended their records; the shipowners averring in both actions that they had contracted, & were litigating, as agents for the limited co.; & the engineers, as defenders in the counter-action, pleading "no title to sue":—*Held*: by prosecuting their own action to decree, the engineers had elected to treat defts. as their debtors in the contract.—*CRAIG & CO. v. BLACKATER*, [1923] S. C. 472.—SCOT.

proof ought to be allowed.—*Ex p. Pitt* (1923), 40 T. L. R. 5, C. A.

v. Ran-  
v. Butt,

2233. *Add. Annotation*:—*Reid. Allen v. Royal Bank of Canada* (1925), 41 T. L. R. 625.

2245. *Add. Annotations*:—*As to* (2) *Reid. Janvier v. Sweeney*, [1919] 2 K. B. 316; *Pratt v. British Medical Assocn.*, [1919] 1 K. B. 244. *Generally, Reid. Kreditbank Cassel G.M.B.H. v. Schenkers*, [1927] 1 K. B. 826; *Reckitt v. Barnett, Pembroke & Slater*, [1928] 2 K. B. 244.

2246. *Add. Annotations*:—*Consd. Janvier v. Sweeney* (1919), 35 T. L. R. 226; *Rand v. Craig*, [1919] 1 Ch. 1; *Mintz v. Silverton* (1920), 36 T. L. R. 399; *Kreditbank Cassel G.M.B.H. v. Schenkers*, [1927] 1 K. B. 826. *Reid. Pratt v. British Medical Assocn.*, [1919] 1 K. B. 244; *Percy v. Glasgow Corp.*, [1922] 2 A. C. 299; *Underwood v. Bank of Liverpool, Same v. Barclays Bank*, [1924] 1 K. B. 775.

2252. *Add. Annotation*:—*Mentd. Re Llewellyns' Settlement, Official Solicitor v. Evans*, [1921] 2 Ch. 281.

2253. *Add. Annotation*:—*Reid. Collins v. Hopkins*, [1923] 2 K. B. 617.

2267. *Add. Annotation*:—*Reid. Re Jubilee Cotton Mills*, [1923] 1 Ch. 1.

2268. *Add. Annotations*:—*Consd. Rand v. Craig*, [1919] 1 Ch. 1; *Kreditbank Cassel G.M.B.H. v. Schenkers*, [1927] 1 K. B. 826.

PART IX. SECT. 3, SUB-SECT. 2.—  
F. (d).

2206 i. *Election to sue one discharges other.*—*MURRAY v. DELTA COPPER CO., LTD.*, [1925] 4 D. L. R. 1061.—CAN.

PART IX. SECT. 3, SUB-SECT. 4.—A.

2245 v. —.—.]—*Resp. had taken fire insurance policies in several cos., amongst which were applt. co. & the F. Co., both represented by D. as their agent. The property insured having been destroyed by fire, resp. received from the adjuster a memorandum showing him entitled to \$2,864.45 as against the F. Co., & to \$1,841.45 & \$2,861.60, as against applt. co., under two policies. Later on, the F. Co., sent to D. their cheque payable to resp., & D. appropriated its proceeds by forging the signature of resp. The latter, pressing D. for a settlement, accepted as an accommodation D.'s personal cheque for the amount of his claim against the F. Co. On the afternoon of the same day, D. informed resp. that the cheque of the F. Co. had arrived. At that time, D. had also received from applt. co. two drafts, payable to the order of resp. D. obtained resp.'s indorsement on the larger one of the drafts on the representation that it was the cheque of the F. Co., which he would use to reimburse himself for his personal cheque, & also secured resp.'s signature on the other draft on the representation that it was a receipt, the execution of which was a formality required by the F. Co. D. indorsed both drafts & deposited them to his own credit, & they were later paid & charged to applt. co.'s account by the bank. Resp. having sued applt. co.:—*Held*: in the fraud practised upon resp., D. was acting within the scope of his agency so as to make his fraud that of his principals, applt. co.; & the indorsements on the drafts of applt. co. were not binding on resp. in the circumstances in which they were given.—*NATIONAL UNION FIRE INSURANCE CO. OF PITTSBURG v. MARTIN*, [1924] 3 D. L. R. 1012;*

S. C. R. 348; *affg.*, [1923] 4 D. L. R. 574; 3 W. W. R. 897; 19 Alta. L. R. 786; *affg.*, [1923] 3 D. L. R. 220.—CAN.

2245 vi. —.—.]—*POPE v. PICTOU STEAMBOAT CO.* (1865), 6 N. S. R. (2 Old.) 18.—CAN.

2245 vii. —.—.]—*PARTAB NARAIN v. JUTE MILLS* (1927), 1 L. R. 50 All. 29.—IND.

2246 ii. —.—.]—*Pltf., believing Z. to be agent of defts., arranged with him for the shipment of two carloads of grain to defts., & signed the bills of lading, on which his name appeared as shipper & defts.' name as consignees. The documents were signed partly in blank, certain particulars being left to be filled in by Z. Z. used the documents for his own purposes, borrowed money upon them from the bank, signed his own name to them, crossed out defts.' name as consignees & substituted that of the bank. Defts., being notified of shipment, paid the bank, procured the bills of lading, disposed of the grain & settled with Z. for the proceeds:—*Held*: defts. were liable to pltf. for conversion for the value of the grain.—*LENO v. SIMPSON-HEPWORTH CO., LTD.*, [1919] 1 W. W. R. 721; 45 D. L. R. 285.—CAN.*

2246 iii. —.—.]—*A principal is liable for the fraud of his agent acting within the scope of his authority, whether the fraud is committed for the benefit of the principal or for the benefit of the agent.—DINABANDHU SAHA v. ABDUL LATIF MOLLA* (1912), 1 L. R. 50 Calc. 258.—IND.

2253 iv. —.—.]—*Pltfs., who resided in England, were the owners of a sub-division in Calgary & were represented there by agents. L. obtained from the agents a listing of parcels of lots & authority to obtain purchasers. L. induced deft. to purchase lots for \$3,400 under an agreement made by a fictitious person as vendor, which L. delivered to deft. & received from him \$1,500 as the cash payment. L. brought in to pltfs.' agents an agreement for sale of the lots to a fictitious person for \$3,000 of which \$1,000 was*

[1920] 3 K. B. 497.

2282. *Add. Annotations*:—*Reid. Janvier v. Sweeney*, [1919] 2 K. B. 316; *Pratt v. British Medical Assocn.*, [1919] 1 K. B. 244; *Kreditbank Cassel G.M.B.H. v. Schenkers*, [1927] 1 K. B. 826.

2284. *Add. Annotations*:—*Consd. Janvier v. Sweeney* (1919), 35 T. L. R. 226; *Rand v. Craig*, [1919] 1 Ch. 1; *Mintz v. Silverton* (1920), 36 T. L. R. 399; *Kreditbank Cassel G.M.B.H. v. Schenkers*, [1927] 1 K. B. 826; *Britt v. Galmoye & Nevill* (1928), 44 T. L. R. 294; *Reckitt v. Barnett, Pembroke & Slater*, [1928] 2 K. B. 244. *Reid. Pratt v. British Medical Assocn.*, [1919] 1 K. B. 244; *Percy v. Glasgow Corp.*, [1922] 2 A. C. 299; *Underwood v. Bank of Liverpool, Same v. Barclays Bank*, [1924] 1 K. B. 775; *Lloyds Bank v. Chartered Bank of India, Australia & China* (1928), 97 L. J. K. B. 609.

2285. *Add. Annotation*:—*Mentd. Kent v. Atkinson*, [1923] P. 142.

2286. *Add. Annotations*:—*Consd. Rand v. Craig*, [1919] 1 Ch. 1; *Performing Right Soc. v. Mitchell & Booker*, [1924] 1 K. B. 762. *Reid. Janvier v. Sweeney* (1919), 35 T. L. R. 226; *Soanes v. L. & S. W. Ry.* (1919), 88 L. J. K. B. 524.

2287. *Add. Annotation*:—*Reid. The Sylvan Arrow*, [1923] P. 220.

payable in cash, which sum only be paid in. He also subsequently collected from deft., but never paid in, the deferred payments under deft.'s agreement. Pltfs. had no knowledge of L.'s fraud until after all the money had been paid to him:—*Held*: pltfs. were liable for the additional \$500 of cash payment fraudulently contracted for & received by L.—*DENTON v. GOODMAN*, [1922] 1 W. W. R. 117; 62 D. L. R. 559.—CAN.

2253 v. —.—.]—*Agent added as co-defendant.*—*The agent of pltf., the vendor, made false representations without the knowledge of his principal in order to induce deft. to purchase property belonging to pltf. Dft., on discovering that the representations were false, refused to complete the transaction & on being sued by pltf. for such non-performance, brought a counterclaim for rescission & damages & joined the agent as co-defendant:—*Held*: the agent was rightly made co-defendant.—*ROTHWELL v. ATTWOOD*, [1923] 4 D. L. R. 734; *revid.*, [1924] 1 D. L. R. 43.—CAN.*

PART IX. SECT. 4, SUB-SECT. 1.—A.

2282 vii. —.—.]—*Negligence of agent's employee.*—*An agent is not personally responsible for damage done by the negligence of those employed by him in the service of his principal, but the principal or those actually employed only are liable.—WINTERMUTE v. MOULTON* (1922), 65 D. L. R. 653.—CAN.

2282 viii. —.—.]—*Deft. agreed to provide teams & men to cart goods for pltf., & in performing such contract caused damage to certain roads. The county council took proceedings, & obtained judgment against pltf. for recovery of the expenses incurred by the council by reason of the damage caused by the extraordinary traffic carried on by deft. On a claim by pltf. to be indemnified by deft. for the amount of the judgment:—*Held*: deft. was pltf.'s agent to do the carting, & the liability to pay for the damage rested on pltf.—*BEGG v. HAGAN*, [1921] N. Z. L. R. 220.—N.Z.*



2292. *Add. Annotations*:—*Consd.* Janvier v. Sweeney (1919), 35 T. L. R. 226; Rand v. Craig, [1919] 1 Ch. 1; Kreditbank Cassel G.M.B.H. v. Schenkers, [1927] 1 K. B. 826. *Refd.* Pratt v. British Medical Assocn., [1919] 1 K. B. 244; Mintz v. Silverton (1920), 36 T. L. R. 399; Percy v. Glasgow Corpn., [1922] 2 A. C. 299; Underwood v. Bank of Liverpool, Same v. Barclays Bank, [1924] 1 K. B. 775.
2294. *Add. Annotation*:—*Refd.* Bonham v. Maycock (1928), 138 L. T. 736.
2295. *Add. Annotation*:—*Refd.* Admiralty Comrs. v. National Provincial & Union Bank of England (1922), 127 L. T. 452.
2305. *Add. Annotations*:—*Mentd.* Aksionairnoye Obschestvo A. M. Luther v. Sagor, [1921] 3 K. B. 532; The Tervaeete, [1922] P. 259; Duff Development Co. v. Kelantan Government, [1923] 1 Ch. 385.
2309. *Add. Annotation*:—*As to* (1) *Refd.* London Joint Stock Bank v. Macmillan & Arthur, [1918] A. C. 777.
2317. *Add. Annotations*:—*Appld.* Pratt v. Patrick, [1924] 1 K. B. 488. *Consd.* Parker v. Miller (1926), 42 T. L. R. 408; Brooke v. Bool, [1928] 2 K. B. 578.
2318. *Add. Annotations*:—*As to* (1) *Refd.* Pratt v. Patrick, [1924] 1 K. B. 488. *As to* (2) *Consd.* Brooke v. Bool, [1928] 2 K. B. 578.
- 2318a. —.]—*Deft.* was in his motor car, with him, on his invitation, being two friends, E. & P. E. drove the car, & owing to his negligence it collided with another vehicle, & P. sustained injuries from which he died. P.'s widow sued *deft.* under Fatal Accidents Act, 1846 (c. 93), for damages:—*Held*: as *deft.* was in the car, & there was no evidence that he had abandoned his right of control, he was liable notwithstanding that by a casual delegation he had entrusted its actual physical management & mechanical control to E.—PRATT v. PATRICK, [1924] 1 K. B. 488; 93 L. J. K. B. 174; 130 L. T. 735; 40 T. L. R. 227; 68 Sol. Jo. 387; 22 L. G. R. 185.
- 2318b. —.]—*Search for escape of gas.*—A landlord of a lock-up shop, occupied by a tenant, had the tenant's authority to visit the premises at night. The landlord occupied the adjoining premises, & a lodger, who had no authority to enter the shop himself, complained to him of a smell of escaping gas coming from the shop. The landlord & the lodger went into the shop together, & the landlord commenced a search for the escape of gas with a naked light, which the lodger continued. Owing to the lodger's negligent conduct, an explosion was caused, resulting in damage to the tenant's goods on the premises:—*Held*: the landlord was liable for the damage on the ground (*inter alia*) of agency.—BROOKE v. BOOL, [1928] 2 K. B. 578; 97 L. J. K. B. 511; 139 L. T. 376; 44 T. L. R. 531; 72 Sol. Jo. 354, D. C.
2326. *Add. Annotations*:—*Generally*, *Refd.* Poland v. Parr, [1927] 1 K. B. 236. *Mentd.* Pratt v. British Medical Assocn., [1919] 1 K. B. 244; Prager v. Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566.
2331. *Add. Annotation*:—*Distd.* Goh Choon Seng v. Lee Kim So6. [1925] A. C. 550.
2336. *Add. Annotations*:—*As to* (1) *Refd.* Britt v. Galmoye & Nevill (1928), 44 T. L. R. 294. *Generally*, *Refd.* Poland v. Parr, [1927] 1 K. B. 236. *Mentd.* Jefferies & Atkey v. Derbyshire Farmers (1920), 36 T. L. R. 825.
2339. *Add. Annotations*:—*As to* (1) *Consd.* Performing Right Soc. v. Caryl Theatrical Syndicate, [1924] 1 K. B. 1; Performing Right Soc. v. Mitchell & Booker, [1924] 1 K. B. 762.
2345. *Add. Annotation*:—*Mentd.* Camillo Tank S.S. Co. v. Alexandria Engineering Works (1921), 38 T. L. R. 134.
2348. *Add. Annotation*:—*Mentd.* Akt. Reidar v. Arcos (1926), 42 T. L. R. 737.

## PART IX. SECT. 4, SUB-SECT. 1.—B.

2299 i. *Funds received for investment—By local manager of bank—Improvident investment.*—Two persons who formed the local advisory board of *deft.* co. purchased on *deft.*'s behalf for \$7,000 the balance unpaid under an agreement for sale of subdivided property, which amounted to about \$7,500 taking the assignment in their own name "as trustees." One of these persons, the local manager of *deft.* co. had an individual private client, *pltf.*, for whom he had invested money. Having \$5,000 of *pltf.*'s money on hand he invested it by buying a part interest in the assignment of agreement for sale, & a declaration of trust was made by the trustees in *pltf.*'s favour to the extent of \$5,000 & interest. The investment turned out badly & *pltf.* sued *deft.* co. for recovery of his money:—*Held*: *pltf.* was entitled to recover.—MC-CRINDLE v. LONDON SCOTTISH CANADIAN INVESTMENT SYNDICATE, [1922] 3 W. W. R. 977; 70 D. L. R. 612.—CAN.

## PART IX. SECT. 4, SUB-SECT. 1.—C.

2317 ii a. —.]—A motor bicycle, the property of *deft.*, which was ridden by R., *deft.*'s brother, injured *pltf.*. *Deft.*'s brother had general permission to ride the motor bicycle for himself or for *deft.*, but he was never in *deft.*'s employment. The jury found that the rider was acting as the agent or servant of *deft.*

in the management of the motor bicycle at the time of the accident:—*Held*: the jury's findings & verdict must stand.—THOMPSON v. REYNOLDS, GIBSON v. REYNOLDS, [1926] N. 131.—IR.

2317 ii b. —.]—DRISCOLL v. COLLETTI, [1926] 2 D. L. R. 428; 58 O. L. R. 444.—CAN.

2317 ii c. —.]—A man was knocked down & killed by a motor car owned by *deft.* whilst it was being driven by his son. The car was kept in a garage on *deft.*'s property which adjoined the son's home. *Deft.* was not licensed to drive & had never been seen driving the car, which on many occasions was driven by the son, who worked with his father. The accident took place whilst the car was proceeding in the direction of the homes of *deft.* & his son:—*Held*: the evidence was not sufficient to establish as between *deft.* & his son the relationship of principal & agent.—GOLDMAN v. BARNFIELD (1927), 27 S. R. N. S. W. 405; 44 N. S. W. W. N. 147.—AUS.

2317 ii d. —.]—*Pltf.* collided with *deft.*'s motor car, which was driven by J., a son of *deft.*, & sustained serious injuries. In answers to interrogatories *deft.* admitted that she was the registered owner of the motor car; that her son C. & her daughter H. were licensed drivers; that she had purchased the car for pleasure; that she paid for all the petrol & oil; that her son J. resided with her; that she paid the rent for a lock-up garage, the key

of which was kept by her son C. A witness stated that he saw J. driving his mother's car more than once prior to the day of the accident. *Deft.* denied that she knew that J. had a key of the garage in his possession on the day of the accident, or that she knew he had access to the key, & stated that she never at any time gave J. permission to drive her car, & that he never drove it to her knowledge:—*Held*: if the answer of the jury that J. at the time of the accident was driving the car with the implied authority of *deft.*, amounted to a finding of agency, it must be set aside, on the ground that there was no evidence to support it.—GIBSON v. O'KEENEY, [1928] N. I. 66.—IR.

2317 ii e. —.]—A motor car owned by *deft.* was, at the time of an accident, being driven by a person to whom it had been lent by him:—*Held*: the mere proof of *deft.*'s ownership of the car was not of itself sufficient to establish a *prima facie* case of liability on his part.—FERGUSON v. WAGNER (1926), 27 S. R. N. S. W. 9; 44 N. S. W. W. N. 22.—AUS.

2317 ii f. —.]—*Allowing third party to drive contrary to instructions—Principal not liable.*—WAINIO v. BEAUDREAULT (Ont.), [1927] 4 D. L. R. 1131.—CAN.

2319 i. *Add. "revised, sub nom."* MURRAY v. JENKINS (1898), 28 S. C. R. 565.—CAN., and delete the word "AUS."



2396. *Add. Annotation* :—Mentd. Public Trustee v. Duchy of Lancaster, [1927] 1 K. B. 516.
2409. *Add. Annotation* :—Mentd. North Staffordshire Ry. v. Edge (1919), 89 L. J. K. B. 78.
2415. *Add. Annotation* :—Refd. Newsholme v. Road Transport & General Insc. (1928), 45 T. L. R. 123.
2436. *Add. Annotation* :—Generally, Refd. Sassoon v. International Banking Corp., [1927] A. C. 711.
2446. *Add. Annotation* :—Refd. Clayton-Greene v. De Courville (1920), 36 T. L. R. 790.
2448. *Add. Annotation* :—Refd. Edwards v. Porter, McNeall v. Hawes, [1923] 2 K. B. 538.
2449. *Add. Annotation* :—Mentd. Re Thellusson, Ex p. Abdy, [1919] 2 K. B. 735.
2455. *Add. Annotations* :—Refd. Re City Equitable Fire Insc., [1925] Ch. 407. Mentd. Ammonia Soda Co. v. Chamberlain, [1918] 1 Ch. 266; Piercy v. Mills, [1920] 1 Ch. 77.

## Part X.—Relations between Agent and Third Parties.

2473. *Add. Annotation* :—Refd. Edwards v. Porter (1924), 41 T. L. R. 57.
- 2474a. —.]—The owners of a chartered ship sued the K. Coal Co. for demurrage at the port of loading under a charterparty expressed to be entered into "between G. T. G. & Co., owners' agents, & A. B. Co., Copenhagen, charterers." The charterparty, which was on a printed form, provided for payment of demurrage by "the charterers," & at the end of the charterparty the following stipulation was added in writing: "Freight & demurrage (if any in loading) to be paid in Glasgow by the K. Coal Co., Ltd." The

charterparty was signed as follows: "For the A. B. Co., Copenhagen, J. B. J., of the K. Coal Co., Ltd. For & by telegraphic authority of owners, for G. T. G. & Co., J. M., as agents only." It was admitted that J. B. J. signed on behalf of the K. Coal Co.:—*Held*: (1) the K. Coal Co. were not by reason of the form of the signature made liable upon the charterparty; (2) the clause in writing did not import a promise of liability sufficient to rebut any inference to the contrary from the form of the signature.—KIMBER COAL CO. v. STONE & ROLFE, LTD., [1926] A. C. 414; 95 L. J. K. B. 601; 135 L. T. 161; 42

### PART IX. SECT. 5, SUB-SECT. 2.—B.

2384 i. —.]—A letter from an agent to his principal which is merely a narrative of an interview between the agent & a third party, if admissible in evidence at all, is not evidence against the principal of a parol acceptance by the third party of an offer made to him.—SWAN v. MILLER, [1919] 1 I. R. 151.—IR.

### PART IX. SECT. 6, SUB-SECT. 1.—B.

2396 ii. —. *Not to agent's interest to disclose.*]—Knowledge communicated to an agent of a fact which it was not the agent's interest to disclose & which he did not disclose to the principal cannot be imputed to the principal.—TEXAS CO. v. BOMBAY BANKING CO., LTD. (1919), 24 C. W. N. 469.—IND.

2408 ii. —.]—MOUNT HOPE RURAL MUNICIPALITY v. FINDLAY, [1921] 3 W. W. R. 658.—CAN.

### PART IX. SECT. 6, SUB-SECT. 2.—B.

2428 iv. —.]—QUEBEC FEDERATED CO-OP. CO. v. FARMERS FENCE CO., [1925] 2 D. L. R. 574; *affg.* Q. R. 37 K. B. 345.—CAN.

### PART IX. SECT. 6, SUB-SECT. 3.

sc. *In general.*]—By conferring authority upon his agent the principal gives third persons the right to assume that they can deal with the agent in the matters covered by that authority until they receive notice of his authority having been revoked, or at least until some circumstance arises which in all reason should put them upon inquiry, & this rule applies especially in favour of third parties who began to deal with the agent while his authority did in fact exist.—WATSON v. POWELL, [1921] 2 W. W. R. 128; 14 Sask. L. R. 424; 58 D. L. R. 615.—CAN.

sd. *Owner leasing farm to former manager.*]—When an owner of land has permitted his employee to manage a farm & to dispose of the crop, from year to year, to an elevator co. & account for the proceeds, & the owner changes his course of dealing, & leases the land to the former employee on a crop-payment rental, the owner

is not entitled to relief against the elevator co. for the loss of his share by the lessee, unless notice of the change of relationship has been given to the co.—NORTH AMERICAN FINANCE CO. v. WESTERN ELEVATOR CO. (1922), 66 D. L. R. 467; 32 Man. L. R. 76; [1922] 2 W. W. R. 162.—CAN.

sf. *Agent accepting goods after revocation.*]—Applts., a Durban firm, entered through V. into contracts with farmers in Alexandria for the supply of chicory. In 1917 V. had authority to accept chicory on behalf of applts., but when applts. entered into a contract with resps. for the 1918-1919 crop of chicory, this authority of V. had been withdrawn. Resps. tendered a consignment of chicory, which was accepted at Alexandria after examination by V., & sent to applts. at Durban; but it was rejected by applts. as being unsound in terms of the contract. Prior to the sending off of this consignment, applts. had notified all the farmers by circular that they would reject any chicory not "tip-top," & charge railage & storage to the senders.—*Held*: the circulars should have put resps. on inquiry as to V.'s authority.—ELLIS BROWN v. VAN ROOYEN, [1920] E. D. L. 81.—S. AF.

sk. *Agent contracting after revocation.*]—Deft. authorised his wife to sell land, but before the contract with pltf. was concluded he revoked his wife's authority. The revocation was not communicated to pltf.:—*Held*: deft. was bound by the contract entered into by his agent with pltf.—WILLIAMS v. WEST, [1921] E. D. L. 352.—S. AF.

### PART X. SECT. 1, SUB-SECT. 1.—A. (a) i.

2457 i. *Agent cannot sue.*]—Pltf. sent to defts. a quotation for goods, written on paper headed, "Niels Storaker, Representative for Alliance Export & Import Co., Christiania, Norway. All orders & contracts are subject to the suppliers' terms of contract. No order or contract is firmly accepted until the suppliers have consented to book it." In the letter he wrote: "All orders are booked on the understanding that my principals are given the option of shipping by steamer or

sailing vessel." Defts. gave pltf. an order. Pltf. wrote to defts. saying: "I have cabled the order over to-day & I hope soon to be able to give upon cable acceptance." Subsequently he wrote: "I am glad in being able to inform you that the above-mentioned order has been booked by my principals & will send you official confirmation in due course." Pltf.'s letters were all signed "Niels Storaker" without any qualification:—*Held*: pltf. was contracting merely as agent, not as principal, & was not entitled to sue on the contract.—STORAKER v. SOUTHOUSE & LONG, LTD. (1920), 20 S. R. N. S. W. 190.—AUS.

2457 ii. —.]—An order for books, addressed to the publishers on a form apparently supplied by them, requested delivery through "your distributors," contained an agreement to pay them (the distributors) at their office & provided that "this order to be binding shall be accepted by them." The distributors supplied the books, & sued for the price.—*Held*: the action was not maintainable.—WISE v. KERR, [1925] 1 W. W. R. 849; 35 B. C. R. 161.—CAN.

2457 iii. —.]—BARKLEY v. WINNYCHUK (Alta.), [1926] 4 D. L. R. 538; [1926] 3 W. W. R. 327.—CAN.

2467 i. *Agent real principal.*]—Where an agent names his principal & makes the contract as agent on his behalf, he cannot enforce it, even though he is the real principal, unless the other party has affirmed the contract with knowledge of the fact.—GLASGOW v. HOOD, [1920] N. Z. L. R. 586.—N. Z.

### PART X. SECT. 1, SUB-SECT. 1.—A. (a) ii.

2471 vi. —. *Father & son.*]—A person acting for a disclosed principal in a contract is not liable thereon, unless there be circumstances to show that he intended to render himself liable. The fact that a son residing with his father telephones for a physician to come & attend his father's servant who is ill, raises no presumption that the son agrees to pay for such services.—BLECKER v. STUTSMAN, [1920] 3 W. W. R. 644; 54 D. L. R. 662.—CAN.

T. L. R. 430; 31 Com. Cas. 333; 17 Asp. M. L. C. 37, H. L.

2475. *Add. Annotation*:—*Generally, Mentd.* Winterbotham, Gurney v. Sibthorp & Cox, [1918] 1 K. B. 625.

2487a. —.]—Pltf., a builder, did work on the order of H., a director of a co. for which pltf. had previously done work on H.'s order. As the work proceeded pltf. prepared estimates & addressed them to the co. whose name he had entered in his books. When the work was finished he was paid a sum on account, but when trying to get payment of the balance he was told that the work had not been ordered on behalf of the co., but for other principals. Thereupon he sued H. The judge found that H. impliedly undertook personal liability for the work, that pltf. gave credit to the co. up to a certain date, but did so under a mistaken impression, & that he never gave exclusive credit to them in such a way as to bind himself to look to them, & that he never gave credit to H. before the work was completed:—*Held*: H. was liable for the balance.—GARDINER v. HEAD-ING, [1928] 2 K. B. 284; 97 L. J. K. B. 766; 139 L. T. 449, C. A.

2501. *Add. Annotations*:—*Refd.* Phillips v. Brooks, [1919] 2 K. B. 243; Said v. Butt, [1920] 3 K. B. 497; Lake v. Simmons, [1927] A. C. 487. *Mentd.* Berners v. Fleming, [1925] Ch. 264.

2502. *Add. Annotation*:—*Consd.* Dyster v. Randall, [1926] Ch. 932.

2504. *Add. Annotation*:—*Consd.* Rederi Akt. Transatlantic v. Drughorn, [1918] 1 K. B. 394.

2516. *Add. Annotation*:—*Generally, Mentd.* Stokes v. Whicher, [1920] 1 Ch. 411.

2518. *Add. Annotation*:—*Mentd.* United States Shipping Board v. Strick, [1926] A. C. 545.

2523a. Judgment obtained against undisclosed principal — Judgment unsatisfied.] — A person making a contract with an agent, who is acting on behalf of an undisclosed principal, cannot sue the agent on the contract after having obtained judgment upon it against

the undisclosed principal, even though such judgment is still unsatisfied. — LONDON GENERAL OMNIBUS CO., LTD. v. POPE (1922), 38 T. L. R. 270.

2530. *Add. Annotation*:—*Mentd.* United States Shipping Board v. Strick, [1926] A. C. 545.

2531. *Add. Annotations*:—*As to* (1) *Refd.* Ariadne S.S. Co. v. McKelvie, [1922] 1 K. B. 518. *As to* (2) *Refd.* Universal Steam Navigation Co. v. McKelvie, [1923] A. C. 492.

2537. *Add. Annotations*:—*Refd.* Ariadne S.S. Co. v. McKelvie, [1922] 1 K. B. 518; Universal Steam Navigation Co. v. McKelvie, [1923] A. C. 492.

2542. *Add. Annotations*:—*Refd.* Ariadne S.S. Co. v. McKelvie, [1922] 1 K. B. 518. *Mentd.* Brightman v. Tate, [1919] 1 K. B. 463.

2543. *Add. Annotations*:—*Consd.* Kimber Coal Co. v. Stone & Rolfe, [1926] A. C. 414. *Refd.* Ariadne S.S. Co. v. McKelvie, [1922] 1 K. B. 518; Universal Steam Navigation Co. v. McKelvie, [1923] A. C. 492.

2544. *Add. Annotation*:—*Consd.* Kimber Coal Co. v. Stone & Rolfe, [1926] A. C. 414.

2545. *Add. Annotations*:—*Refd.* Ariadne S.S. Co. v. McKelvie, [1922] 1 K. B. 518; Universal Steam Navigation Co. v. McKelvie, [1923] A. C. 492.

2546. *Add. Annotations*:—*As to* (1) *Consd.* Ariadne S.S. Co. v. McKelvie, [1922] 1 K. B. 518; Universal Steam Navigation Co. v. McKelvie, [1923] A. C. 492; Kimber Coal Co. v. Stone & Rolfe, [1926] A. C. 414. *As to* (2) *Apprvd.* Universal Steam Navigation Co. v. McKelvie, [1923] A. C. 492. *Generally, Mentd.* Rederi Akt. Transatlantic v. Drughorn, [1918] 1 K. B. 394.

2549. *Add. Annotation*:—*As to* (2) *Refd.* Ariadne S.S. Co. v. McKelvie, [1922] 1 K. B. 518.

2549a. — Agents also described as charterers.]—A charterparty was expressed to be made "between T. H. S. & Co., agents for the owners" of a steamer, "& J. McK. & Co., charterers," & was signed "For & on behalf of J. McK. & Co. (as agents), J. A. McK."

2483 i. *Agent real principal.*]—Pltf. signed an order for the purchase of a tractor addressed to a co., for whom deft. claimed to have made the sale as agent only:—*Held*: deft. was liable as the real vendor.—PETERSON v. CUSHMAN MOTOR WORKS, [1922] 2 W. W. R. 1041; 67 D. L. R. 38.—CAN.

PART X. SECT. 1, SUB-SECT. 1.—  
A. (b) i.

e i. —.]—Every person who in making a contract discloses the existence, but not the name, of the principal on whose behalf he is acting, is personally liable on the contract to the other contracting party.—GLADUE v. WALCH, [1918] 3 W. W. R. 975; 43 D. L. R. 757.—CAN.

al. *Person contracting for "buyer."*]—In pursuance of authority given by deft. his agents purchased sheep for pltf. In none of the telegrams between pltf. & deft.'s agents by which the purchase was arranged was deft. named, but the last telegram from the agents contained the words "Buyer confirms sale":—*Held*: the words "Buyer confirms sale" showed that deft.'s agents were contracting as agents, & relieved them from personal liability on the contract.—MURRAY v. HOPKINS, [1919] N. Z. L. R. 689.—N.Z.

PART X. SECT. 1, SUB-SECT. 1.—  
A. (c) i.

2497 v. —.]—Where an agent for an undisclosed principal contracts on such terms as import that he is the real & only principal, the undisclosed principal cannot sue or be sued on the contract.—WEST v. DILLICAN, [1921] N. Z. L. R. 617.—N.Z.

2497 vi. — *Agent real principal.*]—Where a person who purports to contract as agent for an undisclosed principal is in fact the principal in the transaction, it is not clear whether or not he is entitled to sue on the contract as principal.—GLASGOW v. HOOD, [1920] N. Z. L. R. 586.—N.Z.

2497 vii. — *Damage suffered by principal.*]—In an action against shipowners for payment of the balance of the contract price of goods for a ship, the shipowners counterclaimed for damages for breach of contract. In the course of the action it appeared that the shipowners were not the registered owners of the ship, but merely acted as managers for a co. which owned her:—*Held*: as pltf. had in the circumstances elected to treat defts. as their debtors, defts. were entitled to counterclaim for damages although the damages had been suffered by the principals whom they represented, & not by themselves.—CRAIG & Co. v. BLACKATER, [1923] S. C. 472.—SCOT.

PART X. SECT. 1, SUB-SECT. 1.—  
A. (c) ii.

2510 xiv. —.]—Where a person makes a contract in his own name without disclosing either the name or existence of a principal, he is primarily liable on the contract to the other contracting party.—GLADUE v. WALCH, [1918] 3 W. W. R. 975; 43 D. L. R. 757.—CAN.

2510 xv. —.]—In an action for the hire of a dredge obtained by deft. M. from pltf., relief was sought against deft. J. as undisclosed principal:—*Held*: suspicious circumstances in the relations between M. & J. were not sufficient to support the judgment against J., in the face of the denial of defts. that any such relation existed.—NOVA SCOTIA DREDGING CO., LTD. v. MUSGRAVE & Co. (1918), 52 N. S. R. 71; 40 D. L. R. 589.—CAN.

2510 xvi. —.]—An agent, who does not clearly indicate to the third party that he is acting as an agent, is personally liable.—HILLS v. SWIFT CANADIAN CO., [1923] 3 D. L. R. 997.—CAN.

2510 xvii. —.]—LITCHFIELD v. SASKATCHEWAN & BATTLE RIVER LAND & DEVELOPING CO. (Sask.) (1908), 7 W. L. R. 475.—CAN.

2510 xviii. —.]—WEST v. DILLICAN, No. 2497 v., ante.—N.Z.



The steamer was to load a cargo of coal on the Tyne & proceed to a foreign port, & provision was made for the payment by the charterers of demurrage in the event of the steamer being detained beyond the stipulated time either at the port of loading or at the port of discharge. The charterparty contained numerous other provisions imposing obligations on the charterers. The owners were aware at the time when the charterparty was signed that J. McK. & Co. were acting for other persons. In an action by the owners against J. McK. & Co. for demurrage at the port of discharge:—*Held*: defts. having signed as agents were not liable as principals to pay demurrage, notwithstanding that they were described as charterers in the body of the charterparty.—*UNIVERSAL STEAM NAVIGATION Co. v. McKELVIE (J.) & Co.*, [1923] A. C. 492; 92 L. J. K. B. 647; 129 L. T. 395; 39 T. L. R. 480; 67 Sol. Jo. 593, 16 Asp. M. L. C. 184; 28 Com. Cas. 353, H. L.; *affg. S. C. sub nom. ARIADNE S.S. Co., LTD. v. McKELVIE (J.) & Co.*, [1922] 1 K. B. 518, C. A.

*Annotation*:—*Refd. Kimber Coal Co. v. Stone & Rolfe*, [1926] A. C. 414.

2550. *Add. Annotation*:—*Mentd. Arnour v. Leopold Walford (London)*, [1921] 3 K. B. 473.

2553. *Add. Annotation*:—*Refd. Universal Steam Navigation Co. v. McKelvie*, [1923] A. C. 492.

2563. *Add. Annotations*:—*As to (1) Consd. Kimber Coal Co. v. Stone & Rolfe*, [1926] A. C. 414. *As to (3) Refd. Universal Steam Navigation Co. v. McKelvie*, [1923] A. C. 492.

2564. *Add. Annotation*:—*As to (1) Refd. Kimber Coal Co. v. Stone & Rolfe*, [1926] A. C. 414.

2566. *Add. Annotations*:—*Consd. Ariadne S.S. Co. v. McKelvie*, [1922] 1 K. B. 518; *Universal Steam Navigation Co. v. McKelvie*, [1923] A. C. 492.

2567. *Add. Annotations*:—*Consd. Kimber Coal Co. v. Stone & Rolfe*, [1926] A. C. 414. *Refd. Ariadne S.S. Co. v. McKelvie*, [1922] 1 K. B. 518. *Mentd. Universal Steam Navigation Co. v. McKelvie*, [1923] A. C. 492.

2571. *Add. Annotation*:—*Overd. Universal Steam Navigation Co. v. McKelvie*, [1923] A. C. 492. *Refd. Kimber Coal Co. v. Stone & Rolfe*, [1926] A. C. 414.

2575. *Add. Annotation*:—*Consd. Benton v. Campbell, Parker*, [1925] 2 K. B. 410.

2576. *Add. Annotation*:—*Expld. Akt. Ocean v. Harding*, [1928] 2 K. B. 371.

2577. *Add. Annotations*:—*As to (1) Refd. Westcott v. Hahn*, [1918] 1 K. B. 495. *Generally, Mentd. Sutro v. Heilbut, Symons* (1917), 14

Asp. M. L. C. 34; *Rederi Akt. Acolus v. Hillas* (1925), 42 T. L. R. 69.

2581. *Add. Annotation*:—*Generally, Mentd. Universal Steam Navigation Co. v. McKelvie*, [1923] A. C. 492.

2583. *Add. Annotations*:—*As to (2) Refd. Universal Steam Navigation Co. v. McKelvie*, [1923] A. C. 492. *Generally, Mentd. Palgrave, Brown v. Turid S.S.*, [1922] 1 A. C. 397.

2584. *Add. Annotation*:—*Refd. The Lizzie*, [1919] P. 22.

2585. *Add. Annotation*:—*As to (1) Refd. Universal Steam Navigation Co. v. McKelvie*, [1923] A. C. 492.

2591. *Add. Annotation*:—*Refd. Ariadne S.S. Co. v. McKelvie*, [1922] 1 K. B. 518.

2593. *Add. Annotation*:—*Generally, Mentd. Rederiakt. Argonaut v. Hani*, [1918] 2 K. B. 247.

2594. *Add. Annotation*:—*As to (2) Refd. Bennett v. Whitehead*, [1926] 2 K. B. 380.

2595. *Add. Annotations*:—*Distd. Drughorn v. Rederiakt. Trans-Atlantic*, [1919] A. C. 203. *Mentd. Rederiakt. Argonaut v. Hani*, [1918] 2 K. B. 247.

2597. *Add. Annotation*:—*As to (1) Consd. Kimber Coal Co. v. Stone & Rolfe*, [1926] A. C. 414.

2599. *Add. Annotation*:—*Refd. Ariadne S.S. Co. v. McKelvie*, [1922] 1 K. B. 518.

2606. *Add. Annotations*:—*Distd. Drughorn v. Rederiakt. Trans-Atlantic*, [1919] A. C. 203. *Refd. Rederiakt. Argonaut v. Hani*, [1918] 2 K. B. 247.

2608. *Add. Annotations*:—*Generally, Mentd. Barker v. Stickney*, [1919] 1 K. B. 121; *The Lord Strathcona*, [1925] P. 143; *Palmolive Co. (of England) v. Freedman* (1927), 44 T. L. R. 86.

2609. *Add. Citations*:—*RREDERIAKTIEBOLAGET ARGONAUT v. HANI*, [1918] 2 K. B. 247; 87 L. J. K. B. 999; *sub nom. ARGONAUT v. HANI*, 14 Asp. M. L. C. 310.

*Add. Annotation*:—*Refd. Drughorn v. Rederiaktiebolaget Trans-Atlantic*, [1919] A. C. 203.

2609a. —. ]—The description in a charterparty of one of the contracting parties as "charterer" does not, of itself, designate him as the only person to fill that position.

An action for breach of charterparty was brought by persons claiming to be the undisclosed principals of a party described in the contract as "charterer," & objection was taken to the admission of evidence that pltf's. were in fact the charterers, on the ground that such evidence would contradict the written contract:—*Held*: the evidence was admissible.—*DRUGHORN (F.), LTD. v. REDE-*

PART X. SECT. 1, SUB-SECT. 1.—  
B. (c) i.

2591 iii. —. ]—Where a wife contracting for the sale of a house signed a document in her own name without any indication that she was acting as agent for her husband, & expressly purported as owner to contract for payment to pltf of the commission on the sale thereof:—*Held*: parol evidence was not admissible in an action against the husband to show that she was in fact acting as agent.—*KATZMAN v. OWNATOME REALTY CO.*, [1924] 1 D. L. R. 201; 25 O. W. N. 333.—CAN.

PART X. SECT. 1, SUB-SECT. 1.—  
B. (c) ii.

2598 ii. —. ]—Where a contract is

entered into by an agent in his own name & the terms thereof clearly indicate personal liability the agent is personally bound by the contract, regardless of his intention, unless it can be shown by extrinsic evidence that there was an express agreement that the agent should not be liable & that the contract rendering him liable was so drawn by mistake.—*CURRIE v. RURAL MUNICIPALITY OF WRETFORD*, No. 280, & *LASHER*, [1918] 1 W. W. R. 315; 29 D. L. R. 516; 11 Sask. L. R. 22.—CAN.

sm. —. *Sale of shares.* ]—An investor purchased from a chartered accountant 150 shares in a co., paid the price therefor, & received from the chartered accountant a receipt, which ac-

knowledge payment of the price of 150 shares & concluded with these words: "the transfer for which will be sent you for signature in due course." In an action at the instance of the purchaser against the chartered accountant for transfer of the shares or repayment of the price deft. denied liability, averring that his position in the transaction was merely that of an agent for a disclosed principal:—*Held*: on the terms of the receipt deft. was personally liable to implement the contract of sale, & it was incompetent for him to adduce parol evidence to show, in contradiction of its terms, that he was merely an agent.—*LINDSAY v. CRAIG*, [1919] S. C. 139; 56 Sc. L. R. 93; [1918] 2 S. L. T. 321.



RIAKTIEBOLAGET TRANS-ATLANTIC, [1919] A. O. 203; 88 L. J. K. B. 233; 120 L. T. 70; 35 T. L. R. 73; 63 Sol. Jo. 99; 14 Asp. M. L. C. 400; 24 Com. Cas. 45, H. L.; affg. S. C. sub nom. REDERI AKT. TRANS-ATLANTIC v. DRUGHORN, [1918] 1 K. B. 394, C. A.

Annotation:—Consd. Ariadne S.S. Co. v. McKelvie, [1922] 1 K. B. 518.

2610. Add. Annotation:—As to (2) Refd. Keen v. Mear (1920), 124 L. T. 19.

2613. Add. Annotation:—Refd. Wilson v. United Counties Bank, [1920] A. O. 102.

2620. Add. Annotation:—Refd. Ariadne S.S. Co. v. McKelvie, [1922] 1 K. B. 518.

2634. Before this case, after "See, now, Bills of Exchange Act, 1882 (c. 61), s. 26," add "& generally, BILLS OF EXCHANGE, Vol. VI., pp. 112-114."

2635. Add. Annotations:—Refd. Elliott v. Bax-Ironside, [1925] 2 K. B. 301; Kimber Coal Co. v. Stone & Rolfe, [1926] A. C. 414; Kettle v. Dunster & Wakefield (1927), 43 T. L. R. 770.

2639. Add. Annotations:—Refd. Pocahontas Fuel Co. v. Ambatielos (1922), 27 Com. Cas. 148. Mentd. The Tervae, [1922] P. 259; The Colorado, [1923] P. 102; The Sylvan Arrow, [1923] P. 220; The St. George, [1926] P. 217; The Goulondris, [1927] P. 182; The Stream Fisher, [1927] P. 73.

2655. Add. Annotations:—Refd. Elliott v. Bax-Ironside, [1925] 2 K. B. 301; Kettle v. Dunster & Wakefield (1927), 43 T. L. R. 770.

2658. Add. Citation:—sub nom. CREW v. PETIT, 3 Nev. & M. K. B. 456; 2 Nev. & M. M. C. 309. Add. Annotation:—Refd. Elliott v. Bax-Ironside, [1925] 2 K. B. 301.

2664. Add. Annotation:—As to (1) Refd. Kimber Coal Co. v. Stone & Rolfe, [1926] A. C. 414.

2665. Add. Annotations:—Consd. Elliott v. Bax-Ironside, [1925] 2 K. B. 301; Kettle v. Dunster & Wakefield (1927), 43 T. L. R. 770.

2666. Add. Annotation:—Generally, Refd. Kettle v. Dunster & Wakefield (1927), 43 T. L. R. 770.

2680. Add. Annotations:—Mentd. London General Omnibus Co. v. Pope (1922), 38 T. L. R. 270; R. M. K. R. M. (Firm of) v. M. R. M. V. L. (Firm of), R. M. K. R. M. Somasundaram Chetty v. M. R. M. V. L. Supramanian Chetty (1926), 95 L. J. P. C. 197.

2686. Add. Annotations:—Refd. Weiss, Biheller & Brooks v. Farmer, [1923] 1 K. B. 226; West-

minster Bank v. Hilton (1926), 136 L. T. 315. Mentd. Weigall v. Runciman (1916), 85 L. J. K. B. 1187; Manbre Saccharine Co. v. Corn Products Co., [1919] 1 K. B. 198; Gould v. S. E. & O. Ry. Co., [1920] 2 K. B. 186; Johnson v. Taylor, [1920] A. C. 144; Wilson, Holgate v. Belgian Grain & Produce Co., [1920] 2 K. B. 1; Diamond Alkali Export Corp. v. Bourgeois, [1921] 3 K. B. 443; Finn v. Shelton Iron, Steel & Coal Co. (1924), 131 L. T. 213; Sassoon v. International Banking Corp., [1927] A. C. 711.

2695. Add. Annotations:—As to (1) Overd. Universal Steam Navigation Co. v. McKelvie, [1923] A. C. 492; Generally, Refd. Kimber Coal Co. v. Stone & Rolfe, [1926] A. C. 414.

2701. Add. Annotation:—Consd. Akt. Ocean v. Harding, [1928] 2 K. B. 371.

2726. Add. Annotations:—As to (2) Refd. Public Works Comrs. v. Pontypridd Masonic Hall Co., [1920] 2 K. B. 233. Generally, Refd. Rowland v. Air Council (1923), 39 T. L. R. 228.

2727. Add. Annotations:—Refd. Public Works Comrs. v. Pontypridd Masonic Hall Co., [1920] 2 K. B. 233. Mentd. Mackenzie-Kennedy v. Air Council, [1927] 2 K. B. 517.

2728. Add. Annotation:—Mentd. Public Works Comrs. v. Pontypridd Masonic Hall Co., [1920] 2 K. B. 233.

2729. Add. Annotation:—Folld. Hosier v. Derby (Earl), [1918] 2 K. B. 671.

2731. Add. Annotation:—Refd. Johnstone v. Pedlar, [1921] 2 A. C. 262.

2733a. — For declaration as to meaning of contract.]—By a contract made between plffs. & the Secretary of State for War the Secretary of State hired from plffs. a steam engine & hay press upon the terms that the engine should be used only for the purpose of working the press. Plffs. brought an action against deft., who was Secretary of State for War at the date of the writ, but at the date of the contract did not nor did he now hold that office, alleging that deft. had improperly used the engine for other than the specified purposes, & claiming a declaration that plffs. were entitled to compensation for the improper use of the engine, & certain other declarations as to the construction & meaning of the contract:—Held: the action was not maintainable. It could no more be brought against a servant of the Crown for a declaration as to what the contract meant

PART X. SECT. 1, SUB-SECT. 2.—C.

b1. —.—.—]—A clause in a document under seal purporting to bind a person as principal of one of the parties, cannot so bind him where the deed was not executed by him or executed in his name.—BATTLE CREEK TOASTED CORN FLAKE CO. v. KELLOGG TOASTED CORN FLAKE CO., [1923] 4 D. L. R. 543.—CAN.

PART X. SECT. 1, SUB-SECT. 4.—B. (a).

sn. Failure of foreign principal to perform contract.]—Defts., acting on behalf of a foreign shipowner, who proposed to establish a service from Halifax to Havana & other southern ports, contracted in their own name with plff. to provide space on the ship for a shipment of timber to be carried from Halifax to Buenos Ayres. The proposed service was abandoned by the shipowner, so that the contract entered into by defts. could not be

performed:—Held: there having been failure on defts.' part to disclose that they were merely acting in the capacity of agents for a foreign principal, they were liable to plff. for damages resulting from cancellation of the ship's sailing.—SHEPARD & MORSE LUMBER CO. INCORPORATED v. MATHERS (I. H.) & SON, [1926] 2 D. L. R. 457; 58 N. S. R. 466.—CAN.

PART X. SECT. 1, SUB-SECT. 5.

2712 ii. — On behalf of unincorporated body.]—An officer of a brotherhood lodge, an unincorporated body, who as such officer on behalf of the lodge borrows money & signs documents purporting to obligate it to repayment, is personally liable for repayment, having contracted for a principal who had no existence in law.—FINLAY v. BLACK, [1921] 2 W. W. R. 907.—CAN.

sp. Bill of exchange accepted.—In name of non-existent company.]—Deft., a member of a firm, H. & S., represented & warranted to plff. that H. & S. Co., Ltd., were an incorporated co. & that he was authorised by it to accept a bill of exchange as its agent. He accepted a draft in the name of the co. & plff. upon the faith of such assertion & warranty discounted the draft. H. & S. Co., Ltd., were not then an incorporated co.:—Held: deft., by his acceptance of the draft in the name of a non-existing corp., warranted & represented that there was such a corp. in existence & that he had authority to accept the draft for that co., & not having any such authority, he was personally liable for the amount of the draft & the costs & expenses incurred by plff. in endeavouring to collect same from H. & S. Co., Ltd.—BANK OF NOVA SCOTIA v. HATFIELD (1920), 48 N. B. R. 13; 58 D. L. R. 136.—CAN.

than for substantive relief upon the contract itself.—*HOSIER BROTHERS v. DERBY (EARL)*, [1918] 2 K. B. 671; 87 L. J. K. B. 1009; 119 L. T. 351; 34 T. L. R. 477, C. A.

2734. *Add. Annotation* :—*Consd. R. v. Income Tax Special Purposes Comrs., Ex p. Dr. Barnado's Homes National Incorporated Assocn.*, [1920] 1 K. B. 26.

2740a. ——— *To mess.*—*BROWN v. DOYLE* (1788), 3 Camp. 51, n.; 170 E. R. 1302.

2742a. ——— *On order of secretary of mess committee.*—*LASCELLES v. RATHBUN*, No. 704a, *ante*.

2748. *Add. Annotation* :—*Consd. Edwards v. Porter* (1924), 41 T. L. R. 57.

2749. *Add. Annotations* :—*Consd. Edwards v. Porter, McNeall v. Hawes*, [1923] 2 K. B. 538; *Edwards v. Porter* (1924), 41 T. L. R. 57.

2751. *Add. Annotation* :—*Refd. Edwards v. Porter, McNeall v. Hawes*, [1923] 2 K. B. 538.

2752. *Add. Annotation* :—*Refd. Edwards v. Porter, McNeall v. Hawes*, [1923] 2 K. B. 538.

2753. *Citations* :—For "P. C." read "H. L." *Add. Annotation* :—*Mentd. Ruffy-Arnell, etc., Co. v. R.*, [1922] 1 K. B. 599.

2753a. ——— *Sale of goods—Principal not entitled to sell.*—Where an agent purports to make a contract for a principal to buy goods, whether ascertained or not, or to sell unascertained goods, disclosing the fact that he is acting as agent, but not disclosing the name of his principal, he is personally liable to the purchaser if it afterwards appear that the principal had no right to sell, it being presumed that the purchaser would be unwilling to contract solely with an unknown man. But this presumption does not exist where a specific chattel is so sold, it being impossible to suppose that a purchaser would impose or an agent accept such a liability.—*BENTON v. CAMPBELL, PARKER & Co.*, [1925] 2 K. B. 410; 94 L. J. K. B. 881; 134 L. T. 60; 89 J. P. 187; 41 T. L. R. 662; 69 Sol. Jo. 842, D. C.

2757. *Add. Annotation* :—*As to (1) Consd. Edwards v. Porter* (1924), 41 T. L. R. 57.

2761. *Add. Annotation* :—*As to (3) Refd. Edwards v. Porter, McNeall v. Hawes*, [1923] 2 K. B. 538.

2763. *Add. Annotations* :—*As to (1) Refd. Edwards v. Porter, McNeall v. Hawes*, [1923] 2 K. B. 538; *Edwards v. Porter* (1924), 41 T. L. R. 57. *As to (2) Refd. Re Wingfields*, [1923] 2 K. B. 112.

PART X. SECT. 1, SUB-SECT. 7.—A.

2748 v. ———.]—In an action for breach of warranty of authority, the cause of action is the breach of the express or implied promise of the person who assumes to act as agent that he has authority so to act, the consideration necessary to make that promise binding being found in the action of the other party in entering into the contract. Pltf. in such an action need not establish that he believed deft.'s representation that he had authority, though it must appear that he acted in reliance upon it.—*Leggo v. BROWN*, [1923] V. L. R. 440.—AUS.

PART X. SECT. 1, SUB-SECT. 7.—B.

2765 i. *Third party in error as to actual scope of agent's authority.*—Deft., as agent of absentee landlords, instructed pltf., a solr., to distrain for

rent on certain goods. A claim was made to the goods by a chattel mtgee., whose right was contested by pltf. under instructions from deft., whose authority for such proceedings was later repudiated by the landlords.—*Held*: pltf. could recover from deft. his costs of the interpleader proceedings upon a warranty of authority.—*CUNLIFFE v. PLANTA*, [1920] 3 W. W. R. 898; 54 D. L. R. 196.—CAN.

PART X. SECT. 1, SUB-SECT. 8.—A. (a).

2808 iii. ——— *Subject to special terms.*—Pltf. listed land with defts. for sale. Defts. secured a prospective purchaser, receiving from him \$1,000 as deposit & gave a receipt setting out the terms of sale & concluding thus: "Money to be refunded if Gray Estate fail to deliver, as per

2769. *Add. Citation* :—13 Asp. M. L. C. 463.

2777. *Add. Annotation* :—*Consd. Edwards v. Porter, McNeall v. Hawes*, [1923] 2 K. B. 538.

2778. *Add. Annotation* :—*Mentd. Brandon v. Michelham* (1919), 35 T. L. R. 617.

2780. *Add. Annotation* :—*Consd. Edwards v. Porter* (1924), 41 T. L. R. 57.

2786. *Add. Annotation* :—*Generally, Mentd. Sun Bldg. Soc. v. Western Suburban & Harrow Road Bldg. Soc.*, [1920] 2 Ch. 144.

2788. *Add. Annotation* :—*Refd. Smith v. Buskell, Buskell v. Smith & G. W. Ry.*, [1919] 2 K. B. 362.

2795. *Add. Annotations* :—*Refd. Edwards v. Porter, McNeall v. Hawes*, [1923] 2 K. B. 538; *Edwards v. Porter* (1924), 41 T. L. R. 57.

2807. *Add. Annotation* :—*Refd. Holt v. Markham*, [1923] 1 K. B. 504.

2812. *Add. Annotation* :—*A to (2) Refd. Archangel Saw Mills v. Baring & A.-G., Steam Saw Mills v. Baring & A.-G.* (1921), 37 T. L. R. 857.

2814a. *Agent receiving proceeds of sale of goods for credit of foreign Government.*—In 1917 pltf., under licence from the Russian Imperial Govt. exported timber to this country, & in accordance with the conditions of the licence, paid the purchase-money received by them for the timber to deft. bankers for the credit of the Russian Govt. They then became entitled to receive from the Govt. in Russia an equivalent amount in roubles at a fixed rate of exchange. In Mar. 1917, the Imperial Govt. was overthrown by a revolution, & was succeeded by a Provisional Govt., which in its turn, was, on Nov. 7, 1917, displaced by the Bolsheviks, who, on Dec. 13, forcibly dissolved the Constituent Assembly & established a Soviet Republic. Pltf. having received no roubles in Russia, brought actions against the bankers to recover two sums of money, one of which was paid to them by pltf. in the second action before Nov. 7, & the other by pltf. in the first action on Nov. 9, at which date they did not know of the Bolshevik revolution. Pltf. in both actions alleged that the bankers & the Russian Govt. were merely trustees for them, & the money having been paid under a contract, the consideration for which had entirely failed, they were entitled to recover. Pltf. in the first action further contended that they had paid the money under a mistake of fact, & on that ground also they were entitled to recover it:

"agreement." The purchaser refused to complete.—*Held*: defts. in their receipt undertook an obligation to the purchaser to hold the deposit on his behalf, & pltf. could not recover the money from defts. as if it had been received by them simply & solely on her behalf.—*GRAY v. MURCHISON* (1922), 70 D. L. R. 7; [1922] 3 W. W. R. 545.—CAN.

2809 i a. ———.]—Where a vendor has agreed to pay a commission to his agent & has agreed that the amount received by the agent as a deposit from the purchaser should be retained by the agent in part payment of such commission & has given security for the balance, the deposit must be treated as paid over to the vendor, & in an action for money had & received it is only from the vendor that it can be recovered.—*BRUNSTETTER v. ZUSHING*, [1918] 3 W. W. R. 546.—CAN.

- Held*: (1) this money had been paid to the bank as agents for the Russian Govt., & the ct. would not order payment of it in the absence of that Govt. or its representatives; (2) the bank were entitled to keep the money in their hands, but must undertake not to part with it without notice to pltf. & an order of the ct.—**STEAM SAW MILLS CO. v. BARING BROTHERS & CO., ARCHANGEL SAW MILLS CO. v. BARING BROTHERS & CO.**, [1922] 1 Ch. 244; 91 L. J. Ch. 325; 126 L. T. 403; 38 T. L. R. 200; 66 Sol. Jo. 170, C. A.
- Annotation*.—*Refd.* Home & Colonial Insee. v. London Guarantee & Accident Co. (1928), 45 T. L. R. 134.
2818. *Add. Annotations*:—*Consd.* Scottish Metropolitan Assce. v. Samuel, [1923] 1 K. B. 348. *Refd.* British American Continental Bank v. British Bank for Foreign Trade, [1926] 1 K. B. 328.
2825. *Add. Annotation*:—*Refd.* *Re* A Debtor, [1928] Ch. 199.
2826. *Add. Annotations*:—*Apld.* Admiralty Comrs. v. National Provincial & Union Bank of England (1922), 127 L. T. 452. *Dstd.* Steam Saw Mills Co. v. Baring, Archangel Saw Mills Co. v. Baring, [1922] 1 Ch. 244. *Consd.* British American Continental Bank v. British Bank for Foreign Trade, [1926] 1 K. B. 328. *Refd.* Jones v. Waring & Gillow, [1926] A. C. 670.
2828. *Add. Annotations*:—*Consd.* Scottish Metropolitan Assce. v. Samuel, [1923] 1 K. B. 348. *Refd.* British American Continental Bank v. British Bank for Foreign Trade, [1926] 1 K. B. 328.
2831. *Add. Annotation*:—*Consd.* Guaranty Trust Co. of New York v. Hannay, [1918] 2 K. B. 623.
2834. *Add. Annotation*:—*As to* (1) *Refd.* British American Continental Bank v. British Bank for Foreign Trade, [1926] 1 K. B. 328.
2839. *Add. Annotations*:—*Refd.* Marshall Shipping Co. v. Board of Trade, [1923] 2 K. B. 343. *Mentd.* Glamorgan County Council v. Glasbrook, [1924] 1 K. B. 879.
2841. *Add. Annotations*:—*Refd.* Holt v. Markham, [1923] 1 K. B. 504; Jones v. Waring & Gillow, [1926] A. C. 670. *Mentd.* Chillingworth v. Esche, [1924] 1 Ch. 97.
2866. *Add. Annotation*:—*Folld.* Hosier v. Derby (Earl), [1918] 2 K. B. 671.
2867. *Add. Annotation*:—*Consd.* R. v. Income Tax Special Purposes Comrs., *Ex p.* Dr. Barnado's Homes National Incorporated Asscn., [1920] 1 K. B. 26.
2888. *Add. Annotations*:—*Consd.* British American Continental Bank v. British Bank for Foreign Trade, [1926] 1 K. B. 328; Jones v. Waring & Gillow, [1926] A. C. 670.
2895. *Add. Annotation*:—*Refd.* Lawrence v. Hayes, [1927] 2 K. B. 111.
2899. *Add. Annotation*:—*Refd.* McCreagh v. Judd, [1923] W. N. 174.
2916. *Add. Annotation*:—*Generally, Mentd.* Jordy v. Vanderpump (1920), 64 Sol. Jo. 324.
2917. *Add. Annotation*:—*Mentd.* G. N. Ry. v. L. E. P. Transport & Depository, [1922] 2 K. B. 742.
2924. *Add. Annotation*:—*Refd.* Belvedere Fish Guano Co. v. Rainham Chemical Works, Feldman & Partridge, Ind Coope v. Same, [1920] 2 K. B. 487.
2926. *Add. Annotation*:—*Consd.* Weld-Blundell v. Stephens, [1920] A. C. 956.
2940. *Add. Annotations*:—*Refd.* Underwood v. Bank of Liverpool, Same v. Barclays Bank, [1924] 1 K. B. 775; London & Montrose Shipbuilding & Repairing Co. v. Barclays Bank (1925), 31 Com. Cas. 67.
2943. *Add. Annotation*:—*Refd.* Jones v. Waring & Gillow, [1925] 2 K. B. 612.
2951. *Add. Annotation*:—*Refd.* Banbury v. Bank of Montreal, [1918] A. C. 626.
2953. *Add. Annotation*:—*Consd.* Edwards v. Porter (1924), 41 T. L. R. 57.
2955. *Add. Annotation*:—*Mentd.* Glicksman v. Lancashire & General Assce., [1925] 2 K. B. 593.

## Part XI.—Duration and Termination of Agency.

3005. *Add. Annotation*:—*Refd.* Albemarle Supply Co. v. Hind, [1928] 1 K. B. 307.
3012. *Add. Annotation*:—*Mentd.* Hamilton v. Caldwell (1919), 88 L. J. P. C. 173.

### PART X. SECT. 1, SUB-SECT. 8.— A. (b) ii.

2828 v. —.]—If a bank pays money on a forged cheque to an innocent agent who at the time informs the bank that he is an agent & not a principal, & who before discovery of the forgery pays the money over in accordance with instructions received from his principal, the bank cannot recover the amount from such agent.—**BANQUE D'HOCHELAGA v. MARSHALL**, [1921] 2 W. W. R. 496; 31 Man. L. R. 242.—CAN.

### PART X. SECT. 2, SUB-SECT. 2.— A. (b).

2918 i. *General rule.*—Where a third party has suffered loss or injury he has no right of action against an agent personally unless the agent has been guilty of a wrong or a breach of trust.—**WINTERMUTE v. MOULTON** (1922), 65 D. L. R. 653.—CAN.

### PART X. SECT. 2, SUB-SECT. 2.— B. (a).

2944 i. *Agent holding goods or*

*principal*—*Absolute refusal to true owner.*—A servant or agent can be sued for conversion of a chattel mtgo. claimed by pltf. from the master or principal, where the refusal by such servant or agent to deliver it to the pltf. is absolute.—**ADVANCE RUMELY THRESHER CO., INCORPORATED v. SERVICE**, [1919] 2 W. W. R. 647; 12 Sask. L. R. 294.—CAN.

### PART X. SECT. 2, SUB-SECT. 2.— B. (b).

2950 i. *Misrepresentations — Reckless.*—Deft., as agent for the owner, induced pltf. to purchase a grocery business. Pltf. claimed damages from deft. on the ground that he had induced her to purchase the business by misrepresentations. The jury found that the representations made were untrue, that they had been made by deft. recklessly & without regard to their truth or falsehood, & that they had induced pltf. to purchase the business:—*Held*: the jury was justified in treating deft.'s statements as definite representations & in concluding that they were made to induce & did

induce, pltf. to buy the business.—**EASTERBROOK v. HOPKINS**, [1918] N. Z. L. R. 428.—N.Z.

PART XI. SECT. 2, SUB-SECT. 1.—A. 2965 vii. —.]—In an ordinary house agent's agreement the principal may revoke the agent's authority at any time before the agent has fully performed what he was authorised to do.—**TYNAN v. A'BECKETT**, [1923] V. L. R. 412.—AUS.

2965 viii. —.]—A contract of agency can in the absence of a term, express or implied to the contrary, be terminated at the will of either party.—**POLLARD v. GIBSON**, [1924] 4 D. L. R. 354; 55 O. L. R. 424; varying 54 O. L. R. 419.—CAN.

PART XI. SECT. 3, SUB-SECT. 1. sp. *Death of principal*—*Power to convey land.*—*Held*: under a power of attorney executed by M, who died in 1919, her attorney could execute a valid transfer of her land, after her death.—*Re McCARTY* (1920), 53 D. L. R. 249; 47 O. L. R. 285.—CAN.



3014. *Add. Annotation*:—*Refd.* Payzu v. Saunders, [1919] 2 K. B. 581.
3017. *Add. Annotation*:—*Mentd.* Edwards v. Porter, McNeall v. Hawes, [1923] 2 K. B. 538.
3025. *Add. Annotation*:—*Refd.* *Re* Vulcaan Coal Co., Harrison v. Harbottle, [1922] 2 Ch. 60.
3027. *Add. Annotation*:—*As to* (1) *Folld.* Schostall v. Johnson (1919), 36 T. L. R. 75.
- 3027a. ——— *Agent not interned.*—In Aug. 1912, pltf., who was an Austrian subject residing in this country, made with defts., who were sugar brokers in L., a contract whereby for three years he was to have a share of the commissions & profits on certain business introduced by him & was to assist in defts.' general business in return for a share of the profits. War broke out between England & Austria in Aug. 1914, but pltf. was exempted from internment & was allowed to travel between his house & defts.' place of business. In Sept. 1914, defts. wrote to pltf. that in the circumstances the agreement was null & void, & gave him to understand that it was of no use for him to attempt to do business for them any longer. In an action for breach of the contract:—*Held*: the status of pltf. as the subject of an enemy State did not in the circumstances make the contract impossible of performance, & pltf. was entitled to damages.—SCHOSTALL v. JOHNSON (1919), 36 T. L. R. 75.
3028. *Add. Citations*:—*affd.*, [1918] A. C. 239; 87 L. J. K. B. 416; 118 L. T. 126; 34 T. L. R. 206; 62 Sol. Jo. 290, H. L.  
*Add. Annotations*:—*As to* (1) *Refd.* Ertel Bieber v. Rio Tinto Co., [1918] A. C. 260. *As to* (2) *Distd.* Fried Krupp Akt. v. Orconera Iron Ore Co. (1919), 88 L. J. Ch. 304. *Refd.* Naylor, Benzon v. Krainische Industrie Gesellschaft, [1918] 1 K. B. 331; Rodriguez v. Speyer, [1919] A. C. 59. *Generally, Mentd.* *Re* Munster, [1920] 1 Ch. 268; *Re* Ferdinand, Ex-Tsar of Bulgaria, [1921] 1 Ch. 107; *Re* Rush, Warre v. Rush, [1923] 1 Ch. 36.
3029. *Add. Annotations*:—*As to* (2) *Refd.* Naylor, Benzon v. Krainische Industrie Gesellschaft, [1918] 1 K. B. 331. *Generally, Mentd.* Rodriguez v. Speyer, [1919] A. C. 59; *Re* Sutherland Duchess, Bechoff v. Bubna (1921), 65 Sol. Jo. 513.
3030. *Add. Annotation*:—*Refd.* Schostall v. Johnson (1919), 36 T. L. R. 75.
- 3040a. ———.]—By an underwriting contract dated Dec. 3, 1919, a syndicate agreed with a co. in consideration of a commission to subscribe for 150,000 of 350,000 shares to be offered to the public by a prospectus then about to be issued, & all allotments to the public were to be applied in relief of the syndicate's obligation to take up the 150,000 shares. By a sub-underwriting letter applt. agreed with the syndicate to subscribe 10,000 of the 150,000 shares underwritten by them & stated: "We now hand you application for the shares hereby underwritten by us together with cheque for £1,256, being deposit of 2s. 6d. per share." The letter also provided that applt. was only to be allotted & pay for so many of the 10,000 shares as should be his due proportion of the shares not taken up by the public, & that he was to receive a commission on the shares sub-underwritten by him. The letter also contained this clause: "This contract & our said application shall, notwithstanding any withdrawal on our part &/or any repudiation of our responsibility hereunder, or under the said application form, be sufficient to authorise & empower the directors to allot to us the above-mentioned shares & enter our name in the register of members in respect thereof." Applt. did not in fact sign or hand to the syndicate any written application to the co. for the 10,000 shares as contemplated by the sub-underwriting letter, but he handed to the syndicate the letter together with his cheque for £1,250 in their favour. On the issue of the prospectus only 55,000 shares were applied for by the public. On Dec. 12 the syndicate verbally applied in their own name & in the names of several sub-underwriters including applt. for an allotment of the total amount of the shares which they were bound to take up & paid with their own cheque for the total amount of the application money. On the same day the co. allotted to applt. 6,334, being his proportion of the 10,000 shares under his sub-underwriting letter. On Dec. 22, applt. wrote to the co. withdrawing his application for shares, meaning his sub-underwriting letter, but on Dec. 29 the co. sent him the usual formal notice of the allotment to him of 6,334 shares. On motion by applt. to rectify the register by removing his name therefrom as the holder of the 6,334 shares:—*Held*: the authority given by applt. to the syndicate to apply for shares was a continuing & irrevocable authority coupled with an interest which he was not entitled to withdraw.—*Re* OLYMPIC REINSURANCE CO., POLE'S CASE, [1920] 2 Ch. 341; 89 L. J. Ch. 544; 123 L. T. 786; 36 T. L. R. 691, C. A.
- Annotation*:—*Mentd.* *Re* Greater Britain Insce. Corpn. *Ex p.* Brockdorff (1920), 124 L. T. 194.  
*See, generally, COMPANIES, Vol. IX., pp. 182, et seq.*
3041. *Add. Annotation*:—*Mentd.* Prosperity v. Lloyds Bank (1923), 39 T. L. R. 372.
3051. *Add. Annotation*:—*Refd.* Smith v. Wood (1928), 139 L. T. 250.
3057. *Add. Annotations*:—*Refd.* Cheshire v. Vaughan, [1920] 3 K. B. 240; Maskell v. Hill, [1921] 3 K. B. 157. *Mentd.* Cohen v. Hill, [1922] 2 K. B. 37.

PART XI. SECT. 4, SUB-SECT 3.

3045 iii. ———.]—*Held*: a mere

authority to sell was not rendered irrevocable, either by reason of its express terms or from valuable con-

sideration having been given.—MAHOOD v. GEANGE, [1927] N. Z. L. R. 780.—N.Z.

# AGRICULTURE.

NOTE.—The Act now in force in England is "Agricultural Holdings Act, 1923 (c. 9)," herein referred to as A. H. Act, 1923. The Act repealed (*inter alia*) A. H. Act of 1908 (c. 28).

Owing to the statutory extensions in the law since the original volume was published the following new sub-sections have been added to Part V., Sect. 3 :—

SUB-SECT. 1a.—COMPENSATION FOR INCREASED OR DIMINISHED VALUE OF HOLDING (*see* p. 83, *post*).

SUB-SECT. 3a.—COMPENSATION FOR ENFORCEMENT OF PROPER CULTIVATION (*see* p. 85, *post*).

SUB-SECT. 3b.—ASCERTAINMENT OF COMPENSATION (*see* p. 86, *post*).

## Part I.—Definitions.

Add the following cross-reference :—"Market garden."—*See* Nos. 267b, 267c, *post*.

## Part II. Commencement, Duration, and Termination of Agricultural Tenancy.

4. *Add. Annotations* :—*Re*ld. *Croft v. Blay*, [1919] 1 Ch. 277; *Simmons v. Crossley*, [1922] 2 K. B. 95.
19. *Add. Annotation* :—*As to* (2) *Re*ld. *Re Bebington's Tenancy*, *Bebington v. Wildman*, [1921] 1 Ch. 559.
- 24a. Agriculture Act, 1920 (c. 76), s. 28—To what tenancies applicable.]—The above sect., which renders a notice to quit a holding invalid if it purports to determine the tenancy before the expiration of twelve months from the end of the then current year of tenancy, applies not only to the case of a yearly tenancy but to all contracts of tenancy in which a notice to quit is required to determine the tenancy, including a lease for twenty-one years with an option to either party to determine it on six months' notice at the end of the first seven or fourteen years of the term. A notice to quit includes a notice to determine the tenancy.—*EDELL v. DULIEU*, [1924] A. C. 38; 93 L. J. K. B. 286; 130 L. T. 390; 40 T. L. R. 84; 68 Sol. Jo. 183, H. L.
- 24b. Agricultural Holdings Act, 1923 (c. 9), s. 25 (1).]—The above sub-sect. applies to a notice to quit given by a tenant, as well as to a notice to quit given by a landlord.—*FLATHER v. HOOD* (1928), 44 T. L. R. 698; 72 Sol. Jo. 468.
- 29a. Termination of tenancy—Whether matter for arbitrator—Under Agricultural Holdings Act, 1923 (c. 9), s. 16.]—A question whether a tenancy has terminated or not is not a "question or difference arising out of the termination of the tenancy" within the above sect.—*SIMPSON v. BATEY*, [1924] 2 K. B. 666; 93 L. J. K. B. 919; 131 L. T. 724; 68 Sol. Jo. 754, C. A.
- Annotations* :—*Ex*pld. *R. v. Powell*, *Ex p. Camden*, [1925] 1 K. B. 641. *Consd.* *Lowther v. Clifford*, [1927] 1 K. B. 130. *Re*ld. *Harrison v. Ridgway* (1925), 133 L. T. 238.
- 29b. *S. P. R. v. POWELL*, *Ex p. CAMDEN* (MARQUIS), [1925] 1 K. B. 641; 94 L. J. K. B. 433; 132 L. T. 766; 89 J. P. 64; 41 T. L. R. 277; 23 L. G. R. 391, D. C.
- Annotations* :—*Consd.* *Lowther v. Clifford*, [1927] 1 K. B. 130. *Re*ld. *Harrison v. Ridgway* (1925), 133 L. T. 238.
- 29c. Whether condition precedent to arbitration—Under Agricultural Holdings Act, 1923 (c. 9), s. 16.]—The words "arising out of the termination of the tenancy of the holding" in the above sect. apply to the whole of the preceding part of sub-sect. 1 of the sect., & the determination of the tenancy is a condition precedent to the right to demand the appointment of an arbitrator.—*R. v. POWELL*, *Ex p. CAMDEN* (MARQUIS), [1925] 1 K. B. 641; 94 L. J. K. B. 433; 132 L. T. 766; 89 J. P. 64; 41 T. L. R. 277; 23 L. G. R. 391, D. C.
- Annotations* :—*Ex*pld. *Harrison v. Ridgway* (1925), 133 L. T. 238. *Consd.* *Lowther v. Clifford*, [1927] 1 K. B. 130.
- 29d. *S. P. HARRISON v. RIDGWAY* (1925), 133 L. T. 238; 23 L. G. R. 434, D. C.
- Annotation* :—*Consd.* *Lowther v. Clifford*, [1927] 1 K. B. 130.

### PART I.

sa. "Agriculturist"—*Saskatchewan Co-operative Elevator Company Acts*.]—*Re* COMPANIES WINDING UP ACT, *Re SASKATCHEWAN CO-OPERATIVE ELEVATOR CO., LTD.* (Sask.), [1927] 4 D. L. R. 804; [1927] 3 W. W. R. 269.—CAN.

sd. "Market garden."—*Not experimental bulb growing establishment*.]—*WATERS v. HUNTER*, [1927] S. C. 810.—SCOT.

### PART II. SECT. 3, SUB-SECT. 2.—A.

sk. Joint tenants in possession by tacit relocation.—*Notice to terminate given one tenant*.]—Two brothers were partners & joint tenants under a lease renewable by tacit relocation. The elder brother, the active partner, gave notice in writing to the landlord that he intended to leave the farm. Subsequently they declined to remove

from the farm, on the ground that the notice being in the name of one of the joint tenants only, was insufficient to prevent renewal of the lease by tacit relocation :—*Held* : (1) the notice necessary, under A. H. (Scotland) Act, 1908 (c. 64), s. 18 (1), to prevent tacit relocation, might be given by a duly authorised agent for the tenant; (2) as the evidence showed that the elder brother had sufficient authority to terminate the lease on behalf of the partners, the notice given by him was effectual to prevent tacit relocation, although the fact that he was acting both for himself & as agent for his brother did not appear *ex facie* of the notice.—*GRAHAM v. STIRLING*, [1922] S. C. 90.—SCOT.

### PART II. SECT. 3, SUB-SECT. 2.—B.

sp. Statutory provisions—*Contracting out*.]—Parties to a lease of agri-

cultural subjects cannot contract out of the statutory provisions with regard to notice of termination of the tenancy.—*DUGUID v. MUIRHEAD*, [1926] S. C. 1078.—SCOT.

### PART II. SECT. 3, SUB-SECT. 6.

29a i. Termination of tenancy—Whether matter for arbitrator—Under *Agricultural Holdings (Scotland) Act*, 1923 (c. 10), s. 15.]—*Held* : not one of the matters remitted to the exclusive jurisdiction of the arbitrator.—*DONALDSON'S HOSPITAL (EDINBURGH) TRUSTEES v. ESSLIE MONT*, [1925] S. C. 199; *on appeal*, [1926] S. C. (H. L.) 68.—SCOT.

st. Lessor selling farm under power in lease—*Purchaser put in possession—Sale not completed*.]—*Held* : pltf. having sold the farm, & put purchaser in possession to the knowledge of deft., the latter might conclude that pltf.

**30a. Agricultural Land Sales (Restriction of Notices to Quit) Act, 1919 (c. 63)—Application of Act.]—Sect. 1 of the above Act, rendering null & void notices to quit in the event of sales, applies (1) where the sale is a sub-sale of an interest under a previous contract; (2) to equitable as well as legal owners; (3) where notice is by one person & sale by another; (4) to the whole holding, although the sale is only as to a part.—ROBINSON v. NESBITT (1920), 64 Sol. Jo. 291.**

*Annotation:—Generally, Apprvd. Blay v. Dadswell, [1922] 1 K. B. 632.*

**30b. Contract for sale after passing of Act—Notice by one person—Sale by another.]—ROBINSON v. NESBITT, No. 30a, ante.**

**30c. ——— Sale requiring consent of several parties—Consent of some parties given after passing of Act.]—A contract to sell to pltf. land under Church Building Act, 1839 (c. 49), was entered into before the passing of the Act of 1919, by several, but not all, of the persons whose consent was necessary to the sale. At the time of the contract deft. was in occupation of the land as yearly tenant, but was under a notice to quit which had been served upon him by the vendors. All the persons whose consents were necessary for the sale subsequently joined in the conveyance to pltf., which was executed after the passing of the Act of 1919:—*Held*: the contract of sale was entered into with pltf. before the passing of the Act of 1919, & the notice to quit, therefore, was valid, & pltf. was entitled to possession.—BROOKS v. BLOOR (1920), 90 L. J. K. B. 577; 124 L. T. 316; 36 T. L. R. 826; 64 Sol. Jo. 685, D. C.**

**30d. ——— Sale to tenant.]—(1) Sect. 1 of the above Act applies not only to contracts of sale of holdings to third persons, but also to contracts of sale to the tenants themselves. (2) Agriculture Act, 1920 (c. 76), s. 29 & sched. 1, are amending & not merely declaratory,**

**& are not retrospective as to notices which would, if valid, have expired before the commencement of that Act.—BLAY v. DADSWELL, [1922] 1 K. B. 632; 91 L. J. K. B. 739; 127 L. T. 6; 66 Sol. Jo. 439; 20 L. G. R. 221; 86 J. P. Jo. 65, C. A.**

**30e. Agricultural Holdings Act, 1923 (c. 9)—Farm held under two landlords—Notice to quit given by both—Contract for sale by one for part of farm.]—On May 20, 1912, T. let a farm to C. from year to year from Oct. 11, 1911, at an annual rent of £150. On Dec. 23, 1914, T. conveyed about half the farm to pltfs., subject to & with the benefit of the tenancy agreement. T. died on Jan. 4, 1919, & C. continued to pay the whole rent to her exors., as he had since the conveyance paid it to T. After Oct. 11, 1922, the rent fell into arrear. By a notice to quit dated Oct. 10, 1923, the agents of T.'s exors. & the agent of pltfs. jointly gave C. notice to quit the whole holding on Oct. 11, 1924. By an agreement dated Oct. 1, 1924, T.'s exors. agreed to sell their part of the farm to C., & it was conveyed to him on Apr. 17, 1925. C. refused to give up possession to pltfs. of their part of the holding, contending that under sect. 26 of the above Act the contract by T.'s exors. to sell to him rendered the notice to quit null & void. Pltfs. brought an action for a declaration that the notice to quit was effective, & to recover possession of their land:—*Held*: as the contract to sell a part was not made by the persons who gave notice to quit the entire holding, but only by some of them, sect. 26 of the above Act did not apply; the tenancy had been duly determined as regards pltfs.' land, & pltfs. were entitled to the declaration which they asked & to an order for possession of their land.—ROCHESTER & CHATHAM JOINT SEWERAGE BOARD v. CLINCH, [1925] Ch. 753; 95 L. J. Ch. 49; 134 L. T. 139.**

## Part III.—Covenants and Customs of the Country.

**32. Add. Annotation:—Refd. Richmond v. Savill, [1926] 2 K. B. 530.**

**36. Add. Annotations:—Apld. Cheater v. Cater, [1918] 1 K. B. 247. Mentd. Michael v. Phillips (1923), 130 L. T. 142; Jacobs v. Batavia & General Plantations Trust (1924), 93 L. J. Ch. 520.**

**39. Add. Annotations:—Refd. Horlick v. Scully, [1927] 2 Ch. 150. Mentd. Lloyd-Jones v. Clark-Lloyd, [1919] 1 Ch. 424.**

**56a. ——— Grass land laid down by tenant.]—By a tenancy agreement made in 1894 the trustees of an estate, of which pltf. was the present tenant for life in possession, agreed to let to deft. certain farm lands & house**

**buildings comprising 138 acres more or less, as described in a schedule attached to the agreement, on a yearly tenancy, at the rent of £48. The tenant covenanted to manage & cultivate the land in a husbandlike manner, & that he would not plough or otherwise break up "any grass land" without the consent of the landlord. In the schedule to the agreement the premises were described as consisting of 130 acres 1 r. 31 p. of arable & 8 acres of grass land. In 1898 the tenant laid down 40 acres more to permanent grass. On notice being given to him to determine the tenancy on Sept. 29, 1919, he claimed the right to plough up this 40 acres of permanent grass which had been arable at the commence-**

**had exercised the right to sell given the lessor under the lease & that his lease was therefore at an end; pltf.'s allowing the purchaser to withdraw from the agreement to purchase did not affect deft.'s rights or reinstate the lease.—RINK v. MILOS, [1918] 2 W. W. R. 1021; 11 Sask. L. R. 271; 42 D. L. R. 782.—CAN.**

**sz. Contract for share farming—No provision as to duration.]—Deft. cropped pltf.'s land on shares in 1917, & in 1918 agreed to do so again. Pltf. was**

**trying to sell the land, as deft. knew, & during the summer sold it. No time had been fixed for deft. to give up possession:—*Held*: deft. was entitled to such occupation as was necessary to put in & harvest the crop for 1918.—FLETCHER v. LYONS, [1919] 3 W. W. R. 381; 48 D. L. R. 365.—CAN.**

### PART III. SECT. 1, SUB-SECT. 1.

**sa. In crop-payment agreement—Essence of contract.]—The covenants to cultivate under a crop-payment pur-**

**chase are of the essence of the contract, & go to the root of the performance of the contract by the purchaser.—WEIST v. SMITH (Sask.), [1927] 1 D. L. R. 448; [1927] 1 W. W. R. 280.—CAN.**

### PART III. SECT. 2, SUB-SECT. 1.—B.

**sc. Covenant to rid land of weeds—Breach—Relief from forfeiture.]—Relief was granted due to exceptional weather conditions, etc.—WARNER v. LINAHAN, [1919] 2 W. W. R. 94.—CAN.**



ment of his tenancy. In an action by pltf. to restrain him from so doing in breach of his covenants an *interim* order was made granting the injunction on the usual undertaking as to damages. Deft. counterclaimed for damages by reason of the *interim* order:—*Held*: (1) on the true construction of the agreement, the covenant not to plough up any grass land was not restricted to the 8 acres of grass at the date of the demise but extended to the grass land in dispute & pltf. was entitled to the relief claimed; (2) on the evidence, the proposed dealing with the land would have been a breach of the covenant to cultivate in a husbandlike manner; (3) deft. had suffered no damage from the granting of the *interim* injunction.—CLARKE-JERVOISE v. SCUTT, [1920] 1 Ch. 382; 89 L. J. Ch. 218; 122 L. T. 581.

68. *Add. Annotations*:—*Consd.* Cole v. Kelly, [1920] 2 K. B. 106. *Mentd.* Rye v. Purcell, [1926] 1 K. B. 446.
69. For “that relation existing between him & the other tenants in common” read “that relation not existing between him & the other tenants in common.”
80. *Add. Annotations*:—*Refd.* Horlick v. Scully, [1927] 2 Ch. 150. *Mentd.* Lloyd-Jones v. Clark-Lloyd, [1919] 1 Ch. 424.
103. *Add. Annotation*:—*Refd.* Melzak v. Lilionfeld, [1926] Ch. 480.
106. *Add. Annotation*:—*As to* (1) *Refd.* Clarke-Jervoise v. Scutt, [1920] 1 Ch. 382.
- 107a. *S. P. AYLET v. DODD* (1741), 2 Atk. 238; 26 E. R. 547.
- Annotation*:—*Refd.* Denton v. Richmond (1833), 3 Tyr. 630.
117. *Add. Annotation*:—*Refd.* Matthey v. Curling, [1922] 2 A. C. 180.
- 117a. — Grass land laid down by tenant.]—CLARKE-JERVOISE v. SCUTT, No. 56a, *ante*.
125. *Add. Annotations*:—*Mentd.* A.-G. for Manitoba v. Kelly, [1922] 1 A. C. 268; Kelantan Government v. Duff Development Co., [1923] A. C. 395.
140. *Add. Annotations*:—*Refd.* Raikes v. Ogle, [1921] 1 K. B. 576; Brakspear v. Barton, [1924] 2 K. B. 88.
147. *Add. Annotation*:—*Generally*, *Mentd.* Ariadne S.S. Co. v. McKelvie, [1922] 1 K. B. 518.
- 164a. Against sub-letting—Letting of grass keep in last year of tenancy—Agistment.]—Where the tenant of a farm covenants not to underlet

or permit any other person to use or occupy any part of the demised premises without the written consent of the landlord, the sale or letting by the tenant, without such consent, in the last year of his tenancy of the grass keep, *i.e.* growing herbage, of his pasture lands for a definite period, is a breach of the covenant, although such sale or letting is in accordance with the usual practice of an outgoing tenant in that part of the country. *Semble*: agistment, *i.e.* the taking in by the tenant of the sheep or cattle of another to be depastured on the farm at so much per head per week, would not be a breach of the covenant.—RICHARDS v. DAVIES, [1921] 1 Ch. 90; 89 L. J. Ch. 601; 124 L. T. 238; 65 Sol. Jo. 44.

SUB-SECT. 16.—OTHER MATTERS (Vol. II., p. 28).

Add the following case:—

- 166a. Tenant to perform “team-work” for landlord.]—An agreement for an agricultural lease contained a stipulation that the tenant should perform each year for the landlord, “at the rate of one day’s team-work with two horses & one proper person for every £50 of rent when required, except at hay & corn harvest, without being paid for the same.” In ejectment for a forfeiture:—*Held*: (1) the work thus to be performed meant any work for which teams are generally used, & therefore included drawing coals to B. Palace; (2) the tenant was not bound to supply a car or other vehicle for the purpose of the work.—MARLBOROUGH (DUKE) v. OSBORN (1864), 5 B. & S. 67; 3 New Rep. 568; 33 L. J. Q. B. 148; 10 L. T. 28; 28 J. P. 532; 12 W. R. 418; 122 E. R. 758.
173. *Add. Annotation*:—*Mentd.* Richmond v. Savill, [1926] 2 K. B. 530.
- 175a. Agreement to pay interest on amount of incoming valuation & on quitting to leave equal value of tenant rights.]—*Held*: not to create a personal debt to the lessor, but to enure for the benefit of a subsequent landlord.—WAGSTAFF v. CLINTON (1883), 1 Cab. & El. 45.
194. *Add. Annotations*:—*Consd.* Bradbury v. Grimble (1920), 124 L. T. 189. *Refd.* Lowther v. Clifford (1926), 95 L. J. K. B. 576.

PART III. SECT. 2, SUB-SECT. 3.—B.

• i. — — —.]—Applt. alleged that he was prevented from summer-fallowing by an excessive quantity of water being on the land:—*Held* resp. was entitled to \$133 damages.—HUNT v. WEIBERG (1921), 67 D. L. R. 777.—CAN.

• ii. — — — Or to crop—Breach.]—A lessee agreed each year either to crop or summer-fallow every portion of the demised premises brought under cultivation. The lessee failed to crop or summer-fallow 30 acres brought under cultivation, owing to the land being covered with water. The lessor gave evidence that a crop of green feed could have been grown on the 30 acres:—*Held*: if the lessee could not, or did not choose to crop, he must summer-fallow; “crop” within the covenant in the lease included a green crop.—STEFFES v. SMITH (1921), 68

D. L. R. 452; 17 Alta. L. R. 366; [1922] 1 W. W. R. 70.—CAN.

• iii. — — — & to break land—Breach—Measure of damages.]—The measure of damages is the value of the additional work necessary to do the summer-fallowing & breaking.—TOOHER v. JOHNSON (1922), 68 D. L. R. 768; 32 Man. L. R. 356; [1922] 2 W. W. R. 616.—CAN.

PART III. SECT. 2, SUB-SECT. 4.

120 iv. — — —.]—AINLEY v. LOWEY (Sask.), [1926] 1 D. L. R. 73.—CAN.

• d. Miscropping — Claim for damages during tenancy—How determined.]—Agricultural Holdings (Scotland) Act, 1923 (c. 10), s. 15 (1), is, except as regards disputes relating to the construction of the lease, applicable only to disputes arising out of the termination of the tenancy; & a claim for

damages for miscropping made by a landlord against a tenant under s. 35 (2) during the currency of the lease cannot be referred to arb., but falls to be determined by the ct. in an ordinary action.—WESTWOOD v. BARNETT, [1925] S. C. 624.—SCOT.

PART III. SECT. 2, SUB-SECT. 16.

• e. Covenant to deliver to landlord share of crop or pay its value—Option of tenant—Time for exercising.]—The lessee of a farm agreed to deliver to the lessor a fixed share of the crops, or pay the value thereof, all crops to remain the property of the lessor until the settlement of accounts at the termination of the contract:—*Held*: the time for the exercise of the option was upon the settlement of accounts when the contract was terminated.—DICKIE v. SPARE (1921), 62 D. L. R. 551.—CAN.

## Part V.—Compensation.

226. *Add. Annotation*:—Mentd. *Re Lister, Bradford Overseers & Corpn. v. Durrance* (1925), 42 T. L. R. 143.

226a. ———.]—Where the tenant of a farm held on a verbal tenancy becomes bkpt., & the trustee, having entered into possession of the farm, subsequently disclaims the tenancy, he is excluded from all benefit as well as liability thereunder, including the tenant-right or right to compensation under custom of statute for unexhausted improvements by the tenant, & the amount fixed for compensation having been paid by the incoming tenant to the landlord, to whom arrears of rent are due, the landlord is not bound to account for such payment.—*Re WADSLEY, BETTINSON'S REPRESENTATIVE v. TRUSTEE* (1925), 94 L. J. Ch. 215; [1925] B. & C. R. 76.

229. *Add. Annotations*:—*Reid. Bradshaw v. Bird*, [1920] 3 K. B. 144; *Dale v. Hatfield Chase Corpn.*, [1922] 2 K. B. 282.

229a. Incoming tenant agreeing to repay compensation paid by landlord—Action by landlord on agreement—When cause of action arises.]—By an agreement dated Dec. 24, 1915, made under seal, pltf. let to deft. a small-holding from year to year from Feb. 2, 1916, at a rent of £132 10s. a year payable by half-yearly payments on Feb. 2, & Aug. 2, each year. The tenant agreed "to pay on entry any allowance or compensation which may be due from the council to the outgoing tenant in respect of feeding stuffs or manures or any improvements mentioned in A. H. Act, 1908, Sched. 1, Part III." Deft. entered into occupation of the small-holding on Feb. 2, 1916. At that date the amount of the compensation payable to the outgoing tenant had not been fixed, & it was not until Feb. 11, 1918, that the amount of compensation was agreed to. It was then agreed that the council should pay the outgoing tenant £30 17s. 6d., & that sum was paid by the council to the outgoing tenant on Mar. 17, 1921. On Jan. 13, 1923, pltf. council brought an action in the county ct. claiming to recover from deft. the sum of £30 17s. 6d. under the agreement of Dec. 24, 1915. Deft. pleaded that pltf.' cause of action had

arisen on Feb. 2, 1916, the date of his entry on the holding, & that therefore the claim was barred by Stat. Limitations, s. 3, because the action was not brought "within six years next after the cause of such action or suit":—*Held*: pltf.' cause of action against deft. did not arise on Feb. 2, 1916, when deft. entered on the holding but only on Feb. 11, 1918, when the amount of the compensation was ascertained by agreement; therefore the time only began to run from Feb. 11, 1918, & the action was not barred.—*CHESHIRE COUNTY COUNCIL v. HOPLEY* (1923), 130 L. T. 123; 21 L. G. R. 524.

*Annotation*:—*Reid. Cayzer, Irvine v. Board of Trade*, [1927] 1 K. B. 269.

232. *Add. Annotation*:—*Consd. Re Russell & Harding* (1922), 128 L. T. 476.

233. *Add. Annotations*:—*Reid. Re Masters & Duveen*, [1923] 2 K. B. 729. Mentd. *Bowling v. Camp* (1922), 128 L. T. 342; *Ingle v. Farrand*, [1927] A. C. 417.

234. *Add. Annotation*:—*Generally*, Mentd. *Premier Dairies v. Garlick*, [1920] 2 Ch. 17.

237a. *Agricultural Holdings Act, 1908, s. 1 (1)*—Improvements required to be made under tenancy agreement—Agreement made before January 1, 1921.]—A contract of tenancy made in 1906 for a term of fifteen years contained an agreement by the tenant to plant half the land with fruit trees & fruit bushes within the first four years, & the rest with fruit trees within the first ten years of letting. The tenant planted trees & bushes in accordance with the agreement. At the end of the tenancy he claimed compensation for the improvement thus made:—*Held*: he was not entitled to compensation, the improvement being one which he was required to make by the terms of his tenancy & the contract of tenancy having been made before Jan. 1, 1921.—*HUCKELL v. SAINTLY*, [1923] 1 K. B. 150; 92 L. J. K. B. 313; 128 L. T. 299, C. A.

239. *Add. Annotation*:—*As to (2) Reid. Premier Dairies v. Garlick*, [1920] 2 Ch. 17.

242a. *Agricultural Holdings Act, 1908*—Attempted exclusion of statutory compensation.]—*Re MASTERS & DUVEEN*, No. 267a, *post*.

## PART V. SECT. 3, SUB-SECT. 1.—B.

229 i. *Purchaser*.]—An estate was sold with entry to the purchaser at Martinmas 1922, & on the same date an existing lease of the lands terminated, & the tenant gave up possession. Less than two months later, he intimated a claim for compensation for improvements to the purchaser, & applied to the Board of Agriculture, who appointed an arbiter:—*Held*: the "landlord" liable to make payment of compensation to the tenant was the selling owner, in respect that he alone was the "landlord" at the termination of the tenancy when the tenant quitted the holding & the claim for compensation emerged, & the obligation so incurred did not transmit to the purchaser, & interdict against the arbn. proceedings granted.—*WADDELL v. HOWAT*, [1925] S. C. 484.—SCOT.

landlord abstains from terminating a tenancy, he gives no benefit to the tenant under s. 1 (2) (a) of the above Act where it is not proved that the tenancy was continued in consideration of the tenant executing the improvement.—*MACKENZIE v. MACGILLIVRAY*, [1921] S. C. 722 58 Sc. L. R. 488.—SCOT.

237 ix. ——— *Tenant laying down temporary pasture*.]—The fact that an arbiter finds that in laying down temporary pasture the tenant is complying with the rules of good husbandry, which he was bound to observe, does not preclude him from also finding that the temporary pasture is an improvement for which the tenant is entitled to compensation under the above Act.—*MACKENZIE v. MACGILLIVRAY*, [1921] S. C. 722; 58 Sc. L. R. 488.—SCOT.

PART V. SECT. 3, SUB-SECT. 1.—G.  
s. *Agricultural Holdings (Scotland) Act, 1908 (c. 64)*—*Sufficiency of notice*.]

—A tenant who has, before the determination of his tenancy, made it clear to the landlord that he proposes to claim for unexhausted manures & feeding stuffs, but without furnishing the particulars or amounts, has sufficiently complied with s. 6 (2) of the above Act.—*ROGER v. HUTCHESON*, [1922] S. C. (H. L.) 140, 170.—SCOT.

## PART V. SECT. 3, SUB-SECT. 1.—H. (b).

eg. *What questions arbitrator may determine—Termination of tenancy—Agricultural Holdings (Scotland) Act, 1908 (c. 10), s. 15*.]—In a note of suspension & interdict brought by the landlords of a farm, craving the ct. to interdict proceedings in an arbn. under the above Act upon a claim by the tenant, who had vacated the farm in favour of a new occupier, for compensation for improvements, the complainers maintained that the tenancy had not terminated, & that the appointment of an arbiter under the Act was

PART V. SECT. 3, SUB-SECT. 1.—D.  
237 vii a. ———.]—Where a



252. *Add. Annotation*:—*Mentd. Re Lister, Bradford Overseers & Corpn. v. Durrance* (1925), 42 T. L. R. 143.

255. *Add. Annotations*:—*Consd. Simpson v. Crowle*, [1921] 3 K. B. 243; *Smythe v. Wiles*, [1921] 2 K. B. 66. *Reid. St. Magnus, etc., Parochial Church Council v. London Diocese (Chancellor)*, [1928] P. 38; *Mansfield v. Robinson*, [1928] 2 K. B. 353. *Mentd. Hunter v. Stadtische Hochseefischerei Gemeinnutzige Gesellschaft* (1925), 133 L. T. 488.

259. *Add. Annotations*:—*Appld. Bradshaw v. Air Council*, [1926] Ch. 829. *Reid. Ellesmere v. I. R. Comrs.* (1918), 88 L. J. K. B. 337; *Haynes v. Aldridge Colliery Co.* (1923), 130 L. T. 282; *Mansfield v. Robinson*, [1928] 2 K. B. 353.

264. After this case add as follows:—  
*, further, Sect. 3, sub-sect. 3b, post.*

SUB-SECT. 1a.—COMPENSATION FOR INCREASED OR DIMINISHED VALUE OF HOLDING.

A. Compensation to Tenant.

See A. H. Act, 1923, s. 9.

B. Compensation to Landlord.

See A. H. Act, 1923, s. 10.

264a. Notice of claim—Time for giving—Agriculture Act, 1920 (c. 76).—*Held*: the meaning of sect. 19 of the above Act taken as a whole was that the landlord should have a right of compensation for deterioration under the sect. if he gave a notice before the termination of the tenancy & not otherwise; but if he had a right under contract to claim for deterioration apart from the sect., nothing in the sect. should interfere with that right.

A tenant held a farm as a yearly tenant under the landlord upon the terms, as the arbitrator found, of an agreement in writing under which the father of the tenant had originally held the farm. On Aug. 20, 1920, the landlord served a notice to quit upon the tenant, which expired as to the land, other than the boozy pasture, on Feb. 2, 1922. The tenant gave up possession of the land except the boozy pasture, the tenancy of which did not expire until May 1, 1922, upon that date. On Mar. 28, 1922, the landlord gave notice of & particulars of a counterclaim against the tenant for waste wrongly committed or permitted by the tenant & for breach of contract or otherwise, whereby he claimed for neglect in the care of hedges & ditches on the land & dirty land:—*Held*: (1) the landlord's claim was not barred by sect. 19 of the above Act; (2) the boozy pasture & the rest of the farm were held under one contract of tenancy;

illegal:—*Held*: the question of the claimant's title to present a claim was not one of the matters remitted by the Act to the exclusive jurisdiction of the arbiter, but was a question precedent to the existence of a statutory claim, & the ct. had jurisdiction to entertain the action of interdict.—*DONALDSON'S HOSPITAL (EDINBURGH) TRUSTEES v. EASLEMONT*, [1925] S. C. 199; on appeal, [1926] S. C. (H. L.) 68.—SCOT.

sk. Form of arbitration—Arbitration between outgoing & incoming tenants—Agricultural Holdings (Scotland) Act, 1908 (c. 64).—There is nothing illegal in the outgoing & incoming tenants entering into an agreement for a

common law arbn.—*ROGER v. HUTCHESON*, [1922] S. C. (H. L.) 140, 170.—SCOT.

257 H. — — — — —.]—Charges for preparing & adjusting a special case fall to be dealt with by the arbiter.—*THOMSON v. GALLOWAY*, [1919] S. C. 611; 56 So. L. R. 521.—SCOT.

PART V. SECT. 3, SUB-SECT. 2.

sl. Agricultural Holdings (Scotland) Act, 1908 (c. 64).—What questions arbitrator must determine.—Under s. 10 of the above Act it falls to the arbiter to determine questions connected with

the contract did not finally cease under sect. 10 (7) of the above Act until May 1, 1922, the date of the termination of the boozy tenancy, & the landlord's notice was therefore in time.—*Re ARDEN & RUTTER*, [1923] 2 K. B. 865; 130 L. T. 51; *sub nom. ARDEN v. RUTTER*, 92 L. J. K. B. 894, C. A.

*Annotation*:—As to (1) *Reid. Lowther v. Clifford*, [1927] 1 K. B. 130.

265a. Right to compensation—Tenant holding over after notice to quit.—A tenancy was determined by notice to quit on a certain day. The tenant remained on in possession for about nine months, & was finally ejected. Two days before his ejection he furnished details of his claim for compensation:—*Held*: the tenant, from the date when his notice expired, was not holding under a contract of tenancy, & the land which he persisted in occupying unlawfully was not a holding within sect. 11 of the above Act, & he, therefore, was not within the benefit of the Act.—*CAVE v. PAGE* (1923), 67 Sol. Jo. 659, C. A.

265b. Liability to pay compensation—"Landlord"—Purchaser entitled to rents—Purchase not completed till after claim.—Certain landowners let a farm to tenants. In 1917 they gave notice to the tenants to quit at Michaelmas, 1918, with a view to the sale of the farm. In Oct. 1917, they agreed to sell the farm to a purchaser. On July 5, 1918, the tenants gave to the purchaser, who was then entitled to the rents & profits, notice in writing under sect. 1 (1) of the Act of 1914 of their intention to claim compensation in terms of sect. 11 of the Act of 1908. On July 18, 1918, the sale of the farm was completed:—*Held*: (1) the purchaser was the "landlord" within the Acts; (2) the notice of intention to claim compensation was rightly given to him; (3) he was liable to pay compensation.—*BRADSHAW v. BIRD*, [1920] 3 K. B. 144; 90 L. J. K. B. 221; 123 L. T. 703, C. A.

*Annotations*:—As to (1) *Expld. Richards v. Pryse*, [1927] 2 K. B. 76. *Generally, Consd. Dale v. Hatfield Chase Corpn.*, [1922] 2 K. B. 282; *Tombs v. Turvey* (1923), 93 L. J. K. B. 785.

265c. — — — — — Person entitled to rents at end of tenancy.—(1) Where the tenant of an agricultural holding, who has been disturbed in his tenancy, becomes entitled under sect. 11 of the above Act to compensation for loss in connection with the sale or removal of his household goods, implements, or stock on the condition, among others, of giving to the landlord a reasonable opportunity of making a valuation of such goods, etc., the question whether he has given such a reasonable opportunity is in each case a question of fact depending on the circumstances. The

the time & validity of notices to quit & notices to claim compensation.—*COWDRAY v. FERRIES*, [1919] S. C. (H. L.) 27.—SCOT.

sm. Agriculture Act, 1920 (c. 76), s. 10.—*Claim exceeding one year's rent—Damage proved less than one year's rent.*—*Held*: the tenant was still entitled to one year's rent.—*M'HARG v. SPEIRS*, [1924] S. C. 272.—SCOT.

sn. — — — Loss from error in valuation of waygoing grain crop.—Under the lease of a farm the landlord took over the waygoing crop of grain from the outgoing tenant at fairs prices, the quantity of the growing crop being



mere lapse of an interval of several months between notice of intention to claim compensation & sale or removal is not of itself sufficient to satisfy the condition.

(2) Where the tenant of an agricultural holding has given notice to his landlord under sect. 11, proviso (b), of his intention to claim compensation for disturbance, & the landlord before the appointment of an arbitrator under that sect. assigns the reversion, the person who is liable to pay such compensation as may be awarded is the person who is entitled to receive the rents at the termination of the tenancy, & the notice of intention to claim so given to the original landlord will enure for the benefit of the tenant as against such last-named person.

(3) Assuming sect. 48 (2) of the above Act to apply to proceedings for compensation for disturbance as well as for improvements, the commencement of the "proceedings" is not the service of notice of intention to claim compensation, but the appointment of the arbitrator.—DALE v. HATFIELD CHASE CORPN., [1922] 2 K. B. 282; 92 L. J. K. B. 237; 128 L. T. 194; 87 J. P. 11; 20 L. G. R. 765, C. A.

—As to (2) *Consd. Tombs v. Turvey* (1923), 93 L. J. K. B. 785. *Reid. Richards v. Pryse*, [1927] 2 K. B. 76.

266a. — Notice of claim—To whom given—Purchaser entitled to rents.]—BRADSHAW v. BIRD, No. 265b, *ante*.

266b. — — — — Landlord—Subsequent alienation of reversion.]—DALE v. HATFIELD CHASE CORPN., No. 265c, *ante*.

266c. — Reasonable opportunity of making valuation—What amounts to.]—DALE v. HATFIELD CHASE CORPN., No. 265c, *ante*.

266d. — Commencement of "proceedings"—What amounts to.]—DALE v. HATFIELD CHASE CORPN., No. 265c, *ante*.

266e. Agriculture Act, 1920 (c. 76)—Right to compensation—Withdrawal of notice to quit—What amounts to.]—In Sept. 1920, a landlord gave to the tenant notice to quit his tenancy of a farm for which he was paying a yearly rental of £506 2s. On Dec. 31, 1920, the landlord wrote to the tenant: "I have received an offer of £670 *per annum* for your holding. If you choose to give me the same, you are most welcome to continue the tenancy":—*Held*: having regard to sect. 10 of the above Act, the letter of Dec. 31, 1920, did not constitute an offer in writing to withdraw the notice to quit within the proviso to sect. 10 (1) of that Act.—*Re* PERRETT & BENNETT-STANFORD, [1922] 2 K. B. 592; 91 L. J. K. B. 930; 128 L. T. 57; 38 T. L. R. 849; *sub nom.* PERRETT v. BENNETT-STANFORD, 66 Sol. Jo. 680, C. A.

266f. — — — Ejectment proceedings following notice to quit.]—The landlord of a farm served on the tenant a notice to quit on Mar. 25, 1923. Owing to the illness of his wife, the tenant did not quit the farmhouse

at the expiry of the notice, but he quitted the land, save as under the custom of the country, immediately after the expiry of the notice. Ejectment proceedings were brought by the landlord & judgment was obtained by default of appearance. On being served with the notice to quit, the tenant duly served on the landlord a notice of intention to claim compensation for disturbance under sect. 10 of the above Act:—*Held*: if the tenant was ejected, the ejectment was in consequence of the notice to quit, & therefore, the tenant had quitted the farm in consequence of the notice to quit terminating the tenancy, & the tenant was accordingly entitled to compensation under sect. 10 of the Act.—MILLS v. ROSE (1923), 68 Sol. Jo. 420, C. A.

266g. — — — Necessity for proof of loss or expense—Entire holding in occupation of sub-tenants.]—The effect of sect. 10 (6) of the above Act is that as a condition precedent to his right to compensation for disturbance a tenant must prove that he has incurred some loss or some expense of the kind indicated in the sub-sect.; that on proof of that he is entitled as a minimum to one year's rent of the holding; but that unless he proves some loss or some expense of the kind indicated he does not bring himself within sub-sect. 6 & is not entitled to compensation. Therefore where a lease of a holding under the Act was duly determined by notice to quit & the holding was entirely in the occupation of sub-tenants whose sub-tenancies terminated without notice on the termination of the lease, & the lessee did not sell or remove any household goods, implements of husbandry, fixtures, farm produce or farm stock on or used in connection with the holding:—*Held*: he was not entitled to compensation for disturbance under sect. 10. —AGRICULTURE & FISHERIES MINISTER v. DEAN, [1924] 1 K. B. 85; 93 L. J. K. B. 374; 130 L. T. 709; 40 T. L. R. 285; 68 Sol. Jo. 401, C. A.

Annotation:—*Consd. Westlake v. Page*, [1926] 1 K. B. 298.

266h. — Notice of claim—Time for giving—"Termination of tenancy"—Tenancy of different parts of holding expiring at different times.]—A landlord let a farm, according to the custom of the country, upon a yearly tenancy on the terms that the tenant should enter into occupation of the main portion of the land on Apr. 6, & of the farmhouse, farm buildings, & the remainder of the land on May 13, & that "on the termination of the tenancy" he should give up possession of the different portions of the farm on the respective dates, there being one rent reserved for the whole farm:—*Held*: the "termination of the tenancy" for the purposes of sect. 10 (7) of the above Act took place on May 13, notwithstanding that the main portion of the premises had to be surrendered at the earlier date.—*Semble*: the proviso to sect. 18 (2)

ascertained by arbn. After threshing it was found that the quantity had been underestimated by the arbiters. The outgoing tenant claimed, under the above sect., as compensation for loss in connection with the sale of the farm produce, a sum representing the difference between the price he had received & the price of the actual quantity threshed:—*Held*: the loss was not "directly attributable to the

quitting of the holding," but had arisen from an error of the arbiters.—MCGREGOR v. BOARD OF AGRICULTURE FOR SCOTLAND, [1925] S. C. 613.—SCOT.

*sp. Agricultural Holdings (Scotland) Act, 1923 (c. 10), s. 12 (6)—Refusal of landlord to take over stock—Claim for loss on sale.*—The tenant of a farm received notice to quit. Having taken over

another farm with a bound stock, he sold his sheep at a displensing sale, the landlord refusing to take them over. In a claim for compensation for the difference between the price realised & the "going concern" value:—*Held*: the loss was directly attributable to the quitting of the holding under the above sub-sect.—KEAWICK v. WRIGHT, [1924] S. C. 766.—SCOT.

of the above Act applies only to a case where the tenant has been allowed by a landlord to remain on, after the cesser of the agreement of tenancy, under a new agreement.—*SWINBURNE v. ANDREWS*, [1923] 2 K. B. 483; 92 L. J. K. B. 889; 129 L. T. 650; 39 T. L. R. 545; 67 Sol. Jo. 726, C. A.

*Annotation*:—*Consd. Re Arden & Rutter*, [1923] 2 K. B. 865.

**266i.** Given under Act subsequently repealed—Necessity for notice under repealing Act.]—A tenant who had on Sept. 29, 1920, received notice to quit his farm on Sept. 29, 1921, gave notice on Nov. 17, 1920, to his landlord of his intention to claim compensation for disturbance under A. H. Act, 1908, s. 11. That sect. was repealed by the Act of 1920, which came into force on Jan. 1, 1921, & by sect. 10 substituted a new right to compensation for disturbance. The tenant gave no notice of his intention to claim compensation under that sect. as required by sub-sect. 7 (b) thereof:—*Held*: not having given notice under sect. 10 of the Act of 1920, he had no right of claim under that sect., but his right of making a claim under A. H. Act, 1908, s. 11, was preserved by Interpretation Act, 1889 (c. 63), s. 38, notwithstanding the repeal of sect. 11.—*HAMILTON-GELL v. WHITE*, [1922] 2 K. B. 422; 91 L. J. K. B. 875; 127 L. T. 728; 38 T. L. R. 829; 67 Sol. Jo. 80, C. A.

*Annotation*:—*Consd. Briggs v. Dryden, Talbot v. Vickers*, [1925] 2 K. B. 667.

See, now, A. H. Act, 1923, s. 12.

**266j.** Agricultural Holdings Act, 1923 (c. 9)—Right to compensation—Refusal or failure to agree to arbitration.]—(1) A landlord of a holding gave the tenant notice to quit, & in the same document stated that he had no desire to terminate the tenancy if the tenant would agree to his demand that the rent should be fixed by arbn. The tenant did not agree to arbn.:—*Held*: the tenant did not thereby disentitle himself to compensation, for the refusal or failure to agree to arbn. dealt with by sect. 12 (1) (e) of the above Act is a refusal or failure which has taken place before the date of the notice.

(2) It cannot be laid down as a matter of law, that in no case can the minimum compensation of one year's rent provided by sect. 12 (6) be reduced under the provisions of sect. 12 (8) if the tenant, having held two or more holdings as tenant, remains in possession of one of them. But the provisions of sect. 12 (8) have no application to a case in which the tenant remains in possession of the other holding or holdings, not as tenant, but as owner.—*WESTLAKE v. PAGE*, [1926] 1 K. B. 299; 95 L. J. K. B. 456; 134 L. T. 612, C. A.

**266k.** — Amount of compensation—Tenant holding two or more holdings.]—*WESTLAKE v. PAGE*, No. 266j, *ante*.

**266l.** — Liability to pay compensation—"Landlord"—Agreement for sale—Whether purchaser entitled to rents.]—In July, 1924, the owner of an estate, which included a farm in the occupation of tenants, agreed to sell the farm to a purchaser, who agreed to pay the purchase money in Oct. 1924. The agree-

ment was subject to conditions of sale, by one of which the purchaser agreed to pay the balance of the purchase money on the day named in the contract, & in that respect time was to be of the essence of the contract; & it was further agreed that "all rents & periodical outgoings" should be "apportioned up to the completion," & added to or deducted from the purchase money as the case might require. On Sept. 23, 1924, notice was given to the tenants to quit the farm on Sept. 29, 1925. The purchase was not in fact completed until Oct. 1925:—*Held*: (1) "completion" in the condition of sale meant actual completion, & not the date named for completion; (2) on Sept. 29, 1925, the vendor was the "person entitled to receive the rents & profits" of the farm within sect. 57, & he, & not the purchaser, was the "landlord" within sect. 12 & the person to pay compensation to the tenants.—*RICHARDS v. PRYSE*, [1927] 2 K. B. 76; 96 L. J. K. B. 743; 137 L. T. 170, C. A.

**266m.** — Notice of claim—By whom given—Joint tenancy.]—W., who had been tenant of a farm for many years, entered into negotiations with his landlord to have his tenancy agreement, upon the termination thereof, transferred to himself & B., & as the result of those negotiations W. became joint tenant of the farm with B. at the request of, & for the protection of, the landlord. Upon the termination of W.'s tenancy B. paid W. for the tenant right & also provided the whole of the finance necessary for carrying on the farm. On Feb. 21, 1924, W. alone gave notice to quit. On Mar. 21, 1924, the landlord served notice to quit upon both tenants, upon the ground that they were not cultivating the farm according to the rules of good husbandry. Thereupon B. gave notice to the landlord of his intention to claim compensation:—*Held*: (1) the notice given by B., being the one of the joint tenants who owned the household goods & agricultural implements & had suffered loss by their removal or sale upon the expiration of the joint tenancy, was sufficient to give the arbitrator jurisdiction; (2) it being the object of sect. 12 (7) (b) of the above Act that the landlord should have notice of what compensation was claimed against him, it would, in the case of a joint tenancy, be a great hardship upon the tenant who had a proper & valid claim for compensation which was to be defeated because his joint tenant, who had no such claim, had not joined in the notice.—*HOWSON v. BUXTON* (1928), 97 L. J. K. B. 749; 139 L. T. 504, C. A.

**SUB-SECT. 3a.**—COMPENSATION FOR ENFORCEMENT OF PROPER CULTIVATION.

**266n.** Corn Production Act, 1917 (c. 46), s. 9 (9)—Who is person interested—Tenant.]—(1) A notice to convert certain land into tillage, made under sub-sect. 1 of the above sect. & Defence of the Realm Regulations, 1914, reg. 2 M, was served on the owner of land who was in occupation. After the service of the notice the owner agreed to let the land to a

tenant who entered into occupation & carried out the requirements of the notice. The notice had not been served on the tenant. The tenant claimed compensation for loss alleged to have been suffered by him by reason of his having carried out the requirements of the notice, & the claim was referred to arbn. under the Act, & the arbitrator stated a case in which he asked the ct. certain questions:—*Held*: the tenant was a "person who was interested in the land in respect of which the notice was served," within sub-sect. 9 of the above sect., inasmuch as he was interested at the time when the loss was alleged to have occurred: & the tenant came within the words of the sub-sect. "who suffers any loss by reason of the exercise of the powers conferred by this sect.," & was entitled to compensation for the loss, if any, though the notice had not been served on him, as he had carried out the requirements of the notice.

(2) Two notices were served, each in respect of a different field in a separate farm occupied by the same tenant:—*Held*: in the circumstances, the loss, if any, in respect of each field should be assessed separately.

(3) The tenant of certain land in respect of which a notice to plough had been served under the Act sent in a claim for compensation on Sept. 28, 1918, for the year 1918, & in 1919 he sent in a claim for compensation for 1919. The arbn. to assess compensation was held after both claims had been sent in:—*Held*: the assessment should not be based on the loss, if any, in each year separately; (BANKES, L.J.) the arbitrator should take the experience of the two years, setting off any profit in one year against any loss in the other; (SCRUTTON & ATKIN, L.J.J.) the whole effect of the exercise of the powers conferred by the sect. had to be considered by the arbitrator, including an estimate of the probable loss or profit in the future.—*Re TODD & NORTH RIDING OF YORKSHIRE AGRICULTURAL EXECUTIVE COMMITTEE*, [1921] 1 K. B. 281; 90 L. J. K. B. 228; 124 L. T. 407; 85 J. P. 89; 18 L. G. R. 790, C. A.

266o. — Separate notices as to parts of two farms—Occupied by one tenant—Method of assessment.]—*Re TODD & NORTH RIDING OF YORKSHIRE AGRICULTURAL EXECUTIVE COMMITTEE*, No. 266n, *ante*.

266p. — Separate claims by tenant for two successive years—Method of assessment.]—*Re TODD & NORTH RIDING OF YORKSHIRE AGRICULTURAL EXECUTIVE COMMITTEE*, No. 266n, *ante*.

266q. Award—Jurisdiction of court to remit—Award bad on face for ambiguity or uncertainty.]—In an arbn. for the purpose of awarding compensation under the above Act, the High Ct. may remit to the arbitrator an award bad on the face of it for ambiguity or uncertainty, in accordance with Arbitration Act, 1889 (c. 49), although by sect. 11, sub-sect. 1, of the above Act, it is provided that arbn. thereunder shall be in accordance with A. H. Act, 1908, Sched. 2, which excludes Arbitration Act, 1889.—*MURRAY v. DALTON* (1920), 90 L. J. K. B. 401; 124 L. T. 762; 37 T. L. R. 234; 65 Sol. Jo. 155, D. C.

Annotation:—*Reid. Re Jones & Carter*, [1922] 2 Ch. 599.

Control of food in wartime generally, see *FOOD & DRUGS*, Vol. XXV., pp. 132 *et seq.*

SUB-SECT. 3b.—ASCERTAINMENT OF COMPENSATION.

266r. In respect of what holdings compensation payable—Tenant sub-letting farmhouse.]—By an agreement of tenancy a landlord demised to the tenant a farm of 1,000 acres together with a farmhouse & some cottages. There was a provision that the tenant should use the demised premises for farming purposes. The tenant subsequently, with the permission of the landlord, sub-let the farmhouse to a lady who used it as a house for paying guests. Upon the determination of the lease, the tenant made a claim for compensation under A. H. Act, 1908:—*Held*: the ct. must have regard to the substance of what had been done; by the lease the holding was an agricultural one, & the fact that the farmhouse had been let to a sub-tenant did not cause it to cease to be a "holding" within the Act.—*Re RUSSELL & HARDING* (1922), 128 L. T. 476; 39 T. L. R. 92; 67 Sol. Jo. 123, C. A.

— Compensation for improvements—Under Agricultural Holdings Act, 1908.]—See original volume, p. 42, Nos. 230–232.

266s. Notice of claim—To whom given—Purchaser—Taking subject to existing tenancies.]—Applt. was the tenant of an agricultural holding under a tenancy expiring on Sept. 29, 1922. In May, 1922, the landlord contracted to sell the holding, subject to the tenancy, to resp., completion to take place on Sept. 29, 1922. The completion in fact took place on Nov. 2. The contract of sale contained a general condition that the rents, profits or possession of the property should be received or retained & the outgoings discharged by the vendor up to the time appointed for completion, & that current rents should be apportioned. By a special condition it was provided that for the purpose of this general condition any rent payable on Sept. 29 was to be deemed "current rent," & was to be payable by the purchaser on completion. After the determination of the tenancy the purchaser as "landlord" made a claim against the tenant for dilapidations, & the tenant counterclaimed for compensation:—*Held*: the purchaser was not at the date of the termination of the tenancy the "landlord" within A. H. Act, 1908, s. 48, & Agriculture Act, 1920 (c. 76), s. 18.—*TOMBS v. TURVEY* (1923), 93 L. J. K. B. 785; 131 L. T. 330; 68 Sol. Jo. 385, C. A.

— For compensation for improvements—Under Agricultural Holdings Act, 1908.]—See original volume, p. 46, Nos. 245–250.

For compensation to landlord for deterioration.]—See No. 264a, *ante*.

For compensation for disturbance—Under Agricultural Holdings Act, 1908.]—See original volume, p. 48, No. 266; & Nos. 265b, 265c, *ante*.

Under Agriculture Act, 1920 (c. 76).]—See Nos. 266h, 266i, *ante*.



**266t. Particulars of claim—Sufficiency.]—Held:** having regard to the severity of the penalty attached to non-compliance with Agriculture Act, 1920 (c. 76), s. 18 (2), namely, total extinguishment of the claim, the presumption was that the requirement of “particulars” was not intended to be construed strictly, & for the purpose of keeping the claim alive & enabling the parties to get before the arbitrator, a less degree of particularity was required to satisfy the sect. than would be required of particulars of a statement of claim in an action, notwithstanding that when the parties get before the arbitrator he might be of opinion that the particulars were insufficient, & might order further & better particulars to be given.—*JONES v. EVANS*, [1923] 1 K. B. 12; 92 L. J. K. B. 35; 128 L. T. 228, C. A.

**266u. Award—Setting aside—Jurisdiction of court—Error on face of award.]—The inherent jurisdiction of the High Ct. to set aside an award under A. H. Act, 1908, on the ground of error appearing on the face of it where there has been no misconduct on the part of the arbitrator is not taken away by that Act. That jurisdiction was not excluded by Arbitration Act, 1889 (c. 49), & when the jurisdiction under that Act with reference to arbn. proceedings under the A. H. Act, 1908, was transferred to the county ct. by that Act, the inherent jurisdiction of the High Ct. in those matters was neither expressly nor by implication transferred to it.—*Re JONES & CARTER*, [1922] 2 Ch. 599; 91 L. J. Ch. 824; 127 L. T. 622; 38 T. L. R. 779; 66 Sol. Jo. 611, C. A.**

*Annotation:—Consd. Horrell v. St. John of Bletso*, [1928] 2 K. B. 616.

**266v. — Time for notice of motion to set aside.]—In an arbn. under the A. H. Act, 1908, the award was made on Apr. 8, 1921, & on June 3 applt. gave notice of motion to set aside the award on various grounds. There was no rule either under County Cts. Act, 1888 (c. 43), or under A. H. Act, 1908, dealing with the time within which a notice of motion to set aside an award must be given:—*Held:* the words “principles of practice” in County Cts. Act, 1888 (c. 43), s. 164, did not refer to specific rules of the High Ct., & the time limit of six weeks under R. S. C., Ord. 64, r. 14, was not a “principle of practice” within that sect. of the Act; therefore the only time limit applicable in the present case was under Stat. Limitations & under the doctrine of laches, & the motion to set aside the award was made in time.—*McCREAGH v. FREARSON* (1921), 91 L. J. K. B. 365; 126 L. T. 601, D. C.**

**266w. — Order directing arbitrator to state special case—Appeal lies to Divisional Court.]—*STEVENS v. DOWNHAM, ISLE OF ELY (FEOFFERS OF POOR LANDS)*, [1926] W. N. 168.**

**266x. No power to order arbitrator to state special case on question not within submission to arbitration.]—*STEVENS v. DOWNHAM, ISLE OF ELY (FEOFFERS OF POOR LANDS)*, [1926] W. N. 168.**

**Of compensation for improvements—Under Agricultural Holdings Act, 1908.]—See original volume, p. 47, No. 254–256.**

**266y. Recovery of compensation agreed or awarded—In what court.]—A. H. Act, 1923, s. 19, does not give exclusive jurisdiction to the county ct. in all cases & prevent an action from being brought to recover the sum in the High Ct., when it is in excess of the amount ordinarily recoverable in the county ct.—*HORRELL v. ST. JOHN OF BLETSO (LORD)*, [1928] 2 K. B. 616; *sub nom. HORRELL v. BLETSO*, 97 L. J. K. B. 65; 139 L. T. 400.**

**266z. Costs—Agreement as to—Validity.]—The parties to an arbn. under A. H. Act, 1923, agreed beforehand that the successful party should have costs on the High Ct. scale. The agreement was not communicated to the arbitrator, who gave his award in favour of the landlord, & awarded that each party should pay his own costs. In an action by the landlord to enforce the agreement the judge gave judgment for the tenants, on the ground that the Act gave discretion to the arbitrator as to costs:—*Held:* the agreement was valid & enforceable.—*MANSFIELD v. ROBINSON*, [1928] 2 K. B. 353; 97 L. J. K. B. 466; 139 L. T. 349; 92 J. P. 126; 44 T. L. R. 518, D. C.**

**267a. — “Treated as a market garden.”]—(1) *Held:* the word “treated” in sect. 42 (1) of the above Act, in the collocation in which it was there used did not mean simply that the holding should be in use or cultivation as a market garden, but that it should be let by one person as landlord & occupied by the other as tenant as a market garden, & so treated as between them for the purpose of governing their rights in respect of the holding as a market garden.**

By an agreement in writing dated Dec. 31, 1919, & made between the landlord of the one part & the tenant therein described as “market gardener” of the other part, it was agreed (clause 1): that the landlord should let & the tenant should take the farm therein described for the term of one year from Sept. 19, 1919, & so on from year to year at the yearly rent of £185 by half-yearly payments on Mar. 25 & Sept. 29 in each year, & that the tenant should pay to the landlord as a further rent at the rate of £6 per cent. *per annum* on all sums of money expended by the landlord in the supply of any fruit trees during the tenancy. By clause 7 the tenant was to cultivate the land on the best & most approved system of gardening in

gave such notice, although they did not state the legal basis of the claim or its actual amount.—*MONT-ROSE (DUKE) v. HART*, [1925] S. C. 166.—SCOT.

*sa. Agricultural Holdings (Scotland) Act, 1908 (c. 84)—Appeal—Decision of court on case stated—Binding on arbitrator.]—MITCHELL GILL v. BUCHAN*, [1921] S. C. 390; 58 Sc. L. R. 371.—SCOT.

**PART V. SECT. 3, SUB-SECT. 3b.**

**266t. 1. Particulars of claim—Sufficiency—Agricultural Holdings (Scotland) Act, 1923 (c. 10), s. 15 (2).]**—By a letter, written on receipt of a notice from the tenant of his intention to terminate his tenancy of a sheep farm, the landlord intimated that he reserved his claim in respect of depletion of the sheep stock; & by a second letter, written within two months after the termination of the tenancy, in which he referred to his former

letter, he stated that only 51 per cent. of the sheep stock had been delivered to the incoming tenant, & that the amount of the claim would be intimated when the exact shortage was determined:—*Held:* (1) in view of the severity of the penalty attached to non-compliance, the requirements of the above sub-sect. were sufficiently complied with if fair notice was given to the opposite party of the nature of the claim against him & of the case he had to meet; (2) the letters

general practice in the neighbourhood, & was not to cut down, grub up, or destroy any fruit trees growing in or upon the land, or at any time to be planted thereon, under the provisions of the agreement, without the consent in writing of the landlord or his agent first had & obtained. By clause 9 the landlord was during the term to supply the tenant at his own expense with all fruit trees which might at any time be agreed between the landlord & tenant to be necessary, & the tenant was to pay a certain additional rent in respect of the fruit trees so supplied. Clause 11 contained the following proviso: "That nothing herein contained shall be deemed to be an agreement by the landlord that the premises hereby demised or any part thereof shall be let or treated as a market garden or give rise to a claim for compensation for fruit trees or bushes under A. H. Act, 1908, or any statutory modification thereof":—*Held*: (2) clause 11 of the agreement contained the clearest possible expression of the intention of the parties that the holding was not to be treated as a market garden; there was therefore no agreement in writing within sect. 42 (1) of the Act, by which it was agreed that it should be let or treated as a market garden, & therefore no claim to compensation on that basis arose, because the existence of such an agreement was a condition precedent to such a claim; (3) the agreement was not one which was avoided by sect. 5 of the Act,

because the condition precedent to the tenant having the right to claim compensation had not been satisfied.—*Re MASTERS & DUVEEN*, [1923] 2 K. B. 729; 68 Sol. Jo. 11; *sub nom. MASTERS v. DUVEEN*, 93 L. J. K. B. 57; 130 L. T. 13, C. A.

**267b. Market garden—What is—Garden of country house—Sale of produce.**—The fact that the occupier of a country house sells regularly one-half of the produce of the gardens occupied therewith does not constitute the gardens a market garden.—*BICKERDIKE v. LUCY*, [1920] 1 K. B. 707; 89 L. J. K. B. 558; 84 J. P. 61; 36 T. L. R. 210; 64 Sol. Jo. 257; 18 L. G. R. 207, D. C.

*Annotation*:—*Refd. Lowther v. Clifford* (1925), 90 J. P. 55.

**267c.**—Land was cultivated in order that the crops might be sold, & the crops included fruit & rhubarb:—*Held*: (1) the land was a market garden within A. H. Act, 1923, s. 57; (2) having regard to sect. 54 & other sects. of that Act, sect. 16 should not be read with an unrestricted meaning, & the landlord's right of action to recover the expense of making up a road had not been affected by the provision for reference to arbn. in that sect. (3) *Semble*: sect. 16 deals with procedure.—*LOWTHER v. CLIFFORD*, [1927] 1 K. B. 130, 95 L. J. K. B. 576, 135 L. T. 200; 90 J. P. 113; 42 T. L. R. 432; 70 Sol. Jo. 544; 24 L. G. R. 231, C. A.

*Annotation*:—*As to* (3) *Refd. Mansfield v. Robinson*, [1928] 2 K. B. 353.

## Part VI.—Fixtures.

**268. Add. Annotations**:—*Consd. Re Mann & Harvey* (1920), 123 L. T. 242. *Refd. Pole-Carew v. Western Counties & General Manure Co.*, [1920] 2 Ch. 97.

**268a.**—**Removal by tenant—Agricultural Holdings Act, 1908, s. 21—Power to contract out of Act.**—A. H. Act, 1908, contains no prohibition against the parties to a lease or tenancy contracting themselves out of the provisions of sect. 21 of the Act, & it is therefore competent to them to do so.

A lease of a farm contained a covenant by the lessee to deliver up at the end of the term all the demised premises & all new & other buildings & erections thereon & all such fixtures as were in anywise affixed or fastened to the freehold of the premises:—*Held*: the covenant effectually excluded the provisions of sect. 21 of the Act, & the tenant was not entitled to remove certain buildings & fixtures erected & affixed by him during the term.—*PREMIER DAIRIES v. GARLICK*, [1920] 2 Ch. 17; 89 L. J. Ch. 332; 123 L. T. 44; 64 Sol. Jo. 375.

**268b.**—**No notice by tenant of intention to remove—Claim by tenant for loss on**

**removal.**—An agricultural tenant who at the expiration of his tenancy omits to give to the landlord, under A. H. Act, 1908, s. 21, notice of his intention to remove a fixture or building, whereby the landlord is prevented from exercising the option given to him by the Act to purchase the same, cannot afterwards claim compensation for expenses or loss suffered through the removal under A. H. Act, 1914, s. 1, & A. H. Act, 1908, s. 11.—*Re HARVEY & MANN* (1920), 89 L. J. K. B. 687; *sub nom. Re MANN & HARVEY*, 123 L. T. 242, C. A.

**271. Add. Annotation**:—*Refd. Pole-Carew v. Western Counties & General Manure Co.*, [1920] 2 Ch. 97.

**273. Add. Annotation**:—*As to* (3) *Refd. Vaudeville Electric Cinema v. Muriset*, [1923] 2 Ch. 74.

**275. Add. Annotation**:—*Consd. Re Mann & Harvey* (1920), 123 L. T. 242.

**276. Add. Annotation**:—*As to* (4) *Refd. Premier Dairies v. Garlick*, [1920] 2 Ch. 17.

**277. Add. Annotation**:—*As to* (1) *Refd. Re Rogerstone Brick & Stone Co., Southall v. Wescomb*, [1919] 1 Ch. 110.

### PART VI.

**m i.** —.—.]—Where a lease of farm land provides that the lessee shall have the right, within a specified time after the expiration of the term, to remove any fence which he may have erected during his occupancy, & he erects a fence consisting of strands of wire carried on wooden pickets,

the pickets & wire become part of the land, subject to the lessee's contractual right to sever them, thereby restoring them to the condition of chattels, & to remove them.—*CHERRY v. BREDIN* (Sask.), [1927] 3 D. L. R. 326; [1927] 2 W. W. R. 314.—*CAN.*

**n i.** —.— *Windmill & stable windows.*]

—A windmill, wire fencing & windows in a stable, erected or furnished by a tenant of agricultural land:—*Held*: in view of the degree of annexation & the object of the annexation, to be removable by the tenant.—*CARSCALLEN v. LERSON* (Alta.), [1927] 4 D. L. R. 797; [1927] 3 W. W. R. 425.—*CAN.*

## Part VIII. Growing Crops and Crops, Emblements, and Gleaning.

280. *Add. Annotations*:—*Refd.* Richards v. Davies, [1921] 1 Ch. 90; Back v. Daniels (1924), 69 Sol. Jo. 160.
284. *Add. Annotations*:—*Mentd.* Cohen v. Roche (1926), 95 L. J. K. B. 945; Chaney v. Maclow (1928), 45 T. L. R. 135.
286. *Add. Annotation*:—*Consd.* Stephenson v. Thompson, [1924] 2 K. B. 240.
288. *Add. Annotation*:—*Refd.* English Hop Growers v. Dering, [1928] 2 K. B. 174.
296. *Add. Annotations*:—*Consd.* Stephenson v. Thompson, [1924] 2 K. B. 240. *Refd.* English Hop Growers v. Dering, [1928] 2 K. B. 174.
298. *Add. Annotation*:—*Refd.* Back v. Daniels (1924), 69 Sol. Jo. 160.
304. *Add. Annotations*:—*Consd.* Lebeaupin v. Crispin, [1920] 2 K. B. 714. *Expld. & Dstd.* Re Wait, [1927] 1 Ch. 606.
- 311a. ———. ———.]—At an auction sale of grass & crops held at a farm pltf. purchased the crop of swedes in one of the fields, & deft. purchased the grass on an adjoining field. One of the conditions upon which pltf. purchased the crop of swedes was that he should not remove from the field more than one-half of the crop of swedes, the other half having to be consumed on the field. Deft. put a number of sheep into his field of grass, & the sheep got into pltf.'s field of swedes & did considerable damage to the swedes:—*Held*: the fact that the right of pltf. to remove the swedes from the field was limited to one-half of the crop did not prevent him from maintaining an action of trespass in respect of the damage done by deft.'s sheep, as pltf. had such an exclusive right of possession in the crop as would entitle him to maintain an action of trespass.—WELLS v. COURTIER, [1918] 1 K. B. 200; 87 L. J. K. B. 299; 118 L. T. 256; 34 T. L. R. 115; 62 Sol. Jo. 161, D. C.
- Annotation*:—Richards v. Davies, [1921] 1 Ch. 90.
315. *Add. Annotations*:—*As to* (1) *Refd.* Brightman v. Tate (1919), 35 T. L. R. 209; Gurney v. Houghton (1920), 123 L. T. 706; Hudson's Bay Co. v. Maclay (1920), 36 T. L. R. 469; Newcastle Breweries v. R., [1920] 1 K. B. 854; Shutler v. Rolfe (1920), 36 T. L. R. 828.
317. *Add. Annotation*:—*Refd.* English Hop Growers v. Dering, [1928] 2 K. B. 174.
- 332a. ———. Not lessee for life.]—KNEVIT v. POOLE (1601), Gouldsb. 143; Cro. Eliz. 463; 75 E. R. 1053.

## Part IX.—Trees and Timber.

- 352a. ———. ———. ———.]—*Re* TOWER'S CONTRACT, [1924] W. N. 331.
362. *Add. Annotation*:—*Mentd.* *Re* Terry, Terry v. Terry (1918), 87 L. J. Ch. 577.
366. *Add. Annotations*:—*Refd.* Horlick v. Scully, [1927] 2 Ch. 150. *Mentd.* Lloyd-Jones v. Clark-Lloyd, [1919] 1 Ch. 424.
392. *Add. Annotations*:—*Refd.* Horlick v. Scully, [1927] 2 Ch. 150. *Mentd.* Lloyd-Jones v. Clark-Lloyd, [1919] 1 Ch. 424.
395. *Add. Citation*:—15 W. R. 640.
396. *Add. Annotations*:—*Refd.* De Silva v. Korossa (Ceylon) Rubber Co. (1919), 88 L. J. P. C. 54; Edwards v. Birmingham Navigations, [1924] 1 K. B. 341; Brooke v. Bool, [1928] 2 K. B. 578.

### PART VIII. SECT. 1.

280 i. *Sale—Interest in land—Passing before severance—Statute of Frauds—(Grass.)*—ROBINSON v. LONG, [1923] 3 D. L. R. 918.—CAN.

286 ii. ———. ———.]—As a general rule a contract for the sale of standing timber which is not to be severed immediately is a sale of an interest in land.—HANDY v. CAR-RUTHERS (1893), 25 O. R. 279.—CAN.

b i. ———. ———.]—MESSERVEY v. CENTRAL CANADA CANNING CO., [1923] 4 D. L. R. 1202; 3 W. W. R. 365.—CAN.

e i. ———. ———.]—Crops growing at the completion of a sale of land pass to the purchaser, unless there be a stipulation to the contrary.—ANDERSON v. STASIUK, [1926] 1 D. L. R. 347; [1926] 1 W. W. R. 107; 20 Sask. L. R. 269.—CAN.

e ii. ———. ———.]—*Sale by mortgagee.*—A conveyance by a mtgee. under a power of sale entitles the purchaser to the growing crops.—DYCK v. DYCK, [1926] 3 W. W. R. 762; [1927] 1 D. L. R. 458; 36 Man. L. R. 210.—CAN.

e iii. ———. ———.]—Growing crops are "goods" within Sale of Goods Act when there is an agreement that they

are to be severed under the contract of sale; but, otherwise, they are part of the land & pass with it.—SHEWCHUK v. SEAFRED, [1927] 3 D. L. R. 280; [1927] 2 W. W. R. 207; 36 Man. L. R. 469.—CAN.

e iv. ———. ———.]—*Right of vendor to crop on cancellation of contract—Who entitled to cut crops.*—A provision in an agreement for the sale of land that the vendor, on becoming entitled to cancel the contract, shall have the right to enter into possession & to possess "the growing crop," does not give him any right to crops that have been cut & which thereby became chattels.—CANADIAN PACIFIC RY. CO. v. STEWART (Sask.), [1927] 3 D. L. R. 555; [1927] 2 W. W. R. 385.—CAN.

g i. *Permit to cut hay—Cancellation if land leased.*—*Held*: the permit was not cancelled by only a part of the land being leased.—DECOCK v. HARRAGER (1909), 19 Man. L. R. 31.—CAN.

p i. ———. ———.]—*Right of devisee to crops sown by share tenant—& growing at testator's death.*—*Held*: as testator's interest in the wheat while growing arose out of the agreement, which amounted to a severance of the crop from the land, the money payable for testator's share in the crop fell into the residue of the estate.—*Re*

BURGIN, [1922] V. L. R. 686.—AUS.

p ii. ———. ———.]—*Cost of threshing.*—A lessor on the crop-payment plan agreed to pay one-half the cost of threshing:—*Held*: he was liable for one-half of the cost of hauling the sheaves from the stook to the thresher.—TOOHER v. JOHNSON (1922), 68 D. L. R. 768; 32 Man. L. R. 356; [1922] 2 W. W. R. 616.—CAN.

p iii. ———. ———.]—*Failure of lessor to supply seed—Measure of damages.*—BEAMAN v. TULLY (Sask.), [1927] 4 D. L. R. 113; [1927] 2 W. W. R. 953.—CAN.

p iv. ———. ———.]—*Crop-payment covenant—On whom binding.*—*Held*: binding only on the purchaser & his successors in interest under the covenant.—*Re* SASKATCHEWAN CO-OPERATIVE WHEAT PRODUCERS, LTD., *Re* SENER & HCUCK (Sask.), [1927] 4 D. L. R. 1090; [1927] 3 W. W. R. 547.—CAN.

### PART IX. SECT. 2, SUB-SECT. 1.

403 iii. ———. ———.]—*Property in severed portion.*—Where W. cuts off that portion of a tree overhanging his lot, the trunk of which is on L.'s lot, although the ownership of the fallen portion is in L. & he has the right to enter on W.'s lot & take it away, there is no obligation on the part of W. to deliver



404. *Add. Annotations*:—*Distd. Noble v. Harrison*, [1926] 2 K. B. 332. *Refd. Lagan Navigation Co. v. Lambeg Bleaching, Dyeing & Finishing Co.*, [1927] A. C. 226.
405. *Add. Annotations*:—*As to (1) Refd. Noble v. Harrison*, [1926] 2 K. B. 332. *As to (2) Refd. Collis v. Amphlett* (1919), 89 L. J. Ch. 101; *Edwards v. Birmingham Navigations*, [1924] 1 K. B. 341. *As to (3) Refd. Edwards v. Birmingham Navigations*, [1924] 1 K. B. 341. *As to (4) Consd. Collins v. Amphlett* (1919), 89 L. J. Ch. 101. *Refd. Mills v. Brooker*, [1919] 1 K. B. 555; *Edwards v. Birmingham Navigations*, [1924] 1 K. B. 341.
406. *Add. Annotations*:—*Consd. Collis v. Amphlett* (1919), 89 L. J. Ch. 101. *Refd. Mills v. Brooker*, [1919] 1 K. B. 555; *Edwards v. Birmingham Navigations*, [1924] 1 K. B. 341; *Noble v. Harrison*, [1926] 2 K. B. 332.
- 406a. *Right to appropriate fruit.*—Where the branches of fruit trees growing near their owner's boundary overhang the land of the adjoining owner, the right of the adjoining owner to lop the branches does not carry with it the right to pick & appropriate the fruit, & if he does so he is guilty of conversion & liable to the owner for its value.—*MILLS v. BROOKER*, [1919] 1 K. B. 555; 88 L. J. K. B. 950; 121 L. T. 254; 35 T. L. R. 261; 63 Sol. Jo. 431; 17 L. G. R. 238, D. C.
407. *Add. Annotation*:—*Refd. Edwards v. Birmingham Navigations*, [1924] 1 K. B. 341.
409. *Add. Annotation*:—*Mentd. Hines v. Tousley* (1926), 95 L. J. K. B. 773.
412. *Add. Annotation*:—*Refd. Edwards v. Birmingham Navigations*, [1924] 1 K. B. 341.
416. *Add. Annotations*:—*Generally, Mentd. Michael v. Phillips* (1923), 130 L. T. 142; *Jacobs v. Batavia & General Plantations Trust* (1924), 93 L. J. Ch. 520.
418. *Add. Annotation*:—*Refd. Musgrove v. Pandelis*, [1919] 2 K. B. 43.
419. *Add. Annotations*:—*Refd. Derry v. Sanders*, [1919] 1 K. B. 223. *Mentd. Thomson v. St. Catharine's College, Cambridge, etc.*, [1919] A. C. 468.
428. *Add. Annotation*:—*Generally, Mentd. Weber v. Birkett*, [1925] 1 K. B. 720.
484. Before this case add "*See, also, ECCLESIASTICAL LAW*, Vol. XIX., p. 511."
- Add. Annotation*:—*Refd. Stockman v. Whither* (1614), 1 Roll. Rep. 86.
- BILLINGSLEY (LADY) v. HERSEY* (1612), 2 Bulst. 5; 80 E. R. 912.
519. *Add. Annotations*:—*Apld. Re Londesborough, Spicer v. Londesborough*, [1923] 1 Ch. 500. *Refd. Kursell v. Timber Operators & Contractors* (1926), 95 L. J. K. B. 569.
527. *Add. Annotation*:—*Mentd. Sack v. Jones*, [1925] Ch. 235.
591. *Add. Annotation*:—*Refd. Re Williams' Settlement, Williams Wynn v. Williams*, [1922] 2 Ch. 750.
602. *Add. Annotations*:—*Refd. Lloyd-Jones v. Clark-Lloyd*, [1919] 1 Ch. 424; *Horlick v. Scully*, [1927] 2 Ch. 150.
615. *Add. Annotations*:—*Distd. Horlick v. Scully*, [1927] 2 Ch. 150. *Refd. Lloyd-Jones v. Clark-Lloyd*, [1919] 1 Ch. 424.
624. *Add. Annotation*:—*Mentd. Re Gardner, Ellis v. Ellis*, [1924] 2 Ch. 243.
- 633a. No right to sell timber during life of tenant for life unimpeachable for waste.—*WALLER & PERRY v. SANDS* (1632), Cro. Car. 274; 79 E. R. 839.
649. *Add. Annotation*:—*Mentd. Re Gardner, Ellis v. Ellis*, [1924] 2 Ch. 243.
652. *Add. Annotation*:—*Consd. Re Londesborough, Spicer v. Londesborough*, [1923] Ch. 500.
- 652a. ———.—(1) By a settlement certain hereditaments were settled to the use of certain trustees during the life of A. without impeachment of waste upon the trusts, & with & subject to the powers therein after declared, with remainders as therein mentioned, & it was declared that the hereditaments were thereby limited to the trustees upon trust, during the life of A., that if at the time of such limitation taking effect in possession A. should not be or have been bkpt. the trustees should allow him to enter into & remain in the possession or receipt of the rents & profits of the settled estates during his life or until he should become bkpt. By an agreement, dated Dec. 7, 1920, A. agreed to sell all the timber standing in certain portions of the settled

the cut portion to L.—*LOVEROCK v. WEBB* (1921), 70 D. L. R. 748; 30 B. C. R. 327.—CAN.

408 iv. ———.—The owner of land may lop branches overhanging his land without previous notice to the owner of the tree, but may not keep the branches so lopped down for himself.—*DE VILLIERS v. O'SULLIVAN* (1883), 2 S. C. 251.—S. AF.

403 v. ———.—A person is entitled to cut off those portions of trees growing on his neighbour's land which overhang his land.—*VISHNU JAGANNATH JOSHI v. VASUDEP RAGHUNATH OKA* (1918), 1 L. R. 43 Bom. 164.—IND.

403 vi. *S. P. MAUNG PO THAUNG v. MA GYI* (1923), 1 L. R. 1 Ran. 281.—IND.

407 ia. ———.—Where the soil & freehold of a highway is in the Crown & the possession of the highway in the municipality, an action is not maintainable by an adjoining landowner for damages for the cutting by the municipality of trees on the highway.—*A. G. FOR BRITISH COLUMBIA*

& *WATT v. SAANICH CORPN.*, [1921] 1 W. W. R. 471; 56 D. L. R. 482.—CAN.

407 iia. ———.—A person can obtain an injunction to remove the overhanging portions of trees though he may not be able to prove any damage.—*VISHNU JAGANNATH JOSHI v. VASUDEP RAGHUNATH OKA* (1918), 1 L. R. 43 Bom. 164.—IND.

sb. *Leaves blown on to neighbour's land*—*Polluting water—Trees not noxious & planted for shelter.*—*Held*: the rule in *Rylands v. Fletcher* (1868), L. R. 3 H. L. 330, did not apply.—*MATTHEWS v. FORGIE*, [1917] N. Z. L. R. 921.—N.Z.

#### PART IX. SECT. 2, SUB-SECT. 9.—C.

so. *Right to cut trees for securing profitable enjoyment of land.*—A tenant may have an implied right to cut or destroy bush in order to obtain in a reasonable way the profitable enjoyment of the land, & in lieu of burning or destroying the timber, may save it & sell it for his own benefit. Where, however, the cutting down of the

timber is done for the purpose of making an immediate profit out of the timber, & without any regard to the improvement of the land, there is no implied grant to the tenant to cut & sell the timber.

In the absence of any such grant, the property in the timber when cut vests immediately in the person entitled to the first estate of inheritance in fee or in tail.—*HIRAWANU v. GARDNER*, [1926] N. Z. L. R. 48; *revid. on the facts, sub nom. GARDNER v. HIRAWANU*, [1927] A. C. 388; 96 L. J. P. C. 53; 136 L. T. 613; 43 T. L. R. 198.—N.Z.

#### PART IX. SECT. 2, SUB-SECT. 10.

649 i. *Tenant for life unimpeachable—Trees taken compulsorily by overruling authority.*—*Held*: the money given by way of compensation must be applied by the trustees as part of the corpus of the estate.—*GAGE & ROPER v. PIGOTT & DE JENNER*, [1919] 1 L. R. 23.—IR.

estates. On Jan. 18, 1922, a contract was entered into by A. for sale of part of the settled land, subject to the agreement of Dec. 7, 1920, & on Mar. 14, 1922, such land was conveyed to the purchaser, subject to the agreement:—*Held*: the proceeds of sale of the timber belonged to A.

(2) At the date of the contract for the sale of land & at the date of the conveyance, part of the timber, to the value of about £500, remained uncut:—*Held*: although as regards the purchaser of the land the timber was divided from the freehold, yet nevertheless it remained part of the inheritance & subject to the limitations of the settlement; accordingly, it did not vest in A., but being however part of the inheritance & still remaining subject to the limitations of the settlement, on severance it became the property of A., & therefore the £500 belonged to him.—*Re LONDESBOROUGH (EARL), SPICER v. LONDESBOROUGH (EARL)*, [1923] 1 Ch. 500; 92 L. J. Ch. 423; 128 L. T. 792; 67 Sol. Jo. 439.

656. *Add. Annotation*:—*As to* (4) *Reid. Re Williams' Settlement, Williams Wynn v. Williams*, [1922] 2 Ch. 750.

661a. ————] — *Re LONDESBOROUGH (EARL), SPICER v. LONDESBOROUGH (EARL)*, No. 652a, *ante*.

671. *Add. Annotation*:—*Reid. Re Williams' Settlement, Williams Wynn v. Williams*, [1922] 2 Ch. 750.

680. *Add. Annotation*:—*Reid. Re Williams' Settlement, Williams Wynn v. Williams*, [1922] 2 Ch. 750.

696. *Add. Annotation*:—*Apld. Re Londesborough, Spicer v. Londesborough*, [1923] 1 Ch. 500. *Reid. Kursell v. Timber Operators & Contractors* (1926), 95 L. J. K. B. 569.

711. *Add. Annotation*:—*Consd. Re Londesborough, Spicer v. Londesborough*, [1923] 1 Ch. 500.

712. *Add. Annotations*:—*Distd. Horlick v. Scully*, [1927] 2 Ch. 150. *Reid. Lloyd-Jones v. Clark-Lloyd*, [1919] 1 Ch. 424.

736. *Add. Citation*:—*sub nom. STEWKLEY v. BUTLER* (1615), Moore, K. B. 880; 72 E. R. 970.

*Add. Annotations*:—*Mentd. Ward v. Everard* (1695), Comb. 329; *Bridgwater v. Bolton* (1704), 1 Salk. 236; *Ambatielos v. Anton Jurgens Margarine Works*, [1922] 2 K. B. 185.

739. *Add. Annotations*:—*As to* (1) *Reid. Joel v. International Circus & Christmas Fair* (1920),

124 L. T. 459; *Cohen v. Roche* (1926), 95 L. J. K. B. 945; *Kursell v. Timber Operators & Contractors* (1926), 95 L. J. K. B. 569; *Re Wait*, [1926] Ch. 962. *As to* (2) *Reid. Waimiha Sawmilling Co. v. Waione Timber Co.*, [1926] A. O. 101. *Generally, Mentd. Thames Sack & Bag Co. v. Knowles* (1918), 88 L. J. K. B. 585.

745. *Add. Annotation*:—*Apld. Re Londesborough, Spicer v. Londesborough*, [1923] 1 Ch. 500. *Reid. Kursell v. Timber Operators & Contractors* (1926), 95 L. J. K. B. 569.

769. *Add. Annotation*:—*As to* (2) *Reid. Ambatielos v. Anton Jurgens Margarine Works*, [1922] 2 K. B. 185.

808. *Add. Annotation*:—*As to* (1) *Reid. Re Thellusson, Ex p. Abdy*, [1919] K. B. 735.

810. *Add. Annotations*:—*As to* (1) *Reid. Joel v. International Circus & Christmas Fair* (1920), 124 L. T. 459; *Waimiha Sawmilling Co. v. Waione Timber Co.*, [1926] A. O. 101. *Generally, Mentd. Thames Sack & Bag Co. v. Knowles* (1918), 88 L. J. K. B. 585; *Cohen v. Roche* (1926), 95 L. J. K. B. 945; *Kursell v. Timber Operators & Contractors* (1926), 95 L. J. K. B. 569; *Re Wait*, [1926] Ch. 962.

810a. ———— *Confiscation by foreign State—Frustration.*]—By a contract the vendors agreed to sell & the purchasers to purchase the timber then standing uncut in a forest in the Republic of Latvia, the purchasers to have fifteen years in which to cut & remove it, such time to be extended if the purchasers were prevented by an act of the Govt., or otherwise by *force majeure*, or by war, from cutting or disposing of the timber. Merchantable timber was to mean & include all trunks & branches of trees not less than six inches in diameter at a height of four feet from the ground. The purchasers took possession of the forest, but shortly afterwards an agrarian law was passed in Latvia under which the forest & all the timber therein became the property of the Latvian State, the agreement became annulled, & all the rights of vendors & purchasers in the forest & the timber became entirely confiscated:—*Held*: the contract was not an executed contract on the part of the vendors at the date when it was signed, & the property in the timber had not passed, to the purchaser; the performance of the contract was entirely frustrated by the act of the Latvian State, & the parties were released from it.—*KURSELL v. TIMBER OPERATORS & CONTRACTORS*, [1927] 1 K. B. 298; 95 L. J. K. B. 569; 135 L. T. 223; 42 T. L. R. 435, C. A.

#### PART IX. SECT. 2, SUB-SECT. 16.

*sk. Purchaser under covenant to erect frame dwelling.*]—*Held*: entitled, under the agreement for purchase, to take standing trees to complete the building.—*GIBBONS v. RIDDLE*, [1926] 3 D. L. R. 58; 58 O. L. R. 627.—CAN.

#### PART IX. SECT. 3, SUB-SECT. 3.

736 ii. ————]—The owner of real estate sold all the hemlock bark thereon:—*Held*: the purchaser had a right to fell the trees.—*HATCH v.* (1857), 5 Gr. 651.—CAN.

#### PART IX. SECT. 4, SUB-SECT. 5.

807 ii. ————]—M. conveyed to B. all the timber on his land, with a right for B. at all reasonable times during ———— years to enter & cut & remove

same:—*Held*: the instrument did not convey to B. the fee simple in the standing timber, but only gave him the right to cut & remove it within a reasonable time.—*BEATTY v. MATHEWSON* (1908), 40 S. C. R. 557.—CAN.

807 iii. ———— *Terms* ————]—*O'BRIEN v. MACKINTOSH* (1903), 34 S. C. R. 169.—CAN.

*al. Sale of timber—On land sold to third party—Failure to remove timber.*]—*Held*: no action lay at the instance of the purchaser of the land against the purchaser of the timber for any supposed breach of duty in not removing the timber, as the only ground of action was on the contract, which did not vest in the purchaser of the land.—*RAE v. RANKIN* (1844), 2 Kerr, 453.—CAN.

*sm. ———— Subsequent verbal agreement*

*to let made timber remain on land—Validity.*]—*HEDLEY v. SCISSONS* (1873), 33 U. C. R. 215.—CAN.

*sn. ———— By locatee — Subsequent patent to third party—No reservation of timber.*]—*LANGMAID v. MICKLE* (1888), 16 O. R. 111.—CAN.

*sp. ———— Before issue of patent.*]—*Held*: the locatee was not, nor anyone claiming under him, after its issue, estopped from denying the validity of the sale.—*CHAPIEWSKI v. CAMPBELL* (1898), 29 O. R. 343.—CAN.

*st. ———— Effect of 31 Vict. c. 8 & 37 Vict. c. 23 (O.).*]—*HUTCHINSON v. BEATTY* (1876), 40 U. C. R. 135.—CAN.

*sw. ———— On limit—Duty of vendor to maintain title for reasonable time for removal of timber.*]—*CAINE v. SCHULTZ*, [1927] 1 W. W. R. 600; 38 B. C. R. 332.—CAN.

814. *Add. Annotations*:—*Refd.* Lloyd-Jones v. Clark-Lloyd, [1919] 1 Ch. 424; Horlick v. Scully, [1927] 2 Ch. 150.
828. *Add. Annotation*:—*As to* (1) *Refd.* *Re* Williams' Settlement, Williams Wynn v. Williams, [1922] 2 Ch. 750.
840. *Add. Annotations*:—*Generally*, *Mentd.* *Re* Crosse, Oldham v. Crosse, [1920] 1 Ch. 240; Rotunda Hospital, Dublin v. Coman (1920), 7 Tax Cas. 517; *Re* Shrewsbury Estate Acts, Shrewsbury v. Shrewsbury, [1924] 1 Ch. 315.
842. *Add. Citations*:—119 L. T. 596; 62 Sol. Jo. 716, C. A.
- 846a. *S. P.* OSBORNE v. OSBORNE (*circa* 1814), cited in 19 Ves. at p. 422; 34 E. R. at p. 574, L. C.
- Annotations*:—*Foll.* Wickham v. Wickham (1815), 19 Ves. 419. *Refd.* Tooker v. Annesley (1832), 5 Sim. 235.
851. *Add. Annotations*:—*Refd.* Lloyd-Jones v. Clark-Lloyd, [1919] 1 Ch. 424; Horlick v. Scully, [1927] 2 Ch. 150.
856. *Add. Annotation*:—*Refd.* Horlick v. Scully, [1927] 2 Ch. 150.
874. *Add. Annotation*:—*Refd.* *Re* Williams' Settlement, Williams Wynn v. Williams, [1922] 2 Ch. 750.
- 884a. *S. P.* MATTHEW v. CRASSE (1613), as reported in 2 Bulst. 89; 80 E. R. 983.
- Annotation*:—*Mentd.* Harrison v. Cage (1698), 1 Ld. Raym.
- 894a. **Tenant for years unimpeachable for waste.**—Lessee for years *sans* waste cannot pull down trees that are a defence or ornament to the house.—LONDON (BP.) v. WEB (1718), as reported in 1 P. Wms. 527; 24 E. R. 501.
- Annotation*:—*Refd.* Chamberlayne v. Dummer (1792), 3 Bro. C. C. 549.
921. *Add. Annotation*:—*Mentd.* Burrell v. Leven (1926), 42 T. L. R. 407.
928. *Add. Annotation*:—*As to* (1) & (2) *Consd.* Wheeler v. Keeble (1914), Ltd., [1920] 1 Ch. 57.
- 944a. ——— **Trees excepted.**—If a lessee cuts down the trees excepted out of his lease, the lessor shall have trespass *vi et armis* against him.—PERCY'S CASE (1609), 13 Co. Rep. 60; Ley, 20; 77 E. R. 1470.
949. *Add. Annotation*:—*Refd.* *Re* Williams' Settlement, Williams Wynn v. Williams, [1922] 2 Ch. 750.
953. *Add. Annotations*:—*Mentd.* Osborne v. Bradley, [1903] 2 Ch. 446; Sharp v. Harrison, [1922] 1 Ch. 502; Kelly v. Barrett, [1924] 2 Ch. 379; Price v. Corpn. d'Énergie de Montmagny, [1927] A. C. 363.
- 964a. ———.]—ALDERMAN v. BANNISTER (1826), 4 L. J. O. S. Ch. 126.
970. *Add. Annotations*:—*Consd.* Baldock v. Westminster City Council (1918), 88 L. J. K. B. 502; Sheppard v. Glossop Corpn., [1921] 3 K. B. 132. *Refd.* Oldham v. Sheffield Corpn. (1927), 136 L. T. 681
- 970a. ——— **Omnibus company with right to cut trees—Injury to passenger.**—Where the route of an omnibus lies along a road lined by trees, which by permission of the owner the omnibus co. have taken reasonable care to cut, an accident caused to an outside passenger by an overhanging branch does not render the co. liable, if there is no evidence that the driver was driving too near the trees, or that he had any reason to suspect that they were overhanging.—TRINDER v. GREAT WESTERN RY. CO. (1919), 35 T. L. R. 291.
- 970b. ——— **Overhanging trees.**—Deft. was possessed of land on which there was growing a beech tree, a bough of which overhung a highway. This bough suddenly broke in fine weather, fell upon pltf.'s vehicle then passing, & caused damage. Neither deft. nor his servants knew that the bough was dangerous, & the fracture was due to a latent defect not discoverable by any reasonably careful inspection:—*Held*: deft. was not liable, as the mere fact that the tree overhung the highway did not make the tree a nuisance, & as he neither knew nor ought to have known of the actual danger, & there was no absolute obligation on him to support a tree overhanging the road unless it appeared, or would appear on a proper inspection, that nature could no longer be relied upon to support it.—NOBLE v. HARRISON, [1926] 2 K. B. 332; 95 L. J. K. B. 813; 135 L. T. 325; 90 J. P. 188; 42 T. L. R. 518; 70 Sol. Jo. 691, D. C.

## Part X.—Fertilisers, Feeding Stuffs and Seeds.

- 971a. **Feeding stuffs—Act of 1906, s. 1 (4).**—In Sept. 1922, pltf., a pig-keeper, saw defts.' managing director, who offered to sell him the bakery sweepings as pig food at 2s. 6d. a bag. Pltf. accepted the offer & purchased the sweepings from defts. & fed five pigs with it successfully from Sept. 1922 to Jan. 1923, when the pigs became ill & four of them died. The sweepings consisted of ingredients used in making bread, together with dust & dirt & other odds & ends & string:—*Held*: the words "on the sale of any article" in the above sub-sect. were wide enough to cover the sale of these bakery sweepings; the effect of the sub-sect. was to put the risk upon the seller, who, knowing the constituents of the article which he chose to sell as food for cattle, was made responsible if in fact it contained some article deleterious; if the seller desired to protect himself against the stringent provisions of the Act, it was competent to him to do so by a special contract made for that purpose.—PULLING v. LIDBETTER, LTD., [1924] 2 K. B. 114; 93 L. J. K. B. 542; 131 L. T. 119; 88 J. P. 83; Sol. Jo. 615; 22 L. G. R. 456, C. A.
973. *Add. Annotation*:—*Refd.* Anderson v. Daniel (1923), 130 L. T. 418.
- 974a. ———.]—A seller who in fact



delivers a false invoice commits an offence under sect. 6 (1) (b) of the above Act, whether the nature of the article is such as to make it obligatory on him under sect. 1 to deliver an invoice or not.—*HARVEY & Co. v. HEREFORDSHIRE COUNTY COUNCIL*, [1920] 2 K. B. 395; 89 L. J. K. B. 601; 123 L. T. 428; 84 J. P. 195; 18 L. G. R. 470, D. C.

975a. — **Sending of sample to seller—Act of 1906, s. 3 (3).**—It is a condition precedent to a prosecution of the seller under sect. 6 (1) (a) of the above Act, on a charge of not sending an invoice on the sale of a fertiliser of the soil according to the provisions of sect. 1 (1), that a prescribed portion of the sample thereof taken with a view to the proceedings under sect. 3 (3) shall have been sent to the seller.—*VAUGHAN v. GRINDELL*, [1921] 3 K. B. 412; 91 L. J. K. B. 141; 125 L. T. 315; 85 J. P. 199; 19 L. G. R. 416; 27 Cox, C. O. 5, D. C.

977. *Add. Annotation* :—As to (2) *Refd. Harvey v. Herefordshire County Council*, [1920] 2 K. B. 395.

978a. — **Effect of—"Reasonable excuse."**—(1) As the object of the Act of 1906 in requiring the vendor to give the statutory invoice & imposing on him a penalty in the event of

his default is to protect the purchasers of fertilisers, the effect of non-compliance with the requirement is not merely to render the vendor liable to the penalty, but also to make the sale illegal & preclude the vendor from suing for the price. (2) The fact that, owing to the nature of the article sold as a fertiliser, an analysis of it would necessitate so expensive a process as to make it impossible to sell it after analysis at a profit, affords no "reasonable excuse" within sect. 6 (1), for omitting to give the invoice required by the Act. *Semble*: neither will impossibility of analysis afford any excuse, the intention of the statute in that event being to prohibit the sale of the article altogether. (3) The expression "without prejudice to any civil liability" in sect. 6 (1) refers to the civil liability of the vendor, not to that of the purchaser.—*ANDERSON, LTD. v. DANIEL*, [1924] 1 K. B. 138; 93 L. J. K. B. 97; 130 L. T. 418; 88 J. P. 53; 40 T. L. R. 61; 68 Sol. Jo. 274; 22 L. G. R. 49, C. A.

*Annotation* :—As to (2) *Consd. Pulling v. Liddbetter* (1924), 93 L. J. K. B. 542.

979. *Add. Annotations* :—*Refd. Stearn v. Prentice* (1918), 88 L. J. K. B. 422; *Edwards v. Birmingham Navigations*, [1924] 1 K. B. 341.

#### PART XI. SECT. 10.

i. — **Under licence—Under Forest Act.**—*A.-G. FOR B. C. v. ROBERTSON*, [1924] 1 D. L. R. 1090; 1 W. W. R. 1155; 33 B. C. R. 325.—CAN.

hi. — **Right of Crown to sue for expenses.**—The Crown in the right of the Dominion may sue under Forest Act, R.S.B.C., 1924 (c. 93), s. 114, to recover expenses incurred by officials

of the Dominion Forest Branch in controlling & extinguishing a fire on doft.'s property.—*R. v. SWANSTROM*, [1925] 3 D. L. R. 79; [1925] 1 W. W. R. 713.—CAN

## ALIENS.

## Part I.—What Constitutes Alienage.

1. *Add. Annotations*:—*Consd.* Markwald v. A.-G., [1920] 1 Ch. 348. *Refd.* Johnstone v. Pedlar, [1921] 2 A. C. 262. *Mentd.* The Tervaete (1922), 128 L. T. 176.
3. *Add. Annotation*:—*Mentd.* Fasbender v. A.-G., Kramer v. A.-G., [1922] 2 Ch. 850.
13. *Add. Annotation*:—*As to* (2) *Refd.* Johnstone v. Pedlar, [1921] 2 A. C. 262.
- 13a. ———.]—By an Order in Council made on Nov. 5, 1914, Cyprus was annexed, & by a Proclamation made thereunder on Mar. 3, 1915, revoking an earlier Proclamation, it was provided that "all Ottoman subjects, resident in Cyprus on Nov. 5, 1914, have become British subjects." An amending Order in Council made on Nov. 27, 1917, after reciting that doubts had arisen as to the effect of the Order & the proper interpretation of the Proclamation, ordered that the following persons (*inter alios*) should be deemed to have become British subjects by virtue thereof: "any Ottoman subject who was ordinarily resident & actually present in Cyprus on Nov. 5, 1914." *Resp.*, an Ottoman subject by birth, carried on business in Cairo from 1893 to 1913. In Dec. 1913, he went to Cyprus, & after three or four months brought his family there. He rented a house in Cyprus monthly, & while there discontinued his business in Cairo. He was present in Cyprus on Nov. 5, 1914, & remained there until Oct. 1915, when he returned to Cairo, his family following in December. He received a passport describing him as a British subject, & was so registered at the British Consulate at Cairo, but after annual renewals registration was refused in 1919. He sued for a declaration that he was entitled to registration:—*Held*: if there were any difference between "resident" & "ordinarily resident" the latter became the test by virtue of the interpretative Order of 1917; but on the facts *resp.* was both "resident" & "ordinarily resident" in Cyprus on Nov. 5, 1914, whether or not Cyprus was then his domicile; & whatever may have been his motive for going there, he was a British subject by virtue of the Order in Council.—*GOUT v. CIMITIAN*, [1922] 1 A. C. 105; 91 L. J. P. C. 18; 38 T. L. R. 100; *sub nom.* *GOUT v. CIMITIAN*, *CIMITIAN v. GOUT*, 126 L. T. 293, P. C.
14. *Add. Annotations*:—*Refd.* Markwald v. A.-G., [1920] 1 Ch. 348; Johnstone v. Pedlar, [1921] 2 A. C. 262. *Mentd.* The Tervaete (1922), 128 L. T. 176.
18. *Add. Annotation*:—*Generally*, *Mentd.* Wigg v. A.-G. of the Irish Free State (1927), 96 L. J. P. C. 88.
20. *Annotations*:—For "*Re* Goodman's Trust (1881), 7 Ch. D. 266" read "*Re* Goodman's Trust (1881), 17 Ch. D. 266."
29. *Add. Citation*:—25 Cox, C. C. 622, D. C.
35. *Add. Annotations*:—*Mentd.* Markwald v. A.-G., [1920] 1 Ch. 348; Johnstone v. Pedlar, [1921] 2 A. C. 262; The Tervaete (1922), 128 L. T. 176.
36. *Add. Annotations*:—*Mentd.* Markwald v. A.-G., [1920] 1 Ch. 348; Johnstone v. Pedlar, [1921] 2 A. C. 262; The Tervaete (1922), 128 L. T. 176.
39. *Add. Annotations*:—*Mentd.* Markwald v. A.-G., [1920] 1 Ch. 348; Johnstone v. Pedlar, [1921] 2 A. C. 262; The Tervaete (1922), 128 L. T. 176.
41. *Add. Annotations*:—*Mentd.* Markwald v. A.-G., [1920] 1 Ch. 348; Johnstone v. Pedlar, [1921] 2 A. C. 262; The Tervaete (1922), 128 L. T. 176.
43. *Add. Annotation*:—*Refd.* *Re* Annesley, Davidson v. Annesley, [1926] Ch. 692.
49. *Add. Annotations*:—*Mentd.* Central India Mining Co. v. Soc. Coloniale Anversoise, [1920] 1 K. B. 753; Johnstone v. Pedlar, [1921] 2 A. C. 262.
- 49a. *Under Treaties of Peace & consequent Orders—Who is foreign national—"Stateless person"—Denationalised German.*—(1) *Pltf.* having lost Prussian nationality in 1896, & not acquired nationality of a German State or other nationality:—*Held*: he was not a German national within Peace Treaty of Versailles, Part X., s. 4, or Treaty of Peace Order, 1919.  
(2) Statelessness is not unrecognised by the municipal law of this country.  
(3) Whether a man is a German national or not must be decided by German municipal law & not by English municipal law.—*STOECK v. PUBLIC TRUSTEE*, [1921] 2 Ch. 67; 90 L. J. Ch. 386; 125 L. T. 851; 37 T. L. R. 666; 65 Sol. Jo. 605.  
*Annotations*:—*As to* (3) *Folld.* *Re* Chamberlain's Settlement, Chamberlain v. Chamberlain, [1921] 2 Ch. 533. *Generally*, *Refd.* Kramer v. A.-G., [1923] A. C. 528.
- 49b. ——— *Burden of proof.*—(1) In 1893 *pltf.*s. were admittedly German nationals, & on the *bond fide* assumption that they were still German nationals on Jan. 10, 1920, when the charge under Treaty of Peace Order, 1919, s. 1 (xvi) attached, *deft.* was in possession of their London property as

## PART I. SECT. 1.

— *Birth in Native Indian State.*—The subject of a Native Indian State is an alien.—*MAHOMED & SON v. IMMIGRANTS' APPEAL BOARD* (1918), 38 N. L. R. 7.—S. AF.

10 iv. ———.]—*Applt.*, who was by birth a Bavarian subject, in 1881 became a burgher of the Orange Free State, but in 1883 left the Free State &

did not return before 1902, at which date he was resident in, but not a burgher of, the Transvaal. Under the Orange Free State Constitution of 1878 Free State burghership was lost by residence abroad for more than two years:—*Held*: as at the time of the annexation of the Orange Free State & Transvaal in 1902 *applt.* did not become a British subject either as being a burgher of the Orange Free

State or as a resident in the Transvaal, he was by inference still a Bavarian subject.—*WOLFF v. THE TREASURY*, [1919] App. D., 336.—S. AF.

## PART I. SECT. 3.

49a i. *Under Treaties of Peace & consequent Orders—Who is foreign national—"Stateless person"—Denationalised German.*—*PAULEY v. CUSTODIAN*, [1922] App. D. 161.—S. AF.

custodian. In an action to obtain release of their property:—*Held*: the *onus* was on pltfs. to show that they had lost their original German nationality before Jan. 10, 1920, & not on deft. to disprove it.

Pltfs. had left their birthplace, Idar, in the district of Birkenfeld, about 1893, & with the exception of short annual visits to their mother, & in the case of one, six weeks' military training in 1896, they had resided uninterruptedly out of Germany from 1893 to 1917 or 1918, when they were repatriated, after war internment, to Idar, where according to the police register entries, if genuine, they were registered as stateless on their arrival, & also on their departure for Amsterdam in 1920. On Jan. 29, 1923, the Birkenfeld Govt. after inquiry as to the period of pltfs.' absence from Germany, & as to their German visits during that period, granted them certificates to the effect that during that period they had forfeited their German nationality by ten years' "uninterrupted" residence abroad within North German Nationality Law, 1870, s. 21, & were therefore stateless on Jan. 10, 1920. These certificates were based on the view of the Administrative Cts. which, in considering whether German visits break the ten years' period, look to the number, length, purpose & intent of those visits. They were, however directly contrary to the view of the Leipzig Reichsgericht, which holds that the smallest visit, accidental or otherwise, breaks the period:—*Held*: (2) the certificates, which were admittedly only *prima facie* evidence & open to review in any German ct., were not conclusive in an English ct., & the *onus* was on pltfs. to substantiate them; (3) if the Leipzig ct. view was right, the certificates were invalid; (4) even if the Administrative Ct. view was right, pltfs. had failed to satisfy the English ct. that an Administrative Ct. on being informed of all the circumstances, including fraudulent conduct by pltfs., applications as German nationals in 1915 & 1921, & previous false statements as to their German visits, would necessarily uphold the certificates; (5) having regard to the conflict of opinion in the German cts., pltfs. had failed to discharge the *onus* of proving that by unquestionable & undoubted German law they had lost their nationality on Jan. 10, 1920.—*HAHN v. PUBLIC TRUSTEE*, [1925] Ch. 715; 95 L. J. Ch. 9; 133 L. T. 713; 14 T. L. R. 586; 69 Sol. Jo. 824.

— British subject marrying German & naturalised as German during war.]—By a settlement dated in 1902 a fund of £5,000 was vested in trustees on trust to invest & pay the income of the trust funds to H. during his life or until he should become bkpt. or charge it, "or until some event shall happen . . . whereby the income or any part thereof if belonging absolutely to him would become vested or charged in favour of some other person or persons or corpn.," & in the event of the determination during the life of H., of the above trust in his favour the trustees were given a discretion to apply the income for the benefit of all or any the said H., & his present or any other after-taken wife & his issue & the persons interested for the time being under the ulterior trusts,

& subject thereto, were directed to hold the capital & income of the trust funds upon trust for the benefit of the issue of H. & in default of issue upon trust for H.'s nephews & nieces. H. was born in England of English parents but had resided in Germany since 1906 & had been twice married there to German wives. During the war, on Aug. 8, 1916, he obtained a certificate of naturalisation as a German. In these circumstances a summons was taken out by the trustees to have it determined whether the life interest of H. in the funds was forfeited by the charge imposed on property of German nationals in this country on Jan. 10, 1920, by the Treaty of Peace with Germany, art. 297, or Treaty of Peace Order, 1 '9, & how the income accrued since Aug. 4, 1914, ought to be disposed of. It was admitted at the hearing on behalf of H. that in a German ct. applying German law he would be recognised as a German citizen. No question arose as to the income before Nov. 4, 1915, which had been paid over to H.'s agent:—*Held*: (1) the decision whether a person was a German national within the Treaty & Order fell to be determined exclusively by German municipal law, & accordingly H. was a German national; (2) H.'s interest under the settlement was forfeited as on Jan. 10, 1920, & subject to the payment of costs the accumulations of income in the trustees' hands from Nov. 4, 1915, to Jan. 10, 1920, must be paid to the custodian.—*Re CHAMBERLAIN'S SETTLEMENT, CHAMBERLAIN v. CHAMBERLAIN*, [1921] 2 Ch. 533; 91 L. J. Ch. 34; 126 L. T. 52; 37 T. L. R. 966; 66 Sol. Jo. (W. R.) 3.

*Annotation*:—As to (1) *Apprvd. Fasbender v. A.-G., Kramer v. A.-G.*, [1922] 2 Ch. 850.

49d. .]—A British-born woman, between the date of the signing of the Peace Treaty between England & Germany & the date of its coming into force, went to Germany & there married a German subject. At the date of her marriage & on Jan. 10, 1920, when the Treaty came into force, she was the registered holder of shares in an English limited co.:—*Held*: under British Nationality & Status of Aliens Act, 1914 (c. 17), s. 10, she must be deemed to be an alien, & by her marriage, which was not invalid, she had lost her British nationality & became a German national, so that her shares were subject to the charge imposed by Treaty of Peace Order, 1919, s. 1 (xvi).—*FASBENDER v. A.-G., KRAMER v. A.-G.*, [1922] 2 Ch. 850; 91 L. J. Ch. 791; 128 L. T. 85; 38 T. L. R. 852; 66 Sol. Jo. 709, C. A.

*Annotation*:—*Reid. Re Rush, Warre v. Rush*, [1923] 1 Ch. 56.

49e. ——— Dual nationality.]—*KRAMER v. A.-G.*, No. 215j, *post*.

49f. ——— Austrian acquiring new nationality.]—An Austrian granted citizenship of the Czechoslovakian Republic after the disruption of the Austrian Empire, but before July 16, 1920, the date when the Treaty of Peace between the Allied & Associated Powers & Austria came into force, remains subject to the charge created by art. 249 (b) of the Treaty & Treaty of Peace (Austria) Order, 1920, s. 1 (ix), notwithstanding the provisions of art. 230 of the Treaty.—*ROTHSCHILD v. AUSTRIAN PRO-*



PROPERTY ADMINISTRATOR, [1923] 2 Ch. 542; 93 L. J. Ch. 508; 130 L. T. 175; 68 Sol. Jo. 40

Annotations:—*Folld. Bohemian Union Bank v. Austrian Property Administrator*, [1927] 2 Ch. 175. *Consd. Groedel v. Hungarian Property Administrator* (1927), 44 T. L. R. 65.

49g. ——— Czechoslovakian corporation.]—Under the Treaty of St. Germain, which came into force on July 16, 1920, a Czechoslovakian corp., as well as an individual, can acquire *ipso facto* Czechoslovakian nationality, & the property of such a corp. within the territory of Great Britain at that date is entitled to the benefit of the exemption provided by art. 249 (b) of the Treaty from liability to the charge in favour of the administrator of Austrian property created by that art. & Treaty of Peace (Austria) Order, 1920, s. 1 (ix).—*BOHEMIAN UNION BANK v. AUSTRIAN PROPERTY ADMINISTRATOR*, [1927] 2 Ch. 175; 96 L. J. Ch. 365; 137 L. T. 271; 43 T. L. R. 356; 71 Sol. Jo. 431.

49h. ——— Hungarian.]—(1) The expression "nationals of the former Kingdom of Hungary" in Treaty of Peace (Hungary) Order, 1921, s. 1 (ix), means persons who were Hungarian nationals on Oct. 28, 1918, when the Austrian Empire ceased to exist by the deposition of the Emperor.

(2) Where the administrator of Hungarian property has determined that he is not satisfied that a national of the former Kingdom of Hungary has acquired *ipso facto* in accordance with the Treaty the nationality of an Allied or Associated Power, the ct. cannot go behind the decision of the administrator & investigate the question anew.—*GROEDEL v. HUNGARIAN PROPERTY ADMINISTRATOR* (1927), 44 T. L. R. 65.

49i. ——— By what law decided.]—*STOECK v. PUBLIC TRUSTEE*, No. 49a, *ante*.

49j. ——— ———.] — *Re CHAMBERLAIN'S SETTLEMENT*, *CHAMBERLAIN v. CHAMBERLAIN*, No. 49c, *ante*.

49k. ——— Decision of administrator—Whether final.]—By the Treaty of Peace with Austria, art. 249 (b), the Allied & Associated Powers reserved the right to retain & liquidate all property, rights & interests which belonged at the date of the coming into force of the Treaty to nationals of the former Austrian Empire, but it was provided that "persons who within six months of the coming into

force of the present Treaty show that they have acquired *ipso facto* in accordance with its provisions the nationality of an Allied or Associated Power . . . will not be considered as nationals of the former Austrian Empire within the meaning of this paragraph." The annex to arts. 249 & 250 sanctioned the imposition of a charge on such property, rights or interests. Arts. 248 to 262 with their annexes were scheduled to Treaty of Peace (Austria) Order, 1920, & by art. 1 (i) of the Order given full effect as law. By art. 1 (ix), the charge was imposed on all property, rights & interests within His Majesty's Dominions belonging to nationals of the former Austrian Empire at the date when the Treaty came into force. Art. 2 provided that "for the purposes of the foregoing provisions of this Order but not including the schedule therein referred to . . . the expression 'national of the former Austrian Empire,' does not include persons who within six months of the coming into force of the Treaty show to the satisfaction of the administrator that they have acquired *ipso facto* in accordance with its provisions nationality of an Allied or Associated Power":—*Held*: where the administrator had decided that he was not satisfied that pltf., who was originally a national of the former Austrian Empire, had acquired *ipso facto* the nationality of an Allied or Associated Power, the ct. would not, in an action by him for a declaration that he has "shown that he has acquired *ipso facto* in accordance with the Treaty the nationality of the Republic of Poland & that he is not a national of the former Austrian Empire within the Treaty & the Treaty of Peace Order, & that his property, rights & interests in His Majesty's Dominions are not subject to be charged under the Treaty & the Treaty of Peace Order," go behind the decision of the administrator & investigate independently the question of nationality.—*REITZES DE MARIENWERT v. AUSTRIAN PROPERTY ADMINISTRATOR*, [1924] 2 Ch. 282; 93 L. J. Ch. 587; 132 L. T. 42, 40 T. L. R. 698; 68 Sol. Jo. 644, C. A.

Annotations:—*Folld. Groedel v. Hungarian Property Administrator* (1927), 44 T. L. R. 65. *Refd. Groedel v. Hungarian Property Administrator* (1925), 70 Sol. Jo. 345.

49l. ——— ——— ———.]—*GROEDEL v. HUNGARIAN PROPERTY ADMINISTRATOR*, No. 49h, *ante*.

## Part II.—Rights, Liabilities, and Disabilities of Aliens in Time of Peace.

50. *Add. Annotation*:—*Refd. The Wilhelmina*, [1923] P. 112.

61. *Add. Annotation*:—*Refd. Johnstone v. Pedlar*, [1921] 2 A. C. 262.

63. *Add. Annotations*:—*Refd. Rodriguez v. Speyer*, [1919] A. C. 59; *Johnstone v. Pedlar*, [1921] 2 A. C. 262.

49l. ——— ——— ——— *By what law decided*.]—Questions of nationality must be determined by the municipal law of the country concerned.—*PAULEY v. CUSTODIAN*, [1922] App. D. 161.—S. AF.

### PART II. SECT. 2, SUB-SECT. 1.

sa. *Non-resident alien*—Leave to sue in *forma pauperis*.]—The Supreme Ct. of Alberta has jurisdiction to grant

leave to a non-resident alien to sue in *forma pauperis*.—*AUGUSTINO v. CANADIAN NORTH-WESTERN RY. CO. (Alta.)*, [1927] 4 D. L. R. 609; [1927] 3 W. W. R. 321.—CAN.

been adopted & ratified by the Crown as an act of State.

Pltf., who was born in Ireland, having become a naturalised American citizen, returned to Ireland in 1916 & took part in the rebellion of Easter, 1916, & was interned. On his release he took part in illegal drilling, & on being arrested in Ireland, a sum of money was found upon him, which was taken & detained by the police authorities, the seizure & detention being subsequently ratified by the Chief Secretary for Ireland. In an action by pltf. against the Chief Comr. of the Police for the recovery of the money, deft. pleaded that pltf. was an alien & that the money was detained by direction of the Crown as an act of State:—*Held*: the plea was bad & pltf. was entitled to judgment.

(2) *Semble*: the fact that a subject of a friendly State residing within the realm under an implied licence from the Crown violates the local allegiance which he owes to the Crown does not disentitle him to the rights of an alien *amici* until the Crown withdraws its protection.—*JOHNSTONE v. PEDLAR*, [1921] 2 A. C. 262; 90 L. J. P. C. 181; 125 L. T. 809; 37 T. L. R. 870; 65 Sol. Jo. 679; 27 Cox, C. C. 68, P. C.

*Annotation*:—*As to* (1) *Refd.* Commercial & Estates Co. of Egypt v. Board of Trade, [1925] 1 K. B. 271.

66. *Add. Annotation*:—*Mentd.* Rodriguez v. Speyer, [1919] A. C. 59.
69. *Add. Annotation*:—*Mentd.* Weld-Blundell v. Stephens, [1919] 1 K. B. 520.
70. *Add. Annotation*:—*Refd.* Rodriguez v. Speyer, [1919] A. C. 59.
79. *Add. Annotation*:—*Folld.* Falcon v. Famous Players Film Co., [1926] 2 K. B. 474.
82. *Add. Annotation*:—*Refd.* Behnke v. Bede Shipping Co., [1927] 1 K. B. 649.
85. *Add. Annotations*:—*Refd.* Johnstone v. Pedlar, [1921] 2 A. C. 262. *Mentd.* Markwald v. A.-G., [1920] 1 Ch. 348; The Tervaete (1922), 128 L. T. 176.
94. *Add. Annotation*:—*Dbtd.* Falcon v. Famous Players Film Co., [1926] 2 K. B. 474.
96. To the cross-reference after this case to Copyright Act, 1911 (c. 46), add “& generally, COPYRIGHT, Vol. XIII., pp. 180–182.”
97. *Add. Annotations*:—*Mentd.* Markwald v. A.-G., [1920] 1 Ch. 348; Johnstone v. Pedlar, [1921] 2 A. C. 262; The Tervaete (1922), 128 L. T. 176.
105. *Add. Annotation*:—*Mentd.* Seddon v. Commercial Salt Co., [1925] Ch. 187.

106. *Add. Annotation*:—*Mentd.* Fasbender v. A.-G., Kramer v. A.-G., [1922] 2 Ch. 850.

114. *Add. Annotations*:—*Consd.* *Re* Lyne's Settlement Trusts, *Re* Gibbs, Lyne v. Gibbs, [1919] 1 Ch. 80. *Refd.* *Re* Berchtold, Berchtold v. Capron, [1923] 1 Ch. 192.

116. *Add. Citations*:—*Sty.* 20, 40, 75; 1 Roll. Abr. 19b.

*Add. Annotations*:—*As to* (1) *Consd.* Du Hourmelin v. Sheldon (1838), 1 Beav. 79; Barrow v. Wadkin (1858), 27 L. J. Ch. 129. *Refd.* A.-G. v. Sands (1670), Freem. Ch. 129; A.-G. v. Duplessis (1752), Park. 144; Burgess v. Wheate, A.-G. v. Wheate (1759), 1 Eden. 177; Rittson v. Stordy (1855), 3 Sm. & G. 230; Sharp v. St. Sauveur (1871), 7 Ch. App. 343. *As to* (2) *Refd.* Burgess v. Wheate, A.-G. v. Wheate (1759), 1 Eden. 177. *Generally, Mentd.* Cage v. Acton (1699), 12 Mod. Rep. 288.

140a. *Member of Stock Exchange*.—By the rules of the London Stock Exchange each member is elected for one year only, & must come up for re-election annually under rule 21, which provides that the committee shall on the first Monday in March proceed (*inter alia*) to elect such members as they shall deem eligible to be members of the Stock Exchange during the following year commencing on Mar. 25 then instant. In 1917 an objection was lodged against the re-election of applt., who was a British subject naturalised in this country & denationalised in Germany, at the election to be held in March of that year, on the ground of his enemy birth. Upon the invitation of the committee applt., first in a letter & afterwards at an interview, set forth various facts in proof of his loyalty to the country of his adoption, but eventually the committee refused to re-elect him. Applt. impeached this decision on the ground that the committee had acted arbitrarily & capriciously & had been influenced by irrelevant considerations:—*Held*: the decision of the committee had proceeded solely upon the ground of applt.'s enemy birth, & before deeming him ineligible for re-election on that ground he had been given an opportunity of being heard. The committee having acted honestly & fairly in the exercise of their discretion & within their competence, it was not open to any ct. to review their decision.—*WEINBERGER v. INGLIS*, [1919] A. C. 606; 88 L. J. Ch. 287; 121 L. T. 65; 35 T. L. R. 399; 63 Sol. Jo. 461, H. L.

*See, further, STOCK EXCHANGE.*

## Part III.—Aliens in Time of War.

144. *Add. Annotation*:—*Refd.* Johnstone v. Pedlar, [1921] 2 A. C. 262.
146. *Add. Annotation*:—*Refd.* Central India Mining Co. v. Soc. Coloniale Anversoise, [1920] 1 K. B. 753.
147. *Add. Annotations*:—*Mentd.* Markwald v.

A.-G., [1920] 1 Ch. 348; Johnstone v. Pedlar, [1921] 2 A. C. 262; The Tervaete (1922), 128 L. T. 176.

149. *Add. Annotation*:—*Mentd.* Lala Indar Prasad v. Lala Jagmohan Das (1927), 43 T. L. R. 536.

PART II. SECT. 7, SUB-SECT. 2.  
129 i. *Right to hold & dispose*—Law 3 of 1885—Act 35 of 1908—*Company with Asiatic shareholders*.—Law 3 of 1885 & Act 35 of 1908 do not apply to joint stock cos., even though their shares are held by Asiatics.—*DADOO v. KRUGERS-DORP*, [1920] App. D. 530.—S. AF.  
J.S.

PART II. SECT. 8.  
132 i. *Civil office of trust*—*Town inspector*.—The office of town inspector is one of trust which an alien is ineligible to hold.—*R. v. HEIGHTON* (1) (1922), 69 D. L. R. 386; 55 N. S. R. (G. & R.) 512.—CAN.  
132 ii. *S. P. R. v. HEIGHTON* (2)

(1922), 69 D. L. R. 396; 55 N. S. R. (G. & R.) 527.—CAN.

PART III. SECT. 1, SUB-SECT. 1.

151 ii. —.—.—The subject of an alien State at war with His Majesty, who resides in the province of Quebec & has submitted to the laws of that

154. *Add. Annotation*:—*Mentd. Rodriguez v. Speyer*, [1919] A. C. 59.
155. *Add. Annotations*:—*Apld. Re Sutherland, Bechoff v. Bubna* (1921), 65 Sol. Jo. 513. *Mentd. Re Ferdinand, Ex-Tsar of Bulgaria*, [1921] 1 Ch. 107; *Johnstone v. Pedlar*, [1921] 2 A. C. 262.
- 156a. ———.]—A man who, having a business & commercial domicile in a neutral country, returns to his enemy country of origin & engages in active hostilities against this country, leaving his business under the care of a manager, but controlling it himself from his domicile of residence so far as he is able, cannot be considered anything but an enemy, & his business is an enemy firm & the assets are enemy property.—*THE ANTWERPEN*, [1919] P. 252, n.; 89 L. J. P. 26, n.  
*Annotation*:—*Mentd. The Parana*, [1919] P. 249.  
———.]—An action was brought to recover a debt by a firm consisting of two French subjects & a German subject, & a sequestrator was subsequently appointed in respect of the property of the German pltf.:—*Held*: as the German subject was not residing nor carrying on business in an enemy State, the action was maintainable, & the sequestrator was not a necessary party.—*Re SUTHERLAND (DUCHESS), BECHOFF & Co. v. BUBNA* (1921), 65 Sol. Jo. 513.
157. *Add. Annotations*:—*Refd. Re Sutherland, Bechoff v. Bubna* (1921), 65 Sol. Jo. 513. *Mentd. Re Ferdinand, Ex-Tsar of Bulgaria*, [1921] 1 Ch. 107; *Johnstone v. Pedlar*, [1921] 2 A. C. 262.
160. *Add. Annotations*:—*Generally, Mentd. The Dirigo* (1919), 88 L. J. P. 192; *The Noordam* (No. 2), [1919] P. 255; *The Edna*, [1921] 1 A. C. 735; *The Kronprinsessan Margareta, The Parana, etc.*, [1921] 1 A. C. 486; *The Vesta, etc.*, [1921] 1 A. C. 774.
161. *Citation*:—For "[1916] A. C. 421" read "[1916] 1 A. C. 421."  
*Add. Annotation*:—*As to* (1) *Consd. Stoeck v. Public Trustee*, [1921] 2 Ch. 67.
162. *Add. Annotations*:—*As to* (1) *Consd. Stoeck v. Public Trustee*, [1921] 2 Ch. 67. *As to* (2) *Refd. Stoeck v. Public Trustee*, [1921] 2 Ch. 67.
163. *Add. Annotation*:—*Refd. Re Sutherland, Bechoff v. Bubna* (1921), 65 Sol. Jo. 513.
166. *Add. Citation*:—*subsequent proceedings* (1921), 65 Sol. Jo. 513.
168. *Add. Citation*:—(1915), 1 Br. & Col. Pr. Cas. 605.
- Add. Annotation*:—*Generally, Mentd. Casdagli v. Casdagli*, [1919] A. C. 145.
178. *Add. Annotations*:—*Mentd. Re Ferdinand, Ex-Tsar of Bulgaria*, [1921] 1 Ch. 107; *Johnstone v. Pedlar*, [1921] 2 A. C. 262.
181. *Add. Annotations*:—*Mentd. The Dirigo* (1919), 88 L. J. P. 192; *The Noordam* (No. 2), [1919] P. 255; *The Edna*, [1921] 1 A. C. 735; *The Kronprinsessan Margareta, The Parana, etc.*, [1921] 1 A. C. 486; *The Vesta, etc.*, [1921] 1 A. C. 774.
183. *Add. Annotation*:—*Refd. The Lützow*, [1918] A. C. 435.
187. *Add. Annotations*:—*Consd. Rodriguez v. Speyer*, [1919] A. C. 59. *Refd. Ertel Bieber v. Rio Tinto Co., etc.*, [1918] A. C. 260; *Re Badische Co., Bayer Co., etc.*, [1921] 2 Ch. 331.
189. *Add. Annotations*:—*Refd. Rodriguez v. Speyer*, [1919] A. C. 59. *Mentd. Central India Mining Co. v. Soc. Coloniale Anversoise*, [1920] 1 K. B. 753; *Johnstone v. Pedlar*, [1921] 2 A. C. 262.
192. *Add. Annotation*:—*Refd. Rodriguez v. Speyer*, [1919] A. C. 59.
195. *Add. Annotations*:—*As to* (1) *Consd. The Poona* (1915), 84 L. J. P. 150; *The St. Tudno*, [1916] P. 291; *Re Hilckes, Ex p. Muhesa Rubber Plantations*, [1917] 1 K. B. 48; *Re Badische Co., Bayer Co., etc.*, [1921] 2 Ch. 331; *Russian Commercial & Industrial Bank v. Comptoir d'Escompte de Mulhouse*, [1923] 2 K. B. 630. *Refd. R. v. L. C. C., Ex p. London & Provincial Electric Theatres*, [1915] 2 K. B. 466; *Clapham S.S. Co. v. Handels-en-Transport-Maatschappij Vulcaan of Rotterdam*, [1917] 2 K. B. 639; *Continho Caro v. Vermont*, [1917] 2 K. B. 587; *Elders & Fyffes v. Hamburg Amerikanische Packetfahrt Act., Elders & Fyffes v. Hamburg Columbian Bananen Act.* (1918), 34 T. L. R. 275; *Re British Incandescent Mantle Works* (1923), 129 L. T. 126; *Swedish Central Ry. v. Thompson*, [1924] 2 K. B. 255; *Russian Commercial & Industrial Bank v. Comptoir d'Escompte de Mulhouse*, [1925] A. C. 112; *Bohemian Union Bank v. Austrian Property Administrator*, [1927] 2 Ch. 175. *As to* (2) *Consd. The St. Tudno*, [1916] P. 291. *Apld. The Hamborn*, [1919] A. C. 993. *Consd. The Noordam* (No. 2), [1919] P. 255; *Re Badische Co., Bayer Co., etc.*, [1921] 2 Ch. 331. *Refd. The Vesta*, [1920] P. 385; *I. R. Comrs. v. Sansom* (1921), 8 Tax Cas. 20. *As to* (3) *Consd. Re Hilckes, Ex p. Muhesa Rubber Plantations*, [1917] 1 K. B. 48.

country, is not an alien enemy.—*RAGUSZ v. MONTREAL HARBOUR COMRS.* (1916), 18 Q. P. R. 98; Q. R. 26 K. B. 87.—CAN.

155 i. ——— *Place of residence & carrying on trade*.—"Enemy" means a person, of whatever nationality, who resides or carries on business in enemy territory.—*LAMPPEL v. BERGER* (1917), 40 O. L. R. 165; 38 D. L. R. 47.—CAN.

155 ii. ———.]—The question whether a person is an alien enemy is determined not by his nationality, but by the place where he resides or carries on business.—*REVENTLOW-CRIMMIL v. STREAMSTOWN RURAL MUNICIPALITY*, No. 511, [1917] 3 W. W. R. 546; 37 D. L. R. 394; *affd.*, [1920] 1 W. W. R. 578; 52 D. L. R. 266; 15 Alta. L. R. 204.—CAN.

155 iii. ———.]—A Mission Society the headquarters of which were

in Germany, held property in Natal & had an agent there for the management of its property & interests:—*Held*: (1) the society was resident in Germany & was an alien enemy; (2) a person's place of business, though one test, is not the sole test of his enemy character.—*SIBISI v. HERMANSBERG MISSION SOCIETY* (1916), 37 N. L. R. 409.—S. AF.

155 iv. ———.]—An "alien enemy" does not mean a subject of a State at war with this country but a person of any nationality who resides or carries on business in an enemy country.—*MALCOMESSE v. DURBAN TOWN COUNCIL* (1917), 38 N. L. R. 275.—S. AF.

st. Who is an "enemy" within *Treaty of Peace (Germany) Order*, 1920, s. 32.—*BAUMFELDER v. SECRETARY OF STATE OF CANADA*, [1927] Exch. C. R. 86.—CAN.

#### PART III. SECT. 1, SUB-SECT. 2.

sa. *Widow of naturalised British subject—Return to foreign country after death of husband*.—*Resp.*, a German subject by birth, married a naturalised British subject in Cape Colony. After the death of her husband in 1901 *resp.* returned to Germany where she resided until 1915, & then removed to Switzerland:—*Held*: *resp.* was not an enemy under Act 39 of 1916.—*THE TREASURY v. HANF*, [1919] App. D. 50.—S. AF.

#### PART III. SECT. 1, SUB-SECT. 4.

193 iii. ———.]—A person who voluntarily resides in a hostile country for a substantial period of time acquires the disability attaching to an enemy during that period even if he is a British subject, unless such residence is with the consent of the Crown.—*Haji Ali Jon v. Abdul Jalil Khan* (1920), 1 L. R. 1 Lah. 276.—IND.



**Reid. Re Badische Co., Bayer Co., etc., [1921]** 2 Ch. 331. *As to* (4) **Consd. Re Hilckes, Ex p. Muhesa Rubber Plantations, [1917]** 1 K. B. 48. *As to* (5) **Consd. Rio Tinto Co. v. Ertel Bieber (1917), 116 L. T. 810; Tingley v. Müller, [1917] 2 Ch. 144; Naylor, Benzon v. Krainische Industrie Gesellschaft, [1918] 1 K. B. 331; Stevenson v. Akt. für Cartonnagen Industrie, [1918] A. C. 239. Reid. Re Aramayo Francke Mines, [1917] 1 Ch. 451; Ertel Bieber v. Rio Tinto Co., [1918] A. C. 260; Rodriguez v. Speyer, [1919] A. C. 59; Re Munster, [1920] 1 Ch. 268; Re Ferdinand, Ex-Tsar of Bulgaria, [1921] 1 Ch. 107; Re Rush, Warre v. Rush, [1923] 1 Ch. 56. Generally, Reid. Todd v. Egyptian Delta Land & Investment Co. (1927), 96 L. J. K. B. 554. Mentd. Russian Commercial & Industrial Bank v. British Bank for Foreign Trade, [1921] 2 A. C. 438; Bradbury v. English Sewing Cotton Co., [1922] 2 K. B. 569.**

**195a. ———.]—Re BADISCHE CO., LTD., Re BAYER CO., LTD., Re GRIESHEIM ELEKTRON, LTD., Re KALLE & CO., LTD., Re BERLIN ANILINE CO., LTD., Re MEISTER LUCIUS & BRUNING, LTD., No. 405a, post.**

**198. Add. Annotations:—Consd. Central India Mining Co. v. Soc. Coloniale Anversoise, [1920] 1 K. B. 753; Re Deutsche Bank (London Agency), [1921] 2 Ch. 291. Reid. Jebara v. Ottoman Bank, [1927] 2 K. B. 254.**

**198a. —.]—** Jan. 1914, pltfs. entered into a contract with defts., who were a co. incorporated under the laws of Belgium & had their registered office at Antwerp, to sell to them manganese ore deliverable in certain quantities during the second half of 1914 & the three following years alongside steamer in Bombay. In Sept. 1914, when the German armies were threatening Antwerp, the managing director of deft. co. removed all the co.'s goods & the money in bank to London & came himself to London, & there, without any formal authority from the co., carried on business in his own name, but for the benefit of the co. After the German occupation of Antwerp the German authorities placed the co. under compulsory administration. During the German occupation, meetings of the directors & shareholders were held at which formal business was transacted. These meetings were held so as to comply with Belgian law & to keep the co. in existence. The co. also collected & paid debts due to & owing by it in order to prevent the German authorities from winding up the co. & investing the uncalled capital in German War Loan, & with the like object it created a debt against its uncalled capital in favour of its bankers for the purpose of paying arrears of dividend on its preference shares. Pltfs. contended that the co. was an enemy, & they claimed a declaration that the contract was dissolved & was no longer binding on them:—**Held:** pltfs. were entitled to the declaration claimed; though acts which were necessary merely for the purpose of keeping the co. in existence might not amount

to "carrying on business" within the Proclamation of Sept. 14, 1915, the collection of debts & discharge of liabilities with the intention of continuing the business amounted to a "carrying on business," & constituted the co. an "enemy" within the Proclamation.—**CENTRAL INDIA MINING CO. v. SOCIÉTÉ COLONIALE ANVERSOISE, [1920] 1 K. B. 753; 89 L. J. K. B. 769; 122 L. T. 451; 36 T. L. R. 88, C. A.**

**198b. ———.]—**Germany was in effective military occupation of Brussels & the greater part of Belgium at the date of an order for winding up the business carried on in this country by a German bank, of which a Belgian bank carrying on business in Brussels was an unsecured creditor:—**Held:** the Belgian bank was a creditor who was not an enemy within Trading with the Enemy Amendment Act, 1916 (c. 105), s. 1 (3).—**Re DEUTSCHE BANK (LONDON AGENCY), [1921] 2 Ch. 291; 90 L. J. Ch. 449; 126 L. T. 20; 37 T. L. R. 912; 65 Sol. Jo. 781.**

**198c. Registered in allied country—Government overthrown—Non-recognition of usurping Government.]—**Pltfs., an insurance co. with its registered office at Petrograd & a branch office in England, in Apr. 1917, entered into a reinsurance treaty with defts., an English insurance co., whereby pltfs. reinsured part of the risks of defts. At the end of the first year there was a balance in favour of pltfs. In an action to recover the amount of the balance defts. pleaded that as the Bolsheviks had in Nov. 1917, usurped supreme power in Russia, & as the British Govt. was carrying on warlike operations against them pltfs. were alien enemies, & that owing to the entire suspension of business in Petrograd by reason of the usurpation the basis of the contract had been destroyed:—**Held:** as the Bolshevik Govt. had not been recognised by this country as the Russian Govt., & as pltfs. had not adhered to the Bolsheviks pltfs. were not alien enemies; & as defts. with knowledge of the facts had continued to treat the contract as alive by crediting pltfs. with premiums & debiting them with losses, the Bolshevik revolution had not so destroyed the basis of the contract as to put an end to it, & pltfs. were entitled to recover.—**EASTERN CARRYING INSURANCE CO. v. NATIONAL BENEFIT LIFE & PROPERTY ASSURANCE CO., LTD. (1919), 35 T. L. R. 292.**

**199. Add. Citation:—1 P. Cas. 75. Add. Annotations:—Mentd. The Abonema, The Hillerod, The Florida, The Albania, The Adjutant, [1919] P. 41; The Achilles, [1919] P. 340; Re Certain Craft Captured on Victoria Nyanza, [1919] P. 83; The Orteric, [1920] A. C. 724; The Vesta, etc., [1921] 1 A. C. 774; The Anichab, etc., [1922] 1 A. C. 235; Netherlands-American Steam Navigation Co. v. Procurator-General (1925), 42 T. L. R. 81.**

**201. Add. Annotation:—Reid. Johnstone v. Pedlar, [1921] 2 A. C. 262.**

**202. Add. Annotation:—Consd. Rodriguez v. Speyer, [1919] A. C. 59.**

**PART III. SECT. 2, SUB-SECT. 2.—A.**  
**sb. Shares held by enemy subject—Vested in Public Trustee—Power to sell.]—Held:** War Precautions (Enemy Shareholders) Regulations, 1916 r 11 (2), which empowered the A.

to authorise the Public Trustee to sell shares in a co. transferred to him as being held by an alien enemy, was a valid exercise of the power conferred by War Precautions Act, 1914–1916, s. 4, & was within the defence power

of the Commonwealth.—**BURKARD v. OAKLEY (1918), 25 C. L. R. 422.—AUS.**

**sc. ———.]—Held:** War Precautions (Enemy Shareholders) Regulations, 1916 reg. 11, authorised the sale

204. *Add. Annotation* :—*Consd. Re Ferdinand, Ex-Tsar of Bulgaria*, [1921] 1 Ch. 107.
205. *Add. Annotation* :—*Consd. Re Ferdinand, Ex-Tsar of Bulgaria*, [1921] 1 Ch. 107.
207. *Add. Annotations* :—*Refd. Re Ferdinand, Ex-Tsar of Bulgaria*; [1921] 1 Ch. 107; *Johnstone v. Pedlar*, [1921] 2 A. C. 262.
208. *Add. Citation* :—1 P. Cas. 75.  
*Add. Annotations* :—*Refd. The Achilles*, [1919] P. 340; *Re Certain Craft Captured on Victoria Nyanza*, [1919] P. 83; *The Orteric*, [1920] A. C. 724; *The Vesta*, etc., [1921] 1 A. C. 774; *The Anichab*, etc., [1922] 1 A. C. 235. *Mentd. The Abonema, The Hillerod, The Florida, The Albania, The Adjutant*, [1919] P. 41; *Netherlands-American Steam Navigation Co. v. Procurator-General* (1925), 42 T. L. R. 81.
- 208a. ——— *Effect of Trading with Enemy Acts, 1914–1916.*—(1) Under the common law of England the Crown has always had &, subject to the effect of the above Acts, still has the right to seize & forfeit private property, including choses in action & equitable interests therein, found in this Kingdom belonging to subjects of an enemy State. That right has not been abandoned by desuetude. The powers conferred by the above Acts, however, are so inconsistent with the exercise of the common law right of forfeiture that that right must be treated as being thereby, at least temporarily, superseded.
- (2) In order to complete the title of the Crown to property so seized an inquisition of office must be held before the conclusion of peace.—*Re FERDINAND, EX-TSAR OF BULGARIA*, [1921] 1 Ch. 107; 90 L. J. Ch. 1, C. A.
- Annotation* :—*Generally, Mentd. Netherlands-American Steam Navigation Co. v. Procurator-General* (1925), 42 T. L. R. 81.
209. *Add. Annotation* :—*Refd. Rodriguez v. Speyer*, [1919] A. C. 59.
- 215a. *Treaties of Peace & consequent Orders—What property subject to charge under—Right to assessment of damages in collision action.*—Before the outbreak of war, defts., the German owners of the steamship *M.*, recovered judgment against the British owners of the steamship *K.* for the amount of the damage arising out of a collision between the two vessels, & the damages were

of shares transferred to the Public Trustee, notwithstanding that some beneficial interest in the shares was held by a person not an enemy subject, & was a valid exercise of the power conferred by War Precautions Act, 1914-1916, s. 4.—**BURKARD v. OAKLEY** (1920), 27 C. L. R. 520.—**AUS.**

212 1. *Patent in name of alien enemy—Royalties paid by licensee during suspension of patent—Who entitled to.*—*Held:* (1) royalties paid by the licensee from the date of his licence up to the expiration of six months from the ending of the war, i.e., to Jan. 10, 1920, were not sums belonging to an enemy, & were not properly in the hands of the custodian; (2) royalties paid or to be paid after June 10, 1920, were properly paid or payable in the hands of the custodian as a debt due to an enemy.—*Re* SYNTHETIC DRUG Co., [1925] Exch. C. R. 196.—CAN.

**215 1. Licensed to trade for limited purposes—Banking transactions.]—**The London agency of a German bank, which at the outbreak of war in 1914 became an enemy, held a bill, drawn by a German subject & accepted by

a Scotsman, which had been sent from Germany for collection. It had been the practice of the bank that, if bills so sent were dishonoured, no legal proceedings were taken against acceptors in Great Britain, but the bills were retransmitted to the German office so that proceedings might be taken in the German cts. against the German indorsers. Licences covering the whole period of the war were issued to the London agency, empowering it to carry on banking business under supervision, to the extent of completing current transactions, so as to make its realisable assets available to its creditors, "so far as those transactions would in ordinary course have been carried out through" the London establishment. The bill having been dishonoured on presentation, was retained by the London agency, which debited the German office with the amount, & filed a letter, which owing to war conditions could not be sent, to the German office intimating the circumstances. In an action on the bill brought in 1922 by the Public Trustee against the Scottish acceptor :—*Held* : as an action on the bill was not a

referred to the registrar & merchants for assessment. Before debts. had filed their claim in the registry the war had broken out. A few days before the Peace Treaty was ratified the claim & vouchers were filed, but by consent they were treated as having been filed after the ratification. Thereupon pltf's. took out a summons for an order to set aside the filing & service of the claim & vouchers on the ground that under arts. 296 & 297 of the Treaty & Treaty of Peace Order, 1919, s. 1 (xvi & xvii), the parties had no right to litigate the claim in the registry, inasmuch as, being a debt owing to German nationals, it had to be settled through the intervention of clearing houses:—*Held*: (1) debts.' claim was not a debt but a right, which by the Peace Treaty, art. 297, was subject to the right to be retained & liquidated "in accordance with the law of the allied State . . . concerned," namely, Great Britain; (2) not being a debt, art. 296 did not apply; (3) although debts. would not be able to handle the sum awarded, there was nothing in art. 297 or in Treaty of Peace Order, s. 1 (xvii) to deprive debts. of their right to proceed to a reference, or to prevent pltf's. paying money into ct. with a notice that it was in satisfaction of the claim of German subjects.—THE MARIE GARTZ, [1920] P. 172; 89 L. J. P. 206; 123 L. T. 680; 36 T. L. R. 417; 15 Asp. M. L. C. 98.

215b. ——— Debt—Due to German.]—Clause 14 of the annex contained in the Sched. to Treaty of Peace Order, 1919, does not affect the rights of an individual British national to resist a claim by the Controller of the British Clearing Office to recover a debt which is admitted to be due to a German national, & is therefore an “enemy debt” within Treaty of Versailles & Treaty of Peace Order, 1919.—CLEARING OFFICE CONTROLLER v. EDWARDS & Co. (BREAD STREET), LTD., [1923] W. N. 245.

**215c.** ——— Trust estate—Accumulations of interest.]—*Re* CHAMBERLAIN'S SETTLEMENT, CHAMBERLAIN *v.* CHAMBERLAIN, No. 49c, *ante*.

215d. — — — — .]—*Re* HALLENSTEIN,  
HALSTED v. BLANK, No. 237c, *post*.

215e. ——— Accumulations of annuities.]  
—By his will a testator, who died on Jan. 14,

transaction that would in ordinary course have been carried out through the London agency, the licences conferred no right to sue.—PUBLIC TRUSTEE v. DAVIDSON, [1925] S C. 451.—SCOT.

**215 ii. Substitute this number for 215 i. in original volume.**

215b1. *Treaty of Peace & consequent Orders—What property subject to charge under—"Debits"—What are.]*  
 —(1) Deposits of money with the National Trust Co. for investment in securities, repayment of which was guaranteed on dates which fell during the war; (2) not deposits in a savings bank & moneys invested with a loan co. to be withdrawn on notice & from the bank on presentment of the bank book; (3) not moneys deposited with a trust co. with instructions that all sums of capital & interest so received should be held by the co. to the credit of the owner until further advice.—**SECRETARY OF STATE OF CANADA v. NEITZKE, SECRETARY OF STATE OF CANADA v. WIEHMAYER (1921), 68 D. L. R. 443; 62 S. C. R. 262; varying, 20 Exch. C. R. 219.—CAN.**



1916, directed his exors. to pay annuities to an Austrian & two German nationals "until he or she shall die or mortgage or otherwise charge the same . . . or until the happening of any event whereupon the same if given to him or her absolutely would no longer be received by him or her for his or her benefit." No part of the annuities could be paid to the annuitants during the war by reason of Trading with the Enemy Amendment Act, 1914 (c. 12), but accumulations were retained by the exors., as no order was made under sect. 4 of the Act vesting the annuitants' interests in the custodian:—*Held*: (1) as the Act of 1914 only suspended payments to the alien enemies & did not determine the ownership & ultimate destination of their annuities, those annuities were not forfeited *ab initio*; (2) the annuities were forfeited & determined in the case of the German nationals as from Jan. 10, 1920, by the charge imposed by the Treaty of Peace with Germany & Treaty of Peace Order, 1919, & in the case of the Austrian national as from July 16, 1920, by the charge imposed by the Treaty of Peace with Austria & Treaty of Peace (Austria) Order, 1920; (3) the accumulations of the annuities until those respective dates became subject to the charges & payable therefore to the custodian or the administrator of Austrian property as the case might be.—*Re LEVINSTEIN, LEVINSTEIN v. LEVINSTEIN*, [1921] 2 Ch. 251; 91 L. J. Ch. 32; 126 L. T. 177; 65 Sol. Jo. 767.

*Annotations*:—As to (3) *Folld. Re Chamberlain's Settlmt., Chamberlain v. Chamberlain*, [1921] 2 Ch. 533; *Re Biedermann, Best v. Wertheim*, [1922] 1 Ch. 31.

215f. — — — — —.]—A testator, whose domicile was English, by his will directed his trustees to invest a certain sum in the Hamburg State Loan & from the income thereof to pay a number of annuities, & as & when the annuities fell in, to apply the income & the capital so set free in accumulating a trust fund. That trust fund was also invested in the Hamburg State Loan. The annuitants & those interested under the will in the trust fund, were German nationals:—*Held*: the interests of the beneficiaries under the will were charged under Treaty of Peace Order, 1919, as being "property, rights & interests" in the United Kingdom.—*FAVORKE v. STEINKOPFF*, [1922] 1 Ch. 174; *sub nom. Re STEINKOPFF, FAVORKE v. STEINKOPFF*, 91 L. J. Ch. 165; 126 L. T. 597.

215g. — — — — —.]—Under the trusts of a marriage settlement of 1903 & in the events that had happened certain infant children, German nationals, were on Jan. 10, 1920, when the Peace Treaty came into operation, entitled contingently on attaining twenty-one or marrying to an annuity of £150 a year. If neither infant attained a vested interest the annuity passed to the husband, also a German national. The annuity was secured by the covenant of the wife's parents with the trustees, all British subjects, & was payable during the lives of the surviving covenantor & the surviving

child, but the trustees were not to be liable for any loss occasioned by their neglect to enforce the covenant. The infants' contingent title accrued in possession on the wife's death on July 17, 1918, but the trustees had not enforced the payment of any instalment since then. The custodian having claimed the annuity, the trustees submitted the matter to the ct. The custodian had not obtained a vesting order:—*Held*: both the arrears & the contingent future instalments payable after Jan. 10, 1920, were property rights or interests within Peace Treaty Order, 1919, s. 1 (xvi), & notwithstanding the infants' personal incapacity, were caught by the charge.—*Re NEUBURGER'S SETTLEMENT, FORESHEW v. PUBLIC TRUSTEE*, [1923] 1 Ch. 508; 92 L. J. Ch. 442; 29 L. T. 735; 67 Sol. Jo. 500.

215h. — — — — —.]—*Accumulations of annuities.*

By his will dated Mar. 31, 1911, a testator bequeathed an annuity of £250 to an Austrian national "until he shall die or voluntarily or involuntarily alienate or encumber . . . the same." Testator died on Aug. 22, 1914, during the war. The annuity was therefore accumulated in the hands of his legal personal representative, who made the proper returns to the custodian under Trading with the Enemy Amendment Act, 1914 (c. 12), s. 3, but no vesting order was made under sect. 4. By Treaty of Peace (Austria) Order, 1920, the annuity & its accumulations were, as from July 16, 1920, charged in favour of the administrator of Austrian Property, to secure (*inter alia*) payment of debts owing by Austrian to British nationals:—*Held*: (1) the accumulations up to July 16, 1920, passed to the administrator of Austrian property; (2) the charge created by Treaty of Peace Order was not an involuntary alienation or encumbrance within the meaning of the will, so that the current annuity since July 16, 1920, was not forfeited, but was payable to the administrator of Austrian property.—*Re BIEDERMANN, BEST v. WERTHEIM*, [1922] 1 Ch. 31, 91 L. J. Ch. 105; 38 T. L. R. 37; 66 Sol. Jo. 107; *on appeal*, [1922] 2 Ch. 771, C. A.

Trust estate.]—See Nos. 215e—215g, *ante*.

Shares in English company.]

*FASBENDER v. A.-G., KRAMER v. A.-G.*, No. 49d, *ante*.

215j. — — — — —.]—*Property in England.*—A person of dual nationality, who is a British subject by British law, having been born in England, & also a German subject by German law, is a "German national" within the Treaty of Peace with Germany, art. 297, & Treaty of Peace Order, 1919, giving effect to it, & is not entitled to have property in England belonging to him exempted from the charge created by sect. 1 (xvi) of that Order.—*KRAMER v. A.-G.*, [1923] A. C. 528; 92 L. J. Ch. 333; 129 L. T. 390; 39 T. L. R. 462; 67 Sol. Jo. 552, H. L.; *affg. S. C. sub nom. FASBENDER v. A.-G., KRAMER v. A.-G.*, [1922] 2 Ch. 850, C. A.

*Annotation*:—*Reid. Re Rush, Warre v. Rush*, [1923] 1 Ch. 56.

215i. — — — — —.]—*Bearer shares & debentures in Transvaal mining company.*—*RANDFONTEIN ESTATES GOLD MINING CO., LTD. v. CUSTODIAN OF ENEMY PROPERTY*, [1923] App. D. 576.—S. AF.

215j. — — — — —.]—*Property in Australia—Subject to restraint on anticipation.*—The words "all property, rights & interests" appearing in cl. 4 of the annex to art. 297 of the Treaty of Peace between the Allied Powers

& Germany are wide enough to include an estate for life of a married woman, being a German national, still under coverture subject to a restraint on anticipation.—*COWPER v. FRANKENBERG* (1921), 21 S. R. N. S. W. 388.—AUS.



**215k.** Subject to restraint on anticipation.]—The charge imposed by Treaty of Peace Order, 1919, s. 1 (xvi), upon all property, rights & interests in this country belonging to German nationals at the date of the coming into force of the Treaty of Versailles attaches to the interest of a married woman, who is a German national, in property in England settled upon her for life without power of anticipation, notwithstanding the restraint upon anticipation.—*PUBLIC TRUSTEE v. WOLF*, [1923] A. C. 544; 92 L. J. Ch. 520; 129 L. T. 738; 39 T. L. R. 553; 67 Sol. Jo. 637, H. L.; *reversg.* S. C. *sub nom. Re RUSH, WARRE v. RUSH*, [1923] 1 Ch. 56, C. A.

*Annotations:—*Reid. *Re Neuburger's Settlement*, *Foreshe v. Public Trustee*, [1923] 1 Ch. 508. *Mentd. Morgan v. Morgan & Kirby*, [1923] P. 1; *Parr v. A.-G.*, [1926] A. C. 239.

**215l.** ——— Belonging to foreign bank in liquidation.]—Pltfs. were the receivers of the Austro-Hungarian Bank appointed by the Reparations Commission under Treaty of Peace with Austria, art. 206, & entrusted with the duty of liquidating the bank for the purpose of distributing the liability on the currency notes of the bank among the several States among which the territory of the former Austro-Hungarian monarchy had been divided. Art. 249 of that Treaty provided that "subject to any contrary stipulation" in the Treaty, the British Govt. might retain & liquidate the property in this country of "nationals of the former Austrian Empire" which expression, as the ct. found, included the Austro-Hungarian Bank, & charge it with the payment of claims by British nationals in respect of (*inter alia*) debts due to them by Austrian nationals. By the same article Austria undertook to compensate her own nationals for the retention of & charge upon their property. Defts. were the custodian of enemy property in this country & the administrator appointed by Order in Council to liquidate the property of Austrian nationals in this country & administer the above-mentioned charge. Pltfs. claimed that art. 206 was a "contrary stipulation" within art. 249, that the property of the bank in this country was consequently not subject to the charge, & that they & not defts. were entitled to administer that property:—*Held*: there was no inconsistency between the two articles, which dealt with different subject matters, the only effect of art. 249 upon the liquidation under art. 206 being to replace the assets of Austrian nationals in this country by assets of equal value in Austria if the Austrian Govt. carried out its undertaking, & the action must be dismissed.—*LUXARDO v. PUBLIC TRUSTEE*, [1924] 2 Ch. 147; 93 L. J. Ch. 425; 131 L. T. 200; 40 T. L. R. 546; 68 Sol. Jo. 737, C. A.

**215m.** ——— Policy money—Payable in England.]—Pltf. co. was incorporated by special Act of the Legislature of New York, & had its central office & the bulk of its assets in New York. The co. had a branch in London, & in most of the capitals of Europe, the branch in Paris being its head

office for Europe. The general manager of the London branch had no general authority to issue policies in this country. Certain life policies signed by the president & secretary of the co. & countersigned by the general manager for Europe were issued in London to German nationals before the outbreak of the war. The policies were not under seal. The policy moneys were expressed to be payable in London, but all premiums were payable either at the central office in New York or at the office where the insurance was payable & proofs of death were to be furnished at the New York office. An indorsement on the policy provided that it should be construed according to English law. In an action to determine whether the policy moneys payable under the policies in question, which had matured on or before Jan. 10, 1920, the date when the Treaty of Peace with Germany came into force, were "property, rights & interests within His Majesty's Dominions" belonging to German nationals, & as such were subject to the charge created by Treaty of Peace Order, 1919, s. 1 (xvi):—*Held*: (1) there was nothing in art. 299 of s. V. of the Peace Treaty, or in par. 11 of the annex thereto, to indicate that the property, rights, & interests of the assured under such contracts were to be excluded from the general charge under par. 4 of the annex to s. IV.; (2) inasmuch as a corp'n. might have a dual residence, & there was evidence that pltfs. were resident both in New York & in London carrying on business in both places & in both places being subject to the jurisdiction of the cts., it was permissible & necessary to look at the terms of the contracts & to determine from them at what place the debts would be recoverable. Applying that test in the present case, the debts were recoverable in London where they were expressed to be payable, & that being so, they were situate within His Majesty's Dominions & became subject to the charge.—*NEW YORK LIFE INSURANCE CO. v. PUBLIC TRUSTEE*, [1924] 2 Ch. 101; 93 L. J. Ch. 449; 131 L. T. 438; 40 T. L. R. 430; 68 Sol. Jo. 477, C. A.

*Annotations:—*As to (2) *Reid. Swedish Central Ry. v. Thompson*, [1924] 2 K. B. 255; *Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669.

**215n.** ——— Share of enemy partner in firm.]—So far as English law is concerned one partner in a firm who purchases the share of an enemy partner therein during hostilities acquires no fresh right & has no fresh remedy as a result of such purchase. Such enemy's interest in the concern still falls within the category of "property, rights, & interests" subject to the charge created by Treaty of Peace Order, s. 1 (xvi) for the purpose of giving effect to art. 297, & by Treaty of Peace Orders, s. 1 (xvii) (ccc) is payable to the administrator of German property.—*FRIED v. GERMAN PROPERTY ADMINISTRATOR*, [1925] Ch. 757; 95 L. J. Ch. 4; 134 L. T. 376; 69 Sol. Jo. 707.

**215o.** ——— Joint decisions of Clearing Offices—Effect.]—In 1913 defts. had entered into contracts with German sellers for the purchase

of German nationals in testator's undisposed of property.]—The rights of German nationals in testator's property undisposed of by his will are subject to the charge created by Regulations of Jan.

28, 1920, par. 20 [1922] St. R. Qd. 39. —AUS.

*Administration of trusts in Germany.*—*Re MITCHNER, UNION TRUSTEE CO. OF AUSTRALIA, LTD. v. A.-G. FOR COMMONWEALTH OF*

MITCHNER,

AUSTRALIA, [1927] S. R. Q. 279. —AUS.

*st. — It is acquired under vesting orders made under Trading with Enemy Acts not affected.*—*SECRETARY OF STATE OF CANADA v. GREENSHIELDS, LTD.*, [1925] Exch. C. R. 29. —CAN.

of a quantity of nitrate, delivery of which was to be made to defts.' agent alongside the vessel at Iquique, & payment for which was to be made in London after presentation of bills of lading. Several cargoes were shipped, but war broke out before the vessels arrived at their destination & before the bills of lading, which were made out to order, could be presented. In these circumstances defts. procured delivery to their sub-purchasers by giving an indemnity to the ships, & presumably received payment for the nitrate from their sub-purchasers. After an interval the German sellers duly notified their claim for the price of the nitrate & for interest to the German clearing office, which in turn passed it on to the British clearing office. Defts. were prepared to pay what the Germans claimed as the price of the goods, though they disputed the existence of any debt, either in the strict legal sense or in the sense in which the expression is used in Treaty of Peace, art. 296, & they disputed the claim for interest. As the Treaty only contemplated the admission of debts, & defts. were prepared to pay the amount claimed as the price of the goods, the British clearing office admitted the debt, & the principal money was cleared in 1923. At a later period the claim for interest was again put forward. This claim defts. still disputed, but the two clearing offices arrived at a joint decision that interest was payable upon the principal sum admitted by the British clearing office. Notice of the decision was conveyed to defts. in a letter dated Sept. 13, 1923. The decision took the form of an intimation that the British & German clearing offices had jointly agreed that interest in accordance with par. 22 of the annex to sect. III. of Part X. of the Treaty was payable upon the admitted debt at the rate of 5 per cent. *per annum* calculated from dates specified. The notice then continued as follows: "In default of a notice of appeal under r. 22 of the Rules of Procedure of the Anglo-German Mixed Arbitral Tribunal, the interest on the said sum of . . . at the rate of 5 per cent. from (the date named) to the date of crediting & advice to the German clearing office will be credited by the British clearing office to the German clearing office." No appeal was brought, & after the expiry of the time for appealing, *pltf.*, the controller of the British clearing office, sought to enforce this joint decision by action on the ground that a joint decision unappealed from should, on a true construction of the Peace Treaty, be regarded in the same light as if it was a foreign judgment, or the award of an arbitrator, & should, therefore, be enforced by the *cts.* of this country on the same principle as either a foreign judgment or an award is enforced:—*Held*: under Treaty of Peace, art. 296, as carried out by Treaty of Peace Act, 1919, & Treaty of Peace Order, 1919, the joint decisions of the clearing offices were not in the nature of judgments or of awards under an *arbn.*, so as themselves to be enforceable by action, & therefore the action failed.—*CLEARING OFFICE CONTROLLER v. WEIR & Co.* (1925), 95 L. J. K. B. 88; 133 L. T. 701; 41 T. L. R. 603; 69 Sol. Jo. 809; 22 Lloyd, L. R. 280, C. A.; *affd.* (1926), 135 L. T. 705; 42 T. L. R. 697, H. L.

215p. — Action against administrator—Whether

Attorney-General necessary party.] — The A-G. is not a necessary party to an action against the administrator of Hungarian property in which the substantial claim was against the fund, & a subsidiary claim for a declaration as to nationality was added.—*GROEBEL v. HUNGARIAN PROPERTY ADMINISTRATOR* (1925), 70 Sol. Jo. 345.

219. Citations:—For "*Re HEGELBERG*" read "*Re HAGELBERG*."

219a. — — — — —.]—The controller of the London agency of an enemy bank appointed under the above Act ought not in the absence of special circumstances to pay (1) non-enemy holders of cheques drawn before or after the outbreak of war by enemy customers; (2) non-enemy holders of cheques drawn before or after the outbreak of war by non-enemy customers; (3) pre-war acceptances of customers, whether enemy or non-enemy, of the London branch, or of other persons domiciled for payment at the London branch.

(4) Where cheques are drawn by the head office or any enemy branch on the London branch payable to non-enemy persons, claims in respect thereof must not be met without the direction of the judge.—*Re DRESNER BANK (LONDON AGENCY)* (1920), 64 Sol. Jo. 426.

219b. — — — — — Effect of Treaty of Peace.]—(1) The provision contained in sect. 1 (3) of the above Act continues in force after the coming into operation of the Treaty of Peace of June 28, 1919.

(2) The date at which the enemy or non-enemy character of creditors is to be determined is the date of the winding-up order.—*Re DEUTSCHE BANK (LONDON AGENCY)*, [1921] 2 Ch. 30; 90 L. J. Ch. 406; 126 L. T. 20; 37 T. L. R. 559; 65 Sol. Jo. 492; *subsequent proceedings*, [1921] 2 Ch. 291.

219c. — — — — — Who are creditors.]—On the outbreak of war three enemy banks in the City were closed, but were afterwards reopened under licence. Ultimately the Board of Trade made orders under the above Act winding up the businesses, & a controller was appointed for that purpose. The controller gave the managers notice purporting to terminate their contracts under which they were entitled to a year's notice, & the contracts being subject to German law were not determined by the outbreak of war. The managers took out summonses claiming payment of their salary monthly after the date of the notice, or damages for wrongful dismissal:—*Held*: the claims for salary & for damages were not debts of a London business payable under the above Act, & the applications failed.—*Re ANGLO-AUSTRIAN BANK, Re DRESNER BANK, Re DIRECTION DER DISCONTO GESELLSCHAFT*, [1920] 1 Ch. 69; 89 L. J. Ch. 86; 121 L. T. 640; 35 T. L. R. 736.

Annotation:—*Consd. Re Vulcaan Coal Co., Harrison v. Harbottle*, [1922] 2 Ch. 60.

220. Add. Annotations:—*Consd. Meyer v. Faber* (No. 2), [1923] 2 Ch. 421. *Refd. Re Vulcaan Coal Co., Harrison v. Harbottle*, [1922] 2 Ch. 60.

221. Add. Annotations:—*Refd. Re Dieckmann* (1917), 117 L. T. 713; *Meyer v. Faber* (No. 2), [1923] 2 Ch. 421.



**221a.** **Liability of third party to put business in funds to meet bills.]—**In June, 1914, defts. by their Paris branch, drew ten bills of exchange, payable in London three months after date, on the Dresdner Bank. The Dresdner Bank accepted the bills at their London branch & received as security Russian promissory notes. Defts. provided no funds to meet the bills when they fell due &, under an arrangement between the Treasury & the Bank of England, the amount payable was discharged by the Bank of England. By 1917 the Dresdner Bank in London had repaid the sum due for principal & interest to the Bank of England. In 1918 the Board of Trade, under the above Act, ordered the business carried on by the Dresdner Bank in London to be wound up, & appointed a controller to wind up the business, with power to collect all moneys owing to the bank & to bring actions in the name of the bank:—*Held*: (1) the transaction was part of the "business" of the London branch of the Dresdner Bank; defts.' liability to put the Dresdner Bank in funds to meet the bills was an asset of the London branch within the above sect., even if the London branch accepted the bills on the instructions of the head office in Berlin & debited the current account of the head office with the amount paid on the bills, & defts. were liable to repay pl'ts. the money paid by them to the Bank of England in respect of the bills with simple interest at 5 per cent. on each instalment from the date of payment; (2) the action by the controller in the name of the Dresdner Bank (London Agency) was not an action in the name of a branch of that bank but an action in the name of the Dresdner Bank, & the addition of the words "London Agency," being merely descriptive, did not change pl'ts. from being the Dresdner Bank into something unknown to the law as a legal person.—*DRESDNER BANK v. RUSSO-ASIATIC BANK*, [1923] 1 Ch. 209; 92 L. J. Ch. 204; 128 L. T. 633; 67 Sol. Jo. 277.

*Annotation:—Generally, Mentd. Russian Commercial & Industrial Bank v Comptoir D'Escompte de Mulhouse*, [1923] 2 K. B. 630.

**222. Add. Annotation:—***Refd. Meyer v. Faber* (No. 2), [1923] 2 Ch. 421.

**223. Add. Annotations:—***Refd. Re Vulcaan Coal Co., Harrison v. Harbottle*, [1922] 2 Ch. 60; *Meyer v. Faber* (No. 2), [1923] 2 Ch. 421.

**223a.** **Action in name of business—**  
**Addition of words "London Agency."]**  
*DRESDNER BANK v. RUSSO-ASIATIC BANK*, No. 221a, *ante*.

**223b.** **After Treaty of Peace.]**  
The Treaty of Peace with Germany, art. 296, which declared that enemy debts as therein defined were to be settled through clearing offices to be established after the treaty came into operation, & the annex to that article,

are qualified by art. 297, & the latter article & its annex cannot be construed as limited to a confirmation of what has been done under "exceptional war measures" prior to the coming into force of the Treaty, but must be held to validate all acts & procedure done thereafter in the execution of such exceptional war measures.

Where an action was brought four months after the coming into force of the Treaty of Peace by the controller with the sanction of the Board of Trade, in the name of enemy subjects formerly carrying on business in London, to recover assets of the business alleged to be in the hands of deft.:—*Held*: the action was properly brought; & a motion by deft. to stay the proceeding on the ground that it was prohibited by the Treaty of Peace was dismissed.—*MEYER & CO. v. FABER*, [1921] 2 Ch. 226; 91 L. J. Ch. 233; 125 L. T. 531.

**223c.** **General position of controller.]—**  
*Re VULCAAN COAL CO., HARRISON v. HARBOTTLE*, No. 223f, *post*.

**223d.** **At the outbreak of war in 1914, a British subject, resident in England, & three German subjects, resident in Germany, were carrying on business in partnership in London. The outbreak of war having dissolved the partnership, the British partner with the sanction of the Home Office proceeded to wind up the business. He got in a large sum of money, representing assets of the business, & discharged nearly all the liabilities, & had a balance in hand. The controller, appointed in 1918 under Trading with the Enemy Acts, 1916 (c. 105) & 1918 (c. 31), sued, in the name of the firm, the British partner for the balance of assets. Deft. contended that he had himself claims against the business, & that he was entitled to the taking of partnership accounts to ascertain those claims before paying over the assets:—***Held*: under the Acts, the controller had not the powers of a trustee in bkpcy., his outside powers being those of a liquidator in a voluntary winding up, & he could not therefore override the ordinary law of partnership which entitled deft. to the taking of accounts between himself & the other partners.—*MEYER & CO. v. FABER* (No. 2), [1923] 2 Ch. 421; 93 L. J. Ch. 17; 129 L. T. 490; 39 T. L. R. 550; *sub nom. MEYER & CO. v. FABER, MEYER & CO. v. ELDER*, 67 Sol. Jo. 576, C. A.

**223e.** **Dismissal of manager by controller—**  
**Claim by manager for salary & damages for wrongful dismissal.]—***Re ANGLO-AUSTRIAN BANK, Re DRESDNER BANK, Re DIRECTION DER DISCONTO GESELLSCHAFT*, No. 219c, *ante*.

**223f.** **Claim by manager to retain money as against controller.]—**A controller appointed by the Board of Trade under

**PART III. SECT. 2, SUB-SECT. 2.—**  
**B. (a).**

**223i. Amending Act of 1916, s. 1—**  
**Business ordered to be wound up—Sale of stock—Rights of consignors of stock supplied on sale or return.]—**The business of an alien enemy bookseller was ordered to be wound up, upon application by the controller under the above sect.:—*Held*: he was entitled to sell the whole stock, but if there were identifiable consignments of unsold

stock on sale or return from persons with whom he could communicate, he must return or store them at consignors' expense.—*Re THOMSON, Ex p. M'LINTOCK*, [1918] 1 S. L. T. 137.—*SCOT*.

**sj. Trading with Enemy Acts, 1914–1916—Business ordered to be wound up—Power of controller to apply.]—***Held*: s. 9H of the 1914–16 Acts authorised the Minister for Trade & Customs to confer upon a controller

powers under which the right of that controller to apply to the High Ct. was not to be measured by the standard laid down with regard to similar applications by a liquidator.—*BROKEN HILL v. WARNOCK* (1922), 30 C. L. R. 362.—*AUS*.

**sk. Enemy Trading Act, X of 1916—Business ordered to be wound up—Powers of controller.]—***WOLF v. DADYBA* (1919), 1 L. R. 44 Bom. 631.—*IND*.



sect. 1 (1) of the above Act to wind up the English business of an enemy co. or firm, does not represent the co. or firm. His duties are to get in the assets & discharge the liabilities of the business.

By an agreement, dated Mar. 28, 1913, H. was engaged as manager of the Newcastle branch of a German co. registered in Holland until June 30, 1918, at a salary of not less than £1,000 *per annum*. On Aug. 14, 1916, the Board of Trade made an order to wind up the business & appointed a controller under sect. 1 (1) of the above Act. On Aug. 31, 1916, the controller dispensed with the services of H. At that date H. had in his possession certain moneys of the business, which he claimed to retain, as against the controller, to satisfy his claim for damages for breach by the co. of the agreement:—*Held*: the claim was against the co., & not against the business, & H. was not entitled to retain the moneys as against the controller.—*Re VULCAAN COAL CO., HARRISON v. HARBOTTLE*, [1922] 2 Ch. 60; 91 L. J. Ch. 491; 127 L. T. 274; 66 Sol. Jo. 423.

*Annotation*:—*Dbtd. Meyer v. Faber* (No. 2), [1923] 2 Ch. 421.

223g. ——— *Sale of business by controller—Damages for breach of contract.*—At the outbreak of war the majority of the shares in M. Co., carrying on business in the United Kingdom, were held by, & the majority of the directors were, alien enemies. A controller of the co. was appointed. By the appointment of new directors the co. came under British management. In Dec. 1915, M. Co. agreed to sell, & F. Co. to buy, the whole output of M. Co. until six months after the declaration of peace between England & Germany. In 1919 the Board of Trade, under the above Act, ordered the business of M. Co. to be wound up & the controller sold the business:—*Held*: although at the outbreak of war M. Co. became an alien enemy, yet its business could be lawfully carried on under new non-enemy management even if enemy shareholders might after the war benefit by such trading, & although it was in consequence of the winding-up order

that M. Co. was unable to carry out its contract, it was liable in damages to F. Co. for breach of contract.—*Re BRITISH INCANDESCENT MANTLE WORKS, LTD.* (1923), 129 L. T. 126; 39 T. L. R. 244; 67 Sol. Jo. 517.

224. *Add. Annotations*:—*Refd. Re Vulcaan Coal Co., Harrison v. Harbottle*, [1922] 2 Ch. 60; *Meyer v. Faber* (No. 2), [1923] 2 Ch. 421.

226. *Add. Citation*:—[1917] H. B. R. 243.

235a. ——— *To wind up partnership—Parties.*—At the outbreak of war three German subjects were carrying on business in London in co-partnership with F., their English partner. Under the partnership articles F. was the managing partner in London, & on the dissolution by the declaration of war he carried on the business & collected the assets with the view of liquidation. No accounts had been taken between the partners since Dec. 31, 1913. F. died in 1920, & deft. was his legal personal representative. By an order of the Board of Trade it was ordered that all the property, rights, & interests of the three German partners in the assets of the firm in respect of any claim against the English partner, or his estate, should vest in pltf., who should take all necessary proceedings to collect what might be due to the German partners. In an action by pltf. as custodian of enemy property with the object of winding up the partnership he claimed an account against deft. of all dealings between the German partners & the English partner, including all dealings with the partnership assets since the dissolution, payment of what should be found due, & an inquiry of what the partnership property consisted. The German partners were not added as pltf.s. in the action:—*Held*: in the absence of the German partners as parties to the action no such relief as was asked could be granted, & the action failed.—*PUBLIC TRUSTEE v. ELDER*, [1926] Ch. 776; 95 L. J. Ch. 519; 135 L. T. 589, C. A.

236. *Add. Annotation*:—*Refd. Re Ferdinand, Ex-Tsar of Bulgaria*, [1921] 1 Ch. 107.

### PART III. SECT. 2, SUB-SECT. 2.— B. (b).

230 ii. ——— *Proof of enemy's interest in property.*—A British subject applied to the ct. to make a vesting order vesting in the custodian for Scotland a ship & £20,000, the freight earned by the ship while under requisition of the Admty. He averred that the enemy firm, & the two partners thereof, were "the owners or at least part-owners of the" ship:—*Held*: appct. had failed to aver a sufficient interest of the enemy firm & its partners in the ship to make s. 4 (1) of the above Act applicable.—*BURRELL v. MAASHAVEN S.S. CO. LTD.* (1919), 56 So. L. R. 434.—SCOT.

230 iii. ——— *Instalments of purchase price of ship—Paid to builder by enemy—Ship requisitioned by Admiralty.*—Scottish shipbuilders contracted to build a ship for Austrian shipowners. On the declaration of war between Great Britain & Austria the vessel was nearing completion, & the purchasers had paid instalments of the price amounting to £79,732. On Feb. 17, 1915, the Admty. requisitioned the ship as she then stood at the price of £86,000, but it was not until July 30, 1917, that the Admty. paid the builders that sum, & they refused to pay any interest from the date of

requisition. On Dec. 1, 1917, the Board of Trade pronounced an order vesting the sum of £79,732, with interest from the date of receipt of the instalments, in the custodian for Scotland under the above Act:—*Held*: the custodian was entitled to decree for £79,732 with interest from the date of the interlocutor of the First Division.—*PENNEY v. CLYDE*, [1920] S. C. (H. L.) 68.—SCOT.

s1. *War Measures Act, 1914* (c. 2) —*What property can be vested—Trust funds—Agreement by beneficiaries as to disposition of fund.*—By the will of W., a citizen of the United States, who died in 1916 resident there, the residue of his estate was given to a trustee for the sole use & benefit of the wife & daughter, share & share alike. His daughter was married to a German national, & was residing in Germany at the time of her father's death. W.'s widow was a citizen of the United States. Early in 1917, an agreement was made by the trustee & the wife & daughter, pursuant to clause 11 of the will, by which, in effect, it was agreed that the whole of the assets in Ontario should be allocated to the widow. In May, 1919, an application was made to the ct., by the Secretary of State for Canada, for an order vesting in the custodian

appointed under Consolidated Orders respecting Trading with the Enemy, 1916, one-half of the assets situated in Ontario of the estate of W., on the ground that the said half belonged to or was held or managed for or on behalf of W.'s daughter, who was an enemy. The motion was made under Consolidated Order 28, which was passed pursuant to the above Act:—*Held*: it was appropriate & expedient to make the order asked for.—*Re WALKER* (1919), 46 O. L. R. 86; 16 O. W. N. 328.—CAN.

234 i. For "234 i" read "236 i." sm. *Trading with Enemy Acts, 1914-1916—Powers & duties of custodian—Payment of mortgage debt—Form of order—Costs.*—Where, under s. 9 D (2) of the 1914-16 Acts the Public Trustee is authorised to pay out of the property paid to him in respect of an enemy subject a mtge. debt & interest due by him, the order should provide that the mtgeo. should execute a proper discharge of the mtge. & deliver up upon oath to the Public Trustee all titles & other documents relating to the land mortgaged. The costs of a motion for an order under sect. 9 D (2), of the Public Trustee & of the enemy subject were allowed out of the property in the hands of the Public Trustee. Form of order stated.—*Re SCHURR* (1920), 27 C. L. R. 442.—AUS.

**236a.** **Effect of Treaty of Peace & consequent Orders.]—**By Treaty of Peace Act, 1919 (c. 33), Treaty of Peace Order, & the Treaty of Peace with Germany, the power conferred by Trading with the Enemy Amendment Act, 1914 (c. 12), s. 5 (2), on the ct. to authorise the custodian to pay out of property paid to him in respect of an enemy debts due by that enemy, has, so far as concerns pre-war debts due by German nationals to British nationals, come to an end. Payment of such debts can now be made only through the clearing office established under s. III. of Part X. of the Treaty.—*Re NIERHAUS*, [1921] 1 Ch. 269; 91 L. J. Ch. 107; 36 T. L. R. 425; 64 Sol. Jo. 426.

*Annotation:—Reid. Re National Bank für Deutschland, Re Anglo-Austrian Bank*, [1921] 1 Ch. 284.

**236b.** **—]**—At the outbreak of war a debt was due from a German bank to the London agency of an Austrian bank. Vesting orders were made, under which the property in England of the German bank was vested in the custodian. An order had been made, under which the business of the London agency was wound up & a controller appointed. The controller applied to the ct. to give directions under the powers conferred by sect. 5 (1) or (2) of the above Act that the debt should be paid out of the property vested in the custodian:—*Held*: even if the power still subsisted under those sub-sects. to direct such payment to persons who were not British nationals under the Treaty of Peace, such power was discretionary & the ct. would not exercise it, except in very special circumstances, but would leave such debts to be dealt with under the Order in Council to be made at the termination of the war under sect. 5 (1) of the Act.—*Re NATIONAL BANK FÜR DEUTSCHLAND, Re ANGLO-AUSTRIAN BANK*, [1921] 1 Ch. 284; 90 L. J. Ch. 15; 123 L. T. 647.

**237.** *Add. Annotation:—Folld. Dresdner Bank v. Russo-Asiatic Bank*, [1923] 1 Ch. 209.

**237a.** **Release of funds in favour of British creditors—Mode of distribution.]—**Funds were released by the custodian of enemy assets in this country from his charge upon them under the Treaty of Peace Orders, the release being expressly limited in favour of creditors of British nationality. There were no German creditors, but there were some foreign creditors. Upon the trustee's application for directions:—*Held*: the ct. would direct the funds to be distributed according to Bkpcy. Act, 1914 (c. 59), but would give the custodian an opportunity of being heard, if he so wished, before the order was drawn up.—*Re WISKEMANN, Ex p. TRUSTEE* (1923), 92 L. J. Ch. 349; [1923] B. & C. R. 28.

**237b.** **Right to dividends—On shares held by alien enemies.]—**An English co. had certain alien enemy shareholders & certain assets in Germany. From time to time after the outbreak of the war with Germany, resolutions were passed by the directors & by the co. in general meeting declaring *interim* & *final* dividends respectively, subject in each case to a condition that as regards members of the co. resident in Germany, Austria & Turkey, the dividend should be payable only out of assets in Germany, & as regards

members resident elsewhere out of assets in England. By an order made on Aug. 24, 1916, under sect. 4 (1) of the above Act, it was ordered that the right to transfer the shares held by alien enemies & to receive any dividends "now due & to accrue due thereon" vested in the custodian, & the shares were transferred into his name in due course:—*Held*: the resolutions, so far as they provided for payment only out of assets in Germany, were void as against the custodian, & the co. was liable out of any assets in its hands to pay him the amounts of the dividends, whether declared before or after the vesting order.—*ARAMAYO FRANCKE MINES, LTD. v. PUBLIC TRUSTEE*, [1922] 2 A. C. 406; 91 L. J. Ch. 643; 127 L. T. 661; 38 T. L. R. 756; 66 Sol. Jo. 611, H. L.; *affg. S. C. sub nom. Re ARAMAYO FRANCKE MINES, LTD.*, [1921] 1 Ch. 675, C. A.

**237c.** **—** **Part of trust income—Payable to enemy.]—**(1) *Held*: sect. 2 (1) of the above Act related only to moneys payable under contractual obligations arising out of loans, partnership or membership of a co., & not to trust income payable by trustees to an enemy even when the income was derived from dividends on shares.

(2) By his will a testator, who died in 1904, bequeathed his estate upon trusts whereby the residue & the proceeds of sale thereof were to go in equal shares to his children; & he directed his trustees to retain the share of each of his daughters upon trust during the life of the daughter to pay the annual income to her for her separate use without power of anticipation & until she should do or suffer any act or thing whereby the same, if payable to her absolutely or any part thereof, might have become payable or forfeited to or vested in any other person. In the event of a forfeiture under this provision the income was given upon a discretionary trust during the remainder of the life of the daughter, & subject thereto the daughter's share was to be held in trust for her children & issue as therein mentioned. One of the testator's daughters had intermarried with a German in 1908, & had since resided in Germany. Since the coming into force of the above Act, the trustees had accumulated the income of her share, which amounted on Jan. 10, 1920, the date of the ratification of the Treaty of Peace with Germany, to about £4,000:—*Held*: the daughter's life interest was not determined on the coming into force of the above Act, but ceased on Jan. 10, 1920, by reason of the Treaty of Peace charge, & the accumulations of income up to that date were subject to the charge.—*Re HALLENSTEIN, HALSTED v. BLANK*, [1922] 1 Ch. 355; 91 L. J. Ch. 420; 127 L. T. 58; 38 T. L. R. 313; 66 Sol. Jo. 299.

**237d.** **Liability of custodian for super tax.]—**Property belonging to an enemy which is paid to or vested in the custodian under the above Act is, pending its disposition by Order in Council after the termination of the war, removed from the control & beneficial ownership of the enemy. During the interval the beneficial ownership is in statutory suspense or abeyance, the custodian having meanwhile limited powers of dealing with the property.



When war broke out in 1914, M., an enemy within the Act, owned real estate in England & shares & securities in British cos. By orders under sect. 4 of the Act the real estate, shares & securities were vested in the custodian. The Special Comrs. for Income Tax assessed the custodian to super tax as agent or receiver for M. The custodian disputed the legality of the assessment:—*Held*: (1) M.'s beneficial ownership of the property having ceased on the making of the vesting orders, the profits & gains received by the custodian were received by him in respect of M., but did not in his hands belong to M.; he did not receive or hold them as agent or receiver or trustee for M. within 5 & 6 Vict. c. 35, s. 41, & therefore, he was not liable to be assessed to super tax; (2) as M. could not, after the war, ask to receive back the property except on the footing that a sum equal to the amount of super tax which, but for the war, he would have been liable to pay was paid, the custodian must, under the discretion given to the ct. by sect. 5 (1) of the Act of 1914, pay that sum to the Comrs. as analogous to payment of a debt under sect. 5 (2).—*Re MÜNSTER*, [1920] 1 Ch. 268; 89 L. J. Ch. 138; 36 T. L. R. 173; 64 Sol. Jo. 309.

*Annotation*:—As to (1) *Reid. Re Ferdinand, Ex-Tsar of Bulgaria*, [1921] 1 Ch. 107.

239a. **Application to court—Rectification of register of shareholders.**—Shares belonging to an alien enemy were after the declaration of war vested in the Public Trustee & sold by him. A four-day order was obtained, directing the co. to rectify the register of members, but that order was not complied with. The solrs. to the co. stated in correspondence they had the books of the co., but that all the directors & secretary had resigned:—*Held*: the Public Trustee was entitled to an order to carry out the transfer of the shares.—*Re MANIHOT RUBBER PLANTATIONS, LTD.* (1919), 63 Sol. Jo. 827.

240. *Add. Citation*:—[1918-19] B. & C. R. 171. *Add. Annotations*:—*Reid. Meyer v. Faber* (No. 2), [1923] 2 Ch. 421. *Mentd. Re Ferdinand, Ex-Tsar of Bulgaria*, [1921] 1 Ch. 107.

241. *Add. Annotations*:—*Consd. Central India*

*Mining Co. v. Soc. Coloniale Anversoise*, [1920] 1 K. B. 753; *Re Deutsche Bank* (London Agency), [1921] 2 Ch. 291. *Reid. Jebara v. Ottoman Bank*, [1927] 2 K. B. 254.

250. *Add. Annotations*:—*Mentd. Markwald v. A.-G.*, [1920] 1 Ch. 348; *Johnstone v. Pedlar*, [1921] 2 A. C. 262; *The Tervaele* (1922), 128 L. T. 176.

253. *Add. Annotations*:—*Consd. Rodriguez v. Speyer*, [1919] A. C. 59. *Mentd. Johnstone v. Pedlar*, [1921] 2 A. C. 262.

254. *Add. Annotations*:—*Reid. Rodriguez v. Speyer*, [1919] A. C. 59; *Re Ferdinand, Ex-Tsar of Bulgaria*, [1921] 1 Ch. 107. *Mentd. Johnstone v. Pedlar*, [1921] 2 A. C. 262; *Re Sutherland, Bechoff v. Bubna* (1921), 65 Sol. Jo. 513.

256. *Add. Annotations*:—*Reid. Rodriguez v. Speyer*, [1919] A. C. 59; *Johnstone v. Pedlar*, [1921] 2 A. C. 262.

257. *Add. Annotation*:—As to (2) *Reid. Johnstone v. Pedlar*, [1921] 2 A. C. 262.

259. *Add. Annotations*:—*Folld. Krauss v. Krauss & Orbach* (1919), 35 T. L. R. 637. *Reid. Procurator in Egypt v. Deutsches Kohlen Depot Gesellschaft*, [1919] A. C. 291.

260. *Add. Annotations*:—*Reid. Re Ferdinand, Ex-Tsar of Bulgaria*, [1921] 1 Ch. 107; *Re Sutherland, Bechoff v. Bubna* (1921), 65 Sol. Jo. 513. *Mentd. Johnstone v. Pedlar*, [1921] 2 A. C. 262.

261. *Add. Annotation*:—*Reid. Johnstone v. Pedlar*, [1921] 2 A. C. 262.

261a. ——— **Suit for dissolution of marriage.**—An alien enemy, who has been registered as such & is domiciled in England, has a right to bring a petition for the dissolution of his marriage.—*KRAUSS (OTHERWISE DES SALLES D'EPINOIX) v. KRAUSS (OTHERWISE DES SALLES D'EPINOIX) & ORBACH* (1919), 35 T. L. R. 637; 63 Sol. Jo. 760.

272. *Add. Annotation*:—*Mentd. Fried Krupp Akt. v. Orconera Iron Ore Co.* (1919), 120 L. T. 386.

276. *Add. Annotation*:—*Reid. Stoeck v. Public Trustee*, [1921] 2 Ch. 67.

280. *Add. Annotations*:—*Consd. Rodriguez v. Speyer*, [1919] A. C. 59. *Mentd. Re*

### PART III. SECT. 2, SUB-SECT. 3.—A.

250 vii. ——— **Plaintiff compelled to sue to establish caveat.**—An alien enemy, unless he be within the realm by the licence of the King, cannot sue in our cts. either by himself or by any person on his behalf until peace is restored.

Where a municipality, having sold land for taxes, serves notice on the owner to take proceedings on a caveat, thereby compelling him to proceed to establish it, the owner, if an alien enemy, should be treated, to some extent at least, as in the position of an alien enemy who is debt. to an action. Therefore the action should not be dismissed on the ground that plff. is an alien enemy, for therefrom a discharge of an order continuing the caveat & a discharge of the caveat would follow.—*REVENLOW-CRIMINIL v. STREAMTOWN RURAL MUNICIPALITY*, No. 511, [1917] 3 W. W. R. 546; 37 D. L. R. 394; *affd.*, [1920] 1 W. W. R. 578; 52 D. L. R. 266; 15 Alta. L. R. 204.—CAN.

280 viii. ——— **—**—An alien enemy cannot enforce civil rights in a British ct. during the period of hostilities.—

*SIBISI v. HERMANSBERG MISSION SOCIETY* (1916), 37 N. L. R. 409.—S. AF.

256 i. For "Proclamation of August 13, 1914" read "Proclamation of August 15, 1914."

256 iv. ——— **—**—An alien resident in Ontario, although his country is at war with ours, so long as he conducts himself peaceably, & is within the above Proclamation, is entitled to bring & maintain an action in any ct. in Ontario.—*KRISTO v. HOLLINGER CONSOLIDATED GOLD MINES, LTD.* (1918), 41 O. L. R. 51; 13 O. W. N. 206.—CAN.

256 v. ——— **Christian Armenian.**—The cts. of the province of Quebec are open to a Christian Armenian specially exempted under Order in Council of Nov. 20, 1914.—*SAP v. PICARD* (1919), 20 Q. P. R. 179.—CAN.

21. **Action under Families Compensation Act.**—An action brought under the above Act, for the benefit of the mother of deceased, she being an alien enemy, cannot be maintained.—*CREMIDAS v. BARTISH COLUMBIA ELECTRIC RY. Co.*, [1919] 2 W. W. R. 549.—CAN.

274 iii. ——— **War Measures Act.**—*PERRIMAN v. PICHE* (1918), Q. R. 54 S. C. 170; 41 D. L. R. 147; 24 R. de J. 438.—CAN.

276 ii. ——— **—**—A man of Austro-Hungarian nationality came to Canada after the outbreak of the war, & registered as an alien enemy. In violation of the law, he left Canada without an *exeat*, & on his return was prosecuted & fined. In Dec. 1917, he was arrested under the immigration officer's warrant. His application for a writ of *habeas corpus* was refused on the following grounds: (1) he was an alien enemy, & could not, without the King's protection, sue in His Majesty's ct.; (2) he was not within the proclamation conferring protection upon alien enemies; (3) had he been within the protection of the proclamation, he lost his right by violation of the terms upon which protection was granted; (4) the ct. had no right to deal with the application without the consent of the Minister of Justice.—*Re GOTTSERMAN* (1918), 29 Can. Crim. Cas. 439; 41 O. L. R. 547; 13 O. W. N. 344.—CAN.



**Ferdinand, Ex-Tsar of Bulgaria, [1921] 1 Ch. 107; Johnstone v. Pedlar, [1921] 2 A. C. 262; Re Sutherland, Bechoff v. Bubna (1921), 65 Sol. Jo. 513.**

**Delete the cross-reference following this case.**

280a. Effect of peace—Treaties of Peace & consequent Orders—Right to sue after restoration of peace—Cause of action arising during war.]—In an action for infringement debts. alleged (*inter alia*) that, at all material times, pltf. had been residing or carrying on business in Germany; that, having regard to the Treaty of Peace, art. 309, or, alternatively, under the common law, he could not sue; & that, at the dates of the alleged infringements, the patent had been vested in the custodian under Trading with the Enemy Amendment Act, 1916 (c. 105), & pltf. could not maintain the action:—*Held*: pltf. could not maintain the action because (1) at the date of the alleged infringement, he had been a “hostile person” within the General Vesting Order made under Trading with the Enemy Amendment Act, 1916, & the patent had been vested in the custodian, & the Divesting Order had not transferred to pltf. a right of action that had accrued to the custodian; (2) the case fell within the Treaty of Peace, art. 309.—*WILDERMAN v. BERK* (F. W.) & Co., [1925] Ch. 116; 94 L. J. Ch. 136; 132 L. T. 534; 41 T. L. R. 50; 42 R. P. C. 79.

-.]—See, also, original volume, Nos. 202,  
269. 270

**280b. Debt incurred by neutral.]**  
Deft., a Norwegian subject, living in England, incurred a debt to pltfs., an Austrian co., before the outbreak of war. After the Treaty of Peace pltfs. sued deft. for the amount:—*Held*: although the claim was against a neutral subject, yet, as Treaty of Peace Order, s. 7, made the debt payable to the administrator & transferred to him all the rights of the creditors, pltfs. had no right to bring the action.—*JOSEF INWALD ACT. v. PFEIFFER* (1927), 43 T. L. R. 399, C. A.; *affd.* (1928), 44 T. L. R. 352; 72 Sol. Jo. 205, H. L.

288. *Add. Annotation*: — *Refd.* Rodriguez v. Speyer, [1919] A. C. 59.

291. *Add. Annotation:—*Reif. Rodriguez v.  
Speyer, [1919] A. C. 59.

293. *Add. Annotations*:—*Consd. Rodriguez v. Speyer*, [1919] A. O. 59. *Mentd. Re Ferdinand, Ex-Tsar of Bulgaria*, [1921] 1 Ch. 107; *Johnstone v. Pedlar*, [1921] 2 A. O. 262;

*Re Sutherland, Bechoff v. Bubna* (1921), 65 Sol. Jo. 513.

295. For "but not to a counterclaim," read "but not a counterclaim."

297. *Add. Annotations*:—*Reid. Rodriguez v. Speyer*, [1919] A. C. 59. *Mentd. Re Ferdinand, Ex-Tsar of Bulgaria*, [1921] 1 Ch. 107; *Johnstone v. Pedlar*, [1921] 2 A. C. 262; *Re Sutherland, Bechoff v. Bubna* (1921), 65 Sol. Jo. 513.

299. *Add. Annotations*:—*Refd. Richardson v. Richardson*, [1927] P. 228. *Mentd. Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669.

300. *Add. Annotations* :—*Refd. Richardson v. Richardson*, [1927] P. 228. *Mentd. Republica de Guatemala v. Nunez*, [1927] 1 K. B. 609.

**302.** *Add. Annotations:—Mentd. Re Ferdinand, Ex-Tsar of Bulgaria, [1921] 1 Ch. 107; Johnstone v. Pedlar, [1921] 2 A. C. 262; Re Sutherland, Bechoff v. Bubna (1921), 65 Sol. Jo. 513.*

**303. Add. Annotations :—***Consd. Re Ferdinand, Ex-Tsar of Bulgaria*, [1921] 1 Ch. 107. *Refd. Aksionairnoye Obschestvo A. M. Luther v. Sagor*, [1921] 1 K. B. 458. *Mentd. Stevenson v. Akt. für Cartonnagen Industrie*, [1918] A. C. 239.

**304. Add. Annotations :—**Consd. Rodriguez v. Speyer, [1919] A. C. 59. Rejd. Ertel Bieber v. Rio Tinto Co., etc., [1918] A. C. 260; *Re* Badische Co., Bayer Co., etc., [1921] 2 Ch. 331.

**306.** *Add. Citations* :—[1919] A. C. 59; 88  
L. J. K. B. 147, H. L.

**Add. Annotation :—Mentd. Valentine v. Hyde, [1919] 2 Ch. 129.**

**310. Add. Annotation :—***As to (1) Apprvd. Rodriguez v. Speyer, [1919] A. C. 59.*

313. *Add. Annotation*:—Reid. Rodriguez v. Speyer, [1919] A. C. 59.

**315.** *Add. Annotation:—Mentd.* Johnstone v. Pedlar, [1921] 2 A. C. 262.

**816. Add. Annotations:—***As to* (1) **Refd. Rodriguez v. Speyer**, [1919] A. C. 59. *As to* (2) **Consd. Rodriguez v. Speyer**, [1919] A. C. 59.

**318. Add. Annotation :—***Refd. Central India Mining Co. v. Soc. Coloniale Anversoise, [1920] 1 K. B. 753.*

**320. Add. Annotation:—***Refd. Rodriguez v. Speyer, [1919] A. C. 59.*

**322. Add. Annotation :—As to (1) Refd. Rodriguez v. Speyer, [1919] A. C. 59.**

329. *Add. Annotation:—Reid. Rodriguez v. Speyer, [1919] A. C. 59.*

## Part IV.—Trading and Communicating with the Enemy.

**332. Add. Annotations :—***Reid. Jebara v. Ottoman Bank*, [1927] 2 K. B. 254. *Mentd. Re Badische Co., Bayer Co., etc.*, [1921] 2 Ch. 331; *Sargant v. Paterson* (1923), 129 L. T. 471; *Akt. Reidar v. Arcos*

337. *Add. Annotation* :—Mentd. The Prins der Nederlanden, [1921] 1 A. C. 754.

346. *Add. Annotation* :—Mentd. The Regina  
d'Italia, [1925] P. 123.

**PART III. SECT. 2, SUB-SECT. 8.—C.**

292 ii. —.]—An alien enemy, who is sued by a British subject in a British ct. is entitled to be heard in defence.—UNION BANK v. LOHMANN, [1919] V. L. R. 418.—AUS.

**292 iii. —. ]—An alien enemy who is sued has a right to defend the action & to appeal against any decision, final or interlocutory, that may be given against him.**

Where a municipality served notice on the owner of land, sold for taxes, to take proceedings on a *caveat*, thereby compelling him to proceed to establish it:—*Held*: the owner, being an alien enemy, should be treated as being in the position of an alien enemy defending an action, & the action should not be dismissed.—*REVENTLOW-CRIMINIL v. STREAMSTOWN RURAL MUNICIPALITY*, [1920] 1 W. W. R. 577; 52 D. L. R. 266; 15 Alta. L. R. 204; *affg.*, [1917]

3 W. W. R. 546; 37 D. L. R. 394.—  
CAN.

**PART III. SECT. 2, SUB-SECT. 8.—D.**

3041. *Proceedings by partnership—Enemy partners.*—If one of the partners in a firm is an alien enemy, neither he nor his partner, who does not bear an enemy character, can recover money owing to the firm.—**Haji Ah Jon v. Abdul Jalil Khan** (1920), 1 L. R. 1 Lah. 276.—IND.

347. *Add. Annotation*:—*Consd. Casdagli v. Casdagli*, [1919] A. C. 145.
351. After the words "was void" at the end of the paragraph in original volume add "; (2) in the circumstances the indorsement to pltf. conveyed to him a legal title in the bills, on which he might sue after the return of peace."
- Add. Annotation*:—*Mentd. Re Ferdinand, Ex-Tsar of Bulgaria*, [1921] 1 Ch. 107.
357. *Add. Annotation*:—*Mentd. Re Ferdinand, Ex-Tsar of Bulgaria*, [1921] 1 Ch. 107.
359. *Add. Annotations*:—*Refd. Rodriguez v. Speyer*, [1919] A. C. 59. *Mentd. Royal Exchange Assce. v. Hope*, [1928] Ch. 179.
360. *Add. Annotations*:—*Mentd. Central India Mining Co. v. Soc. Coloniale Anversoise*, [1920] 1 K. B. 753; *Johnstone v. Pedlar*, [1921] 2 A. C. 262.
363. *Add. Annotation*:—*Refd. Rodriguez v. Speyer*, [1919] A. C. 59.
370. *Add. Annotation*:—*Refd. Casdagli v. Casdagli*, [1919] A. C. 145.
371. *Add. Annotations*:—*Refd. Re Badische Co., Bayer Co., etc.*, [1921] 2 Ch. 331; *Jebara v. Ottoman Bank*, [1927] 2 K. B. 254. *Mentd. Sargant v. Paterson* (1923), 129 L. T. 471; *Akt. Reidar v. Arcos* (1926), 42 T. L. R. 737.
374. *Add. Citation*:—13 Asp. M. L. C. 484.
376. *Add. Annotation*:—*As to* (1) *Refd. The Ambatielos, The Cephalaria*, [1923] P. 68.
379. *Add. Annotation*:—*Refd. Jebara v. Ottoman Bank*, [1927] 2 K. B. 254.
383. *Add. Annotation*:—*Refd. Jebara v. Ottoman Bank*, [1927] 2 K. B. 254.
386. *Add. Annotation*:—*Generally, Mentd. Re*
- Sutherland, *Bechoff v. Bubna* (1921), 65 Sol. Jo. 513.
391. *Add. Annotation*:—*Mentd. Rodriguez v. Speyer*, [1919] A. C. 59.
392. *Add. Citation*:—1 Br. & Col. Pr. Cas. 605. *Add. Annotation*:—*Mentd. Casdagli v. Casdagli*, [1919] A. C. 145.
- 392a. "Proc. A," par. 7—Goods sent to enemy agent for sale.]—Appls., who were Ottoman subjects carrying on business in England, in Sept. & Nov. 1915 posted to their agent, an Austrian subject, at Shanghai packets of diamonds for sale on their behalf. The diamonds were returned to England by the postal authorities & were seized in the Postal Censor's office in Nov. 1917. They were condemned on the ground that the transaction was a trading with the enemy:—*Held*: the diamonds were properly condemned, since under Trading with the Enemy (China, Siam, Persia & Morocco) Proclamation, 1915, applts.' agent was for the purpose of "Proc. A," an "enemy" & the transaction was a supplying with goods contrary to cl. 5 (7) of the latter Proclamation.—*SALT ET FILS v. PROCURATOR-GENERAL*, [1919] A. C. 968; 88 L. J. P. 209; 121 L. T. 459; 35 T. L. R. 679; 14 Asp. M. L. C. 460, P. C.
395. *Add. Annotation*:—*Refd. Jebara v. Ottoman Bank*, [1927] 2 K. B. 254.
396. *Add. Annotation*:—*Generally, Mentd. Rodriguez v. Speyer*, [1919] A. C. 59.
397. *Add. Annotation*:—*Mentd. Re Vulcaan Coal Co., Harrison v. Harbottle* (1922), 91 L. J. Ch. 491.
402. *Add. Annotations*:—*As to* (1) *Refd. Lebeaupin v. Crispin*, [1920] 2 K. B. 714. *As to* (2) *Refd. Re Badische Co., Bayer Co., etc.*, [1921] 2 Ch. 331. *As to* (3) *Refd. Re Badische Co., Bayer Co., etc.*, [1921] 2 Ch. 331.

## PART IV. SECT. 3, SUB-SECT. 1.

390 i. "Act B," s. 6—Assignment of chose in action to British firm.—In payment of debt.]—An Austrian firm was indebted to a London firm at the commencement of the war. On Sept. 25, 1914, the Austrian firm wrote a letter purporting to be an assignment to the London firm of a debt due to them by B. The letter contained an enclosure signed by the Austrian firm addressed to B. amounting to a notice of assignment of the debt. In the following December the London firm forwarded it to B.:—*Held*: as the transaction of Sept. 25 amounted to a valid equitable assignment of a chose in action for valuable consideration, it was not illegal as contravening the above sect.—*GRUNDY v. BROADBENT*, [1918] 1 I. R. 433.—IR.

sn. Proclamation of December 12, 1914—Taking delivery of goods from enemy ships in neutral ports.]—Pltfs. were a British bank carrying on business in London & Bombay. Defts. were a firm of merchants, British subjects, carrying on business in Bombay. On June 24, 1914, A., a German subject, drew a bill of exchange upon defts. in favour of pltfs. The bill purported to be drawn upon defts. against fifty bales of goods per a German steamer. The bill was accepted by defts. on July 20, 1914, payable at the office of pltfs. in Bombay. The steamer reached Bombay just before the outbreak of war, & in order to evade capture left Bombay & took shelter in a neutral port. The bill was presented for payment on the due date with the shipping documents attached but was dishonoured by non-payment. Pltfs. filed a suit on

Sept. 30, 1915, to recover the amount due on the bill:—*Held*: pltfs. were entitled to succeed, as by the above Proclamation the consignees were permitted to take delivery of goods from enemy ships in neutral ports.—*MOTISHAW & CO. v. MERCANTILE BANK OF INDIA* (1916), 1 L. R. 41 Bom. 566.—IND.

## PART IV. SECT. 4.

402 iv. ———— *Repayment of instalments.*]—In Apr., 1914, the A. co. contracted to construct machinery for the B. co. by Dec. 31, 1914. Progress payments were made by the B. co., but none of the machinery was ever delivered. After the commencement of the war, an order was, on Nov. 13, 1914, made under Trading with the Enemy Act, 1914, s. 8, appointing C. controller of the B. co., & on June 13, 1918, under Trading with the Enemy Act, 1914–1916, s. 9H, requiring the B. co. to be wound up, & appointing C. controller. The contract was never completed:—*Held*: the contract became null & void as from the commencement of the war, & neither the B. co. nor C. was entitled to recover from the A. co. any portion of the sum paid as progress payments.—*Re CONTINENTAL* (1919), 27 C. L. R. 194.—AUS.

402 v. ————.]—A contract between a British firm & an Austrian firm, for the purchase by the latter of goods to be manufactured, provided for an extension of time for delivery if delay should occur owing to causes beyond the control of the sellers. The price was payable by instalments, of which £4,620 was paid to account of the whole when war broke out & it

became illegal to implement the contract. None of the goods had at that time been delivered. Thereafter the goods were completed & sold in Great Britain at an enhanced price. Third parties having obtained a decree against the purchasers of the goods arrested money in the hands of the sellers of the goods:—*Held*: (1) the contract was dissolved by the outbreak of war; (2) the sum paid to account of the price of the goods belonged to the buyers & was validly arrested in the hands of the sellers.—*DAVIS & PRIMROSE, LTD. v. CLYDE SHIP-BUILDING & ENGINEERING CO., LTD.* (1918), 56 Sc. L. R. 24.—SCOT.

402 vi. ————.]—In May, 1914, Scottish engineers contracted with Austrian shipbuilders to build a set of marine engines, payment to be by instalments. The first instalment had been paid, but no part of the engines had been built when war broke out & further performance of the contract became legally impossible. After the war on action brought for repetition of the instalment paid:—*Held*: as the instalment had been paid as part of the price of the engines, & as the engines had not been delivered owing to a cause for which neither of the parties was responsible, defenders were bound to make restitution of the instalment.—*CANTIERE v. CLYDE*, [1923] S. C. (H. L.) 105; 60 Sc. L. R. 635.—SCOT.

402 vii. ———— *Enemy Contracts Annulment Act, 1915.*]—A contract was made in 1911 for the sale by the C. co. to the B. co. of the whole of the output of the C. co. In Sept. 1914, an agreement was entered into between the parties by which the terms of pay-



—Pltf. was a British subject carrying on business as an exporter of Manchester goods to Turkey. At the outbreak of war between Great Britain & Turkey deft. bank, a Turkish subject, was the holder of sight bills for the invoice amount in sterling of goods consigned by pltf. to Beyrout, which had arrived there shortly before the outbreak of war, & were subsequently delivered to the customers by deft. bank against payment in piastres. At the conclusion of the war deft. bank claimed the right to pay to pltf. an amount in sterling representing the then value of the piastres which they had received in payment for the goods. Pltf. claimed to be paid the sterling amount of the bills, or, in the alternative, damages for their conversion:—*Held*: (1) as the bank in Beyrout accepted the payment in lawful money from the Syrian merchant & handed over the goods, it constituted itself, as in a question with the drawer, debtor for the sterling amount on the face of the bill; (2) it was not every contract that was abrogated by the war; it was only a contract which was still executory & which for its execution required intercourse between the British subject & the enemy, & as the contract had been partially carried out, the bills had been indorsed, & the bank had been handed them together with the indorsed bills of lading, from that a subsidiary contract arose, namely, that on payment of the bills the shipping documents should be handed over, to execute which no intercourse between a British subject & the enemy was necessary; & the bank was entitled to do what it did, & there could be no question of conversion, & having constituted themselves debtors in sterling, in sterling they must pay. —OTTOMAN BANK *v.* JEBARA, [1928] A. C. 269; 97 L. J. K. B. 502; 139 L. T. 194; 44 T. L. R. 525; 72 Sol. Jo. 516; 33 Com. Cas. 260, H. L.; *reversg.* S. C. *sub nom.* JEBARA *v.* OTTOMAN BANK, [1927] 2 K. B. 254, C. A.

403. *Add. Annotation*:—*Reid. Larrinaga v. Soc. Franco-Americaine des Phosphates de Medulla* (1923), 92 L. J. K. B. 455.

405a. — — — — —.]—For many years there existed in Germany works for the manufacture of dyestuffs (*Farbenfabriken*), belonging to a German concern which carried on business in England through agents. In 1878 the agents were a partnership firm consisting of A. & two other persons. In 1895 A. was the sole partner. In that year a limited co. was formed & registered in England, & in 1898 its name was changed to B. Co. Its original capital was £5,000, divided into 500 shares of £10 each of which

A. held five shares & the German concern 470. In 1905 the capital was increased to £25,000 by the issue of 2,000 new shares fully paid, & in 1909 it was increased to £100,000, by the issue of 7,500 like shares. At the times material the German concern held 9,912 shares & A. twenty shares. By an agreement dated in 1910 between the German concern & B. Co., the district of the German concern was defined as the whole world outside the United Kingdom with the Channel Islands & the Isle of Man, & the district of B. Co. as the United Kingdom, the Channel Islands & the Isle of Man. The German concern bound itself not to import goods into B. Co.'s district except for the purposes of B. Co., & B. Co. bound itself not to import into the German concern's district except for the purposes of the German concern. By an agreement, dated in 1912, between the same parties & operative for seven years, the German concern bound itself to sell to B. Co. & to no one else in the United Kingdom for sale in the United Kingdom anilines & chemicals manufactured by the German concern, & B. Co. bound itself to buy from the German concern & from no other manufacturer such dyestuffs. By unwritten agreement B. Co. was bound from its inception to import only from the German concern. From the time of the registration of B. Co. A.'s firm ceased to act as agents for the German concern. B. Co. sold not in the name of the German concern, but in its own name, & as a principal; but it announced to the world on its office windows, & to its customers on notepaper & other documents & by books, catalogues & samples, that it was the sole importer in England of the manufactures of the German concern. It was thus brought home to the customers that they were buying the produce of the German concern as before. The new régime was in effect a continuation of the agency though legally the agency had ceased. The business of B. Co. was conducted by A. & another director, both resident in England. The German concern supplied them with lists of prices to be charged by the German concern to B. Co., B. Co. making a profit by selling to customers at a price higher than the list. If an English customer offered to buy at a price lower than the list, the German concern would reduce its price to B. Co. accordingly. The overwhelming shareholding of the German concern in B. Co. caused it to be vitally interested, as seller & buyer, in the contract between itself & B. Co. & as seller in the contract between B. Co. & its customer. Down to the outbreak of war between England & Germany on Aug. 4, 1914, the

ment were varied:—*Held*: the agreement of Sept. 1914, was not rendered null & void by s. 3 (6) of the above Act, nor by Trading with the Enemy Act, 1914.

—.]—On Feb. 2, 1914, deft. firm agreed to sell to pltf. steel bars under a c.i.f. contract free Hooghly. The goods were shipped on July 2, 1914, per a German steamer, which was subsequently captured with her cargo & condemned by the Prize Ct.:—*Held*: the contract under which the goods would be delivered in the Hooghly became impossible by the outbreak of war within Indian Contract Act, s. 56, & was void.—

MADHORAM HURDEO DAS *v.* SETT (1917), L. L. R. 45 Calo. 28.—IND.

405 i. — — — — — *Effect of suspensory clause*.—By a contract made after the outbreak of war with Germany to supply German dyes, deft. was not to be liable in case of non-arrival of the steamers at certain ports on account of the state of war. The ship & the dyes therein were seized & condemned by a Prize Ct.:—*Held*: (1) the contract was unenforceable; (2) the Royal Proclamation of Sept. 8, 1914, put an end to the contract.—ABDUL RAZACK *v.* KHANDI ROW (1918), L. L. R. 41 Mad. 225.—IND.

*sp. Debtor of alien enemy—Payment of interest in respect of transaction*

*entered into before outbreak of war—Right to repayment*.—Where a person indebted to an alien enemy had paid interest in respect of a transaction entered into before the outbreak of hostilities & sought a refund of the amount paid for the period between the outbreak of hostilities & the date of a licence to trade obtained by the enemy firm:—*Held*: he was not entitled to such refund, as there was no suspension of interest in respect of such transactions during that period.—VALLI, *ETC. v.* BERTHOLD REUF (1919), I. L. R. 44 Bom. 1.—IND.

*sq. Erection of machinery—Replacement of defective parts*.—In Mar. 1913, resps. contracted to supply & erect



control of B. Co., its business, affairs & acts, were in the hands of the German concern. On Apr. 1, 1914, B. Co. entered into a contract with a British firm for a supply to the firm of dyestuffs, identified by letters & numbers as the manufacture of the German concern or of other German manufacturers, of which samples from Germany were in the possession of the British firm. It was provided that any duties imposed by the British Govt. on the goods should be paid by the British firm or the price should be advanced accordingly. It was further provided that deliveries or orders off the contract might be suspended by either party if any contingency should arise beyond the control of the parties, such as fire, accidents, war, strikes, or the like. The contract covered a period unexpired at the outbreak of war. At that date quantities of dyestuffs remained undelivered & were never afterwards delivered. An order was made by the Board of Trade, under Trading with the Enemy Amendment Act, 1916 (c. 105), s. 1, for the winding up of the business of B. Co., & a controller appointed. In the winding up the British firm claimed damages for breach of contract in the non-fulfilment of deliveries. The controller resisted the claim on the grounds: (a) that the contract was dissolved at the outbreak of war, because B. Co. was an enemy or of enemy character, because the parties contracted on the footing that the goods should come from Germany, & because continued existence or performance of the contract would involve intercourse with, or tend to assist the enemy; (b) that owing to the suspension clause no right to damages had yet arisen; (c) that the object of the contract had been frustrated, because the period of suspension was indefinite & beyond the contemplation of the parties, because performance of the contract was prevented by Govt. action or embargo, & because the basis of the contract was that the importation of the goods to be supplied should continue to be possible & by reason of war it was rendered impossible. On application to the ct. by the controller for directions whether the claim should be admitted as a debt due from B. Co.:—*Held*: (1) at the date of the outbreak of war B. Co. assumed enemy character, & accordingly, the contract became dissolved by the outbreak of war as being a current contract entered into with a co. which *eo instanti* assumed enemy character; (2) the abrogation of the contract by outbreak of war being founded on public policy, the presence of a suspension clause in the event of war did not assist the claimant, & if "war" in the clause included war between England & Germany the clause was void as against public policy, & the claim must be rejected; (3) assuming that B. Co. had not assumed enemy character at the outbreak of war, the claim must fail on the following grounds: that, the contract being for the supply of goods to be obtained from Germany, further performance on the outbreak of war involved intercourse with the

enemy & became illegal accordingly; that, the contracts having been made on the basis that the existing commercial conditions would continue & that the basis having ceased to exist by outbreak of war between England & Germany, the commercial object of the contract had been frustrated, & the contract was dissolved at the outbreak of war; (4) the suspension clause was not intended by the parties to apply to war between England & Germany; (5) the doctrine of frustration applied to contracts for the sale of unascertained goods.—*Re BADISCHE CO., LTD., Re BAYER CO., LTD., Re GRIESHEIM ELEKTRO, LTD., Re KALLE & CO., LTD., Re BERLIN ANILINE CO., LTD., Re MEISTER LUCIUS & BRUNING, LTD.*, [1921] 2 Ch. 331; 91 L. J. 7h. 183; 126 L. T. 466.

406. *Add. Citations*:—*affd. sub nom. FRIED KRUPP AKT. v. ORCONERA IRON ORE CO., LTD.* (1919), 88 L. J. Ch. 304; 120 L. T. 386; 35 T. L. R. 234, H. L.

*Add. Annotation*:—*Mentd. Re Rush, Warre v. Rush*, [1923] 1 Ch. 56.

408. *Add. Annotations*:—*As to* (1) *Folld. Fried Krupp Akt. v. Orconera Iron Ore Co.* (1919), 88 L. J. Ch. 304. *Refd. Central India Mining Co. v. Soc. Colonial Anversoise*, [1920] 1 K. B. 753; *Re Badische Co., Bayer Co., etc.*, [1921] 2 Ch. 331; *Larrinaga v. Soc. Franco-Americaine des Phosphates de Medulla* (1922), 38 T. L. R. 739; *Jebara v. Ottoman Bank*, [1927] 2 K. B. 254. *As to* (2) *Refd. Re Badische Co., Bayer Co., etc.*, [1921] 2 Ch. 331. *As to* (3) *Refd. Guaranty Trust Co. of New York v. Hannay*, [1918] 2 K. B. 623.

409. *Add. Annotation*:—*Refd. Re Badische Co., Bayer Co., etc.*, [1921] 2 Ch. 331.

409a. ——— *Effect of Treaties of Peace & consequent Orders.*—*ROWE BROTHERS & CO., LTD. v. LINDGENS* (1920), 36 T. L. R. 247.

411. *Add. Annotation*:—*As to* (1) *Refd. Re Sutherland, Bechoff v. Bubna* (1921), 65 Sol. Jo. 513.

412. *Add. Annotation*:—*Refd. Re Badische Co., Bayer Co., etc.*, [1921] 2 Ch. 331.

412a. *Insurance policy—Effect of Treaties of Peace & consequent Orders.*—*EXCESS INSURANCE CO., LTD. v. MATHEWS* (1925), 31 Com. Cas. 43.

413. *Add. Annotation*:—*As to* (2) *Refd. Matthey v. Curling*, [1922] 2 A. C. 180.

414. *Add. Annotation*:—*Mentd. Fried Krupp Akt. v. Orconera Iron Ore Co.* (1919), 120 L. T. 386.

416. *Add. Annotations*:—*Refd. Naylor, Benzon v. Krainische Industrie Gesellschaft*, [1918] 1 K. B. 331; *Fried Krupp Akt. v. Orconera Iron Ore Co.* (1919), 88 L. J. Ch. 304; *Re Ferdinand, Ex-Tsar of Bulgaria*, [1921] 1 Ch. 107; *Re Rush, Warre v. Rush*, [1923] 1 Ch. 56.

418. *Add. Annotations*:—*Refd. Rodriguez v. Speyer*, [1919] A. C. 59. *Mentd. Johnstone v. Pedlar*, [1921] 2 A. C. 262.

419a. ——— *Property otherwise subject to con-*

certain machinery for applt. In Mar. 1914, the machinery was erected, & in June, 1914, it broke down. By an agreement made in Jan. 1915, resps. agreed to replace the defective parts, & did so in Apr. 1915. Shortly afterwards the machinery again broke down.

In July, 1915, resps. were declared to be a co. "managed or controlled, directly or indirectly, by or under the influence of, or carried on wholly or mainly for the benefit or on behalf of, persons of enemy nationality":—*Held*: the agreement of Jan. 1915, &

subject to the exception in Enemy Contracts Annulment Act, 1915, s. 3 (5), the agreement of Mar. 1913, were null & void.—*SYDNEY MUNICIPAL COUNCIL v. AUSTRALIAN METAL CO., LTD.* (1926), 37 C. L. R. 550.—AUS.

- fiscation.]—THE DEERGARDEN (1747), cited in 1 Ch. Rob. at p. 202; THE ST. PHILIP (1747), cited in 8 Term Rep. at p. 556; THE ELIZABETH (1749), cited in 1 Ch. Rob. at p. 202; THE LADY JANE (1749), cited in 1 Ch. Rob. at p. 202; THE RINGENDE JACOB (1750), cited in 1 Ch. Rob. at p. 202; THE JUFFEROUW LOUISA MARGARETHA (1781), cited in 1 Ch. Rob. at p. 203; THE COMPTE DE WOHRONZOFF (1781), cited in 1 Ch. Rob. at p. 205; THE EXPEDITE VAN ROTTERDAM (1782), cited in 1 Ch. Rob. at p. 206; THE BELLA GUIDITA (1785), cited in 1 Ch. Rob. at p. 207; THE EENIGHEID (1795), cited in 1 Ch. Rob. at p. 210; THE FORTUNA (1795), cited in 1 Ch. Rob. at p. 212; THE FREEDEN (1795), cited in 1 Ch. Rob. at p. 213; THE WILLIAM (1795), cited in 1 Ch. Rob. at p. 214.
- .]—See, also, Nos. 369–371, ante.
424. *Add. Annotations*:—*Refd.* Johnstone v. Pedlar, [1921] 2 A. C. 262. *Mentd.* Central India Mining Co. v. Soc. Coloniale Anversoise, [1920] 1 K. B. 753.
425. *Add. Annotation*:—*Refd.* Johnstone v. Pedlar, [1921] 2 A. C. 262.
429. *Add. Annotation*:—As to (1) & (2) *Refd.* Casdagli v. Casdagli, [1919] A. C. 145.
- 440a. —.]—LA FLORA (1805), 6 Ch. Rob. 1; 1 Eng. Pr. Cas. 515; 165 E. R. 828.
445. *Add. Annotation*:—As to (1) *Refd.* The Rannveig, [1922] 1 A. C. 97.
449. *Add. Annotation*:—*Mentd.* Produce Brokers Co. v. Weis (1918), 87 L. J. K. B. 472.
451. *Add. Annotation*:—*Generally*, *Mentd.* Royal Exchange Assce. v. Hope, [1928] Ch. 179.
452. *Add. Annotation*:—*Mentd.* Williams v. Baltic Insee. Assocn. of London, [1924] 2 K. B. 282.
460. *Add. Annotations*:—*Refd.* Casdagli v. Casdagli, [1919] A. C. 145. *Mentd.* Rodriguez v. Speyer, [1919] A. C. 59.
- 493a. —.]—Where a licence is granted for a voyage to a hostile country, to continue in force till a given day, if the voyage is *bonâ fide* begun before that day, it continues to be protected by the licence, though delayed beyond the day by stress of weather or other accident over which the assured have no control.—GRONING v. CROCKETT (1811), 3 Camp. 83; 170 E. R. 1313, N. P.

## Part V.—Acquisition of British Nationality.

513. *Add. Annotations*:—*Mentd.* Markwald v. A.-G., [1920] 1 Ch. 348; Johnstone v. Pedlar, [1921] 2 A. C. 262; The Tervaete (1922), 128 L. T. 176.
520. *Add. Citation*:—26 Cox, C. C. 211, D. C. *Add. Annotation*:—*Consd.* Markwald v. A.-G., [1920] 1 Ch. 348.
- 520a. —.]—A natural-born German subject left Germany in 1878 & went to Australia, where, in 1908, he took the oath of allegiance to His Majesty & was granted under the powers of the Naturalisation Act, 1903, a certificate of naturalisation by which he became entitled to all political & other rights, powers, & privileges to which a natural-born British subject is entitled in the Commonwealth. He subsequently became a resident in London & was charged & convicted for that, being an alien, he had failed to furnish to a registration officer the particulars required by Aliens Restriction (Consolidated) Order, 1916, & his conviction was afterwards upheld by a Div. Ct. In an action brought by pltf. against the A.-G. for a declaration that he was no alien in England, but a liege subject of His Majesty the King, & entitled to the protection of His Majesty the King in all parts of His Majesty's Kingdom & Dominions:—*Held*: neither the taking of the oath of allegiance alone, nor the taking of the oath coupled with the grant of the certificate in Australia, made pltf. a British subject in the United Kingdom, & he was, therefore, an alien when in the United Kingdom, & the declaration must be refused. Pltf. was at least to this extent to be regarded as an alien, that he was a person so described in British Nationality & Status of Aliens Act, 1914 (c. 17), & for the purposes of that Act. He was a person entitled under that Act to apply as an alien for & to have granted to him in the United Kingdom a certificate of naturalisation.—MARKWALD v. A.-G., [1920] 1 Ch. 348; 89 L. J. Ch. 225; 122 L. T. 603; 36 T. L. R. 197; 64 Sol. Jo. 239, C. A.
- Annotation*:—*Mentd.* Russian Commercial & Industrial Bank v. British Bank for Foreign Trade, [1921] 2 A. C. 438.

### PART IV. SECT. 5, SUB-SECT. 1.

420 i. *Necessity for licence*—*How given*—*Approval of contract by officer entrusted to grant licence*.—*Held*: the fact that a contract had been approved by the officer who was *de facto* entrusted by the Crown with the exercise of the prerogative to grant licences to trade with the enemy was an answer to prosecutions for trading with the enemy.—DONOHUE v. SCHROEDER (1916), 22 C. L. R. 362.—AUS.

### PART V. SECT. 3.

518 ii. —.]—*Child of mother naturalised by subsequent marriage*.—Sect. 10 (5) of the above Act does not

apply to an infant whose mother by her subsequent marriage to a naturalised British subject has herself become a British subject but has not, while a widow, obtained a certificate of naturalisation in the United Kingdom.—JERGER v. PEARCE (1920), 27 C. L. R. 526.—AUS.

*st. Commonwealth Naturalisation Acts, 1903–1917, s. 10—Effect—Step-child of man naturalised under Naturalisation Act, 1870 (c. 14).*—The above sect. does not apply to a child whose mother has married a man who was naturalised under Naturalisation Act, 1870 (c. 14).—JERGER v. PEARCE (1920), 27 C. L. R. 526.—AUS.

*ss. Naturalisation Act, R. S. O., 1906 (c. 77)—Status of naturalised persons.*—An alien naturalised in Canada under the above Act acquires the status of a British subject.—*Re SOLVANG*, [1918] 3 W. W. R. 876; 43 D. L. R. 549.—CAN.

*vi. Naturalisation Acts—Fitness of applicant—Previous conviction.*—The fact that appt. had several years before undergone a sentence of imprisonment in default of paying a fine for supplying intoxicating liquor to an Indian is not a bar to his claim for naturalisation under the above Acts.—*Re BRESNIK* (1920), 58 D. L. R. 233; 34 Can. Crim. Cas. 167.—CAN.

## Part VI.—Loss of British Nationality.

526. *Add. Annotations*:—Mentd. Markwald v. A.-G., [1920] 1 Ch. 348; Johnstone v. Pedlar, [1921] 2 A. C. 262; The Tervaeete (1922), 128 L. T. 176.
533. *Add. Annotations*:—Consd. Fasbender v. A.-G., [1922] 1 Ch. 232. Refd. *Re Chamberlain's Settlement*, [1921] 2 Ch. 523; Fasbender v. A.-G., Kramer v. A.-G., [1922] 2 Ch. 850.
536. *Add. Citation*:—26 Cox, C. C. 177, D. C.
537. *Add. Citations*:—16 L. G. R. 764; 26 Cox, C. C. 244, D. C.
538. *Add. Annotations*:—Consd. Fasbender v. A.-G., [1922] 1 Ch. 232. Refd. *Re Chamberlain's Settlement*, [1921] 2 Ch. 533; Fasbender v. A.-G., Kramer v. A.-G., [1922] 2 Ch. 850; Kramer v. A.-G., [1923] A. C. 528.
- 538a. — British woman marrying alien—In time of war.]—FASBENDER v. A.-G., KRAMER v. A.-G., No. 49d, ante.

## Part VIII.—Immigration and Expulsion of Aliens.

540. *Add. Annotation*:—Refd. Johnstone v. Pedlar, [1921] 2 A. C. 262.
541. *Add. Annotation*:—Refd. Johnstone v. Pedlar, [1921] 2 A. C. 262.

## PART VI.

sb. *Revocation*—Whether reasons need be stated.]—A revocation of a certificate of naturalisation need not state the reasons of the Governor-General.—MEYER v. POYNTON (1920), 27 C. L. R. 436.—AUS.

sc. — Effect of Treaty of Peace with Germany.]—Art. 278 of the above Treaty does not affect the right of the Governor-General to revoke the certificate of naturalisation of a natural-born German subject.—MEYER v. POYNTON (1920), 27 C. L. R. 436.—AUS.

sd. *Declaration of intention to become citizen of foreign State*.]—By going to the United States & there making a declaration of intention to become a citizen of that country, a person of German birth naturalised in Canada does not cease to be a British citizen.—NEWMAN (or NEUMAN) v. BRADSHAW, [1917] 1 W. W. R. 1223; 23 B. C. R. 492.—CAN.

534 i. *British Nationality & Status of Aliens Act, 1914 (c. 17)*—*Declaration of alienage—Effect on liability under Military Service Acts*.]—A natural-born British subject who is also an American subject, & has been duly called up under Military Service Act, 1916, ss. 3, 11, is not relieved from his obligation to serve by a declaration of alienage under British Nationality & Status of Aliens Act, 1914 (c. 17).—*Re HORNE*, [1919] N. Z. L. R. 190.—N.Z.

## PART VIII.

540 ix. — Son of domiciled Chinaman.]—The domicile gained by a Chinaman in Canada was held not available for the benefit of his son, twelve years of age, who had lived his lifetime in China, so as to give the son Canadian domicile.—*Re WONG SUEY MONG*, [1921] 3 W. W. R. 122.—CAN.

540 x. — Son of naturalised Russian.]—A Russian, an insane person, was held for deportation under Immigration Act (Consolidation), s. 3. His release was applied for on the ground that his father had been resident in Canada for a number of years & had been naturalised there, & that the domicile of the father applied to the son:—*Held*: the son had no domicile in Canada & was expressly prohibited from landing under the Immigration Act.—*Re LIPSTEIN*, [1923] 2 D. L. R. 1055; 56 N. S. R. (G. & R.) 292.—CAN.

e (p. 193) i. — — —.]—A deportation order made by an immigration officer, when there is no Board of

Inquiry in the vicinity of the port of entry, must show on the face of it that there was no such Board there.—*R. v. BANNSTEAD, Ex p. HANSON, Ex p. MOLLER* (1920), 55 D. L. R. 287.—CAN.

sf. *Immigration Act, 1901–1920*—*Prohibited immigrant—Onus of proof—Evidence of prosecution incomplete*.]—Where, on a prosecution under sect. 5 (2) of the above Act, the prosecution proves some only of the relevant facts & does not complete them so as to enable the tribunal to come to a conclusion one way or the other, the averment that deft. is an immigrant & has entered the Commonwealth within three years before failing to pass the dictation test is, under sect. 5 (3), to be deemed to be proved in the absence of proof to the contrary by the personal evidence of deft.—*GABRIEL v. AH MOOK* (1924), 34 C. L. R. 591; 31 Argus L. R. 84.—AUS.

sj. — — — *Person born in Australia returning from abroad*.]—Where a person born in Australia has left the Commonwealth, the question whether, when he attempts to re-enter the Commonwealth, he is an immigrant within the above Act depends on whether he is as a fact coming back to Australia as to his home.—*DONOHUE v. WONG SAU* (1925), 36 C. L. R. 404.—AUS.

e (p. 194) i. — — — “*Landing*” — *What is*.]—“*Landing*” is the original act of landing & not the return of a certificated Chinese resident of Canada from a short visit to an adjacent city in the United States.—*R. v. FONG SOON*, [1919] 1 W. W. R. 486; 45 D. L. R. 78; 31 Can. Crim. Cas. 78.—CAN.

sl. — *Whether repugnant to Immigration Act, 1910 (c. 27)*.]—The powers & mode of procedure of the Board of Inquiry as to deportation under the latter Act are repugnant to the former Act, & do not apply.—*Re IMMIGRATION ACT, R. v. JEN JANG HOW*, [1919] 3 W. W. R. 271; 47 D. L. R. 538.—CAN.

sm. — — —.]—Sect. 18 of the former Act is not repugnant to s. 3 of the latter Act.—*Re JUNG YIN*, [1921] 3 W. W. R. 194.—CAN.

sn. *Chinese Immigration Act, 1923 (c. 38)*—*Deportation order—Appeal from—Person not Canadian citizen or having no Canadian domicile*.]—*Held*: the ct. had no jurisdiction to interfere.—*Re YEE FOO*, [1925] 2 D. L. R. 1131; 44 Can. Crim. Cas. 17; 56 O. L. R. 669.—CAN.

sp. *S.P. Re YOUNG SUE HING* (1926), 37 B. C. R. 227; [1926] 2 W. W. R. 374.—CAN.

sq. — — —.]—*Certiorari* in general lies with respect to an order for deportation made under sect. 26 of the above Act; & sect. 38 is no bar to its application to such orders when made without or in excess of jurisdiction or in violation of the essentials of justice.—*Re LOW HONG HING*, [1926] 3 D. L. R. 692; [1926] 2 W. W. R. 597; 46 Can. Crim. Cas. 65; 37 B. C. R. 295.—CAN.

sr. — *Alien allowed to land pending inquiry—Omission to obtain deposit as security*.]—*Held*: not equivalent to an assent to the alien being landed.—*R. v. LEE CHOW YING*, [1927] 1 W. W. R. 527; 47 Can. Crim. Cas. 203; 38 B. C. R. 241.—CAN.

q (p. 195) i. — *Detention for return to country not specified in order—After admittance refused by country specified in order*.]—An order had been made under the above Act for deportation of a native of India to the United States. On the refusal of the United States immigration officials to allow him to enter he was held for deportation to India:—*Held*: he was illegally detained & was entitled to his discharge.—*Re SANTA SINGH*, [1924] 3 D. L. R. 1088; 3 W. W. R. 164; 34 B. C. R. 190.—CAN.

q (p. 195) ii. — *Attempting to land forbidden person*.]—*R. v. PALANGIO* (1912), 22 O. W. R. 540; 3 O. W. N. 1440; 4 D. L. R. 611.—CAN.

st. — *Whether repugnant to Chinese Immigration Act, R. S. C., 1906 (c. 95)*.]—*Re IMMIGRATION ACT, R. v. JEN JANG HOW*, [1919] 3 W. W. R. 271.—CAN.

sv. — *Proceedings under—Not criminal proceedings*.]—*R. v. ALAMAZOFF*, [1919] 3 W. W. R. 281; 47 D. L. R. 533.—CAN.

sw. — — —.]—*Re IMMIGRATION ACT & WONG SHEE* (1922), 66 D. L. R. 485; 37 Can. Crim. Cas. 371; [1922] 2 W. W. R. 156.—CAN.

sz. — — —.]—*Re PONG FOOK WING, Re IMMIGRATION ACT*, [1923] 4 D. L. R. 1034; 3 W. W. R. 819.—CAN.

t (p. 195) i. — — —.]—*Person not Canadian citizen or having Canadian domicile*.]—The ct. cannot interfere with what is done is by the Immigration officers looking to the deportation of aliens who have not acquired Canadian domicile.—*Re GOTTSMAN* (1918), 29 Can. Crim. Cas. 439; 41 O. L. R. 547; 13 O. W. N. 344.—CAN.

t (p. 195) ii. — — —.]—*Motion for release from custody of one held for deportation under an order of a Board of Inquiry, was dismissed for want of jurisdiction in the ct. under*



543a. —.]—In making a recommendation for expulsion part of a sentence regard must be had to the period of the alien's residence in this country.—R. v. SHAFFNER (1920), 14 Cr. App. Rep. 131, C. C. A.

s. 23 of the above Act. Appet. had not shown that he was a Canadian citizen or had Canadian domicile.—R. v. SCHOPPELREI, [1919] 3 W. W. R. 322.—CAN.

t (p. 195) iii. —.]—The ct. has no power to interfere with an order of deportation made by the Board of Inquiry unless the person ordered to be deported be a Canadian citizen or have Canadian domicile.—Re IMMIGRATION ACT & WONG SHEE (1922), 66 D. L. R. 485; 37 Can. Crim. Cas. 371; [1922] 2 W. W. R. 156; revsg. 59 D. L. R. 626; 36 Can. Crim. Cas. 405; 30 B. C. R. 70.—CAN.

t (p. 195) iv. —.]—Habeas corpus will lie in respect of a deportation order made by an immigration officer whose jurisdiction so to act in the stead of a Board of Inquiry is not shown on the face of the order, although an appeal by appet. to the Minister of the Interior under s. 19 of the above Act has been unsuccessful.—R. v. BANNSTEAD, Ex p. HANSON, Ex p. MOLLER (1920), 55 D. L. R. 287.—CAN.

t (p. 195) v. —.]—If it be proved that the Board of Inquiry has not acted judicially, but merely on instructions from Ottawa, in ordering the deportation of a Chinaman, the ct. would be bound to grant an application for a writ of habeas corpus.—Re JUNG YIN, [1921] 3 W. W. R. 194.—CAN.

t (p. 195) vi. —.]—An appeal lies in habeas corpus proceedings where a person is detained under the above Act.—Re IMMIGRATION ACT & WONG SHEE (1922), 66 D. L. R. 485; 37 Can. Crim. Cas. 371; [1922] 2 W. W. R. 156.—CAN.

t (p. 195) vii. —.]—An appeal lies to the Ct. of Appeal from an order made in habeas corpus proceedings releasing a person detained under the above Act.—Re PONG FOOK WING, Re IMMIGRATION ACT, [1923] 4 D. L. R. 1034; 3 W. W. R. 819.—CAN.

v (p. 195) i. —.]—Chinese immigrant.—Under s. 23 of the above Act the ct. is prevented from interfering with the decision of a Board of Inquiry concerning the admission of a Chinaman to Canada.—Re WONG SIT KEE, [1921] 3 W. W. R. 118.—CAN.

v (p. 195) ii. —.]—The decision of a Board of Inquiry as to the admission of a Chinaman is not subject to review by the ct.—Re WONG SUEY MONG, [1921] 3 W. W. R. 123.—CAN.

sa. Immigration Amendment Act, 1919 (c. 25)—Not retrospective.—Re IMMIGRATION ACT & SANTA SINGH, [1920] 2 W. W. R. 999.—CAN.

sb. — Appointment of immigration officer—Sufficiency.—The signature of the Acting Deputy Minister of Immigration & Colonisation is sufficient.—Re PAPPAS, [1921] 1 W. W. R. 949.—CAN.

sc. — Deportation order—Form of order.—Where an order only stated "P. C. 23" as the reason for deportation:—Held: such an order was defective.—R. v. LANTALUM, Ex p. OFFMAN (1921), 62 D. L. R. 223; 35 Can. Crim. Cas. 295; 48 N. B. R. 448.—CAN.

sd. — Amendment of order.—An order of deportation, insufficient in form as not showing jurisdiction, may be amended by the immigration officer.—Re PAPPAS, [1921] 1 W. W. R. 949.—CAN.

se. Opium & Narcotic Drugs Acts—Proceedings under—Not criminal proceedings.—Re LOO LEN (No. 1), [1924]

1 D. L. R. 909; 1 W. W. R. 733; 41 Can. Crim. Cas. 386; 33 B. C. R. 448.—CAN.

sg. — Conviction under—No order against deportation—Power to make subsequent order.—There is no power to make an order except at the time of conviction.—Re JOE FONG (1923), 53 O. L. R. 493; 24 O. W. N. 39.—CAN.

sh. — —.]—An order against deportation made subsequently is invalid.—R. v. LEE PARK, [1924] 4 D. L. R. 883; 3 W. W. R. 490.—CAN.

sj. — Necessity for order.—Since under Opium & Narcotic Drug Act, 1923, s. 25, deportation follows automatically in the case of the conviction of an alien under sect. 4 (d), it is not necessary for a formal order for deportation to be made in such a case.—R. v. WOO FONG TOY (B.C.), [1926] 3 W. W. R. 703.—CAN.

Validity of warrant.—The omission of the figures "1923" from the citation of the Act does not invalidate the warrant.—R. v. GAN, [1925] 3 W. W. R. 783.—CAN.

sl. — Subsequent detention for deportation—Validity.—Accused was convicted under s. 5a (2) of the 1911 Act & fined with imprisonment in default of payment. The fine was not paid, & on the termination of the imprisonment prisoner was held for deportation under s. 10b:—Held: the purpose of s. 10b was to superadd the penalty of deportation as a consequence of a conviction for the commission of any of the statutory offences created by s. 5a.—R. v. HOW, [1923] 4 D. L. R. 1007; 56 N. S. R. (G. & R.) 372.—CAN.

sm. — Application for release.—Where an alien has been convicted under s. 5a (2) of the 1911 Act & upon termination of the imprisonment imposed is detained for deportation under s. 10b, he is not entitled to release on habeas corpus on the ground of having Canadian domicile within Immigration Act, s. 43.—R. v. CHANG SONG, [1924] 1 D. L. R. 1161; 1 W. W. R. 778; 42 Can. Crim. Cas. 8; 33 B. C. R. 176.—CAN.

warrant of deportation regular on its face having issued after prisoner had served his sentence on conviction under the 1911 Act, the ct., on an application in habeas corpus proceedings, can only inquire into the truth of the statements made in the warrant, & cannot interfere by reason on the unlawful imposition of hard labour by the sentence & conviction.—R. v. CHOW TONG (1924), 34 B. C. R. 12.—CAN.

so. — —.]—Where a prisoner has been convicted of an infraction of the 1923 Act & is held for deportation, the mere fact that the warrant committing him for deportation, although stating him to be an alien, does not show or recite that a Board of Inquiry was held as provided by Immigration Act, is not a ground for granting a writ of habeas corpus.—R. v. GEE DEW (No. 3), [1924] 3 D. L. R. 186; 2 W. W. R. 793; 42 Can. Crim. Cas. 213; 33 B. C. R. 548.—CAN.

sp. — Held: habeas corpus proceedings were proceedings "arising out of a criminal charge," & within the exception to the jurisdiction of the Supreme Ct. of Canada under Supreme Ct. Act, R. S. C., 1906, s. 36.—JUNGO LEE v. R., [1927] 1 D. L. R. 721; 46 Can. Crim. Cas. 329; [1926] S. C. R. 652.—CAN.

Accused was convicted under s. 5a (2)

of the 1911 Act, & condemned to pay a fine, & in default of payment to imprisonment. Upon termination of the imprisonment he was kept in custody for deportation under s. 10b. A writ of habeas corpus was granted & accused ordered to be discharged from custody. On appeal the order was sustained.—Re MAH SHIN SHONG, Re SING YIM HONG, [1923] 4 D. L. R. 844; 39 Can. Crim. Cas. 401; 32 B. C. R. 176; [1923] 1 W. W. R. 1365.—CAN.

sr. — —.]—Where an alien on the termination of his imprisonment, imposed on conviction under the 1911 Act, is detained pending deportation & he applies for habeas corpus, but is refused release, an appeal from such refusal lies to the Ct. of Appeal.—Re LOO LEN (No. 1), [1924] 1 D. L. R. 909; 1 W. W. R. 733; 41 Can. Crim. Cas. 386; 33 B. C. R. 448.—CAN.

st. — Validity of warrant of deportation.—The omission of the figures "1923" from the citation of the Act does not invalidate the warrant.—R. v. JUNGO LEE (1926), 46 Can. Crim. Cas. 92; 37 B. C. R. 318; [1926] 2 W. W. R. 734.—CAN.

sw. Chinese Exclusion Act, 1904 (c. 37) (Cape)—Deportation after conviction—Effect of exemption certificate.—Appls., being Chinamen & holders of exemption certificates under the above Act, having each been convicted at least twice for offences against the gambling laws, but none of them having served two terms of imprisonment:—Held: not to be exempted under s. 2 (e) of the Act from s. 34, & liable under the terms of the latter sect. to be deported.—AH YET v. UNION GOVERNMENT, [1921] App. D. 97.—S. AF.

sx. Act 22 of 1913—Prohibited immigrant—Asiatic—Holding qualifications for residence.—The entry of applt., an Asiatic, into Natal was not discovered until Apr. 1916, when he was arrested as a prohibited immigrant under s. 4 (1) (a) of the above Act:—Held: he had obtained no title to reside in the Union until he had successfully presented himself as an immigrant no matter how well qualified he might be to obtain a title to reside in the Union.—DESAI v. IMMIGRANTS' APPEAL BOARD (1916), 37 N. L. R. 277.—S. AF.

sy. — Indian returning after temporary residence in India—Domicil certificate not acquired before departure to India.—Appl., a resident in Natal from 1897, in 1911 went to India with the object of seeking a wife there from among his own relations. Prior to leaving for India he applied to the authorities for a certificate of domicile, but that certificate was illegally refused. Applt.'s visit to India was extended to a period of four years, & he returned to Natal in Apr. 1915:—Held: applt.'s visit to India was for a special or temporary purpose; the home in Natal continued to be his place of permanent abode, & he was domiciled in Natal within s. 30 of the above Act.—KAJES v. IMMIGRANTS' APPEAL BOARD (1916), 37 N. L. R. 42.—S. AF.

sz. — Domicil certificate acquired before departure to India.—Immigrant, an Indian, first came to Natal in 1893, where he continued to reside. In 1899 he obtained a certificate of domicile. In 1902 immigrant went back to India. Recently he returned to Natal but was refused admission as being a prohibited immigrant under the above Act:—Held: the certificate conferred upon

544. *Add. Annotations*:—As to (2) *Folld. R. v. Shaffner* (1920), 14 Cr. App. Rep. 131; *R. v. Rogoff* (1924), 18 Cr. App. Rep. 1.

544a. ——— Family domiciled in England.]—*R. v. Rogoff* (1924), 18 Cr. App. Rep. 1, C. C. A.

547. *Add. Annotation*:—*Folld. R. v. Gilbert* (1921), 16 Cr. App. Rep. 34.

548a. ——— Unnecessary aggravation of sentence involved.]—*R. v. IRVING* (1920), 15 Cr. App. Rep. 61, C. C. A.

551. *Add. Annotations*:—*Reid. Brightman v. Tate* (1919), 35 T. L. R. 209; *R. v. Brixton Prison, Ex p. Bloom* (1920), 90 L. J. K. B. 574; *R. v. Home Secretary, Ex p. Bressler* (1924), 131 L. T. 386.

551a. ———.]—Aliens Order, 1919, art. 12, par. 1, which empowers the Secretary of State "if he deems it to be conducive to the public good" to make a deportation order against an alien, is not *ultra vires*. In acting under the article the Secretary of State is not a judicial, but is an executive officer, & is therefore not bound to hold an inquiry or give the person against whom he proposes to make a deportation order the opportunity of being heard.—*R. v. LEMAN STREET POLICE STATION INSPECTOR, Ex p. VENICOFF, R. v. SECRETARY OF STATE FOR HOME AFFAIRS, Ex p. VENICOFF*, [1920] 3 K. B. 72; 89 L. J. K. B. 1200; 23 L. T. 573; 84 J. P. 222; 36 T. L. R. 677, D. C.

*Annotation*:—*Reid. R. v. Home Secretary, Ex p. Bressler* (1924), 131 L. T. 386.

553. *Add. Annotations*:—As to (1) *Consd. R. v. Home Secretary, Ex p. Bressler* (1924), 131

L. T. 386. *Reid. Brightman v. Tate* (1919), 35 T. L. R. 209.

553a. ——— Aliens Restriction (Amendment) Act, 1919 (c. 92)—Power of expulsion in time of peace.]—Appct. was charged before a metropolitan police magistrate with four offences under the above Acts. He pleaded guilty to the charges, & was sentenced to fourteen days' imprisonment & recommended for deportation. After having served his sentence, he was detained in prison awaiting deportation. The Secretary of State had on the day after the expiration of the sentence made an order for the deportation of appct. Upon an application for a writ of *habeas corpus*:—*Held*: the order of the Secretary of State was not *ultra vires*, but was within the powers conferred upon him by the above Acts, & Aliens Order, 1919, art. 12.—*R. v. BRIXTON PRISON (GOVERNOR), Ex p. BLOOM* (1920), 90 L. J. K. B. 574; 124 L. T. 375; 85 J. P. 87; 19 L. G. R. 62; 26 Cox, C. C. 687, D. C.

553b. ———.]—The Order in Council made as to the deportation of aliens on Mar. 25, 1920, under sect. 1 (1) of each of the above Acts, did not expire when the power to make such an order would, but for further legislation, have expired, namely on Dec. 23, 1920, inasmuch as the Act of 1919 has been continued by the Expiring Laws Continuance Acts, 1920 (c. 73), & 1921 (c. 53).—*R. v. BRIXTON PRISON (GOVERNOR), Ex p. SUGARMAN* (1922), 127 L. T. 27; 86 J. P. 75; 38 T. L. R. 325; 27 Cox, C. C. 208, D. C.

553c. ——— Form of order by Secretary of State.]—The making of an order for the

him rights, which were not restricted by the above Act, & there was no intention on the part of immigrant to abandon his domicile in Natal.—*Re RUNGASAMY CHETTY* (1917), 38 N. L. R. 42.—S. AF.

sb. ——— Domicil certificate acquired by deceased parent.]—K., the possessor of a certificate of domicile under the above Act, brought his wife & son, N., to Natal from India in 1911. In 1914 they returned to India & lived there till after K.'s death in Natal in 1917. On a question as to whether N. could of right enter Natal in 1920:—*Held*: N. had no such right under s. 6 (g) of the above Act, as he had no father domiciled in Natal.—*NATHOO v. IMMIGRANTS' APPEAL BOARD* (1921), 42 N. L. R. 30.—S. AF.

sc. ——— Second wife of Mohammedan.]—Where a Mohammedan's daughter & her mother have returned to India & both are residing there, another wife of such Mohammedan is not a prohibited immigrant.—*MARIAM & MAHOMED v. IMMIGRANTS' APPEAL BOARD* (1918), 39 N. L. R. 382.—S. AF.

sd. ——— Sons of domiciled parents—Resident in another province.]—M. & Y., Asiatics, & the minor sons of parents resident in the Transvaal, but formerly resident in Natal, & holding certificates of domicile under the above Act, were declared prohibited immigrants in Natal, neither M. or Y. having ever been resident in Natal save for temporary purposes during which periods their parents remained in the Transvaal.—*MAHOMED v. PRINCIPAL IMMIGRATION OFFICER* (1921), 42 N. L. R. 337.—S. AF.

se. ——— Deportation under—Conviction obtained without Union.]—A person not born in the Union of South Africa who is convicted of an offence under s. 4 (1) (b) of the above Act is liable

to be deported under s. 22, whether the conviction took place within or without the Union.—*COLLINGWOOD v. UNION GOVERNMENT*, [1917] App. D. 550.—S. AF.

sg. ——— Boarding ship before examination of immigrants completed.]—Where a person was convicted of being on board a ship before the general examination of immigrants had been completed, & stated in defence that notice to the master of the ship had been given:—*Held*: he was rightly convicted.—*ANGLIA v. R.* (1918), 39 N. L. R. 147.—S. AF.

sh. ——— Decision of immigration authority—Jurisdiction of court to interfere.]—The ct. may interfere where there is a manifest absence of jurisdiction or if an order is made or obtained fraudulently.—*UNION GOVERNMENT v. FAKIR*, [1923] App. D. 466.—S. AF.

si. ———.]—Asiatic, had been declared by the immigration officer of Natal to be a prohibited immigrant. On application to the ct. for an order restraining his deportation:—*Held*: as the immigration officer had not acted outside his jurisdiction or *malâ fide*, the ct. had no jurisdiction to make the order prayed.—*NARAINSAMY v. PRINCIPAL, ETC.*, [1923] App. D. 673.—S. AF.

sm. *Indian Immigration Act, 1891 (Natal)*—Liability of employers for medical attendance on Indian immigrants.]—Employers were held liable under the above Act for medical attendance on Indian immigrants who, after being free, had not re-indentured, themselves & for their descendants.—*INDIAN IMMIGRATION TRUST BOARD v. GOVINDSAMY* (1920), 37 T. L. R. 128.—S. AF.

553i. *Aliens Restriction Order, 1916*

—Power of expulsion in war time—*Validity of Order*—Power to specify destination.]—*Held*: par. 25 of the above Order was within the authority conferred by War Precautions Act, 1914–1916, s. 6; it conferred a discretion upon the Minister to make an order for the deportation of any particular alien, & authorised his subsequent arrest & detention & the placing him on board a ship chosen by the Minister, & his detention there whilst the ship was in the territorial limits of the Commonwealth; & such an order was not rendered invalid by the fact that the Minister made it for the purpose of carrying out an agreement by which the Commonwealth Govt. was under an obligation to the country of which the particular alien was a subject to assist as far as possible in enforcing the return to that country of persons liable to military service there.—*FERRANDO v. PEARCE* (1918), 25 C. L. R. 241.—AUS.

sn. ——— Necessity of communication of deportation order to alien.]—Par. 23 of the above Order does not require communication to the alien of a deportation order made under it by the Minister of Defence.—*MEYER v. POYNTON* (1920), 27 C. L. R. 436.—AUS.

so. ——— Form of deportation order.]—Such order need not be in any particular form.—*JERGER v. PEARCE* (1920), 28 C. L. R. 588.—AUS.

sw. *Aliens Restriction Order, 1916*—Power of expulsion in war time—Subject of allied State liable for military service.]—The Minister having ordered the deportation of an Italian subject for military service, the ct. refused an application for a rule nisi for *habeas corpus*, the matter being in the Minister's discretion under the above Order.—*Ex p. MAGGI* (1918), 18 S. R. N. S. W. 150.—AUS.



deportation of an alien under Aliens' Order, 1920, art. 12 (6), lies within the discretion of the Home Secretary. It is desirable that an order made under the article should state on the face of it that the Home Secretary deems it to be conducive to the public good to make the order.—*R. v. HOME SECRETARY*,

*Ex p. BRESSLER* (1924), 131 L. T. 386; 88 J. P. 89; 68 Sol. Jo. 646; 22 L. G. R. 460; 27 Cox, C. C. 655, C. A.

558d. ——— Recommendation for deportation —Right of appeal.]—*R. v. GRAHAM CAMPBELL, Ex p. AHMED HAMID MOUSSA*, No. 558h, *post*.

## Part IX.—Registration, Internment, and other Restrictions.

557. *Add. Citation*:—(1917), 26 Cox, C. C. 16, D. C.

558a. ——— Aliens Order, 1920.]—(1) The word "keeper" in the above Order of 1920, art. 20 (2), includes the lessee of a house who lets unfurnished rooms in the house in separate lettings to tenants at weekly rentals & employs another person to manage the house for him.

(2) A flat let on a seven years' lease would not constitute "premises" within the above Order of 1920, art. 6, but that art. does not apply to rooms in a leasehold house let unfurnished on weekly tenancies, there being a manager of the house employed by the lessee whose duties include cleaning the common stairs, ways & places, the maintenance of electric light, & so on.—*RODDA v. GODFREY* (1926), 95 L. J. K. B. 704; 90 J. P. 111; 42 T. L. R. 473; 24 L. G. R. 311; 28 Cox, C. C. 209, D. C.

558b. ———.]—The fact that the keeper of any premises to which the above Order of 1920, art. 7, applies knows that a person staying at such premises is a British subject, does not excuse compliance with the obligation to require such person to sign a statement as to his nationality.  
*v. JONES*, [1928] 2 K. B. 227; 97 L. J. K. B. 606; 139 L. T. 167; 92 J. P. 79; 44 T. L. R. 511; 26 L. G. R. 318, D. C.

558c. Aliens Restriction (Amendment) Act, 1919 (c. 92)—Restrictions as to change of name—Carrying on business under pre-war name.]—Resp., who was an alien, & whose real name was Karel Kollross, purchased in 1921, & continued to carry on, a business under the name of the Widmore Laundry, which business had been carried on under the same name by his predecessors for many years before Aug. 4, 1914. Apart from the laundry business resp. continued to be known as Karel Kollross, & he was registered in that name as the proprietor of the Widmore Laundry under Registration of Business Names Act, 1916 (c. 58). An information having been preferred against resp. for using the name Widmore Laundry, being a name other than that by which he was ordinarily known on Aug. 4, 1914, contrary to sect. 7 of the Act of 1919, the justices dismissed the information:—*Held*: the justices were right, as resp. had committed no offence against sect. 7 (1), by taking over an old-established business with a pre-war name & continuing to carry it on under that name.—*BRUNNING v. KOLLROSS*, [1923] 1 K. B. 311; 92 L. J. K. B. 323; 128 L. T. 600; 87 J. P.

41; 39 T. L. R. 129; 67 Sol. Jo. 278; 21 L. G. R. 108; 27 Cox, C. C. 383, D. C.

558d. ——— Addition of "& Co."—An alien uses a name "other than that by which he was ordinarily known" on Aug. 4, 1914, contrary to sect. 7 (1) of the Act of 1919, if he adds to the name by which he was ordinarily known on that date the words "& Co."—*EVANS v. PIAUNEAU*, [1927] 2 K. B. 374; 96 L. J. K. B. 734; 137 L. T. 482; 91 J. P. 97; 43 T. L. R. 524; 25 L. G. R. 321; 28 Cox, C. C. 410, D. C.

558e. ——— Prosecution under—Whether offences triable on indictment.]—(1) On a prosecution for an offence against a statutory Order, an objection that the Order has not been proved must be taken before the ct. at the trial. It is too late to take the point for the first time on appeal.

(2) In cases under the Act of 1914, s. 1 (4), & the Act of 1919, s. 13, when any question arises whether the person charged is an alien or not the *onus* lies upon him to prove that he is not an alien.

(3) Offences against the Act of 1914 & the Act of 1919 are punishable only in the manner prescribed by the statutes, namely on summary conviction, unless the person charged with the offence claims the right under Summary Jurisdiction Act, 1879 (c. 49), s. 17, to be tried with a jury. Where, therefore, an offence under those Acts was treated by the magistrate as an indictable one & the case sent for trial before quarter sessions without any claim for trial with a jury having been put forward by prisoner, the conviction at the sessions was quashed.—*R. v. KAKELO*, [1923] 2 K. B. 793; 92 L. J. K. B. 997; 129 L. T. 477; 87 J. P. 184; 39 T. L. R. 671; 68 Sol. Jo. 41; 27 Cox, C. C. 454; 17 Cr. App. Rep. 150, C. C. A.

558f. ——— Proof of Order.]—*R. v. KAKELO*, No. 558e, *ante*.

558g. ——— Proof of alienage.]—*R. v. KAKELO*, No. 558e, *ante*.

558h. ——— Appeal—Effect of ambiguous plea.]—Appct. was charged under Aliens Order, 1920, with, being an alien, having failed to notify his change of address. When before the magistrate he was asked "Are you an Egyptian?" to which he answered "Yes." He was then asked "Did you tell the registration officer that you intended to change your residence, & tell him when & where you were going?" to which he answered "No." Thereupon the magistrate entered a plea of guilty & sentenced appct.

could not succeed.—*R. v. HACKMAN* (1919), 44 O. L. R. 224; 15 O. W. N. 190.—CAN.

PART IX.  
558. Registration—No permanent place of residence of r.]—Deft.

was convicted for neglect to register as an enemy alien. There was no evidence that deft. had no permanent place of residence in Canada:—*Held*: the charge



to imprisonment for one month & recommended the making of a deportation order against him :—*Held* : appct. had not pleaded guilty or admitted the truth of the charge within Summary Jurisdiction Act, 1879 (c. 49), s. 19, or Criminal Justice Administration Act, 1914 (c. 58), s. 37, &, therefore, he had a right of appeal to quarter sessions by virtue of those sections.—*R. v. GRAHAM CAMPBELL, Ex p. AHMED HAMID MOUSSA*, [1921] 2 K. B. 473 ; 90 L. J. K. B. 818 ; 125 L. T. 310 ; 85 J. P. 189 ; 37 T. L. R. 611 ; 19 L. G. R. 461 ; 26 Cox, C. C. 747, D. C.

558l. ——— From recommendation for deportation.]—*R. v. GRAHAM CAMPBELL, Ex p. AHMED HAMID MOUSSA*, No. 558h, *ante*.

559. *Add. Annotation* :—*Refd. Ronnfeldt v. Phillips* (1918), 35 T. L. R. 46.

560. *Add. Annotations* :—*Consd. Ernest v. Metropolitan Police Comr.* (1919), 89 L. J. K. B. 42. *Refd. Brightman v. Tate* (1919), 35 T. L. R. 209 ; *Re De Keyser's Royal Hotel, De Keyser's Royal Hotel v. R.*, [1919] 2 Ch. 197 ; *Chester v. Bateson*, [1920] 1 K. B. 829 ; *Fowle v. Monsell* (1920), 90 L. J. K. B. 105 ; *Gurney v. Houghton* (1920), 123 L. T. 706 ; *Hudsons' Bay Co. v. Maclay* (1920), 36 T. L. R. 469 ; *R. v. Leman Street Police Station Inspector, Ex p. Venicoff*, [1920] 3 K. B. 72 ; *R. v. Wormwood Scrubbs Prison*, [1920] 2 K. B. 305 ; *Shutler v. Rolfe* (1920), 36 T. L. R. 828 ; *R. v. Cannon Row Police Station Inspector, Ex p. Brady* (1921), 91 L. J. K. B. 98.

561. *Add. Annotations* :—*Refd. R. v. Secretary of*

State for Home Affairs, *Ex p. O'Brien*, [1923] 2 K. B. 361. *Mentd. Re Clifford & O'Sullivan*, [1921] 2 A. C. 470 ; *Secretary of State for Home Affairs v. O'Brien*, [1923] A. C. 603.

561a. ——— Restrictions as to change of name—*Validity*.]—Applt., a foreigner by birth, became a naturalised British subject in 1912, & changed his name by deed poll in 1915 from Ernst to Ernest. In 1919 he was convicted under reg. 14h of the above regulations, for that, not being a natural-born British subject, he used a name other than that by which he was ordinarily known at the beginning of the war. He contended that reg. 14h was *ultra vires*, on the ground that it was not competent by Order in Council, issued under Defence of the Realm Act, 1914 (c. 8), to deprive him of any rights, powers, or privileges which were not at the same time taken away from all British subjects ; & that the regulations purported to override an Act of Parliament, although there was no power under the Act of 1914 to do so :—*Held* : reg. 14h was not *ultra vires* because it discriminated between naturalised & natural-born British subjects.

Regulations made by the King in Council under Defence of the Realm Act, 1914 (c. 8), have all the force of a statute & may take away a statutory privilege or impose a statutory duty.—*ERNEST v. METROPOLITAN POLICE COMR.* (1919), 89 L. J. K. B. 42 ; 121 L. T. 222 ; 83 J. P. 182 ; 35 T. L. R. 512 ; 17 L. G. R. 448 ; 26 Cox, C. C. 458, D. C.

563. *Add. Citation* :—26 Cox C. C. 58, D. C.

## ANIMALS.

## Part II.—Property in Animals.

3. *Add. Annotation*:—*Mentd. Jebara v. Ottoman Bank*, [1927] 2 K. B. 254.
34. *Add. Annotation*:—*As to (3) Refd. Granby v. Bakewell U. D. C.* (1923), 87 J. P. 105.
43. *Add. Annotation*:—*Refd. Re Powell, Dodd v. Williams*, [1921] 1 Ch. 178.
44. *Add. Annotations*:—*As to (1) Refd. Re Powell, Dodd v. Williams*, [1921] 1 Ch. 178. *As to (2) Consd. Re Powell, Dodd v. Williams*, [1921] 1 Ch. 178.
45. *Add. Annotations*:—*Refd. The Tubantia*, [1924] P. 78. *Mentd. Pratt v. British Medical Assocn.*, [1919] 1 K. B. 244.
46. *Add. Annotation*:—*Refd. The Tubantia*, [1924] P. 78.
47. *Add. Annotation*:—*Mentd. The Fagernes*, [1926] P. 185.
64. *Add. Annotation*:—*Mentd. Nye v. Niblett* (1917), 16 L. G. R. 57.
78. *Add. Annotation*:—*Refd. The Tubantia*, [1924] P. 78.
90. *Add. Annotations*:—*As to (1) Consd. Re Powell, Dodd v. Williams*, [1921] 1 Ch. 178. *As to (2) Refd. Re Powell, Dodd v. Williams*, [1921] 1 Ch. 178.

## Part III.—Rights and Liabilities of Owners of Animals.

101. *Add. Annotation*:—*Apld. Barnard v. Evans*, [1925] 2 K. B. 794.
107. *Add. Annotation*:—*Refd. Stearn v. Prentice*, [1919] 1 K. B. 394.
109. *Add. Annotation*:—*Consd. Hines v. Tousley* (1926), 95 L. J. K. B. 773.
113. *Add. Annotation*:—*Generally, Mentd. Hardy v. C. L. Ry.*, [1920] 3 K. B. 459.
116. *Add. Annotation*:—*Consd. Barnard v. Evans*, [1925] 2 K. B. 794.
117. *Add. Annotation*:—*Refd. Nye v. Niblett* (1917), 87 L. J. K. B. 590.
119. *Add. Annotation*:—*Consd. Horton v. Gwynne*, [1921] 2 K. B. 661.
130. *Add. Annotation*:—*Mentd. Ilford U. D. C. v. Beal*, [1925] 1 K. B. 671.

## PART II. SECT. 1, SUB-SECT. 1.

*sa. Camel*.]—Under the condition of affairs which has existed in Western Australia for many years, camels are to be regarded as belonging to the class of domestic animals. — *NADA SHAH v. SIKEMAN* (1917), 19 W. A. L. R. 119.—AUS.

## PART II. SECT. 2, SUB-SECT. 1.—A.

19 ii. ———.]—A fox born & reared in captivity escaped & was killed by defts. upon a stranger's land a week later:—*Held*: the fox was an animal *feræ naturæ*; pltf.'s qualified property therein came to an end when the animal escaped & was reduced into actual possession by defts.; there was no immediate pursuit, nor was there *animus revertendi*.—*CAMPBELL v. HEDLEY* (1917), 39 O. L. R. 528; 37 D. L. R. 289.—CAN.

## PART II. SECT. 2, SUB-SECT. 2.

74 ii. ——— *Animal killed by trespasser*.]—When a person kills a wild animal on the property of another the carcass does not belong to the killer but to the proprietor of the property, & the latter, either himself or by his duly authorised agent, is entitled to demand & if refused, seize the carcass, & such persons as help him to exercise his right are doing no wrong; but as against any other person, the killer has a right to retain possession of the carcass.—*R. v. ARTU RANTRA* (1924), 1 L. R. 3 Pat. 549.—IND.

## PART II. SECT. 3.

*sb. As between husband & wife—Wife's cattle on husband's farm*.]—Where cattle belonging to a wife are placed on her husband's farm, fed from the crops grown thereon & looked after by him in carrying on farming operations, not as her agent or manager, but as his own business, & the offspring of the original stock are treated in the same way & sold from time to time & the proceeds invested in other stock, the increase of the original animals &

the animals bought from the proceeds of the sale cannot be claimed by the wife.—*MINAKER v. HADDEN*, [1917] 3 W. W. R. 774.—CAN.

*so. Brood of tame & domestic animals—Belongs to owner of dam or mother*.]—*CALHOUN v. REID* (Sask.), [1927] 4 D. L. R. 808; [1927] W. W. R. 429.—CAN.

## PART III. SECT. 1, SUB-SECT. 1.—B.

*sd. Straying bull tied up during night—Released & driven away next day—Subsequently found dying*.]—Deft. tied up over night a bull which had strayed on his premises, to prevent it damaging his cows, & released it next day & drove it away. In the evening it was found castrated near the boundary of deft.'s farm & died the next day. In an action for damages:—*Held*: deft.'s actions were justified, & in the absence of evidence as to when or how or by whom the animal was injured, pltf. could not succeed.—*FICOWICH v. MALESHCHAK*, [1924] 4 D. L. R. 585; 3 W. W. R. 308.—CAN.

## PART III. SECT. 1, SUB-SECT. 1.—E.

*so. Claim against custodian of animal—Onus of proof as to absence of negligence*.]—The onus is upon the custodian to show that the injury did not occur through his act or negligence only where it is shown that the injury occurred when the animal was or should have been in his custody or control, or that he was under an obligation to account for it to the owner.—*FICOWICH v. MALESHCHAK*, [1924] 4 D. L. R. 585; 3 W. W. R. 308.—CAN.

132 ii a. ——— *Animal falling in well—Animal lawfully at large*.]—Pltf.'s horse while lawfully running at large was killed by falling into an open well on deft.'s land. Deft., who knew of the open well, was residing outside the province, the land being occupied by a tenant:—*Held*: deft.'s breach of Open Wells Act gave pltf. a right of action "on a tort committed within the jurisdiction," justifying allowance

of the issue of a writ for service on deft. *ex juris*.—*BROTHERSON v. KENNEDY*, [1919] 2 W. W. R. 803; 47 D. L. R. 131; 12 Sask. L. R. 304.—CAN.

132 ii b. ——— *What is an "open well"*.]—Whether a well is an "open well" or not is a question of fact to be proved at the trial. While it might be an "open well" if insecurely covered, the fact that an animal falls into it without any evidence of how it occurred does not prove it such, nor does the fact that the material of the covering was seven years old.—*DRYSDALE v. REID*, [1920] 3 W. W. R. 832.—CAN.

132 ii c. ——— *Animal unlawfully at large*.]—Owners of such animals have no right of action where they are killed or injured by falling into an open well.—*DILLE v. GREAT WEST LIFE ASSURANCE CO.*, [1926] 3 D. L. R. 339; [1926] 2 W. W. R. 342; 20 Sask. L. R. 545.—CAN.

132 iii a. ———.]—The digging by a municipality of a ditch dangerous to animals alongside the travelled portion of a highway & the leaving of it unprotected, was held to be a nuisance which rendered the municipality liable for the loss of a horse which plunged into the ditch & was killed.—*HOWELL v. WILTON RURAL MUNICIPALITY No. 472* (1922), 66 D. L. R. 321; 15 Sask. L. R. 427; [1922] 2 W. W. R. 568.—CAN.

132 iv. ——— *Animal falling in excavation*.]—Deft. & pltf. were neighbours. Pltf.'s cow while running at large fell into an excavation on deft.'s land:—*Held*: pltf. could not recover damages.—*PITZEN v. SHOKLICK*, [1921] 2 W. W. R. 686; 16 Alta. L. R. 482.—CAN.

—.]—The owner or occupier of land will be liable in damages for any loss of stock resulting from failure to guard against access to an excavation.—*KELLOGG v. DAPPEN* (1922), 69 D. L. R. 528; [1922] 3 W. W. R. 573.—CAN.

134. *Add. Annotation*:—*Reid. British Petroleum Co. v. A.-G. for Ceylon*, [1926] A. C. 147.

136a. *Negligent driving by farrier—Measure of damages.*—*HUGHES v. QUENTIN* (1838), 8 C. & P. 703; 173 E. R. 681, N. P.

*Annotations*:—*Apld. Greenbirt v. Smee* (1876), 135 L. T. 168. *Reid. The Mediana* (1900), 69 L. J. P. 35.

139. *Add. Annotations*:—*Consd. Dunster v. Hollis*, [1918] 2 K. B. 795. *Mentd. Fairman v. Perpetual Investment Bldg. Soc.*, [1923] A. C. 74; *Mersey Docks & Harbour Board v. Procter*, [1923] A. C. 253.

145. *Add. Annotation*:—*As to (1) Reid. British & Foreign Marine Insce. v. Gaunt*, [1921] 2 A. C. 41.

145a. *Animal killed—Meaning of "external & visible injury."*—A policy of insurance provided that an insurance co. should indemnify the insured against death solely attributable

to accidental external & visible injury to any horse the property of the insured, duly certified by a veterinary surgeon, & further provided that the due observance & fulfilment of the conditions of the policy should be a condition precedent to any liability of the co. under the policy. The insured's horse, drawing a loaded van, got out of the driver's control, bolted, & fell into a ditch with the van on top of it, & died in consequence of the pressure of a shaft upon its windpipe. There was no mark visible on the skin of the horse, & no certificate of a veterinary surgeon was obtained:—*Held*: (1) it was not necessary that there should have been any mark visible on the skin of the horse, & the injury was external & visible; & (2) it was a condition precedent to the insured's right to recover that the death of the horse should

132 vi. ——— *Cellar of unused house.*—Deft. owned unfenced land on which was an unused open house with a cellar beneath. Pltf.'s horse, running at large, got into the house, & while there, one of its feet broke through the floor above the cellar & being unable to withdraw it, it died:—*Held*: the animals must take the land as they find it, & Open Wells Act did not apply.—*WRUBLESKI v. LOFF*, [1923] 2 W. W. R. 764.—CAN.

z i. ———.—Where there is a bye-law permitting cattle to run at large & such cattle are injured by the barbed wire of a fence which has fallen down through the rottenness of its posts, the owner of the fence is liable for the injury to cattle lawfully on the highway, & injured thereon.—*CHASE v. COLERIDGE*, [1917] 2 W. W. R. 736.—CAN.

z ii. ——— *On racecourse—Injury to racehorse.*—Applt.'s racehorse was injured on resp.'s racecourse by a splinter from a stake used to flag off a portion of the regular course, which had become dangerous owing to heavy rain:—*Held*: resp. having taken proper steps to ensure that the course was as safe as reasonable care & skill could make it, & the risk not being in the nature of a "trap," no liability attached for the injury.—*WACKROW v. TAKAPUNA JOCKEY CLUB*, [1928] N. Z. L. R. 249.—N.Z.

137 xiii. ——— *Negligence of owner.*—An action will not lie for damages for the loss of cattle killed by a train when the cattle were on the railway line through the negligence of pltf.—*NELSON v. GRAND TRUNK PACIFIC RY. CO.* (1920), 51 D. L. R. 1.—CAN.

k i. *Grain left accessible to stock—Injury from eating—Grain escaping from granary.*—Where animals straying upon the premises were injured by consuming grain which had escaped from a granary through no fault of the grower:—*Held*: deft. was not liable under Open Wells Act, R. S. S. (c 124), s. 3.—*HILL v. MALLACH*, [1918] 1 W. W. R. 10; 10 Sask. L. R. 419; 37 D. L. R. 709.—CAN.

k ii. ——— *Animal lawfully at large.*—Where the non-observance by a proprietor of land of Open Wells Act, R. S. S., 1909 (c. 124), s. 3, results in injury to animals lawfully at large which have strayed upon his land, he is liable in damages to their owner.—*WATSON v. GUILLAUME*, [1918] 2 W. W. R. 1047; 11 Sask. L. R. 348; 42 D. L. R. 380.—CAN.

k iii. ——— *Animal trespassing.*—If grain be left in such an unguarded condition as to permit of horses being attracted by it & eating it to their injury, the owner of the grain will be liable for the resulting damage, even

though the horses are trespassers.—*FULTON v. RANDALL, GEE & MITCHELL, LTD.*, [1918] 3 W. W. R. 331.—CAN.

k iv. ———.—A person who allows threshed grain to be accessible to stock, is liable in damages for the death of an animal resulting therefrom, even though the animal was unlawfully at large, unless the owner of the animal when turning it at large knew that such grain was accessible to stock.—*HAWORTH v. WEBB* (1922), 65 D. L. R. 174; 15 Sask. L. R. 275; [1922] 1 W. W. R. 1070.—CAN.

k v. ———.—Pltf. alleged that deft. while engaged in seeding left out in his unfenced ploughed field an unprotected waggon box which contained wheat & that pltf.'s horse while lawfully running at large gorged itself with the wheat & died:—*Held*: deft. was not liable.—*MUSSELMAN v. ZIMMERMAN* (1922), 66 D. L. R. 350; [1922] 2 W. W. R. 640.—CAN.

k vi. ———.—The result of an action under Open Wells Act, R. S. S., 1920 (c. 169), does not depend upon whether or not the animals injured were unlawfully at large under Stray Animals Act, R. S. S. 1920 (c. 124).—*WENTZALL v. PERKS* [1924] 3 W. W. R. 876.—CAN.

k vii. ——— *Grain mixed with poisonous substance.*—No liability attaches to a railway co. for damages for the loss of cattle which die from eating grain which has become mixed with lead ore, where the grain was dropped upon the ground among the particles of lead ore by a customer of the railway co. while unloading grain from the company's cars.—*DAWSON v. PARADISE MINE & CANADIAN PACIFIC RY. CO.*, [1919] 1 W. W. R. 499.—CAN.

k viii. ———.—The obligation imposed by Open Wells, etc., Act, R. S. S., 1920 (c. 160), s. 4, is an absolute one, & where another's animals have been injured as the result of threshed grain being accessible to them, the fact that the granary in question was reasonably fit for the storage of grain as against animals running at large is no defence.—*SCHOFIELD v. GLENN & BABB*, [1927] 3 D. L. R. 188; [1927] 2 W. W. R. 183; 21 Sask. L. R. 494.—CAN.

n i. ——— *Running into animal using highway.*—Deft., while driving his automobile at dusk at twenty-five miles an hour with his lights on, ran into pltf.'s cow which he had not seen until very close to it. He was held liable in damages.—*JOHNSON v. GIFFEN* (1921), 62 D. L. R. 635; [1921] 3 W. W. R. 596.—CAN.

w i. ——— *Liability of boatowner for act of repairer.*—A boatowner employed a joiner to repair his boats. he paint scrapings were left lying on

the ground, & poisoned a cow that was grazing on the pasture:—*Held*: it was the boatowner's duty to see that the paint scrapings were removed, & he was liable in damages for the cow's death.—*STEWART v. ADAMS*, [1920] S. C. 129; 57 Sc. L. R. 83.—SCOT.

w ii. ——— *Animals lawfully at large—Whether poison hidden trap.*—Poison which deft. had put in bags on his unfenced land & carefully covered with manure, & which, without his knowledge, became exposed & caused the death of pltf.'s cattle lawfully at large, which entered on the land:—*Held*: not to constitute a hidden trap.—*WINMILL & THOMAS v. COLLINS* (St) [1927] 3 W. W. R. 325.—CAN.

141 i. *Wrong quantity in poisonous dip—Animals poisoned.*—Pltf. alleged that the death of his sheep was due to the presence of an excess of arsenic in powder manufactured & sold by defts. which he had added, together with more than the quantity of water specified in defts.' printed instructions, to a solution through which the sheep had already been passed without injury:—*Held*: pltf. had not proved that the death of the sheep was due to an excess of arsenic in the powder.—*COOPER v. VISSER*, [1920] App. D. 111.—S. AF.

#### PART III. SECT. 1, SUB-SECT. 1.—G.

c i. ———.—A claimant has a right of action to compel council & valuer to comply with the Acts as far as may be necessary to give effect to a valid claim for compensation; but he has no right of action in the nature of appeal against the determination of the council or the valuation of the valuer.—*HOGLE v. ERNESTTOWN TOWNSHIP* (1918), 41 O. L. R. 394; 13 O. W. N. 347; 41 D. L. R. 123.—CAN.

c ii. ——— *Mandamus.*—The direction to the municipal council to award compensation under the Act of 1914 is mandatory; & they may by *mandamus* be required to obey the statute.—*NOBLE v. ESQUESING TOWNSHIP* (1918), 41 O. L. R. 400; 13 O. W. N. 339; 41 D. L. R. 99.—CAN.

c iii. ———.—If a township council fail to perform the duties imposed upon it by s. 18 of the Act of 1914, a *mandamus* may be granted to compel the council to make the inquiry directed by the sect. & award compensation.—*HUDSON & HARDY v. BIDDULPH TOWNSHIP* (1920), 46 O. L. R. 216.—CAN.

sl. ——— *Wanton killing of unlicensed dog.*—Notwithstanding the Act of 1917, B. C., s. 3, one is liable in damages for causing death or injury to an unlicensed dog in a sheep-protection district, if the injury is inflicted wantonly.—*WILGESS v. RITCHIE*, [1920] 2 W. W. R. 421; 52 D. L. R. 543.—CAN.



be duly certified by a veterinary surgeon, but, on the facts of the case, the co. had waived compliance with such condition.—*BURRIDGE & SON v. HAINES (F. H.) & SONS, LTD.* (1918), 87 L. J. K. B. 641; 118 L. T. 681; 62 Sol. Jo. 521, D. C.

146. *Add. Annotation*:—Generally, *Mentd. Firemen's Fund Insce. v. Western Australian Insce. & Atlantic Insce.* (1927), 138 L. T. 108.

151. After this case add “*See, also, CONSTITUTIONAL LAW, Vol. XI., p. 589; COPYHOLDS, Vol. XIII., pp. 21 et seq.*”

154. *Add. Citation*:—17 C. B. N. S. 251, n.

*Add. Annotations*:—*Refd. Read v. Edwards* (1864), 17 C. B. N. S. 245; *Gayler & Pope v. Davies* (1924), 93 L. J. K. B. 702.

156a. —.].—*MANTON v. BROCKLEBANK, No. 258a, post.*

156b. —.].—(1) For injury caused by horses or cattle to property on or adjoining a highway the owner is not liable in the absence of negligence or of wilful intention on his part.

(2) The bolting of a horse which has been left unattended in a public street is *prima facie* evidence of negligence on the part of the owner.—*GAYLER & POPE, LTD. v. DAVIES (B.) & SON, LTD.*, [1924] 2 K. B. 75; 93 L. J. K. B. 702; 131 L. T. 507; 40 T. L. R. 591; 68 Sol. Jo. 685.

159. *Add. Citation*:—62 Sol. Jo. 161.

### PART III. SECT. 2, SUB-SECT. 1.—A.

154 ix. —.].—The owner of an animal in which by law the rule of property can exist is bound to take care that it does not stray into the land of his neighbour, & he is liable for any trespass it may commit, & for the ordinary consequences of that trespass. Whether or not the escape of the animal is due to the owner's negligence is immaterial.—*WHALLEY v. VANDERGRAND* [1919] 1 W. W. R. 87; 44 D. L. R. 319.—CAN.

154 x. —.].—*To remove cattle—Under Domestic Animals Act, R. S. A., 1922 (c. 67), s. 64.*—If lands of A. adjoin lands of B. without a fence between them, & the lands are within an extra-municipal area which has not been closed under s. 8 of the above Act, & none of the lands have ever been within a municipal or pound district, & if A.'s cattle stray on to B.'s lands & B. gives notice to remove them, A. sufficiently complies with s. 64 of the above Act by removing them a reasonable distance on to his own land, even though this does not effect a permanent removal.—*R. (GAGAN) v. HILLMER*, [1923] 3 W. W. R. 660.—CAN.

176 iii. —.].—Where a fence erected by one of two adjoining owners becomes by agreement, express or implied, the line fence & the other adjoining owner fences three sides of his land & joins on to the line fence, he must pay a just proportion of the then value thereof & thereafter bear an equal share of the costs of maintenance & repair, but it also vests in him all the rights of an owner in respect of the line fence. He is entitled to strengthen & repair it by adding strands of wire to prevent his cattle getting upon the land of his neighbour, & the latter has no right to remove the strands. If he does so, & the cattle get upon his land by his act, he cannot claim against the adjoining owner for resulting damages.—*ARMSTRONG v. THOMPSON*, [1923] 3 D. L. R. 74; 2 W. W. R. 609.—CAN.

h i. —.].—A horse belonging to applt. was being grazed in a field which adjoined resp.'s farm, upon which he kept cattle, including a bull.

The cattle were continually breaking through the dividing fence, & on one occasion the bull gored the horse. The fence between the properties was not a sufficient fence within Fencing Act, 1908:—*Held*: there was no evidence of negligence by resp. towards applt. & without proof of *scienter* damages were not recoverable.—*EDWARDS v. RAWLINS*, [1924] N. Z. L. R. 333.—N.Z.

ii. —.].—Where there exists a valid bye-law permitting animals to run at large in a municipality, an owner cannot be held to be guilty of negligence in allowing his animals so to run.—*KOCH v. GRAND TRUNK PACIFIC BRANCH LINES CO.*, [1917] 1 W. W. R. 1120; 10 Sask. L. R. 35.—CAN.

iii. —.].—Damage caused by a bull running at large contrary to Entire Animals Ordinance, s. 4, is recoverable though the property damaged is not surrounded by a lawful fence.—*MCLEAN v. BRETT*, [1919] 3 W. W. R. 521; 49 D. L. R. 162.—CAN.

iii. —.].—The owner of cattle rightfully running at large is not liable for damage to crops done by them on unfenced land.—*McKAY v. LOUCKS*, [1920] 2 W. W. R. 1007; 53 D. L. R. 394.—CAN.

iv. —.].—Animals are not running at large when in charge of a herdsman.—*R. v. PETERSON*, [1920] 1 W. W. R. 506; 51 D. L. R. 104; 32 Can. Crim. Cas. 218.—CAN.

v. —.].—*CLEARY v. HITE*, [1921] 3 W. W. R. 130.—CAN.

vi. —.].—Pltf. & deft. owned adjoining farms, & the line between the farms was unfenced. Deft. turned his cattle loose & they went on to pltf.'s land & ate up his grain which was, to deft.'s knowledge, lying in stocks thereon:—*Held*: deft. was liable in damages.—*DOBROLOWSKI v. DANYLUK*, [1921] 2 W. W. R. 729.—CAN.

vii. —.].—A bull, which has broken through from its owner's enclosed land on to adjoining enclosed land of another person & is without a herder, is running at large within Stray Animals Act.—*R. v. BRADY*,

*Add. Annotation*:—As to (1) *Refd. Richards v. Davies*, [1921] 1 Ch. 90.

162. After this case add “*See, now, Dogs Act, 1906 (c. 32), s. 1 (1) (3).*”

168a. Cat killing pigeons.]—In the case of a cat attacking pigeons it is necessary to prove *scienter* before the owner of the cat can be made responsible in law.—*BUCKLE v. HOLMES*, [1926] 2 K. B. 125; 95 L. J. K. B. 547; 134 L. T. 743; 90 J. P. 109; 42 T. L. R. 369; 70 Sol. Jo. 464, O. A.

166. *Add. Annotation*:—*Consd. Hines v. Tousley* (1926), 95 L. J. K. B. 773.

167. *Add. Annotation*:—*Consd. Manton v. Brocklebank*, [1923] 2 K. B. 212.

168. *Add. Annotation*:—*Refd. Performing Right Soc. v. Mitchell & Booker*, [1924] 1 K. B. 762.

180. *Add. Annotations*:—As to (1) *Consd. Manton v. Brocklebank*, [1923] 2 K. B. 212. As to (2) *Refd. Manton v. Brocklebank*, [1923] 2 K. B. 212.

181. After this case add “*See, also, BOUNDARIES, Vol. VII., pp. 281, 282.*”

183. *Add. Annotations*:—*Consd. Manton v. Brocklebank*, [1923] 2 K. B. 212; *Gayler & Pope v. Davies*, [1924] 2 K. B. 75. *Refd. Theyer v. Purnell*, [1918] 2 K. B. 333.

187. *Add. Annotations*:—*Refd. Manton v. Brocklebank*, [1923] 2 K. B. 212. *Mentd. Gayler & Pope v. Davies*, [1924] 2 K. B. 75.

[1921] 3 W. W. R. 396.—CAN.

i viii. —.].—Under Animals Act, R. S. B. C., 1924 (c. 11), s. 11, the owner of an animal unlawfully at large is liable for personal injuries committed by it when running at large, as well as for injury to property.—*JACOBSON v. SCHNEIDER*, [1927] 1 D. L. R. 1006; [1927] 2 W. W. R. 257; 38 B. C. R. 83.—CAN.

ni. —.].—Where a municipal bye-law is passed pursuant to Stray Animals Act, R. S. S. 1920 (c. 124), to prohibit the permitting of horses to run at large, the duty imposed thereby is one towards the proprietors of cultivated land as defined in s. 2 (14) of the Act, & not towards the public at large.—*OSADCHUK v. RUSSNAK* (1922), 63 D. L. R. 323; 15 Sask. L. R. 286; [1922] 1 W. W. R. 829.—CAN.

ni. —.].—A municipality passed a bye-law providing that all animals should be allowed to run at large in the municipality with certain exceptions & except between certain dates. Another bye-law prescribed what should constitute a lawful fence. Nothing was said as to what should be the effect of a lawful fence, & no bye-law was passed for the purposes of Municipal Act, Man., s. 602 (d):—*Held*: the effect of the first-mentioned bye-law was to permit cattle, other than those excepted in it, to run at large between certain dates, & in this it ousted the common law liability of the owner of the cattle for damages caused by them when so running at large, & such damages were not recoverable even if the land where the damage was done was surrounded by a lawful fence.

(2) The bye-law also provided that nothing therein contained should prevent the owner of any lands trespassed upon or of any property destroyed from waiving rights created by that bye-law & bringing his action in any competent ct. in consequence of any trespass:—*Held*: that provision gave no right of action taken away by the other bye-law provision.—*JUKES v. MISKELLY*, [1923] 2 D. L. R. 561; 33 Man. L. R. 67; [1923] 1 W. W. R. 1057.—CAN.

194. *Add. Annotation* :—*Consd. Manton v. Brocklebank*, [1923] 2 K. B. 212.
195. *Add. Annotations* :—*Consd. Manton v. Brocklebank*, [1923] 2 K. B. 212; *Hines v. Tousley* (1926), 95 L. J. K. B. 773. *Refd. Mansel v. Webb* (1918), 88 L. J. K. B. 323; *Musgrove v. Pandelis*, [1919] 2 K. B. 43; *A.-G. v. Cory, Kennard v. Cory*, [1921] 1 A. C. 521; *Rainham Chemical Works v. Belvedere Fish Guano Co.*, [1921] 2 A. C. 465; *Hoare v. McAlpine*, [1923] 1 Ch. 167; *Edwards v. Birmingham Navigations*, [1924] 1 K. B. 341; *Gayler & Pope v. Davies*, [1924] 2 K. B. 75; *Glanville v. Sutton* (1927), 44 T. L. R. 98. *Mentd. De Silva v. Korossa* (Ceylon) Rubber Co. (1919), 88 L. J. P. C. 54; *Quebec Ry. Light, Heat & Power Co. v. Vandry*, [1920] A. C. 662; *Boynton v. Ancholme Drainage & Navigation Comrs.*, [1921] 2 K. B. 213; *Jefferson v. Derbyshire Farmers*, [1921] 2 K. B. 281; *Postmaster-General v. Liverpool Corpn.* (1922), 92 L. J. K. B. 382; *Phillips v. Britannia Hygienic Laundry Co.*, [1923] 1 K. B. 539; *Cockburn v. Smith*, [1924] 2 K. B. 119; *Performing Right Soc. v. Caryl Theatrical Syndicate*, [1924] 1 K. B. 1; *Booth v. Thomas* (1925), 42 T. L. R. 114; *Ilford U. D. C. v. Beal*, [1925] 1 K. B. 671; *Noble v. Harrison*, [1926] 2 K. B. 332; *Smith v. G. W. Ry.* (1926), 135 L. T. 112; *G. W. Ry. v. S.S. Mostyn, The Mostyn*, [1928] A. C. 57; *St. Anne's Well Brewery Co. v. Roberts* (1928), 92 J. P. 180.
201. *Add. Annotation* :—*Consd. Phillips v. Britannia Hygienic Laundry Co.*, [1923] 1 K. B. 539.
202. *Add. Annotation* :—*Refd. Phillips v. Britannia Hygienic Laundry Co.*, [1923] 1 K. B. 539.
203. *Add. Annotations* :—*Consd. Gayler & Pope v. Davies*, [1924] 2 K. B. 75. *Refd. Manton v. Brocklebank*, [1923] 2 K. B. 212; *Phillips v. Britannia Hygienic Laundry Co.*, [1923] 1 K. B. 539.
204. *Add. Annotations* :—*As to* (1) *Consd. Gayler & Pope v. Davies*, [1924] 2 K. B. 75. *Refd. Manton v. Brocklebank*, [1923] 2 K. B. 212.
205. *Add. Annotation* :—*Refd. Gayler & Pope v. Davies*, [1924] 2 K. B. 75.
- 206a. ———.]—*GAYLER & POPE, LTD. v. DAVIES (B.) & SON, LTD.*, No. 156b, *ante*.
208. *Add. Annotations* :—*Consd. Glasgow Corpn v. Taylor*, [1922] 1 A. C. 44. *Refd. Hardy v. C. L. Ry.*, [1920] 3 K. B. 459; *Weld-Blundell v. Stephens*, [1920] A. C. 956
214. *Add. Annotations* :—*Consd. Paul v. G. E. Ry.* (1920), 36 T. L. R. 344. *Refd. Ellerman Lines v. Grayson*, [1919] 2 K. B. 514; *Saies v. Bristol Petroleum Co. v. G. W. Ry.* (1920), 90 L. J. K. B. 1289; *Admiralty Comrs. v. S.S. Volute*, [1922] 1 A. C. 129; *Anglo-Newfoundland Development Co. v. Pacific Steam Navigation Co.*, [1924] A. C. 406. *Mentd. The Manorbier Castle* (1922), 129 L. T. 31.

194 i. — *Remoteness of damage.*— Damages for personal injuries suffered by the rider of a horse from a kick by a neighbour's trespassing horse are not too remote where the trespassing horse's owner knows that the neighbour frequently rides on horseback, & where it is customary in the country to ride horses when bringing home horses or cattle.—*WHALLEY v. VANDERGRAND*, [1919] 1 W. W. R. 87; 44 D. L. R. 319.—CAN.

194 ii. ———.]—Where a heifer was thoroughbred & registered & its owner intended to breed it to a certain thoroughbred registered bull, the owner of the heifer was given damages for the difference in value between the calf anticipated as the result of such breeding & the calf that was born as the result of a bull's trespass. Damage by reason of the possible influence upon the strain of subsequent offspring was held too remote & uncertain to be considered.—*MOLEAN v. BRETT*, [1919] 3 W. W. R. 521; 49 D. L. R. 162.—**CAN.**

194 iii. ———.]—Deft.'s trespassing "scrub" bull served pltf.'s young purebred heifer:—*Held*: pltf. was entitled to damages for the decreased value of the heifer caused by her growth being stunted & shape being affected by being bred at an early age, but not to damages based on a consideration of the effects on the minds of others of an erroneous theory that the heifer was liable to "throw back" to the first bull in future breeding.—*COUSINS v. GREAVES*, [1920] 3 W. W. R. 702; 54 D. L. R. 650.—CAN.

194 iv. ———.]—Def't. negligently allowed his mare to escape & trespass in another's field where she kicked & injured a farm boy while she was being ejected:—*Held*: the injury was not too remote.—*HARRISON v. ARMSTRONG* (1917), 51 I. L. T. 38.—*IR.*

195<sup>th</sup>. ———.]—The owner of a bull at large contrary to law must be held to have known that he would naturally seek to cover any heifer or cow which he can reach, & his covering

the heifer of another owner on that owner's property & against his will is a trespass for which the owner of the bull is liable.—**MCLEAN v. BRETT**, [1919] 3 W. W. R. 521; 49 D. L. R. 162.—**CAN.**

195 iv. — — —.]—Deft.'s cattle trespassed on pltf.'s land which was not enclosed by a lawful fence. Pltf.'s son on horseback was chasing the cattle out when pltf. proceeded on foot to drive a steer through a gateway & was charged by the steer & injured. Deft. had no knowledge that the steer was of a vicious nature or liable to attack persons:—*Held*: pltf. could not recover damages, as the injury was not an ordinary consequence of the trespass; the damages claimed were too remote, & the proximate cause of the injury was pltf.'s action in approaching the animal on foot which he should not have done.—*HATTON v. MORTON*, [1921] 2 W. W. R. 803.—*CAN.*

197 ia. ———.]—A sheep owner cannot join the owners of trespassing dogs as defts. in one action for damages for the loss of his sheep.—**MCDERMOTT v. HUDSON** (1920), 16 Tas. L. R. 21.—**AUS.**

197 iv. ————.]—Where damage is done by animals belonging to several owners the fact that the injured party cannot specify the amount of damage done by the animals of each owner does not disentitle him to substantial damages.—*PIXLEY v. BEDFORD*, [1918] 2 W. W. R. 1055; 11 Sask. L. R. 345; 42 D. L. R. 560.—CAN.

197 v. —.]—The owners of different animals were held liable as joint tortfeasors for destruction of grain.—**ALTHOUSE v. BESANA**, [1919] 3 W. W. R. 725; 49 D. L. R. 158.—**CAN.**

**PART III. SECT. 2. SUB-SECT. 1.—C.**

200 1a. —.]—Where by def't's negligence his four-horse team ran away & pl'tf. ran out to stop them & received injuries:—*Held*: pl'tf. could not recover damages as he failed to show that any person was in danger

when he tried to stop the horses.—  
MCDONALD v. BURR, [1919] 3 W. W. R.  
825.—CAN.

206 x. ——— *Mechanical precautions for control of horse.*—TUCKER v. HENNESSEY, [1918] V. L. R. 56.—AUS.

w i. ———.]—It is negligence for a man mounted on a bicycle to drive loose horses at 6.15 a.m. along the streets of a populated district, urging them round corners at a fast trot.—**BARRETT v. HARDIE & THOMPSON, LTD.**, [1924] N. Z. L. R. 228.—N.Z.

**y i. Restive horse — Negligence.]**—Pltf. was driving a motor car when he was held up by the traffic police. Deft.'s driver pulled up his horse & cart between the car & the footpath, & the horse became restive & backed into the motor car, occasioning damage to it. The horse had not previously been known to be restive, & was usually quiet, & the driver was unable to say what had frightened the horse. The driver was not in any way negligent in the manner in which he looked after the horse:—*Held*: there was no evidence of negligence on the part of the driver of the horse or of deft.—**SARTORI v. REYNOLDS, LTD. (1927), 29 W. A. L. R. 32.—AUS.**

215 iii. — *Liability of dog owner.* — Deft.'s dog, to his knowledge, had for long had a habit of running after & barking at horses & carriages travelling upon highways:—*Held*: deft. was liable in damages for injury caused by the running away of horses frightened by the dog so acting.—*BIRDSALL v. MERRITT* (1917), 38 O. L. R. 587; 35 D. L. R. 260.—*CAN.*

215 iv. ——— *Scienter.*]—Deft.'s dog jumped from an automobile & ran at plff.'s horses & barked causing the horses to jump sideways, the pole strap to break, & the team to run away, causing loss & bodily injuries. The ct. found that the dog had, to def't.'s knowledge, the mischievous propensity of doing such acts, & def't. was held liable in damages.—*SPAT v. HOGSON*, [1919] 3 W. W. R. 210.—CAN.



216. *Add. Annotations*:—*Refd.* Manton v. Brocklebank, [1923] 2 K. B. 212; Phillips v. Britannia Hygienic Laundry Co., [1923] 1 K. B. 539; Gayler & Pope v. Davies, [1924] 2 K. B. 75.
218. *Add. Annotations*:—*Consd.* Manton v. Brocklebank, [1923] 2 K. B. 212; Buckle v. Holmes, [1926] 2 K. B. 125. *Refd.* Gayler & Pope v. Davies, [1924] 2 K. B. 75.
220. *Add. Annotation*:—*Refd.* Gayler & Pope v. Davies, [1924] 2 K. B. 75.
222. *Add. Annotation*:—*As to* (1) *Refd.* Manton v. Brocklebank, [1923] 2 K. B. 212.
226. *Add. Annotation*:—*As to* (1) *Refd.* Manton v. Brocklebank, [1923] 2 K. B. 212.
234. *Add. Annotation*:—*Refd.* Gayler & Pope v. Davies, [1924] 2 K. B. 75.
235. *Add. Annotation*:—*As to* (1) *Refd.* Manton v. Brocklebank, [1923] 2 K. B. 212.
238. *Add. Annotation*:—*Refd.* Manton v. Brocklebank, [1923] 1 K. B. 406.
239. *Add. Annotations*:—*Consd.* Manton v. Brocklebank, [1923] 2 K. B. 212; Hines v. Tousley (1926), 95 L. J. K. B. 773. *Refd.* Mansel v. Webb (1918), 88 L. J. K. B. 323; Musgrove v. Pandelis, [1919] 2 K. B. 43; A.-G. v. Cory, Kennard v. Cory, [1921] 1 A. C. 521; Rainham Chemical Works v. Belvedere Fish Guano Co., [1921] 2 A. C. 465; Hoare v. McAlpine, [1923] 1 Ch. 167; Cockburn v. Smith, [1924] 2 K. B. 119; Edwards v. Birmingham Navigations, [1924] 1 K. B. 341; Gayler & Pope v. Davies, [1924] 2 K. B. 75; Booth v. Thomas (1925), 42 T. L. R. 114; Noble v. Harrison, [1926] 2 K. B. 332; Smith v. G. W. Ry. (1926), 135 L. T. 112; Glanville v. Sutton (1927), 44 T. L. R. 98. *Mentd.* De Silva v. Korossa (Ceylon) Rubber Co. (1919), 88 L. J. P. C. 54; Quebec Ry. Light, Heat & Power Co. v. Vandry, [1920] A. C. 662; Boynton v. Ancholme Drainage & Navigation Comrs., [1921] 2 K. B. 213; Jefferson v. Derbyshire Farmers, [1921] 2 K. B. 281; Postmaster-General v. Liverpool Corp'n. (1922), 92 L. J. K. B. 382; Phillips v. Britannia Hygienic Laundry Co., [1923] 1 K. B. 539; Performing Right Soc. v. Caryl Theatrical Syndicate, [1924] 1 K. B. 1; Ilford U. D. C. v. Beal, [1925] 1 K. B. 671; G. W. Ry. v. S.S. Mostyn, The Mostyn, [1928] A. C. 57; St. Anne's Well Brewery Co. v. Roberts (1928), 92 J. P. 180.
243. *Add. Annotations*:—*Refd.* Manton v. Brocklebank, [1923] 2 K. B. 212; Buckle v. Holmes (1925), 95 L. J. K. B. 158.
- 246a. *Bull attacking cow—Bull in auction yard.*—In an action for damages arising out of an attack on a cow in an auction yard by a bull which was in charge of deft.'s servants, but otherwise unsecured:—*Held*: there was no presumption in law that a bull would attack a cow in such circumstances, & for pltf. to succeed it was necessary for him to prove negligence in not having anticipated a probable danger; further, if such negligence were proved, it would be no answer for deft. to set up absence of *scienter*.—HINCKES v. HARRIS (1921), 65 Sol. Jo. 781.
- 258a. *Mare attacking horse—Strange mare turned into field with horse.*—Trespass to person or goods by an animal in which there is at common law a valuable property, such as horses & cattle, does not generally render its owner liable.
- Deft. put a mare into a field in which there was a horse belonging to pltf. without

**225 iii.** ———.—Pltf.'s motor car collided with a dark brown heifer belonging to deft. which had strayed from deft.'s unfenced land & came suddenly out on to the highway from the land of an adjoining owner; the car was overturned & pltf. sustained injury. There was no negligence in the driving or management of the car:—*Held*: deft. was not liable to pltf.—**v. WIGHTMAN, [1926] N. 92.—IR.**

**226 i. — Sheep—Defective fence—Natural propensity.**—A motor cyclist was injured by a collision in daylight with a sheep upon a public road. Pursuer averred that defender was negligent in knowingly failing to keep his fences in such repair as would prevent his sheep from straying on to the road, &, in any event, in allowing his sheep to graze upon the road:—**Held:** the accident was not the natural & probable result of the negligence alleged.—**FRAZER v. PATE, [1923] S. C. 748; 60 Sc. L. R. 470.—SCOT.**

**sk. Animals running "at large"—Dog—Biting pedestrian.**—The owner is liable in damages only if he knew that the dog was viciously disposed.—**BOWEN v. LIGHTFOOT**, [1920] 2 W. W. R. 153; 32 D. L. R. 305; 30 Man. L. R. 387.—**CAN.**

— *Horses — Collision with motor car.*—The owner is *prima facie* liable for such damages as a horse is likely to commit if allowed to stray. The doctrine of *scienter* applies, & the case is in the same class as that of a horse biting or kicking a person on the highway.—OSADCHUK v. RUSSNAK (1922), 63 D. L. R. 323; 15 Sask. L. R. 286; [1922] 1 W. W. R. 829.—CAN.

**PART III. SECT. 2, SUB-SECT. 1.—D.**

sm. *Person in unfenced garden—*

**Cow escaping from railway yard.**—The animal knocked down & injured pltf., but was not vicious, but nervous & excitable:—*Held*: pltf.'s action to recover damages for her injuries failed. —**STREET v. CRAIG (1920)**, 48 O. L. R. 324; 56 D. L. R. 105.—**CAN.**

**PART III. SECT. 2. SUB-SECT. 2.—A.**

**sn. Husky.**—An animal which is the result of a cross between a dog & a wolf must be considered as essentially a wild animal, & a person in charge thereof will be responsible for injury done by it to a human being.—**TEMPLE v. ELVERY** (Sask.), [1926] 3 W. W. R. 652.—**CAN.**

**sp. Steer.]—**The rule that an owner of an animal of an ordinarily quiet nature is liable for the vicious acts thereof only if he knew that the animal was accustomed or likely to commit such acts, applies to an action for damages for personal injuries caused by an attack by a steer.—**ROSENTHAL v. HESS (Sask.), [1927] 1 D. L. R. 493; [1927] 1 W. W. R. 15.—CAN.**

**PART III. SECT. 2, SUB-SECT. 2.—**  
**B. (a).**

245 i. *Vicious animals in general—Duty to keep under control.*—If an owner of a dangerous animal knows it to be dangerous & neglects to keep it safe, he is liable in damages for injuries or death caused by it.—**TARASOFF v. ZIELINSKY**, [1921] 2 W. W. R. 135; 14 Sask. L. R. 226; 69 D. L. R. 177.—**CAN.**

246 *la.* ———.]—In an action for damages for the death of a person killed by a bull known to be dangerous allowed to be at large on the farm where deceased lived, a defence of contributory negligence cannot be supported

(Ceylon) Rubber Co. (1919), 88 L. J. P. C. 54; Quebec Ry. Light, Heat & Power Co. v. Vandry, [1920] A. C. 662; Boynton v. Ancholme Drainage & Navigation Comrs., [1921] 2 K. B. 213; Jefferson v. Derbyshire Farmers, [1921] 2 K. B. 281; Postmaster-General v. Liverpool Corp'n. (1922), 92 L. J. K. B. 382; Phillips v. Britannia Hygienic Laundry Co., [1923] 1 K. B. 539; Performing Right Soc. v. Caryl Theatrical Syndicate, [1924] 1 K. B. 1; Ilford U. D. C. v. Beal, [1925] 1 K. B. 671; G. W. Ry. v. S.S. Mostyn, The Mostyn, [1928] A. C. 57; St. Anne's Well Brewery Co. v. Roberts (1928), 92 J. P. 180.

**243. Add. Annotations:—***Reid. Manton v. Brocklebank*, [1923] 2 K. B. 212; *Buckle v. Holmes* (1925), 95 L. J. K. B. 158.

246a. Bull attacking cow—Bull in auction yard.]  
—In an action for damages arising out of an attack on a cow in an auction yard by a bull which was in charge of deft.'s servants, but otherwise unsecured :—*Held* : there was no presumption in law that a bull would attack a cow in such circumstances, & for pltf. to succeed it was necessary for him to prove negligence in not having anticipated a probable danger ; further, if such negligence were proved, it would be no answer for deft. to set up absence of *scienter*.—*HINCKES v. HARRIS* (1921), 65 Sol. Jo. 781.

**258a. Mare attacking horse—Strange mare turned into field with horse.]—Trespass to person or goods by an animal in which there is at common law a valuable property, such as horses & cattle, does not generally render its owner liable.**

Deft. put a mare into a field in which there was a horse belonging to pltf. without

by the fact that deceased, though knowing of the possible danger, went about her ordinary business on the farm, in the course of which she was killed.—*TARASOFF v. ZIELINSKY*, [1921] 2 W. W. R. 135; 14 Sask. L. R. 226; 59 D. L. R. 177.—*CAN.*

246 iii. —.]—While deft.'s servants were unloading cattle at a railway station a bullock "got wild" on the platform, rushed upon adjoining ground, was driven back, escaped through a gate, ran through the streets of the city, & injured pltf.:—*Held*: the bullock on emerging from the railway wagon had displayed its wild condition to deft.'s servants in such a way as to deprive them of the benefit of the doctrine of the *prima facie* harmlessness of domestic animals as frequenters of the highway, & the duty of controlling it as though it belonged to the class of animals *feræ naturæ* had fallen on deft. & his servants.—HOWARD v. BERGIN, O'CONNOR & Co., [1925] 2 I. R. 110, 118.—IR.

250 i. — *Failure to keep same off premises.*— If a party harbours a dog, or allows it to remain about his premises, with a knowledge of its vicious character, he is liable for injuries caused by it, though he is not the owner.— *WOOD v. VAUGHAN* (1889), 28 N. B. R. 472.—CAN.

o i. —.]—It is negligence on the part of the owner of a stallion, whose disposition towards mares is known to him to be dangerous, not to take reasonable care to prevent the stallion from being in an enclosure in which, as he is aware, mares belonging to other persons are or may be running, & he will be liable in damages if injury ensues.—**MATHESON v. STUCKEY**, [1921] V. L. R. 637.—**AUS.**



notifying pltf. The mare kicked the horse, which had to be destroyed. No *scienter* was proved in deft., but it was found by the deputy county ct. judge that the propensity of horses running loose to injure one another in sport or quarrel was common knowledge:—*Held*: (1) the mare was not within the class of dangerous animals which the owner must keep at his peril according to the rule in *Fletcher v. Rylands* (see No. 195); (2) deft. was entitled to assume that the mare, being *mansuetæ naturæ*, was an innocent animal, & having no notice of any fact indicating the contrary, was not under any duty towards pltf. to give notice of his intention to place the mare in the field, or to have a person on the watch or in charge of her, & on the whole deft. was not liable either for breach of an absolute duty or for negligence.—*MANTON v. BROCKLEBANK*, [1923] 2 K. B. 212; 92 L. J. K. B. 624; 129 L. T. 135; 39 T. L. R. 344; 67 Sol. Jo. 455, C. A.

*Annotations*:—As to (2) *Apld.* *Buckle v. Holmes*, [1926] 2 K. B. 125. *Refd.* *Gayler & Pope v. Davies* [1924] 2 K. B. 75; *Glanville v. Sutton* (1927), 44 T. L. R. 98.

260. *Add. Citations*:—6 Exch. 697; 17 L. T. O. S. 158; 155 E. R. 724.

*Add. Annotation*:—*Refd.* *Manton v. Brocklebank*, [1923] 2 K. B. 212.

261. *Add. Annotations*:—As to (1) *Refd.* *Hardy v. C. I. Ry.*, [1920] 3 K. B. 459. As to (2) *Consd.* *Coleshill v. Manchester Corpn.*, [1928] 1 K. B. 776. *Refd.* *Fairman v. Perpetual Investment Bldg. Soc.*, [1923] A. C. 74; *Manton v. Brocklebank*, [1923] 1 K. B. 406. *Generally*, *Mentd.* *Oldham v. Sheffield Corpn.* (1927), 136 L. T. 681.

264. *Add. Annotations*:—As to (1) *Refd.* *National Provincial & Union Bank of England v. Charnley*, [1924] 1 K. B. 431. As to (2) *Refd.* *Baker v. James*, [1921] 2 K. B. 674; *Letang v. Ottawa Electric Ry.*, [1926] A. C. 725.

267. *Add. Annotation*:—*Mentd.* *Manton v. Brocklebank*, [1923] 2 K. B. 212.

270a. — Mare kicking horse.] — *MANTON v. BROCKLEBANK*, No. 258a, *ante*.

274. *Add. Annotations*:—*Consd.* *Manton v. Brocklebank*, [1923] 2 K. B. 212. *Apld.* *Buckle v. Holmes* (1925), 95 L. J. K. B. 158. *Consd.* *Hines v. Tousley* (1926), 95 L. J. K. B. 773.

274a. — — —.]—The owner of a dog, which was a well-behaved dog, & against whose character nothing was known:—*Held*: not liable to indemnify an employer in respect of compensation which the employer had to pay under Workmen's Compensation Acts to the employee, who had been injured by an accident caused by the dog.—*HINES v. TOUSLEY* (1926), 95 L. J. K. B. 773; 135 L. T. 296; 70 Sol. Jo. 732; 19 B. W. O. C. 216, C. A.

275. *Add. Annotations*:—*Consd.* *Manton v. Brock-*

*lebank*, [1923] 2 K. B. 212; *Buckle v. Holmes*, [1926] 2 K. B. 125. *Refd.* *Gayler & Pope v. Davies*, [1924] 2 K. B. 75.

277. *Add. Annotation*:—*Refd.* *Manton v. Brocklebank*, [1923] 2 K. B. 212.

301a. Dog biting cattle—Furious disposition—Previous biting of cattle.]—*Held*: no evidence of *scienter*.—*THOMAS v. MORGAN* (1835), 2 Cr. M. & R. 496; 1 Gale, 172; 5 Tyr. 1085; 5 L. J. Ex. 64; 150 E. R. 214.

*Annotations*:—*Refd.* *Owen v. Knight* (1837), 5 Scott, 307 *May v. Burdett* (1846), 9 Q. B. 101.

305a. Horse biting man—Previous biting of horses.—The fact that the owner of a horse knew that it was accustomed to bite other horses is not sufficient to establish his liability for its biting a human being.—*GLANVILLE v. SUTTON & Co., LTD.*, [1928] 1 K. B. 571; 97 L. J. K. B. 166; 138 L. T. 336; 44 T. L. R. 981, D. C.

306. *Add. Annotation*:—*Refd.* *Wakefield v. Board* (1928), 45 R. P. C. 261.

325. *Add. Annotation*:—As to (2) *Apld.* *Stearn v. Prentice*, [1919] 1 K. B. 394.

325a. Rats—Damage to crops.]—Defts. carried on the business of bone manure manufacturers on premises near pltf.'s farm. For the purpose of their business they had on their premises a heap of bones, which caused large numbers of rats to assemble there. The rats made their way from defts.' premises on to pltf.'s land, & ate his corn, causing substantial loss, in respect of which pltf. claimed damages from defts. It was not proved that the bones kept by defts. were excessive or unusual in quantity:—*Held*: no cause of action had been established against defts.—*STEARNS v. PRENTICE BROTHERS, LTD.*, [1919] 1 K. B. 394; 88 L. J. K. B. 422; 120 L. T. 445; 35 T. L. R. 207; 63 Sol. Jo. 229; 17 L. G. R. 142, D. C.

328a. — — —.]—*R. v. FAIRBANK* (1850), 15 L. T. O. S. 259; *sub nom.* *R. v. HULL JJ.*, 14 J. P. Jo. 384.

332. *Add. Annotation*:—*Refd.* *A.-G. v. Hodgson*, [1922] 2 Ch. 429.

332a. — — —.]—Proof that infraction of by-law caused nuisance not necessary.]—*TONG STREET LOCAL BOARD v. SEED* (1874), 39 J. P. 278.

—See, also, No. 331,

*ante*.

333a. — — —.]—Metropolis Management Act, 1862 (c. 102), s. 73—Proof of actual nuisance necessary.]—*CHELSEA VESTRY v. KING* (1864), 17 C. B. N. S. 625; 5 New Rep. 85; 34 L. J. M. C. 9; 11 L. T. 419; 29 J. P. 39; 10 Jur. N. S. 1150; 13 W. R. 157; 144 E. R. 250.

333. *Add. Annotations*:—*Refd.* *Sack v. Jones*, [1925] Ch. 235. *Mentd.* *Edwards v. Birmingham Navigations*, [1924] 1 K. B. 341.

### PART III. SECT. 2, SUB-SECT. 3.

P 1. — — —.] To order dog to be kept under control.—Person in charge of dog.]—*WALKER v. BRANDER*, [1930] S. C. (J.) 20; 57 Sc. L. R. 651.—*SCOT*.

### PART III. SECT. 2, SUB-SECT. 4.

337 i. Horses—Noise from stables.]—Though a livery stable is constructed with all modern improvements for drainage & ventilation, if offensive odour therefrom, & the noise made by the horses, are a source of annoyance & inconvenience to the neighbouring

residents, the proprietor is liable in damages for the injury caused thereby.—*DRYSDALE v. DUGAS* (1896), 26 S. C. R. 20.—*CAN*.

340 i. — — —.] Smell from stables.]—*DRYSDALE v. DUGAS*, No. 337 i, *ante*.—*CAN*.

## Part IV.—Agistment.

342. *Add. Annotation*:—*Refd.* Back v. Daniels (1924), 69 Sol. Jo. 160.

342a. — Whether breach of covenant not to underlet.]—Where the tenant of a farm covenants not to underlet or permit any other person to use or occupy any part of the demised premises without the written consent of the landlord, the sale or letting by the tenant, without such consent, in the last year of his tenancy of the grass keep—i.e. growing herbage, of his pasture lands for a definite period, is a breach of the covenant, although such sale or letting is in accordance with the usual practice of an outgoing tenant in that part of the country.

*Semble*: agistment, i.e. the taking in by the tenant of the sheep or cattle of another to be depastured on the farm at so much per head per week, would not be a breach of the covenant.—RICHARDS v. DAVIES, [1921] 1 Ch. 90; 89 L. J. Ch. 601; 124 L. T. 238; 65 Sol. Jo. 44.

343. *Add. Annotation*:—*Refd.* Coldman v. Hill, [1919] 1 K. B. 443.

344. *Add. Annotation*:—*Refd.* Coldman v. Hill, [1919] 1 K. B. 443.

346. *Add. Annotation*:—*Refd.* Weld-Blundell v. Stephens, [1920] A. C. 956.

346a. — Animal stolen—Duty of agister.]—An agister of cattle does not discharge himself of his duty as a bailee for reward by proving that they were stolen without his default, if by using reasonable diligence he could have recovered them.

If, having failed to use such diligence, he is sued for loss of the cattle, he must prove, in order to discharge himself, that such diligence would have been unavailing; it is not for the bailor to prove that it would have retrieved the loss.

A farmer accepted certain cattle for agistment. Some of them were stolen without his default. After learning that they were missing he made no effort, whether by informing the owner or the police, or otherwise, to recover them. It was doubtful whether any reasonable attempt on his part would have led to their recovery:—*Held*: he was liable for their loss.—COLDMAN v. HILL, [1919] 1 K. B. 443; 88 L. J. K. B. 491; 120 L. T. 412; 35 T. L. R. 146; 63 Sol. Jo. 166, C. A.

347. *Add. Annotation*:—*Consd.* White v. Smith (1927), 96 L. J. K. B. 397.

## Part V.—Hiring.

371. *Add. Annotation*:—*Refd.* Edwards v. Porter (1924), 41 T. L. R. 57.

377. *Add. Annotation*:—*As to* (4) *Refd.* Kemp v.

Elisha, [1918] 1 K. B. 228.

380. *Add. Annotation*:—*Mentd.* Albemarle Supply Co. v. Hind (1927), 43 T. L. R. 783.

## PART IV.

b i. — Construction.]—By a contract for agistment *pltf.* agreed to make available certain properties for the agistment of *deft.*'s sheep. The terms of payment were 1*l.*d. per head per week, £500 to be paid when the sheep arrived, £500 in six months, & the balance when the sheep were removed:—*Held*: the payment contemplated by the contract was 1*l.*d. per head per week, according to the number of sheep on the properties from time to time; the contract was one for making available the area of land agreed on for the sheep, & included the taking care of the sheep agisted at the above remuneration while they were in *pltf.*'s custody.—SPRING v. YOUNG, [1923] S. A. S. R. 116.—AUS.

344 xii. — Loss of animals.]—*Pltf.* was the owner of a mare which he delivered to *deft.* for agistment in his paddock of 6,000 acres, which paddock was heavily timbered & covered with blackboys. After the mare had remained in the paddock for some time, *pltf.* requested the delivery of the mare in two months' time. *Deft.* made endeavours to find the mare, but only saw it on one occasion, & thereafter made many attempts to locate the mare, but without success:—*Held*: *deft.* was not liable to *pltf.* for the value of the mare, there being no evidence of negligence.—ROBINSON v. WATERS (1920), 22 W. A. L. R. 66.—AUS.

344 xiii. — Failure to detect loss within reasonable time.]—A large number of sheep were lost, & there was evidence rendering it probable that

these had been driven off the run:—*Held*: an agister of sheep must show that he took reasonable care to see the sheep were on the agistment area, & failure to detect this loss within a reasonable time was clear evidence of negligence.—SPRING v. YOUNG, [1923] S. A. S. R. 116.—AUS.

344 xiv. — —.]—An agister is bound to take reasonable care of the animal entrusted to him, & when the owner comes for it, if he cannot produce it he must show that he took all reasonable precautions against its disappearance.—COMSTOCK v. ASHCROFT ESTATES, LTD., [1917] 1 W. W. R. 1412; 23 B. C. R. 4761.—CAN.

344 xv. — — Onus of negativing negligence.]—In case of loss of animals while in the care of an agister, the onus is on him to show circumstances negativing negligence on his part.—MCCAULEY v. HUBER, [1920] 3 W. W. R. 123; 54 D. L. R. 150.—CAN.

344 xvi. — Agister not insurer—What amounts to negligence.]—PORTS v. SMAIL (Alta.), [1927] 3 W. W. R. 619.—CAN.

sq. — Failure to provide food & water.]—Where horses have been delivered into the custody of an owner of pasture lands to be kept & pastured by him in return for a money payment, it is his duty to see that the horses are provided with sufficient food & water, & if he neglects these duties & a loss through death or a loss through depreciation is thereby incurred he is liable in damages.—METX v. MARSHALL (1922), 70 D. L. R. 14; [1922] 3 W. W. R. 660.—CAN.

356 iii. — —.]—An agister has no lien, in the absence of special agreement, upon the animals he agists.—Re JORGENSEN, [1923] 2 W. W. R. 600.—CAN.

356 iv. — Or *statute*.]—An agister has a lien on the pastured animals under Possessory Liens Act, R.S.A., 1922 (c. 104), but not under Livery Stable-Keepers Act, R.S.A., 1922 (c. 107).—SPARLING v. WARD, [1925] 2 D. L. R. 922; [1925] 2 W. W. R. 181.—CAN.

362 i. — For malicious injury.]—Appet. had cattle on his land under grazing contracts with the owners. These cattle were maliciously driven off the lands & injured:—*Held*: appet. as bailee in possession could claim compensation for the cattle entrusted to his care.—WORTHINGTON v. TIPPERARY COUNTY COUNCIL, [1920] 2 I. R. 233; 54 I. L. R. 77.—IR.

## PART V.

369 xv. — — —.]—If a hired horse is in a sound condition when taken out, & it is brought back injured, the onus of proof in a claim for damages for negligence is on *deft.* The hirer is bound to treat the horse with the degree of care which a person of ordinary discretion would use towards his own, but if the horse is so treated & nevertheless receives an injury the hirer is not liable in damages for such injury.—REINSETH v. CAMPBELL (1920), 52 D. L. R. 357.—CAN.

369 xvi. — — —.]—Where a person hires an animal & it dies while in his custody, the onus is upon him to establish that he took

## Part VI.—Sale and Exchange of Animals.

384. *Add. Annotation*:—*Refd. Lake v. Simmons* (1926), 95 L. J. K. B. 586.

390a. ——— *Resale of horse at loss—Form of action.*—A vendor gave a warranty of sound workable condition on the sale of a horse. The warranty was fulfilled, but the purchaser wrongfully refused delivery, & returned the horse. The vendor then put it up at auction as “in dispute,” & without a warranty, when it was sold for about £40 less than the contract price. In an action for the difference between the price realised at the auction & the contract price:—*Held*: (1) this was not the proper form of action; (2) the action must be for damages; (3) the conditions of the auction sale were not a test of the value of the horse, the auction being of a horse “in dispute,” & without warranty, & quite different from the original contract conditions; (4) *pltf.* was not entitled to more

than nominal damages, as he had failed to prove his damages to be the difference between the contract price & the price realised at the auction.—*MACKLIN v. NEWBURY SANITARY LAUNDRY* (1919), 63 Sol. Jo. 337, D. C.

390b. ——— *Rescission by vendor—Vendor liable for keep during period animal kept by purchaser.*—*KING v. PRICE* (1816), 2 Chit. 416.

391. *Add. Annotation*:—*Consd. Re A Debtor*, [1927] 2 Ch. 367.

401. *Add. Annotation*:—*Refd. Phillips v. Britannia Hygienic Laundry Co.*, [1923] 1 K. B. 539.

409. *Add. Annotation*:—*Refd. Manchester Liners v. Rea*, [1922] 2 A. C. 74.

410. *Add. Annotations*:—*Refd. Manchester Liners v. Rea*, [1922] 2 A. C. 74; *Baldry v. Marshall*, [1925] 1 K. B. 260.

care of it. That care is the care which a prudent man would take of his own animal under the circumstances.—*MURRAY v. COLLINS*, [1920] 2 W. W. R. 845; 53 D. L. R. 120.—CAN.

xvii.

hired a horse from *pltf.* to drive from T. to L. & return. At a distance of between six & eight miles from S., the horse fell lame in the right hind leg. *Deft.* drove it to S., put it in a livery stable & gave instructions to have the hoof of the right hind leg re-shod. *Deft.* hired another horse & continued his journey to L., a distance of over eight miles. He returned next day, took the horse out, & finding that it was not then lame, started with it on the return journey. After travelling about three miles, the horse again fell lame & kept getting a little lammer all the way to T. The journey from S. to T., a distance of twenty-two miles, took seven & one-half hours. There was no evidence as to what caused the horse's lameness. There was no evidence that there was, between the place where the horse fell lame & T. any suitable place in which the horse could have been placed & cared for, or where *deft.* could have hired another horse to continue the return journey:—*Held*: as the lameness when it first developed on the return journey was not shown to have been of a more serious nature than often happens to a horse which may nevertheless walk, or even trot slowly, fifteen to twenty miles without serious distress, *deft.* could not be held guilty of negligence until he had travelled a sufficient distance to satisfy himself that the lameness was increasing so as to make it dangerous to the welfare of the horse to continue the journey.—*GAGNON v. LANGIS* (1920), 48 N. B. R. 76.—CAN.

374 ii. ——— *Bill of sale granted by bailee—Rights of grantee.*—A., the owner of twenty-seven cows depasturing on his farm, agreed to lease his farm & cows to G. for a term of years, & it was agreed that G. should have the right to purchase the farm & stock at any time during the term. G. was given possession of the stock & farm. G. gave to *applt.* a bill of sale over the cows. A. recovered possession of his farm & cows from G., & shortly thereafter *applt.* seized & sold the cows under his bill of sale. Thirty-four cows were seized & sold, only nine of which were of the original herd, the balance having been bought by G. during the time he had possession of the farm. A. claimed damages for the seizure:—*Held*: it had not been shown that the

cattle substituted by G. for those originally bailed to him had become the property of A., who was entitled to damages only in respect of the cows originally bailed.—*NORFOLK CO-OPERATIVE DAIRY CO., LTD. v. ALLEN*, [1924] N. Z. L. R. 136.—N.Z.

374 iii. ——— *Loss by bailee—Negligence.*—In an action for the value of a horse which was lost after it had been hired to *deft.* under an agreement whereby the latter undertook to take “good care in every way” thereof, it appeared that the horse, which was unbroken, was received by *deft.* & put into a pasture belonging to a neighbour of *deft.* & *deft.* went to see it every other day. The pasture was surrounded by a fence of two strands of wire, & the horse got out twice during the winter but was put back. It disappeared about the end of the following April. The fence was down in one place, & the evidence showed a custom among the farmers in the neighbourhood to allow horses not in use to run at large during the winter. While *deft.* was given the right to work the horse, it was shown that it was not customary in that locality to break horses until the spring:—*Held*: *deft.* had taken sufficiently good care of the horse & was not liable for its loss.—*ZIMMERMAN v. ARCHER* (1922), 63 D. L. R. 399; [1922] 2 W. W. R. 524.—CAN.

380 i. *Contract—Covering mare—Damages for breach.*—Breach of a contract to breed mares to a stallion is not a ground for damages, in the absence of evidence upon which such damages may be estimated with reasonable certainty.—*SINCLAIR v. WALKER*, [1917] 2 W. W. R. 321.—CAN.

## PART VI. SECT. 1.

i. ——— *Action by purchaser for damages—What damages recoverable.*—*PERRY v. KIDD* (1909), 12 W. L. R. 9.—CAN.

ii. ——— *Sale of bull—Bull sterile.*—At an auction sale advertised “as pedigree stock sale” *resp.* purchased from *applt.* a bull described in the sale catalogue under the heading “Jersey Bulls” as “Lot 78, Bull Harbour Light.” The conditions of sale expressly negatived the existence of any warranties on the vendor's part. At the time of the sale the bull had not been used, but subsequently was found to be sterile. This condition was shown to be a latent defect not discoverable upon examination. In an action by *resp.*, claiming damages:—

*Held*: as the capacity for procreation was not, by implication, a part of the description, & as the bull complied in all other respects with the description, *resp.* was without remedy.—*DELL v. QUILTY*, [1924] N. Z. L. R. 1270.—N.Z.

iii. ——— *Sale of horse as gelding—Horse in fact a “rigot”—Whether failure of implied condition on sale of goods by description.*—*TWAITES v. MORRISON* (Alta.), [1918] 3 W. W. R. 349; 43 D. L. R. 73.—CAN.

iv. ——— *Default by purchaser—Resale by vendor.*—*Held*: (1) money paid, not as a deposit, but on account of the purchase-price, must be returned to the purchaser; (2) having elected to treat the contract as at an end, instead of suing for damages for breach, the vendor was not entitled to recover anything for the care of the animals from the time fixed by the contract for delivery until he resold.—*BALDWIN v. BRIANGER*, [1920] 1 W. W. R. 216; 50 D. L. R. 540; 13 Alta. L. R. 27.—CAN.

zi. ———.]—*Held*: oral evidence that it was part of the agreement for sale of a stallion that the pedigree papers should be delivered to the purchaser within a few days of the sale, being in contradiction of the written agreement, was not admissible.—*KASTER v. COWAN*, [1925] 2 D. L. R. 742; [1925] 2 W. W. R. 186; 21 Alta. L. R. 366; *revg.*, [1923] 4 D. L. R. 491; [1923] 3 W. W. R. 610.—CAN.

## PART VI. SECT. 2, SUB-SECT. 1.

396 vi. ———.]—An auctioneer in selling a horse said: “Here is a horse about nine years old” in presence of the vendor who did not contradict it. A note given for the balance of the price had indorsed thereon: “Given for one bay mare nine years old.” The purchaser believed the horse was of that age:—*Held*: the statement amounted to a warranty, & the vendor was bound thereby.—*ALLEN v. SMITH*, [1920] 3 W. W. R. 645.—CAN.

410 iv. ———.]—*Pltf.* purchased a horse from *deft.* which *deft.* warranted to be suitable for the general purposes of a farmer & sound in every respect. The trial judge found that there was a defect in the horse which could not be discovered by an ordinary examination at the time of the sale & that the horse was not suitable for the purpose for which it was required:—*Held*: the findings of the trial



## *Part VII.—Carriage of Animals.*

517. *Add. Annotations*:—**Consd.** Gould v. S. E. & C. Ry., [1920] 2 K. B. 186. **Refd.** L. & N. W. Ry. v. Hudson, [1920] A. C. 324.
518. *Add. Annotation*:—**As to** (2) **Refd.** L. & N. W. Ry. v. Hudson, [1920] A. C. 324.
522. *Add. Annotations*:—**Refd.** Gould v. S. E. & C. Ry., [1920] 2 K. B. 186; L. & N. W. Ry. v. Hudson, [1920] A. C. 324.
523. *Add. Annotations*:—**Mentd.** Denholm v. Ship ping Controller (1920), 124 L. T. 378; Brad ley v. Federal Steam Navigation Co. (1927), 137 L. T. 266.
526. *Add. Annotations*:—**Refd.** Hemmings v. Stoke Poges Golf Club, [1920] 1 K. B. 720. **Mentd.** Phillips v. Britannia Hygienic Laundry Co. (1923), 93 L. J. K. B. 5.
530. For “**Expenses reasonably—Incurred in disinfecting,**” etc., read “**Expenses reasonably incurred—In disinfecting,**” etc.
531. *Add. Annotations*:—**Refd.** Coldman v. Hill, [1919] 1 K. B. 443; Transoceanica Soc. Italiana Di Navigazione v. Shipton, [1923] 1 K. B. 31; Prager v. Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566.

judge must be accepted.—MARTELL v. PRINGLE (1920), 53 N. S. R. 502.—OAN.

**ST. Sale of male animal—Under Livestock Purchase & Sale Act, R.S.S., 1920 (c. 125)—No implied warranty that animal capable of reproducing type & colour.]—R. (MINISTER OF AGRICULTURE FOR SASKATCHEWAN) v. BOURKE, [1925] 3 D. L. R. 537; [1925] 2 W. W. R. 397; 19 Sask. L. R. 483.—CAN.**

**PART VI. SECT. 2, SUB-SECT. 2.**  
 420 ii. ———.] — **EISENHAUER v.**  
**MACKAY (N. S) (1911), 9 E. L. R. 304.**  
 —CAN.

**PART VI. SECT. 2, SUB-SECT. 3.—A.**

**438 i. Sound—Meaning of term—Seeds of disease at date of sale.**—At an auction sale the auctioneer said "Would you let this good sound mare go for that money?" The mare was diseased at the time. No fraud was proved :—**Held** : one who was induced by the statement to bid for & purchase the mare was entitled to rescission on the ground of misrepresentation.—**ANDERSON v. KENNEDY, [1920] 1 W. W. R. 25; 50 D. L. R. 105; 13 Sask. L. R. 38.—CAN.**

459 i. *Warranty relating to future—Dairy cattle warranted "to calve at proper time & correct in teats only."*—A dairy cow, due to calve within a fortnight, was bought at a cattle market under the following warranty: "Dairy cattle are warranted to calve at their proper time & correct in their teats only." The cow calved at her proper time, but, owing to disease which appeared in her teats, her milk supply was defective:—*Held*: (1) the warranty applied to the period of calving, & guaranteed, against the ordinary risks of that period, that the cow's teats would then be capable of performing their function of giving milk; (2) as the disease from which

the cow suffered had not been proved to be due either to negligence on pursuer's part or to external accident, the guarantee applied.—*KYLE v. SIM*, [1925] S. C. 425.—*SCOT*.

**PART VI. SECT. 2, SUB-SECT. 4.—A.**

**st. Rescission—Affirmance of contract after notice of misrepresentation.**—A purchaser of a mare was not allowed rescission on the ground of what the ct. found was an innocent misrepresentation as to her being in foal to a celebrated stallion, because after discovery that the mare was not in foal he repeatedly attempted to get her in foal by breeding her to another stallion, this being held to amount to an affirmance of the contract.—**MONTICELLO STATE BANK v. QUEST,** [1920] 3 W. W. R. 14.—CAN.

**PART VI. SECT. 2, SUB-SECT. 4.—B.**

**g i. — — —.]**—In an action on promissory notes given for the price of a stallion, an alleged breach of warranty does not justify a defence of failure of consideration. Debt. must claim under the breach of warranty setting it up in diminution of the price, or in an action for damages.—**EDWARDS v. PEARSON (Alta.)**, [1919] 3 W. W. R. 505.—**CAN.**

BY. Cheque given for price—Whether breach of warranty a defence.]—MYKLEBUST v. GALEY (Sask.) (1919), 48 D. L. R. 699—CAN.

**PART VI. SECT. 2, SUB-SECT. 4.—C.**

484 ii. — *Effect of—On other remedies of purchaser.*—A condition for return of a horse in as good condition as when sold & the substitution of another horse of equal value prevents the purchaser from resorting to any other form of remedy, unless he can show that he returned the horse in good condition & the vendor failed to substitute as agreed.—EDWARDS v.

PEARSON (Alta.), [1919] 3 W. W. R.  
505.—CAN.

485 II. — Purchaser not liable for cost of keep after repudiation of contract.]—LONG v. BYERS (Sask.), [1927] 4 D. L. R. 223.—CAN.

**PART VI. SECT. 2, SUB-SECT. 4.—D.**

486 ix. —.] — The measure of damage in an action for breach of warranty of a bull is the difference between the value at the time of delivery to the buyer & the value it would have had if it had answered to the warranty.—WARD v. ROSSER (1920), 54 D. L. R. 531.—CAN.

**PART VI. SECT. 2, SUB-SECT. 4.—E.**

**sw. Proof of breach at time of sale necessary—Sufficiency of evidence.]—**  
**WESTWOOD v. McMILLAN (Sask.),**  
**[1920] 2 W. W. R. 857; 53 D. L. R.**  
**317.—CAN.**

EX. ———.]—AHEIR v. CAPLETTE  
[1926] 3 D. L. R. 346; [1926] 2  
W. W. R. 346; 20 Sask. L. R. 549.—  
CAN.

sy. —.]—LONG v. BYERS (Sask.),  
[1927] 4 D. L. R. 223.—CAN.

**PART VII. SECT. 1, SUB-SECT. 1.—A.**

528 1. — *Animals poisoned—No affirmative evidence.*—Pltf. shipped horses by defts.' railway. On arrival at destination, some of the horses had died & others were sick & died soon after. It was subsequently established that they died of arsenic poison. An action against deft. railway co. for negligence was dismissed, as there was no evidence connecting the cause of injury with any alleged negligence. The cause of the damage was purely a matter of speculation, & certain provisions of the contract were a complete answer to pltf.'s claim that the damages arose from defts.' negligence. —TURNER v. CANADIAN PACIFIC RY. Co. (1922), 66 D. L. R. 31; [1922] 2 W. W. R. 558.—CAN.

*Annotation:—As to (1) Reid. G. N. Ry. L. E. P. Transport & Depository, [1922]* 542. *Add. Annotation:—As to (1) Reid. G. N. Ry. v. L. E. P. Transport & Depository, [1922]* 2 K. B. 742.

## Part VIII.—Wild Birds.

568a. ——— Birds lawfully taken elsewhere.]—Applt. was charged under Wild Birds Protection Act, 1880 (c. 35), s. 3, as extended under s. 8 in the county of London by the Wild Birds Protection (Administrative County of London) Order, 1909, par. 4, with having in his possession some goldfinches recently taken. The magistrate found that the charge was proved & dismissed it under the Probation of Offenders Act, 1907 (c. 17), ordering applt. to pay the costs. The birds were lawfully caught in Ireland on or immediately before Dec. 3, 1918, & after being kept there for upwards of a month to enable them to recover their condition, & travel safely, were sent to applt. in London by post.

They were found in applt.'s possession in a wild & terrified state on Jan. 15 1919:—*Held*: the magistrate was justified in taking into consideration all the circumstances of the case, including the condition of the birds when exposed for sale & the fact that they had to be kept in Ireland for some time in order to endure the journey & arrive alive, & also the length of the journey, in order to arrive at the conclusion that the birds were recently taken.—HARRIS v. LUCAS, [1919] 2 K. B. 291; 88 L. J. K. B. 1082; 121 L. T. 317; 83 J. P. 208; 35 T. L. R. 486; 17 L. G. R. 421; 26 Cox, C. C. 468, D. C.

564. *Add. Annotation:—Appld. Harris v. Lucas, [1919] 2 K. B. 291.*

## Part X. Cruelty to and Killing, Maiming, and Wounding Animals.

NOTE.—The Act now in force in England is Protection of Animals Act, 1911 (c. 27), as amended by Protection of Animals Act (1911) Amendment Acts, 1912 (c. 17), & 1921 (c. 14). In considering the cases in Sect. 1 of this Part, regard should be had to their dates & the Act under which they were decided.

568. *Add. Annotation:—Mentd. Gould v. Houghton, [1921] 1 K. B. 509.*

572a. Shooting trespassing dog—No attempt to drive dog away before shooting.]—A farm labourer shot at a dog which was trespassing

on his master's land, & wounded it. The dog was not doing damage & deft. made no effort to drive it away before he shot it, & the justices found that shooting was not necessary:—*Held*: he was guilty of "cruelly ill-treating" the dog within Protection of Animals Act, 1911 (c. 27), s. 1.—BARNARD v. EVANS, [1925] 2 K. B. 794; 94 L. J. K. B. 932; 133 L. T. 829; 89 J. P. 165; 41 T. L. R. 682; 28 Cox, C. C. 69, D. C.

574. *Add. Annotation:—Distd. Barnard v. Evans, [1925] 2 K. B. 794.*

### PART VII. SECT. 1, SUB-SECT. 2.

532 i. Declaration of value—*Requisites of.*]—FOX v. LONDON, MIDLAND & SCOTTISH RY. CO., No. 541 i, *post.*—IR.

541 i. Carrier exempted from liability "in any case" above declared value.]—A railway co. made conditions limiting their liability for loss of or damage to any live stock delivered to them for transit beyond the value, in the case of horses, of £50, unless a higher value was declared in writing at the time of delivery, & a percentage of 1½ per cent. paid on the value, so declared, in excess of the above-named sum. A race horse, exceeding £50 in value, was delivered to the co. for transit by the sender's groom, who informed the booking clerk that he had got "a very valuable 'chaser, worth about £1,000," a figure arrived at by the groom himself from casual gossip. The clerk gave the groom the co.'s form of "consignment note & waybill" for live stock, & the groom filled it in for carriage at the ordinary rate, & signed it, with full knowledge of its contents. The horse

having been injured in transit:—*Held*: (1) the above conditions were not unreasonable; (2) the contract of carriage, which was signed by the groom under a direction by his employer that the horse was to be carried at the ordinary rate, exempted the co. from liability for any greater amount than £50; (3) in order to make the co. liable for the full value of the horse, the declaration of value must have been made with the intention of paying the higher rate, & the statement of value made by the groom to the booking clerk was insufficient.—FOX v. LONDON, MIDLAND & SCOTTISH RY. CO., [1926] 1 R. 106.—IR.

52. Shipper undertaking obligation to "feed" & "water" animals—*Obligation of supplying feed & water.*]—The obligation to furnish the feed & water is upon the shipper.—KNIGHT-WATSON RANCHING CO. v. CANADIAN PACIFIC RY. CO. (1921), 62 D. L. R. 601; 15 Sask. L. R. 1; [1921] 3 W. W. R. 788; *revers.*, 14 Sask. L. R. 5.—CAN.

5a. Carrier under no liability "un-

less written notice delivered at point of delivery"—*Sufficiency of notice.*]—KNIGHT-WATSON RANCHING CO. v. CANADIAN PACIFIC RY. CO. (1921), 62 D. L. R. 601; 15 Sask. L. R. 1; [1921] 3 W. W. R. 788; *revers.*, 14 Sask. L. R. 5.—CAN.

### PART X. SECT. 1, SUB-SECT. 1.

574 ii. ——— Failure to remove from animal broken pieces of instrument.]—Resp. undertook to treat a horse, & inserted into the animal's urethra a catheter, which broke, & the horse was returned to its owner with the broken pieces left in the urethra:—*Held*: (1) if resp. allowed the broken pieces of the catheter to remain in the urethra for an unreasonable time, without taking any steps to alleviate the pain or without taking any steps to secure their removal, he unreasonably caused unnecessary pain; (2) resp. was under a duty to inform the owner of the horse within a reasonable time that the fragments were in the animal's urethra.—MARTIN v. CARPENTER, [1925] S. A. S. R. 421.—AUS.

576. *Add. Annotation* :—*Distd. Barnard v. Evans*, [1925] 2 K. B. 794.
613. *Add. Annotation* :—*Refd. R. v. Wood, Ex p. Farwell* (1918), 87 L. J. K. B. 913.
651. *Add. Citation* :—26 Cox, C. C. 113.
653. *Add. Annotation* :—*Refd. Nye v. Niblett* (1918), 87 L. J. K. B. 590.
654. *Add. Annotation* :—*Consd. Horton v. Gwynne*, [1921] 2 K. B. 661.
656. *Add. Annotation* :—*Refd. Nye v. Niblett* (1918), 87 L. J. K. B. 590.

## Part XI.—Diseased Animals.

657. *Add. Annotation* :—*Refd. Theyer v. Purnell*, [1918] 2 K. B. 333.
659. *Add. Citation* :—88 L. J. K. B. 263.
664. *Add. Annotation* :—*Refd. Phillips v. Britannia Hygienic Laundry Co.*, [1923] 1 K. B. 539.
- 690a. — “Double dipping”—*Meaning.*—*Held* : the words “double dipped” meant twice dipped & not dipped for a second time after the first prescribed dipping.—*ADAMS v. GALLOWAY* (1925), 23 L. G. R. 588, D. C.
697. *Add. Annotations* :—*Generally, Mentd. Everett v. Griffiths*, [1924] 1 K. B. 941; *Aylott v. West Ham Corpn.*, [1927] 1 Ch. 30.
- 705a. — — — *Burden of proof—Diseases of Animals Act, 1894 (c. 57), ss. 4 (1), 57 (1).*—*WILSON v. YATES* (1927), 91 J. P. 188; 44 T. L. R. 25; 25 L. G. R. 514, D. C.

NOTE.—It has been found desirable to add the following Part :

## Part XII.—Breeding of Animals.

Statutory control—Horse breeding.]—*See* Horse Breeding Act, 1918 (c. 13).

Hire of stallion's services—Right of lien on mare

—For expense of covering.]—*See* original volume, p. 257, No. 380.

Increase in animals—Who entitled to.]—*See* original volume, pp. 212, 213.

sb. *Abandoning horse in street—Horse found starving—Whether owner exercising control.*—*Held* : accused could not be convicted of ill-treatment under Prevention of Cruelty to Animals Act, 1890, s. 3 (a), as he was not in a position to exercise control over the animal at the time of the ill-treatment.—*R. v. NAZIR WAZIR* (1919), 1 L. R. 44 Bom. 159.—IND.

sc. *Permitting animal injured on ship to land—Master of ship ignorant of animal's condition.*—*Held* : the master's want of knowledge was no defence.—*M'LAREN v. SMITH*, [1923] S. C. (J.) 91.—SCOT.

### PART X. SECT. 1, SUB-SECT. 2.

sd. *Carrying cranes by train—With eyes stitched up.*—*Held* : accused had committed no offence under Prevention of Cruelty to Animals Act, 1890, s. 3, cl. (b), for the cruelty was caused by the persons who stitched up the eyes & not by the manner or position in which the birds were carried in the train.—*R. v. IBRAHIM MEER SHIKAR* (1917), 1 L. R. 41 Bom. 654.—IND.

### PART X. SECT. 1, SUB-SECT. 3.

sl. *Commitment for trial for over-driving—Jurisdiction of one justice.*—*R. v. NELSON* (1916), 28 Can. Crim. Cas. 276.—CAN.

### PART XI. SECT. 1.

662 vi. —.—.]—A contract for the sale of animals affected with a contagious or infectious disease is an offence against R. S. C. 1906 (c. 75), s. 38, whether or not the seller knows that the animals are so affected.—*BALDWIN v. SNOOK*, [1918] 2 W. W. R. 314; 40 D. L. R. 433.—CAN.

662 vii. —.—.]—On a sale without warranty of an animal known to the seller to be affected with a certain contagious disease there is no common-law duty upon the seller to warn the buyer of the disease, where the latter is reputed to be possessed of more than ordinary skill & knowledge in the treatment of animals, the disease in question is fairly common in the neighbourhood,

the buyer knows that the animal is suffering from some complaint, although not the particular nature of it, & the buyer refuses to complete the sale until he has had the animal in his possession a certain time.

The Animal Contagious Diseases Act, R. S. C. 1906 (c. 75), does not give a right of action to a buyer of animals who suffers damage from a sale which is illegal under that Act.—*O'MEALEY v. SWARTZ*, [1918] 3 W. W. R. 98.—CAN.

662 viii. —.—.]—In view of Orders in Council authorised under s. 38k exempting tuberculosis from the effect of Animal Contagious Diseases Act, R. S. C. 1906 (c. 75), s. 38, *Baldwin v. Snook*, No. 662 vi., *ante*, was held not applicable to support a defence of illegal sale of cattle.—*WOOD, WEILLER & MCCARTHY, LTD. v. VALCOUR*, [1921] 2 W. W. R. 32.—CAN.

662 ix. —.—.]—Where animals are exposed for sale by a vendor & he knows that they are infected with a contagious disease he is liable to a penalty under Animal Contagious Diseases Act, & if he effects a sale of the animals under such circumstances the sale is illegal & void. If in addition to the breach of his statutory duty the vendor makes false representations as to the condition of the animals & thereby induces a person to purchase them, the latter is entitled to succeed in an action for any resulting damages sustained by him, & in any event he is entitled to recover any money paid by him to the vendor on the illegal contract, he not being in *part delicto* with the vendor.—*LONG v. ZLATNICK* (1922), 70 D. L. R. 88; [1922] 3 W. W. R. 687.—CAN.

### PART XI. SECT. 2, SUB-SECT. 3.

sk. *Hogs fed on garbage—Under licence waiving compensation—Disease necessitating slaughter—Onus of proof of cause of disease.*—A. obtained a licence to feed his hogs on garbage obtained from outside, which licence contained the following words: “In consideration of the granting of a

licence to me I hereby agree . . . (4) to forfeit all claim to compensation, in case it is necessary to destroy any of my hogs, as a result of hog cholera, unless it can be shown that the infection came from some other source than garbage feeding.”—*Held* : the onus of proving that the cholera in question came from some other source than garbage feeding was upon suppliant.—*ALDERSON v. R.* (1922), 65 D. L. R. 398; 21 Exch. C. R. 359.—CAN.

### PART XI. SECT. 2, SUB-SECT. 5.

sl. *Power to make bye-law—Prohibiting admission of infected animals into municipality.*—To provide in a bye-law that no animal affected with any infectious or contagious disease shall be brought into the municipality was held to be beyond the powers of a municipal council under Municipal Act.—*R. v. MOULD*, [1920] 2 W. W. R. 540; 52 D. L. R. 302.—CAN.

### PART XII.

sm. *Statutory control—Horse breeding—Refusal of certificate of registration of stallion—Registration of Stallions Act, 1916.*—At the trial of an action by a person, who was the owner of a stallion, against the members of the Board of Control & Appeal under the above Act for wrongful refusal to consider an appeal against the refusal of a certificate of registration, it appeared that pltf. was not actual owner but had control & management of the animal.—*Held* : he was entitled to maintain the action.—*DUTTON v. EVANS* (1920), 16 Tas. L. R. 45.—AUS.

*Hire of stallion's services—Liability of owner of stallion—Injury to mare.*—*See* Vol. II., p. 220, cases q, r.

— — — *Mare improperly served by stallion.*—*See* Vol. II., p. 220, cases s, t, u.

sp. — — — *Breach of contract.*—*SINCLAIR v. WALKER*, No. 380 i., *ante*, —CAN.



## ARBITRATION.

## Part I.—The Submission.

3. *Add. Annotation*:—*Refd.* *Charles v. Cardiff Collieries* (1928), 44 T. L. R. 448.

24. *Add. Annotation*:—*Refd.* *Anglo-Newfoundland Development Co. v. R.*, [1920] 2 K. B. 214.

26. *Add. Annotations*:—*Refd.* *Anglo-Newfoundland Development Co. v. R.*, [1920] 2 K. B. 214. *Mentd.* *Agricultural Wholesale Soc. v. Biddulph & District Agricultural Soc.*, [1925] Ch. 769.

26a. — Verbal agreement to grant royalties—Amount to be settled by arbitration—Refusal of grantee to arbitrate.]—In 1913 a patent was granted for "Improvements in winches for operating the rope of a duplex derrick." Between the times of the filing of the provisional & complete specifications, the patentee, under a verbal agreement, entered the service of a co. engaged in making windlasses as technical adviser & engineer draughtsman; & the co., while the patentee was in their employment, made & sold the patented windlasses. In 1919 the patentee commenced an action against the co., alleging that it was a term of the verbal agreement that, during pltf.'s service, the co. should have pltf.'s licence to make & sell windlasses under the patent, at a reasonable royalty, & failing agreement between the parties, at such royalty as might be settled by arbn. He contended that he would have received at least 5 per cent. on the selling price of the windlasses. Defts. denied that they had agreed to accept a licence from pltf.:—*Held*: pltf. had proved that the agreement for a licence had been made; he was entitled to a reasonable royalty; & as the agreement was verbal, & defts. refused to refer the matter to arbn., the matter could not go to arbn. It was directed that the matter should be referred to an official referee for inquiry & report under sect. 13 of the above Act.—*FLEMING v. DOIG* (J. S.) (*GRIMSBY*), LTD. (1921), 38 R. P. O. 57.

36a. Reference under National Health Insurance 44a.

## PART I. SECT. 2.

d i. — Informal extension of written submission amounting to new parol submission.]—An award was not made within the time fixed by the written submission to arbn. nor was the time extended. The arbitrators proceeded after the expiry of the time, both parties appearing before them & taking part in the proceedings, & the award was made & not appealed from or moved against, & had ever since been acted upon:—*Held*: a parol submission must be taken to have been made & to include the terms contained in the written one, & the award to have been made pursuant to the parol submission.—*HARRISON v. HARRISON* (1918), 41 O. L. R. 195; 13 O. W. N. 245.—CAN.

10 v. — Signature of one of series of documents—Forming part of agreement.]—A submission or written agreement to submit differences to

J.S.

arbn. may be collected from a series of documents, even though connected by parol evidence, & signature of any document forming part of the agreement is sufficient to bind the person so signing to the submission contained in the agreement.—*SUKHAMAL BAN-SIDHAR v. BABN LAL KEDIN & Co.* (1920), I. L. R. 42 All. 525.—IND.

11. — General requisites.]—An award made by arbitrators is not invalid on the ground that in the reference to arbn. the actual dispute is stated merely in general terms, when the award itself shows that the nature of the dispute was properly explained to the arbitrators.—*RAM BAHADUR SEN v. MAHANATH GANESH BHAGAT* (1923), I. L. R. 2 Pat. 554.—IND.

11. — A submission to arbn. according to the above sect. is a submission which provides that either party in case of a dispute arising on the contract is at liberty to take the necessary steps to get the dispute

*Regulations of Insurance Commissioners.*]

By an agreement between a medical practitioner on the panel & the insurance committee of a county, the practitioner agreed to give medical treatment to insured persons, & by clause 1 the National Health Insurance (Medical Benefit) Regulations (England), 1913, were incorporated. By clause 14, "any dispute or question arising between the committee & the practitioner . . . relating to the construction of this agreement or the rights & liabilities of the committee or the practitioner . . . hereunder shall be referred to the Comrs." By reg. 51 of the regulations, "Where under the provision of these regulations or of any agreement made between the committee & a practitioner . . . is referred, or any appeal from a decision of the committee is made to the Comrs. the Comrs. shall determine such questions or appeal in such manner as they think fit, & if in the opinion of the Comrs. a hearing is required they may authorise any two or more of the Comrs. to hear & determine such question or appeal, & any decision of the Comrs. or any of them made under this article shall be final & conclusive." A dispute having arisen under the agreement, the practitioner brought an action against the committee in respect thereof, & the committee applied under the Act of 1889, s. 4, to stay the action:—*Held*: the action must be stayed (*PICKFORD, L.J. & SARGANT, J.*) upon the ground that there was a "submission" to arbn. within the Act of 1889, s. 27 (*BANKES, L.J.*), upon the ground that under reg. 51 a special tribunal was constituted with special powers for determining disputes between practitioners & the committee.—*CLEMENTS v. COUNTY OF DEVON INSURANCE COMMITTEE*, [1918] 1 K. B. 94; 87 L. J. K. B. 203; 118 L. T. 89; 82 J. P. 71, C. A.

41. *Add. Annotation*:—*Consd.* *O'Rourke v. Darbishire*, [1920] A. C. 581.

*Appeal.*—Where proceedings are

decided by arbn.—*BURJOR v. ELLERMAN CITY LINES, LTD.* (1925), I. L. R. 49 Bom. 854.—IND.

## PART I. SECT. 3, SUB-SECT. 1.

sa. *Appointment of appraisers—Under arrangement separate from policy.*]—*Held*: not to constitute a submission to arbn., but a provision for appraisal.—*SEARLE v. ALLIANCE INSURANCE CO.*, [1925] 4 D. L. R. 378; [1925] 3 W. W. R. 729.—CAN.

## PART I. SECT. 3, SUB-SECT. 2.

42 iii. — ]—In an action of slander the parties agreed to trial before a judge & seven jurymen instead of the requisite eight. A verdict was given for pltf. Dert. appealed:—*Held*: the ct. had acted as an arbitrator, & no appeal lay.—*LOANE v. BLACK*, [1925] 3 D. L. R. 940.—CAN.

42 iv. — ]—*Re FRASER'S APPEAL, Re WINNIPEG CHARTER*, [1927] 4 D. L. R. 213; [1927] 2 W. W. R. 600; 36 Man. L. R. 597.—CAN.

taken out of the ordinary *cursus curiæ*, with the assent of the parties, the decree of the ct. below cannot be regarded as the award of an arbitrator, so as to deprive either party of the right of appeal, unless there has been an attempt to give the ct. a jurisdiction which it does not possess, or unless the procedure has been so violently strained as to be put entirely out of its course.—*PISANI v. A.-G. FOR GIBRALTAR* (1874), L. R. 5 P. C. 516; 30 L. T. 729; 22 W. R. 900, P. C.

*Annotations*:—*Mentd.* *Readdy v. Pendergast* (1886), 55 L. T. 767; *Moody v. Cox & Hatt* (1917), 116 L. T. 740; *Ware v. Whitlock*, [1923] 2 K. B. 418.

53. *Add. Annotation*:—*Consd.* *Charles v. Cardiff Collieries* (1928), 44 T. L. R. 448.

53a. ———.]—*BOYNTON v. RICHARDSON*, No. 71a, *post*.

66. *Add. Annotation*:—*Consd.* *Richardsons & Bradley v. Bernhard*, [1925] 2 K. B. 121.

68. *Add. Annotations*:—*Consd.* *Charles v. Cardiff Collieries* (1928), 44 T. L. R. 448. *Mentd.* *Hirji Mulji v. Cheong Yue S.S. Co.*, [1926] A. C. 497.

70. *Add. Annotation*:—*Consd.* *Charles v. Cardiff Collieries* (1928), 44 T. L. R. 448.

71. *Add. Annotations*:—*Appld.* *Boynton v. Richardson* (1924), 69 Sol. Jo. 107. *Consd.* *Wisbech R. D. C. v. Ward* (1927), 91 J. P. 200. *Refd.* *Brightman v. Tate*, [1919] 1 K. B. 463; *Wisbech R. C. v. Ward*, [1928] 2 K. B. 1.

71a. *Surveyor's certificate—Valuation of timber—Liability for negligence.*—A firm of surveyors was appointed jointly by the parties to a contract for the sale of certain growing timber, to value the timber. The vendor subsequently commenced proceedings against the surveyors for damages for negligence in respect of their valuation of the timber:—*Held*: the surveyors were in the position of quasi-arbitrators, & the action failed.—*BOYNTON v. RICHARDSON* (1924), 69 Sol. Jo. 107.

#### PART I. SECT. 3, SUB-SECT. 6.

51 ii. ———.]—Where land was expropriated for railway purposes the railway co. & the owner agreed to have the compensation determined by reference to three named persons called "valuers" in the submission; their decision was to be binding & conclusive on both parties & not subject to appeal; they could view the property & call such witnesses & take such evidence, on oath or otherwise, as they, or a majority of them, might think proper; & either party could have a representative present at the view or taking of evidence, but his failure to attend for any reason would not affect the validity of the decision:—*Held*: this agreement did not provide for a judicial arbn. but for a valuation merely.—*CAMPBELLFORD, LAKE ONTARIO & WESTERN RY. CO. v. MASSIE* (1914), 50 S. C. R. 409.—CAN.

m i. *Assessing loss by theft & fire—Appointment of appraisers under arrangement separate from policy.*—*Held*: a provision for appraisal, & not a submission to arbn.—*SEARLE v. ALLIANCE INSURANCE CO.*, [1925] 4 D. L. R. 378; [1925] 3 W. W. R. 729.—CAN.

n i. *S. P. IRWIN v. CAMPBELL* (1914), 32 O. L. R. 48.—CAN.

#### PART I. SECT. 4.

t i. *S. P. JNAUENDRA NATH BAGCHI v. SURES CHANDRA ROY* (1927), 1 L. R. 6 Pat. 556.—IND.

v i. ———.]—The selection of a guardian cannot be referred to

as it is not a matter of private interest between parties.—*PALANIANDI CHETTI v. ADAIKALAM CHETTI* (1923), 1 L. R. 47 Mad. 459.—IND.

sm. *Liability for & amount of alimony.*—*Held*: proper subjects for arbn.—*HARRISON v. HARRISON* (1918), 41 O. L. R. 195; 130 W. N. 245.—CAN.

sp. *Right to receiver & injunction.* *Held*: not a matter to refer. *SURENDRA KUMAR ROY CHOWDHURY v. SUSHIL KUMAR ROY CHOWDHURY* (1927), 1 L. R. 55 Calc. 249.—IND.

#### PART I. SECT. 5.

st. *Reference by Crown—By whom signed.*—*DOMINION BUILDING CORPN., LTD. v. R.*, [1927] 2 D. L. R. 510; [1927] Exch. C. R. 79.—CAN.

#### PART I. SECT. 6, SUB-SECT. 1.

137 ii. ———.]—Where a submission to arbn. is made subject to Arbn. Act. R.S.A., 1922 (c. 98), the provisions of that Act must be held to be applicable in so far as they can reasonably be applied.—*MASTERS & McDUGALL v. STEPHEN, STEPHEN v. MASTERS & McDUGALL*, [1925] 4 D. L. R. 684; [1925] 3 W. W. R. 493.—CAN.

#### PART I. SECT. 6, SUB-SECT. 3.

145 v. ———.]—A policy of fire insurance provided that if a claim be rejected & an action be not commenced within three months after such rejection, all benefits under the policy should be forfeited, & further any question of amount of loss should be

78. *Add. Annotation*:—*Refd.* *L. & N. E. Ry. v. Easington Union Assmt. Com. & Easington-with-Thorpe Parish Council* (1925), 95 L. J. K. B. 255.

79. *Add. Annotations*:—*Refd.* *Re Badische Co., Bayer Co., etc.*, [1921] 2 Ch. 331. *Mentd.* *Lebeaupin v. Crispin*, [1920] 2 K. B. 714.

80. *Add. Annotations*:—*Refd.* *Fried Krupp Akt. v. Orconera Iron Ore Co.* (1919), 88 L. J. Ch. 304; *Re Badische Co., Bayer Co., etc.*, [1921] 2 Ch. 331; *Jebara v. Ottoman Bank*, [1927] 2 K. B. 254. *Mentd.* *Guaranty Trust Co. of New York v. Hannay*, [1918] 2 K. B. 623; *Central India Mining Co. v. Soc. Coloniale Anversoise*, [1920] 1 K. B. 753; *Larrinaga v. Soc. Franco-Americaine des Phosphates de Medulla* (1922), 38 T. L. R. 739.

135a. ———.]—By a contract made between an Italian buyer & English sellers it was provided as follows: "Any dispute arising out of this contract to be settled by arbn. in London in the usual way." A dispute having arisen between the parties, defts. appointed M. as their arbitrator. Pltf. having failed to appoint an arbitrator after due notice given, M. made an award in favour of defts., & defts. thereupon counter-claimed to enforce the award:—*Held*: (1) the words "to be settled by arbn. in London in the usual way" meant the way in which disputes arising as to the particular commodity were settled in London, & there was ample evidence that the dispute had been settled "in the usual way"; (2) any objection to the award upon the ground of irregularity or misconduct on the part of the arbitrator could only be taken by motion to set aside or remit the award, & pltf. having failed to move within the limited time, his remedy in that respect had lapsed.—*SCRIMAGLIO v. THORNETT & FEHR* (1924), 131 L. T. 174; 40 T. L. R. 320; 68 Sol. Jo. 630; 29 Com. Cas. 175, C. A.

referred to arbn., such arbn. to be a condition precedent to any action. To a claim sent in, the co. answered that they did not agree upon the amount claimed & that under the conditions of the policy they did not admit their liability:—*Held*: the right of action was that it might be decided whether such rejection was right or wrong, & it was only in the event of that question being decided against the co. that it would become necessary to ascertain the amount of the loss by arbn.—*EAGLE STAR & BRITISH DOMINIONS INSURANCE CO. v. DINANATH* (1922), 1 L. R. 47 Bom. 509.—IND.

e i. ———.]—The parties in framing a contract may insert a clause binding them to refer all future disputes, either in the carrying out of the contract or in respect of a breach of it, to arbn., & one party to such a contract cannot, by averring that the other party has repudiated the contract, get rid of the arbn. clause.—*SANDERSON & SON v. ARMOUR & Co., LTD.* (1922), 91 L. J. P. C. 167; 127 L. T. 597; [1922] S. C. (H. L.) 117; 59 Sc. L. R. 268.—SCOT.

s ii. ———.]—Where there is a repudiation which goes to the substance of the whole contract, the person setting up that repudiation cannot insist on a subordinate term of the contract still being enforced.—*GRAHAM v. PROVIDENT LIFE ASSURANCE CO.*, [1922] N. Z. L. R. 718.—N.Z.

s i. ———.]—*Performance of contract prevented by Government.*—A firm



146. *Add. Annotations*:—*Consd. Woodall v. Pearl Assce.*, [1919] 1 K. B. 593. *Distd. Macaura v. Northern Assce.*, [1925] A. C. 619. *Refd. Sanderson v. Armour* (1922), 91 L. J. P. C. 167; *Hirji Mulji v. Cheong Yue S.S. Co.*, [1926] A. C. 497.

147. *Add. Annotation*:—*Consd. Macaura v. Northern Assce.*, [1925] A. C. 619.

147a. —In a proposal for insurance against accident the intending assured stated his occupation & signed a declaration that the answers to the questions therein were true, & that he agreed that the declaration should be the basis of the contract between him & the insurance co. whose policy, subject to the terms & conditions thereof, he agreed to accept. The policy recited the proposal & declaration "which proposal & declaration warranted to be true it is agreed shall be the basis of this contract . . . & be considered as incorporated herein, & any suppression, misrepresentation, or misstatement of fact in such written proposal & declaration shall *ipso facto* render this policy null & void"; & it provided that it was a condition precedent to the recovery of any sum under the policy that the conditions indorsed thereon should be strictly observed. Condition 8 provided that the policy might be renewed from year to year but only upon condition that nothing had happened to increase the risk, & if the risk was increased by (*inter alia*) the assured engaging in some other occupation, then "unless notice in writing of such increased risk is given to the co. . . & any extra premium that may be required paid . . . the policy is void & no claim can be made." By condition 11, "If any question shall arise touching this policy or the liability of the co. thereunder or the extent or nature of such liability or otherwise howsoever in connection herewith then the assured & all persons claiming through the assured may refer & shall be bound, if the co. shall so require, to refer the same to arbn. by one arbitrator to be agreed on or in default of agreement by two arbitrators & their umpire under the Act of 1889 . . . & no person shall be entitled to bring or to maintain any action or proceeding on this policy except for the sum awarded under such arbn." During the currency of the policy the assured was killed by an accident. The co. denied

liability on the policy on the ground that the assured either had misstated his occupation in the proposal, or, if not, had changed his occupation for one involving increased risk of which notice as required by condition 8 had not been given to the co., & contended that the policy was therefore void, & they required the dispute to be referred to arbn. under condition 11. In an action on the policy:—*Held*: (1) upon the co. requiring arbn. condition 11 made the obtaining of an award a condition precedent to a right of action; (2) the co. by relying on the terms of the policy which rendered it void in certain events did not thereby repudiate the policy as a binding contract between the parties, & were entitled to rely upon the arbn. clause as a defence to the actor —*WOODALL v. PEARL ASSURANCE CO.*, [1919] 1 K. B. 593; 88 L. J. K. B. 706; 120 L. T. 556; 83 J. P. 125; 63 Sol. Jo. 352; 24 Com. Cas. 237, C. A.

*Annotation*:—*As to* (2) *Refd. Macaura v. Northern Assce.*, [1925] A. C. 619.

*Compare* original volume, p. 356, No. 293.

153. *Add. Annotations*:—*Refd. Lowther v. Clifford* (1926), 95 L. J. K. B. 576. *Mentd. Croft v. Blay*, [1919] 2 Ch. 343; *Cole v. Kelly*, [1920] 2 K. B. 106; *Re Leeds & Batley Breweries & Bradbury's Lease*, *Bradbury v. Grimble*, [1920] 2 Ch. 548.

155. *Add. Annotations*:—*As to* (1) *Refd. Jones v. Oceanic Steam Navigation Co.*, [1924] 2 K. B. 730; *N. V. Kwik Hoo Tong Handel Maatschappij v. Finlay*, [1927] A. C. 604. *As to* (2) *Refd. Sanderson v. Armour* (1922), 91 L. J. P. C. 167.

156. *Add. Annotation*:—*Consd. Board of Trade v. Cayzer, Irvine*, [1927] A. C. 610.

164. *Add. Annotation*:—*Consd. Pinnock v. Lewis & Peat*, [1923] 1 K. B. 690.

164a. —.] two contracts made in 1919, applt. bought from resps. a large quantity of "American Fresh Eggs." The contracts provided that in case of any dispute as to the quality or condition of the goods, the question should be referred to arbn., provided that, "such reference shall be claimed in writing within three days after the goods have been landed." It was also provided that the award in writing of any two arbitrators should be conclusive & binding on all parties, subject to the right of appeal. The goods arrived in

agreed to sell & to ship from Calcutta to Buenos Ayres bales of jute goods. The contracts contained provisions exempting the sellers from liability for late & short shipment attributable (*inter alia*) to Govt. commandeering of ships, war, "or any other unforeseen circumstances" & included provisions for the shipment of delayed cargoes as soon as possible, subject to a right of refusal on the part of the purchasers. Each contract contained an arbn. clause in these terms: "Any dispute that may arise under this contract to be settled by arbn." Before all the bales had been shipped, the further export of jute from India to the Argentine was prohibited. A controversy having arisen between the parties as to whether, in the circumstances, the contracts had been rendered void & unenforceable *quoad* the shipment of the remainder of the bales:—*Held*: on a construction of the contracts, the controversy was a dispute arising under the contracts, & accordingly, fell to be determined by

arbn.—*SCOTT & SONS v. DEL SEL*, (1923) S. C. (H. L.) 37.—*SCOT*.

s ii. — *Contract cancelled*.—If a contract is cancelled, an arbn. clause falls with such cancellation.—*Cox Towing Line v. Bunfield & Co.* (1922), 68 D. L. R. 133.—*CAN*.

s iii. — *Existence of dispute*.—The right of one party to a contract to insist upon a term in it providing for reference to arbn. depends in the first place on the existence of a dispute.—*STANDARD INSURANCE CO. v. SCANDRETT* (1923), 23 S. R. N. S. W. 254; 40 N. S. W. W. N. 22.—*AUS*.

s iv. — —.]—The existence of a dispute is an essential condition for the jurisdiction of arbitrators.—*UTTAM CHAND SALIGRAM v. JEWAMA MOOJI* (1919), 1 L. R. 46 Cal. 534.—*IND*.

153 iv. — *Lease in dispute*.—A lease contained a clause referring to arbn. certain specific matters & "any other questions in reference to this lease which may arise between the parties." In arbn. proceedings the

issue between the parties was not the validity of a notice to quit but the question whether the tenant was possessing under the lease or under a new bargain:—*Held*: as the lease itself was in dispute, the arbn. clause in the lease did not apply.—*HOTH v. COWAN*, [1926] S. C. 58.—*SCOT*.

s b. *Clause in broker's note—Rules applicable to members only*.—Flour was sold by defts. to pltf. under contracts in broker's notes which contained a condition that the rules & regulations of the S. Asscn. should apply. The rules of the asscn. provided that every dispute or difference arising out of any contract or dealing should be referred to arbn. Pltf., who was not a member of the asscn., having sued defts. for damages for breach of contract:—*Held*: as the rules referring to arbn. were applicable only to disputes between members of the asscn., an application for a stay of proceedings must be dismissed.—*LEVIN v. BERG*, etc., [1921] App. D. 78.—*S. AF*.



England, & were not examined at the port of landing, but were sold by applt. to sub-purchasers. More than three days after the goods had been landed applt. wrote to resps complaining that the goods were of inferior quality, & some time later he wrote a letter claiming a reference to arbn. Resps. did not then take the objection that the claim was out of time, but signed a submission to arbn. in respect of each contract. At the reference resps took the points that applt.'s claim was out of time, & that the goods should have been examined at the port of landing. The arbitrators awarded "that the buyer was out of time in examining & making claim on the goods, & also in claiming arbn., & that therefore his case fails." The buyer took no steps to set aside the awards, but nearly two years later brought an action claiming damages for breach of contract:—*Held*: the awards were a bar to the action.—*AYSCOUGH v. SHEED THOMSON & Co.* (1924), 93 L. J. K. B. 924; 131 L. T. 610; 40 T. L. R. 707; 30 Com. Cas. 23, H. L.; *affg.* (1923), 92 L. J. K. B. 878, C. A.

*Annotation*:—Distd. *Pinnock v. Lewis & Peat*, [1923] 1 K. B. 690.

**165a. Arbitrator to be appointed within limited time.]**—A ship was chartered for a voyage from R. to H. with a full cargo of linseed. The charterparty provided for the reference of all disputes to the final arbitrament of two arbitrators, one to be appointed by each of the parties, with power to appoint an umpire, & the clause continued: "Any claim must be made in writing & claimants' arbitrator appointed within three months of final discharge, & where this provision is not complied with the claim shall be deemed to be waived & absolutely barred." After the arrival of the ship at H. the charterers brought an action against the shipowners in respect of damage alleged to have been occasioned to a part of the linseed during the voyage by reason of the unseaworthiness of the ship at the commencement of the voyage. The shipowners pleaded that the charterers failed to appoint their arbitrator within three months of the discharge of the ship & that by reason thereof the action was not maintainable, & by order of the ct., the question whether the claim in the action was barred by the arbn. clause was tried as a preliminary question of law:—*Held*: (1) the arbn. clause was not open to objection on the ground that it ousted the jurisdiction of the ct.; (2) inasmuch as the claim in the action was founded upon a breach of the implied condition of seaworthiness, there being in the charterparty no express provision relating to unseaworthiness, the shipowners were not entitled to the benefit of the term in the clause restricting the time within which the action could be brought, & consequently the claim was not barred by the arbn. clause.—*ATLANTIC SHIPPING & TRADING Co. v. DREYFUS (L.) & Co.*, [1922] 2 A. C. 250; 91 L. J. K. B. 513; 127 L. T. 411; 38 T. L. R. 534; 66 Sol. Jo. 437; 15 Asp. M. L. C. 566; 27 Com. Cas. 311, H. L.; *varying* S. C. *sub nom.* *DREYFUS & Co. v. ATLANTIC SHIPPING & TRADING Co.* (1921), 37 T. L. R. 417, C. A.

*Annotations*:—As to (1) Distd. & Expld. *Czarnikow v. Roth, Schmidt*, [1922] 2 K. B. 478. As to (2) Distd. *Ford v. Compagnie Furness (France)*, [1922] 2 K. B. 797; *Pinnock v. Lewis & Peat*, [1923] 1 K. B. 690. *Generally, Mentd.* *The Christel Vinnen*, [1924] P. 61; *Reed v. Page & East*, [1927] 1 K. B. 743.

**165b. —.]**—A charterparty contained a clause providing that all disputes arising out of the contract should be referred to arbn., the claimants' arbitrator to be appointed within a time therein limited, & if he was not so appointed the claim was to be deemed to be waived & absolutely barred. Loss to cargo was suffered owing to the ship's unseaworthiness. The cargo owners claimed damages & went to arbn., but did not appoint their arbitrator within the time limited. An award was made in their favour, the shipowners not appearing:—*Held*: although the loss was caused by unseaworthiness, & consequently, the above clause could not have been set up by the shipowners, the cargo owners were entitled in virtue of the clause to go to arbn., but only in accordance with its terms, & as they had not complied with those terms the arbitrator had no jurisdiction to make the award.—*FORD (H.) & Co. v. COMPAGNIE FURNESS (FRANCE)*, [1922] 2 K. B. 797; 92 L. J. K. B. 88; 128 L. T. 286; 16 Asp. M. L. C. 102, D. C.

**165c. —.]**—Pltfs. bought from defts. a quantity of East African copra cake to be of fair average quality, sound delivered. The contract provided that "the goods are not warranted free from defect rendering same unmerchantable, which would not be apparent on reasonable examination"; that any disputes arising out of the contract should be settled by arbn.; & that notice of arbn. should be given & the arbitrator nominated in writing not later than fourteen days after the final discharge of the vessel. Pltfs. resold the copra cake to B. & Co., who resold it to dealers, & they in turn resold it to farmers, who used it for feeding cattle. The cattle fed on the cake became ill, & it was then found on analysis that the cake contained an admixture of castor beans in so large a proportion as to make it poisonous. Claims were then made by the various buyers against their sellers & by pltfs. against defts. as soon as the mischief was discovered, but this was after the expiration of fourteen days from the final discharge of the vessel. Pltfs. claimed arbn., but the arbitrator before whom the matter came held that he had no jurisdiction, as notice of arbn. was not given nor the arbitrator nominated in time. In an action by pltfs. claiming damages, it was found that it was within the contemplation of the parties that the copra cake would be used for cattle food & nothing else:—*Held*: the presence of the arbn. clause was not in itself a bar to the action, nor was the award, which dealt merely with the arbitrator's jurisdiction & not with the claim.—*PINNOCK BROTHERS v. LEWIS & PEAT, LTD.*, [1923] 1 K. B. 690; 92 L. J. K. B. 695; 129 L. T. 320; 39 T. L. R. 212; 67 Sol. Jo. 501; 28 Com. Cas. 210.

*Annotation*:—Distd. *Ayscough v. Sheed Thomson* (1924), 93 L. J. K. B. 924.

**165d. —.]**—Pltfs. chartered their ship to defts. to carry grain, the charterparty providing that all disputes should be referred to arbn. & that claimant's arbitrator must be "appointed within three months of final discharge, & where this provision is not complied with the claim shall be deemed to be waived & absolutely barred." Before completion of discharge defts. made various payments to pltfs. on account of freight, & on final dis.

charge pl'tfs. claimed that £568 was still owing for freight. Defts. admitted that £416 was still owing for freight, but they set up a counterclaim for £581 for short delivery & refused to pay the £416 until their counterclaim was met. Neither party referred the matter to arbn., & more than three months after final discharge pl'tfs. brought an action for £568 balance of freight & defts. counterclaimed £581 for short delivery:—*Held*: though pl'tfs. could not recover the £568, as the claim for it ought to have been taken to arbn., yet they could recover the £416 about which there had never been any dispute, but the counterclaim, as it was always in dispute, was barred by the arbn. clause.—*BEDE STEAM SHIPPING CO., LTD. v. BUNGE Y BORN LIMITADA S.A.* (1927), 43 T. L. R. 374.

167. *Add. Annotation*:—*Distd. Crediton Gas Co. v. Crediton U. D. C.*, [1928] 1 Ch. 447.

168. *Add. Annotation*:—*Consd. Metropolitan Tunnel & Public Works v. L. Elec. Ry.*, [1926] Ch. 371.

172. *Add. Annotation*:—*Consd. Hirji Mulji v. Cheong Yue S.S. Co.*, [1926] A. C. 497.

234. *Add. Citation*:—2 Hudson's B. C. 4th ed. 100. *Add. Annotations*:—*Consd. Re Nott & Cardiff Corpn.*, [1918] 2 K. B. 146. *Refd. Hirji Mulji v. Cheong Yue S.S. Co.*, [1926] A. C. 497.

237a. "If any dispute as to the agreement or any matter or thing therein or intention or construction thereof."—Where a dispute arose on a contract as to the meaning of a clause therein which dealt with tests that the purchaser was making, the purchaser contending that the tests were unsatisfactory, & the vendor that they signed the contract on the faith of an assurance by the purchaser that the tests were proving satisfactory, & the contract contained a clause that if any dispute should arise between the parties as to the agreement or any clause, matter or thing therein contained, or the intention or construction thereof, or in anywise relating thereto, the same should be referred to arbn.:—*Held*: such dispute came within the clause, & was not a dispute dehors the contract.—*DE LA GARDE v. WORSNOP & Co.*, [1928] Ch. 17; 96 L. J. Ch. 446; 137 L. T. 475; 71 Sol. Jo. 604.

238a. "All loss."—In an action in Manitoba against building contractors to recover sums improperly paid to them under a contract, & for damages, a judgment by consent was entered whereby it was provided (*inter alia*) that pl'tf. should recover, among other sums, "all loss to pl'tf. by reason of defective workmanship & materials," & that there should be set off against the sums recovered by pl'tf. the fair value of the work done & materials provided at fair contractor's prices. The judgment provided further that the sums

to be debited & credited were to be determined by two appraisers, & that any matter upon which they differed was to be referred to a named umpire whose decision thereon was to be final; & that the Manitoba Arbn. Act should not apply. Defts. moved to set aside or vary an award made:—*Held*: (1) under the words "all loss" there was jurisdiction to award to pl'tf. not only sums actually expended at the date of the award, but also a sum estimated as being necessary to make good the defects; (2) the award being within the jurisdiction conferred by the submission, & there being no error apparent on its face, it could not be questioned either on the facts or on the law.—*A.-G. FOR MANITOBA v. KELLY*, [1922] 1 A. C. 268; 91 L. J. P. C. 91; 126 L. T. 711; 38 T. L. R. 281, P. C.

*Annotations*:—*As to (2) Consd. Kelantan Government v. Duff Development Co.*, [1923] A. C. 395; *Refd. Hirji Mulji v. Cheong Yue S.S. Co.*, [1926] A. C. 497.

240. *Add. Annotation*:—*Refd. Re Boks & Peters, Rushton*, [1919] 1 K. B. 491.

254. *Add. Annotation*:—*Consd. Cayzer, Irvine v. Board of Trade* (1926), 95 L. J. K. B. 1054.

254a. ———]—Unless the submission otherwise provides, the Crown is entitled, in arbn. proceedings, to rely upon the defence of the above Act.—*CAYZER, IRVINE & Co. v. BOARD OF TRADE* (1925), 95 L. J. K. B. 134; 136 L. T. 7; 42 T. L. R. 163; 70 Sol. Jo. 347; *revsd. on other grounds, sub nom. BOARD OF TRADE v. CAYZER, IRVINE & Co.*, [1927] A. C. 610, H. L.

*Annotation*:—*Refd. Hyman, v. Hyman, Hughes v. Hughes* (1928), 139 L. T. 416.

255. *Add. Annotation*:—*Consd. Czarnikow v. Roth, Schmidt*, [1922] 2 K. B. 478.

263. *Add. Annotations*:—*Consd. Czarnikow v. Roth, Schmidt*, [1922] 2 K. B. 478; *Hallen v. Spaeth*, [1923] A. C. 684. *Expld. Caven v. Canadian Pacific Ry.* (1925), 133 L. T. 774. *Refd. Woodall v. Pearl Assce.*, [1919] 1 K. B. 593; *Atlantic Shipping & Trading Co. v. Dreyfus*, [1922] 2 A. C. 250; *Cayzer, Irvine v. Board of Trade* (1926), 95 L. J. K. B. 1054; *Gowar v. Hales* (1927), 96 L. J. K. B. 1088; *Hyman v. Hyman, Hughes v. Hughes* (1928), 139 L. T. 416; *Wales v. Iron Trades Employers' Asscn.* (1928), 21 B. W. O. C. 316. *Mentd. Hill v. South Staffordshire Ry.* (1865), 12 L. T. 63; *Lothian v. Epworth Press* (1927), 137 L. T. 582.

265. *Add. Annotation*:—*Mentd. Cayzer, Irvine v. Board of Trade* (1926), 95 L. J. K. B. 1054.

265a. ———]—*Action on charterparty*.—*ATLANTIC SHIPPING & TRADING CO. v. DREYFUS (L.) & Co.*, No. 165a, *ante*.

269. *Add. Annotation*:—*Refd. Board of Trade v. Cayzer, Irvine*, [1927] A. C. 610.

273. *Add. Annotation*:—*Refd. Kerr v. Marine Products* (1928), 44 T. L. R. 292.

#### PART I. SECT. 6, SUB-SECT. 7.—A.

166 iv. ———.]—An arbitrator cannot, by an erroneous construction of the contract, give himself jurisdiction over matters not covered by it; he cannot go beyond the matters as to which the parties agreed to give him jurisdiction, nor can he deprive the ct. of the right & duty of determining the limits of the jurisdiction.—*LAW v. CITY OF TORONTO* (1920), 47 O. L. R. 251; 18 O. W. N. 58.—CAN.

#### PART I. SECT. 6, SUB-SECT. 7.—D.

a (p. 343) i. "Any difference"—*Partner-*

*ship dispute—Claim for damages.*]—A clause in a deed of partnership provided that any difference between the partners in regard to any matter relating to the partnership affairs should be submitted to arbn. Pl'tf. sued def't. for damages suffered through the fraudulent acts of def't. in breach of his duty as a partner:—*Held*: such a claim fell within the terms of the arbn. clause.—*WALTERS v. ALLISON* (1922), 43 N. L. R. 238.—S. AF.

#### PART I. SECT. 7.

r i. ———.]—*GROTHE v. MONTREAL CORPN.*, [1924] 4 D. L. R. 401.—CAN.

so. *Waiver of right to immediate appraisal—Repossession by vendor of farm implement—Farm Implement Act, R.S.S. 1920 (c. 128), s. 24.*]—*Re GRAY TRACTOR CO. OF CANADA & VAN TROYEN*, [1925] 1 D. L. R. 718; [1925] 1 W. W. R. 513; 19 Sask. L. R. 202.—CAN.

#### PART I. SECT. 8.

263 vii. ———.]—An agreement to refer a dispute to arbn. does not oust the jurisdiction of the ct.—*BHOWANIDAS RAMGOBIND v. PANNA-CHAND LUCHMIPAT* (1924), 1 L. L. R. 52 Calc. 453.—IND.



Cases 278—330.

278. *Add. Annotation* :—*l. Czarnikow v. Roth, Schmidt, [1922] 2 B. 478.*
288. *Add. Annotation* *Refd. Sanderson v. Armour (1922), 91 L. J. P. C. 167.*
290. *Add. Annotations* :—*Apld. Woodall v. Pearl Assce., [1919] 1 K. B. 593. Consd. Czarnikow v. Roth, Schmidt, [1922] 2 K. B. 478. Apld. Hallen v. Spaeth, [1923] A. C. 684. Expld. Caven v. Canadian Pacific Ry. (1925), 133 L. T. 774. Apld. Board of Trade v. Cayzer, Irvine, [1927] A. C. 610. Refd. Hill v. South Staffordshire Ry. (1865), 12 L. T. 63; Atlantic Shipping & Trading Co. v. Dreyfus, [1922] 2 A. C. 250; Gower v. Hales (1927), 96 L. J. K. B. 1088; Hyman v. Hyman, Hughes v. Hughes (1928), 139 L. T. 416; Wales v. Iron Trades Employers' Asscn. (1928), 21 B. W. C. C. 316. Mentd. Lothian v. Epworth Press (1927), 137 L. T. 582.*
291. *Add. Annotation* :—*Mentd. Tredegar v. Harwood (1927), 44 T. L. R. 17.*
293. *Add. Annotation* :—*Refd. Board of Trade v. Cayzer, Irvine, [1927] A. C. 610.*
299. *Add. Annotation* :—*Refd. Board of Trade v. Cayzer, Irvine, [1927] A. C. 610.*
300. *Add. Annotation* :—*Consd. Board of Trade v. Cayzer, Irvine, [1927] A. C. 610.*
301. *Add. Annotation* :—*Consd. Board of Trade v. Cayzer, Irvine, [1927] A. C. 610.*
302. *Add. Annotations* :—*As to (1) Folld. Pailin v. Northern Employers Mutual Indemnity Co., [1925] 2 K. B. 73. Apld. Wales v. Iron Trades Employers' Asscn. (1928), 21 B. W. C. C. 316.*
- 302a. *Reference of disputes under charterparty—No action maintainable till after arbitration.*—*WILLIAMS & MORDEY v. MULLER (W. H.) & Co. (LONDON), LTD. (1924), 18 Lloyd, L. R. 50.*
303. *Add. Annotation* :—*Refd. Charles v. Cardiff Collieries (1928), 44 T. L. R. 448.*
305. *Add. Annotation* :—*As to (2) Consd. Re Nott & Cardiff Corpn., [1918] 2 K. B. 146.*
- 305a. *Provision for fixing valuation of buildings by reference to arbitration.*—*Appl. let an estate to resp. for a term of ten years, & covenanted that at the end of the term he would purchase "by valuation buildings erected by the lessee," with a reference to arbn. if the parties were unable to agree the valuation. Resp. covenanted not to transfer the demised premises without the written consent of applt.; but, in breach of that covenant, he sub-leased for the entire term, there being similar covenants in the sub-lease. At the end of the term applt. having resumed possession, resp. sued him to*

recover the value of buildings erected by the sub-lessee. There had been no agreement as to the amount of the valuation, & no arbn. :—*Held*: the action failed, since upon the true construction of applt.'s covenant resp. could not recover in the absence of an agreement, or an award, as to the amount of the valuation.—*HALLEN v. SPAETH, [1923] A. C. 684; 92 L. J. P. C. 181; 129 L. T. 803, P. C.*

306. *Add. Annotations* :—*Refd. Cayzer, Irvine v. Board of Trade (1926), 95 L. J. K. B. 1054. Mentd. Blackburn Bobbin Co. v. Allen, [1918] 1 K. B. 540.*

307. *Add. Annotation* :—*Generally, Mentd. Moriarty v. Regents' Garage Co., [1921] 1 K. B. 423.*

- 310a. *Jurisdiction of arbitrator—Dismissal of action on ground that award is condition precedent.*—*When an action on a contract has been dismissed upon a contention by deft. that an award is a condition precedent to the right to sue, & the claim is then submitted to arbn., deft. is precluded from contending that the award is bad in that the arbitrators had not jurisdiction to construe the contract, but only to determine the sum, if any, due.—SOUTH BRITISH INSURANCE CO. v. GAUCI BROTHERS & Co., [1928] A. C. 352; 97 L. J. P. C. 101; 139 L. T. 362, P. C.*

- 316a. *Petition of right.*—(1) Where a petition of right, founded on a contract with the Crown which contains a written agreement to submit differences to arbn., has been filed in the High Ct. of Justice, proceedings in the petition may in a proper case be stayed under the Act of 1889, s. 4. (2) The granting of the King's fiat is not a step in the proceedings within that sect.

*Held*: (3) as the matters in dispute included an important constitutional question the proceedings in the petition ought not to be stayed.—*ANGLO-NEWFOUNDLAND DEVELOPMENT CO. v. R., [1920] 2 K. B. 214; 89 L. J. K. B. 570; 122 L. T. 731; 84 J. P. 121; 14 Asp. M. L. C. 584, C. A.*

*Annotation* :—*As to (1) Refd. Ruffy-Arnell, etc. Co. v. R., [1922] 1 K. B. 599.*

324. *To the existing paragraph, after the last words "being known" add as follows* :—  
; (4) although the ct. had jurisdiction to appoint a receiver pending a reference to arbn., it was not proper to do so unless a special case was made, as the course of liquidation before the tribunal chosen by the parties themselves would thereby be interfered with.

330. *Add. Annotations* :—*Mentd. Mortimer v. Beckett, [1920] 1 Ch. 571; Prosperity v. Lloyds' Bank (1923), 39 T. L. R. 372.*

PART I. SECT. 9, SUB-SECT. 1.

290 v. — *Reference of disputed claim under policy.*—*Conditions in an insurance policy requiring the reference of any disputed claim to arbn. & the making of an award a condition precedent to any right of action on the policy, & requiring the action to be brought within three months after such award, are valid.—WEBB v. QUEENSLAND INSURANCE CO., LTD., [1920] N. Z. L. R. 118.—N.Z.*

PART I. SECT. 9, SUB-SECT. 2.

295 v. — *—BRYLINSKI v. INKOL (1924), 55 O. L. R. 369.—CAN.*

*sd. Reference of disputes at port of loading—No action "elsewhere" till*

*after arbitration.*—*Held*: the clause prohibited the bringing of an action on such a dispute outside the province in which the port of loading was situated.—*COX TOWING LINE v. BUNFIELD & Co. (1922), 68 D. L. R. 133.—CAN.*

*ss. Provision for fixing price of goods.*

—*Pltf. agreed to sell, & deft. agreed to purchase, all fish caught by pltf. The price was to be "hereafter agreed upon, failing which the price shall be arrived at by the decision of three arbitrators." Provision was made for appointment of the arbitrators who were to "determine the price for the winter fish & the price so determined shall be paid" by deft. to pltf. :—Held: the fixing of the*

price by agreement or arbn. was a condition precedent to the right of pltf. to sue to recover the price.—*VIDAL v. ROBINSON (WILLIAM) CO., LTD.; STEVENS v. ROBINSON (WILLIAM) CO., LTD.; SIGURDSON v. ROBINSON (WILLIAM) CO., LTD., [1925] 1 D. L. R. 1001.—CAN.*

PART I. SECT. 10, SUB-SECT. 3.—O.

*o i. —.*—*A clause in a policy of fire insurance whereby the parties agreed that, if any difference should arise as to the amount of loss, it should be submitted to arbn., but which did not provide that the determination of the insurer's liability should be postponed until the loss had been ascer-*



332. *Add. Annotation*:—*Mentd.* Metropolitan Tunnel & Public Works v. L. Elec. Ry., [1926] Ch. 371.

338. *Add. Annotation*:—*Consd.* Metropolitan Tunnel & Public Works v. L. Elec. Ry., [1926] Ch. 371.

339. *Add. Annotation*:—*Folld.* Metropolitan Tunnel & Public Works v. L. Elec. Ry., [1926] Ch. 371.

343. *Add. Annotations*:—*Refd.* Hirji Mulji v. Cheong Yue S.S. Co., [1926] A. C. 497. *Mentd.* Blackburn Bobbin Co. v. Allen, [1918] 1 K. B. 540.

350a. —.]—*LAW v. GARRETT*, No. 324, *ante*.

355. *Add. Annotations*:—*Refd.* Metropolitan Tunnel & Public Works v. L. Elec. Ry., [1926] Ch. 371. *Mentd.* R. v. Leman Street Police Station Inspector, *Ex p.* Venicoff, [1920] 3 K. B. 72.

367. *Add. Annotation*:—*Consd.* Metropolitan Tunnel & Public Works v. L. Elec. Ry., [1926] Ch. 371.

372. *Add. Annotation*:—*As to* (1) *Appld.* Metropolitan Tunnel & Public Works v. L. Elec. Ry., [1926] Ch. 371.

372a. —.]—Pltfs. agreed with defts. to execute railway works at prices contained in schedules amounting to £359,383 0s. 10d., & with the addition thereto of 10 per cent. for "general contingencies," amounting in the aggregate to £395,321 6s. 11d., & there was incorporated in the contract a letter from defts. accepting pltfs.' tender for that sum. The contract provided for the payment by monthly instalments on the certificate of defts.' engineer at the rate of 90 per cent. of the value of the work actually executed, the remaining 10 per cent. to be treated as a retention fund, & further provided that any question arising between the parties in connection with the contract, or as to the construction or meaning of the contract, should be referred to the

decision of an engineer to be agreed upon, or, failing agreement, to be nominated by the President for the time being of the Institute of Civil Engineers, & such submission should be deemed a submission to arbn. within the Act of 1889. An originating summons having been taken out by pltfs. for the determination of the question whether upon the true construction of the contract, for the purpose of the monthly payments to be made to pltfs. thereunder, the value of the work executed was to be ascertained by adding to the prices contained in the schedules a proportionate amount of the sum therein provided for "general contingencies," defts. moved for a stay of proceedings under the summons:—*Held*: there was a clear & definite contract between the parties that the matter in dispute should be referred to an arbitrator as being a person who possessed the necessary technical knowledge for dealing with the subject-matter of the contract; if the ct. allowed the action to proceed evidence would be necessary in order to put the ct. in a position to determine the technical meaning of the expression "general contingencies" & a number of other expressions used in the contract; the meaning of those expressions in an engineering contract would be perfectly familiar & would present no difficulty to the engineer to whom the parties had agreed to refer the decision of their disputes; the case was not one which involved a simple question of law, & pltfs. had not discharged the *onus* of showing that the dispute was one which ought not to be referred to arbn., & the arbn. ought to proceed.—*METROPOLITAN TUNNEL & PUBLIC WORKS v. LONDON ELECTRIC RY. CO.*, [1926] Ch. 371; 95 L. J. Ch. 246; 135 L. T. 35, C. A.

379a. Matters in dispute including important constitutional question.] — *ANGLO-NEWFOUND-*

tained:—*Held*: not to be a reason for staying an action by the insured on the policy.—*GRANCHUK v. SPRINGFIELD FIRE & MARINE INSURANCE CO.*, [1925] 1 D. L. R. 857; [1925] 1 W. W. R. 272; 35 Man. L. R. 139.—*CAN.*

*sf. Arbitration Act, R. S. M.* 1913 (c. 9)—*Agreement to refer to foreign court.*]—Sect. 6 of the above Act enables deft. to take advantage of an agreement to refer disputes to arbn. by an application to stay proceedings in the action. A clause in an agreement providing for the reference of any disputes which may arise to the decision of a foreign ct. is a submission within s. 6.—*BRAND v. NATIONAL LIFE ASSURANCE CO. OF CANADA*, [1918] 3 W. W. R. 858.—*CAN.*

*sg. Arbitration abortive.*]—Where an arbn. proves abortive & an action is brought with respect to the matter arbitrated, the objection that the parties should be compelled to resort to arbn. should be taken at the commencement of the action.—*BERGE v. GREW (Alta.)*, [1927] 3 W. W. R. 811.—*CAN.*

#### PART I. SECT. 10, SUB-SECT. 5.

339 iii. —.]—When the ct. has been apprised that a suit has been instituted in contravention of an arbn. agreement, the ct. has a discretion to stay the suit. The burden lies on pltf. to show that some sufficient reason exists why the matter should not be referred to arbn.—*DINABANDHU JANA v. DURGAPRASAD JANA* (1919), 1 L. R. 46 Cal. 1041.—*IND.*

349 i. *Power to appoint receiver.*]—Where on account of an arbn. clause

the ct. stays proceedings pending before itself, it retains jurisdiction to deal with a prayer for an injunction or for a receiver.—*SURENDRA KUMAR ROY CHOWDHURY v. SUSHIL KUMAR ROY CHOWDHURY* (1927), 1 L. R. 55 Cal. 249.—*IND.*

#### PART I. SECT. 10, SUB-SECT. 6.—C.

361 i. *Surveyor of one party.*]—A contract provided that every dispute which might arise between the parties touching the construction of the contract, or as to the rights or liabilities of either party thereunder, should be referred to defts.' surveyor, whose decision should be final:—*Held*: if questions would come before him for decision in which he would be a necessary witness defts.' surveyor would be disqualified from acting as arbitrator, but as, in the circumstances, he would not be a necessary witness, he was not disqualified, although he had already expressed an opinion in favour of defts.—*HOGG v. BELFAST CORPN.*, [1919] 2 L. R. 305.—*IR.*

363 ii. —.]—When a personal interest which may conflict with duty exists, an arbitrator is disqualified; & the inference necessary to disqualify is more easily drawn by reason of the relationship between the arbitrator & one of the contracting parties.—*LAW v. CITY OF TORONTO* (1920), 47 O. L. R. 251; 18 O. W. N. 58.—*CAN.*

#### PART I. SECT. 10, SUB-SECT. 6.—D.

369 i. *Only question one of law.*]—*Held*: the question should be determined in the course of the action itself.

—*GRAHAM v. PROVIDENT LIFE ASSURANCE CO.*, [1922] N. Z. L. R. 718.—*N.Z.*

374 iii. —.]—An important question of law being involved, the ct. in the exercise of its discretion, refused to stay the action.—*RICHARDSON v. ARMY, NAVY & GENERAL ASSURANCE ASSOCN., LTD.*, [1924] 2 I. R. 90.—*IR.*

374 iv. —.]—*ANGLO-PERSIAN OIL CO., LTD. (MADRAS) v. PANCHAPAKESA AIYAR* (1923), 1 L. R. 47 Mad. 164.—*IND.*

*sk. Fundamental questions of law.*]—On motion by defts. to stay the proceedings, & to refer the matters in dispute to defts.' surveyor:—*Held*: fundamental questions of law were involved which should be tried in an action. Motion refused.—*HOGG v. BELFAST CORPN.*, [1919] 2 I. R. 305.—*IR.*

#### PART I. SECT. 10, SUB-SECT. 6.—E.

376 vi. —.]—In an action for specific performance of a contract, deft. applied for stay of proceedings under an arbn. clause:—*Held*: the dispute going to the making of the contract was not within the arbn. clause, & stay refused.—*MCINTOSH v. LAYFIELD*, [1919] 1 W. W. R. 590.—*CAN.*

376 vii. —.]—On a motion by defts. to stay proceedings & to refer the matters in dispute to arbn.:—*Held*: the matters in dispute were outside the arbn. clause, & motion refused.—*HOGG v. BELFAST CORPN.*, [1919] 2 I. R. 305.—*IR.*

- LAND DEVELOPMENT Co. v. R., No. 316a, *ante*.
380. *Add. Annotation*:—Consd. Smith v. Martin, [1925] 1 K. B. 745.  
*Add. Annotation*:—As to (1) Refd. Metropolitan Tunnel & Public Works v. L. Elec. Ry., [1926] Ch. 371.
391. *Add. Annotation*:—Refd. Metropolitan Tunnel & Public Works v. L. Elec. Ry., [1926] Ch. 371.
394. *Add. Annotation*:—Mentd. Metropolitan Tunnel & Public Works v. L. Elec. Ry., [1926] Ch. 371.
400. *Add. Annotation*:—Refd. Metropolitan Tunnel & Public Works v. L. Elec. Ry., [1926] Ch. 371.
- 402a. *Summons for discovery*.]—A party to a written contract containing an agreement to refer disputes to arbn. was sued for breach of the contract. He was unaware that the contract contained an agreement to refer. Pltfs. in the action took out a summons for discovery. Deft. asked for discovery also, & an order for mutual discovery was made. He then became aware of the agreement to refer & applied for a stay of proceedings in the action:—*Held*: he had taken a step in the proceedings within the Act of 1889, s. 4, & therefore was not entitled to a stay.—PARKER. GAINES & Co. v. TURPIN, [1918] 1 K. B. 358; 87 L. J. K. B. 357; 118 L. T. 346; 62 Sol. Jo. 331, D. C.
- 408a. *Granting of fiat—Petition of right*.]—ANGLO-NEWFOUNDLAND DEVELOPMENT Co. v. R., No. 316a, *ante*.
410. *Add. Annotation*:—Mentd. Metropolitan Tunnel & Public Works v. L. Elec. Ry., [1926] Ch. 371.
413. *Add. Annotation*:—Mentd. Prosperity v. Lloyds Bank (1923), 39 T. L. R. 372.
419. *Add. Annotations*:—Mentd. Hogarth Shipping Co. v. Blyth, Greene, Jourdain, [1917] 2 K. B. 534; North Shipping Co. v. Rank (1926), 43 T. L. R. 82.
420. *Add. Annotation*:—Mentd. Blackburn Bobbin Co. v. Allen, [1918] 1 K. B. 540.
442. *Add. Annotation*:—Mentd. Samuel v. Dumas, [1924] A. C. 431.
503. *Add. Annotation*:—Refd. Re Cogstad & Newsum, [1921] 1 K. B. 87.
521. *Add. Annotations*:—Mentd. Hogarth Shipping Co. v. Blyth, Greene, Jourdain, [1917] 2 K. B. 534; North Shipping Co. v. Rank (1926), 43 T. L. R. 82.
565. After this case, following "*D. By Lunacy*."—*See case infra*," add as follows:—
- E. Other Cases.*
- 565a. *Frustration of adventure—Charterparty containing arbitration clause*.]—Resps. agreed to place their steamship at the disposal of applts. on Mar. 1, 1917, & applts. agreed to employ her on specified terms for ten months from the date when she was delivered to them. The charterparty contained a clause by which all disputes arising out of the contract were submitted to arbn. The ship was requisitioned by the Govt. before Mar. 1, 1917, & was not released until Feb. 1919. Applts. then refused to take delivery of her. An arbitrator awarded resps. damages for breach of contract, & they brought an action upon the award:—*Held*: there had been in 1917 a frustration of the charterparty which forthwith brought to an end the whole contract, including the submission to arbn., & the contract being executory the arbitrator had not jurisdiction.—HIRJI MULJI v. CHEONG YUE S.S. Co., [1926] A. C. 497; 95 L. J. P. C. 121; 134 L. T. 737; 42 T. L. R. 359; 31 Com. Cas. 199; 17 Asp. M. L. C. 8, P. C.
- Annotation*:—Distd. De la Gardo v. Worsnop (1927), 96 L. J. Ch. 446.

## Part II.—The Arbitrators and Umpire.

582. *Add. Annotation*:—Mentd. Macaulay v. Guaranty Trust Co. of New York (1927), 44 T. L. R. 99.
627. After this case insert, "*See, now, Administration of Justice Act, 1920 (c. 81), s. 16.*"
629. *Add. Annotation*:—As to (3) Distd. Re

383 i a. —.]—The cts. should be reluctant to permit an appeal to them by one of the parties to an agreement to refer questions that may arise between them to a domestic forum rather than the ordinary cts., when the agreement is couched in wide terms.—STOKES-STEPHENS OIL Co. v. McNAUGHT, [1918] 2 W. W. R. 124.—CAN.

### PART I. SECT. 10, SUB-SECT. 7.

a1. *After appearance*.]—An application must be made after appearance, & where appearance is not requisite the application may be made at any time before taking any other step in the proceedings.—HARRISON, ET AL. v. CRESPIN, [1921] V. L. R. 643.—AUS.

e1. —.]—The application for a stay is too late if made after delivery of the defence.—BRAND v. NATIONAL LIFE ASSURANCE Co. OF CANADA, [1918] 3 W. W. R. 858.—CAN.

f1. —.]—An application for stay of proceedings before deft. has filed his written statement or taken any

other step in the suit does not constitute taking a step in the proceedings within Arbn. Act, s. 19, so as to operate as a bar.—JOYLALL & Co. v. GOPIRAM BHOTICA (1920), 1 L. R. 47 Calc. 611.—IND.

396 i. *Security for costs*.]—Defts. were held to be precluded from moving for an order staying proceedings in an action, by having previously issued & served an order for security for costs.—HEISTEIN & SONS v. POLSON IRON WORKS, LTD., [1920] 46 O. L. R. 285.—CAN.

398 i. *Summons for directions*.]—If a party on a summons for directions takes objection, this is a "step in the action" & prevents him applying for a stay of the action, although he may say at the time he intends to apply for a stay.—BUCKLEY v. QUEEN INSURANCE Co., [1923] 3 D. L. R. 163.—CAN.

### PART I. SECT. 12, SUB-SECT. 2.

441 i. *Powers & duty of court*.]—An

arbn. as to the value of property became abortive because of the failure of the persons appointed to act as arbitrators to agree:—*Held*: it was the duty of the ct. in working out a contract which provided for such arbn. to receive evidence of such value & to decide the question.—CALGARY CITY v. BLOW, [1925] 3 D. L. R. 1165; [1925] 3 W. W. R. 225.—CAN.

### PART I. SECT. 13, SUB-SECT. 1.—B.

494 ii. —. *Submission by Crown in right of Dominion*.]—Ontario Arbn. Act, s. 5, making a submission to arbn. irrevocable except by leave of the ct., does not apply to a submission by the Crown in right of the Dominion.—GAUTHIER v. R. (1916), 56 S. C. R. 176; 40 D. L. R. 353.—CAN.

### PART II. SECT. 1, SUB-SECT. 1.

579 x a. —. —.]—FINO v. SOUTH AFRICAN RAILWAYS & HARBOURS (1927), 48 N. L. R. 369.—S. AF.

579 xxvii. —. —.]—SIMS v. SELLER (P. E. I.), [1927] 2 D. L. R. 51.—CAN.

Bjornstad & Ouse Shipping Co., [1924] 2 K. B. 673.

629a. — Discretion of court to refuse to appoint except upon terms.]—On an application under the Act of 1889, s. 5, to appoint an arbitrator the ct. has a discretion & may in a proper case refuse to make an appointment except upon terms.

A contract between British shipbuilders & foreign shipowners for the building & purchase of certain ships contained a clause referring disputes & differences to the decision of a single arbitrator in accordance with the Arbn. Act. Disputes having arisen the foreign firm duly gave notice to the British shipbuilders to appoint an arbitrator, & on their refusal to do so, applied to the ct. under sect. 5 of the Act to appoint an arbitrator:—*Held*: in the case of an application for arbn. by a foreigner residing out of the jurisdiction the ct. had an absolute discretion in assenting to or refusing the application, & in the former case the ct. could attach any reasonable condition, such as making an order for security for the costs of the proceedings, to the granting of the application.—*Re BJORNSTAD & OUSE SHIPPING CO.*, [1924] 2 K. B. 673; *sub nom.* BJORNSTAD *v.* OUSE SHIPPING CO., 93 L. J. K. B. 977; 131 L. T. 663; 40 T. L. R. 636; 68 Sol. Jo. 754; 30 Com. Cas. 14, C. A.

630. *Add. Annotation*:—*Folld.* Richardsons & Bradley *v.* Bernhard, [1925] 2 K. B. 121.

630a. — — — — —.]—A contract for the sale of goods was entered into between B., the seller, & R., who, so far as appeared from the contract, were the buyers. The contract contained an arbn. clause. The goods delivered in pursuance of the contract were despatched to a foreign firm, who complained of their quality. Thereupon the foreign firm & R., who said they had merely acted as agents for that firm, claimed to have the dispute as to the quality of the goods sub-

mitted to arbn. B., while willing to go to arbn. as between himself & R., refused to assent to an arbn. to which the foreign firm were parties, maintaining that he had sold to R. as principals. R. & the foreign firm then took out a summons for the appointment of an arbitrator pursuant to the Act of 1889, s. 5:—*Held*: it being in dispute whether there was a submission between B. on the one hand & R. & the foreign firm on the other, there was no "matter" pending in the High Ct. as between those parties; therefore an appeal from an order for the appointment of an arbitrator was not in a matter of practice & procedure within R. S. C. Ord. 54, r. 23, & consequently, it lay not to the Ct. of Appeal, but to the Div. Ct.—*RICHARDSONS & BRADLEY Co. v. BERNHARD*, [1925] 2 K. B. 121; 94 L. J. K. B. 691; 133 L. T. 234, D. C.

633. *Add. Annotation*:—*Mentd.* Dibble *v.* Wilts & Somerset Farmers, [1923] 1 Ch. 342.

639. *Add. Annotations*:—*Mentd.* A.-G. for Manitoba *v.* Kelly, [1922] 1 A. C. 268; Kelantan Government *v.* Duff Development Co., [1923] A. C. 395.

686. *Add. Annotation*:—*Mentd.* Samuel *v.* Dumas, [1924] A. C. 431.

696. *Add. Annotation*:—*Refd.* Paterson *v.* Ardrosan Harbour Co. (1926), 19 B. W. C. C. 621.

704. *Add. Annotation*:—*Refd.* Royal Commission on Sugar Supply *v.* Kwik-Hoo-Tong Trading Soc. (1922), 38 T. L. R. 684.

791. *Add. Annotation*:—*Refd.* Boynton *v.* Richardson (1924), 69 Sol. Jo. 107.

793. *Add. Annotation*:—*Refd.* Wisbech R. C. *v.* Ward (1927), 138 L. T. 308.

794. *Add. Annotations*:—*As to* (1) *Consd.* Wisbech R. D. C. *v.* Ward (1927), 91 J. P. 200. *Refd.* Brightman *v.* Tate, [1919] 1 K. B. 463. *As to* (2) *Folld.* Boynton *v.* Richardson (1924), 69 Sol. Jo. 107.

PART II. SECT. 1, SUB-SECT. 2.—A.  
n. Add as follows:—*Revsd. sub nom.* INVERNESS RY. & COAL CO. *v.* MCISAAC (1905), 37 S. C. R. 134.

o i. — Objection to—*Whether maintainable.*]—Where an agreement with an incorporated club provides that it shall be compensated for damage from the acts which the agreement authorises the other party to perform, it is not open to such party to object that notice of the appointment, in pursuance of the agreement, of the club's arbitrator is not properly signed.—*Re WINNIPEG GOLF CLUB v. HUTCHINGS* (Man.), [1926] 4 D. L. R. 1188; [1926] 3 W. W. R. 443.—CAN.

PART II. SECT. 1, SUB-SECT. 2.—B.

y ii. — — — — —.]—A motion to appoint an arbitrator under s. 8 of the above Act on the refusal of the municipality to appoint its arbitrator, refused on the ground of lack of jurisdiction.—*GOLD v. SOUTH VANCOUVER*, [1918] 3 W. W. R. 585.—CAN.

*See, also*, Vol. II., p. 409, case n.

PART II. SECT. 1, SUB-SECT. 4.  
618 i. *Time for appointment.*]—

SYNOD OF HURON *v.* FERGUSON (1924), 56 O. L. R. 161.—CAN.

PART II. SECT. 1, SUB-SECT. 5.

sm. *Original nominee incapable of acting.*]—A party to an arbn. has power to appoint another arbitrator in place of a first who has rendered himself incapable of acting.—*Re WEILER BROTHERS & CITY OF VICTORIA CORPN.* (1917), 24 B. C. R. 148.—CAN.

PART II. SECT. 1, SUB-SECT. 6.—C.

d (p. 408) i. — *Vancouver Incorporation Act.*]—SPENCER *v.* CITY OF VANCOUVER (1922), 68 D. L. R. 747; 30 B. C. R. 382; [1922] 1 W. W. R. 779.—CAN.

d (p. 408) ii. — — — — — *Costs of application.*]—A Supreme Ct. judge in appointing an arbitrator is acting as *persona designata*, & has no jurisdiction under s. 133 (9) of the above Act to award costs.—*MATTE v. VANCOUVER (CITY)*, [1917] 2 W. W. R. 53.—CAN.

n i. — — — — —.]—*BULGER v. HOME INSURANCE CO.*, [1927] 2 D. L. R. 585; [1927] 2 W. W. R. 456; 38 B. C. R. 270.—CAN.

o i. — *Party declining to appoint—Ottoman Order in Council*, 1910, arts. 90, 99, 129.]—*SOUTH BRITISH INSURANCE*

CO., LTD. *v.* GAUCHI BROTHERS & CO., [1928] A. C. 352; 97 L. J. P. C. 101; 139 L. T. 362, P. C.—EGYPT.

sn. *Arbitrator incapable of acting—Removal of residence to United States of America—Arbitration Act*, 1909.]—Where an arbitrator had removed his residence to Buffalo, N. Y., & was not expected to return:—*Held*: the appointment of a new arbitrator was justified as the first was "incapable of acting" within s. 7 of the above Act.—*Re MCNAUGHT & STOKES-STEPHENS OIL CO. (No. 2)*, [1918] 3 W. W. R. 337; 43 D. L. R. 7.—CAN.

PART II. SECT. 5, SUB-SECT. 1.

so. *Arbitrator a barrister.*]—*SCHOOL DISTRICT ST. BONIFACE v. MACDONALD*, [1927] 2 D. L. R. 735.—CAN.

PART II. SECT. 5, SUB-SECT. 4.

sp. *Action for return of excess paid—Payment by one cheque to arbitrators jointly—Form of judgment.*]—The judgment should be against each deft. for the sum received by him in excess of the amount to which he was entitled.—*CANADIAN NORTHERN RY. CO. v. OUSLEY*, [1918] 2 W. W. R. 1005; 11 Sask. L. R. 282; 42 D. L. R. 772.—CAN.



## Part III.—The Hearing.

816a. — Act of 1889, s. 2, Sched. I.

—“Subject to any legal objection.”—

(1) In an arbn. for the determination of disputes under a contract between the Shipping Controller on behalf of His Majesty & another party, the arbitrators or umpire have no jurisdiction under Sched. 1 (f), incorporated in sect. 2 of the above Act, or otherwise, to require the Shipping Controller to make discovery of the documents in his possession or power relating to the matters in question. (2) In Sched. 1 (f), incorporated in sect. 2 of the above Act, the words “subject to any legal objection” apply to all the subsequent provisions of the clause, including not only the provision that the parties shall produce before the arbitrators or umpire all books, etc., within their possession or power, but also the provision that the parties shall “do all other things which . . . the arbitrators or umpire may require.”—*Re SOCIÉTÉ LES AFFRÉTEURS RÉUNIS & SHIPPING CONTROLLER*, [1921] 3 K. B. 1; *sub nom. SOCIÉTÉ LES AFFRÉTEURS RÉUNIS v. SHIPPING CONTROLLER*, 90 L. J. K. B. 812; 124 L. T. 727; 37 T. L. R. 460, D. C.

Annotation:—As to (2) *Reid. Kursell v. Timber Operators & Contractors*, [1923] 2 K. B. 202.

Discovery against the Crown generally, see DISCOVERY, Vol. XVIII., p. 60.

817. *Add. Annotations*:—*Consd. Re Soc. Les Affréteurs Réunis & Shipping Controller*, [1921] 3 K. B. 1; *Kursell v. Timber Operators & Contractors*, [1923] 2 K. B. 202. *Mentd. Light v. West*, [1926] 2 K. B. 238.

817a. — Power of arbitrator to order—Reference by consent out of court.]—In a reference by consent out of ct. under the Act of 1889, the arbitrator has jurisdiction to order either party to make discovery of documents or to answer interrogatories on oath, by virtue of Sched. 1 (f) of the Act.—*KURSELL v. TIMBER OPERATORS & CONTRACTORS, LTD.*, [1923] 2 K. B. 202; 92 L. J. K. B. 607; 129 L. T. 21; 87 J. P. 79; 39 T. L. R. 419; 67 Sol. Jo. 557; 28 Com. Cas. 376, D. C.

830. *Add. Annotation*:—*Reid. Ricketts v. Gurney* (1819), 7 Price, 699.

830a. — — — — —.]—On an application to the Ct.

of Exch. on the same facts as set out in No. 830:—*Held*: the party was privileged during the journey, including his stay at Clifton, on the ground of the deviation being for a necessary purpose, & the delay no more than reasonable for the accomplishment of it.—*RICKETTS v. GURNEY* (1819), 7 Price, 699; 1 Ohit. 682; 146 E. R. 1106.

Annotations:—*Reid. Spencer v. Newton* (1837), 1 Nev. & P. K. B. 818. *Mentd. Selby v. Hills* (1839), 1 Moo. & S. 253.

835. *Add. Annotations*:—*Reid. A.-G. for Manitoba v. Kelly*, [1922] 1 A. C. 268; *Kelantan Government v. Duff Development Co.*, [1923] A. C. 395.

836. *Add. Annotation*:—*Consd. Cayzer, Irvine v. Board of Trade* (1926), 95 L. J. K. B. 1054.

840. *Add. Annotation*:—*Reid. R. v. Sullivan*, [1923] 1 K. B. 47; *R. v. Harris*, [1927] 2 K. B. 587.

841a. Whether entitled to act as advocate for part-appointing him.]—An arbitrator appointed to act for one of the parties to a commercial dispute is not justified in taking up the position of an advocate for the party appointing him, but should act impartially.—*ROFF v. BRITISH & FRENCH CHEMICAL MANUFACTURING CO. & GIBSON*, [1918] 2 K. B. 677; 87 L. J. K. B. 996; 119 L. T. 436; 34 T. L. R. 485; 62 Sol. Jo. 620, C. A.

841b. — — — — —.]—*FRENCH GOVERNMENT v. TSURUSHIMA MARU (OWNERS)*, No. 1022a, *post*.

862. *Add. Annotation*:—*Reid. Royal Commission on Sugar Supply v. Kwik-Hoo-Tong Trading Soc.* (1922), 38 T. L. R. 684.

874. *Add. Annotation*:—*Reid. Royal Commission on Sugar Supply v. Kwik-Hoo-Tong Trading Soc.* (1922), 38 T. L. R. 684.

888a. — — — — — Agreement to dispense with notice.]—*FRENCH GOVERNMENT v. TSURUSHIMA MARU (OWNERS)*, No. 1022a, *post*.

906. *Add. Annotations*:—As to (1) *Apprvd. & Folld. Oppenheim v. Mahomed Haneef*, [1922] 1 A. C. 482. *Reid. Scrimaglio v. Thornett & Fehr* (1924), 131 L. T. 174. As to (2) *Apprvd. & Folld. Oppenheim v. Mahomed Haneef*, [1922] 1 A. C. 482. *Reid. Scrimaglio v. Thornett & Fehr* (1924), 131 L. T. 174.

PART III. SECT. 2, SUB-SECT. 2.  
i. — — — — —.]—*Re SMITH & PLYMPTON (TOWNSHIP)* (1886), 12 O. R. 20.—CAN.

PART III. SECT. 2, SUB-SECT. 4.  
883 iii. — — — — —.]—There is no statutory rule that if an arbitrator proceeds *ex parte* without giving notice of his intention to proceed in that manner, the award made by him must be set aside.—*UDAICHAND PANNA LALL v. DEBIBUX JEWANRAM* (1920), 1 L. R. 47 Cal. 951.—IND.

PART III. SECT. 2, SUB-SECT. 8.—A.  
i. — — — — —.]—An arbitrator cannot decide the case submitted to him on his own knowledge & without taking evidence, unless the terms of the reference especially permit him to do so.—*LACHMI NARAIN v. SHEONATH PONDE* (1919), 1 L. R. 42 All. 185.—IND.

pi. — — — — —.]—In an agricultural reference when the general question submitted was a matter depending upon opinion:—*Held*: the oversman, himself a farmer & skilled valuer, was able to form a just & conscientious opinion without the necessity of hearing evidence.—*FLETCHER v. ROBERTSON* (1919), 56 Sc. L. R. 305; [1919] 1 S. L. T. 260.—SCOT.

PART III. SECT. 2, SUB-SECT. 8.—B.  
938 v. — — — — —.]—An award was set aside for the taking of evidence by the arbitrator in the absence of the other arbitrators & of one of the parties.—*Re SNIDER & MILLER'S ARBITRATION*, [1924] 4 D. L. R. 313; 3 W. W. R. 226.—CAN.

938 vi. — — — — —.]—One of the parties to an arbn. sought redaction of the arbiter's award on the ground that the arbiter had examined witnesses without that party being present or

being represented:—*Held*: as the arbiter had decided the question in that party's favour, he had suffered no injustice, & reduction refused.—*BLACK v. WILLIAMS & CO. (WISHAW) LTD.*, [1924] S. C. (H. L.) 22.—SCOT.

938 vii. — — — — —.]—An arbitrator heard evidence from one party in the absence of his opponent, & also took evidence in the absence of both parties. The award was consequently set aside by the ct.—*BURNS v. BURNS* (1922), 43 N. L. R. 461.—S. AF.

938 viii. — — — — —.]—*By umpire*.]—Arbitrators having differed, the matter was submitted to an umpire, who made inquiries in the absence of deft., but denied that he had recorded any evidence at the time:—*Held*: in making these inquiries the umpire was guilty of misconduct.—*ABDUL HAMID v. MUHAMMAD AFZAL* (1927), 1 L. R. 8 Lah. 329.—IND.

939. *Add. Annotation*:—*Refd.* Royal Commission on Sugar Supply v. Kwik-Hoo-Tong Trading Soc. (1922), 38 T. L. R. 684.

941. *Add. Annotation*:—*Refd.* Royal Commission on Sugar Supply v. Kwik-Hoo-Tong Trading Soc. (1922); 38 T. L. R. 684.

943. *Add. Annotation*:—*Refd.* Royal Commission on Sugar Supply v. Kwik-Hoo-Tong Trading Soc. (1922), 38 T. L. R. 684.

949a. ——.]—An arbitrator appointed under Agricultural Holdings Act, 1908 (c. 28), for the purpose of determining claims & compensation payable in respect of (*inter alia*) certain fixtures, hay & straw left by the tenant on his farms, & hay & straw removed by him after the determination of the tenancy, held two sittings & then gave notice that he had been waiting to be supplied with information as to the hay & straw sold off & warned the parties that if it was not supplied promptly he would have to hold another sitting. After an interval of less than a fortnight he gave further notice that he would go to the farms on a specified date "to value the hay & straw & to receive an account of the hay & straw removed." The tenant not having such an account ready & thinking that the only question to be dealt with was a valuation of the stacks of hay & straw remaining on the farm did not attend by himself or his representative, but his foreman was present to point out & give information about the stacks on the farms. While there the arbitrator, besides valuing the stacks, questioned the foreman as to the hay & straw removed. Immediately afterwards he closed the hearing & made an award in which he dealt with the claim for hay & straw removed on the basis of the foreman's evidence, which had not been tendered by either party, & was taken in the presence only of the landlord's representative. He did not deal with the question of the fixtures, but purported to reserve power to deal with them, if required:—*Held*: the award must be set aside as the arbitrator had been guilty of legal misconduct in taking evidence in the absence of, & without previous notice to, the tenant.—*Re O'CONOR & WHITLAW'S ARBITRATION* (1919), 88 L. J. K. B. 1242, C. A.

949b. ——.]—In an arbn. between sellers & buyer arising out of the rejection by the latter of certain goods which he alleged did not correspond to the contract description, the arbitrators heard the evidence of each of the parties in the absence of the other. No objection was made at the time to this procedure. An award having been made in favour of the sellers, the buyer moved to set it aside:—*Held*: the award must be set aside, as the arbitrators had acted improperly in hearing the evidence on behalf of one party in the absence of the other.—*RAMSDEN (W.) & CO. v. JACOBS*, [1922] 1 K. B. 640; 91 L. J. K. B. 432; 126 L. T. 409; 26 Com. Cas. 287, D. C.

949c. ——. Evidence immaterial.]—It is misconduct which may justify the setting aside

of an award if the arbitrators hear evidence in the absence of the parties, even though the evidence so received is immaterial. It makes no difference that the arbitrators could not properly have made any other award than that which they did make, & it is quite immaterial whether the evidence wrongly admitted helped the arbitrators to a right conclusion or a wrong conclusion, & the ct. cannot inquire to what extent their minds were affected by such evidence.—*ROYAL COMMISSION ON SUGAR SUPPLY v. KWIK-HOO-TONG TRADING SOCIETY* (1922), 38 T. L. R. 684, D. C.; *subsequent proceedings, sub nom. KWIK-HOO-TONG TRADING SOCIETY v. ROYAL COMMISSION ON SUGAR SUPPLY* (1923), 129 L. T. 500.

952. *Add. Annotation*:—*Refd.* Royal Commission on Sugar Supply v. Kwik-Hoo-Tong Trading Soc. (1922), 38 T. L. R. 684.

955. *Add. Annotation*:—*Refd.* Royal Commission on Sugar Supply v. Kwik-Hoo-Tong Trading Soc. (1922), 38 T. L. R. 684.

956. *Add. Annotation*:—*Refd.* Royal Commission on Sugar Supply v. Kwik-Hoo-Tong Trading Soc. (1922), 38 T. L. R. 684.

960. *Add. Annotation*:—*Refd.* Royal Commission on Sugar Supply v. Kwik-Hoo-Tong Trading Soc. (1922), 38 T. L. R. 684.

964. *Add. Annotation*:—*Refd.* Royal Commission on Sugar Supply v. Kwik-Hoo-Tong Trading Soc. (1922), 38 T. L. R. 684.

969. *Add. Annotation*:—*Folld.* Caven v. Canadian Ry. (1925), 133 L. T. 774.

1000. *Add. Annotation*:—*Refd.* Kursell v. Timber Operators & Contractors, [1923] 2 K. B. 202.

1022a. ——. ——. ——.]—In commercial arbn. the practice is that, unless the parties give notice that they desire to attend personally or by their solr. or counsel, the arbitrators present the evidence & arguments to the umpire & have full power to act as advocates. In an arbn. on a charterparty the umpire without hearing the parties made his award on the case as presented by the arbitrators. On a motion to set aside the award on the ground of misconduct by the umpire:—*Held*: there was no evidence of misconduct by the umpire, & the motion failed.

In arbn. proceedings *prima facie* the common law rule applies that the parties should have notice of the proceedings so that they could attend them, if desirous of so doing, & the only way in which the rule can be departed from is by agreement, & the ct. would give effect to their agreement (*ATKIN, L.J.*).—*FRENCH GOVERNMENT v. TSURUSHIMA MARU (OWNERS)* (1921), 37 T. L. R. 961, C. A.

*Annotation*:—*Refd.* Bourgeois v. Weddell, [1924] 1 K. B. 539.

1023a. Right to call arbitrator as witness.]—A dispute arose between the buyer & sellers of a quantity of meat as to its quality. The buyer sent K. to inspect & report upon the meat. The dispute having been referred to

959 v. ——.]—An award was set aside because, in considering the same after the hearing, an arbitrator, in the absence of & without notice to the parties, interviewed & got information from one who had been a witness on the hearing.—*Re YUKON GOLD CO.*

& *MOREAU*, [1921] 1 W. W. R. 760; 67 D. L. R. 229.—*CAN.*

959 vi. ——.]—Where the arbitrator had taken evidence in the absence of both parties:—*Held*: the award should be set aside.—*BURNS v. BURNE*

(1922), 43 N. L. R. 461.—*S. AF.*

PART III. SECT. 2, SUB-SECT. 8.—*C.*

968 x. *S. P. LATHAM v. FOSTER'S AUSTRALIAN FIBRES, LTD.*, [1926] V. L. R. 427.—*AUS.*

arbn., the buyer appointed K. as his arbitrator. The arbitrators having failed to agree upon their award the matter was referred to an umpire, & the buyer then proposed to call K. as a witness before the umpire to prove the state of the meat. The sellers objected to the competency of K. as a witness on the general principle that an arbitrator was disqualified from giving evidence in the arbn. proceedings:—*Held*: as it was a commercial arbn. K. was not disqualified from giving evidence before the umpire, notwithstanding that he had acted as arbitrator.—*BOURGEOIS v. WEDDELL & Co.*, [1924] 1 K. B. 539; 93 L. J. K. B. 232; 130 L. T. 635; 40 T. L. R. 261; 68 Sol. Jo. 421; 29 Com. Cas. 152; 88 J. P. Jo. 25, D. C.

1034. *Add. Annotation*:—*Refd. Re Cogstad & Newsum*, [1921] 1 K. B. 87.

1035. *Add. Annotation*:—*Refd. Czarnikow v. Roth, Schmidt* (1922), 127 L. T. 824.

1036. *Add. Annotation*:—*Refd. Czarnikow v. Roth, Schmidt* (1922), 127 L. T. 824.

1036a. .]—A contract for the sale of sugar provided that the contract was subject to the rules of the Refined Sugar Assocn. The rules required that all members of the assocn. making contracts subject to those rules should refer any disputes arising out of such contracts, including any questions of law, to the arbn. of the council of the assocn.; & by r. 19: "Neither buyer, seller, trustee in bkpcy., nor any other person as aforesaid shall require, nor shall they apply to the ct. to require, any arbitrators to state in the form of a special case for the opinion of the ct. any question of law arising in the reference, but such question of law shall be determined in the arbn. in manner herein directed." A dispute between the buyers & sellers was referred to the arbn. of the council. The buyers requested the arbitrators either to state their award in the form of a special case under the Act of 1889, s. 7, or alternatively to state a case for the opinion of the ct. under sect. 19 upon certain points of law arising in the reference, or to give them an opportunity of applying to the ct. for an order directing them to state a case. The arbitrators, thinking themselves precluded by r. 19, refused to comply with that request, & made their award without giving the buyers an opportunity of applying to the ct. for an order. The buyers move to set aside the award on the ground of misconduct of the arbitrators in so refusing:—*Held*: r. 19 & the agreement embodying it were contrary to public policy & invalid, as involving an ouster of the statutory jurisdiction of the cts. under the Arbn. Act, & the award must be set aside.—*CZARNIKOW v. ROTH, SCHMIDT & Co.*, [1922] 2 K. B. 478; 92 L. J. K. B. 81; 127 L. T. 824; 38 T. L. R. 797; 28 Com. Cas. 29, C. A.

1037. *Add. Annotations*:—*Refd. Buerger v. Bar-*

nett (1919), 89 L. J. K. B. 161; *Czarnikow v. Roth, Schmidt*, [1922] 2 K. B. 478.

1039. *Add. Annotations*:—*Mentd. Cornelius v. Phillips*, [1918] A. C. 109; *Anderson v. Daniel*, [1924] 1 K. B. 138.

1039a. — Well-defined question of law must be formulated.]—An arbitrator should not state a special case except upon some well-defined questions of law & should insist that the party asking him to state a case should formulate the questions upon which he desires it to be stated. It is improper for an arbitrator to state a case merely asking generally for the opinion of the ct. on any questions of law involved.—*WILLIAMS v. MANISSALIAN FRÈRES* (1923), 29 Com. Cas. 42, C. A.

1043. *Add. Annotation*:—*Mentd. Re Cogstad & Newsum*, [1921] 1 K. B. 87.

1047. *Add. Annotation*:—*Refd. Czarnikow v. Roth, Schmidt* (1922), 127 L. T. 824.

1049. *Add. Citation*:—*On appeal*, [1914] 1 Ch. 300, C. A.

*Add. Annotations*:—*Mentd. R. v. Bedfordshire County Council. Ex p. Sear*, [1920] 2 K. B. 465; *Morris v. Harris*, [1927] A. C. 252.

1051a. — Application to stay proceedings—Until security for costs given.]—The Govt. of an independent State made with a co. a contract containing an arbn. clause. An arbn. took place & was divided into two parts, the first being as to whether the Govt. had committed a breach of contract. The result of this part of the arbn. was that an award was given in favour of the co. & the Govt. was ordered to pay costs. The second part of the arbn. as to the amount of damage then began, & when the evidence had been closed the Govt. asked the arbitrator to state an advisory case for the opinion of the ct., but the arbitrator refused to do so. The Govt. then issued a summons asking that the arbitrator might be ordered to state a case, & thereupon the co., applied that all further proceedings might be stayed until the Govt. (1) had paid the costs which it had been ordered to pay, & (2) had given security to answer the costs of the matter & of the arbn.:—*Held*: so far as concerned the summons for a case to be stated the Govt. was in the position of a pltf., & it could not rely on its foreign sovereignty, & being out of the jurisdiction must give security for the costs of the summons, but the rest of the co.'s application must stand over to be dealt with on the hearing of the summons.—*DUFF DEVELOPMENT CO., LTD. v. KELANTAN GOVERNMENT* (1925), 41 T. L. R. 375; *sub nom. Re DUFF DEVELOPMENT CO., LTD. & KELANTAN GOVERNMENT*, 69 S. Jo. 491.

1053. *Add. Annotations*:—*Consd. Duff Development Co. v. Kelantan Government* (1925), 41 T. L. R. 375. *Refd. Northwood v. L. U. C.* (1927), 137 L. T. 49. *Mentd. Manbre Saccharine Co. v. Corn Products Co.*, [1919] 1 K. B. 198; *Cogstad v. Newsum*, [1921] 2 A. C. 528.

#### PART III. SECT. 3, SUB-SECT. 1.

1034 v. — *Arbitration Act, R. S. O.*, 1914 (c. 65).]—A case may be stated by the arbitrators under s. 29 of the above Act.—*Re TORONTO GENERAL TRUSTS CORPN. & McCONKEY* (1918), 41 O. L. R. 314; 13 O. W. N. 281.—CAN.

m l. —.]—A case stated by arbitrators, under Arbn. Act, R. S. O.,

1914 (c. 65), s. 22, for the determination of the ct., is now to be heard by a judge in the Weekly Ct.—*Re McCONKEY'S ARBITRATION* (1918), 42 O. L. R. 380; 14 O. W. N. 31; 43 D. L. R. 732.—CAN.

1059 l. — — *Where erroneous award can be set aside.*]—Although an appeal cannot be brought upon an opinion of the ct. given to arbitrators, who have consulted the ct. on a point

of law arising in the course of the arbn. proceedings, yet the award expressed to be based upon such opinion & incorporating same, if the opinion is erroneous, may be set aside & referred back to the arbitrators as being based on an error of law apparent upon the face of the award.—*Re BRECHIN & DRAPERY IMPORTING CO., LTD.*, [1928] N. Z. L. R. 241.—N.Z.



1054. *Add. Annotation*:—*Refd. Cogstad v. Newsum*, [1921] 2 A. C. 528.

1055. *Add. Annotations*:—*As to (1) Consd. Cogstad v. Newsum*, [1921] 2 A. C. 528. *As to (2) Refd. Cogstad v. Newsum*, [1921] 2 A. C. 528.

1056. *Add. Annotations*:—*Consd. Northwood v. L. C. C.* (1927), 137 L. T. 49. *Refd. Manbre Saccharine Co. v. Corn Products Co.*, [1919] 1 K. B. 198; *Cogstad v. Newsum*, [1921] 2 A. C. 528; *Duff Development Co. v. Kelantan Government* (1925), 41 T. L. R. 375.

1057. *Add. Annotations*:—*Consd. Cogstad v. Newsum*, [1921] 2 A. C. 528. *Refd. Larrinaga v. Soc. Franco-Americaine des Phosphates de Medulla* (1922), 92 L. J. K. B. 45.

1058a. —.]—A special case stated by an arbitrator for the opinion of the ct. is stated under the Act of 1889, s. 19, or s. 7, according as the arbitrator does or does not retain jurisdiction in the reference. If he retains jurisdiction the case is stated under sect. 19, & no appeal lies to the Ct. of Appeal from the decision of the High Ct. upon the special case; but if he makes his award finally, & retains no further jurisdiction in the reference, the case is stated under sect. 7 & an appeal lies from the decision of the ct.

By a submission contained in a charterparty disputes were referred to two arbitrators & if they could not agree, to an umpire. The umpire stated for the opinion of the High Ct. a special case in which he set out the facts, decided that there had been a breach of the charterparty, & assessed damages for the breach. The award concluded with these words: "The question for the opinion of the ct. is whether upon the true construction of the charterparty & the facts stated by me the decisions at which I have arrived are correct in law. If they be correct my award is to stand, but if incorrect in any particulars I desire that the award may be referred back to me for reassessment of the damages due in accordance with the decision of the ct."—*Held*: this was not a final award; the case was, therefore, stated under sect. 19 & no appeal lay to the Ct. of Appeal.—*COGSTAD (C. T.) & Co. v. NEWSUM (H.), SONS & Co.*, [1921] 2 A. C. 528 90 L. J. K. B. 1293; 85 J. P. 253; 37 T. L. R. 995; 19 L. G. R. 581; 27 Com. Cas. 11; *sub nom. Re COGSTAD (C. T.) & Co. & NEWSUM (H.), SONS & Co., LTD.*, 126 L. T. 65; 15 Asp. M. L. C. 369, H. L.; *affg. S. C. sub nom. Re COGSTAD & Co. & NEWSUM, SONS & Co.*, [1921] 1 K. B. 87, C. A.; *previous proceedings, sub nom. LORD (OWNERS) v. NEWSUM, SONS & Co., LTD.*, [1920] 1 K. B. 846.

*Annotation*:—*Expld. & Distd. Larrinaga v. Soc. Franco-Americaine des Phosphates de Medulla* (1922), 92 L. J. K. B. 45.

1059. *Add. Annotations*:—*Consd. Re Wulff & Dreyfus* (1917), 117 L. T. 583; *Re Cogstad & Newsum*, [1921] 1 K. B. 87; *A.-G. for Manitoba v. Kelly*, [1922] 1 A. C. 268; *Kelantan Government v. Duff Development Co.*, [1923] A. C. 395. *Refd. Re Olympia Oil & Cake Co. & MacAndrew Moreland*, [1918] 2 K. B. 771; *Re Parsons & Brixham Fishing Smack Insce. Soc.* (1918), 62 Sol. Jo. 384; *Westacott v. Hahn*, [1918] 1 K. B. 495; *Champsey Bhara v. Jivraj Balloo Spinning & Weaving Co.*, [1923] A. C. 480; *Northwood v. L. C. C.* (1927), 137 L. T. 49; *Roberts v. Anglo-Saxon Insce. Assocn.* (1927),

96 L. J. K. B. 590. *Mentd. Hill v. Showell* (1918), 87 L. J. K. B. 1106; *Payzu v. Saunders*, [1919] 2 K. B. 581; *Finlay v. N. V. Kwik Hoo Tong Handel Maatschappij*, [1928] 2 K. B. 604.

1062. *Add. Annotation*:—*Mentd. Harnett v. Bond*, [1924] 2 K. B. 517.

1067. *Add. Annotations*:—*As to (1) Refd. Larrinaga v. Soc. Franco-Americaine des Phosphates de Medulla* (1922), 92 L. J. K. B. 45. *Generally, Mentd. Metropolitan Water Board v. Kingston Union Assmt. Com.*, [1925] 2 K. B. 509.

1067a. *Finality—Request to court to vary if award wrong in law.*—Disputes which had arisen under a charterparty were referred to arbn. & the arbitrator made his award in the form of a special case in which, after setting out the facts, & holding that the owners had committed a breach of the charterparty, he made an award in favour of the charterers & assessed the damages & costs payable by the owners to the charterers. The case proceeded as follows: "The question for the opinion of the ct. is whether upon the facts as stated by me my award is right in law. If my award be correct then it shall stand; but should the ct. find that it be wrong in law then I request that the ct. shall vary my award as in their discretion they may think fit, both as to the damages & as to the costs . . . except that if the ct. shall only vary my award on the subject of the amount of the damages, my discretion as to the costs of the reference & the costs of my award shall stand"—*Held*: the award was a complete & final award under sect. 7 of the Act of 1889.—*LARRINAGA & Co. v. SOCIETE FRANCO-AMERICAINE DES PHOSPHATES DE MEDULLA* (1922), 92 L. J. K. B. 45; 27 Com. Cas. 160.

*Annotation*:—*Mentd. Hirji Mulji v. Cheong Yue S.S. Co.*, [1926] A. C. 497.

1069a. *Subject-matter of commercial nature—May be transferred to & heard in Commercial Court.*—PRACTICE NOTE, [1927] W. N. 258.

1070. For "Burden of proof on party disputing award" read "Right to begin—Burden of proof on party disputing award."

1071. For "—" read "— — — — —."

1071a. — Award in alternative form—Party claiming damages entitled to begin.—*PATRICK & Co. v. RUSSO-BRITISH GRAIN EXPORT CO., LTD.* (1927), 43 T. L. R. 724.

1071b. *Case stated on unstamped document—Struck out.*—*SYMINGTON & Co. v. UNION INSURANCE SOCIETY OF CANTON* (1927), 164 L. T. Jo. 390.

1073. *Add. Annotation*:—*Refd. Graigola Merthyr Co. v. Swansea Corpn.*, [1928] Ch. 31.

1075. *Add. Annotations*:—*Mentd. County Hotel & Wine Co. v. L. & N. W. Ry.* (1918), 17 L. G. R. 274; *S. E. Ry. v. Cooper*, [1924] 1 Ch. 211; *Birkdale District Electric Supply Co. v. Southport Corpn.*, [1926] A. C. 355.

1082. *Add. Annotation*:—*Refd. Re Cogstad & Newsum*, [1921] 1 K. B. 87.

1083. *Add. Annotation*:—*Refd. Ruf v. Pauwels*, [1919] 1 K. B. 660.

1083a. *Act of 1889, s. 7—Appeal lies to Court of Appeal.*—*COGSTAD (C. T.) & Co. v. NEWSUM (H.), SONS & Co.*, No. 1058a, *ante*.

**1083b. Loss of right to appeal—Acceptance of award.]—**In an arbn. concerning a contract of sale of goods the umpire stated a special case in which he made three different awards, leaving the ct. to decide which was right. The judge having decided that the first award was right, appls. demanded & obtained payment of the amount of that award & gave a receipt therefor. They then

appealed from the decision of the judge & contended that the second award was the right one:—*Held*: having demanded & accepted payment under the first award appls. were precluded from contending that it was wrong.—*DEXTERS, LTD. v. HILL CREST OIL CO. (BRADFORD)*, [1926] 1 K. B. 348; 95 L. J. K. B. 386; 134 L. T. 494; 42 T. L. R. 212; 31 Com. Cas. 161, C. A.

## Part IV.—The Award.

**1086. Add. Annotations:—**Mentd. A.-G. for Manitoba *v. Kelly*, [1922] 1 A. C. 268; *Larrinaga v. Soc. Franco-Americaine des Phosphates de Medulla* (1922), 92 L. J. K. B. 45; *Rockingham Sisters of Charity v. R.*, [1922] 2 A. C. 315.

**1107a. Award signed by all three as arbitrators.]—**Under a submission to arbn. each of the two parties could appoint an arbitrator, & the arbitrators could appoint an umpire. The parties duly appointed arbitrators & the arbitrators appointed an umpire. An award was then made & was signed by these three persons, who added to their signatures the word "arbitrators":—*Held*: the third person who signed the award was properly appointed as umpire, he acted as umpire, & he really intended to sign as umpire, & the fact that he signed as arbitrator was only a matter to require a purely formal amendment.—*BENABU & CO. v. PRODUCE BROKERS CO., LTD.* (1921), 37 T. L. R. 609; *on appeal*, 37 T. L. R. 851, C. A.

**1152a. — Existence of written contract—Signature by one party only.]—**To constitute a contract in writing it is not necessary that such contract should be signed by both parties, & the recital in an award of the existence of a contract in writing between the parties when in fact the contract has been signed by one of them only does not con-

stitute an error in law on the face of the award sufficient to justify the ct. in setting it aside.—*RUF (T. A.) & CO. v. PAUWELS*, [1919] 1 K. B. 660; 88 L. J. K. B. 674; 121 L. T. 36; 83 J. P. 150; 35 T. L. R. 322; 63 Sol. Jo. 372, C. A.

**1165. Add. Annotations:—**Mentd. A.-G. for Manitoba *v. Kelly*, [1922] 1 A. C. 268; *Larrinaga v. Soc. Franco-Americaine des Phosphates de Medulla* (1922), 92 L. J. K. B. 45; *Rockingham Sisters of Charity v. R.*, [1922] 2 A. C. 315.

**1172. Add. Annotation:—**Mentd. *Cayzer, Irvine v. Board of Trade* (1926), 95 L. J. K. B. 1054.

**1182. Add. Annotation:—***Reid. Re Rubel Bronze & Metal Co. & Vos*, [1918] 1 K. B. 315.

**1187. Add. Annotations:—**Consd. *Hirji Mulji v. Cheong Yue S.S. Co.*, [1926] A. C. 497. Mentd. *Manbre Saccharine Co. v. Corn Products Co.*, [1919] 1 K. B. 198; *Clark v. Cox, McEuen*, [1921] 1 K. B. 139; A.-G. for Manitoba *v. Kelly*, [1922] 1 A. C. 268.

**1188. Add. Annotations:—***Reid. Lebeaupin v. Crispin* (1920), 124 L. T. 124; *Sheik Mohammad Habib Ullah v. Bird* (1921), 37 T. L. R. 405. Mentd. *Montevideo Gas & Drydock Co. v. Clan Line Steamers* (1921), 37 T. L. R. 544; *Taylor v. Bank of Athens, Pinnock v. Bank of Athens* (1922), 128 L. T. 795.

### PART IV. SECT. 2.

**k i. — Majority award valid—***Alberta Insurance Act, R. S. A., 1922 (c. 171).*—On a submission to an arbn. of three persons under statutory condition No. 22 in Sched. C. to the above Act, to determine the amount of loss, the decision of a majority of the arbitrators is binding.—*GLASGOW UNDERWRITERS v. SMITH*, [1924] 4 D. L. R. 801; [1924] S. C. R. 531; *affg.*, [1924] 1 D. L. R. 187; 1 W. W. R. 155; 20 Alta. L. R. 114.—CAN.

—*Held*: the award was valid.—*Re BALDWIN & WILLINSKY*, [1925] 1 D. L. R. 1177; 56 O. L. R. 296.—CAN.

**1100 v. — Award by one.]—***Held*: valid.—*Re NATIONAL TRUST CO. & MUNICIPAL DISTRICT OF VALE*, [1925] 3 D. L. R. 459.—CAN.

**1106 ia. — —.]—***Held*: binding.—*MASTERS & McDougall v. STEPHEN, STEPHEN v. MASTERS & McDougall*, [1925] 4 D. L. R. 684; [1925] 3 W. W. R. 493.—CAN.

**1109 viii. — —.]—**Where the arbitrators did not meet together & sign the formal document in the presence of each other:—*Semble*: the award was invalid.—*HARRISON v. HARRISON* (1918), 41 O. L. R. 195; 13 O. W. N. 245.—CAN.

**1109 ix. — —.]—***RYE FARM CO. v. BRITISH OAK INSURANCE CO., LTD.*, [1924] 3 D. L. R. 706; 3 W. W. R. 16.—CAN.

### PART IV. SECT. 5.

**1125 x. — —.]—**An award made upon an arbn. under Municipal Act is published when notice thereof is given by the arbitrators to the municipality.—*Re SWINSON & MUNICIPALITY OF CHARLESWOOD*, [1917] 1 W. W. R. 293; 27 Man. L. R. 234.—CAN.

### PART IV. SECT. 8, SUB-SECT. 2.—A.

**1161 xi. — —.]—**The umpire is bound by the terms of the submission, & he cannot make an award not within its scope.—*PORTER v. PORTER* (1921), 55 I. L. T. 206.—IR.

### PART IV. SECT. 8, SUB-SECT. 2.—B.

**si. — —.]—***Held*: the arbitrators had no power to include in their award interest on the amount found to be the value of the property from the date of taking possession.—*TORONTO CITY CORPN. v. TORONTO RY. CORPN.*, [1925] A. C. 177, P. C.—CAN.

**sa. Reference of "accuracy" & "justice" of accounts.]—***Held*: the arbitrator was appointed to adjust the accounts between the parties on a fair

& equitable basis, & had a discretion whether any interest should be allowed to either party, & in the exercise of that discretion was not bound to apply any rule of law.—*FISHER v. MATSON & CO., MATSON & CO. v. FISHER*, [1918] N. Z. L. R. 1.—N.Z.

### PART IV. SECT. 8, SUB-SECT. 2.—C.

**1185 ii. — Award dismissing claim for short delivery.]—***Held*: words "any claim or dispute arising in connection with this contract" in the arbn. clause included a claim for short delivery of goods.—*GHANANDI LAL-NARAIN DAS v. CHURANJI LAL-POKHAR MAL* (1923), 1 L. R. 4 Lah. 168.—IND.

**1188 i. Submission of any question arising under contract—Award giving damages for non-delivery.]—**Where a contract provided for a reference to arbn. of any question arising under it:—*Held*: the proper conclusion upon the evidence was that the parties, by their course of conduct before the arbitrators, established that the question as to the damages was a matter in dispute & a subject of the reference.—*Re HEAVER WOOD FIBRE CO., LTD., & AMERICAN FOREST PRODUCTS CORPN.*, [1920] 47 O. L. R. 590; 54 D. L. R. 672; 18 O. W. N. CAN.

1263. *Add. Annotation* :—*Reid. Weber v. Birkett*, [1925] 1 K. B. 720.
1281. *Add. Annotation* :—*Mentd. Royal Commission on Sugar Supply v. Kwik-Hoo-Tong Trading Soc.* (1922), 38 T. L. R. 684.
1288. *Add. Annotation* :—*Reid. Weber v. Birkett*, [1925] 1 K. B. 720.
1291. *Add. Citation* :—7 Mod. Rep. 345.
1307. *Add. Annotation* :—*Mentd. Re Boks & Peters, Rushton*, [1919] 1 K. B. 491.
- 1357a. ———.]—*COGSTAD (C. T.) & Co. v. NEWSUM (H.) SONS & Co.*, No. 1058a, *ante*.
- 1357b. ———.]—*LARRINAGA & Co. v. SOCIETE FRANCO-AMERICAINE DES PHOSPHATES DE MEDULLA*, No. 1067a, *ante*.
1361. *Add. Citations* :—88 L. J. K. B. 227; 119 L. T. 558; 83 J. P. 9.  
*Add. Annotation* :—*Reid. Re Fiscel & Mann & Cook*, [1919] 2 K. B. 431.
- 1361a. ———.]—Arbitrators made their award in an alternative form stating a special case & giving to the parties the option of taking the opinion of the ct. upon the points of law involved in it if notice of intention to apply to the ct. was given before a date specified; & in the alternative making an award in favour of one of the parties if, as was the case, no such notice was given. The case was set down for argument in the special paper :—*Held* : the condition was reasonable & the award was good, so that there was nothing for the ct. to deal with.—*LYON (J. L.) & Co., LTD. v. HADDOCK, PARKER & Co.*, [1919] W. N. 11.
1398. *Add. Annotation* :—*Mentd. Ayscough v. Sheed Thomson* (1923), 92 L. J. K. B. 878.
- 1415a. ———.]—Reserved for consideration if required.]—*Re O'CONNOR & WHITLAW'S ARBITRATION*, No. 949a, *ante*.
- 1435a. ———.]—(1) Where parties submitted all matters in difference to arbn., & the award, after reciting the submission, awarded that a certain sum was due & owing from one party to the other :—*Held* : the award must be intended to be made on all the matters referred.

PART IV. SECT. 8, SUB-SECT. 2.—G.

g (p. 479) i. ———.]—*Valuation to be fixed as in open market—Absence of any market.*]—*CANADIAN PACIFIC RY. CO. v. WINDEBANK*, [1917] 3 W. W. R. 99.—CAN.

q i. ———.]—The points for decision on a submission to arbn. were on which partner rested the responsibility for the causes necessitating dissolution, & on which condition the partnership should be dissolved :—*Held* : this did not give jurisdiction to the arbitrator to award payment by one partner of damages because of premature dissolution of the partnership.—*Re ARBITRATION ACT, Re GUYOT & VIGOURET & AWARD MADE BY GOSSELIN*, [1919] 3 W. W. R. 957.—CAN.

PART IV. SECT. 8, SUB-SECT. 3.—D.

1286 iv. ———.]—*Delivery of goods "in fair proportion to all imports."*]—*Held* : the direction to deliver goods "in fair proportion to all imports" was uncertain & lacking in finality & therefore not enforceable.—*THOMPSON, MEGGITT & Co., LTD. v. MOODY* (1920), 21 S. R. N. S. W. 125; 37 N. S. W. W. N. 267.—AUS.

PART IV. SECT. 8, SUB-SECT. 3.—E.

sb. *Award of sum subject to tion—"Good & special reasons."*]—*NOBLE v. CAMPBELLFORD, LAKE ONTARIO & WESTERN RY. CO.* (1918), 21 Can. Ry. Cas. 380.—CAN.

so. *Award for payment for working to "estimated" depth.*]—An award stated that a contractor was entitled to payment at the contract-price for the drilling to an estimated depth of 2,400 feet, saying nothing about the amount to which the contractor was thus entitled :—*Held* : the amount of the contract-price & credits allowed could be ascertained by evidence, & the use of the word "estimated" in the award was definite & amounted to a fixing of the depth at 2,400 feet.—*MCAUGHT v. STOKES-STEPHENS OIL CO., LTD.*, [1919] 1 W. W. R. 952.—CAN.

PART IV. SECT. 8, SUB-SECT. 3.—L.

1356 i. *Award settling dispute—Alternative if court should decide differently.*]—An arbitrator awarded a certain sum, & in the event of the Supreme Ct. determining that certain views expressed by him in his reasons were erroneous, a certain larger sum :—*Held* : in the absence of any such determination the alternative award did not come into operation, & the award was not thereby rendered uncertain.—*MELBOURNE HARBOUR TRUST COMRS. v. HANCOCK*, [1927] V. L. R. 418; 39 C. L. R. 570; [1927] Argus. L. R. 245.—AUS.

PART IV. SECT. 8, SUB-SECT. 9.—D.

1517 i. *Reference of two separate mat-*

(2) It appeared by affidavit that the claims of one of the parties consisted of items for money due, & also for prospective damages, in consequence of a contract between the parties being put an end to by the other side, but as it also appeared that each of the claims was investigated before the arbitrators :—*Held* : a general finding was sufficient that a balance was due to one of the parties.

(3) Where on a reference one of the parties admits the claim of the other, but seeks to reduce the balance by a set-off, it is sufficient for the award to state that a sum is owing to one side or the other, without further noticing the set-off.—*Re CROYDON CANAL CO.* (1839), 1 Per. & Dav. 391.

1439. *Add. Annotation* :—*Mentd. Toachimson v. Swiss Bank Corp.*, [1921] 3 K. B. 110.
1461. *Add. Annotation* :—*Reid. Weber v. Birkett*, [1925] 1 K. B. 720.
1467. *Add. Annotation* :—*Reid. Weber v. Birkett*, [1925] 1 K. B. 720.
1468. *Add. Annotation* :—*Reid. Weber v. Birkett*, [1925], 1 K. B. 720.
1472. *Add. Annotation* :—*Reid. Weber v. Birkett*, [1925] 1 K. B. 720.
1473. *Add. Annotation* :—*Reid. Weber v. Birkett*, [1925] 1 K. B. 720.
1477. *Add. Annotation* :—*Reid. Weber v. Birkett*, [1925] 1 K. B. 720.
1497. *Add. Annotation* :—*Consd. Weber v. Birkett*, [1925] 1 K. B. 720.
1506. *Add. Annotation* :—*Reid. Weber v. Birkett*, [1925] 1 K. B. 720.
1511. *Add. Annotation* :—*Reid. Caven v. Canadian Pacific Ry.* (1925), 133 L. T. 774.
- 1516a. ———.]—*Re CROYDON CANAL CO.*, No. 1435a, *ante*.
- 1593a. ———.]—*A.-G. FOR MANITOBA v. KELLY*, No. 238a, *ante*.
1598. *Add. Annotations* :—*Distd. Champsey Bhara v. Jivraj Balloo Spinning & Weaving Co.*, [1923] A. C. 480. *Consd. Kelantan Government v. Duff Development Co.*, [1923] A. C. 395.

ters—One award.]—*Held* : the award must be referred to the arbitrator to draw up two awards.—*Re DREYFUS & S. A. MILLING & TRADING CO.*, [1923] S. A. S. R. 75.—AUS.

PART IV. SECT. 10.

1520 v. ———.]—Where an arbn. award is valid as to a part thereof & void as to another part, the valid portion, if severable from the rest, is enforceable.—*CITY OF SWIFT CURRENT v. LESLIE*, [1920] 1 W. W. R. 467; 52 D. L. R. 532.—CAN.

1541 ii. ———.]—An award contained two directions :—*Held* : the two directions could not be severed, & although the first direction was valid, the second direction being invalid judgment must be entered for debt.—*THOMPSON, MEGGITT & Co., LTD. v. MOODY* (1920), 21 S. R. N. S. W. 125; 37 N. S. W. W. N. 267.—AUS.

PART IV. SECT. 13, SUB-SECT. 1.

1594 ii. ———.]—The ct. has jurisdiction to set aside an award where error of law appears on the face of it.—*Re CASSWELL & Co., LTD. & DONALD & JACOBS, LTD.*, [1921] N. Z. L. R. 368.—N.Z.

1594 iii. ———.]—*SALEH MAHOMED UMER DOOSAL v. NATHOOMAL KESAMAL* (1927), 54 L. R. Ind. App. 427; 1 L. R. 55 Calo. 126.—IND.



1598a. ———.]—Certain trawlers were insured as to three-quarters of their value in the B. Insurance Co. To save their vessels from destruction by enemy submarine, the owners cut away the trawls, which were not insured, & claimed a general average contribution against the co., of which the owners were members. The rules provided that all disputes should be settled in the first instance by a general meeting of the co., or, on appeal, by two arbitrators & an umpire, none of whom should be lawyers. The general meeting having refused the claim, the owners proceeded to arbn. under a submission which provided that "all matters in difference in reference to the said claim for a general average contribution are referred," etc. The umpire by his award ignored the claim for general average. On a motion to set aside the award:—*Held*: it was bad as disclosing an error in law on the face of it; & having regard to the general terms of the submission, it was not open to resps. to say that a definite point of law had been submitted to arbn., as to which the decision of the arbitrator was final, & the award must be set aside.—*PARSONS v. BRIKHAM FISHING SMACK INSURANCE CO., LTD.* (1918), 118 L. T. 600; 14 Asp. M. L. C. 307; *sub nom. Re PARSONS & BRIKHAM FISHING SMACK INSURANCE CO., LTD.*, 62 Sol. Jo. 384, D. C.

1598b. ———.]—An error in law on the face of an award means that one can find in the award or in a document actually incorporated, as, for instance, a note appended by the arbitrator stating the reasons for his judgment, some legal proposition which is the basis of the award & which is erroneous. Where it is impossible to say, from what is shown on the face of the award, what mistake, if any, the arbitrator has made, or that the arbitrator has tied himself down, on the face of his award, to some special legal proposition which is unsound, the award will stand.—*CHAMPSEY BHARA & CO. v. JIVRAJ BALLOO SPINNING & WEAVING CO.*, [1923] A. C. 480; 92 L. J. P. C. 163; 129 L. T. 166; 39 T. L. R. 253, P. C.

*Annotation*:—*Mentd. Hirji Mulji v. Cheong Yue S.S. Co.*, [1926] A. C. 497.

1599. *Add. Annotations*:—*Consd. Re Cogstad & Newsum*, [1921] 1 K. B. 87; A.-G. for Manitoba *v. Kelly*, [1922] 1 A. C. 268; *Champsey Bhara v. Jivraj Balloo Spinning & Weaving Co.*, [1923] A. C. 480; *Kelantan Government v. Duff Development Co.*, [1923] A. C. 395; *Northwood v. L. C. C.* (1927), 137 L. T. 49; *Roberts v. Anglo-Saxon Insce. Assocn.* (1927), 96 L. J. K. B. 590. *Mentd. Payzu v. Saun-*

1599 i. ———. *In special case submitted to High Court.*—*Re BRECHIN & DRAPERY IMPORTING CO., LTD.*, No. 1059 i, *ante*.—N.Z.

1604 ii. ———. *Apparent on face of award.*—*Held*: the mistake rendered the award invalid.—*BEACH v. HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO*, [1924] 4 D. L. R. 995; 56 O. L. R. 35.—CAN.

1606 vii. ———. *Omission to mention agreed disposition of property.*—*Held*: the arbitrator was entitled to supply the omission by an addition to the award.—*DEBRET v. DEBRET*, [1917] 3 W. W. R. 503; 10 Sask. L. R. 366.—CAN.

PART IV. SECT. 13, SUB-SECT. 2.—B. (a).

1626 i. *General reference of all mat-*

*ters in dispute.*—*Held*: the parties were bound by the arbitrator's award however erroneous in law it might be.—*NATIONAL MORTGAGE & AGENCY CO., LTD. v. BRAID & CO.*, [1923] N. Z. L. R. 933.—N.Z.

1630 vi. ———.]—Where a question of law has been submitted to the arbitrators their decision is not open to review.—*Re MCNAUGHT & STOKES-STEPHENS OIL CO., LTD.* (No. 3) (1919), 14 Alta. L. R. 148.—CAN.

PART IV. SECT. 13, SUB-SECT. 2.—B. (b).

1649 vii. ———.]—It is no ground for setting aside an award that an ex-

ders, [1919] 2 K. B. 581; *Taylor v. Bank of Athens*, *Pinnock v. Bank of Athens* (1922), 91 L. J. K. B. 776; *Finlay v. N. V. Kwik Hoo Tong Handel Maatschappij*, [1928] 2 K. B. 604.

1603a. ———. *Immaterial to decision.*—*BUERGER & Co. v. BARNETT*, No. 1822a, *post*.

1614. *Add. Annotation*:—*Consd. A.-G. for Manitoba v. Kelly*, [1922] 1 A. C. 268.

1622. *Add. Annotation*:—*Refd. Re Becker, Shillan & Barry*, [1921] 1 K. B. 391.

1624. *Add. Annotations*:—*Expld. Re Becker, Shillan & Barry*, [1921] 1 K. B. 391. *Refd. Larinaga v. Soc. Franco-Americaine des Phosphates de Medulla* (1922), 92 L. J. K. B. 45.

1643. *Add. Annotations*:—*Refd. A.-G. for Manitoba v. Kelly*, [1922] 1 A. C. 268; *Kelantan Government v. Duff Development Co.*, [1923] A. C. 395.

1644. *Add. Annotation*:—*Refd. Kelantan Government v. Duff Development Co.*, [1923] A. C.

1644a. ———.]—Though an award may be set aside for an error of law appearing on the face of it, & though a question of construction is, generally speaking, a question of law, yet, where a question of construction is the very thing referred for arbn., then the decision of the arbitrator upon that point cannot be set aside by the ct. only because the ct. would itself have come to a different conclusion. If it appears by the award that the arbitrator has proceeded illegally, for instance, that he decided on evidence which in law is not admissible or on principles of construction which the law does not countenance, then there is error in law which may be ground for setting aside the award; but the mere dissent of the ct. from the arbitrator's conclusion on construction is not enough for that purpose.—*KELANTAN GOVERNMENT v. DUFF DEVELOPMENT CO.*, [1923] A. C. 395; 129 L. T. 356; 39 T. L. R. 337; 67 Sol. Jo. 437, H. L.; *previous proceedings, sub nom. DUFF DEVELOPMENT CO. v. KELANTAN GOVERNMENT*, [1923] 1 Ch. 385, C. A.

1645. *Add. Annotations*:—*As to* (1) *Apprvd. Champsey Bhara v. Jivraj Balloo Spinning & Weaving Co.*, [1923] A. C. 480. *Consd. Roberts v. Anglo-Saxon Insce. Assocn.* (1927), 96 L. J. K. B. 590. *Refd. A.-G. for Manitoba v. Kelly*, [1922] 1 A. C. 268; *Kelantan Government v. Duff Development Co.*, [1923] A. C. 395.

1647. *Add. Annotation*:—*Consd. Kelantan Government v. Duff Development Co.*, [1923] A. C. 395.

amination of the materials before the arbitrator discloses that his findings are unsupported by, or against, the weight of evidence.—*LATHAM v. FOSTER'S AUSTRALIAN FIBRES, LTD.*, [1926] V. L. R. 427.—AUS.

PART IV. SECT. 13, SUB-SECT. 3.

1665 i va. ———.]—Where an arbitrator has made an award in respect of a claim involving the proof of a number of items, an affidavit of the arbitrator setting out the items in respect of which he has made his award, & the amount he awarded in respect of each item of the claim, is inadmissible in evidence.—*HALLIGAN v. LAWSON* (1922), 22 S. R., N. S. W. 501; 39 N. S. W. W. N. 204.—AUS.

1667. *Add. Annotation*:—*Consd. Sutherland v. Hannevig*, [1921] 1 K. B. 336.

1668a. — — — *Act of 1889, s. 7 (c).*—An arbitrator in making his award gave two sets of costs to one of the parties in terms which were not sufficiently explicit, & subsequently on the request of one party added explanatory words & issued an amended award:—*Held*: inasmuch as the original award was in the language intended by the arbitrator & neither contained words which he had meant to omit, nor omitted words which he had intended to insert, the fact that he had failed to choose apt words to convey his meaning was not an “accidental slip or omission” entitling him to amend his award under the above sect., & the amended award must be set aside.—*SUTHERLAND & Co. v. HANNEVIG BROTHERS, LTD.*, [1921] 1 K. B. 336; 90 L. J. K. B. 225; 37 T. L. R. 102; *sub nom. Re SUTHERLAND & Co. & HANNEVIG BROTHERS, LTD.*, 125 L. T. 281; 15 Asp. M. L. C. 203, D. C.

1669. *Add. Annotation*:—*Refd. Sutherland v. Hannevig*, [1921] 1 K. B. 336.

1698. *Add. Annotations*:—*Refd. A.-G. for Manitoba v. Kelly*, [1922] 1 A. C. 268. *Mentd Larrinaga v. Soc. Franco-Americaine des Phosphates de Medulla* (1922), 92 L. J. K. B. 45; *Rockingham Sisters of Charity v. R.*, [1922] 2 A. C. 315.

1701a. *Liability to cross-examination.*—In June, 1913, claimants, R. & Co., effected an insurance with resps., an insurance co., whereby the insurance co. agreed that, if at any time during the period covered by the policy the premises of claimants should be destroyed by fire, & their business should be thereby interfered with or interrupted, they would pay to claimants monthly until such time as the reduction in turnover in consequence of the fire should have ceased, but not exceeding in all nine months, on account of annual net profit & charges as therein set forth, the same percentage on the amount by which the turnover in each month should in consequence of the fire be less than the turnover for the corresponding month of the year preceding the fire as the sum or sums thereby insured should bear to the total of the turnover for the last financial year. It was provided that the amount of the losses under the policy should be assessed by

claimants' auditors, L. & G. A condition on the back of the policy provided for reference to arbn. of all differences arising out of the policy. The premises of claimants were destroyed by fire on July 22, 1913, a date within the period covered by the policy. G., a member of the firm of L. & G., duly assessed the amount of the loss suffered by claimants in respect of profits for the period of nine months succeeding the fire. Differences having arisen in regard to the payments under the policy, the parties went to arbn. G. was called as a witness by claimants at the arbn. proceedings, & stated that although it did not so appear on the face of the assessments he was at the time of signing the same satisfied that the losses of the turnover respectively therein stated were in fact sustained in consequence of the fire. There was no suggestion of any fraud on the part of the assessor:—*Held*: as G., whether regarded as an arbitrator or an assessor, had been called to give oral testimony he could be cross-examined on all relevant issues & consequently could be cross-examined to show that he had failed to take into account certain considerations necessary for arriving at the reduction in the turnover of claimants due solely to the fire.—*RECHER & Co. v. NORTH BRITISH & MERCANTILE INSURANCE Co.*, [1915] 3 K. B. 277; 84 L. J. K. B. 1813; 113 L. T. 827, D. C.

1706. *Add. Annotations*:—*Mentd. Stollmeyer v. Trinidad Lake Petroleum Co.*, [1918] A. C. 498, n.; *Slack v. Leeds Industrial Co-operative Soc.*, [1923] 1 Ch. 431.

1715. *Add. Annotation*:—*Mentd. Spencer v. Hemmerde* (1922), 128 L. T. 33.

1735. *Add. Annotation*:—*Refd. Conquer v. Boot*, [1928] 2 K. B. 336.

1738. After this case add “Personal representative.”—*See Vol. XXIV.*, p. 621, Nos. 6508, 6509, & compare original volume, pp. 393 *et seq.*”

1751. *Add. Annotation*:—*Refd. Czarnikow v. Roth, Schmidt*, [1922] 2 K. B. 478.

1758. *Add. Annotation*:—*Refd. Ayscough v. Sheed Thomson* (1923), 92 L. J. K. B. 878.

1761. *Add. Annotation*:—*Refd. Ayscough v. Sheed Thomson* (1923), 92 L. J. K. B. 878.

1762. *Add. Annotation*:—*Refd. Ayscough v. Sheed Thomson* (1923), 92 L. J. K. B. 878.

1666 iii. — — — *Effect of statute—Arbitration Act, 1914 (c. 85).*—*Held*: the arbitrator had power to amend his award under s. 10 (c) of the above Act.—*Re WHITE & CITY OF TORONTO* (1917), 38 O. L. R. 337.—CAN.

1671 vii. — — — *Unless award not truly stating arbitrator's opinion.*—An appellate ct. should not interfere to vary an award unless it is satisfied that the award did not truly represent the honest opinion of the arbitrators as to damages, or that their basis of valuation was erroneous.—*Re SCOTT & OSHAWA TOWN* (1922), 52 O. L. R. 504.—CAN.

1671 viii. — — — *Power to increase amount.*—The amount awarded by an arbitrator may, upon consideration of the evidence, be increased by the appellate ct.—*LAKE ERIE & NORTHERN RY. Co. v. BRANTFORD GOLF & COUNTRY CLUB* (1918), 21 Can. Ry. Cas. 360; 32 D. L. R. 219.—CAN.

J.S.

#### PART IV. SECT. 15, SUB-SECT. 2.—A. (b).

1723 xi. — — — *Damages—Unless wrong principle followed.*—*LAKE ERIE & NORTHERN RY. Co. v. MUIR* (1918), 21 Can. Ry. Cas. 350.—CAN.

#### PART IV. SECT. 15, SUB-SECT. 2.—A. (c).

ni. — — —]—Where arbn. proceedings are initiated by a provincial railway co. & much of the evidence is received before an amalgamation of the co. with a Dominion railway co. is effected & the proceedings are allowed to proceed after the amalgamation, until practically all that remained to be done is the making of the award, the Dominion co. is bound by the award made as a result of such proceedings.—*HANEY v. CANADIAN NORTHERN RY. Co.*, [1917] 3 W. W. R. 105; 36 D. L. R. 674.—CAN.

#### PART IV. SECT. 15, SUB-SECT. 2.—D. *sd. Jurisdiction of court ordering*

*reference.*—Where an order for a reference is made with the consent of the solrs. on both sides, & arbitrators are appointed in pursuance of such order, & the arbitrators take evidence & file their award, counsel for both parties taking no objection to the regularity of the proceedings, the parties will not be permitted, afterwards, to attack the award or the subsequent proceedings on the ground that the ct. by which the order for reference was made had no jurisdiction to do so.—*HALL v. ELECTRIC COMRS. OF LAWRENCETOWN*, [1921] 54 N. S. R. 283; 57 D. L. R. 535.—CAN.

#### PART IV. SECT. 16, SUB-SECT. 1.

ni. — — — *Compulsory reference—Subsequent voluntary submission.*—*Held*: the award of the arbitrator was not open to review by the ct.—*ROYAL COMMISSION OF WHEAT SUPPLIES v. USHER & Co., LTD.*, [1920] 2 L. R. 483.—IR.

1786 ia. — — — *Appellate Division of*



1799a. — Single judge of High Court.]—PRODUCE BROKERS, LTD. v. BLYTH, GREENE, JOURDAIN & Co., LTD., No. 1960a, *post*.

1822. *Add. Annotations*:—*Reid*. Buerger v. Barnett (1919), 89 L. J. K. B. 161; Ozarnikow v. Roth, Schmidt, [1922] 2 K. B. 478.

1822a. Question to be raised immaterial.]—(1) It is not misconduct on the part of an arbitrator or umpire, within the Act of 1889, s. 11, to refuse to state a case, under sect. 7 (b) or 19 of the Act, for the opinion of the ct. on a point of law, if his finding on a question of fact makes the question which would be raised by the case immaterial.

(2) An award is not vitiated by an error in law on the face of it, if the error is not material to the decision.—BUERGER & Co. v. BARNETT (1919), 89 L. J. K. B. 161; 120 L. T. 570; 35 T. L. R. 260; 63 Sol. Jo. 391, D. C.

1822b. .]—When questions of law arise in an arbn. it is of the greatest importance that the right of the parties to obtain the assistance of the ct. at any period of the proceedings should be fully enforced, though the arbn. tribunal has not passed through all the stages of its own procedure providing for an appeal from the award. If the umpire by refusing to make his award in the form of a special case deprives the parties of the right to have questions of law, which are neither frivolous nor vexatious but are substantial, decided by the ct., he is guilty of misconduct & his award will be set aside.—*Re FISCHER & Co. & MANN & COOK*, [1919] 2 K. B. 431; 121 L. T. 275; *sub nom.* FISCHER & Co. v. MANN & COOK, 88 L. J. K. B. 1173, D. C.

1825a. Disregarding statute passed after hearing but before issue of award.]—(1) Resps. to an arbn. had hired of claimant, for a certain period, a number of horses which, on the outbreak of war & before the expiry of the period, were commandeered by the War Office. He then refused to pay the hire for the full period on the ground of frustration of the adventure. At the hearing of the arbn. on June 19, 1917, claimant did not press for hire after the seizure of the horses, & on July 31, 1917, the arbitrator issued his award, giving claimant the amount due up to the date of the seizure, but not afterwards. On July 10, 1917, Courts Emergency Powers Act, 1917 (c. 25), had come into operation, but there was nothing to show

*Supreme Court.*]—An appeal from or a motion to set aside or remit an award must be to the Appellate Div. of the Supreme Ct.—*SNIDER v. MILLER*, [1924] 2 D. L. R. 617; 1 W. W. R. 1163; 20 Alta. L. R. 237; *affg.*, [1924] 1 D. L. R. 198; [1923] 3 W. W. R. 1376.—CAN.

1802 III. —.]—In a submission to arbn. the parties thereto agreed that the Arbn. Act should not apply therein, & that the decision of the arbitrator should be final & binding upon both parties:—*Held*: this agreement was void as against public policy.—*BRACH v. HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO*, [1924] 4 D. L. R. 995; 56 O. L. R. 35.—CAN.

#### PART IV. SECT. 16, SUB-SECT. 2.—A.

s. 1. —.]—Unless in the procedure adopted by the arbitrators there has been something radically wrong or vicious an award cannot be impeached on the ground that the technical web of judicial procedure & rules of evidence

which surround judicial procedure were not strictly adhered to.—*MAURIG SHWE HPU v. U MIN NYUN* (1925), 1 L. R. 3 Ran. 387.—IND.

*se. Award reciting order of reference not fixing time for delivery of award.*]—*Held*: an award which recited an order of reference not fixing a time for delivery of the award was *prima facie* liable to be set aside, but Supreme Ct. Ordinance, 1876, of the Gold Coast, Ord. 52, rr. 12 (c) & 13, prevented the omission from having that effect.—*YAMIKE KWEKU v. ANNOR ADJAYE*, [1926] A. C. 755; 95 L. J. P. O. 157; 135 L. T. 642.—GOLD COAST.

#### PART IV. SECT. 16, SUB-SECT. 2.—B.

s. 1. — *Refusal to state case.*]—Neglect by an arbitrator to state a case for the opinion of the ct. after being definitely asked by either of the parties to do so is *prima facie* technical misconduct for which his award may be set aside.—*FISHER v. MATSON & Co.*, *MATSON & Co. v. FISHER*, [1918]

whether the arbitrator was or was not aware of the Act. On a motion to set aside the award on the ground of the technical misconduct of the arbitrator in not taking the statute into consideration:—*Held*: whether or not the arbitrator was aware of the Act, he had applied its principles, & consequently, there was no misconduct; the parties were not taken by surprise, & the award was good.

(2) It has been contended that the fact that the arbitrator did not know or take cognisance of the Act, which was passed after the hearing of the arbn. & before the issue of the award, constituted misconduct. I doubt very much whether that would amount to misconduct, although possibly it might amount to surprise (A. T. LAWRENCE, J.)—*OSMOND v. WOOLLEY* (1917), 87 L. J. K. B. 822; 118 L. T. 29; 34 T. L. R. 133, D. C.

1826. *Add. Annotation*:—*Reid*. Cayzer, Irvine v. Board of Trade (1926), 95 L. J. K. B. 1054.

1827. *Add. Annotation*:—*Reid*. *Re Boks & Peters*, Rushton, [1919] 1 K. B. 491.

1839a. Surprise—What amounts to.]—*OSMOND v. WOOLLEY*, No. 1825a, *ante*.

1850a. — Objection to authority of arbitrator to determine dispute.]—The owner of a timber estate sold the whole of the timber thereon to a timber co. in consideration of fully paid up shares in the co. Subsequently by policies effected in his own name with several insurance cos. he insured this timber against fire. The greater part of the timber having been destroyed by fire, he sued the insurance cos. to recover the loss, but the actions were stayed & the matter was referred to arbn. in pursuance of the conditions contained in the policies. Claimant was the sole shareholder in the co. & was also a creditor of the co. to a large extent. The arbitrator held that claimant had no insurable interest in the goods insured & disallowed the claim:—*Held*: claimant having allowed the point of want of insurable interest to be raised before the arbitrator without objection, it was not open to him to call in question the authority of the arbitrator to entertain it.—*MACAURA v. NORTHERN ASSURANCE Co.*, [1925] A. C. 619; 94 L. J. P. C. 154; 133 L. T. 152; 41 T. L. R. 447; 69 Sol. Jo. 777; 31 Com. Cas. 10, H. L.

*Annotation*:—*Mentd.* Hirji Mulji v. Cheong Yue S.S. Co., [1926] A. C. 497.

1851a. —.]—*DEXTERS, LTD. v. HILL CREST OIL Co. (BRADFORD)*, No. 1083b, *ante*.

N. Z. L. R. 1.—N.Z.

1811 II a. —.]—Where in a paving contract with a city the city's engineer is made arbitrator, he must guard against being unduly influenced by his employers; & if it appears that he is so biased as to be likely not to decide fairly, then the contractor will not be bound by his decision.—*BLOME v. CITY OF REGINA*, [1920] 1 W. W. R. 311; 50 D. L. R. 93; 13 Alta. L. R. 94.—CAN.

#### PART IV. SECT. 16, SUB-SECT. 3.

1852 XI. — *Consent to extension of time for making award.*]—*Held*: the act of consent to extension of time, & recognition of the propriety of the arbitrators making the award, precluded objection to the award on the ground of misconduct.—*POWIS v. VANCOUVER (CITY)*, *RAMAGE v. VANCOUVER (CITY)* (1917), 23 B. C. R. 180.—CAN.

1852 XII. —.]—Where applts.



**1857a. By motion.]—**Any objection to an award on the ground of misconduct or irregularity on the part of an arbitrator must be taken by motion to set aside or remit the award, & if not so taken [within the time limited by R. S. C., Ord. 64, r. 14] cannot be pleaded in answer to an action on the award (*per Cur.*).—**OPPENHEIM & Co. v. MAHOMED HANEEF**, [1922] 1 A. C. 482; 91 L. J. P. C. 205; 127 L. T. 196, P. C.

*Annotation:—***Apld.** **Scrimaglio v. Thornett & Fehr** (1924), 131 L. T. 174.

**1857b. —.]—****SCRIMAGLIO v. THORNETT & FEHR**, No. 135a, *ante*.

**1857c. — Entered in special paper.]—**A motion to set aside an award which has been stated in the form of a special case should be entered in the special paper, & both the motion & the special case should be argued before the judge who takes the special paper. Where a special case has been set down in the special paper & subsequently notice of motion is given to set aside the award, the motion should be set down also in the special paper.—**Re COWAN BROTHERS, LTD. & RYMER (HENRY) & Co.**, [1919] W. N. 140, D. C.

**1869. Add. Annotation:—****Refd.** **Re Campbell** (1919), 88 L. J. Ch. 519.

**1912a. — Failure to apply within time limit.]—****OPPENHEIM & Co. v. MAHOMED HANEEF**, No. 1857a, *ante*.

**1912b. —.]—****SCRIMAGLIO v. THORNETT & FEHR**, No. 135a, *ante*.

**1925. Add. Annotations:—****Refd.** A.-G. for Manitoba v. Kelly, [1922] 1 A. C. 268; Kelantan Government v. Duff Development Co., [1923] A. C. 395.

**1943. Add. Annotations:—****Refd.** A.-G. for Manitoba v. Kelly, [1922] 1 A. C. 268; Champsey Bhara v. Jivraj Balloo Spinning & Weaving Co., [1923] A. C. 480; Kelantan Government v. Duff Development Co., [1923] A. C. 395; Roberts v. Anglo-Saxon Insce. Assocn. (1927), 96 L. J. K. B. 590.

**1950a. Misconduct.]—****OPPENHEIM & Co. v. MAHOMED HANEEF**, No. 1857a, *ante*.

**1954a. —.]—**Where an arbitrator in making his award deals with the costs of the award & his own personal costs, but does not mention the costs of the parties in the reference, the ct. will not presume that he has exercised his discretion to make no order as

to costs, or to leave each side to pay their own costs, but will remit the award to the arbitrator to exercise his discretion in express terms.—**Re BECKER, SHILLAN & Co. & BARRY BROTHERS**, [1921] 1 K. B. 391; 90 L. J. K. B. 316; 124 L. T. 604; *sub nom.* **BECKER, SHILLAN & Co. v. BARRY BROTHERS**, 37 T. L. R. 101, D. C.

*Annotations:—***Consd.** **Bradshaw v. Air Council**, [1926] Ch. 329. **Refd.** **Larrinaga v. Soc. Franco-Américaine des Phosphates de Medulla** (1922), 92 L. J. K. B. 45.

**1960a. By motion—Before single judge of High Court.]—**A judge of the High Ct. sitting alone may entertain a motion to set aside or remit for further statement an award stated in the form of a special case.—**PRODUCE BROKERS, LTD. v. BLYTH, GREENE, JOURDAIN & Co., LTD.** (191) 88 L. J. K. B. 597; 119 L. T. 311; 34 T. L. R. 419.

*Annotation:—***Folld.** **Re Cowan & Rymer**, [1919] W. N. 140.

**1960b. —.]—****OPPENHEIM & Co. v. MAHOMED HANEEF**, No. 1857a, *ante*.

**1981. For the paragraph in original volume substitute the following paragraph:—**

**Foreign award—Whether enforceable as judgment of foreign court.]—**An award in a foreign arbn. [unenforceable in the foreign country without an enforcement order] is not a decision which a ct. here ought to recognise as a foreign judgment, & cannot be enforced.—**MERRIFIELD, ZIEGLER & Co. v. LIVERPOOL COTTON ASSOCN., LTD.** (1911), 105 L. T. 97; 55 Sol. Jo. 581.

*Annotation:—***Refd.** **Harrop v. Harrop**, [1920] 3 K. B. 386.

**1981a. — Action on—By what law contract governed.]—**Pltfs., an insurance co. in London, & defts., an insurance co. in Norway, entered into a written contract headed "Re-insurance contract—Marine Insurance." The contract was not stamped as a policy, but it contained the usual terms of a reinsurance treaty, pltfs. being the reinsured & defts. the reinsurers, & there was a clause providing that in the event of disputes an arbn. should take place in Norway. The contract was signed by pltfs. in Norway & by defts. in London & was stamped with an English six-penny stamp, but not in accordance with the English law as to contracts of marine insurance, but it was valid by the law of Norway. An arbn. under the contract was held in Norway & an award was issued in

went on with an arbn. without objection after an irregularity had occurred:—**Held:** they were precluded from seeking to set aside the award on the ground of the irregularity.—**U GUNAWA v. U PYINNYADIPA** (1923), 1 L. R. 1 Ran. 15.—**IND.**

**1852 xlii. —.]—**A reference was made to arbiters to determine the amount payable by a landlord to his tenant in respect of sheep stock:—**Held:** pursuer having full knowledge of the nature of the stock that was tendered to him, & having accepted the stock & dealt with it as if it was his own, was barred from objecting to the award of the oversman.—**FLETCHER v. ROBERTSON** (1919), 56 So. L. R. 305; [1919] 1 S. L. T. 260.—**SCOT.**

**st. Award following opinion of court on case stated.]—****Held:** the award might be set aside notwithstanding that it followed the opinion of the ct. upon a case stated under Arbn. Act, s. 29.—**Re MCCONKEY'S ARBITRATION** (1920), 17 O. W. N. 829; 47 O. L. R. 411.—**CAN.**

#### PART IV. SECT. 16, SUB-SECT. 4.—C.

**1998 i. Grounds for extension—Not mistake of counsel on question of law or practice.]—**On a motion to extend the time for making an application to set aside an award:—**Held:** where the rules require special circumstances to be shown upon an application for extension of time, the mistake of counsel or solr. upon a question of law or practice does not constitute a special circumstance justifying the intervention of the ct.—**Re SWEINSSON & MUNICIPALITY OF CHARLESWOOD**, [1917] 1 W. W. R. 293; 27 Man. L. R. 234.—**CAN.**

**Under Consolidated Municipal Act, 1922, ss. 333, 345 (1).—****Re VAHRY & CARLETON COUNTY**, [1924] 4 D. L. R. 1055; 56 O. L. R. 129.—**CAN.**

#### PART IV. SECT. 16, SUB-SECT. 4.—D.

**sk. Limited to evidence taken down in writing by arbitrator.]—****Re NEW BRUNSWICK GAS & OILFIELDS, LTD. & NEW BRUNSWICK ELECTRIC POWER COM.** (N.B.), [1926] 2 D. L. R. 102.—**CAN.**

#### PART IV. SECT. 17, SUB-SECT. 2.

**al. Under 2 Edw. 7, c. 107, ss. 12, 21—Grounds for remitting.]—****Re COLEMAN & TORONTO & NIAGARA POWER Co.** (1917), 40 O. L. R. 130; 38 D. L. R. 65.—**CAN.**

#### PART IV. SECT. 17, SUB-SECT. 3.

**r i. —.]—**Unless there is a mistake in law or fact evident on the face of the award itself, or the arbitrator admits that he has made a mistake in law or fact, or there has been fraud or corruption, the award will not be referred back.—**Re FOX & CONSOLIDATED MINING & SMELTING Co. OF CANADA**, [1925] 1 D. L. R. 245; [1924] 3 W. W. R. 861.—**CAN.**

**r ii. — Arbitrators alleging mistake.]—**The ct. will not remit an award because the arbitrators allege a mistake involving an impeachment of their award.—**ROBINS v. ANDREWS**, [1923] 2 D. L. R. 353; 1 W. W. R. 963.—**CAN.**

favour of plffs. In an action on the award defts. submitted that the law applicable to the whole contract must be the law of England, & that, since the contract neither was a policy as required by English law nor was properly stamped as such a policy, plffs. could not recover on the award:—*Held*: as the action was brought on the award, & as the proper inference from the provision as to the arbn. being held in Norway was that the parties intended the law of Norway to govern the contract, plffs. were entitled to recover the sum awarded.—*NORSKE ATLAS INSURANCE CO., LTD. v. LONDON GENERAL INSURANCE CO., LTD.* (1927), 43 T. L. R. 541.

1985. *Add. Annotation*:—*Mentd. Re Campbell*, [1920] 1 Ch. 35.

After this case add “*See, now, R. S. C., Ord. 11, r. 8a.*”

1985a. *Grounds for granting or refusing order—Objection to award.*—Where there is no objection to an award or where the objection raised is one which can easily be disposed of, the summary procedure provided by the Act of 1889, s. 12, is prompt & convenient; but where there are matters which may gravely affect the validity of the award or the right to proceed under it, it is proper that they should be dealt with by an action in which the facts can be fully ascertained, & no order under the sect. should be made giving leave to proceed summarily under the award.—*Re Boks & Co. & PETERS, RUSHTON & Co.*, [1919] 1 K. B. 491; 88 L. J. K. B. 351; 120 L. T. 516, C. A.

1985b. — *Award against Crown.*—An award against the Crown in an arbn. under the Act of 1889 cannot, for the purpose of enforcement, be treated as a judgment or decree on a petition of right, & under sect. 12 of that Act leave to enforce the award as a judgment or order will be refused.—*GRECH v. BOARD OF TRADE* (1923), 92 L. J. K. B. 956; 130 L. T. 16; 39 T. L. R. 630; 67 Sol. Jo. 725, C. A.

#### PART IV. SECT. 19, SUB-SECT. 4.—C.

2050 iii a. — — —.]—B., an arbitrator, in the absence of & without notice to one of the parties, made an award:—*Held*: although the award might have been set aside for misconduct of the arbitrator if moved against in time, yet, the award being final, the misconduct could not be set up as an answer to an action upon the award.—*TOURANGEAU v. SANDWICH WEST TOWNSHIP*, [1920] 48 O. L. R. 306; 56 D. L. R. 83.—CAN.

2050 iii b. — — —.]—In a suit in India upon an award made upon a submission to arbn. in England, irregularity or misconduct in arriving at the award is not a defence.—*OPPENHEIM & Co. v. MAHOMED HANKEF* [1922] 1 A. C. 482; 91 L. J. P. C. 205; 127 L. T. 196; 49 L. R. Ind. App. 174.—IND.

2050 iii c. — — —.]—An award duly made in England under the English Act of 1889 can be enforced by a suit in an Indian ct., & cannot be set aside by an Indian ct. on any ground of misconduct or irregularity on the part of the arbitrator.—*JOHN BATT & Co. (LONDON) v. KANOOLAL & Co.* (1925), 1 L. R. 53 Cal. 65.—IND.

#### PART IV. SECT. 19, SUB-SECT. 8.

sm. *What defences available.*—Appls. brought an action against the Commonwealth to recover money due under two contracts. While the action was pending the A.-G. of the Common-

wealth agreed to submit to arbn. the matters in dispute between the parties. This agreement recited the making of the two contracts. The arbitrator having made his award in favour of the Commonwealth, applts. moved to set aside the award or to remit it to the arbitrator on certain grounds, none of which related to the validity of either of the contracts. That motion was dismissed. On an application by the Commonwealth for leave to enforce the award:—*Held*: applts. were not entitled to challenge the validity of the two contracts or the authority of the A.-G. to make the agreement for arbn.—*KIDMAN v. COMMONWEALTH OF AUSTRALIA* (1925), 37 C. L. R. 233; 26 S. R. N. S. W. 379; 43 N. S. W. L. N. 11; [1926] Argus L. R. 118.—AUS.

sn. *Arbitration Act, 1909, s. 13—Award merely determining rights.*—The above sect. does not authorise a judge to give leave to issue execution directly on an award which merely determines rights, but says nothing as to the amount to which the successful party is entitled.—*Re MCNAUGHT & STOKES-STEPHENS OIL CO. (No. 2)*, [1918] 3 W. W. R. 337; 43 D. L. R. 7.—CAN.

sq. *Arbitration Act, R. S. M., 1913 (c. 9)—Award under Municipal Act.*—Arbn. Act, R. S. M., 1913 (c. 9), applies to awards under Municipal Act unless expressly conflicting with the latter Act. Where an award on an arbn. under Municipal Act is made on a written submission & fixes not only the

1986. *Add. Annotation*:—*Distd. Richardsons & Bradley v. Bernhard*, [1925] 2 K. B. 121.

2043. *Add. Annotation*:—*Mentd. Spencer v. Hemmerde* (1922), 128 L. T. 33.

2048. *Add. Annotation*:—*Mentd. Weber v. Birkett*, [1925] 1 K. B. 720.

2053. *Add. Annotation*:—*Mentd. L. & N. E. Ry. v. Easington Union Assmt. Com. & Easington-with-Thorpe Parish Council* (1925), 95 L. J. K. B. 255.

2056a. — — —.]—*OPPENHEIM & Co. v. MAHOMED HANEEF*, No. 1857a, ante.

2059. *Add. Annotation*:—*Refd. Joachimson v. Swiss Bank Corp.*, [1921] 3 K. B. 110.

2141. *Add. Annotation*:—*Mentd. Re Boks & Peters, Rushton*, [1919] 1 K. B. 491.

2187. *Add. Annotations*:—*Apld. Bradshaw v. Air Council*, [1926] Ch. 329. *Refd. Haynes v. Aldridge Colliery Co.* (1923), 130 L. T. 282; *Mansfield v. Robinson*, [1928] 2 K. B. 353.

2213. *Add. Annotation*:—*Consd. Kursell v. Timber Operators & Contractors*, [1923] 2 K. B. 202.

2226. *Add. Annotation*:—*Mentd. Sutherland v. Hannevig*, [1921] 1 K. B. 336.

2244. *Add. Annotation*:—*Refd. Akt. Ocean v. Harding*, [1928] 2 K. B. 371.

2326. *Add. Annotation*:—*As to (1) Refd. Reid, Hewitt v. Joseph*, [1918] A. C. 717.

2331. *Add. Annotation*:—*Refd. Akt. Ocean v. Harding*, [1928] 2 K. B. 371.

2332. *Add. Annotations*:—*Consd. Reid, Hewitt v. Joseph*, [1918] A. C. 717. *Refd. Terry v. Gould* (No. 2) (1924), 69 Sol. Jo. 212; *Weber v. Birkett*, [1925] 1 K. B. 720.

2336. *Add. Annotation*:—*Consd. Reid, Hewitt v. Joseph*, [1918] A. C. 717.

2340. *Add. Annotations*:—*Consd. Keen v. Towler* (1924), 41 T. L. R. 86. *Apld. King v. Sunday Pictorial Newspapers* (1920) (1924), 133 L. T. 397.

2344. *Add. Annotation*:—*Apld. Re Becker, Shillan & Barry*, [1921] 1 K. B. 391.

amount but also the liability, it may be entered on application as a judgment of the Ct. of King's Bench & enforced accordingly.—*SWEINSSON v. RURAL MUNICIPALITY OF CHARLESWOOD*, [1917], 3 W. W. R. 201; 36 D. L. R. 32.—CAN.

#### PART IV. SECT. 20, SUB-SECT. 1.—D. (b).

ii. — *Arbitration Act, R. S. M., 1913 (c. 9)—Greater Winnipeg Water District Act, 1913 (c. 22).*—*Re IVERSON & GREATER WINNIPEG WATER DISTRICT*, [1921] 1 W. W. R. 621; 57 D. L. R. 184; 30 Man. L. R. 98.—CAN.

iii. — *Arbitration Act, 1908.*—An order provided that the costs of the reference & award should be with in the discretion of the arbitrator under & subject to the above Act:—*Held*: the discretion of arbitrators with regard to costs was not limited by the principles which the cts. apply.—*TYNAN v. FORBES*, [1921] N. Z. L. R. 738.—N.Z.

#### PART IV. SECT. 20, SUB-SECT. 3.

z i. — *Includes costs of counter-claim.*—*KIRK v. KIRK* (1897), 40 N. S. R. 600.—CAN.

sq. “*Costs of attendance of party—Party attending with several witnesses—Costs of witnesses not included.*”—*MCQUEEN v. VANCOUVER ISLAND POWER CO., LTD.* (1925), 35 B. C. R. 558.—CAN.

2352. *Add. Annotation*:—*Re*d. *Re* Becker, Shillan & Barry, [1921] 1 K. B. 391.
2353. *Add. Annotation*:—*Consd.* Williams v. Jones, [1926] 1 K. B. 255.
2354. *Add. Annotation*:—*As to* (1) *Consd.* Williams v. Jones, [1926] 2 K. B. 37.
- 2355a. — Whether more than one issue—R. S. C., Ord. 65, r. 2.]—WILLIAMS v. JONES (STANLEY) & Co., [1926] 2 K. B. 37; 95 L. J. K. B. 471; 134 L. T. 652; 70 Sol. Jo. 463, C. A.
2358. *Add. Annotation*:—*Ap*ld. *Re* Becker, Shillan & Barry, [1921] 1 K. B. 391.
- 2361a. — Award not providing for costs of parties.]—*Re* BECKER, SHILLAN & Co. & BARRY BROTHERS, No. 1954a, *ante*.
2400. *Add. Annotation*:—*Ment*d. Earle v. Hemsworth R. D. C. (1928), 44 T. L. R. 758.
2406. *Add. Annotation*:—*Ment*d. Earle v. Hemsworth R. D. C. (1928), 44 T. L. R. 758.
2418. *Add. Annotation*:—*Ment*d. *Re* Barker's Sett'mt., Klocker v. Vernon Jones, [1920] 1 Ch. 527.

## Part V.—References by Order of Court.

2439. *Add. Annotation*:—*Ment*d. Sharp & Dohme Inc. v. Boots Pure Drug Co. (1928), 45 R. P. C. 153.
2443. *Add. Annotations*:—*Ment*d. Countess Warwick S.S. Co. v. Nickel Soc. Anon., Anglo-Northern Trading Co. v. Emlyn, Jones & Williams (1917), 87 L. J. K. B. 309; Robinson v. R., [1921] 3 K. B. 183.
2447. *Add. Annotation*:—*Ment*d. Sack v. Jones [1925] Ch. 235.
2448. *Add. Annotation*:—*Re*d. Liggett (Liverpool) v. Barclays Bank, [1928] 1 K. B. 48.
2455. *Add. Annotations*:—*Re*d. Liggett (Liverpool) v. Barclays Bank, [1928] 1 K. B. 48. *Ment*d. Deuchar v. Gas Light & Coke Co., [1925] A. C. 691.
2456. *Add. Annotation*:—*Ment*d. Robinson v. R., [1921] 3 K. B. 183.
2459. *Add. Annotations*:—*Re*d. Liggett (Liverpool) v. Barclays Bank, [1928] 1 K. B. 48. *Ment*d. Deuchar v. Gas Light & Coke Co., [1925] A. C. 691.
2474. *Add. Annotation*:—*Ment*d. Sharp & Dohme Inc. v. Boots Pure Drug Co. (1927), 44 R. P. C. 367.
2523. *Add. Annotation*:—*Ment*d. Taylor v. Davies, [1920] A. C. 636.
2557. *Add. Annotations*:—*As to* (1) *Consd.* *Re* Soc. les Affréteurs Réunis & Shipping Controller, [1921] 3 K. B. 1; Kursell v. Timber Operators & Contractors, [1923] 2 K. B. 202. *As to* (2) *Consd.* *Re* Soc. les Affréteurs Réunis & Shipping Controller, [1921] 3 K. B. 1; Kursell v. Timber Operators & Contractors, [1923] 2 K. B. 202; Light v. West, [1926] 2 K. B. 238.
- 2580a. No power to alter his own order.]—Where a referee acts deliberately, even though he may not realise that what he is doing does not carry out his full intention, he has no jurisdiction under R. S. C., Ord. 28, r. 11, to alter his report subsequently.—BENTLEY v. O'SULLIVAN (1925), 133 L. T. 189; 41 T. L. R. 374; 69 Sol. Jo. 509, D. C.
- 2580b. Power to set aside his own order.]—In an action tried by an official referee judgment was given against defts. by default. Defts. applied to the judge in chambers to set aside the judgment of the official referee & to order a new trial. The application was not made within six days after the trial before the official referee, but no objection in regard to time was taken by pl'ts. before the judge in chambers. The judge referred to the official referee the application to set aside his own judgment. At the hearing of the application the official referee himself took the point that the application to set aside his judgment had not been made within six days after the trial; & he further held that, having regard to the concluding words of R. S. C., Ord. 59a, r. 3 (b), he had no jurisdiction to set aside

### PART IV. SECT. 20, SUB-SECT. 6.

*sr.* Power of arbitrator to fix counsel's fees.]—On an arbn. as to costs in an action, the arbitrator has power to fix the counsel's fees.—CHATTERSON v. DUTTON, [1917] 2 W. W. R. 393; 33 D. L. R. 622; 10 Sask. L. R. 169.—CAN.

*st.* Power of arbitrator to postpone taxation.]—An arbitrator on making his award may reserve the question of the costs of the arbn. & tax them subsequently.—CHATTERSON v. DUTTON, [1917] 2 W. W. R. 393; 33 D. L. R. 622; 10 Sask. L. R. 169.—CAN.

2395 vii. — — —.]—The taxing officer having disallowed the fees for senior counsel on the taxation of a bill of costs in an arbn. case on the ground that two counsel were in no way necessary:—*Held*: as the arbn. involved a sum of nearly £6,000 & the evidence was of a highly technical nature, the services of a senior counsel were properly employed, & his fees & the accessory charges should have been allowed.—GARLICK & Co. v. POYNTON (1917), 38 N. L. R. 59.—S. AF.

2414 viii. — — —.]—NEW BRUNSWICK ELECTRIC POWER COMMISSION v. QUINTON, [1924] 4 D. L. R. 345.—CAN.

### PART V. SECT. 1, SUB-SECT. 4.

*a i.* — “ Acting ” Deputy Registrar of Supreme Court.]—*Held*: while the validity of the appointment was doubtful, yet as the above officer had acted since his appointment, a judge of first instance should uphold the appointment unless fully satisfied that there was no power of making it, especially where, as in this case, the reference had proceeded without objection on the point.—FUSARELLI v. LOCO TOWNSITE Co., [1922] 1 W. W. R. 1238.—CAN.

### PART V. SECT. 1, SUB-SECT. 5.

*p* (p. 616) i. — — — *Alberta Rules*, r. 312.]—MAINFROID v. MAINFROID (Alta.), [1926] 4 D. L. R. 1060; [1926] 3 W. W. R. 617.—CAN.

*z i.* — — —.]—*Re* COCHRAN'S TRUSTS, No. 2 (1919), 52 N. S. R. 278.—CAN

### PART V. SECT. 1, SUB-SECT. 6.

2474 ii. — — —.]—AVORY & SON v. PARKS (1917), 12 O. W. N. 4; 39 O. L. R. 74; 35 D. L. R. 71.—CAN.

### PART V. SECT. 2, SUB-SECT. 1.—D.

*sw.* Under *Alberta Rules*.]—MAINFROID v. MAINFROID (Alta.), [1926] 4 D. L. R. 1060; [1926] 3 W. W. R. 617.—CAN.

*o i.* — Action on building contract.]—HOUSE REPAIR & SERVICE Co. v. MILLER (1921), 64 D. L. R. 115; 49 O. L. R. 205.—CAN.

### PART V. SECT. 2, SUB-SECT. 6.

*sv.* Time for appeal—Extension of time—When granted.]—An application was refused for extension of time for appeal from a matter in a referee's report, the report, although not finally confirmed, having been dealt with nearly two months before, & the reason for extension & merits of appeal being, in the circumstances, insufficient.—JAMIESON v. JAMIESON, [1921] 1 W. W. R. 63.—CAN.



his own judgment :—*Held* : (1) the objection in regard to time, not having been taken at the earliest opportunity, could not be relied upon by pltf. on the appeal ; (2) as under R. S. C., Ord. 36, r. 50, the official referee had " the same authority in the conduct of any reference or trial as a judge of the High Ct.," he had jurisdiction to set aside his own judgment, & the words " save as herein provided, no application for a new trial before a referee shall be made " at the conclusion of Ord. 59a, r. 3 (b), referred only to the procedure to be followed in appeals from referees to the Divisional Ct.—*LONDON STEAMSHIP & TRADING CORPN., LTD. v. RUSSIAN VOLUNTEER FLEET* (1926), 135 L. T. 607 ; 42 T. L. R. 632 ; 70 Sol. Jo. 838, D. C.

2591. *Add. Annotations* :—*Mentd.* *Evans v. Shotton* (1918), 87 L. J. Ch. 527 ; *Citron v. Cohen* (1920), 36 T. L. R. 560 ; *Woodfield v. Bond*, [1922] 2 Ch. 40 ; *Anstruther-Gough-Calthorpe v. McOscar*, [1924] 1 K. B. 716 ; *Hewitt v. Rowlands* (1924), 131 L. T. 757.

2593. *Add. Annotation* :—*Refd.* *Ruf v. Pauwels*, [1919] 1 K. B. 660.

2595. *Add. Annotation* :—*Mentd.* *Williams v. Jones*, [1926] 1 K. B. 255.

2598. *Add. Annotations* :—*Mentd.* *Ellis v. Tarrington* (1919), 35 T. L. R. 531 ; *S.S. Celia v. S.S. Voltorno*, [1921] 2 A. C. 544 ; *Calthorpe v. McOscar*, [1923] 2 K. B. 578.

2599. *Add. Citation* :—46 L. J. Q. B. 136.

2603. *Add. Annotations* :—*As to* (1) *Consd.* *Cogstad v. Newsum*, [1921] 2 A. C. 528. *As to* (2) *N.F. Cogstad v. Newsum*, [1921] 2 A. C. 528.

2610. *Add. Annotation* :—*Mentd.* *Re Jewell's Settlmt., Watts v. Public Trustee*, [1919] 2 Ch. 161.

2611a. — *Costs.*—In an action upon a contract in the High Ct. judgment was given for pltf. for an amount to be ascertained on taking an account between the parties, with costs of the action. This judgment was dated & entered on Apr. 8. The referee took the account & ascertained the amount to be £83 10s. & on Nov. 29 indorsed the order accordingly. On the next day & before final entry of the completed order, the judge, upon pltf.'s application, ordered the costs to be taxed on the High Ct. scale :—*Held* : in the circumstances the judge had jurisdiction under County Cts. Act, 1919 (c. 73), s. 11, to award costs on the High Ct. scale, for until the result of the account was ascertained the question of costs could not be finally determined.—*LIGHT v. WEST (WILLIAM) & SONS, LTD.*, [1926] 2 K. B. 238 ; 95 L. J. K. B. 557 ; 134 L. T. 693 ; 42 T. L. R. 311 ; 70 Sol. Jo. 404, C. A.

2612. *Add. Annotation* :—*Mentd.* *Joachimson v. Swiss Bank Corpn.*, [1921] 3 K. B. 110.

## Part VI.—Application of Arbitration Act, 1889, to References under Statute.

2614. *Add. Annotation* :—*Mentd.* *Re Cogstad & Newsum*, [1921] 1 K. B. 87.

2618. *Add. Annotations* :—*Consd.* *Re Becker*,

*Shillan & Barry*, [1921] 1 K. B. 391. *Mentd.* *Larrinaga v. Soc. Franco-Americaine des Phosphates de Medulla* (1922), 92 L. J. K. B. 45.

### PART V. SECT. 3.

sz. *Scope of reference—Not facts in issue determined by court.*—*FOSTER v. REAUME*, [1926] 1 D. L. R. 1024 ; 60 O. L. R. 63.—CAN.

# AUCTION AND AUCTIONEERS.

## Part I.—Definitions.

1. *Citations* :—For “ 1 Dav. 111 ” read “ 1 Dow. 111, H. L. ”

## Part II.—Auctioneer's Licence.

15a. *Use of initials “A.A.I.”*—Pltf. Bowler & his co-pltf. Blake carried on in partnership the business of auctioneers & estate agents at P. & G., & in May, 1920, deft. entered their employment as an outside canvassing & negotiating clerk under a written agreement of service which provided (*inter alia*) that either party could terminate the employment on giving seven days' notice in writing & (clause 5) “ after the termination from any cause of the employment aforesaid the clerk shall not for the term of one year carry on or be interested in carrying on the business of auctioneers & estate agents after such termination directly or indirectly assist as clerk manager or in any other capacity in the

carrying on of such business within the borough of P. or in the town of G.” In Sept. 1920, pltf. duly terminated deft.'s employment, & on leaving their service he at once commenced business on his own account as an estate agent within the prohibited area, describing himself as “ O. Lovegrove, A.A.I., Estate Agent,” the initials A.A.I. meaning Associate of the Auctioneers' Institute, but he did not take out an auctioneer's licence nor do any business as an auctioneer :—*Held* : deft. had not by the use of the initials A.A.I. held himself out to be an auctioneer.—*BOWLER v. LOVEGROVE*, [1921] 1 Ch. 642 ; 90 L. J. Ch. 356 ; 124 L. T. 695 ; 37 T. L. R. 424 ; 65 Sol. Jo. 397.

## Part III.—Authority of Auctioneer.

21. *Add. Annotations* :—*Mentd. Chillingworth v. Esche* (1923), 129 L. T. 808 ; *Monnickendam v. Leanse* (1923), 39 T. L. R. 445.
43. *Add. Annotation* :—*Consd. Chaney v. Maclow* (1928), 97 L. J. Ch. 349.
56. *Add. Annotation* :—*Consd. Chaney v. Maclow* (1928), 97 L. J. Ch. 349.
57. *Add. Annotations* :—*Consd. Cohen v. Roche* (1926), 95 L. J. K. B. 945. *Refd. Chaney v. Maclow* (1928), 45 T. L. R. 135.
58. *Add. Annotation* :—*Refd. Chaney v. Maclow* (1928), 45 T. L. R. 135.
59. *Add. Annotation* :—*Refd. Cohen v. Roche* (1926), 95 L. J. K. B. 945.
63. *Add. Annotation* :—*Refd. Chaney v. Maclow* (1928), 97 L. J. Ch. 349.
- 63a. ————]—A freehold house was knocked down to deft. as the highest bidder, but he afterwards refused to sign the contract because one of the conditions of sale required the purchaser to pay certain road-making charges. On the same day the auctioneer, as soon as he was informed of deft.'s refusal, signed the contract as deft.'s agent. In an action by the vendor for specific performance, the judge held in the circumstances the auctioneer's signature could fairly be said to be part of the transaction of sale, & there was a memorandum in writing sufficient to

satisfy Law of Property Act, 1925 (c. 20), s. 40 :—*Held* : an auctioneer had authority to sign a memorandum sufficient to satisfy the Act, provided he signed it at such a time & in such circumstances that the signature could fairly be said to be part of the transaction of sale, & as the question whether this condition was satisfied was a question of fact, the judge's decision that there was a valid memorandum must be affirmed.—*CHANEY v. MACLOW* (1928), 45 T. L. R. 135, C. A.

67. *Add. Annotation* :—*Consd. Chaney v. Maclow* (1928), 97 L. J. Ch. 349.
68. *Add. Annotation* :—*Refd. Cohen v. Roche* (1926), 95 L. J. K. B. 945.
73. *Add. Annotations* :—*Mentd. Chillingworth v. Esche* (1923), 129 L. T. 808 ; *Monnickendam v. Leanse* (1923), 39 T. L. R. 445.
- 76a. ————]—*Entry of purchaser's name—Auctioneer's name printed on catalogue.*—Pltf. bought for £60 at an auction one of the lots, which was the property of deft., who was the auctioneer. The lot was included in the printed catalogue, the whole of which was pasted into the auctioneer's book, & after the lot in question was knocked down to pltf. deft. wrote against its description in the book the price & pltf.'s trade name. Deft.'s name

### PART II.

sa. *Acquisition of provincial licence* *essly for municipal licence.*—A person who has obtained a provincial licence as auctioneer under Auctioneers & Pedlers' Act, R. S. A., 1923 (c. 39), may be compelled to take out a municipal licence.—*R. (MORRIS)* [1923] 4 D. L. R. 955 ; 8

W. W. R. 1185.—CAN.

sb. ————]—*Power of city—Can-*  
*not arbitrarily refuse licence.*—*MOOSE*  
*JAW v. TAYLOR*, [1924] 1 W. W. R.  
1063.—CAN.

sc. ————]—*Cannot arbi-*  
*trarily revoke licence.*—*MOOSE JAW v.*  
*TAYLOR*, [1924] 1 W. W. R. 1063.—  
CAN.

*Auctioneer licensed by*  
*province.*—*MOOSE JAW v. TAYLOR*,  
[1924] 1 W. W. R. 1063.—CAN.

sd. *Licensing & Bankrupt Sales in*  
*City of St. John Act, N. B., 1924*  
*(c. 75)—When fee of \$500 payable.*—  
*PAGE v. ST. JOHN'S CORPN. (N. B.)*,  
[1926] 2 D. L. R. 414.—CAN.

was nowhere written by him in the book, but his printed name appeared on the front page of the catalogue pasted in the book. Deft. refused to hand over the goods on the ground that the lot in question had been the subject of a "knock-out" to which pltf. had been a party. In an action for breach of contract deft. pleaded that there was no memorandum signed by him within Sale of Goods Act, 1893 (c. 71), s. 4 (1):—*Held*: (1) the exist-

ence of a "knock-out" did not afford any defence to the action; (2) deft.'s printed name, having been authenticated by his writing down the price & the purchaser's name, was a sufficient signature, & there was a sufficient note or memorandum of the contract, & pltf. was entitled to recover.—*COHEN v. ROCHE*, [1927] 1 K. B. 169, 95 L. J. K. B. 945; 136 L. T. 219; 42 T. L. R. 674; 70 Sol. Jo. 942.

## Part IV.—Conduct of the Sale.

93. *Add. Annotation*:—*Mentd. Rawlings v. General Trading Co.*, [1921] 1 K. B. 635.
95. *Add. Annotation*:—*Mentd. Yandle v. Sutton Young v. Yandle*, [1922] 2 Ch. 199.
107. *Add. Annotation*:—*Mentd. Said v. Butt*, [1920] 3 K. B. 497.
120. *Add. Annotation*:—*Generally, Mentd. Said v. Butt*, [1920] 3 K. B. 497.
126. *Add. Annotation*:—*Mentd. Auerbach v. Nelson*, [1919] 2 Ch. 383.
131. *Add. Annotation*:—*Mentd. Re Clayton, Smith v. Clayton*, [1920] 1 Ch. 257.
134. *Add. Annotations*:—*Refd. Beyfus v. Lodge*, [1925] Ch. 350. *Mentd. Simpson v. Gilley* (1922), 92 L. J. Ch. 194.
147. *Add. Annotations*:—*Mentd. Re Lavey, Ex p. Trustee*, [1919] B. & C. R. 116; *French v. Gething*, [1922] 1 K. B. 236.
148. *Add. Annotation*:—*Apld. Rawlings v. General Trading Co.*, [1921] 1 K. B. 635.
149. *Add. Annotation*:—*Refd. Rawlings v. General Trading Co.*, [1921] 1 K. B. 635.
150. *Add. Annotation*:—*Consd. Rawlings v. General Trading Co.*, [1921] 1 K. B. 635.
- 151a. ———.]—At a sale by public auction of surplus property belonging to the Ministry of Munitions pltf. & deft. agreed, in order to

avoid competition, that deft. alone should bid for certain goods, & that the goods, if purchased, should be divided equally between them. In pursuance of that agreement pltf. abstained from bidding & the goods were knocked down to deft. Deft. subsequently repudiated the agreement. In an action by pltf. to recover one moiety of the goods purchased or the value thereof over & above the price paid at the auction.—*Held*: the agreement was not illegal, & judgment should be entered for pltf.—*RAWLINGS v. GENERAL TRADING CO.*, [1921] 1 K. B. 635; 90 L. J. K. B. 404; 124 L. T. 562; 37 T. L. R. 252; 65 Sol. Jo. 220; 26 Com. Cas. 171, C. A.

*Annotation*:—*Apld. Cohen v. Roche*, [1927] 1 K. B. 169.

151b. ———.]—*COHEN v. ROCHE*, No. 76a, ante.

152. *Add. Annotation*:—*Refd. Rawlings v. General Trading Co.*, [1921] 1 K. B. 635.

153. *Add. Annotation*:—*Refd. Rawlings v. General Trading Co.*, [1921] 1 K. B. 635.

155a. ———.]—*BENNETT v. SMITH* (1852), 20 L. T. O. S. 28; 16 Jur. 421.

159. *Add. Annotation*:—*Mentd. Christoforides v. Terry*, [1924] A. C. 566.

## Part V.—Deposit.

184. *Add. Annotations*:—*Mentd. Chillingworth v. Esche* (1923), 129 L. T. 808; *Monnickendam v. Leanse* (1923), 39 T. L. R. 445.
192. *Add. Annotation*:—*Refd. Beyfus v. Lodge*, [1925] Ch. 350.
194. *Add. Annotation*:—*Mentd. Akt. Reidar v. Arcos* (1926), 42 T. L. R. 737.

### PART IV. SECT. 3, SUB-SECT. 2.

s. 2. *Sale "without reserve"*—*Burden of proof*.]—The onus of proving that a sale by auction was "without reserve" is upon the person alleging it. In case of doubt the presumption is that the auction was one with reserve. *NEUGEBAUER & CO., LTD. v. HERMANN*, [1923] App. D. 564.—S. AF.

### PART IV. SECT. 5.

s. 1. ———.]—*Sale for cash*—*Bidder unable to pay cash*.]—*Held*: no sale had been effected.—*DENIS v. MORINILL CORPN.* (Alta.), [1917] 2 W. W. R. 323; 34 D. L. R. 724.—CAN.

s. 1. ———.]—*Not affected by verbal statements made by vendor's clerk at sale*.]—

*CURRIER v. CROSBY* (1877), 17 N. R. (1 P. & B.) 464.—CAN.

### PART IV. SECT. 7.

s. 1. *Refusal of bidder to pay*—*Sale of goods seized under execution*—*Sheriff entitled to sell goods again*.]—*HALIFAX AUTOMOBILE CO. v. DREW*, [1924] 1 D. L. R. 891; 57 N. S. R. 1.—CAN.

### PART IV. SECT. 9.

148 vi. ———.]—A combination among intending purchasers at an unreserved auction sale to stifle competition by not bidding against one another is a fraud against the seller, & the auctioneer is not bound to recognise a bid by a member of such a combination.—*NEUGEBAUER & CO., LTD. v. HERMANN*, [1923] App. D. 564.—S. AF.

151 i. *Knock-out sale*—*Enforcement of agreement between parties*.]—*GRANT v. WHITZMAN* (1921), 55 N. S. R. 16.—CAN.

n i. ———.]—*Sale declared void*.—*FOY v. MERRICK* (1860), 8 Gr. 323.—CAN.

n ii. ———.]—*Held*: the legal estate passed by the conveyance, & if it was sought to impeach it, the case must be taken into equity.—*RAYNES v. CROWDER* (1864), 14 C. P. 111.—CAN.

n iii. ———.]—A sale will not be set aside on the ground that a party was prevented from bidding by promises made to him by the purchaser. Such fact, if established, would constitute the purchaser a trustee for him, & would be subject for a suit.—*BROCK v. SAUL* (1867), 2 Ch. Ch. 145.—CAN.



## Part VII.—Rights and Duties in Relation to Vendor.

213. *Add. Annotation*:—*Refd.* *Cohen v. Roche* (1926), 95 L. J. K. B. 945.
219. *Add. Annotation*:—*Mentd.* *The Jupiter* (No. 3) (1927), 137 L. T. 333.
226. *Add. Annotation*:—*Mentd.* *Schiller v. Petersen* (1924), 130 L. T. 810.
246. *Add. Annotation*:—*Consd.* *Bow's Emporium v. Brett* (1927), 44 T. L. R. 194.
255. *Add. Annotations*:—*Refd.* *Page v. Sully* (1919), 63 Sol. Jo. 55; *Benton v. Campbell, Parker*, [1925] 2 K. B. 410.
257. *Add. Annotation*:—*Refd.* *Albemarle Supply Co. v. Hind* (1927), 43 T. L. R. 783.
260. *Add. Annotation*:—*Mentd.* *Weld-Blundell v. Stephens*, [1920] A. C. 956.
263. *Add. Annotations*:—*Consd.* *Britannia Hygienic Laundry Co. v. Thornycroft* (1926), 135 L. T. 83. *Mentd.* *Adams v. Morgan*, [1923] 2 K. B. 234.
268. *Add. Annotation*:—*Refd.* *Adams v. Morgan*, [1923] 2 K. B. 234.

## Part VIII.—Rights and Liabilities in Relation to Purchaser.

273. *Add. Annotations*:—*Consd.* *Benton v. Campbell, Parker*, [1925] 2 K. B. 410. *Refd.* *Page v. Sully* (1918), 63 Sol. Jo. 55.
- 280a. — *Option to resell on purchaser's default.* — Goods were put up for sale by auction, the conditions of sale printed on the auctioneers' catalogue providing: "The lot to be taken away & paid for the day after sale," & "upon failure of complying with the above conditions all lots uncleared within the time aforesaid shall be resold." A purchaser, through his own negligence, bid for a lot for which he had not intended to bid, & the lot was knocked down to him. He afterwards endeavoured to persuade the auctioneers to put up the lot for sale again, but they declined. Upon his refusing to pay, an action for the purchase price was brought by the auctioneers, & the purchaser contended that under the conditions of sale it was obligatory upon the auctioneers to resell the lot in question, & that he could be charged only with any deficiency upon resale:—*Held*: the words "all lots uncleared shall be resold" did not impose any obligation upon the auctioneers, but merely conferred upon them an option of reselling at their discretion, & the auctioneers were entitled to recover the full price at which the lot was knocked down to the purchaser.—*ROBINSON, FISHER & HARDING v. BEHAR*, [1927] 1 K. B. 513; 96 L. J. K. B. 150; 136 L. T. 284; 91 J. P. 59; 43 T. L. R. 66, D. C.
282. *Add. Annotation*:—*Consd.* *Benton v. Campbell, Parker*, [1925] 2 K. B. 410.
289. *Add. Annotation*:—*Consd.* *Benton v. Campbell, Parker*, [1925] 2 K. B. 410.
293. *Add. Annotation*:—*Consd.* *Benton v. Campbell, Parker*, [1925] 2 K. B. 410.
- 293a. — — —.]—*PAGE v. SULLY*, No. 301a, *post*.
295. *Add. Annotation*:—*Distd.* *Benton v. Campbell, Parker*, [1925] 2 K. B. 410.
296. *Add. Annotation*:—*Consd.* *Benton v. Campbell, Parker*, [1925] 2 K. B. 410.
- 301a. *Non-delivery* — Goods included in lot by mistake.]—In the catalogue of a sale by auction a lot marked 103 to 109\* was included, being various bundles of paper. Item 109\* was a bundle which the auctioneer did not intend to be in the catalogue, & he purposed to sell it separately. It was, however, knocked down to *pltf.*, & he paid for it, but the auctioneer refused to deliver it to him. The catalogue announced the sale as being "By order of J. S. & others." The buyer brought an action for damages against the auctioneer:—*Held*: the various owners of the lots not being disclosed as the principals, & there being no disclaimer by the auctioneer of personal liability, the auctioneer was personally liable for non-delivery; & the fact that the buyer accidentally learned of the ownership of lot 109\* was not material.—*PAGE v. SULLY* (1918), 63 Sol. Jo. 55, D. C.
307. *Add. Annotation*:—*Refd.* *Page v. Sully* (1918), 63 Sol. Jo. 55.
311. *Add. Annotation*:—*Consd.* *Benton v. Campbell, Parker*, [1925] 2 K. B. 410.
- 312a. — — —.]—An auctioneer who sells a chattel on behalf of a principal does not by the mere fact of sale warrant his principal's right to sell.—*BENTON v. CAMPBELL, PARKER & CO.*, [1925] 2 K. B. 410; 94 L. J. K. B. 881; 134 L. T. 60; 89 J. P. 187; 41 T. L. R. 662; 69 Sol. Jo. 842, D. C.

PART VII. SECT. 6, SUB-SECT. 2.  
240 II. — — —.]—*Re* *McCOLL, McCOLL v. McCOLL* (1881), 8 P. R. 480.—CAN.

PART VIII. SECT. 2, SUB-SECT. 1.  
296 III. — — —.]—*Pltf.* & C.

entered into a hire-purchase agreement in respect of a motor car. After making his first payment C. delivered the car to W. to sell at public auction. K. bought the car at an auction conducted by W.:—*Held*: the name of

the vendor having been disclosed to the purchaser at the sale W. was not responsible to the buyer.—*ARCHIBALD v. WASHER & CO. & KINNERNEY*, [1923] N. Z. L. R. 165.—N.Z.

## Part IX.—Rights and Liabilities in Relation to Third Parties.

313. *Add. Annotations* :—*Consd. Benton v. Campbell, Parker*, [1925] 2 K. B. 410. *Mentd. Page v. Sully* (1918), 63 Sol. Jo. 55.

324. *Add. Annotation* :—*Mentd. Underwood v. Bank of Liverpool, Underwood v. Barclays Bank*, [1924] 1 K. B. 775.

326. *Add. Annotation* :—*Mentd. Underwood v.*

*Bank of Liverpool, Underwood v. Barclays Bank*, [1924] 1 K. B. 775.

329. *Add. Annotations* :—*Mentd. Phillips v. Brooks*, [1919] 2 K. B. 248; *Folkes v. King*, [1923] 1 K. B. 282; *Lake v. Simmons* (1926), 95 L. J. K. B. 586; *Lowther v. Harris*, [1927] 1 K. B. 393.

## BAILMENT.

## Part I.—In General.

1. *Add. Annotations*:—Mentd. *Coldman v. Hill*, [1919] 1 K. B. 443; *The Empress* (1922), 92 L. J. P. 42; *Ellis' Trustee v. Dixon-Johnson*, [1924] 2 Ch. 451; *Pratt v. Patrick*, [1924] 1 K. B. 488.
3. *Add. Annotations*:—Mentd. *Re Thellusson, Ex p. Abdy*, [1919] 2 K. B. 735; *Re Comptoir Commercial Anversois & Power*, [1920] 1 K. B. 868; *Lebeaupin v. Crispin*, [1920] 2 K. B. 714; *Mertens v. Home Freeholds Co.*, [1921] 2 K. B. 526; *Larrinaga v. Soc. Franco-Americaine des Phosphates De Medulla* (1923), 92 L. J. K. B. 455; *Re Wait*, [1926] Ch. 962; *Kursell v. Timber Operators & Contractors*, [1927] 1 K. B. 298; *First Russian Insee. v. London & Lancashire Insee.*, [1928] Ch. 922; *The Penelope*, [1928] P. 180.
6. *Add. Annotation*:—*Reid. Folkes v. King*, [1923] 1 K. B. 282.
18. *Add. Annotation*:—Mentd. *Jefferson v. Derbyshire Farmers*, [1921] 2 K. B. 281.
17. *Add. Annotation*:—Mentd. *E. v. Porter* (1924), 41 T. L. R. 57.
38. *Add. Annotation*:—*Reid. Van Oppen v. Tredegars* (1921), 37 T. L. R. 504.

## Part II.—Gratuitous Bailment.

43. *Add. Citation*:—Palm. 381. *Annotation*:—*Reid. Hill v. Vaux*, 1 Ld. Raym. 227.
46. *Add. Annotation*:—*Reid. Coldman v. Hill*, [1919] 1 K. B. 443.
47. *Add. Annotations*:—*Reid. Coldman v. Hill*, [1919] 1 K. B. 443; *The Empress* (1922), 92 L. J. P. 42. Mentd. *Ellis' Trustee v. Dixon-Johnson*, [1924] 2 Ch. 451; *Pratt v. Patrick*, [1924] 1 K. B. 488.
50. *Add. Annotations*:—*Reid. The Santa Catharina* (1919), 88 L. J. P. 170; *The Cairnsmore*, [1919] 1 K. B. 443; *The Empress* (1922), 92 L. J. P. 42. Mentd. *Ellis' Trustee v. Dixon-Johnson*, [1924] 2 Ch. 451; *Pratt v. Patrick*, [1924] 1 K. B. 488.

## PART I. SECT. 1.

ask. *Person obtaining possession & control of goods without owner's consent.*—To constitute a bailment it is sufficient if the bailee, having obtained possession & control of the bailor's goods without the latter's knowledge or consent, afterwards acknowledges to the bailor that he holds them for him, & thereafter retains possession & control for him with his consent.—*MAKOWER, McBEATH & Co., PROPRIETARY, LTD. v. DALGETY & Co., LTD.*, [1921] V. L. R. 385.—AUS.

181. — *Licence to occupy floor space.*—Deft. was owner of a private garage, & rented to pltf. the right to store his motor car therein. The garage had no dividing partitions or stalls, & no particular space was assigned to pltf. Pltf. was given a key of this garage & was able to enter at any time he saw fit to do so & remove & return his car as he chose.—*Held*: deft. was not bailee of pltf.'s car.—*LESSER v. JONES*, [1920] 47 N. B. R. 318.—CAN.

141. — *Goods left at cloak-room—Ball organised by committee.*—The committee hired a hall, & tickets were sold. A room was provided for a cloak-room, & a caretaker of this room hired at a remuneration paid by the committee. When resp. presented his numbered ticket corresponding to the number placed on his coat it was found that another coat had been substituted for his.—*Held*: as regards the caretaker, there was no implied contract between him & resp. As regards the members of the committee, any contract they might make was a contract on behalf of the whole body, including resp.—*CORBETT v. JAMIESON*, [1923] N. Z. L. R. 374.—N.Z.

al. — *Delivery of mineral-water bottles—Charge for detention of empties.*—Pltf. sold mineral-water in bottles branded with their name. The course of dealing with customers was to invoice the bottles at a deposit rate of two shillings per dozen & when bottles

were returned the customers were credited in full. Where bottles were not returned the customers were debited with a charge for them, pltf. usually accepting half the deposit rate for missing bottles where a deficiency was found to exist.—*Held*: the transaction was in law a bailment in which bare possession of the bottles vested in the borrower, the true ownership remaining in the lender.—*CANTRELL & COCHRANE v. NEESON*, [1926] N. 107.—IR.

## PART I. SECT. 2.

38 ii. —.—*LONG v. R.* (1922), 63 D. L. R. 134; 21 Exch. C. R. 264.—CAN.

## PART II. SECT. 1, SUB-SECT. 1.

sm. *Timber sold remaining in mill yards—Warehouse receipt given to buyer.*—*Held*: seller gratuitous bailee for buyer.—*FERGUSON v. EYER* (1918), 43 O. L. R. 190.—CAN.

40 iii. — *Valuables of bathers left with caretaker of bathing-shed.*—Appls. were sued by resp. for the value of a gold watch & other articles left by resp. in the custody of the caretaker of a bathing-shed conducted by applts. & which were lost, presumably stolen.—*Held*: the fact by undertaking the care of valuables belonging to bathers the use of the bathing-shed was rendered more attractive would constitute a consideration.—*TIMARU BOROUGH COUNCIL v. BOULTON*, [1924] N. Z. L. R. 365.—N.Z.

## PART II. SECT. 1, SUB-SECT. 2.

47 ii. —.—*Pltf. on leaving a hotel was allowed to leave a locked bag in the baggage room, which was kept locked except when opened for taking luggage in or out. On calling for the bag he found contents had been stolen.*—*Held*: the hotelkeeper was a gratuitous bailee & had exercised the reasonable care of a prudent man.—*BREWER v. CALORI* (1921), 29 B. C. R. 457.—CAN.

47 iii. —.—*GIBSON v. WILSON & DOWNER* (1922), 67 D. L. R. 410.—CAN.

47 iv. —.—*The duty of a gratuitous bailee is to take the same care of the goods deposited with him as a reasonably prudent & careful man might fairly be expected to take of his own property.*—*MUMFORD v. NORTHERN TRUSTS CO.*, [1924] 2 W. W. R. 745.—CAN.

47 v. —.— *Cloak-room—Of school.*—Boards of Education are not insurers of school children's clothing; they are responsible for its loss or injury only when it is caused by their negligence.—*STEVENSON v. TORONTO BOARD OF EDUCATION* (1919), 46 O. L. R. 146; 17 O. W. N. 52.—CAN.

47 vi. —.— *Of racing club.*—Resp. sued applts., a racing club, for the value of a coat which she had left at applts.' cloak-room at the racecourse, & which disappeared from there. Resp. was holder of a ticket for the race meeting, but paid nothing for the deposit of the coat. There were hung on the walls of the waiting-room notices stating that while every care would be taken of deposited articles the club accepted no responsibility for same.—*Held*: there was a want of care on the part of applts. in discharging the duty they had accepted.—*WELLINGTON RACING CLUB v. SYMONS*, [1923] N. Z. L. R. 1.—N.Z.

gi. —.—*The exhibiting of a dog at a dog show constitutes a bailment for the benefit of both the exhibitor & the club or assocn. holding the exhibition, & the latter are liable for their own carelessness notwithstanding a provision in the entry form signed by the exhibitor that "it shall be a condition of entry that the club shall not be liable for loss or damage to any exhibit occasioned by fire, accident, condition of structure, or negligence of other exhibitors or of the officials or servants of the club or otherwise."*—*ANDREW v. GRIFFIN*, [1918] 1 W. W. R. 274.—CAN.



The Gunda, [1921] 1 A. C. 439; The Canada (1922), 127 L. T. 499. Mentd. The Bernisse & The Elve, [1920] P. 1; The Oscar II, The Bernisse, The Elve, [1921] P. 173.

50a. ———.]—Pltf., who was a member of a residential club, of which defts. were the proprietors, gave the manager certain jewellery to lock up in a safe in the manager's office. The rules provided that "No claim in respect of any property alleged to have been left or lost in the club-house will be entertained, & neither the club nor the proprietors shall be responsible for any article of value so left or lost in the club, but small articles of value may, on application to the secretary, be deposited in the safe, but neither the club nor the proprietors shall be under any liability in respect of such deposits." The jewellery was stolen from the safe by the night porter employed by defts., who before engaging him had obtained references from two persons by whom he had been employed, but apparently had made no inquiry as to his previous career. After the theft it was discovered that he was an old & dangerous criminal:—*Held*: defts. had not used due care in engaging the night porter, & as the above rule did not negative defts.' liability for damage due to their neglect to take such care, they were liable for the loss.—WILLIAMS v. CURZON SYNDICATE, LTD. (1919), 35 T. L. R. 475, C. A.

52. *Add. Annotation*:—*Refd.* Coldman v. Hill, [1919] 1 K. B. 443.

64. *Add. Annotation*:—*Refd.* Coldman v. Hill, [1919] 1 K. B. 443.

65. *Add. Annotation*:—*Refd.* Layton v. General Steam Navigation Co. (1923), 130 L. T. 662.

67. *Add. Annotations*:—*Consd.* Coldman v. Hill, [1919] 1 K. B. 443. *Distd.* City of Baroda (Cargo Owners) v. Hall Line (1926), 42 T. L. R. 717.

70. *Add. Annotations*:—*Refd.* Coldman v. Hill, [1919] 1 K. B. 443; G. N. Ry. v. L. E. P. Transport & Depository, [1922] 2 K. B. 742. *Mentd.* Pratt v. Patrick, [1924] 1 K. B. 488.

75. *Add. Annotations*:—*Refd.* Coldman v. Hill, [1919] 1 K. B. 443; Smith v. G. W. Ry. (1920), 37 T. L. R. 117.

59 iii. ———.]—Defts. having by mistake removed a suit case from a railway carriage, took the most speedy means of restoring the suit case to the owner by placing it on a steamer about to leave for a point on the railway:—*Held*: (1) defts. as bailees without reward were bound to use as much diligence in dealing with the goods in their possession as they would in dealing with their own; (2) in delivering the suit case to a fireman on the steamer to be delivered to the mate, defts. failed to acquit themselves of the responsibility resting upon them.—McCOWAN v. McCULLOCH, [1926] 1 D. L. R. 312; 58 N. S. R. 320.—CAN.

65 iv. ———.]—The fact that a chattel has been lost or injured in the hands of a gratuitous bailee raises a *prima facie* presumption against him. That presumption, however, may be rebutted by his proving that he was not to blame for the loss or injury.—MUMFORD v. NORTHERN TRUSTS Co., [1924] 2 W. W. R. 745.—CAN.

#### PART II. SECT. 1, SUB-SECT. 4.

77 i. *Rights of finder against all but*

*true owner*—*Money found in shop.*]—Deflt. was a shopkeeper, & pltf., a salesman in the shop, picked up from the floor a roll of banknotes, & handed it to deflt., who caused inquiry to be made for the owner. No claim was made, & deflt. kept the notes:—*Held*: the property was "lost," & as against all other persons than the owner, the finder became the substantial owner of the thing found by him, & pltf. was not, by reason of being in the employment of deflt., deprived of his rights as a finder.—HAYNEN v. MUNDLE, 22 C. L. T. 152.—CAN.

77 ii. ——— *Or in bank.*]—A clerk in a bank noticed lying on a desk, used by patrons of the bank in the public portion of the premises, a wallet containing money, & handed it over to the manager for the rightful owner, who never was discovered or appeared to claim it:—*Held*: the money was not "lost."—HEDDLE v. BANK OF HAMILTON (1912), 17 B. C. R. 306.—CAN.

#### PART II. SECT. 3.

108 i. *Duties of borrower—Measure of diligence.*]—Where an owner of a

88. *Add. Annotation*:—*Refd.* Jebara v. Ottoman Bank, [1927] 2 K. B. 254.

89. *Add. Annotations*:—*Mentd.* Prager v. Blat-spiel, Stamp & Heacock, [1924] 1 K. B. 566; Jebara v. Ottoman Bank, [1927] 2 K. B. 254.

91. *Add. Annotations*:—*Mentd.* Underwood v. Bank of Liverpool, Underwood v. Barclays Bank, [1924] 1 K. B. 775; London & Montrose Shipbuilding & Repairing Co. v. Barclays Bank (1925), 31 Com. Cas. 67.

96. *Add. Annotations*:—*Refd.* The Empress (1922), 92 L. J. P. 42. *Mentd.* Coldman v. Hill, [1919] 1 K. B. 443; Ellis' Trustee v. Dixon-Johnson, [1924] 2 Ch. 451; Pratt v. Patrick, [1924] 1 K. B. 488.

101. *Add. Annotations*:—*Mentd.* Banbury v. Bank of Montreal, [1918] A. C. 626; Everett v. Griffiths, [1920] 3 K. B. 163.

103a. *S. P.* PARBY v. ROBERTS (1835), 3 Ad. & El. 118; 5 Nev. & M. K. B. 669; 4 L. J. K. B. 189; 111 E. R. 358; *sub nom.* BARRY v. ROBERTS, 1 H. & W. 242.

106. *Add. Citation*:—*sub nom.* ANON., Cary, 9.

108. *Add. Annotations*:—*Mentd.* Coldman v. Hill, [1919] 1 K. B. 443; The Empress (1922), 92 L. J. P. 42; Ellis' Trustee v. Dixon-Johnson, [1924] 2 Ch. 451; Pratt v. Patrick, [1924] 1 K. B. 488.

110. *Add. Annotation*:—*Mentd.* Musgrove v. Pandelis, [1919] 2 K. B. 43.

118. *Add. Annotation*:—*Refd.* Sack v. Jones, [1925] Ch. 235.

122. *Add. Annotations*:—*Refd.* Smith v. Wood (1928), 139 L. T. 250. *Mentd.* *Re* Stokes, *Ex p.* Mellish, [1919] 2 K. B. 256; Royal Exchange Assce. v. Hope, [1928] Ch. 179.

125a. *S. P.* PRICE v. GROOM (1848), 11 L. T. O. S. 475, N. P.; *on appeal*, 2 Exch. 542.

*Annotation*:—*Mentd.* *Re* Whiteley, *Ex p.* Smith (1892), 67 L. T. 69.

131. *Add. Annotation*:—*Consd.* Lambert v. I. R. Comrs. (1927), 12 Tax. Cas. 1053.

131a. ——— *Distinct chattels.*]—The doctrine of confusion of property does not apply to distinct chattels like chairs & tables, but to commodities such as corn, wine, oil & the like, of which there can be a commingling of substance (BRAMWELL, B.).—SMITH v. TORR (1862), 3 F. & F. 505.

motor car leaves it at a garage to be repaired & is given, without charge, a motor therefrom for use in the meantime, he is a bailee from the garage proprietor without reward unless it be that the work of repairing is the consideration for the loan of the car. He is therefore bound to take reasonable care of the car hired, & if it be received by him in good condition & he returns it damaged & fails to give any account of the time, place & manner of the injury, the law will presume that he has been negligent.—BLJOU MOTOR PARLORS v. KEEL, [1918] 1 W. W. R. 706; 39 D. L. R. 410.—CAN.

108 ii. ——— *Onus to negative negligence.*]—Pltf. loaned deflt. his traction engine to be used for hauling a gasoline engine to start same. While being used for hauling a separator over rough ground the crankshaft broke:—*Held*: the onus was on deflt. to negative negligence on his part, & not having discharged this onus, he was liable in damages.—SMITH v. MOATS, [1921] 1 W. W. R. 268; 56 D. L. R. 415; 14 Sask. L. R. CAN.

## Part III.—Bailment for Valuable Consideration.

133. *Add. Annotations*:—*Refd. Coldman v. Hill*, [1919] 1 K. B. 443; *The Empress* (1922), 92 L. J. P. 42. *Mentd. Ellis' Trustee v. Dixon-Johnson*, [1924] 2 Ch. 451; *Pratt v. Patrick*, [1924] 1 K. B. 488.
136. *Add. Annotation*:—*Refd. Coldman v. Hill*, [1919] 1 K. B. 443.
137. *Add. Annotations*:—*Refd. Coldman v. Hill* (1918), 88 L. J. K. B. 491; *Welden v. Smith*, [1924] A. C. 484.
140. *Add. Annotations*:—*Consd. Turner v. Civil Service Supply Assocn.*, [1926] 1 K. B. 50. *Refd. Coldman v. Hill*, [1919] 1 K. B. 443; *The Santa Catharina* (1919), 88 L. J. P. 170; *Williams v. Curzon Syndicate* (1919), 35 T. L. R. 475; *Gibaud v. G. E. Ry.*, [1921] 2 K. B. 426; *Reynolds v. Boston Deep Sea Fishing & Ice Co.* (1921), 38 T. L. R. 22; *Rutter v. Palmer*, [1922] 2 K. B. 87; *Layton v. General Steam Navigation Co.* (1923), 130 L. T. 662; *Fagan v. Green & Edwards* (1925), 70 Sol. Jo. 185; *Gosse Millard v. Canadian Government Merchant Marine, American Can Co. v. Canadian Government Merchant Marine*, [1927] 2 K. B. 432. *Mentd. Diamond Alkali Export Corp'n. v. Bourgeois*, [1921] 3 K. B. 443; *Wasserman v. Blackburn* (1926), 43 T. L. R. 95.
- 140a. Car driven "at customer's sole risk."—The owner of a motor car deposited the car for sale on commission with deft., the keeper of a garage, upon the terms of a printed document containing the clause: "Customers' cars are driven by your staff at customers' sole risk." The car was sent out by deft. in charge of one of his drivers to be shown to a prospective purchaser, & was injured owing to the negligence of the driver:—*Held*: the above clause protected deft. from liability for the negligence of his servants.—*RUtter v. PALMER*, [1922] 2 K. B. 87; 91 L. J. K. B. 657; 127 L. T. 419; 38 T. L. R. 555; 66 Sol. Jo. 576, C. A.
- Annotations*:—*Apld. Forbes, Abbott & Lonnard v. G. W. Ry.* (1927), 138 T. L. 286. *Refd. Durnford v. G. W. Ry.* (1927), 43 T. L. R. 527.
141. *Add. Annotation*:—*Refd. Coldman v. Hill*, [1919] 1 K. B. 443.
142. *Add. Annotation*:—*Refd. Layton v. General Steam Navigation Co.* (1923), 130 L. T. 662.
143. *Add. Annotation*:—*Refd. Gosse Millard v. Canadian Government Merchant Marine, American Can Co. v. Canadian Government Merchant Marine*, [1927] 2 K. B. 432.
144. *Add. Annotations*:—*Consd. Layton v. General Steam Navigation Co.* (1923), 130 L. T. 662; *Gosse Millard v. Canadian Government Merchant Marine, American Can Co. v. Canadian Government Merchant Marine*, [1927] 2 K. B. 432. *Refd. Coldman v. Hill*, [1919] 1 K. B. 443; *The Santa Catharina* (1919), 88 L. J. P. 170; *Williams v. Curzon Syndicate* (1919), 35 T. L. R. 475; *Fagan v. Green & Edwards* (1925), 70 Sol. Jo. 185; *Turner v. Civil Service Supply Assocn.*, [1926] 1 K. B. 50. *Mentd. Diamond Alkali Export Corp'n. v. Bourgeois*, [1921] 3 K. B. 443; *Gibaud v. G. E. Ry.*, [1921] 2 K. B. 426; *Reynolds v. Boston Deep Sea Fishing & Ice Co.* (1921), 38 T. L. R. 22; *Rutter v. Palmer*, [1922] 2 K. B. 87; *Wasserman v. Blackburn* (1926), 43 T. L. R. 95.
145. *Add. Annotation*:—*Consd. Pennington v. Reliance Motor Works*, [1923] 1 K. B. 127.
146. *Add. Annotation*:—*Mentd. Rye v. Purcell*, [1926] 1 K. B. 446.
159. *Add. Citation*:—88 L. J. K. B. 55. *Annotations*:—*Refd. Auchteroni v. Midland Bank*, [1928] 2 K. B. 294. *Mentd. Joachimson v. Swiss Bank Corp'n.*, [1921] 3 K. B. 110; *Re Polemis & Furness, Withy*, [1921] 3 K. B. 560; *Jones v. Waring & Gillow*, [1926] A. C. 670.
163. *Add. Annotations*:—*Consd. Gibaud v. G. E. Ry.*, [1921] 2 K. B. 426. *Apld. Buerger v. Cunard S.S. Co.*, [1925] 2 K. B. 646. *Refd. The Cap Palos*, [1921] P. 458, L. & N. W. Ry. v. Neilson, [1922] 2 A. C. 263; *The Refrigerant*, [1925] P. 130.
- 163a. — Evidence of negligence—Failure to examine goods periodically.]—*Resps.' wheat*

## PART III. SECT. 1, SUB-SECT. 1.

133 ii. — Not liable for theft—Motor car left at garage—Garage under repair.]—*FOURNIER v. MCKENNA* (1921), 57 D. L. R. 725; 54 N. S. R. 479.—CAN.

135 ii. — —.]—A restaurant keeper who invites customers to deposit articles of clothing temporarily in a place provided by him for that purpose is a bailee for hire & not a gratuitous bailee. It is part of the accommodation for which the keeper of the restaurant receives his recompense from his customers. The bailee in such a case is bound to exercise ordinary diligence in caring for the articles entrusted to him & is liable in case of failure to do so.—*MURPHY v. HART* (1919), 52 N. S. R. 79.—CAN.

136 iii. — — Stable keeper.]—Pltf.'s mare, kept for him in an open stall in deft.'s stable, was kicked by a horse, which was kept in the adjoining open stall, & had broken his halter shank during the night & got loose:—*Held*: as it was not proved that the horse had ever broken a halter shank before, or that the shank was not as

strong as halter shanks usually were, deft. was not liable.—*TEMPLETON v. WADDINGTON* (1904), 24 C. L. T. Occ. N. 151; 14 Man. L. R. 495.—CAN.

— Liability for acts of vants.]—A motor car was entrusted by its owners to garage proprietors for safe custody over night. During the night the night watchman in charge of the garage took the car out for his own purposes, contrary to his employers' instructions & without their knowledge. While being driven by the night watchman the car collided with another car & was damaged:—*Held*: as the defenders had delegated their duty of keeping the car safely secured in the garage to their servant, they were liable to pursuers for the servant's failure in performance.—*CENTRAL MOTORS, GLASGOW, LTD. v. CESSNOCK GARAGE & MOTOR CO.*, [1925] S. C. 796.—SCOT.

141 iv. — —.]—Where a bailee for reward, or a person who is under the same legal obligations as such a bailee, is sued for the loss of goods, the onus of proving that the loss did not occur through any want of reasonable care on the part of deft. or his

employees is upon deft.—*MAKOWER, McBEATH & Co., PROPRIETARY, LTD. v. DALGETY & Co., LTD.*, [1921] V. L. R. 365.—AUS.

141 v. — —.]—The burden is on pltf. in the first instance to establish negligence, but where the loss is established or the goods are not returned, a sufficient case is raised against the bailee to put him upon his defence. The law in such case presumes negligence to be the cause of the loss or non-return. Where there is no explanation of the cause of loss & deft. fails to meet the *prima facie* case against him he will be held liable for the consequences of his neglect.—*MURPHY v. HART* (1919), 52 N. S. R. 79.—CAN.

141 vi. — —.]—*CAMMAERT v. GRASSWOLD (Alta.)*, [1926] 2 D. L. R. 1062.—CAN.

## PART III. SECT. 1, SUB-SECT. 2.

161 vi. Read now "163a i."

161 vii. Read now "163a ii."

163a iii. — — —.]—Pltf. placed apples in the cool stores of deft. The apples were in good order & con-



was stored at applts.' warehouse, which was allowed to become congested with grain of various kinds, including maize, which had a special tendency to heat, & applts. were in consequence unable to fulfil the obligation they were under to resps. to execute their orders to turn & cool as expeditiously as they were bound to do. Resps.' wheat was moist, & there was evidence that even a small rise in the surrounding temperature might, unless it was expeditiously turned, cause it to heat:—*Held*: applts. were liable.—LIVERPOOL GRAIN STORAGE & TRANSIT CO., LTD. v. CHARLTON & BAGSHAW (1918), 146 L. T. Jo. 20, H. L.

164. *Add. Annotation*:—*Refd.* Coldman v. Hill, [1919] 1 K. B. 443.

168. *Add. Annotations*:—*Generally*, *Refd.* Lloyds Bank v. Chartered Bank of India, Australia & China (1928), 97 L. J. K. B. 609. *Mentd.* Reader v. S. E. & O. Ry. & L. & N. W. Ry., Van Den Berghs v. G. W. Ry. (1921), 38 T. L. R. 14.

171. *Add. Annotations*:—*Consd.* Engel v. Lancashire & General Assce. (1925), 41 T. L. R. 408. *Mentd.* Lake v. Simmons (1926), 95 L. J. K. B. 586.

184. *Add. Annotation*:—*Refd.* L. & N. W. Ry. v. Hudson, [1920] A. C. 324.

190. For "Company not responsible for package over £10," read "Company not responsible for package over stated value."

*Add. Annotation*:—*Refd.* Gibaud v. G. E. Ry. (1921), 125 L. T. 76.

192. *Add. Annotation*:—*Consd.* Gibaud v. G. E. Ry., [1921] 2 K. B. 426.

192a. Loss of luggage left outside cloak-room.]—A condition in a railway cloak-room ticket purporting to exempt the railway co. from responsibility for articles above a specified value deposited in the cloak-room except on certain terms, & assented to by the person taking the ticket, is not prevented from being part of the contract & from protecting the co. merely because it is unreasonable, provided that it be not so extravagant as to imply, & there is no other evidence to

show, that that person's assent to it has been obtained by fraud, or so irrelevant as to be foreign to the contract.

*Pltf.* took his bicycle to the cloak-room at a station of deft. co. for the purpose of depositing it there, paid to the official the charge demanded, & received a ticket purporting to be a cloak-room ticket upon the face of which was legibly printed the following condition: "The co. will not be in any way responsible in respect of any article deposited the value whereof exceeds £5, unless at the time of deposit the true value & nature of the article shall have been declared, & 1d. per £1 sterling of the declared value be paid for each day or part of a day in addition to the ordinary cloak-room charges." The value of the bicycle exceeded £5, but *pltf.* made no declaration of value or additional payment. The bicycle was standing at the open door of the cloak-room, but the official told *pltf.* to leave it there as he would put it away. When *pltf.* returned to claim the bicycle it could not be found. In an action by *pltf.* against defts. for the value of the bicycle defts. relied upon the above condition. It was found in effect that *pltf.* knew that there was printing on the ticket, that he believed it contained a condition, & that defts. had done sufficient to give *pltf.* notice of the condition; & it was not found & there was no evidence to show that *pltf.*'s assent to the condition had been obtained by fraud. It was further found that owing to the negligence of the official in leaving the bicycle at the door of the cloak-room it had been stolen:—*Held*: (1) assuming that the condition was unreasonable which, *semble*, it was not, defts. were not, merely on that ground, prevented from relying upon it, inasmuch as it was not so extravagant as to imply that *pltf.*'s assent to it had been obtained by fraud, or so irrelevant as to be foreign to the contract; (2) defts. were protected by the condition, although the bicycle had not been deposited within the cloak-room; (3) on the above facts & findings judgment should be entered for defts.—GIBAUD v. GREAT EASTERN RY. CO., [1921] 2 K. B. 426; 90 L. J. K. B. 535;

dition when they were placed in the store. Several months later the apples were taken out of the store considerably damaged & deteriorated:—*Held*: it was the duty of deft. being a bailee for reward to provide a cool store fit for the purpose intended, & to maintain the proper temperature & proper circulation of cold air in the store by efficient means, & to store the apples in such manner as would ensure access of the cold air to the fruit; & as fruit was liable to be injuriously affected by failure to perform any of these duties, & might become affected at any time, it was the duty of deft. to inspect the fruit in the store at reasonable times, & if indications of deterioration were observed, to notify *pltf.*, & if necessary & practicable, to take steps to protect the goods from further damage.—AURORA TRADING CO., LTD. & JACKSON v. NELSON FREEZING CO., LTD., [1922] N. Z. L. R. 662.—N.Z.

163a iv. ——— Failure to inspect premises—Defective wharf.]—*Held*: the collapse of the wharf was due to failure of worm-eaten piles supporting it, & such defect should have been known if proper diligence had been

used in inspection.—FURNESS WITHY CO., LTD. v. ARLIN (1918), 42 D. L. R. 97.—CAN.

*sp. Delivery to purchaser without production of lake-bills of lading.*—*Held*: defts., an elevator co., to whom the goods had been shipped for storage, were liable.—NORTHERN GRAIN CO., LTD. v. GODERICH ELEVATOR & TRANSIT CO., LTD., [1926] 1 D. L. R. 297; [1926] S. C. R. 120.—CAN.

172 ii. ———]—*Pltf.* delivered goods to defts., a warehouse co., for storage. The warehouse contract provided that the responsibility of the co. "for the contents of any piece or package is limited to the sum of \$50, unless the value thereof is made known at the time of storage & receipted for in the schedule; an additional charge will be made for higher valuation." The goods, which were in several packages, were stored without a declaration of value & without any additional charge for a higher valuation. Through the negligence of defts.' servants, the goods were included in a shipment of other goods & sent to England. Some of *pltf.*'s goods were lost, & others damaged:—*Held*: the amount which *pltf.* was entitled to recover was

limited by the clause of the warehouse contract.—MAUNSELL v. CAMPBELL SECURITY FIREPROOF STORAGE & MOVING CO., LTD., [1921] 2 W. W. R. 348; [1921] 2 W. W. R. 579.—CAN.

172 iii. ———]—A cold storage co. gave a receipt for hops stored with them which bore, "The co. will use every endeavour in taking care of all goods consigned to its charge, but will not be held responsible for any damage whatsoever. . . . All goods are received subject to the conditions on the back of this receipt." The first condition on the back was, "The co. will use every endeavour in taking care of all goods consigned to its charge, but will not be held responsible for loss or damage to goods stored through maintaining too high or too low a temperature in the stores, failure of machinery, buildings or plant fire, or any other cause whatsoever other than theft":—*Held*: the contract meant that defenders promised to do their utmost to take care of the hops, but that, if their efforts were unsuccessful for any cause other than theft, they were not to be liable in damages.—BALLINGALL & SON v. DUNDEE ICE & COLD STORAGE CO., [1924] S. C. 238.—SCOT.



125 L. T. 76; 37 T. L. R. 422; 65 Sol. Jo. 454, C. A.

*Annotations*:—As to (2) *Consd. L. & N. W. Ry. v. Neilson*, [1922] 2 A. C. 268. *Refd. Armour v. Walford* (London). [1921] 3 K. B. 473; *The Cap Palos*, [1921] P. 458; *Nunan v. Southern Ry.* (1923), 130 L. T. 131; *Buerger v. Cunard S. S. Co.*, [1925] 2 K. B. 646; *The Refrigerant*, [1925] P. 180.

194. *Add. Annotation*:—*Consd. Gibaud v. G. E. Ry.* (1921), 125 L. T. 76.

195a. ————]—*DOVER v. MILLS* (1831), 5 C. & P. 175; 172 E. R. 928, N. P.

*Annotations*:—*Refd. Colepeppre v. Good* (1832), 5 C. & P. 380.

197. *Add. Annotations*:—*Consd. Gibaud v. G. E. Ry.* (1921), 125 L. T. 76. *Apld. Ehinger v. S. E. & C. Ry. & The Pullman Car Co.* (1922), 38 T. L. R. 678; *Hearn v. Southern Ry.* (1925), 41 T. L. R. 305. *Mentd. Nunan v. Southern Ry.* (1923), 130 L. T. 131.

198. *Add. Annotations*:—*Refd. Gibaud v. G. E. Ry.* (1921), 125 L. T. 76. *Mentd. Walls v. Centaur Co.* (1921), 126 L. T. 242; *Nunan v. Southern Ry.* (1923), 130 L. T. 131.

199. *Add. Annotations*:—*Mentd. Coldman v. Hill*, [1919] 1 K. B. 443; *The Empress* (1922), 92 L. J. P. 42; *Ellis' Trustee v. Dixon-Johnson*, [1924] 2 Ch. 451; *Pratt v. Patrick*, [1924] 1 K. B. 488.

201. *Add. Annotation*:—*Mentd. Brightman v. Tate*, [1919] 1 K. B. 463.

207. *Add. Annotation*:—As to (2) *Refd. Franco-British Ship Store Co. v. Compagnie des Chargeurs Francaise* (1926), 42 T. L. R. 735.

211. *Add. Annotation*:—*Refd. Gedding v. Marsh*, [1920] 1 K. B. 668.

212. *Add. Annotation*:—*Apld. Point Anne Quarries v. The M. F. Whalen* (1922), 39 T. L. R. 37.

215. *Add. Annotation*:—*Refd. Britannia Hygienic Laundry Co. v. Thornycroft* (1926), 135 L. T. 83.

216a. *Duty to keep in repair.*]—Where a person hires a specific thing for the purpose of using it, there is an implied contract on the part of the letter that he will in the meantime keep the thing, as I should say, in repair, that is, he will not by want of reasonable care after the contract is made allow it to become worse than it was at the time the contract was made (BRETT, L.J.).—*ROBERTSON v. AMAZON TUG & LIGHTERAGE Co.* (1881), as reported in 7 Q. B. D., at p. 606, C. A.

*Annotations*:—*Refd. The West Cock*, [1911] P. 208; *The Glenmorven*, [1913] P. 141. *Mentd. Point Anne Quarries v. The M. F. Whalen* (1922), 39 T. L. R. 37.

218. *Add. Annotations*:—*Folld. Mintz v. Silverton* (1920), 36 T. L. R. 399. *Refd. Williams v. Curzon Syndicate* (1919), 35 T. L. R. 475.

218a. *Agreement to insure chattel—Against "all risks."*]—Defts. hired a crane-barge from pltf., one of the terms of the contract being that pltf. would insure the crane against all risks, defts. paying the premium. Pltfs.

took out a policy covering, as they thought, all risks. The crane, when proceeding to lift a load, broke away from its bedplate & fell over & was damaged. It was then found that the accident was not covered by the policy, & defts. refused to pay for the damage. In an action for breach of contract:—*Held*: though defts. had failed to discharge the *onus* which was upon them, of proving that what happened was not the result of negligence by their servants, yet, as the agreement in regard to insurance was intended to be an arrangement for the benefit of both parties, & as the accident came within the description "all risks" & defts. had stipulated that they were not to bear those risks, the action failed.—*PRICE & SONS v. CHRISTIANI & NIELSEN* (1924), 44 T. L. R. 335; 72 Sol. Jo. 172.

219. *Add. Annotations*:—*Mentd. Coldman v. Hill*, [1919] 1 K. B. 443; *The Empress* (1922), 92 L. J. P. 42; *Ellis' Trustee v. Dixon-Johnson*, [1924] 2 Ch. 451; *Pratt v. Patrick*, [1924] 1 K. B. 488.

223. *Add. Annotation*:—As to (1) *Refd. Gosse Millard v. Canadian Government Merchant Marine, American Can Co. v. Canadian Government Merchant Marine*, [1927] 2 K. B. 432.

224. For the existing paragraph substitute as follows:—*Obligation to keep in repair—Agreement for redelivery in good working order.*]—*SCHRODER v. WARD*, No. 237, *post*.

226. *Add. Annotations*:—*Refd. Mertens v. Home Freeholds Co.*, [1921] 2 K. B. 526; *Kursell v. Timber Operators & Contractors*, [1927] 1 K. B. 298; *First Russian Insce. v. London & Lancashire Insce.*, [1928] Ch. 922; *The Penelope*, [1928] P. 180. *Mentd. Re Thellusson, Ex p. Abdy*, [1919] 2 K. B. 735; *Re Comptoir Commercial Anversoise & Power*, [1920] 1 K. B. 868; *Lebeaupin v. Crispin*, [1920] 2 K. B. 714; *Larrinaga v. Soc. Franco-Americaine des Phosphates de Medulla* (1923), 92 L. J. K. B. 455; *Re Wait*, [1926] Ch. 962.

227. *Add. Annotations*:—*Refd. Coldman v. Hill*, [1919] 1 K. B. 443; *The Empress* (1922), 92 L. J. P. 42. *Mentd. Ellis' Trustee v. Dixon-Johnson*, [1924] 2 Ch. 451; *Pratt v. Patrick*, [1924] 1 K. B. 488.

240. *Add. Annotation*:—*Mentd. Schiller v. Petersen*, [1924] 1 Ch. 394.

241. *Add. Annotation*:—*Mentd. British Ry. Traffic & Electric Co. v. C. R. C. Co. & L. C. C.*, [1922] 2 K. B. 260.

245. *Add. Annotations*:—*Consd. Lewis v. Thomas*, [1919] 1 K. B. 319. *Mentd. British Ry. Traffic & Electric Co. v. C. R. C. Co. & L. C. C.*, [1922] 2 K. B. 260; *Lamb v. Wright*, [1924] 1 K. B. 857.

247. *Add. Annotation*:—*Mentd. British Ry. Traffic & Electric Co. v. C. R. C. Co. & L. C. C.*, [1922] 2 K. B. 260.

### PART III. SECT. 3, SUB-SECT. 1.

241 vi. ————]—Pltf. handed over nine motor lorries to deft., receiving from him Rs.5,000 upon the terms of a written agreement, the material parts of which were as follows:—"I have to-day agreed to sell to you on the hire-purchase system for Rs.25,000 my nine lorries . . . in consideration of payment as under. In case of failure

to pay any of the instalments on due date, previous payments will be considered null & void, & the lorries are not considered as sold until the final payment has been received. The purchaser has no right to mortgage or dispose of any lorries until the full amount has been paid & [pltf.] or his nominee has the right to seize the lorries wherever they may be. The con-

sideration money is to be paid as under. As against the payment of Rs.5,000 I have to-day given to you delivery of all the nine lorries, & also a letter addressed to the Commissioner of Police to transfer the lorries to your name":—*Held*: the agreement was an agreement for sale.—*COLE v. NANALAL MORARJI DARE* (1924), I. L. R. 49 Bom. 172.—IND.

252. *Add. Annotation*:—Mentd. Dominion Coal Co. v. Maskinonge S.S. Co., [1922] 2 K. B. 132.

252a. *Delivery—Refusal of hirer to take delivery—Remedy of owner.*—Under a hire-purchase agreement deft. agreed to hire from pltf. a cash register for ten months certain at an agreed monthly rental payable in advance with an option to purchase on payment of a fixed sum within one month after payment of all the rent for the agreed period of hiring. Deft. in breach of his contract, refused to accept delivery of the register. Pltf. issued a default summons in the county ct. for rent accrued due up to the date of the summons:—*Held*: no actual debt had been incurred & the action was not maintainable, pltf.' remedy being in damages only.—NATIONAL CASH REGISTER CO. v. STANLEY, [1921] 3 K. B. 292; 90 L. J. K. B. 1220; 125 L. T. 765; 37 T. L. R. 776; 65 Sol. Jo. 643, D. C.

254. *Add. Annotations*:—Refd. Albemarle Supply Co. v. Hind (1927), 43 T. L. R. 783. Mentd. Pennington v. Reliance Motor Works, [1923] 1 K. B. 127.

255. *Add. Annotations*:—Refd. Albemarle Supply Co. v. Hind (1927), 43 T. L. R. 783. Mentd. Pennington v. Reliance Motor Works, [1923] 1 K. B. 127.

257. *Add. Annotation*:—Apld. A.-G. v. Pritchard (1928), 97 L. J. K. B. 561.

258. *Add. Annotation*:—Distd. A.-G. v. Pritchard (1928), 97 L. J. K. B. 561.

258a. — *Recovery of unpaid instalments.*—On a claim by the owner of furniture for unpaid instalments:—*Held*: as the agreement with the hirer was for the sale of the furniture, the property not to pass to him until all the instalments had been paid, & the owner had resumed possession of it & dealt with it in such a way as to put it out of his power to return it to the hirer, he was disentitled from claiming part of the purchase price, & the proper remedy was to sue for damages for breach of contract.—A.-G. v. PRITCHARD (1928), 97 L. J. K. B. 561; 44 T. L. R. 490.

261. *Add. Annotation*:—Mentd. *Re* North Wales Produce & Supply Soc., [1922] 2 Ch. 340.

262. *Add. Citation*:—119 L. T. 632.

*Add. Annotations*:—As to (1) Consd. Nelson Murdoch v. Wood (1922), 126 L. T. 745 As to (2) Apld. Cohen v. Roche, [1927] 1 K. B. 169.

262a. — — — — —.]—Pltf. let a piano on a hire-purchase agreement which provided that until all the instalments were paid the hirer should have no property in the goods otherwise than as hirer, & that in case of any breach of the agreement pltf. might, without any formal notice, put an end to the hiring & retake possession of the piano, & that the hirer should keep the piano in his own custody. At a date when the hirer had paid all the instalments then due, but before he had paid the total price, he sold the piano to deft., who *bona fide* believed that the hirer was the absolute owner. The hirer having subsequently got the piano back into his own possession & having again disposed of it, but having, in the meantime, kept up the payment of the instalments, pltf., on ascertaining the facts, claimed damages from deft. for conversion:—*Held*: the sale by the hirer to deft. was not *ipso facto* a repudiation of the hire-purchase agreement, as pltf. had never accepted the repudiation, but it transferred whatever interest the hirer had at the time of the sale, & as pltf. were not entitled to the possession of the piano until they elected to put an end to the agreement there was no conversion by deft.—NELSON MURDOCH & CO. v. WOOD (1921), 126 L. T. 745; 38 T. L. R. 23; 66 Sol. Jo. (W. R.) 6 D. C.; *revsd.* on other grounds (1922), 38 T. L. R. 393, C. A.

264. After "the owner can maintain an action for conversion against the purchaser" add "as the hirer has not 'agreed to buy' the goods within Factors Act, 1889 (c. 45), s. 9."

267. *Add. Annotation*:—Mentd. British Ry. Traffic & Electric Co. v. C. R. C. Co. & L. C. C., [1922] 2 K. B. 260.

## Part IV.—Considerations Common to all Classes of Bailment.

278. *Add. Annotations*:—Refd. Mertens v. Home Freeholds Co., [1921] 2 K. B. 526; Kursell v. Timber Operators & Contractors, [1927] 1 K. B. 298; First Russian Insee. v. London & Lancashire Insee., [1928] Ch. 922; The Pene-

lope, [1928] P. 180. Mentd. *Re* Wait, [1926] Ch. 962.

280. *Add. Annotations*:—Consd. Kempler v. Bravingtons (1925), 133 L. T. 680. Refd. Lake v. Simmons (1926), 95 L. J. K. B. 586.

248 vi. — — — — — *What is payment.*—Under a hire-purchase agreement the hirers made an initial payment & gave to the owners bills of exchange for the total amount of the monthly payments as collateral security. These bills were subsequently discounted by the owners:—*Held*: no conditional payment, & the property in the goods remained in the owners.—*Re* RANKIN & SHILDAY, [1927] N. 162.—IR.

### PART III. SECT. 3, SUB-SECT. 2.

259 ii. — — — — —.]—ROGERS v. NANAIMO MOTORS, LTD. (1926), 37 B. C. R. 326.—CAN.

264 v. — — — — —.]—Pltf. & C. en-

tered into a hire-purchase agreement in the usual form in respect of a motor car. After making his first payment C. delivered the car to deft. W. to sell. Deft. K. bought the car at an auction conducted by W.:—*Held*: both defts. were liable to pltf.—ARCHIBALD v. WASHER & CO. & KINNERNEY, [1923] N. Z. L. R. 165.—N.Z.

### PART III. SECT. 4.

269 i. — — — — —.]—*Held*: a firm of upholsterers who had contracted to remove, beat, & relay a carpet, were not liable for its accidental destruction while in the premises of a firm of carpet-beaters with whom they

had sub-contracted to beat it, there being no *delectus personarum* in such a contract as to bar them from employing a sub-contractor, & no negligence in the selection of the sub-contractor.—STEVENSON & SONS v. MAULE & SON, [1920] S. C. 335; 57 So. L. R. 284.—SCOT.

### PART IV. SECT. 1, SUB-SECT. 1.

275 ii. — — — — —.]—The law imposes an obligation upon a bailee to restore the article bailed to the bailor, subject to this, that the bailee is excused from restoring it if his inability to do so is due to no want of reasonable care on his part.—PATERSON v. MILLER, [1923] V. L. R. 36.—AUS.

285. *Add. Annotations*:—*Refd.* Russian Commercial & Industrial Bank v. Comptoir D'Escompte de Mulhouse (1924), 93 L. J. K. B. 1098; *The Jupiter* (No. 3) (1927), 137 L. T. 333.
287. *Add. Annotation*:—*Mentd.* *The Jupiter* (No. 3) (1927), 137 L. T. 333.
296. *Add. Annotations*:—*Distd.* Laurie & Morewood v. Dudin, [1926] 1 K. B. 223; *Wait & James v. Midland Bank* (1926), 31 Com. Cas. 172. *Mentd.* *Sterns v. Vickers*, [1923] 1 K. B. 78.
298. *Add. Citation*:—19 Q. B. D. 68.  
*Add. Annotations*:—*Consd.* Flatau v. Sawyer (1892), 8 T. L. R. 656. *Refd.* Sarat Chunder Dey v. Chunder Lala (1892), 56 J. P. 741; H. v. H., [1928] P. 206. *Mentd.* L. & Y. Ry., L. & N. W. Ry. & Graeser v. MacNicol (1918), 88 L. J. K. B. 601.
299. *Add. Annotation*:—*Consd.* Laurie & Morewood v. Dudin (1925), 134 L. T. 309.
300. *Add. Annotations*:—*Consd.* Laurie & Morewood v. Dudin, [1926] 1 K. B. 223. *Mentd.* Colley v. Overseas Exporters, [1921] 3 K. B. 302.
- 304a. —.]—Defts., warehousemen, held 618 quarters of maize belonging to A., who sold 200 quarters thereof to W., who sold them to pltf., giving to the latter a delivery order which they lodged with defts. Defts. did not object to the order, nor did they make any acknowledgment to pltf. of their title:—*Held*: the mere receipt of the delivery order by defts. without objection did not estop them from denying that pltf. were the owners of the 200 quarters.—LAURIE & MOREWOOD v. DUDIN & SONS, [1926] 1 K. B. 223, 95 L. J. K. B. 191; 134 L. T. 309; 42 T. L. R. 149; 31 Com. Cas. 96, C. A.
- Annotations*:—*Consd.* Wait & James v. Midland Bank (1926), 31 Com. Cas. 172; *Re Wait*, [1927] 1 Ch. 606.
- 304b. —.]—WAIT & JAMES v. MIDLAND BANK (1926), 31 Com. Cas. 172.
306. *Add. Annotation*:—*Consd.* Laurie & Morewood v. Dudin, [1926] 1 K. B. 223.
309. *Add. Annotations*:—*Apld.* The Joannis Vatis, [1922] P. 92. *Refd.* The Rosalind (1920), 90 L. J. P. 126. *Mentd.* Elliott Steam Tug Co. v. Shipping Controller, [1922] 1 K. B. 127; G. N. Ry. v. L. E. P. Transport Depository, [1922] 2 K. B. 742; The Zelo, [1922] P. 9; Mersey Docks & Harbour Board v. Hay, [1923] A. C. 345.
312. *Add. Annotations*:—*Consd.* Lake v. Simmons (1926), 95 L. J. K. B. 586. *Mentd.* Williams v. Baltic Insce. Assocn. of London, [1924] 2 K. B. 282.
313. *Add. Annotation*:—*Refd.* Lake v. Simmons (1926), 95 L. J. K. B. 586.
317. *Add. Annotation*:—*Refd.* Whiteley v. Hilt, [1918] 2 K. B. 808.
- 319a. Completion of work—Goods sent to trades-

man for work to be done.]—Where goods are sent to a tradesman to exercise his skill upon them, his duties as bailee do not cease as soon as his work is done. Until the parties have shown, either by express words or by conduct, that they intend to alter the original relationship between them, that relationship continues.—MITCHELL v. DAVIS (1920), 37 T. L. R. 68.

322. *Add. Annotation*:—*Refd.* Whiteley v. Hilt, [1918] 2 K. B. 808.
324. *Add. Annotation*:—*Mentd.* Belvedere Fish Guano Co. v. Rainham Chemical Works, Feldman & Partridge, Ind, Coope v. Same, [1920] 2 K. B. 487.
325. *Add. Citation*:—119 L. T. 632.  
*Add. Annotations*:—*Consd.* Nelson Murdoch v. Wood (1922), 126 L. T. 745. *Refd.* Cohen v. Roche (1926), 95 L. J. K. B. 945.
336. *Add. Annotations*:—*Consd.* Coldman v. Hill, [1919] 1 K. B. 443. *Refd.* City of Baroda (Cargo Owners) v. Hall Line (1926), 42 T. L. R. 717.
338. *Add. Annotation*:—*Consd.* Coldman v. Hill, [1919] 1 K. B. 443.
339. *Add. Annotation*:—*Consd.* White v. Smith (1927), 96 L. J. K. B. 397.
- 339a. Right of sale—On non-payment of charges —Storage of goods.]—Defts., a firm of warehousemen, received a quantity of furniture from pltf. to be stored by them at an agreed rental. An express condition of the contract stipulated that if the rent or other charges due to defts. should be two years in arrear defts., on giving proper notice in the terms of the contract to pltf., should be entitled to sell the whole or any part of the goods & pay themselves out of the proceeds:—*Held*: defts. were entitled to sell the whole of the goods, & it was not unreasonable that they should do so, & they had done nothing actionable in selling.—WILLETTS v. CHAPLIN & Co. (1923), 39 T. L. R. 222.
340. *Add. Annotation*:—*Apld.* Parkinson v. College of Ambulance & Harrison (1924), 40 T. L. R. 886.
357. *Add. Annotations*:—*Apld.* The Joannis Vatis, [1922] P. 92. *Refd.* The Rosalind (1920), 90 L. J. P. 126. *Mentd.* Elliott Steam Tug Co. v. Shipping Controller, [1922] 1 K. B. 127; G. N. Ry. v. L. E. P. Transport Depository, [1922] 2 K. B. 742; The Zelo, [1922] P. 9; Mersey Docks & Harbour Board v. Hay, [1923] A. C. 345.
371. *Add. Annotation*:—*Consd.* Cohen v. Roche (1926), 95 L. J. K. B. 945.
372. *Add. Annotation*:—*Refd.* The Joannis Vatis (1921), 15 Asp. M. L. C. 506.
373. *Add. Annotations*:—*Consd.* The Rosalind (1920), 90 L. J. P. 126. *Apld.* The Joannis Vatis, [1922] P. 92; The Zelo, [1922] P. 9.

PART IV. SECT. 1, SUB-SECT. 7. —  
316 ii. —.]—S. sold certain sheep to D. Under the contract of sale, on a fixed date, a count & *pro forma* delivery was to be given, & such delivery was to be taken only upon payment in cash of the full amount of the purchase-money & not before. Until such payment in cash, or until all cheques, etc., given in payment were met & satisfied, the sheep were to remain the sole & absolute property of S. During the period between the *pro forma* delivery & J.S.

payment the sheep were to be in charge of D. D. sold the sheep though payment to S. in accordance with the terms of the contract had not been made:—*Held*: under the terms of the contract, S. had a right to immediate possession of the sheep.—SCOTTON v. BRIDGE & Co., LTD. (1919), 19 N. S. W. L. R. 70.—AUS.

PART IV. SECT. 2, SUB-SECT. 1.  
354 iii. —.]—Joint negligence of bailee & third party.]—A. entrusted

his motor car to C. for repairs. While the car was being tested by C. it came into collision with a lorry belonging to B. In an action for damages brought by A. against B., the jury found that the driver of the lorry had driven at an excessive speed, & that the driver of the motor car was negligent in not keeping a proper look-out:—*Held*: the doctrine of identification of bailor & bailee was not applicable in relation to liability for negligence.—WELLWOOD v. KING (ALEXANDER), LTD., [1921] 2 I. R. 274.—IR.



## ENGLISH AND EMPIRE DIGEST SUPPLEMENT:

**Refd.** Elliott Steam Tug Co. v. Shipping Controller, [1922] 1 K. B. 127. **Mentd.** G. N. Ry. v. L. E. P. Transport Depository, [1922] 2 K. B. 742; Mersey Docks & Harbour Board v. Hay, [1923] A. C. 345.

**374a.** S. P. BROWN v. HAND-IN-HAND FIRE INSURANCE SOCIETY (1895), 11 T. L. R. 538; 39 Sol. Jo. 672.

**374b.** **With interest from date of loss.]—** While on hire by the Admty. a steam trawler was sunk through a collision with the R. The value of the trawler was agreed between the parties, but the Admty. claimed, as bailees in possession, to recover as part of their damages interest from the date of the loss. The owners of the R. contended that interest was only payable from the date when the Admty. paid the value of the trawler to her owners:—**Held:** under the Admty. rule

a bailee in possession was entitled to recover from a wrongdoer a complete equivalent of the chattel deteriorated or lost, namely, its value at the time of the deterioration or loss, with interest from that date; but inasmuch as there was an agreement between the parties that defts. should pay what the Admty. had to pay to the owners of the trawler, interest on the payment only ran from the date of payment.—**THE ROSALIND** (1920), 90 L. J. P. 126; 37 T. L. R. 116.

**379.** **Add. Annotations:—**Apld. The Zelo, [1922] P. 9. **Refd.** Elliott Steam Tug Co. v. Shipping Controller, [1922] 1 K. B. 127; Wilston S.S. Co. v. Andrew Weir (1925), 31 Com. Cas. 111.

**392.** **Add. Annotations:—**Consd. Brooke v. Bool, [1928] 2 K. B. 578. **Refd.** Pratt v. Patrick, [1924] 1 K. B. 488.

### PART IV. SECT. 2, SUB-SECT. 2.

**376 ii.** — *Proceeds of sale paid to fictitious owner* ]—The owner of furniture entrusted it to pltf. for storage. Pltf. was fraudulently induced to send the furniture for sale by deft., who was to account to the owner for it. Deft.

sold the furniture & paid the purchase-money to the person who had falsely represented himself to be the owner:—**Held:** pltf. could not maintain an action against deft. either for conversion or for money had & received.—**GRACE BROTHERS, LTD. v. LAWSON** (1922), 31 C. L. R. 130.—**AUS.**

### PART IV. SECT. 2, SUB-SECT. 3.

**383 i.** *Negligence of hirer in use of chattel.* ]—**WAINIO v. BEAUDREAU** (Ont.), [1927] 4 D. L. R. 1131.—**CAN.**

**383 ii.** — *A bailor is not responsible for the negligence of his bailee.*—**GIBSON v. O'KEENEY**, [1928] N. L. 66.—**IR.**

## BANKERS AND BANKING.

## Part I.—Constitution and General Position of Banks.

23. *Add. Annotation*:—Mentd. *Edwards v. Porter, McNeill v. Hawes*, [1923] 2 K. B. 538.
- 38a. ——— Court of Chancery Act, 1841 (c. 5), s. 4.]—CHAMBERLAIN & SPROAT *v. WALL & LLOYD* (1920), 150 L. T. Jo. 387.
40. *Add. Annotation*:—Mentd. *Esquimault & Nanaimo Ry. v. Wilson*, [1920] A. C. 358.
56. *Add. Annotation*:—Distd. *Hong Kong & Shanghai Bank v. Lo Lee Shi*, [1928] A. C. 181.
57. *Add. Annotations*:—As to (2) *Consd. Woollatt v. Stanley* (1928), 138 L. T. 620. *Generally, Mentd. Bowling v. Camp* (1922), 128 L. T. 342.
61. *Add. Annotation*:—Mentd. *Banque Belge v. Hambrouck*, [1921] 1 K. B. 321.
73. *Add. Annotation*:—Mentd. *South Behar Ry. v. I. R. Comrs.*, [1925] A. C. 476.
75. *Add. Annotation*:—Mentd. *South Behar Ry. v. I. R. Comrs.*, [1925] A. C. 476.
98. *Add. Annotation*:—*Consd. Bailey v. Bailey*, [1926] Ch. 758.
106. *Citations*:—For “3 L. T. M. C. 84” read “3 L. J. M. C. 84.”
- 112a. “Dispute”—Conflicting claims to deposit—Jurisdiction of Registrar of Friendly Societies.]—*Held*: (1) the words “any person claiming to be entitled to any money deposited in such savings bank” in Savings Bank Act, 1844 (c. 83), s. 14, were not limited to persons claiming through a depositor; (2) a dispute between a depositor & a person claiming adversely to him was a dispute within the sect.; (3) the Registrar of Friendly Societies now has jurisdiction over disputes between rival claimants to a deposit.—*BAILEY v. BAILEY*, [1926] Ch. 758; 95 L. J. Ch. 470; 135 L. T. 431; 42 T. L. R. 502, C. A.
- 112b. Nomination to deposit—Invalid nomination—Recovery of money paid under.]—P., who had money to his credit in the Post Office Savings Bank, signed a nomination form by which he left the money to deft. The name of a witness appeared on the form, but P. had not signed the form in his presence as required by the regulations. After P.’s death, as the form appeared on the face of it to be valid, the Postmaster-General paid the money to deft. Pltf., having taken out letters of administration of P.’s estate, claimed the money from deft., as money received by him to the use of pltf.:—*Held*: the form was invalid, & the position of deft. was the same as if he had received payment under a will afterwards held invalid, & pltf. was entitled to recover.—*PEARMAN v. CHARLTON* (1928), 44 T. L. R. 517; 72 Sol. Jo. 368.

## SECT. 6a.—MUNICIPAL SAVINGS BANKS.

- 112c. Nomination to deposit—Regulations—Power of bank to alter.]—A. had a sum of money on deposit at a municipal savings bank, which he purported to nominate to his two daughters under the regulations relating to deposits in savings banks. A. died intestate, & an application was made by one of his next of kin for a declaration that the nomination was void, on the ground that there was a limit as to nominations by depositors under the special Act of the corpn. whose bank it was, & that, even though by later regulations the corpn. had purported to abandon this limitation, such a nomination was *ultra vires* the special Act & void:—*Held*: regulations as to nominations could be made by the corpn. under their special Act similar to those indicated in Savings Banks Act, 1887 (c. 40), with such modifications, including abolition of the maximum, as might be considered necessary; the limit laid down could be abolished under these regulations & such abolition need not abrogate the whole matter, & the nomination by deceased was good.—*Re KIMBER, VALE v. ROCKMAN*, [1928] Ch. 749; 97 L. J. Ch. 430; 139 L. T. 550; 72 Sol. Jo. 545.
128. *Add. Annotation*:—Mentd. *Evans v. Brunner, Mond*, [1921] 1 Ch. 359.
- 128a. ——— To act as sole judicial trustee with remuneration.]—A bank may be appointed a sole judicial trustee, with remuneration, under the sect. dealing with the appointment of “a person” under Judicial Trustee Act, 1896 (c. 35).—*Re COHEN, COHEN v. COHEN* (1918), 62 Sol. Jo. 682.
131. *Add. Annotation*:—Mentd. *Hong Kong & Shanghai Bank v. Lo Lee Shi*, [1928] A. C. 181.
156. *Add. Citation*:—*sub nom. BANK OF AUSTRAL-ASIA v. BANK OF AUSTRALIA*, 12 Jur. 189.
157. *Add. Annotations*:—Mentd. *Atherton v. British Insulated & Helsby Cables*, [1925] 1 K. B. 421; *Re City Equitable Fire Insce.*, [1925] Ch. 407.
159. *Add. Citation*:—18 Jur. 885.
166. *Add. Annotation*:—*Refd. Wright v. Morgan*, [1926] A. C. 788.
169. *Add. Annotations*:—*Consd. Atherton v. British Insulated & Helsby Cables*, [1925] 1 K. B. 421. *Appld. Re City Equitable Fire Insce.*, [1925] Ch. 407.
203. *Add. Annotation*:—*Refd. Employers’ Liability Assce. v. Sedgwick Collins* (1926), 95 L. J. K. B. 1015.

## PART I. SECT. 6.

t. Read now “112a i.”

## PART I. SECT. 7, SUB-SECT. 3.

i. ———.]—*R. v. BARNARD* (25), 44 Can. Crim. Cas. 137; 57

O. L. R. 397.—CAN.

y. ii. ———.]—*R. v. SMITH* (1925), 44 Can. Crim. Cas. 361; 57 O. L. R. 383.—CAN.y. iii. ———.]—*R. v. GOUGH* (1925), 44 Can. Crim. Cas. 122; 57

O. L. R. 426.—CAN.

## PART I. SECT. 7, SUB-SECT. 4.—B.

214 ix. ——— *By administrator to next of kin.*]—*CLARKSON v. MCLEAN* (1918), 42 O. L. R. 1; 13 O. W. N. 373.—CAN.

215a. *S. P. FRY v. RUSSELL* (1858), 3 C. B. N. S. 665; 140 E. R. 902; *sub nom.* *FRY v. RUSSELL, POWIS v. BUTLER*, 27 L. J. C. P. 153; 4 Jur. N. S. 193.

*Annotation*:—*Mentd.* *Wolverhampton New Waterworks v. Hawkesford* (1859), 29 L. J. C. P. 121.

SECT. 8.—FOREIGN AND BRITISH OVERSEAS BANKS (Vol. III., p. 159).

For "See COMPANIES" read as follows:—

230a. Credit notes of Russian State Bank—Rights of holders.]—*MARSHALL v. GRINBAUM* (1921), 37 T. L. R. 913.

Foreign companies.]—See COMPANIES, Vol. X., pp. 1198–1209.

231. *Add. Annotations*:—As to (4) *Refd.* *Banque Belge v. Hambrouck*, [1921] 1 K. B. 321; *Anchor Donaldson v. Crossland* (1928) 45 T. L. R. 97. *Generally, Mentd.* *Dominion Coal Co. v. Maskinonge S.S. Co.*, [1922] 2 K. B. 132; *Boston Corp'n. v. Fenwick* (1923), 129 L. T. 766; *Holt v. Markham*, [1923] 1 K. B. 504; *Cantiare San Rocco, S.A. v. Clyde Shipbuilding & Engineering Co.*, [1924] A. C. 226; *Bowling v. Cox*, [1926] A. C. 751.

PART I. SECT. 7, SUB-SECT. 4.—C. sa. *Dividends payable after shareholder's death—Belong to legacies.*]—*BRYSON v. BRYSON* (1927), Q. R. 65 S. C. 112.—CAN.

PART I. SECT. 7, SUB-SECT. 5. u i. — *Appointment of interim liquidator—Notwithstanding curator appointed.*]—*Re HOME BANK OF CANADA* (Ont.), [1923] 4 D. L. R. 891.—CAN.

x i. *Pensions fund society—Right of members to fund.*]—Where the merger or winding up of a bank constitutes a cessation of employment & a pensions fund society has been founded in accordance with Pension Fund Societies Act, R. S. C., 1906 (c. 123), members, ex-members & pensioners rank for distribution of the funds of the society according to the byelaws of the society regardless of the general law unless the bye-laws make no provision for the case in question.—*Re SOCIETE DE LA CAISSE DE RETRAITE DE LA BANQUE NATIONALE, TRUDEL v. LEMOINE*, [1925] 4 D. L. R. 97; [1925] S. C. R. 698; *affd.*, [1926] 3 D. L. R. 988.—CAN.

b (p. 157) i. — *Bank not properly incorporated—Effect upon position of shareholders.*]—*Re HOME BANK OF CANADA*, [1927] 1 D. L. R. 871; 59 D. L. R. 654; 8 C. B. R. 143.—CAN.

j i. — *Debt to party liable as surety.*]—In the winding up of a bank a person liable to the bank as surety may set off his personal right against the bank as a depositor, where both debts exist at the time of the winding up.—*CLARKSON v. ROBINET*, [1925] 4 D. L. R. 778; *varying*, 26 O. W. N. 466.—CAN.

j ii. — *Debt to party liable as partner.*]—A partner, with his co-partner, was sued by the liquidators of an insolvent bank for a partnership debt, for which he had pledged his individual deposit in the bank:—*Held*: he was entitled to have his separate deposit applied, either as a set-off in the action, or against the partnership debt.—*CLARKSON v. SMITH & GOLDBERG*, [1926] 1 D. L. R. 509; 58 O. L. R. 241.—CAN.

j iii. —.]—*CLARKSON & HOME*

*BANK OF CANADA v. LANCASTER* (1927), 38 B. C. R. 217.—CAN.

223 i. *Liability to contribute—Trustee.*]—*Held*: not personally liable, as the will was sufficiently "named" in the books of the bank in connection with the actual holding.—*Re HOME BANK OF CANADA, NATIONAL TRUST CO.'S CASE* (1925), 57 O. L. R. 27; 5 C. B. R. 644; *affg.* 5 C. B. R. 318.—CAN.

sb. *Action by bank—Security for costs.*]—Order made.—*HOME BANK v. HAMONA FARMERS ASSOCN.*, [1927] 1 W. W. R. 528; 21 Sask. L. R. 420.—CAN.

PART I. SECT. 10, SUB-SECT. 1.

a (p. 159) i. —.]—*CUNNINGHAM v. NORTHERN BANKING CO., LTD.*, [1928] N. I. 112.—IR.

sc. *Right to give consent for adding bank as party.*]—A local manager of a bank has authority to give the consent in writing required by Rules of Ct., r. 41, for the adding of a pltf.—*KUSCH v. PEAT*, [1922] 2 W. W. R. 174; 63 D. L. R. 408; 15 Sask. L. R. 324.—CAN.

f (p. 160) i. —.]—The local manager of a bank, in answer to the inquiry of a customer, informed him that a cheque held by him was good, & the customer indorsed the cheque & left it with the manager to be applied against his debt to the bank, & relying on such assurance, permitted his position as against the maker of the cheque to be altered to his prejudice. On the failure of the maker to provide funds to meet the cheque:—*Held*: the bank was estopped from denying that the customer paid in the amount represented by the cheque.—*BANQUE D'HOCHELAGA v. BRUNET*, [1925] 2 W. W. R. 447.—CAN.

f (p. 160) ii. —.]—The acceptance of a cheque by a local bank manager is binding on the bank, although at the time the drawer has insufficient funds to meet it.—*LEDUC v. LA BANQUE D'HOCHELAGA*, [1926] 1 D. L. R. 433; [1926] S. C. R. 76.—CAN.

237. *Add. Annotation*:—*Refd.* *Sutters v. Briggs*, [1922] 1 A. O. 1.

238. *Add. Annotations*:—*Mentd.* *Pratt v. British Medical Assocn.*, [1919] 1 K. B. 244; *Prager v. Blatspiel, Stamp & Heacock*, [1924] 1 K. B. 566; *Poland v. Parr*, [1927] 1 K. B. 236.

239. *Add. Annotations*:—As to (2) *Refd.* *Kreditbank Cassel G.M.B.H. v. Schenkers*, [1927] 1 K. B. 826. *Generally, Refd.* *Reckitt v. Barnett, Pembroke & Slater*, [1928] 2 K. B. 244. *Mentd.* *Janvier v. Sweeney*, [1919] 2 K. B. 316; *Pratt v. British Medical Assocn.*, [1919] 1 K. B. 244.

247. *Add. Annotation*:—*Consd.* *Jones v. Waring & Gillow*, [1925] 2 K. B. 612.

254. *Add. Annotations*:—*Generally, Mentd.* *Cal-menson v. Merchants' Warehousing Co.* (1920), 125 L. T. 129; *Dey v. Mayo*, [1920] 2 K. B. 346; *Everett v. Griffiths*, [1921] 1 A. C. 631; *Hearn v. Southern Ry.* (1925), 41 T. L. R. 305.

263. *Add. Annotation*:—*Apld.* *Re City Equitable Fire Insee.*, [1925] Ch. 407.

245 i. *Guaranteeing repayment of loan—Made by third party to customer.*]—*Held*: not within the ostensible authority of a local branch manager of a bank.—*STEVENS v. MERCHANTS BANK OF CANADA*, [1920] 1 W. W. R. 52; 49 D. L. R. 528; 30 Man. L. R. 46.—CAN.

248 ii. — *Delivery up of keys to purchaser from customer without getting cheque.*]—Pltf. sold his business & agreed to assign to the purchasers the lease of the premises upon which the business was carried on. Pltf. sent the keys of the premises to deft. C., manager of a branch of deft. bank, in a letter, in which he requested C. to hand the keys to W., one of the purchasers, upon receiving from W. a cheque for a named sum. C., without getting the cheque, gave up the keys to the landlord of the premises, who handed them to W.:—*Held*: (1) C. had failed to carry out the terms of his instructions; (2) the keys were sent to C. in his capacity as manager, & the transaction was within the scope of his authority as such; (3) the onus of proving damage was on pltf., & he had not satisfied it.—*GARBER v. UNION BANK OF CANADA* (1919), 46 O. L. R. 129; 17 O. W. N. 16.—CAN.

ii a. —.]—As the terms of Mercantile Law (Scotland) Amendment Act, 1856 (c. 60), s. 6, are unequivocal & unambiguous, they cannot be construed as relating only to the case where the representations are founded on as the basis of a substantive action but must equally apply where they are founded on in defence.—*UNION BANK OF SCOTLAND v. TAYLOR*, [1925] S. C. 835.—SCOT.

sd. *Agreeing to forward bankers' draft.*]—*Held*: as the promise by the acting manager to forward the draft was a voluntary act without remuneration & not part of his duty as an officer of the bank, the bank was not liable for his failure in performing it.—*MAXWELL v. UNION BANK OF CANADA*, [1922] 1 W. W. R. 7; 69 D. L. R. 130.—CAN.



## Part II.—Business of Banking.

264. *Add. Citation*:—*sub nom.* BANK OF AUSTRALASIA *v.* BANK OF AUSTRALIA, 12 Jur. 189.
270. *Add. Annotation*:—*Mentd.* Ipswich Permanent Money Club *v.* Arthy, [1920] 2 Ch. 257.
- 270a. *Cheque presented after business hours—Right of bank to deal with cheque.*—*Pltf.* had an account with defts.' branch, the closing hour of which was 3 p.m. *Pltf.* drew a cheque in favour of W., & handed it to W. at such an hour that it was impossible for him to present it for payment before 3 p.m. He did, in fact, present it for payment shortly after 3 o'clock, & received payment. Later in the day *pltf.* decided to stop payment of the cheque, & sent his son to the bank at the hour of opening on the following morning, but he then found that the money had already been paid:—*Held*: a bank is entitled to deal with a cheque within a reasonable business margin after their advertised time of closing, & in cashing the cheque defts. had acted within their rights.—*BAINES v. NATIONAL PROVINCIAL BANK, LTD.* (1927), 96 L. J. K. B. 801; 137 L. T. 631; 32 Com. Cas. 216.
272. *Add. Annotations*:—*Consd.* Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110. *Refd.* London Joint Stock Bank *v.* Macmillan & Arthur, [1918] A. C. 777. *Mentd.* *Re* Richardson, Pole *v.* Pattenden, [1920] 1 Ch. 423.
274. *Add. Annotation*:—*Consd.* *Re* Farrow's Bank, [1923] 1 Ch. 41.
- 274a. *Bank stopping payment before final clearance of cheque received for collection.* *Re* FARROW'S BANK, LTD., No. 479a, *post*.
275. *Add. Annotation*:—*Refd.* Garrard *v.* James, [1925] Ch. 616.
276. *Add. Annotation*:—*Consd.* Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110.
- 276a. ——— *At branch where account kept.*—In the absence of special agreement, it is an implied term of the contract between a bank & its customer that the promise of the bank to repay a balance is a promise to repay it at the branch of the bank where the account is kept & not till after demand at that branch. The obligation of the bank is local, although after local demand & refusal to pay the bank is liable to be sued wherever it can be served. When local demand must be met by payment in a foreign currency the remedy available in an English ct. for refusal to pay is a cause of action in damages for breach of contract & not for debt.—*RICHARDSON v. RICHARDSON*, [1927] P. 228; 96 L. J. P. 125; 137 L. T. 492; 43 T. L. R. 631; 71 Sol. Jo. 695.
278. *Add. Annotation*:—*Mentd.* Rederi Akt. Transatlantic *v.* Drughorn, [1918] 1 K. B. 394.
279. *Add. Annotation*:—*Mentd.* The Tervaeete, [1922] P. 259.
281. *Add. Annotations*:—*Consd.* Auchteroni *v.* Midland Bank, [1928] 2 K. B. 204. *Mentd.* Quebec Ry. Light, Heat & Power Co. *v.* Vandry, [1920] A. C. 662; McDonald *v.* Nash, [1924] A. C. 625; Samuel *v.* Dumas, [1924] A. C. 431; Ouellette *v.* Canadian Pacific Ry., [1925] A. C. 569; Gilbert *v.* Gilbert & Bougher (1927), 96 L. J. P. 137; Tilling-Stevens Motors *v.* Kent County Council & Transport Minister (1928), 139 L. T. 265.
282. *Add. Annotations*:—*Appld.* British American Continental Bank *v.* British Bank for Foreign Trade, [1926] 1 K. B. 328. *Refd.* Admiralty Comrs. *v.* National Provincial & Union Bank of England (1922), 127 L. T. 452; Jones *v.* Waring & Gillow, [1926] A. C. 670. *Mentd.* Steam Saw Mills Co. *v.* Baring, [1922] 1 Ch. 244.
- 282a. *Account opened in assumed name—Payment in of cheque obtained by duress—Payment out on forged cheques—Action by party whose name assumed.*—*Pltf.* brought an action against deft. bank for £125,000, money had & received by defts. to his use. *Pltf.*'s case was that an account was opened in his name at a branch of deft. bank by some one other than himself, that a cheque for £150,000 payable to his order was paid into the account, & that on the following day a forged cheque, purporting to be drawn by *pltf.*, for £130,000 was cashed by one H., the balance being afterwards withdrawn by H., by means of other forged cheques. Defts. alleged that the cheque for £150,000 was obtained by a blackmailing conspiracy from one A., who was discovered by one N. with *pltf.*'s wife in compromising circumstances, & that the proceeds were shared between the conspirators, whom defts. alleged to include, among others, *pltf.*, *pltf.*'s wife, & H. & N. *Pltf.* & his wife denied that they took part in any conspiracy, & *pltf.* said that, when he heard of the relations between his wife & A., he instructed H., who represented himself to be a solr., to take divorce proceedings, & that, when the sum of £25,000 was handed to him by H., he, *pltf.*, passed the amount on to his wife & said that he would have nothing more to do with her, & that he learned later that A. had paid £150,000. It was to recover the difference between these

## PART II. SECT. 1, SUB-SECT. 2.

b 1. ———.]—*BRANDON v. BANK OF MONTREAL*, [1926] 4 D. L. R. 182; 59 O. L. R. 268.—CAN.

275 va. ———.]—A deposit of money in a bank to meet a draft is not payment of the draft. The money so deposited must be appropriated by the depositor thereof to the draft. Where the bank is authorised so to appropriate the money it acts in doing so as agent of the depositor, & if it fails to carry out its duties as such agent, the loss falls on its principal. It is possible for a bank while acting as agent of the drawer of a draft for

the purpose of collecting it to act also as agent of the drawee in appropriating the money.—*BRANTFORD CORDAGE CO. v. MILNE*, [1925] 1 D. L. R. 862; [1925] 1 W. W. R. 911; 35 Man. L. R. 17; *affo.*, [1925] 1 D. L. R. 92; [1925] 1 W. W. R. 442.—CAN.

275 vii. ———.]—*In Canadian paper in American bank—In what currency payable by bank.*—*Held*: *pltf.*'s deposits created merely the relation of debtor & creditor, & the bank's obligation under that relationship was to repay the exact amount of money which was received on deposit. Whether amounts of deposits repayable

in Canadian or American currency discussed.—*SHEPPARD v. FIRST INTERNATIONAL BANK OF SWEET GRASS*, [1924] 1 D. L. R. 582; 1 W. W. R. 290.—CAN.

275 viii. ———.]—*Cheque delivered to bank to be cashed.*—The fact that the holder of a cheque delivers it to a bank to be cashed does not constitute a deposit nor render the bank his debtor, & the bank has no right to set off against the proceeds of the cheque a debt owing to it by the holder.—*ROYXEL v. ROYAL BANK OF CANADA*, [1918] 2 W. W. R. 791; 11 Sask. L. R. 218.—CAN.

two amounts that the action was brought. The jury found that there was a conspiracy to get money from A. by catching him with pltf.'s wife, but that pltf. & his wife were not parties to the conspiracy, that A. was induced to part with the money through fear, & that his parting with it was not free & voluntary:—*Held*: pltf. never got the property in the cheque for £150,000 & could not sue in conversion, & he had no right to sue in contract because the dealings with deft. bank were not on his behalf, & therefore he had no title to the cheque, & the action failed.—*ROBINSON v. MIDLAND BANK, LTD.* (1925), 41 T. L. R. 402; 69 Sol. Jo. 428, 792, O. A.

284a. — Effect of mere book entries.] — In dealings between banker & customer, where it is sought to treat a mere book entry as a payment, some other circumstances must be present & relied upon to enable the customer in whose favour it is made to succeed, either some express previous authority to pay, or a communication of the making of the entry to the customer & an acting upon it by him; there must be, in effect, both a payment by one party & a receipt by the other, or an alteration in the position of the customer in whose favour the book entry was made.—*BRITISH & NORTH EUROPEAN BANK, LTD. v. ZALZSTEIN*, [1927] 2 K. B. 92; 96 L. J. K. B. 539; 137 L. T. 127; 43 T. L. R. 299.

289a. — Bills specifically appropriated to one account—Payment of proceeds to other account.]—A banker who has agreed with a customer to open two accounts in his name, & who holds bills which the customer has specifically appropriated to one account, is not entitled, without the customer's consent, to transfer the proceeds of such bills to the other account.—*GREENHALGH (W. P.) & SONS v. UNION BANK OF MANCHESTER*, [1924] 2 K. B. 153; 93 L. J. K. B. 844; 131 L. T. 637.

292. *Add. Annotation*:—*Reid. Taxation Comrs. v. English, Scottish & Australian Bank*, [1920] A. C. 683.

292a. —.]—(1) The word "customer" in Bills of Exchange Act, 1909 (No. 27 of 1909, Commonwealth), s. 88 (1), which is in the same terms as the above sect. signifies a relationship in which duration is not of the essence, & includes a person who has opened an account on the day before paying in a cheque to which he has no title.

(2) The negligence referred to in the subsect. is negligence in collecting the cheque, not in opening the account. The test is whether the paying in of any given cheque, coupled with the circumstances antecedent & present, was so out of the ordinary course that it ought to have aroused doubt in the banker's mind, & caused him to make inquiries. The standard of care required is that derived from the practice of bankers.

—*TAXATION COMRS. v. ENGLISH, SCOTTISH & AUSTRALIAN BANK* [1920] A. C. 683; 89 L. J. P. O. 181; 123 L. T. 34; 36 T. L. R. 305, P. O.

*Annotations*:—*As to* (2) *Appl. Hampstead Grdns. v. Barclays Bank* (1923), 39 T. L. R. 229; *Lloyds Bank v. Chartered Bank of India, Australia & China* (1928), 97 L. J. K. B. 609. *Consd. Auchteroni v. Midland Bank*, [1928] 2 K. B. 294. *Reid. Underwood v. Bank of Liverpool, Same v. Barclays Bank*, [1924] 1 K. B. 775; *London & Montrose Shipbuilding & Repairing Co. v. Barclays Bank* (1925), 81 Com. Cas. 67.

292b. — Another bank for whom cheque collected—*Bills of Exchange Act, 1882* (c. 61), s. 82.]—(1) The word "customer" in the above sect. applies to another bank for whom the bank, which relies on the protection of the sect., collects a cheque.

(2) The words "receives payment" in the sect. apply to a bank which receives payment as a collecting bank.—*IMPORTERS Co. v. WESTMINSTER BANK*, [1927] 2 K. B. 297; 96 L. J. K. B. 919; 137 L. T. 693; 43 T. L. R. 639; 32 Com. Cas. 369, O. A.

293. *Add. Citation*:—88 L. J. K. B. 55.

*Add. Annotations*:—*Consd. Auchteroni v. Midland Bank*, [1928] 2 K. B. 294. *Mentd. Joachimson v. Swiss Bank Corp.*, [1921] 3 K. B. 110; *Re Polemis & Furness, Withy*, [1921] 3 K. B. 560; *Jones v. Waring & Gillow*, [1926] A. C. 670.

294. *Add. Annotation*:—*Mentd. Guaranty Trust Co. of New York v. Hannay*, [1918] 2 K. B. 623.

297. *Add. Annotations*:—*Mentd. Calmenson v. Merchant's Warehousing Co.* (1920), 125 L. T. 129; *Everett v. Griffiths*, [1921] 1 A. C. 631; *Hearn v. Southern Ry.* (1925), 41 T. L. R. 305.

298a. Remittance sent abroad on request—*Obligation of bank*.]—*Pltfs.*, customers of defts., bankers in London, instructed them to transmit money to a person in Rumania, & defts. sent a cheque by registered post to him personally. The cheque never reached him, but someone apparently put on it a forged indorsement of his name, & it was eventually cleared through a bank in Poland, & defts. debited pltfs. with the amount. In an action for negligence pltfs. alleged that defts. should have sent the cheque by a letter which was insured in addition to being registered:—*Held*: as the loss of a cheque was a rare occurrence, & as the standard of defts.' duty should not be measured by a consideration of all the precautions which subsequent events might suggest, the action failed.—*OSE GESELLSCHAFT, ETC. v. JEWISH COLONIAL TRUST* (1927), 43 T. L. R. 398.

300. *Add. Annotations*:—*Appl. London Provincial & South Western Bank v. Buszard* (1918), 35 T. L. R. 142. *Reid. Brown v. Swan* (1921), 37 T. L. R. 787.

301. *Add. Annotation*:—*Consd. Brown v. Swan* (1921), 37 T. L. R. 787.

289 ii. —.]—In the absence of any special contract to keep a customer's accounts separate a bank may combine his accounts in different departments of the bank for the purpose of meeting his indebtedness to the bank without notifying him or obtaining his consent thereto.—*WALLINDER v. IMPERIAL BANK OF CANADA*, [1925] 4 D. L. R. 390; [1925] 3 W. W. R. 409.—CAN.

#### PART II. SECT. 1, SUB-SECT. 3.—A.

301 ii. —.]—For certain limited purposes a branch bank may be treated as a separate organisation, but for all purposes of liability a bank is a unit & indivisible.—*WHITE v. ROYAL BANK OF CANADA*, [1923] 4 D. L. R. 1206; 53 O. L. R. 543.—CAN.

ss. *Forwarding to another branch documents for collection—Negligence*.]

Where a branch office of a bank, in the usual course of banking business for reward, sends to another office of the bank for collection on behalf of a customer negotiable documents of debts, such as participation certificates issued by the Canadian Wheat Board, which, having been indorsed by the producer, are, in effect, made payable to bearer on surrender thereof, & whose terms deny responsibility in the Wheat



302. *Add. Annotations*:—*Reid. Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669; *Richardson v. Richardson*, [1927] P. 228.
303. *Add. Citation*:—63 Sol. Jo. 246.
304. *Add. Annotations*:—*Consd. Elliott v. Bax-Ironside*, [1925] 2 K. B. 301. *Reid. Kimber Coal Co. v. Stone & Rolfe*, [1926] A. C. 414; *Kettle v. Dunster & Wakefield* (1927), 43 T. L. R. 770.
310. *Add. Annotations*:—*Reid. Joachimson v. Swiss Bank Corpn.*, [1921] 3 K. B. 110. *Mentd. Re Gunsbourg, Ex p. Trustee*, [1919] B. & C. R. 99.
312. *Add. Annotations*:—*Generally, Reid. Earle v. Hemsworth R. D. C.* (1928), 44 T. L. R. 758. *Mentd. Joachimson v. Swiss Bank Corpn.*, [1921] 3 K. B. 110.
317. *Add. Annotations*:—*As to (1) Reid. Joachimson v. Swiss Bank Corpn.*, [1921] 3 K. B. 110. *Generally, Reid. Richardson v. Richardson*, [1927] P. 228.
330. *Add. Citation*:—40 L. T. 404.
331. *Add. Annotations*:—*Reid. Jones v. Waring & Gillow*, [1926] A. C. 670. *Mentd. Holt v. Markham* (1922), 128 L. T. 719.
332. *Add. Annotations*:—*Reid. British American Continental Bank v. British Bank for Foreign Trade*, [1926] 1 K. B. 328; *Jones v. Waring & Gillow*, [1926] A. C. 670.
333. *Add. Annotations*:—*Consd. British American Continental Bank v. British Bank for Foreign Trade*, [1926] 1 K. B. 328; *Jones v. Waring & Gillow*, [1926] A. C. 670.
- 333a. — *Payment into account under belief that customer alive—Liability to refund.*—Where money has been paid into the current account of the customer of a bank under a mistake of fact, such as the belief that the customer is still alive & entitled to the money, the money can be recovered back from the bank without joining the customer's legal personal representatives as defts. to the action.—*ADMIRALTY COMRS. v. NATIONAL PROVINCIAL & UNION BANK OF ENGLAND, LTD.* (1922), 127 L. T. 452; 38 T. L. R. 492; 66 Sol. Jo. 422.
334. *Add. Annotations*:—*Consd. Re Hodgson's Trusts, Public Trustee v. Milne*, [1919] 2 Ch. 189. *Reid. Bradford Old Bank v. Sutcliffe*

(1918), 88 L. J. K. B. 85; *Albemarle Supply Co. v. Hind* (1927), 43 T. L. R. 652.

- 338a. *Necessity for demand—Whether condition precedent to action against banker on account.*—Where money is standing to the credit of a customer on current account with a banker, in the absence of a special agreement a demand by the customer is a necessary ingredient in the cause of action against the banker for money lent.—*JOACHIMSON v. SWISS BANK CORPN.*, [1921] 3 K. B. 110; 90 L. J. K. B. 973; 125 L. T. 338; 37 T. L. R. 534; 65 Sol. Jo. 434; 26 Com. Cas. 196, C. A.

*Annotations*:—*Consd. Admiralty Comrs. v. National Provincial & Union Bank of England* (1922), 38 T. L. R. 492; *Richardson v. Richardson*, [1927] P. 228. *Reid. Re British American Continental Bank Credit General Leigeois' Claim*, [1922] 2 Ch. 589. *Prosperity v. Lloyds Bank* (1923), 39 T. L. R. 372; *Touffier v. National Provincial & Union Bank of England*, [1924] 1 K. B. 461.

- 342a. — *Account in credit—Reasonable notice.*—In the absence of special stipulation a banker can close his customer's banking account in credit only on giving him a reasonable notice, dependent on the nature of the account & the facts & circumstances of the case. When a banking account, opened by pltf. with defts., & having a credit balance of some £7,000, was so interwoven with a "snowball" scheme of insurance devised by pltf. that it became in respect to subscriptions to the scheme a part thereof:—*Held*: a month's notice by defts. to discontinue the account was not, in the circumstances of the case, sufficient, but an injunction restraining defts. from closing the account must be refused.—*PROSPERITY, LTD. v. LLOYDS BANK, LTD.* (1923), 39 T. L. R. 372.

347. *Add. Citation*:—*affg. S. C. sub nom. Re GROSS, Ex p. ADAIR* (1871), 24 L. T. 198.

358. *Add. Annotations*:—*Mentd. Aksionairnoye Obschestvo A. M. Luther v. Sagor*, [1921] 3 K. B. 532; *The Tervaeete*, [1922] P. 259; *Duff Development Co. v. Kelantan Government*, [1923] 1 Ch. 385.

363. *Add. Annotations*:—*Consd. Banque Belge v. Hambrouck*, [1921] 1 K. B. 321. *Reid. Re Hodgson's Trusts, Public Trustee v. Milne*, [1919] 2 Ch. 189. *Mentd. Re Wait*, [1927] 1 Ch. 606.

Board with respect to indorsements, & failing to receive a return letter of acknowledgment, the sending office makes no inquiry of the receiving office as to the safety of the documents until after the lapse of six weeks, it is guilty of negligence. The bank is still more guilty of negligence, when, having made the belated inquiry & learned that the documents have not been received at the other office it fails to take immediate steps in the quickest manner available to warn the debtor liable under the documents of the loss thereof, & thus stop payment to any unauthorised person.—*NELSON v. UNION BANK OF CANADA*, [1923] 3 W. W. R. 1330.—CAN.

303 i. — — — — —]—*GARRIOCH v. CANADIAN BANK OF COMMERCE*, [1919] 3 W. W. R. 185.—CAN.

#### PART II. SECT. 1, SUB-SECT. 4.

317 xi. — *Account in trade name.*—Where an individual keeps his bank account under a trade name & is sued & his banker is garnisheed, it is for the bankers to satisfy themselves that the judgment debtor named is the person keeping such account, & if satisfied beyond reasonable doubt that the right

fund is being garnisheed to pay it into ct.—*SMITH v. GAUTSCHKE*, [1917] 2 W. W. R. 225; 23 B. C. R. 455.—CAN.

#### PART II. SECT. 2, SUB-SECT. 1.

334 v. — — — — —]—Pltf. made a promissory note in favour of S., which was dishonoured on presentment. Both banked with defts., to whom S. was indebted on overdraft for a greater sum than the amount of the note. Subsequently pltf. paid £100 into his account, & defts. immediately, without reference to pltf., paid the note for £119 19s. 10d. & debited pltf.'s account with the amount by which his funds in the hands of defts. were insufficient to meet the note:—*Held*: defts. were at liberty to apply whatever funds of pltf. they had in hand in satisfaction. *pro tanto*, of the note of which they were the holders for value.—*BELL v. UNION BANK*, [1923] N. Z. L. R. 379.—N.Z.

#### PART II. SECT. 2, SUB-SECT. 2.—B.

af. *Right of bank to refuse to pay.*—In order to hold a banker justified in refusing to pay a demand of his customer the customer being an exor., & drawing a cheque as exor., there

must in the first place be some misapplication, some breach of trust intended by the exor., & there must in the second place be proof that the bankers are privy to the intent to make their misapplication of the trust funds. If it be shown that any personal benefit to the bankers themselves is designed or stipulated for, that circumstance above all others will most readily establish the fact that the bankers are in privy with the breach of trust that is about to be committed.—*STANDARD BANK v. ESTATE VAN RHYN*, [1925] App. D. 266.—S. AF.

#### PART II. SECT. 2, SUB-SECT. 3.—A.

371 i. *Joint account of persons not partners—Cheque drawn & countermanded by one after decease of other—Payment by bank—No right of action in survivor.*—*RADCLIFFE v. BANK OF MONTREAL*, [1919] 2 W. W. R. 887.—CAN.

371 ii. — *Subsequent claim by one to whole account—Position of bank.*—Where a bank deposit is made in the name of either of two persons it is a notification that either one may deal with the funds & that the account will be subject to the control of either



378. *Add. Annotation*:—*Mentd. Tournier v. National Provincial & Union Bank of England*, [1924] 1 K. B. 461.

387a. ————.]—For some years before 1919 one U., a merchant, had a banking account at debts' bank. In that year he converted himself into a limited co., all the shares being allotted to himself except one, which was held by his wife. A debenture in the form of a floating charge over the assets of the co. was issued to a creditor of U. as a security for his debt. The arts. of assocn. of the co. incorporated Table A. by par. 71 of which the business of the co. is to be managed by the directors. By the arts. U. was appointed sole director. After the formation of the co. U. kept on his private banking account with debts. as before, they having notice that his business had been transferred to the co. The co. had a separate account, which was kept at another bank, but debts. had no knowledge of that fact. U., as sole director, became possessed of a number of cheques, some crossed & others uncrossed, drawn in favour of the co. He indorsed them "A.L.U., Ltd.—A.L.U. sole director," & paid them into his own account with debts. instead of paying them in to the co.'s account with the other bank. Debts., without inquiring whether the co. had a separate banking account, collected the cheques & credited U. with the proceeds, which he misappropriated. When doing so they treated him as being identical with the co., as he owned all the shares, & overlooked the materiality of the cheques being drawn in the co.'s favour & not in his. In an action brought by the co. on behalf of the debentureholder for conversion of the cheques:—*Held*: (1) debts. were precluded from setting up that U., when paying the cheques in to his own account, was acting within the scope of his apparent authority as agent of the co., upon two grounds: first, that the act of an agent paying his principal's cheques into his own account was so unusual as to put them on inquiry, that they ought to have inquired whether the co. had a separate banking account, & if it had, why the cheques were not paid in to that account, & that their failure to make that inquiry amounted to negligence; & secondly, that U. when paying in the cheques did not purport to act as the co.'s agent, but as being himself the co., & that debts. so treated him; (2) with respect to the cheques which were crossed the omission to inquire about the co.'s banking account disentitled debts. as collecting bankers to the protection afforded by Bills of Exchange Act, 1882 (c. 61), s. 82.

A customer of a bank paid into his account some cheques to which he had no title. Immediately on his so paying them in the bank credited him with the amounts of the cheques in their ledger, but there was no agreement between the bank & the customer that he should be allowed to draw against the cheques before they were cleared, nor did he in fact draw against them until after

the bank had received the proceeds:—*Held*: (3) apart from any question whether the bank had notice of any defect in the customer's title, they were not holders in due course, there being no evidence that they took the cheques for value. The mere fact that bankers credit a customer with the amounts of cheques before they are cleared does not make them holders for value; in order to entitle them to that character there must have been an agreement, express or implied, that the customer should be allowed to draw against the cheques before clearance, & that agreement must have been acted upon. —*UNDERWOOD (A. L.), LTD. v. BANK OF LIVERPOOL, SAME v. BARCLAYS BANK*, [1924] 1 K. B. 775; 93 L. J. K. B. 690; 131 L. T. 271; 40 T. L. R. 302; 68 Sol. Jo. 716; 29 Com. Cas. 182, C. A.

*Annotations*:—As to (1) *Appld. London & Montrose Shipbuilding & Repairing Co. v. Barclays Bank* (1925), 31 Com. Cas. 67; *Liggett (Liverpool) v. Barclays Bank* (1927), 137 L. T. 443; *Lloyds Bank v. Chartered Bank of India, Australia & China* (1928), 97 L. J. K. B. 609. *Consd. Auchteroni v. Midland Bank*, [1928] 2 K. B. 294. *Refd. Kreditbank Cassel G. m. b. H. v. Schenkers*, [1926] 2 K. B. 450; *Houghton v. Nothard, Lowe & Wills*, [1927] 1 K. B. 246; *Reckitt v. Barnett, Pembroke & Slater* (1928), 45 T. L. R. 36. As to (2) *Consd. London & Montrose Shipbuilding & Repairing Co. v. Barclays Bank* (1925), 31 Com. Cas. 67. *Refd. Robinson v. Midland Bank* (1925), 41 T. L. R. 402.

389. *Add. Annotations*:—*Consd. Jones v. Waring & Gillow*, [1925] 2 K. B. 612. *Refd. Banque Belge pour l'Etranger (Soc. Anon.) v. Hambrouck, Spanoghe* (1920), 123 L. T. 495. *Mentd. Brocklebank v. R.*, [1925] 1 K. B. 52.

391. *Add. Annotation*:—*Distd. Re Harrison, Day v. Harrison* (1920), 90 L. J. Ch. 186.

391a. ———— Cheques drawn by wife on bank manager's advice—Title of wife to balance.] —A husband, in 1908, transferred the money standing to a current account at his bank in his own name into the joint names of himself & his wife. He did not inform his wife of the joint account, & always drew cheques on the account himself. He died in Nov. 1919. The wife never drew any cheque on the account until shortly before his death, when he was in failing health & unable to attend to business. The bank manager then informed her of the joint account, & advised her to draw a cheque, which she did. The husband had also from time to time made deposits in the joint names of himself & his wife, & in Aug. 1919, consolidated them into one deposit in the joint names. The wife never knew of this deposit until after her husband's death. There was then found among his papers an envelope indorsed with the wife's initials & containing the deposit receipt & a document in which he said: "I would like this paying away at once if possible as under," with a list of names with amounts against them:—*Held*: the money standing to the credit of both the current account & the deposit account belonged to the wife as survivor, & the document did not raise any presumption that the husband regarded the deposit as his

of them in the absence of special directions. But upon a subsequent notice to the bank by one of such persons that he claims it all, the bank in dealing with the money thereafter in any way affecting such claim acts at its own risk.—*HILL v. HOCHRELAGA*

*BANK*, [1921] 3 W. W. R. 430.—CAN.

PART II. SECT. 2, SUB-SECT. 3.—B. g. *Add "on appeal*, [1919] A. C. 658; 88 L. J. P. C. 118; 121 L. T. 100, P. C."

PART II. SECT. 2, SUB-SECT. 3.—E.

3901. *Joint account of husband & wife—Subsequent claim by wife to whole account—Bank entitled to set off sums advanced for husband's benefit before notice of claim.*—*HILL v. HOCHRELAGA BANK*, [1921] 3 W. W. R. 430.—CAN.

own property.—*Re HARRISON, DAY v. HARRISON* (1920), 90 L. J. Ch. 186.

402. *Add. Annotation* :—*Reid. Joachimson v. Swiss Bank Corp.*, [1921] 3 K. B. 110.

402a. *Effect of need for notice of withdrawal.*—There is no difference in principle in the nature of a deposit requiring notice of withdrawal & a deposit not requiring notice of withdrawal.—*Re GLENDINNING, STEEL v. GLENDINNING* (1918), 88 L. J. Ch. 87; 120 L. T. 222; 63 Sol. Jo. 156.

409. *Add. Annotation* :—*Apld. Re Westerton, Public Trustee v. Gray* (1919), 122 L. T. 264.

409a. *Assignment by order in writing to bank to pay third party sum on deposit—Unindorsed deposit receipt—Letter to assignee.*—About a year before his death, which happened in 1917, testator handed to his landlady, G., an envelope addressed to her describing it as a present to her. She was about to open it, when he took it from her hand & said he would keep it for her & locked it up in his despatch box. After testator's death there was found in his despatch box an envelope containing: (1) A deposit receipt for £500 deposited with his bank in 1914; (2) an order in writing signed by testator directing the bank to pay to G. the sum of £500 then on deposit; & (3) a letter addressed to G.: "You have been very kind to me & I desire to make some return by giving you the amount £500 now on deposit at the . . . bank as per receipt enclosed." The deposit receipt was not indorsed by testator & no notice was given to the bank of any assignment till after his death, the interest on the sum on deposit having been carried by the bank to his current account:—*Held*: there was a valid & complete gift to G. of the sum on deposit by way of assignment under Jud. Act, 1873, s. 25 (6).—*Re WESTERTON, PUBLIC TRUSTEE v. GRAY*, [1919] 2 Ch. 104; 88 L. J. Ch. 392; 122 L. T. 264; 63 Sol. Jo. 410.

*Annotation* :—*Apprvd. & Apld. Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669.

410. *Add. Annotations* :—*Mentd. Re Westerton, Public Trustee v. Gray*, [1919] 2 Ch. 104; *Re Richards, Jones v. Rebbeck*, [1921] 1 Ch. 513.

411. *Add. Annotations* :—*Mentd. Re Westerton, Public Trustee v. Gray*, [1919] 2 Ch. 104; *Re Richards, Jones v. Rebbeck*, [1921] 1 Ch. 513.

431. *Add. Annotation* :—*Reid. Cohen v. Roche* (1926), 95 L. J. K. B. 945.

432. *Add. Annotation* :—*Mentd. Re City Life Assce.* (1925), 42 T. L. R. 45.

453. *Add. Annotation* :—*Reid. Allen v. Royal Bank of Canada* (1925), 41 T. L. R. 625.

454. *Add. Annotations* :—*Mentd. Dey v. Mayo*,

[1920] 2 K. B. 346; *Brown v. Swan* (1921), 37 T. L. R. 787; *Sutters v. Briggs*, [1922] 1 A. C. 1; *Re Farrow's Bank*, [1923] 1 Ch. 41; *Underwood v. Bank of Liverpool & Martins, Underwood v. Barclays Bank*, [1924] 1 K. B. 775; *Importers Co. v. Westminster Bank*, [1927] 2 K. B. 297.

456. *Add. Annotation* :—*Mentd. Brown v. Swan* (1921), 37 T. L. R. 787.

479. *Add. Annotation* :—*Reid. Sutters v. Briggs*, [1922] 1 A. C. 1.

479a. *Cheque credited before clearance—Whether bank holders for value—Bank stopping payment before final clearance.*—(1) Where a customer pays a crossed cheque into his bank, the question whether the bank receive it as holders for value or as agents for collection is a pure question of fact. The fact that the cheque is immediately credited in the ledger does not necessarily make the bank holders for value. That inference may be rebutted by notices in the pass-book & paying-in slip or other evidence showing that the customer could not draw before clearance.

(2) If the bank receive the cheque as agents for collection & stop payment before it is finally cleared at the clearing house, they can only receive & hold the proceeds as collecting agents for their customer, & not on the ordinary bank relationship of debtor & creditor. Consequently, in a winding up following on the stoppage the liquidator must pay the full proceeds of a cheque cleared after the stoppage to the customer, although it was cleared shortly before the actual winding up.—*Re FARROW'S BANK, LTD.*, [1923] 1 Ch. 41; 92 L. J. Ch. 153; 128 L. T. 332; 67 Sol. Jo. 78; [1925] B. & C. R. 8, C. A.

479b. — — — — — *UNDERWOOD (A. L.), LTD. v. BANK OF LIVERPOOL, SAME v. BARCLAYS BANK, No. 387a, ante.*

484. *Add. Annotation* :—*Reid. Guaranty Trust Co. of New York v. Hannay*, [1918] 2 K. B. 623.

487. *Add. Annotations* :—*Reid. Jones v. Waring & Gillow*, [1926] A. C. 670. *Mentd. Holt v. Markham*, [1923] 1 K. B. 504.

489. *Add. Annotation* :—*Mentd. The Sheaf Brook*, [1926] P. 61.

493. *Add. Annotations* :—*Apld. London Provincial & South Western Bank v. Buszard* (1918), 35 T. L. R. 142. *Reid. Brown v. Swan* (1921), 37 T. L. R. 787.

500. *Add. Annotation* :—*Generally, Mentd. Brown v. Swan* (1921), 37 T. L. R. 787.

528. *Add. Annotation* :—*Generally, Mentd. Underwood v. Bank of Liverpool & Martins, Underwood v. Barclays Bank*, [1924] 1 K. B. 775.

#### PART II. SECT. 4, SUB-SECT. 3.

*eg. Money paid to retire draft—Failure of purpose for which draft paid—Liability of bank to refund.*—*Held*: pliffs. could recover from the bank the amount paid by them to retire the draft.—*GIBBONS & CARNES v. ROYAL BANK OF CANADA*, [1921] 2 W. W. R. 370.—CAN.

*aj. Delay in transmitting draft—Transaction not part of manager's duty—Liability of bank.*—*Held*: as the promise by the acting manager to forward the draft was a voluntary act without remuneration & not part of his duty as an officer of the bank, the bank was not liable for his failure

in performing it.—*MAXWELL v. UNION BANK OF CANADA*, [1922] 1 W. W. R. 7; 69 D. L. R. 130.—CAN.

#### PART II. SECT. 5, SUB-SECT. 1.

4631. — — — — — *Stoppage of bank-cheque for debt—Debt not paid.*—*UNION BANK OF CANADA v. NETTLETON* (1924), 55 O. L. R. 643.—CAN.

#### PART II. SECT. 6, SUB-SECT. 1.

*cl. — — — — —*—A co. drew bills of exchange upon customers to whom they had supplied goods & who accepted the bills. The co. indorsed the bills in blank, & delivered them to a bank for collection. The co. went into liquidation. Its current account with the

bank was overdrawn to a large amount. In the liquidation the bank claimed that they were owners of the bills, & that they were not bound to value & deduct the obligations in the bills for the purpose of a ranking. The bank's lien over the proceeds of the bills was admitted:—*Held*: the bills, having been indorsed & delivered to the bank for the limited purpose of collection, remained assets of the co., over which the bank held a mere right in security in virtue of their lien, & the obligations under the bills must be valued & deducted for the purposes of a ranking.—*CLYDESDALE BANK, LTD. v. SENIOR (JAMES ALLAN) & SON LIQUIDATORS*, [1926] S. C. 235.—SCOT.



537. *Add. Annotations*:—*Consd.* Barclay v. Malcolm (1925), 133 L. T. 512; Jones v. Waring & Gillow, [1925] 2 K. B. 612. *Mentd.* Soc. Des Hôtels Le Touquet Paris Plage v. Cummings, [1922] 1 K. B. 451.
538. *Add. Annotation*:—*Consd.* *Re* Swinburne, Sutton v. Featherley (1925), 70 Sol. Jo. 64.
- 538a. —.] — A. drew a cheque for £700 in favour of B. & gave it to B., who presented it forthwith. A. had current & deposit accounts at the bank, but her money on current account was not sufficient to meet the cheque without resort to the money on deposit. It had been the practice of the bank to allow A. to overdraw her current account so long as the overdraft was covered by her money on deposit. The bank refused payment of the cheque, not because of the state of A.'s current account, but because they doubted A.'s signature on the cheque. A. died before anything further was done:—*Held*: in the circumstances there had not been any appropriation or dedication of the money in the bank, or any constructive payment of the cheque; & there had been an incomplete gift *inter vivos* of the amount of the cheque, which gift would not be perfected by the assistance of equity.—*Re* SWINBURNE, SUTTON v. FEATHERLEY, [1926] Ch. 38; 95 L. J. Ch. 104; 134 L. T. 121; 70 Sol. Jo. 64, C. A.
540. *Add. Annotation*:—*Refd.* Australian Bank of Commerce v. Perel, [1926] A. C. 737.
544. *Add. Annotations*:—*Apld.* Underwood v. Bank of Liverpool & Martins, Underwood v. Barclays Bank, [1924] 1 K. B. 775. *Refd.* Kreditbank Cassel G. m. b. H. v. Schenkers, [1926] 2 K. B. 450; Houghton v. Nothard, Lowe & Wills, [1927] 1 K. B. 246; Liggett (Liverpool) v. Barclays Bank (1927), 137 L. T. 443. *Mentd.* Dey v. Pullinger Engineering Co., [1921] 1 K. B. 77.
- 544a. —. —. —.] — A bye-law of applt. co. authorised its secretary-treasurer jointly with any director to sign cheques drawn upon its bank account. A series of cheques payable to one of the directors were fraudulently signed by the director jointly with the secretary-treasurer, & after indorsement were placed by resp. bank to the credit of an account which the director had with them. Resps. collected the cheques from applts.' bank in the usual course of business. In order that there should be to the credit of applts.' account sufficient to meet each of the cheques, the director in each case fraudulently drew a cheque upon one of various other accounts upon which he had authority to draw, & paid it into applts.' account. Applts. sued resps. to recover the aggregate amount of the cheques collected by them:—*Held*: the action failed, because (1) resps. had not knowledge, either by the form of the cheques collected or otherwise, that they were improperly drawn on applts.' account, & could not recover the money as having been held by their bankers in trust for them, & (2) applts. had suffered no loss, & the ct. could not investigate applts.' liability to persons not parties to the action in respect of the cheques placed to applts.' credit.—*CORPORATION AGENCIES v. HOME BANK OF CANADA*, [1927] A. C. 318; 96 L. J. P. C. 63, P. C.
- Annotations*:—*As to* (1) *Consd.* Lloyds Bank v. Chartered Bank of India, Australia & China (1928), 97 L. J. K. B. 609; Reckitt v. Barnett, Pembroke & Slater, [1928] 2 K. B. 244.
- 548a. —. —. —. Cheques paid to customer's creditors.] — Deft. bank negligently, & in breach of the instructions given by their customer, pltf. co., paid cheques drawn on the co.'s account signed by one director only. All the cheques were paid to the co.'s trade creditors:—*Held*: (1) the bank being put on inquiry & being negligent, as the jury found, were not entitled to assume that a signature purporting to be that of a new director was that of a person duly appointed; (2) whether pltf. co.'s account was in credit or in debit at the time of the payments to trade creditors, the bank were, on the equitable doctrine under which a person who has in fact paid the debts of another without authority is allowed to take advantage of his payment, entitled to credit for the cheques paid in discharge of the debts of pltf. co.; (3) an inquiry should be ordered into the circumstances of payment of each cheque.—*LIGGETT (B.) (LIVERPOOL), LTD. v. BARCLAYS BANK, LTD.*, [1928] 1 K. B. 48; 97 L. J. K. B. 1; 137 L. T. 443; 43 T. L. R. 449.
- Annotation*:—*As to* (2) *Refd.* Lloyds Bank v. Chartered Bank of India, Australia & China (1928), 97 L. J. K. B. 609.
548. *Add. Annotation*:—*Refd.* Brown v. Swan (1921), 37 T. L. R. 787.
549. *Add. Annotations*:—*Refd.* Wilson v. United Counties Bank, [1920] A. C. 102. *Mentd.* Neville v. London Express Newspaper, [1919] A. C. 368; *Re* Thellusson, *Ex p.* Abdy, [1919] 2 K. B. 735.
550. *Add. Annotation*:—*Refd.* Wilson v. United Counties Bank, [1920] A. C. 102.
554. *Add. Annotation*:—*Refd.* Prosperity v. Lloyds Bank (1923), 39 T. L. R. 372.
557. *Add. Annotations*:—*Consd.* *Re* Farrow's Bank, [1923] 1 Ch. 41. *Refd.* British & North

## PART II. SECT. 8, SUB-SECT. 2.—A.

538 i. *Constructive payment—Cheque & credit slip stamped "paid."*—*WHITE v. ROYAL BANK OF CANADA*, [1923] 4 D. L. R. 1206; 53 O. L. R. 543.—CAN.

## PART II. SECT. 8, SUB-SECT. 2.—B.

545 i. *To clerk—Notice of limitation of authority.*—A clerk's express duties were to collect amounts due from grain dealers for freight charges, etc., & on presentation of bills of lading & payment of charges to hand out warehouse receipts, & deposit all moneys collected to the credit of the Receiver-General in a designated bank & at certain intervals to remit by draft to the head office of the business. Such charges were almost always paid to him by accepted cheque & deft.

bank cashed such a cheque on it, paying the clerk the proceeds:—*Held*: the bank was negligent as inquiry should have been made as to the clerk's authority & the unusual act of a business firm cashing such a cheque, especially of a large amount, & a certain discrepancy between the name of the payee in the cheque & the name in the indorsement should have aroused suspicion.—*R. v. ROYAL BANK OF CANADA* (1920), 1 W. W. R. 198; 50 D. L. R. 293; 30 Man. L. R. 104.—CAN.

545 ii. —. —. —.] — *HAYES v. STANDARD BANK*, [1927] 3 D. L. R. 336; 60 O. L. R. 461.—CAN.

## PART II. SECT. 8, SUB-SECT. 3.—A.

549 iii. —. —. —. Money advanced on

*agreed terms—Bank holding security.*—*FINUCANE v. STANDARD BANK OF CANADA*, [1921] 3 W. W. R. 314; 62 S. C. R. 110; 59 D. L. R. 465.—CAN.

y i. —. *Dishonour of cheques able to self.*—A demand made personally by a customer upon his banker for payment is a two-party transaction. The refusal of payment cannot give rise to the implication of defamation of the customer to a third party, which necessarily arises when a trader's cheque, drawn or indorsed in favour of a third party, is presented by the holder & dishonoured by the banker. Judgment for pltf. for £250 set aside, & judgment entered for defts., defts. having admitted liability to pay pltf. nominal damages & having paid £10 into ct.—*KINLAN v. ULSTER BANK*, [1928] I. R. 171.—IR.



European Bank v. Zalstein, [1927] 2 K. B. 92. *Mentd.* Dey v. Mayo, [1920] 2 K. B. 346; Sutters v. Briggs, [1922] 1 A. C. 1; Importers Co. v. Westminster Bank, [1927] 2 K. B. 297.

560. *Add. Annotation*:—*Mentd.* *Re* Southerden, Adams v. Southerden, [1925] P. 177.

561. *Add. Annotation*:—*Mentd.* Goldfarb v. Bartlett & Kremer, [1920] 1 K. B. 639.

569. *Add. Annotations*:—*Refd.* Joachimson v. Swiss Bank Corpn., [1921] 3 K. B. 110; Richardson v. Richardson, [1927] P. 228.

574. *Add. Annotations*:—*Refd.* Brown v. Swan (1921), 37 T. L. R. 787. *Mentd.* Pocahontas Fuel Co. v. Ambatielos (1922), 27 Com. Cas. 148.

577. *Add. Annotation*:—*Mentd.* Tournier v. National Provincial & Union Bank of England, [1924] 1 K. B. 461.

582. *Add. Annotations*:—*Mentd.* *Re* Gunsbourg, *Ex p.* Trustees, [1919] B. & C. R. 99; Joachimson v. Swiss Bank Corpn., [1921] 3 K. B. 110.

585. *Add. Annotation*:—*Refd.* Jones v. Waring & Gillow, [1926] A. C. 670.

586. *Add. Annotations*:—*Mentd.* Dey v. Mayo, [1920] 2 K. B. 346; Robinson v. Marsh, [1921] 2 K. B. 640; Sutters v. Briggs, [1922] 1 A. C. 1; *Re* Farrow's Bank, [1923] 1 Ch. 41.

589. *Add. Annotation*:—*Consd.* Westminster Bank v. Hilton (1926), 136 L. T. 315.

589a. — Mistake in telegram—Duty of bank to make inquiry.]—Pltf., who had an account with defts., on July 31, 1924, drew a cheque, No. 117,285, & post-dated it Aug. 2. On Aug. 1 he telegraphed to defts. to stop payment of cheque No. 117,283, mentioning the date, the payee, & the amount. These particulars were correct as to cheque No. 117,285, but the number of the cheque was wrong. Cheque No. 117,285 was presented on Aug. 6, & the bank officials paid it, supposing that it had been drawn in place of the one that had been stopped. If they had searched, they would have seen that a cheque numbered 117,283 had already been presented & honoured. In an action for negligence:—*Held*: the view of the bank officials, that the cheque presented, being subsequent to the date of the stop instructions, might be a duplicate cheque which they were bound to cash, was correct, & pltf. was not entitled to recover.—WESTMINSTER BANK, LTD. v. HILTON (1926), 136 L. T. 315; 43 T. L. R. 124; 70 Sol. Jo. 1196; *sub nom.* HILTON v. WESTMINSTER BANK, LTD., 162 L. T. Jo. 450, H. L.

592. *Add. Annotation*:—*Refd.* Baines v. National Provincial Bank (1927), 96 L. J. K. B. 801.

594. *Add. Annotation*:—*Refd.* Baines v. National Provincial Bank (1927), 96 L. J. K. B. 801.

595. *Add. Annotation*:—*As to* (2) *Refd.* Baines v. National Provincial Bank (1927), 96 L. J. K. B. 801.

600a. Presentment over counter—Duty of bank to pay.]—Pltfs., a partnership firm at Liverpool,

sold goods to the P. Co. & drew upon the co. a bill for a large amount payable in three months in payment for the goods. The P. Co. accepted the bill payable at deft. bank at Liverpool, where they kept their account. Shortly before the bill became payable the co., who were then overdrawn at deft. bank, asked that bank to order payment of the bill & charge to the account of the co. Defts. were willing to act upon this advice, because they had an arrangement for a running overdraft with the co., & the bill was within the limits of that overdraft. When the bill became due it was brought by W., a servant of pltfs., to a partner of pltf. firm, who, at W.'s request, indorsed the bill in blank. V., instead of taking the bill to pltfs.' bank for the purpose of collection through the clearing house, presented the bill for payment over the counter to deft. bank & received the money, which he then fraudulently converted & stole. Pltfs. sued defts. to recover the amount of the bill on the grounds of negligence, money had & received, & conversion of the bill. Evidence was given at the trial that there is an almost universal custom at Liverpool that trade bills should be presented through the clearing house for payment to the bank at which they were accepted payable, but evidence was also given that presentation of such bills over the counter, though most unusual, was not irregular:—*Held*: deft. bank were not liable to pltfs. (1) on the ground of negligence, because no privity of contract existed between defts. & pltfs., & defts. owed no duty to pltfs.; (2) on the ground of money had & received, because the drawing of the bill did not amount to an assignment in favour of the payee of funds of the drawee, as the acceptors had no funds to meet the bill, which was paid out of a loan by defts., & the advice to pay the bill sent by the acceptors to defts. gave no rights to pltfs. as against defts.; (3) defts. were not liable to pltfs. for the conversion of the bill, because the bill was a negotiable instrument, & they paid it in good faith without notice of any defect in title & in accordance with the law merchant. A bank was not bound to make inquiries merely because a bill indorsed in blank or an open cheque was presented for payment over the counter. According to the law merchant such presentation, although unusual, was always recognised as due presentation, sufficient to require the bankers to pay, in the absence of very special circumstances of suspicion.—AUCHTERONI & Co. v. MIDLAND BANK, LTD., [1928] 2 K. B. 294; 97 L. J. K. B. 625; 139 L. T. 344; 44 T. L. R. 441; 72 Sol. Jo. 337; 33 Com. Cas. 345.

615. *Add. Annotations*:—*Consd.* Auchteroni v. Midland Bank, [1928] 2 K. B. 294. *Mentd.* Quebec Ry. Light, Heat & Power Co. v. Vandry, [1920] A. C. 662; McDonald v. Nash, [1924] A. C. 625; Samuel v. Dumas, [1924]

#### PART II. SECT. 3, SUB-SECT. 4.

sl. *Payment after notice of countermand—Liability of bank.*]—GARRIOCH v. CANADIAN BANK OF COMMERCE, [1919] 3 W. W. R. 185.—CAN.

589 l. *By telegram—Payment after notice of countermand—Negligence.*]—*Held*: defts. were guilty of a breach of duty as bankers.—READE v. ROYAL

BANK OF IRELAND, LTD., [1922] 2 L. R. 22.—IR.

sm. *By notice of death.*]—The duty & authority of a bank to pay a cheque cease on notice of the drawer's death.—CURLLEY v. BRIGGS (ADMINISTRATOR OF DEURY ESTATE), [1920] 2 W. W. R. 1025; 58 D. L. R. 351.—CAN.

sn. —.]—It is not the death of

the customer, but notice of his death, that operates as a revocation of the authority of a bank to pay the customer's cheque.—KENDRICK v. DOMINION BANK & BOWNAS (1920), 47 O. L. R. 372; 18 O. W. N. 138.—CAN.

so. —.]—WINNIPEG SAVINGS BANK (TRUSTEE) v. KENNY, [1924] 1 D. L. R. 952.—CAN.

- A. C. 431; *Ouellette v. Canadian Pacific Ry.*, [1925] A. C. 569; *Gilbert v. Gilbert & Bougher* (1927), 96 L. J. P. 137; *Tilling-Stevens Motors v. Kent County Council & Transport Minister* (1928), 139 L. T. 265.
617. *Add. Annotation*:—*Refd.* *Wilson v. United Counties Bank*, [1920] A. C. 102.
625. *Add. Annotation*:—*Mentd.* *Brown v. Swan* (1921), 37 T. L. R. 787.
627. *Add. Annotation*:—*Consd.* *Garrard v. James*, [1925] Ch. 616.
628. *Add. Annotation*:—*Mentd.* *British & North European Bank v. Zalstein*, [1927] 2 K. B. 92.
629. *Add. Citation*:—88 L. J. K. B. 55.  
*Add. Annotations*:—*Consd.* *Auchteroni v. Midland Bank*, [1928] 2 K. B. 294. *Mentd.* *Joachimson v. Swiss Bank Corp.*, [1921] 3 K. B. 110; *Re Polemis & Furness, Withy*, [1921] 3 K. B. 560; *Jones v. Waring & Gillow*, [1926] A. C. 670.
631. *Add. Annotations*:—*Consd.* *Lloyds Bank v. Chartered Bank of India, Australia & China* (1928), 97 L. J. K. B. 609; *Reckitt v. Barnett, Pembroke & Slater*, [1928] 2 K. B. 244; *Mentd.* *Taxation Comrs. v. English, Scottish & Australian Bank*, [1920] A. C. 683; *Goldman v. Cox* (1924), 40 T. L. R. 423; *Underwood v. Bank of Liverpool & Martins*, *Underwood v. Barclays Bank*, [1924] 1 K. B. 775; *Australian Bank of Commerce v. Perel*, [1926] A. C. 737; *Jones v. Waring & Gillow*, [1926] A. C. 670.
636. *Add. Annotation*:—*Mentd.* *British & North European Bank v. Zalstein*, [1927] 2 K. B. 92.
- 639a. **Payment to third party without valuable consideration—Right of bank to recover.**—*Deft. H.* having possessed himself of crossed cheques which were drawn on *pltf. bank* in his favour & which purported to be drawn by his employer's authority defrauded his employer by paying them into a bank, which collected them & credited *H.* with the amounts. *H.* drew out these amounts & paid some of the money without valuable consideration to *deft. S.*, who in turn paid into her account with *deft. bank* a portion of what she so received. *S.* had no notice of any defect in *H.*'s title, & she never paid into her account with *deft. bank* any money except money which was part of the proceeds of *H.*'s frauds. In an action for a declaration that the money standing to the credit of *S.* with *deft. bank* was the property of *pltf. bank*:—*Held*: on the assumption that *H.* obtained a voidable title to the proceeds of the cheques, yet *pltf. bank* had established their right to the money claimed, as it was capable of being traced.—*BANQUE BELGE POUR L'ETRANGER v. HAMBROUCK*, [1921] 1 K. B. 321; 90 L. J. K. B. 322; 37 T. L. R. 76; 65 Sol. Jo. 74; 26 Com. Cas. 72, C. A.  
*Annotation*:—*Expld.* *Jones v. Waring & Gillow*, [1925] 2 K. B. 612.
640. *Add. Annotation*:—*Mentd.* *Joachimson v. Swiss Bank Corp.*, [1921] 3 K. B. 110.
644. *Add. Citation*:—88 L. J. K. B. 55.  
*Add. Annotations*:—*Consd.* *Auchteroni v. Midland Bank*, [1928] 2 K. B. 294. *Mentd.* *Joachimson v. Swiss Bank Corp.*, [1921] 3 K. B. 110; *Re Polemis & Furness, Withy*, [1921] 3 K. B. 560; *Jones v. Waring & Gillow*, [1926] A. C. 670.
646. *Add. Annotation*:—*As to* (2) *Refd.* *Jones v. Waring & Gillow*, [1926] A. C. 670.
649. *Add. Annotations*:—*Consd.* *Koechlin v. Kestenbaum*, [1927] 1 K. B. 889. *Refd.* *Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669.
652. *Add. Annotations*:—*Refd.* *Goldman v. Cox* (1924), 40 T. L. R. 744. *Mentd.* *Jones v. Waring & Gillow*, [1926] A. C. 670.
658. *Add. Annotation*:—*Refd.* *Bow's Emporium v. Brett* (1927), 44 T. L. R. 194.
662. *Add. Annotation*:—*Generally*, *Mentd.* *Underwood v. Bank of Liverpool & Martins*, *Underwood v. Barclays Bank*, [1924] 1 K. B. 775.
663. *Add. Annotations*:—*Refd.* *Auchteroni v. Midland Bank*, [1928] 2 K. B. 294. *Mentd.* *Quebec Ry. Light, Heat & Power Co. v. Vandry*, [1920] A. C. 662; *McDonald v. Nash*, [1924] A. C. 625; *Samuel v. Dumas*, [1924] A. C. 431; *Ouellette v. Canadian Pacific Ry.*, [1925] A. C. 569; *Gilbert v. Gilbert & Bougher* (1927), 96 L. J. P. 137; *Tilling-Stevens Motors v. Kent County Council & Transport Minister* (1928), 139 L. T. 265.
666. *Add. Annotations*:—*Consd.* *Lloyds Bank v. Chartered Bank of India, Australia & China*, (1928), 97 L. J. K. B. 609. *Mentd.* *Underwood v. Bank of Liverpool & Martins*, *Underwood v. Barclays Bank*, [1924] 1 K. B. 775.
667. *Add. Annotation*:—*Refd.* *Lloyds Bank v. Chartered Bank of India* (1927), 44 T. L. R. 165.
- 668a. ————.] — *M.*, who was secretary & managing director of *pltf. co.*, represented that he had bought goods for them from *W.*, & the *co.* drew cheques to the aggregate amount of £762 in payment on a South African bank, making them payable to *W.*, & handing them to *M.* as manager that he might hand them to *W.* *M.*, instead of doing so, paid the cheques with forged indorsements into his own account with *deft. bank* which credited him with the amounts & obtained payment from the South African bank. The cheques were signed by two directors, including *M.*, of *pltf. co.* *M.* applied the money received from the cheques with the exception of about £272 for *W.*, paying out of the proceeds of five cheques "to order" for £62 10s. each four sums of £60 from his private account to *W.* One cheque, dated May 27, 1918, for £97 10s., which was payable to "self or order" & signed by *M.* & a co-director, was refused by the bank, & came back to them after such refusal

## PART II. SECT. 10.

635 ii a. ————.]—In an action by a customer of *deft. bank* to recover the aggregate amount of a number of cheques forged by a confidential clerk employed by the customer, which were paid by the bank & charged to the customer's account, the fraud being skillfully concealed from

both customer & bank:—*Held*: with the exception of certain cheques bearing genuine signatures, the amounts of which were raised by the clerk, there was no negligence on the part of either the customer or the bank in failing to discover the frauds.—*COLUMBIA GRAPHOPHONE CO. v. UNION BANK OF CANADA* (1916), 38 O. L. R. 326; 34 D. L. R. 743.—CAN.

635 ii b. ————.]—A customer of a bank was estopped from denying that certain forged cheques were signed by him or by his authority, by reason of his conduct in not having notified the bank when he learned of the forgery of previous cheques on his account by the same person.—*CABANA v. BANK OF MONTREAL*, [1919] 3 W. W. R. 969.—CAN.

with M.'s name written in after the word "self," but the alteration was not initialed by both directors, & the addition was in M.'s writing. Pltf. co. repudiated the transactions & sued the bank for damages for conversion of the cheques, or alternatively for money had & received. Deft. bank claimed protection under Bills of Exchange Act, 1882 (c. 61), s. 82, & also as holders for value:—*Held*: (1) the *onus* of proving that there was no negligence had been discharged by the bank, except as to the five cheques for £62 10s. each; (2) the bank's duty with regard to these five cheques was to have made inquiries, & they were negligent in paying them into M.'s account; (3) the bank was negligent in cashing the cheque of May 27, 1918, as it should have seen that the alteration in it was made without the concurrence of both directors; (4) the evidence was not sufficient to show that M. paid anything out of his private account to W. in respect of the fifth cheque for £62 10s.; (5) there must be judgment for pltf. co. for £2 10s. on four of the cheques "to order" for £62 10s., £62 10s. on the fifth cheque for the same amount, & £97 10s. on the cheque of May 27, 1918, making an aggregate amount of £170.—*SOUCHETTE, LTD. v. LONDON COUNTY, WESTMINSTER & PARR'S BANK, LTD.* (1920), 30 T. L. R. 195.

670. *Add. Annotations*:—*Refd.* Importers Co. v. Westminster Bank, [1927] 2 K. B. 297. *Mentd.* Dey v. Mayo, [1920] 2 K. B. 346; Brown v. Swan (1921), 37 T. L. R. 787; Sutters v. Briggs, [1922] 1 A. C. 1; *Re Farrow's Bank*, [1923] 1 Ch. 41; Underwood v. Bank of Liverpool & Martins, Underwood v. Barclays Bank, [1924] 1 K. B. 775.
671. *Add. Citations*:—*sub nom.* MATHEWS v. WILLIAMS, BROWN & Co., 10 R. 210.
- 672a. — Collection for another bank.]—IMPORTERS CO. v. WESTMINSTER BANK, No. 292b, *ante*.
673. *Add. Annotation*:—*Refd.* Taxation Comrs. v. English, Scottish & Australian Bank, [1920] A. C. 683.
674. *Add. Annotations*:—*As to* (2) *Consd.* Lloyds Bank v. Chartered Bank of India, Australia & China (1928), 97 L. J. K. B. 609. *Refd.* London & Montrose Shipbuilding & Repairing Co v. Barclays Bank (1925), 31 Com. Cas. 67.
676. *Add. Annotations*:—*Apld.* Brown v. Swan (1921), 37 T. L. R. 787. *Consd.* *Re Farrow's Bank*, [1923] 1 Ch. 41. *Refd.* Dey v. Mayo, [1920] 2 K. B. 346; Sutters v. Briggs, [1922] 1 A. C. 1; Underwood v. Bank of Liverpool & Martins, Underwood v. Barclays Bank, [1924] 1 K. B. 775; Importers Co. v. Westminster Bank, [1927] 2 K. B. 297.
677. *Add. Annotations*:—*Refd.* Dey v. Mayo, [1920] 2 K. B. 346; Sutters v. Briggs, [1922] 1 A. C. 1; *Re Farrow's Bank*, [1923] 1 Ch. 41; Importers Co. v. Westminster Bank, [1927] 2 K. B. 297. *Mentd.* British & North European Bank v. Zalstein, [1927] 2 K. B. 92.
678. *Add. Annotation*:—*Mentd.* Souchette v. London County Westminster & Parr's Bank (1920), 36 T. L. R. 195.
679. *Add. Annotation*:—*Dlstd.* Lloyds Bank v. Chartered Bank of India, Australia & China (1928), 97 L. J. K. B. 609.
680. *Add. Annotation*:—*Consd.* Lloyds Bank v.

Chartered Bank of India, Australia & China (1928), 97 L. J. K. B. 609.

- 680a. "Receives payment"—Collecting bank.]—IMPORTERS CO. v. WESTMINSTER BANK, No. 292b, *ante*.

681. Before this case add "See, also, Nos. 674–680."

684. *Add. Annotations*:—*Consd.* Lloyds Bank v. Chartered Bank of India, Australia & China (1928), 97 L. J. K. B. 609. *Refd.* Underwood v. Bank of Liverpool & Martins, Underwood v. Barclays Bank, [1924] 1 K. B. 775.

685. *Add. Annotation*:—*Apld.* Underwood v. Bank of Liverpool & Martins, Underwood v. Barclays Bank, [1924] 1 K. B. 775.

687. *Add. Annotations*:—*Refd.* Underwood v. Bank of Liverpool & Martins, Underwood v. Barclays Bank, [1924] 1 K. B. 775; Lloyds Bank v. Chartered Bank of India, Australia & China (1928), 97 L. J. K. B. 609.

- 687a. — — — — —.]—L., who was the chief accountant at the Bombay branch of pltf. bank, & was authorised to sign cheques on their behalf, had by a system of fraud procured the signature by another official of the branch of cheques payable to deft. bank. Those cheques were then sent to deft. bank for collection, with instructions written by L. on the bank's letter paper requesting deft. bank to place the proceeds of the cheques to the credit of a joint account which L. had opened at deft. bank in the name of himself & his wife. Those instructions having been carried out, the proceeds of the cheques were then collected by L. promptly after they had been paid in. It appeared from the account itself that it was generally in small credit until the arrival of each fraudulent cheque, & there was a failure on the part of deft. bank to make inquiries of pltf. bank as to the regularity of the transactions:—*Held*: (1) each cheque taken by itself was "issued," being signed & dealt with by persons having ostensible authority to sign & issue it, but the accompanying instructions, signed by L. alone, gave notice of irregularity which destroyed the "holding in due course"; (2) deft. bank were not entitled to rely on Indian Negotiable Instruments Act, s. 131, as their title as holders was defective through notice, so that they were not "true owners" within the sect.; (3) deft. bank had failed to discharge the burden of showing that they had collected without negligence. Examination of L.'s account should have put them on inquiry as to the source from which these payments were made, & pltf. were entitled to succeed in their claim for conversion.—*LLOYDS BANK v. CHARTERED BANK OF INDIA, AUSTRALIA & CHINA* (1928), 97 L. J. K. B. 609; 139 L. T. 126; 44 T. L. R. 534; 33 Com. Cas. 306, C. A.

690. *Add. Annotations*:—*As to* (1) *Consd.* Lloyds Bank v. Chartered Bank of India, Australia & China (1928), 97 L. J. K. B. 609; Reckitt v. Barnett, Pembroke & Slater, [1928] 2 K. B. 244. *Refd.* Taxation Comrs. v. English, Scottish & Australian Bank, [1920] A. C. 683; Underwood v. Bank of Liverpool & Martins, Underwood v. Barclays Bank, [1924] 1 K. B. 775; Australian Bank of Commerce v. Perel, [1926] A. C. 737. *Generally, Refd.* Goldman v. Cox, (1924), 40 T. L. R. 423. *Mentd.*



Jones v. Waring & Gillow, [1926] A. C. 670.

691. *Add. Annotation* :—As to (2) *Reid*. Underwood v. Bank of Liverpool & Martins, Underwood v. Barclays Bank, [1924] 1 K. B. 775.

691a. *Cheque payable to & indorsed by public official.*—A banker to whom a private customer hands, for collection on his account, a cheque payable to & indorsed by a public official is put upon inquiry whether the customer is entitled to the cheque, & acts negligently if he credits the customer with the proceeds of the cheque without having made any such inquiry.

The Overseas Military Forces of Canada engaged in the European war had an estates office in England authorised by the Secretary of State for the Colonies to perform in accordance with statutory conditions the duties of collecting & distributing the estates of members of these forces dying in Europe. A sergeant employed at the office misappropriated during a period of ten months thirty-two cheques of the aggregate value of about £3,900, representing money belonging to the estates of deceased soldiers. Each of the cheques was drawn payable to "The Officer in Charge, Estates Office, Canadian Overseas Military Forces," & was indorsed generally by that officer under the same description with a view to its being sent to the Paymaster-General of these forces for payment of the amount to the beneficiaries, or in some cases directly to the beneficiary, & each cheque was crossed generally. The sergeant paid the first two cheques into a branch of defts.' bank at which he had a small private account of his own & the rest of them into another branch of the bank which passed them on to the former branch. No inquiry was made at either branch whether he was entitled to the cheques, & at the former branch they were credited to his account & payment of them was received for him. In an action by the Paymaster-General against defts. for damages for conversion of the cheques:—*Held*: the fact that the cheques were drawn payable to & indorsed by a public official should have put the cashiers of defts. upon inquiry whether their private customer was entitled to the cheques; in crediting the cheques to him without any inquiry the cashiers of both the branches had been guilty of negligence; & therefore defts. were not protected by Bills of Exchange Act, 1882 (c. 61), s. 82, from liability to pltf.—*Ross v. LONDON COUNTY, WESTMINSTER & PARR'S BANK*, [1919] 1 K. B. 678; 88 L. J. K. B. 927; 120 L. T. 636; 35 T. L. R. 315; 63 Sol. Jo. 411.

*Annotations*:—*Consd.* Lloyds Bank v. Chartered Bank of India, Australia & China (1928), 97 L. J. K. B. 609. *Reid*. Underwood v. Bank of Liverpool, Underwood v. Barclays Bank, [1924] 1 K. B. 775.

691b. *Cheque payable to company.*—

#### PART II. SECT. 12, SUB-SECT. 3.

691 i. *What is negligence—Defective title of customer—Collection for stranger.*—A man unknown to a banker was permitted to open an account with the bank by paying in a deposit of £5 in notes & four crossed cheques for collection, such cheques being made payable to a number or bearer & marked "bank," or "not negotiable," or "bank not negotiable." Without

making any inquiry as to the man's title to the cheques the bank collected them. On the following day the man, by an open cheque, drew out almost the whole of the amount to the credit of his account, & paid in for collection four other crossed cheques, including one drawn by pltf. payable to a number or bearer to which the man who paid it in had no title. These four cheques were collected by the bank almost without inquiry:—*Held*: the cir-

cumstances in which the account was opened was such as to put the bank upon inquiry; the duty of inquiry extended to the transactions of the next day & in the absence of reasonable inquiry the bank was guilty of negligence.—*LONDON BANK OF AUSTRALIA, LTD. v. KENDALL* (1920), 28 O. L. R. 401.—*AUS.*

691 ii. — — — — —.]—*MASON v. SAVINGS BANK OF SOUTH AUSTRALIA*, [1925] S. A. S. R. 198.—*AUS.*

UNDERWOOD (A. L.), LTD. v. BANK OF LIVERPOOL, SAME v. BARCLAYS BANK, No. 387a, *ante*

691c. — In pltf's. were building ships for a firm, L. M. & P., & in connection with that business L. M. & P. sent pltf's. a crossed cheque for £8,000. That cheque was duly received at pltf's. office & B., a director, signed a receipt form on the back of the cheque as follows: "L. & M. Shipbuilding Co. T. B. director." Another director of pltf's., J., then indorsed the cheque to the order of another co. of which B. was a director, B. & Co. Ltd. The cheque was then indorsed by B. "for & on behalf of B. & Co. T. B. director," & was paid into the account of B. & Co. at a branch of defts.; & subsequently by arrangement between defts. & himself B. drew £2,000 out of the £8,000 thus credited to B. & Co. Ltd. for his own private purposes. J. had no right to indorse the cheque to the order of B. & Co., & B. & Co. had no right to the proceeds of the cheque. In 1923 pltf's. went into liquidation, & the liquidator on examining the accounts found that the cheque for £8,000 had been misapplied, & also that other sums were owing by B. to pltf's. The liquidator thereupon proceeded by a misfeasance summons against J. & B., & upon that summons an order was made for £450 against J. & £10,450 against B. The money was not paid, & pltf's. brought an action against defts. for conversion of the £8,000 cheque:—*Held*: there was clear evidence of negligence on the part of defts., & Bills of Exchange Act, 1882 (c. 61), s. 81, gave no defence to the claim.—*LONDON & MONTROSE SHIPBUILDING & REPAIRING CO., LTD. v. BARCLAYS BANK* (1926), 31 Com. Cas. 182, C. A.

692a. —.]—*TAXATION COMRS. v. ENGLISH, SCOTTISH & AUSTRALIAN BANK*, No. 292a, *ante*.

692b. — *Question of fact.*—The question whether a banker in receiving payment of a cheque for a customer has acted without negligence, so as to be protected by Bills of Exchange Act, 1882 (c. 61), s. 82, if the customer has no title thereto, is a question of fact. Where there was a missing link in the chain of identification of the customer:—*Held*: that fact ought to have put the bank upon inquiry, & the bank was not protected by the sect.—*HAMPSTEAD GUARDIANS v. BARCLAYS BANK, LTD.* (1923), 39 T. L. R. 229; 67 Sol. Jo. 440.

693. *Add. Annotation* :—*Reid*. London & Montrose Shipbuilding & Repairing Co. v. Barclays Bank (1925), 31 Com. Cas. 67.

694. For "forgot" in the seventh line of the paragraph read "forged."

*Add. Annotations* :—*Reid*. Importers Co. v. Westminster Bank, [1927] 2 K. B. 297. *Mentd.* Dey v. Mayo, [1920] 2 K. B. 346; Brown v. Swan (1921), 37 T. L. R. 787; Sutters v.

Briggs, [1922] 1 A. C. 1; *Re Farrow's Bank*, [1923] 1 Ch. 41; *Underwood v. Bank of Liverpool & Martins*, *Underwood v. Barclays Bank*, [1924] 1 K. B. 775.

696. *Add. Annotations*:—*Mentd.* Liggett (Liverpool) *v. Barclays Bank* (1927), 137 L. T. 443; *Lloyds Bank v. Chartered Bank of India, Australia & China* (1928), 97 L. J. K. B. 609.

697. *Add. Annotation*:—*Mentd.* Sun Bldg. Soc. *v. Western Suburban Bldg. Soc.*, [1921] 2 Ch. 83.

703. *Add. Annotations*:—*Refd.* Auchteroni *v. Midland Bank*, [1928] 2 K. B. 294. *Mentd.* Quebec Ry. Light, Heat & Power Co. *v. Vandry*, [1920] A. C. 662; *McDonald v. Nash*, [1924] A. C. 625; *Samuel v. Dumas*, [1924] A. C. 431; *Ouellette v. Canadian Pacific Ry.*, [1925] A. C. 569; *Gilbert v. Gilbert & Bougher* (1927), 96 L. J. P. 137; *Tilling-Stevens Motors v. Kent County Council & Transport Minister* (1928), 139 L. T. 265.

704. *Add. Annotation*:—*As to* (2) *Refd.* British & North European Bank *v. Zalstein*, [1927] 2 K. B. 92.

710. *Add. Annotation*:—*Mentd.* Albemarle Supply Co. *v. Hind*, [1928] 1 K. B. 307.

713. *Add. Annotation*:—*Consd.* *Re Swinburne, Sutton v. Featherley* (1925), 70 Sol. Jo. 64.

717. *Add. Annotation*:—*Mentd.* Souchette *v. London County Westminster & Parr's Bank* (1920), 36 T. L. R. 195.

728. *Add. Annotation*:—*Consd.* Auchteroni *v. Midland Bank*, [1928] 2 K. B. 294.

734. *Add. Annotations*:—*Apld.* British American Continental Bank *v. British Bank for Foreign Trade*, [1926] 1 K. B. 328. *Refd.* Admiralty Comrs. *v. National Provincial & Union Bank of England* (1922), 127 L. T. 452; *Steam Saw Mills Co. v. Baring, Archangel Saw Mills Co. v. Baring*, [1922] 1 Ch. 244; *Jones v. Waring & Gillow*, [1926] A. C. 670.

748. *Add. Annotation*:—*Refd.* Sassoon *v. International Banking Corp.*, [1927] A. C. 711.

752. *Add. Annotations*:—*Refd.* Sassoon *v. International Banking Corp.*, [1927] A. C. 711. *Mentd.* Wilson *v. United Counties Bank*, [1920] A. C. 102.

753. *Add. Annotations*:—*Consd.* Sassoon *v. International Banking Corp.*, [1927] A. C. 711. *Mentd.* *Re Dresdner Bank (London Agency)* (1920), 64 Sol. Jo. 426.

756. *Add. Annotations*:—*Mentd.* Aksionairnoye Obschestvo A. M. Luther *v. Sagor*, [1921] 3 K. B. 532; *The Tervaete*, [1922] P. 259; *Duff Development Co. v. Kelantan Government*, [1923] 1 Ch. 385.

756a. Credit conditional on tender of approved insurance policy.—What is approved insurance policy.]—Bankers issued a letter of credit to English sellers of 100 tons of steel plates to Dutch buyers. By the terms of the letter of credit the bankers agreed to honour the sellers' draft for the amount of the purchase-money, which included freight & insurance to R., provided the draft were accompanied by an approved insurance policy covering the shipment of the goods. The sellers presented their draft accompanied by a certificate of insurance which did not contain & did not offer any means of ascertaining the full terms of the insurance. In an action by the sellers against the bankers for not honouring the draft:—*Held*: the certificate was not an "approved insurance policy," within the meaning of the letter of credit, & the bankers were justified in refusing to honour the draft. An approved insurance policy is one to which no reasonable objection can be made.—SCOTT (DONALD H.) & CO., LTD. *v. BARCLAYS BANK, LTD.*, [1923] 2 K. B. 1; 92 L. J. K. B. 772; 129 L. T. 108; 39 T. L. R. 198; 67 Sol. Jo. 456; 28 Com. Cas. 253, C. A.

*Annotations*:—*Refd.* Harper *v. Mackechnie*, [1925] 2 K. B. 423; *Koskas v. Standard Marine Insee.* (1926), 42 T. L. R. 692; *Sassoon v. International Banking Corp.*, [1927] A. C. 711; *De Monchy v. Phoenix Insee. Co. of Hartford* (1928), 138 L. T. 703. *Mentd.* Malmberg *v. Evans* (1924), 41 T. L. R. 38; *Tredegar v. Harwood*, [1928] Ch. 59.

756b. Irrevocable letter of credit.—Payment for goods.—Refusal of bank to pay invoices.—Liability of bank to seller.]—Pltfs. entered into a contract with buyers in C. to manufacture & ship machinery by instalments over several months at agreed prices, but subject to a stipulation that should the cost of labour or wages increase, there should be a corresponding increase in the purchase price. The buyers were also to open a "confirmed irrevocable credit" in favour of pltfs. with a bank in this country, & to pay for each shipment as it took place. In pursuance of this arrangement defts., who were the buyers' bankers in L., wrote to pltfs. stating that they would pay bills drawn on the buyers to the extent of £70,000, the bills to be accompanied by documents & to be received before Apr. 14, 1921, "this to be considered a confirmed irrevocable credit." Pltfs. shipped two instalments under the contract & received payment under the letter of credit. The buyers then found that the invoices included an increase in the purchase price on account of wages & material, & instructed defts. only to pay so much of the next invoices as represented the original

## PART II. SECT. 13, SUB-SECT. 1.

699 III. —.—.]—BHARAT NATIONAL BANK *v. BANARJE DAS* (1923), 1 L. R. 5 Lah. 129.—IND.

*sp. Signing vouchers as to correctness of account in pass-book—Estoppel.*]—COLUMBIA GRAPHOPHONE CO. *v. UNION BANK OF CANADA* (1916), 38 O. L. R. 326; 34 D. L. R. 743.—CAN.

*st. —.—.]—Monthly vouchers regularly signed by a bank's customer as to the correctness of his account as it stood from time to time & given in exchange for cancelled cheques, were held to be fatal to his contention that certain cheques had not been credited to him.*—UNION BANK OF CANADA *v. WOOD*, [1920] 3 W. W. R. 173.—CAN.

—.]—CAMPBELL. IMPERIAL BANK, [1924] 4 D. L. R. 289; 55 O. L. R. 318.—CAN.

713 II. —.—.]—The delivery of a pass-book cannot constitute a *donatio mortis causa* so as to give the donee title to the money represented by it.—CUSACK *v. DAY*, [1925] 3 D. L. R. 1028; [1925] 2 W. W. R. 715.—CAN.

## PART II. SECT. 16.

a I. —.—.]—A document in the form of a letter written by a bank was as follows:—"We beg to inform you that we are in receipt of advice by wire from our London office that a confirmed irrevocable credit has been opened under which we are authorised to negotiate your bills, as offered on G. & Co., of London, to the extent of

£16,875 on the following conditions: bills to be drawn payable three months after sight & to be accompanied by proper shipping documents representing shipment of two thousand bales of jute of a particular mark from Calcutta to Antwerp, during Nov., Dec. 1920." Among the conditions, the two following were the most important:—(a) "Please note that this advice does not release you from the liability attaching to the drawer of a bill of exchange"; (b) "Under present conditions we can give no undertaking to negotiate bills drawn under this credit".—*Held*: the document was not an ordinary banker's letter of credit.—CHANDANMULL BENGANEY *v. NATIONAL BANK OF INDIA, LTD.* (1923), 1 L. R. 51 Calc. 43.—IND.



prices. Defts. accordingly refused to pay the bill presented on the next shipment & pltfs. then cancelled the contract, claiming damages from defts. as on a repudiation by the buyers:—*Held*: the credit being irrevocable, the refusal of defts. to take & pay for the particular bills on presentation of the proper documents constituted a repudiation of the contract as a whole, & pltfs. were entitled to damages so reckoned. The basis of this form of banking facility is that the buyer is taken, as between himself & the banker, to accept the seller's invoices as correct. Any adjustment must be made by way of refund by the seller & not by way of retention by the buyer.—*URQUHART LINDSAY & CO. v. EASTERN BANK, LTD.*, [1922] 1 K. B. 318; 91 L. J. K. B. 274; 126 L. T. 534; 27 Com. Cas. 124.

*Annotation*:—*Refd.* *Prosperity v. Lloyds Bank* (1923), 39 T. L. R. 372.

**756c. Revocable letter of credit—Duty of bank to give notice of withdrawal.**—A firm in W., who wished to buy a quantity of asbestos sheets from pltfs., a firm in L., instructed defts. to open a credit in favour of pltfs. Defts. accordingly wrote a letter dated June 14, 1920, to pltfs. informing them of their instructions & adding that their letter "is merely an advice of the opening of the above-mentioned credit, & is not a confirmation of the same." On July 20, 1920, pltfs. shipped part of the goods to the buyers & were paid the agreed price by defts. on presentation of the stipulated documents which included bills of lading & a draft on defts. On Aug. 4, 1920, defts. were instructed by cable that the credit was withdrawn. On Sept. 30, 1920, pltfs., not having had notice of the withdrawal of the credit, shipped the balance of the goods to the buyers, but defts. refused payment of a draft for the price. Pltfs. brought an action against defts. for recovery of the balance of the credit, alleging (*inter alia*) that it was the duty of defts. to give to pltfs. reasonable notice that the credit had been withdrawn. There was evidence that it was the practice of defts. at once to inform persons to whom revocable credit was given of the withdrawal of the credit, but that in this instance, owing to pressure of business, they had forgotten to do so. Among the documents tendered to defts. on the application for payment on the second occasion was a bill of lading which

defts. alleged was out of order, but which, according to pltfs., was in exactly the same terms as the former bill of lading accepted by defts. without objection:—*Held*: (1) a letter in the form of that written by defts. on June 14, 1920, intimated to the person in whose favour the credit was opened that he might find that the credit was revoked at any time; (2) there was no legal obligation on defts. to give notice of the revocation of the credit; (3) the giving of notice was an act of courtesy which it was very desirable should be performed, but it was not founded upon any legal obligation.—*CAPE ASBESTOS CO., LTD. v. LLOYDS BANK, LTD.*, [1921] W. N. 274.

**760. Add. Annotations**:—*Refd.* *Lloyds Bank v. Chartered Bank of India, Australia & China* (1928), 97 L. J. K. B. 609; *Reckitt v. Barnett, Pembroke & Slater*, [1928] 2 K. B. 244. *Mentd.* *Janvier v. Sweeney* (1919), 35 T. L. R. 226; *Pratt v. British Medical Assocn.*, [1919] 1 K. B. 244; *Rand v. Craig*, [1919] 1 Ch. 1; *Percy v. Glasgow Corpn.*, [1922] 2 A. C. 299; *Underwood v. Bank of Liverpool & Martins*, *Underwood v. Barclays Bank*, [1924] 1 K. B. 775; *Kreditbank Cassel G.M.B.H. v. Schenkers*, [1927] 1 K. B. 826; *Britt v. Galmoye & Nevill* (1928), 44 T. L. R. 294.

**767. Add. Annotation**:—*Refd.* *National Provident Institution v. Brown*, *Brown v. National Provident Institution*, *Provident Mutual Life Assce. Assocn. v. Ogston*, *Ogston v. Provident Mutual Life Assce. Assocn.* (1921), 8 Tax. Cas. 57.

**779. Add. Annotation**:—*Refd.* *Humphrey & Denman v. Kavanagh* (1925), 41 T. L. R. 378

**785. Add. Annotation**:—*Mentd.* *Omnium Insce. Corpn. v. United London & Scottish Insce.* (1920), 36 T. L. R. 386.

**798. Add. Annotation**:—*Mentd.* *Maskell v. Hill*, [1921] 3 K. B. 157.

**805. Add. Annotations**:—*As to* (1) *Refd.* *Lloyds Bank v. Chartered Bank of India, Australia & China* (1928), 97 L. J. K. B. 609. *As to* (2) *Refd.* *Liggett (Liverpool) v. Barclays Bank*, [1928] 1 K. B. 48.

**806. Add. Annotation**:—*Mentd.* *Prosperity v. Lloyds Bank* (1923), 39 T. L. R. 372.

**809. Add. Citations**:—88 L. J. K. B. 85; 119 L. T. 727.

## PART II. SECT. 19.

**sz. Unauthorised application of proceeds—In payment of borrower's debts to other customers—Right to damages.**—After crediting pltf. with the proceeds of a note which it discounted for him, deft. bank, without authority from him, applied nearly all of such proceeds to pay off debts which he owed to other customers of the same bank, & paid itself the amount of the note out of the proceeds of promissory notes which it held as collateral securities for advances made by it to him:—*Held*: pltf. was entitled to nominal damages & costs for the breach of the contract to lend him the money, & to judgment for the amount of the proceeds of his note which the bank had so applied, together with interest.—*MARSH v. ROYAL BANK OF CANADA*, [1922] 1 W. W. R. 486; 63 D. L. R. 659; 15 Sask. L. R. 201.—CAN.

## PART II. SECT. 20, SUB-SECT. 1.

**809 i. Discharge of overdraft—Tender**

*of cheque—What amounts to acceptance.*—*Held*: the action of the bank in retaining & clearing the cheque was not conclusive on the question of acceptance, & as the bank had not accepted the proceeds of the cheque in full settlement, judgment had been rightly entered for the bank.—*BURT v. NATIONAL BANK OF SOUTH AFRICA, LTD.*, [1921] App. D. 59.—S. AF.

## PART II. SECT. 20, SUB-SECT. 2.

**y i.** — — — — —.]—Where there is an agreement between a bank & its customer, that he shall pay interest at the rate of 8 per cent. upon a promissory note, the agreement is not entirely void, & the customer remains liable to pay interest at the rate of 5 per cent.—*STANDARD BANK OF CANADA v. ALBERTA ENGINEERING CO., LTD.* (1917), 1 W. W. R. 1177; 33 D. L. R. 542; 11 Alta. L. R. 96.—CAN.

**y ii.** — — — — —.]—The stipulation by a bank for an illegal rate of

interest merely avoids the rate & not the entire contract for interest.—*UNION BANK v. FARMER*, [1917] 1 W. W. R. 1361.—CAN.

**y iii.** — — — — —.]—Pltf. was indebted to deft. bank for which debt they took his note charged with interest at 9 per cent. Order made for reduction of interest to 5 per cent.—*DEGROW v. UNION BANK OF CANADA* (1922), 63 D. L. R. 688.—CAN.

**y iv.** — — — — —.]—Where a bank contracts for 8 per cent. interest it can only collect the legal rate of 5 per cent.—*BANK OF MONTREAL v. HOLOBOFF*, [1923] 3 W. W. R. 645.—CAN.

**y v.** — — — — —.]—A provision in a guarantee given a bank that any account settled or stated by or between the bank & its customer may be adduced by the bank as conclusive evidence against the guarantor, cannot be held binding on the guarantor, when there is included in the amount so stated interest charges at a rate in excess of



820. *Add. Annotation*:—Mentd. *Re Morris, May-hew v. Halton*, [1921] 1 Ch. 172.
844. *Citations*:—For “61 L. J. Ch. 732” read “61 L. J. Ch. 723.”
- Add. Annotations*:—Consd. *Auchteroni v. Midland Bank*, [1928] 2 K. B. 294; *Reckitt v. Barnett, Pembroke & Slater*, [1928] 2 K. B. 244.
- 846a. ——— Bank entitled to hold securities not merely for specific advance but for balance of whole account between broker & bank.]—*TINDALL v. BARNETTS & HOARE* (1887), 3 T. L. R. 476.
859. *Add. Annotation*:—Mentd. *Albemarle Supply Co. v. Hind*, [1928] 1 K. B. 307.
862. *Add. Annotations*:—Mentd. *Brandon v. Michelham* (1919), 35 T. L. R. 617; *G. N. Ry. v. L. E. P. Transport & Depository*, [1922] 2 K. B. 742.
865. *Add. Annotations*:—Apld. *Re Allester*, [1922] 2 Ch. 211. Refd. *Albemarle Supply Co. v. Hind* (1927), 43 T. L. R. 652; *Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669. Mentd. *Pennington v. Reliance Motor Works*, [1923] 1 K. B. 127.

the maximum legal rate allowed under Bank Act.—*ROYAL BANK OF CANADA v. MCBRIDE*, [1927] 1 D. L. R. 909; [1927] 1 W. W. R. 245; 21 Sask. L. R. 417.—CAN.

y vi. ———.]—Where interest on a loan has been charged up to a borrower's current account at a rate in excess of 7 per cent. & such charges have been included in the statements furnished him from month to month, & without making any objection thereto, he has signed & returned such statements as satisfactory, he cannot complain, in an action to recover the loan & interest, that the charges for interest at that rate were illegal.—*ROYAL BANK OF CANADA v. DOTEN* (Alta.), [1927] 3 D. L. R. 305; [1927] 2 W. W. R. 670.—CAN.

y vii. ——— *Whether charged*.]—Upon the return of a dishonoured bill, the drawer would again draw for the same amount, & pltf. bank would discount the bill as before, & if the second bill came back dishonoured it would again be charged in full to the drawer's account:—*Held*: there was no breach of Bank Act, s. 91.—*IMPERIAL BANK OF CANADA v. ALLEY*, [1926] 3 D. L. R. 85; 59 O. L. R. 1.—CAN.

sa. *Raising rate of interest—Whether customer bound*.]—The mere sending of a notice that the interest charged on overdrafts against security held by the bank has been raised, is not of itself sufficient to render a customer liable to pay the enhanced rate, but where, after receiving such a notice, the customer borrows more money from the bank, the bank is justified in charging him interest at the enhanced rate.—*GADDAR MAL v. TATA INDUSTRIAL BANK, LTD., BOMBAY* (1927), 1 L. R. 49 All. 674.—IND.

#### PART II. SECT. 21, SUB-SECT. 1.

d i. ——— *Liability contracted after execution of mortgage*.]—A mtge. to a bank cannot be a valid security for a liability contracted subsequently to its execution.—*Re EDMONTON BREWING & MALTING CO., LTD.* (No. 2), [1918] 3 W. W. R. 988; 43 D. L. R. 748.—CAN.

n. Add “*affd.*,” 58 S. C. R. 448.”

#### PART II. SECT. 21, SUB-SECT. 2.

o i. ———.]—*QUEBEC BANK v. PHILIPS*, [1917] 2 W. W. R. 365; 10 Sask. L. R. 190; 36 D. L. R. 440.—CAN.

#### PART II. SECT. 21, SUB-SECT. 3.

r i. ——— *Money advanced partly on security of land*.]—A bank may recover upon a promissory note notwithstanding that the moneys were advanced upon the security in part of lands.—*ROYAL BANK OF CANADA v. GOLD*, [1918] 2 W. W. R. 745; 24 B. C. R. 145; 41 D. L. R. 276.—CAN.

a i. ——— *New note given by maker—Rights of bank*.]—*Held*: the bank was entitled to recover on the note.—*BANK OF MONTREAL v. WEISDEPP*, [1917] 2 W. W. R. 615; 24 B. C. R. 73; 34 D. L. R. 26.—CAN.

J.S.

a ii. ——— *Conversion of specific security into general security*.]—*Held*: as the bank knew that debtor had no right to hypothecate generally the notes they could not recover, not being holders in due course.—*BANK OF MONTREAL v. NORMANDIN*, [1925] 3 D. L. R. 975; [1925] S. C. R. 687.—CAN.

f i. ——— *Obtained to cover overdraft—Alleged fraud of manager*.]—Pltf. alleged that a bank manager obtained a note from him without disclosing that the note was for payment of an overdraft then due to the bank. Application for judgment dismissed for want of any evidence of fraud on the bank manager's part.—*BRASSETH v. ROYAL BANK OF CANADA* (1921), 67 D. L. R. 740.—CAN.

f ii. ——— *Renewal—Effect of*.]—The renewal by defts. of a promissory note given to pltf. bank as security for a loan:—*Held*: not to estop them from setting up the defence that the bank had received & misapplied the proceeds of goods covered by a lien note which they had assigned to the bank as collateral security, such proceeds having been paid into the bank by the maker of the lien note.—*CANADIAN BANK OF COMMERCE v. REID*, [1925] 3 D. L. R. 509; [1925] 1 W. W. R. 1080; 21 Alta. L. R. 337.—CAN.

#### PART II. SECT. 21, SUB-SECT. 4.

m i. ——— *Stock registered in name of bank's nominee—Identity of shares not preserved—Rights of owner*.]—A customer, who had a secured loan account with a bank which was operated upon in accordance with the above practice, averred that the bank had sold her shares without her authority, in breach of their obligation to retain the specific shares unless realised for reduction of the loan & to retransfer the identical shares on repayment of the loan:—*Held*: defenders had acted according to their usual practice, which was known to & approved by the firm of stockbrokers whom pursuer had employed as her agents in the transactions, & she was barred from insisting in the action.—*CRERAR v. BANK OF SCOTLAND*, [1922] S. C. (H. L.) 137; 59 Sc. L. R. 312.—SCOT.

p i. *Shares of company—Sale by bank before default—Measure of damages*.]—*GEORGESON v. DOMINION BANK*, [1924] 3 D. L. R. 607; 2 W. W. R. 931.—CAN.

861 i. *Bearer securities—Presumed to belong to depositing customer*.]—*BANK OF MONTREAL v. ISBELL*, [1925] 2 D. L. R. 30; revsg. 26 O. W. N. 263.—CAN.

#### PART II. SECT. 21, SUB-SECT. 6.

h (p. 277) i. ——— *Indorsed by shipper to bank—Bank to apply part of proceeds to payment of promissory note*.]—*Held*: no violation of Bank Act, s. 90.—*ROYAL BANK OF CANADA v. WYE*, [1926] 4 D. L. R. 262; [1926] 2 W. W. R. 780; 36 Man. L. R. 14.—CAN.

h (p. 277) ii. ——— *Bank taking*

*bailee's receipt from parties for whom goods shipped—D of bank not to impair security*.]—*SALTERS (JOSEPH) SONS, LTD. v. BANK OF NOVA SCOTIA*, [1926] 1 D. L. R. 581; 58 N. S. R. 389.—CAN.

q (p. 280) i. ——— *Chattel mortgage to secure past debt—Subsequent mortgage of land—Right to enforce chattel mortgage*.]—*Held*: (1) the mtge. was not contrary to Bank Act; (2) the fact that a mtge. on land was afterwards given to the bank did not prevent it from realising first on the chattel mtgo.—*PIPER v. CANADIAN BANK OF COMMERCE*, [1922] 1 W. W. R. 121.—CAN.

q (p. 280) ii. ———.]—A. obtained advances & delivered to the bank storage tickets for wheat in elevators:—*Held*: the security of the warehouse receipts would not cover past advances.—*YOUNG v. DENCHER, BANK OF TORONTO v. ADAMES*, [1923] 1 D. L. R. 432; 18 Alta. L. R. 496; [1923] 1 W. W. R. 136.—CAN.

q (p. 280) iii. ——— *Chattel mortgage as security for loan—Whether crops of following year chargeable*.]—Security on grain given to a bank in Oct. 1921, in respect of advances made in the spring of 1920, held invalid in respect of the 1921 crop.—*NORTH AMERICAN LUMBER CO., LTD. v. BANK OF MONTREAL*, [1922] 1 W. W. R. 1265; 65 D. L. R. 348; 15 Sask. L. R. 375.—CAN.

q (p. 280) iv. ——— *Lease of chattels to secure advances*.]—*Held*: the lease was invalid, the bank not having the power under Bank Act to take a lease of chattels as security.—*BANK OF MONTREAL v. HUESTON* (1922), 69 D. L. R. 208; 51 O. L. R. 584.—CAN.

q (p. 280) v. ——— *Lien agreements on goods—Valid*.]—*Re CANADIAN HART PRODUCTS, LTD. (TRUSTEE) v. ROYAL BANK*, [1924] 4 D. L. R. 225; 54 O. L. R. 293; 4 C. B. R. 211.—CAN.

q (p. 280) vi. ——— *Warehouse receipt for goods on leased premises—Valid*.]—*Re J. STANLEY WEDLOCK, LTD.* (P. E. I.), [1926] 2 D. L. R. 263; 7 C. B. R. 147.—CAN.

e (p. 281) i. *S. P. BANQUE CANADIENNE NATIONALE v. SAWCHUK*, [1926] 3 D. L. R. 964; [1926] 2 W. W. R. 771; 36 Man. L. R. 1.—CAN.

sb. *Security on crop to be grown—Priority over claim by vendor under crop-payment agreement*.]—*GOEBEL v. CANADIAN BANK OF COMMERCE*, [1921] 3 W. W. R. 81; 14 Sask. L. R. 451.—CAN.

sc. *Security invalid under Bank Acts—Sale of goods to third party—Bank not entitled to follow goods or proceeds*.]—*HAWKER v. ROYAL BANK OF CANADA* (1921), 59 D. L. R. 674.—CAN.

sd. *Title of bank as against municipal lien for taxes*.]—*Re ELECTRICAL FITTINGS & FOUNDRY CO., LTD.* (Ont.), [1926] 1 D. L. R. 752; 58 O. L. R. 364.—CAN.

- 865a. Bills of lading pledged—Authorised sale by pledgor—Title of bank to proceeds.]—**A limited co. pledged bills of lading with a bank to secure an overdraft. When it was time to sell the goods, the co. in accordance with the well-established mercantile practice obtained the bills of lading from the bank for realisation on the terms stated in the usual letter of trust given by the co. to the bank, to wit, that the co. received the bills of lading in trust on the bank's account & undertook to hold the goods when received & the proceeds when sold as the bank's trustees to remit the entire net proceeds as realised:—*Held*: the bank's previous rights as pledgee remained unaffected by this common & convenient mode of realisation.—*Re ALLESTER (D.), LTD.*, [1922] 2 Ch. 211; 91 L. J. Ch. 797; 127 L. T. 434; 38 T. L. R. 611; 66 Sol. Jo. 486; [1922] B. & C. R. 190.
- 883. Add. Annotation:—Generally, Refd. Lawrence v. Hayes**, [1927] 2 K. B. 111.
- 908. Add. Annotations:—Mentd. Dey v. Mayo**, [1920] 2 K. B. 346; *Sutters v. Briggs*, [1922] 1 A. C. 1; *Re Farrow's Bank*, [1923] 1 Ch. 41; *British & North European Bank v. Zalstein*, [1927] 2 K. B. 92; *Importers Co. v. Westminster Bank*, [1927] 2 K. B. 297.
- 916. Add. Annotation:—Mentd. Ord v. Ord**, [1923] 2 K. B. 432.
- 921. Add. Annotation:—Folld. Baker v. Lloyds Bank**, [1920] 2 K. B. 322.
- 921a. ———.]—**Defts. acted as bankers for a firm up to Feb. 3, 1914, when the firm being insolvent by deed assigned all their property to pltf. as trustee for their creditors. The deed provided that payments to the creditors should be made upon the basis of a bkpcy. distribution of the property & that secured creditors should have the same rights as under a bkpcy. At the date of the deed the firm had £2,934 to the credit of their current account in deft. bank, & the bank held certain shares as security for an advance to the firm. These shares were subsequently sold by the bank & realised £812 in excess of the amount of the advance to the firm. Before Feb. 3, 1914, the firm had discounted with the bank a number of bills of exchange, which matured after that date, & in respect thereof the firm became the debtors of the bank to the amount of

£19,941. In an action by pltf. as trustee under the deed to recover from the bank the two sums of £2,934 & £812, the bank claimed a lien on those sums & also to set off a sufficient portion of £19,941 against those sums:—*Held*: the bank's claim was right on both points.—*BAKER v. LLOYDS BANK*, [1920] 2 K. B. 322; 89 L. J. K. B. 912; 123 L. T. 330; [1920] B. & C. R. 128.

**921b. ——— Balance of proceeds of sale of shares—Held as security for advances.]—***BAKER v. LLOYDS BANK*, No. 921a, ante.

**923. Add. Annotation:—Consd. Baker v. Lloyds Bank**, [1920] 2 K. B. 322.

**925. Add. Annotation:—Refd. Re Southerden, Adams v. Southerden**, [1925] P. 177.

**926. Add. Annotation:—Consd. Baker v. Lloyds Bank**, [1920] 2 K. B. 322.

**932. Add. Annotations:—Refd. Royal Exchange Assce. v. Hope**, [1928] Ch. 179. *Mentd. Barker v. Stickney*, [1918] 2 K. B. 356.

**932a. ——— Joint & several guarantee—Termination.]—**By an agreement the six signatories thereto jointly & severally agreed with a Canadian bank to guarantee repayment up to a fixed sum of all liabilities, including interest, which a customer had or should incur to the bank: it was provided that the agreement should be a continuing guarantee "until the undersigned, or the exor. or administrator of the undersigned, shall have given the bank notice in writing to make no further advances on the security of this guarantee." In 1913, the bank, without notice to the guarantors but with the assent of the debtor, increased the rate of interest upon the advances to 8 per cent., though, by Bank Act (R. S. Can. c. 29), s. 91, it was illegal for a bank to charge more than 7 per cent. Subsequently one of the signatories died, & his exors. gave notice purporting to terminate the liability of the estate of the deceased under the guarantee:—*Held*: (1) the guarantee remained in force against all the guarantors until each & all of them or their respective exors. or administrators gave notice to determine it; (2) the increase in the rate of interest did not discharge the guarantors, but they were liable for the principal sum advanced & for such interest as the debtor was legally to pay.—*EGBERT v.*

PART II. SECT. 21, SUB-SECT. 7.

**se. Assignment of mortgage—Or of agreement for sale of land—As additional security—Valid.]—***Re WIARTON LUMBER CO., Ex p. BANK OF COMMERCE*, [1924] 2 D. L. R. 160; 4 C. B. R. 477.—CAN.

**st. Assignment of debts present & future & all contracts & securities—Valid.]—***Re WIARTON LUMBER CO., Ex p. BANK OF COMMERCE*, [1924] 2 D. L. R. 160; 4 C. B. R. 477.—CAN.

**di. ——— Subsequent assignment to creditor—Duty of bank to account—Interest.]—**Book debts were assigned as security to deft. bank. Subsequently they were assigned to pltf. subject to the assignment to the bank. The bank realised under its assignment:—*Held*: pltf. was entitled to an accounting from the bank in detail, & the bank could not, as against pltf., charge a higher rate of interest than permitted under Bank Act.—*ROBERTSON (JOHN) & SON, LTD. v. CANADIAN BANK OF COMMERCE*, [1920] 2 W. W. R. 1003.—CAN.

**Assignment of money due under**

**agreement for sale of land—Valid.]—***Re SHAW*, [1925] 3 D. L. R. 1205; 5 C. B. R. 825.—CAN.

**sk. Common law assignment of money—Subsequent security under Bank Act—Property passed by assignment—Validity of security immaterial.]—***IMPERIAL BANK v. WESTERN SUPPLY & EQUIPMENT CO.* (1918), 39 D. L. R. 803.—CAN.

PART II. SECT. 21, SUB-SECT. 8.

**sl. Prohibited security—Money lent thereunder recoverable.]—**A bank may recover money lent upon a prohibited security although it cannot enforce the security.—*UNION BANK v. FARMER*, [1917] 1 W. W. R. 1361.—CAN.

PART II. SECT. 22, SUB-SECT. 1.—A.

**ni. ———.]—**A bank has not a lien in respect of a deposit or balance to the credit of a customer, as there is no specific property on which a lien can operate.—*Re MORRIS, CONEYS v. MORRIS*, [1922] 1 I. R. 81.—IR.

PART II. SECT. 22, SUB-SECT. 1.—F.

**sm. Pledged to third party—Duty**

**of bank to disclose lien.]—***Held*: such a duty existed.—*LAZARD BROTHERS & CO. v. UNION BANK OF CANADA* (1920), 47 O. L. R. 608; 18 O. W. N. 290; 51 D. L. R. 636.—CAN.

PART II. SECT. 22, SUB-SECT. 2.

**mi. ———.]—***Held*: money to the credit of the customer not shown to be trust funds, might be retained & set off by the bank as against the indebtedness of the customer on the note.—*ROY v. CANADIAN BANK OF COMMERCE* (1918), 24 B. C. R. 397; 38 D. L. R. 742.—CAN.

**sp. Bank cashing cheque—Holder indebted to bank.]—**A bank, to which a cheque has been delivered to be cashed, has no right to set off against the proceeds of the cheque a debt owing to it by the holder.—*ROYXEL v. ROYAL BANK OF CANADA*, [1918] 2 W. W. R. 791; 11 Sask. L. R. 218.—CAN.

**st. Debt not recoverable—Statute-barred.]—**A bank's right of set-off cannot be exercised where a debt is statute-barred & not recoverable.—*Re MORRIS, CONEYS v. MORRIS*, [1922] 1 I. R. 136.—IR.



NATIONAL CROWN BANK, [1918] A. C. 903 ; 87 L. J. P. C. 186 ; 119 L. T. 659 ; 35 T. L. R. 1, P. C.

*Annotation*.—As to (2) *Reid. Re Darwen & Pearce, Associated Paper Mills v. Barnes* (1926), 95 L. J. Ch. 487.

961. *Add. Annotations*.—*Reid. Re Wait*, [1927] 1 Ch. 606. *Mentd. Ratner v. London Joint City & Midland Bank* (1922), 38 T. L. R. 253.

974. *Add. Annotation*.—*Consd. British & North European Bank v. Zalstein*, [1927] 2 K. B.

978. *Add. Annotations*.—*Mentd. Bradford Old Bank v. Sutcliffe* (1918), 88 L. J. K. B. 85 ; *Re Hodgson's Trusts, Public Trustee v. Milne*, [1919] 2 Ch. 189 ; *Albemarle Supply Co. v. Hind* (1927), 43 T. L. R. 652.

985. *Add. Annotation*.—*Consd. Tournier v. National Provincial & Union Bank of England*, [1924] 1 K. B. 461.

986. *Add. Annotation*.—*Reid. Tournier v. National Provincial & Union Bank of England*, [1924] 1 K. B. 461.

986a. *Without consent of customer.*—It is an implied term of the contract between a banker & his customer that the bank will not divulge to third persons, without the consent of the customer express or implied, either the state of the customer's account, or any of his transactions with the bank, or any information relating to the customer acquired through the keeping of his account, unless the banker is compelled to do so by order of a ct., or the circumstances give rise to a public duty of disclosure, or the protection of the banker's own interests requires it.

Pltf. was a customer of deft. bank. A cheque was drawn by another customer of defts. in favour of pltf., who instead of paying it in to his own account indorsed it to a third person who had an account at another bank. On the return of the cheque to defts. their manager inquired of the last-named bank who the person was to whom it had been paid, & was told it was a bookmaker. That information defts. disclosed to third persons :—*Held* : that disclosure constituted a breach of defts.' duty to pltf., for though the in-

formation was acquired not through pltf.'s account but through that of the drawer of the cheque, it was acquired by defts. during the currency of pltf.'s account & in their character as bankers.—*TOURNIER v. NATIONAL PROVINCIAL & UNION BANK OF ENGLAND*, [1924] 1 K. B. 461 ; 93 L. J. K. B. 449 ; 130 L. T. 682 ; 40 T. L. R. 214 ; 68 Sol. Jo. 441 ; 29 Com. Cas. 129, C. A.

*Annotation*.—*Reid. Waterhouse v. Barker*, [1924] 2 K. B. 759.

987. *Add. Annotation*.—*Reid. Tournier v. National Provincial & Union Bank of England*, [1924] 1 K. B. 461.

990a. *Disclosing any other information relating to customer.*—*TOURNIER v. NATIONAL PROVINCIAL & UNION BANK OF ENGLAND*, No. 986a, *ante*.

1010. *Add. Annotation*.—*Reid. Waterhouse v. Barker*, [1924] 2 K. B. 759.

1011. *Add. Annotation*.—*Reid. Ironmonger v. Dyne* (1928), 44 T. L. R. 579.

1012. *Add. Annotation*.—*Reid. Waterhouse v. Barker*, [1924] 2 K. B. 759.

1012a. ——— *Entries tending to incriminate.*—On an application under Bankers' Books Evidence Act, 1879 (c. 11), s. 7, for leave to inspect & take copies of entries in a banker's books before the trial of an action, the ct. is guided by the general rules regulating the inspection of documents before trial. Therefore if resp. to the application, being a party to the action, objects in proper form that the entries tend to incriminate him, the ct. will not grant the leave applied for.—*WATERHOUSE v. BARKER*, [1924] 2 K. B. 759 ; 93 L. J. K. B. 897 ; 132 L. T. 15 ; 40 T. L. R. 805 ; 69 Sol. Jo. 51, C. A.

1012b. ——— *Where, under Bankers' Books Evidence Act, 1879 (c. 11), s. 7, an order is made for the inspection of a judgment debtor's account with a banker, the ct. has power to make the order extend to the banking account of a person other than debtor, if the account of that other person was controlled by debtor & was used by debtor for his or her own purposes.*—

*COMMERCE*, [1925] 2 W. W. R. 150 ; 19 Sask. L. R. 413.—CAN.

## PART II. SECT. 25.

957 ii. ——— *Rights of bank.*—A cheque on the S. Bank, which was indorsed by the payee to the H. Bank, was deposited & applied against his overdraft after the H. Bank had suspended payment at its head office, but before notice thereof reached the local branch in which the cheque was deposited :—*Held* : the H. Bank was entitled to enforce payment of the cheque from the drawer.—*SULLIVAN v. HOME BANK OF CANADA*, [1927] 1 D. L. R. 1097 ; S. C. R. 115.—CAN.

957 iii. *Collection of bills for customer—Money received—Rights of customer.*—Where a branch of resp. bank had received bills from applts. for collection & remittance of the proceeds, & after collection but prior to remitting the bank suspended payment :—*Held* : (1) applts., having employed the bank as a whole in a fiduciary capacity, were entitled to a prior charge on the balances held by the bank as a whole at the date of suspension of payment ; (2) applts. were not entitled to a prior charge on the bank's general assets.—*SHAW WALLACE & CO. v. AMRITSAR NATIONAL BANK (IN LIQUIDATION)* (1926), 1 L. R. 7 Lah. 155.—IND.

## PART II. SECT. 23.

935 i. *Whether surety released—Increase in rate of interest.*—*Held* : an increase in the rate of interest charged by the bank to an amount in excess of that authorised by Canadian Bank Act, without intimation to the guarantors, did not discharge them from their liability.—*EGBERT v. NATIONAL CROWN BANK*, [1918] A. C. 903 ; 87 L. J. P. C. 186 ; 119 L. T. 659.—CAN.

935 ii. *S. P. MERCHANTS BANK OF CANADA v. BUSH*, [1918] 2 W. W. R. 574, 631.—CAN.

935 iii. ——— *Taking new security from principal debtor.*—*BANK OF NEW ZEALAND v. BAKER*, [1926] N. Z. L. R. 462.—N.Z.

935 iv. ——— *Note indorsed as security for specific purpose—General hypothecation of note by creditor to bank.*—*Held* : surety released.—*GORDON v. HEBBLE-WHITE*, [1927] 1 D. L. R. 817 ; [1927] S. C. R. 29.—CAN.

935 v. *Account settled between bank & customer—How far binding on surety of customer.*—Even if a certificate given by a customer of a bank of the correctness of the condition of his account as stated therein constitutes an account stated between the bank & its customer, yet such certificate

cannot be conclusive as against the surety of the customer.—*STANDARD BANK OF CANADA v. ALBERTA ENGINEERING CO., LTD.*, [1917] 1 W. W. R. 1177.—CAN.

935 vi. ——— *Special agreement to accept account.*—An express provision in the guarantee given to the bank that the stating, settling or admission of an account between the creditor & the bank should be conclusive evidence against the sureties cannot be effective to prevent the sureties from objecting to illegal charges, nor to charges, which though not illegal, were improper to the knowledge of the bank.—*NORTHERN CROWN BANK v. WOODCRAFTS, LTD.*, [1917] 1 W. W. R. 1205 ; 33 D. L. R. 367.—CAN.

935 vii. *Advance also secured by crop to be grown—Right of surety to proceeds of crop.*—Where a bank advances money for the purchase of seed grain on the security of the crop to be grown therefrom & also procures the signature of a surety to the borrower's note, the surety has a right to have any money realised out of the crop appropriated to the reduction of the debt for which he became surety in priority to all other claims of the bank against the borrower.—*PROUDLOCK v. CANADIAN BANK OF*



**Cases 1012b—1022. ENGLISH AND EMPIRE DIGEST SUPPLEMENT.**

- IRONMONGER & CO. *v.* DYNE (1928), 44 T. L. R. 579, C. A.
1013. *Add. Annotation :—*Refd. Waterhouse *v.* Barker, [1924] 2 K. B. 759.
1016. *Add. Annotation :—*Refd. Waterhouse *v.* Barker, [1924] 2 K. B. 759.
1017. *Add. Annotation :—*As to (1) Apld. Waterhouse *v.* Barker, [1924] 2 K. B. 759.
1018. *Add. Annotations :—*Apld. Waterhouse *v.* Barker, [1924] 2 K. B. 759. Consd. Ironmonger *v.* Dyne (1928), 44 T. L. R. 579.
1019. *Add. Annotation :—*Refd. Waterhouse *v.* Barker (1924), 132 L. T. 15.
1022. *Add. Annotation :—*Refd. Waterhouse *v.* Barker, [1924] 2 K. B. 759.

## BARRISTERS.

9. *Add. Annotation*:—Mentd. *Re Tetley, National Provincial & Union Bank of England v. Tetley* (1922), 39 T. L. R. 45.
- 66a. *Before parliamentary commission.*—BELFAST RIOTS COMMISSION CASE (1886), 21 L. Jo. 556.
71. *Add. Annotation*:—Refd. *Marson v. Unmack* [1923] P. 163.
84. *Add. Annotations*:—Mentd. *Lexden & Winstreet Union v. Windsor Union*, [1921] 2 K. B. 143; *Wycombe Grdns. v. Barton-upon-Irwell Grdns.* (1926), 43 T. L. R. 89.  
After this case add the following cross-reference: *See, further*, JUDGMENTS, Vol. XXX., pp. 203 *et seq.*
- 162a. — *Right of junior counsel settling pleadings to lead another junior counsel.*—A member of the Outer Bar settled pleadings & led at trial. Another member of the Outer Bar was briefed to attend trial as his junior. On party & party taxation the taxing master disallowed the fees paid to the second counsel on the ground that the junior who settled the pleadings could not lead, but could be led by a senior either of the Outer or Inner Bar:—*Held*: junior counsel who settled pleadings could lead another junior counsel, & fees of both counsel should be allowed.—*DOUGLAS v. ASSOCIATED NEWSPAPERS, LTD.* (1922), 67 Sol. Jo. 48.
184. *Add. Annotation*:—Mentd. *Turner v. Kingsbury Collieries*, [1921] 3 K. B. 169.
191. *Add. Annotation*:—Apld. *Re Morgan, Brown v. Jones* (1927), 71 Sol. Jo. 650.
- 191a. — — —.]—Where trustees are represented by the same firm of solrs. & one of them is interested in the trust fund beneficially, it is *prima facie* the solrs.' duty to employ separate counsel to represent the independent trustee, in order that the ct. may have the assistance of such separate counsel.—*Re MORGAN, BROWN v. JONES* (1927), 71 Sol. Jo. 650.
202. *Add. Annotation*:—Mentd. *Salvesen (or von Lcrang) v. Austrian Property Administrator*, [1927] A. C. 641.
207. *Add. Annotation*:—Mentd. *A.-G. v. De Keyser's Royal Hotel*, [1920] A. C. 508.
216. *Add. Annotation*:—Mentd. *Smith v. Smith & Rutherford*, [1920] P. 208.
- 220a. — *Of junior counsel—Proportionate to fee of leader.*—A junior counsel is entitled to be allowed two-thirds of the fee allowed to his leader & the taxing master has no power to direct that the amount of the fee of junior counsel on the hearing before the master in chambers should be deducted from the amount of the fee allowed on the adjourned hearing before the judge in ct., on the ground that the brief was practically the same on each occasion.—*Re PARK, BOTT v. CHESTER* (1921), 66 Sol. Jo. (W. R.) 2.
230. *Add. Annotation*:—Mentd. *Re Wigzell, Ex p. Hart*, [1921] 2 K. B. 835.
234. *Add. Annotation*:—Mentd. *Wild v. Simpson*, [1919] 2 K. B. 544.
251. *Add. Annotation*:—Mentd. *Tournier v. National Provincial & Union Bank of England*, [1924] 1 K. B. 461.
281. *Add. Annotation*:—Mentd. *Shepherd v. Robinson*, [1919] 1 K. B. 474.
291. *Add. Annotation*:—Apld. *Shepherd v. Robinson*, [1919] 1 K. B. 474.
300. *Add. Annotation*:—Refd. *Shepherd v. Robinson*, [1919] 1 K. B. 474.

## SECT. 1, SUB-SECT. 1.

b i. — *Nature of duties devolving upon.*—The discharge of the duties under Law Society Act, now R. S. O., 1914, c. 157 is not a matter of mere private concern, but one affecting the public, having to do with the well-being of the society in maintaining the standards which should prevail in the legal profession; &, unless in a case of manifest wrong, there should be no interference with the society's exercise of its statutory powers.—*HALL v. BALL* (1923), 54 O. L. R. 147.—CAN.

## SECT. 1, SUB-SECT. 2.—A.

11 ii. For "(1905), S. C. 221" read "[1905] T. S. 221."

11 iii. — *Without examination—Managing clerk to solicitor.*—In Law Practitioners Act, 1908, s. 5, the words "managing clerk to a solr." must be taken in the strict sense to mean one who has control & supervision of other clerks in the solr.'s employ.—*Re CHALMERS*, [1918] N. Z. L. R. 561.—N.Z.

15 ii a. — — —.]—The ct. will not grant *mandamus* to compel Benchers of a Law Society to admit an individual as member with a view to his qualifying himself to be called to the Bar.—*Re HAGEL & LAW SOCIETY OF BRITISH COLUMBIA* (1922), 31 B. O. R. 75.—CAN.

## SECT. 2, SUB-SECT. 7.—A.

sa. *Barrister of five years' standing—What constitutes.*—*Held*: applt., who had been called to the Bar more than five years, but had never practised

as a barrister, was a "barrister of not less than five years' standing" within the meaning of Industrial Arbn. Act, s. 6 (7).—*McCawley v. R.* (1918), 26 C. L. R. 9.—AUS.

## SECT. 3, SUB-SECT. 1.—A.

g. For "IR." at the end of this case read "SIERRA LEONE."

sb. *For conviction for perjury in England—Disbarment in England—How far binding on Indian court.*—*Held*: (1) the loss of the privilege of being a barrister in England, though the only qualification for admission in India as an advocate, did not necessarily entail disbarment in the High Ct. (2) Suspension for one year ordered in this case.—*Re AN ADVOCATE* (1923), I. L. R. 46 Mad. 903.—IND.

## SECT. 5, SUB-SECT. 2.

221 xi. — — —.]—*ARMOUR v. DINNER* (1899), 4 Terr. L. R. 30.—CAN.

sd. "Normal" fees—*Fees in big & difficult cases.*—*Held*: both are just such fees as a practising law-agent finds sufficient in order to command the services of competent counsel in cases of a similar character.—*CALEDONIAN RY. CO. v. GREENOCK CORPN., GLASGOW & SOUTH WESTERN RY. CO. v. SAME*, [1922] S. C. 299.—SCOT.

## SECT. 5, SUB-SECT. 6.

274 i. *Misconduct—Inserting libel on judge in notice of appeal—On instructions of client.*—*Held*: this conduct

was highly improper.—*JACOB & CO. v. RASH BEHARI GHOSE* (1920), I. L. R. 47 Calc. 828.—IND.

## SECT. 5, SUB-SECT. 7.—C. (b) i.

291 i. *General rule.*—Rules regarding competency of counsel to compromise suits, make admissions, or confess judgment, so as to bind their clients, discussed.—*MUTHIAH CHETTIAR v. MUTHU K. R. A. KAROPPAN CHETTI* (1927), I. L. R. 50 Mad. 786.—IND.

294 i. *Power presumed—Counsel apparently properly instructed—Party's agent present without protest.*—*NILMONR CHAUDHURI v. KEDAR NATH DAGA* (1922), I. L. R. 1 Pat. 489.—IND.

300 iv. — — —.]—A settlement within the apparent general authority of counsel:—*Held*: binding.—*B. N. SEN & BROTHERS v. CHUNI LAL DUTT & Co.* (1923), I. L. R. 51 Calc. 385.—IND.

301 i. *Authority to compromise out of court.*—A compromise effected by counsel on behalf of his client out of ct., & not assented to by his client, is only binding upon the client if it is expressly authorised or subsequently ratified by the client or by his agent authorised in that behalf.—*ASKARAO CHOUTMAL v. EAST INDIAN RY. CO.* (1925), I. L. R. 52 Calc. 386.—IND.

301 ii. — — —.]—The fact that negotiations for compromise between counsel took place before the hearing of the suit commenced, or were carried on outside the ct., does not vitiate the agreement.—*JOHURMULL BHUTRA v.*

312. *Add Annotation*:—Mentd. *Bosworthick v. Bosworthick*, [1926] P. 159.
313. *Add. Annotation*:—Mentd. *Butterworth v. Butterworth & Englefield, Collins v. Collins & Harrison, Barratt v. Barratt & Fox, Howell v. Howell & Walker, Adams v. Adams & Ward, Ellworthy v. Ellworthy & Ledgard*, [1920] P. 126.
- 323a. *Express instructions given to solicitor.*—At the hearing of an action for debt counsel for deft. consented to judgment against his client for part only of the claim, pltf. abandoning the balance. Without the knowledge of counsel on either side, or of the solrs. for pltf., deft. had given instructions to her solrs. that the case was not to be settled. Upon an application made before the judgment was drawn up:—*Held*: the case must be restored to the list for hearing.—*SHEPHERD v. ROBINSON*, [1919] 1 K. B. 474; 88 L. J. K. B. 873; 120 L. T. 492; 35 T. L. R. 220, C. A.
324. *Add. Annotation*:—Distd. *Shepherd v. Robinson*, [1919] 1 K. B. 474.
326. *Add. Annotation*:—Apld. *Shepherd v. Robinson*, [1919] 1 K. B. 474.
331. *Add. Annotation*:—Apld. *Shepherd v. Robinson*, [1919] 1 K. B. 474.
335. *Add. Annotation*:—Refd. *Shepherd v. Robinson*, [1919] 1 K. B. 474.
- 356a. *Whether binding at second trial.*—A man was employed by a railway co. to sweep their yard & goods warehouse. Several lines of rails ran through the yard, & it was his duty to sweep between the lines, but to stand clear of them when trucks were being run over them. On June 10, 1918, a capstan man in the employ of defts. gave notice to the man that he was going to run trucks into the yard, which notice the man acknowledged. The first truck was sent in. & the capstan man stated that he saw the man apply the brake to it, which was not a part of his duty, & then leave the yard. A second truck was then sent down on another line, & shortly afterwards the man was found sitting on the ground, having sustained injuries from which he died. Upon a claim by his widow for compensation under Workmen's Compensation Act, 1906 (c. 58), an admission was made by counsel at the trial that "deceased was crushed between two waggons & sustained abdominal injury from which he died." A new trial having been ordered:—*Held*: the above admission was not to be binding at the second trial.—
- DAWSON v. GREAT CENTRAL RY. CO. (1919), 88 L. J. K. B. 1177; 121 L. T. 263; 12 B. W. C. C. 163, C. A.
375. *Add. Annotation*:—Mentd. *Eastern Shipping Co. v. Quah Beng Kee*, [1924] A. C. 177.
381. *Add. Annotation*:—Mentd. *R. v. Minister of Labour*, [1924] 2 K. B. 210.
382. *Add. Annotation*:—Mentd. *Rhondda's Claim*, [1922] 2 A. C. 339.
- 383a. *Duty to assist court—By citing all relevant authorities.*—Upon the hearing of an appeal in the House of Lords, it is the duty of counsel to bring to the attention of the House any authority, statutory or other, within their knowledge which bears one way or the other upon the matters under debate, irrespectively of whether or not the particular authority assists the case of the party who is aware of it. It is likewise the duty of those who instruct counsel, if they are aware of any such authority, to bring it to the attention of counsel, in order that they in turn may bring it to the attention of the House.—*GLEBE SUGAR REFINING CO., LTD. v. GREENOCK PORT & HARBOURS TRUSTEES*, [1921] 2 A. C. 66; 125 L. T. 578; 37 T. L. R. 436; 65 Sol. Jo. 551, H. L.
- 383b. *Duty to disclose adultery of petitioner in suit for dissolution of marriage.*—Where a petitioner has committed adultery it is the duty of his counsel & solr. to disclose the fact to the ct. if they are aware of it.—*ABRAHAM v. ABRAHAM & HARDING* (1919), 120 L. T. 672; 35 T. L. R. 371; 63 Sol. Jo. 411.
- Disclosure of petitioner's adultery in suits for dissolution of marriage generally, see *HUSBAND & WIFE*.
389. After this case add, *See, also*, *NEGLIGENCE*, Nos. 842, 842a.
- 408a. ———.]—*PRACTICE NOTE*, [1920] W. N. 34.
421. *Add. Annotations*:—Mentd. *Sage v. Eicholz*, [1919] 2 K. B. 171; *Valentine v. Hyde*, [1919] 2 Ch. 129; *The Ruapehu* (1926), 136 L. T. 146; *Hardie & Lane v. Chilton* (1927), 96 L. J. K. B. 1040.
- 421a. ———.]—The House of Lords has a prior claim to the attendance of counsel over other cts., & before absenting himself counsel ought to have made an application for leave to be absent.—*ABRAM S.S. CO. v. WESTVILLE SHIPPING CO.* (1923), as reported in 67 Sol. Jo. 535, H. L.

KEDAR NATH BHUTRA (1927), I. L. R. 55 Cal. 113.—IND.

#### SECT. 5, SUB-SECT. 7.—C. (b) iii.

i. ———.]—The general authority of counsel to compromise a suit does not extend beyond matters in the suit.—*JOHURMULL BHUTRA v. KEDAR NATH BHUTRA* (1927), I. L. R. 55 Cal. 113.—IND.

#### SECT. 5, SUB-SECT. 7.—C. (b) iv.

334 ii. ———.]—Where the advocate for one of the parties in a proceeding for the grant of letters of administration under a misapprehension consented to the other party being granted the letters:—*Held*: if such consent was given without instructions the client might withdraw the consent at any time prior to the actual issue of letters.—*KYONE HOE TSEE v. KYON*

SOON SUN (1925), I. L. R. 3 Ran. 261.—IND.

#### SECT. 5, SUB-SECT. 10.

i. ———.]—In an action for damages for breach of contract, certain admissions were made by counsel for both parties & put in at the trial by consent:—*Held*: deft. was bound by the admissions made by counsel on his behalf.—*DOMINION ART CO., LTD. v. MURPHY* (1923), 54 O. L. R. 332.—CAN.

#### SECT. 6, SUB-SECT. 1.

383 i. ———.]—Should not make scandalous charges.—Members of the legal profession are under no duty to their clients to make grave & scandalous charges against either judges or the opposite parties on their client's mere wish. They are responsible to the

ct. for the fair & honest conduct of the case. They are not mere agents of the man who pays them, but are acting in the administration of justice.—*Re DIVARKA PRASAD MITHAL* (1923), I. L. R. 46 All. 121.—IND.

383 ii. ———.]—*Duty as regards offensive questions.*—An advocate should exercise his own discretion before putting an offensive question.—*M. BANERJEE v. ANUKUL CHANDRA MITRA* (1927), I. L. R. 55 Cal. 85.—IND.

31. *May criticise questions submitted to jury—After asking for direction & calling no evidence.*—*STEELE v. BELFAST CORPN.*, [1920] 3 I. R. 125, 133.—IR.

#### SECT. 6, SUB-SECT. 5.

429 ii. ———.]—*Re DIVARKA PRASAD MITHAL*, No. 383 i., ante.—IND.



446. *Add. Annotations*:—Mentd. The Christel Vinnen, [1924] P. 61; Elder, Dempster v. Paterson, Zochonis, Griffiths Lewis Steam Navigation Co. v. Paterson, Zochonis, [1924] A. C. 522; Reed v. Page & East (1926), 42 T. L. R. 744.
453. *Add. Annotations*:—Refd. Banbury v. Bank of Montreal, [1918] A. C. 626; Wilson v. United Counties Bank, [1920] A. C. 102. Mentd. Yorke v. Yorkshire Insce., [1918] 1 K. B. 662; Yorkshire Insce. v. Craine, [1922] 2 A. C. 541.
465. *Add. Annotation*:—Consd. De Freville v. Dill (1927), 43 T. L. R. 431.
467. *Add. Annotation*:—Mentd. Evans v. Heathcote, [1918] 1 K. B. 418.

## BASTARDY.

## Part I.—The Presumption of Legitimacy.

2. *Add. Annotations*:—*Refd. Gaskill v. Gaskill* (1921), 126 L. T. 115; *Warren v. Warren*, [1925] P. 107.
3. *Add. Annotations*:—*Refd. Gaskill v. Gaskill* (1921), 126 L. T. 115; *Farman v. Farman* (1924), 40 T. L. R. 823.
4. *Add. Annotations*:—*Consd. Mart v. Mart*, [1926] P. 24. *Mentd. Russell v. Russell*, [1924] A. C. 687.
5. *Add. Annotation*:—*Mentd. Brown v. Leech* (1924), 88 J. P. 208.
6. *Add. Annotation*:—*Mentd. Russell v. Russell*, [1924] A. C. 687.
10. *Add. Annotation*:—*Mentd. Re Wright, Hegan v. Bloor*, [1920] 1 Ch. 108.
11. *Add. Annotation*:—*Refd. Gaskill v. Gaskill*, [1921] P. 425.
12. *Add. Annotations*:—*Refd. Gaskill v. Gaskill*, [1921] P. 425; *Russell v. Russell*, [1924] A. C. 687.
17. *Add. Annotations*:—*Apld. Warren v. Warren*, [1925] P. 107. *Refd. Russell v. Russell*, [1924] A. C. 687.
18. *Add. Annotation*:—*Mentd. Brown v. Leech* (1924), 88 J. P. 208.
20. *Add. Annotation*:—*Refd. Andrews v. Andrews & Chalmers* (1924), 40 T. L. R. 873.
21. *Add. Annotations*:—*Mentd. Hensley v. Hensley & Nevin* (1920), 122 L. T. 814; *Pullen v. Pullen & Holding* (1920), 123 L. T. 203.
22. *Add. Annotations*:—*Consd. Russell v. Russell*, [1924] A. C. 687; *Mart v. Mart*, [1926] P. 24. *Refd. Andrews v. Andrews & Chalmers* (1924), 132 L. T. 400.
- 22a. ———.]—In the absence of evidence to the contrary the presumption of legitimacy does not arise in the case of a child born to a resp. more than nine months after she has obtained, under Summary Jurisdiction Married Women's Act, 1895 (c. 39), an order that she be no longer bound to cohabit with petitioner.—*ANDREWS v. ANDREWS & CHALMERS*, [1924] P. 255; 93 L. J. P. 137; 132 L. T. 400; 40 T. L. R. 873.  
*Annotation*:—*Refd. Mart v. Mart*, [1926] P. 24.
- 22b. *Deed of separation—Presumption of non-access.*]—The legal presumption of access, & of the legitimacy of a child born during marriage, is rebutted by its conception during a period when the spouses are living apart under a deed of separation. For this purpose a deed of separation has the same effect as an order under Summary Jurisdiction (Married Women) Act, 1895 (c. 39), that the wife shall not be bound to cohabit with her husband, or a judicial separation.—*MART v. MART*, [1926] P. 24; 95 L. J. P. 29; 134 L. T. 446; 42 T. L. R. 253.
- 24a. ———.]—*HASLAM v. CRON, OLIVANT'S CLAIM* (1871), 19 W. R. 968.
25. *Add. Annotations*:—*Refd. Gaskill v. Gaskill* (1921), 126 L. T. 115; *Farman v. Farman* (1924), 40 T. L. R. 823.
28. *Add. Annotation*:—*Refd. Russell v. Russell*, [1924] A. C. 687.
35. *Add. Annotations*:—*Refd. Gaskill v. Gaskill* (1921), 126 L. T. 115; *Warren v. Warren*, [1925] P. 107.
36. *Add. Annotations*:—*Apld. Best v. Best & McKinley*, [1920] P. 75; *Re Stollery, Weir v. Treasury Solicitor*, [1926] Ch. 284.
40. *Add. Annotations*:—*Mentd. Brown v. Leech* (1924), 88 J. P. 208; *Russell v. Russell*, [1924] A. C. 687.
42. *Add. Annotations*:—*Consd. Gaskill v. Gaskill* (1921), 126 L. T. 115. *Mentd. Farman v. Farman* (1924), 40 T. L. R. 823.
43. *Add. Annotation*:—*Refd. Gaskill v. Gaskill*, [1921] P. 425.
- 43a. ———.]—When adultery is to be inferred solely from the length of gestation of a child *in utero*, & evidence adverse to the wife, its mother, as regards her conduct, is absent, the same considerations apply as in a case of legitimacy & the presumption thereof. In such a case the evidence to negative lawful access as the cause of pregnancy must be strong, distinct, satisfactory, & conclusive, & must not consist of a mere balance of probability. If on medical evidence there is no distinct & inherent impossibility of access by the husband which could account for the birth of a child, the wife cannot be found guilty of adultery.—*GASKILL v. GASKILL*, [1921] P. 425; 90 L. J. P. 339; 126 L. T. 115; 38 T. L. R. 1.  
*Annotations*:—*Refd. Russell v. Russell*, [1924] A. C. 687. *Mentd. Sloggett v. Sloggett*, [1928] P. 148.
44. *Add. Annotation*:—*Mentd. Russell v. Russell*, [1924] A. C. 687.
46. *Add. Annotation*:—*Refd. Warren v. Warren*, [1925] P. 107.
49. *Add. Annotations*:—*Apld. Gaskill v. Gaskill*, [1921] P. 425. *Refd. Russell v. Russell*, [1924] A. C. 687.

## PART I. SECT. 2.

7 v. ———.]—*Held*: "born out of wedlock" within Children of Unmarried Parents Act, 1921 (c. 54), s. 13, & the husband may show by his own evidence & that of his wife that they had in fact no intercourse at such time as would make his parentage possible.—*Re DUCKWORTH & SKINKLE* (1924), 55 O. L. R. 272.—CAN.

7 vi. ———. *Wife divorced woman.*]—Where a Hindu woman was married to S. in Oct. 1903, was divorced by him in June 1904, married T. in

July 1904, & gave birth to a son in Sept. 1904:—*Held*: there was no proof that T. could not have had access to her at any time when the son could have been begotten, & the son should be held to be the legitimate son of T.—*SETHU v. PALAIN* (1925), 1 L. R. 49 Mad. 553.—IND.

14 i. ———. *Even where wife adulteress.*]—*Re BROWN & ARGUE*, [1925] 3 D. L. R. 873; 57 O. L. R. 297.—CAN.

14 d. *Child of Chinese resident in Straits Settlements & "t'sip" (secondary wife).*]—Regarded as legitimate & entitled to inherit equally with children

by the "t'sai" (primary wife).—*KHOO HOOI LEONG v. KHOO HEAN KWEH*, [1926] A. C. 529; 95 L. J. P. O. 94; 135 L. T. 170.—STRAITS SETTLEMENTS.

## PART I. SECT. 3.

49 iii. ———. *Illicit intercourse with paramour.*]—*Held*: evidence of pltf. should not have been received to bastardise her child, & as there was no admissible evidence that the child was illegitimate, it must be taken that pltf.'s husband was the father.—*KLIJKO v. BACZYSKI* (1921), 67 D. L. R. 46; 51 O. L. R. 225.—CAN.

54. *Add. Annotations*:—*Refd. Gaskill v. Gaskill* (1921), 126 L. T. 115; *Warren v. Warren*, [1925] P. 107.
56. *Add. Annotation*:—*Refd. Russell v. Russell*, [1924] A. C. 687.
57. *Add. Annotation*:—*Refd. Russell v. Russell*, [1924] A. C. 687.
58. *Add. Annotations*:—*Consd. Russell v. Russell*, [1924] A. C. 687. *Distd. Holland v. Holland*, [1925] P. 101. *Refd. Warren v. Warren*, [1925] P. 107.
59. *Add. Annotation*:—*Refd. Warren v. Warren*, [1925] P. 107.
60. *Add. Annotations*:—*Consd. Russell v. Russell*, [1924] A. C. 687. *Refd. Brown v. Leech* (1924), 88 J. P. 208.
61. *Add. Annotation*:—*Refd. Brown v. Leech* (1924), 88 J. P. 208.
63. *Add. Annotation*:—*Consd. Russell v. Russell*, [1924] A. C. 687.
64. *Add. Annotation*:—*Refd. Russell v. Russell*, [1924] A. C. 687.
- 65a. ———— *Resp., A. L., a married woman, living at all material times in London apart from her husband, preferred a complaint against applt. alleging that he was the father of her bastard child. Evidence was given by two independent witnesses that at all material times one F. L., was living in Cardiff. Resp. alone identified F. L. as her husband:—Held: apart from resp.'s identification, there was no evidence of non-access by the husband, & since Russell v. Russell, No. 70a, post, such evidence could not be given by the wife.—BROWN v. LEECH* (1924), 94 L. J. K. B. 48; 132 L. T. 205; 88 J. P. 208; 41 T. L. R. 89, D. C.
- 65b. ———— *Child still-born.*—The rule laid down by the House of Lords in *Russell v. Russell*, No. 70a, post, that evidence of non-access by the husband or wife cannot be admitted where the result may be to bastardise a child, does not include a still-born child.—*HOLLAND v. HOLLAND*, [1925] P. 101; 94 L. J. P. 64; 133 L. T. 318; 41 T. L. R. 431.
- 65c. ———— *—A wife's admission that she had committed adultery, even if accompanied by a statement of her belief that a child subsequently born, was the result of the adultery, cannot bastardise the child without evidence of the non-access of the husband. The confession of the wife, therefore, that she had committed adultery is admissible as evidence in a suit for divorce so long as she does not assert that the husband could have had no access at the time of conception.—WARREN v. WARREN*, [1925] P. 107; 94 L. J. P. 68; 133 L. T. 352; 41 T. L. R. 599; 69 Sol. Jo. 725.
- 65d. ———— *—Where a husband took out a summons asking that an order for maintenance should be discharged, on the ground that the wife had committed adultery:—Held: evidence of the husband*
- of non-access to bastardise his child was not admissible.—*BOSTON v. BOSTON* (1928), 138 L. T. 647; 92 J. P. 44; 26 L. G. R. 183, D. C.
66. *Add. Annotation*:—*Consd. Russell v. Russell*, [1924] A. C. 687.
67. *Add. Annotation*:—*Refd. Russell v. Russell*, [1924] A. C. 687.
68. *Add. Annotations*:—*Refd. Russell v. Russell*, [1924] A. C. 687. *Mentd. Hensley v. Hensley & Nevin* (1920), 122 L. T. 814.
70. *Add. Annotations*:—*Mentd. Hensley v. Hensley & Nevin* (1920), 122 L. T. 814; *Gaskill v. Gaskill*, [1921] P. 425.
- 70a. ———— *—The rule of law that neither a husband nor a wife is permitted to give evidence of non-intercourse after marriage to bastardise a child born in wedlock applies to proceedings instituted in consequence of adultery, & is not affected by the above sect., which makes the parties to such proceedings, & the husbands & wives of such parties, competent witnesses.—RUSSELL v. RUSSELL*, [1924] A. C. 687; 93 L. J. P. 97; 131 L. T. 482; 40 T. L. R. 713; 68 Sol. Jo. 682, H. L.
- Annotations*:—*Apld. Brown v. Leech* (1924), 94 L. J. K. B. 48. *Consd. Farman v. Farman* (1924), 40 T. L. R. 823. *Distd. Warren v. Warren*, [1925] P. 107. *Consd. Mart v. Mart*, [1926] P. 24; *Re A. B.'s Petn.*, [1928] P. 25. *Refd. Andrews v. Andrews & Chalmers* (1924), 132 L. T. 400; *Holland v. Holland*, [1925] P. 101; *Selby v. Atkins* (1926), 135 L. T. 45; *S. v. S. & P.* (1927), 44 T. L. R. 52.
- Evidence in matrimonial suits generally, see HUSBAND & WIFE.
71. *Add. Annotations*:—*Consd. Russell v. Russell*, [1924] A. C. 687; *Mart v. Mart*, [1926] P. 24. *Refd. Andrews v. Andrews & Chalmers* (1924), 132 L. T. 400.
72. *Add. Annotation*:—*Refd. Brown v. Leech* (1924), 88 J. P. 208.
73. *Add. Annotation*:—*Refd. Russell v. Russell*, [1924] A. C. 687.
- 73a. ———— *—Although, as decided in Russell v. Russell, No. 70a, ante, neither husband nor wife can give evidence of non-access, with a view of showing that a child born in wedlock was not a child of the marriage, yet the fact of non-access can be proved by evidence aliunde.—FARMAN v. FARMAN* (1924), 40 T. L. R. 823.
75. *Add. Annotation*:—*Mentd. Russell v. Russell*, [1924] A. C. 687.
76. *Add. Annotations*:—*Consd. Russell v. Russell*, [1924] A. C. 687; *Mart v. Mart*, [1926] P. 24.
79. *Add. Annotation*:—*Mentd. Russell v. Russell*, [1924] A. C. 687.
80. *Add. Annotations*:—*Consd. Russell v. Russell*, [1924] A. C. 687; *Mart v. Mart*, [1926] P. 24.
81. *Add. Annotations*:—*Mentd. Hensley v. Hensley & Nevin* (1920), 122 L. T. 814; *Gaskill v. Gaskill*, [1921] P. 425.
82. *Add. Annotations*:—*Mentd. Hensley v.*

PART I. SECT. 4.

56 vii. ———— *—The evidence of a man & his wife, given for the purpose of bastardising a child born during wedlock, & at a time consistent with lawful conception, is not admissible.—Re BROWN & ARGUE*, [1925] 3 D. L. R. 873; 57 O. L. R. 297.—CAN.

56 viii. ———— *—A husband sued his wife for divorce on the ground of adultery, which she denied. The*

wife had given birth to a child, of which the husband alleged that he was not the father. The husband gave evidence of non-access. The birth had been registered by the wife, who gave the name of a man other than her husband as its father:—*Held*: (1) the husband's evidence as to non-access was inadmissible; (2) the registration of the child's birth by the wife did not throw the *onus* upon her of proving

that the child was not an adulterine child, but the *onus* of proof remained upon the husband.—*SURMON v. SURMON*, [1926] App. D. 47.—S. AF.

56 ix. ———— *—Evidence of adultery does not bastardise issue, unless it amounts to evidence of non-access by the husband at about the time when the child might have been begotten.—JUSTICE v. JUSTICE*, [1925] S. A. S. R. 278.—AUS.



Hensley & Nevin (1920), 122 L. T. 814; Pullen v. Pullen & Holding (1920), 123 L. T. 203.

88. *Add. Annotations*:—*Reid. Holland v. Holland*, [1925] P. 101; *Warren v. Warren*,

[1925] P. 107. *Mentd. Russell v. Russell*, [1924] A. C. 687.

85. *Add. Annotation*:—*Consd. Re Stollery, Weir v. Treasury Solicitor* (1926), 134 L. T. 430.

96. *Add. Citation*:—*previous proceedings* (1861), 2 Sw. & Tr. 465.

## Part II.—Mode of Determining Question of Legitimacy.

111. For "a person who has no interest in opposing a petition will not be cited," read "a person not cited, who has no real interest in opposing a petition for a declaration of legitimacy, will not be allowed to intervene."

*Add. Citation*:—1 New Rep. 107, 378.

114. *Add. Annotations*:—*Mentd. Young v. Grier-son, Oldham* (1924), 41 R. P. C. 548; *R. v. Copestake, Ex p. Wilkinson* (1926), 90 J. P. 191.

118. *Add. Annotations*:—*Mentd. Re Letters Patent No. 139207, Re Carbonit Akt.*, [1924] 2 Ch. 53; *R. v. Copestake, Ex p. Wilkinson* (1926), 90 J. P. 191.

120. *Add. Annotations*:—*Mentd. A.-G. v. Cory, Kennard v. Cory* (1919), 88 L. J. Ch. 410; *Compania Martiartu v. Royal Exchange Assce. Corpn.* (1923), 92 L. J. K. B. 546; *Re Clayton's Petn.* (1927), 43 T. L. R. 659.

121. *Add. Annotations*:—*Apld. Rutter v. Rutter*, [1921] P. 136. *Mentd. Re Clayton's Petn.* (1927), 43 T. L. R. 659.

129. *Add. Annotations*:—*Mentd. Hensley v. Hensley & Nevin* (1920), 122 L. T. 814; *Pullen v. Pullen & Holding* (1920), 123 L. T. 203.

130. *Add. Annotation*:—*Mentd. Keyes v. Keyes & Gray*, [1921] P. 204.

130a. *Under Legitimacy Act, 1926 (c. 60)—Parties.*—*Held*: in a suit, to which only a husband & wife were parties, the ct. was not competent to find the facts necessary to make the child a legitimated child by virtue of the above Act.—*BEDNALL v. BEDNALL & SHIVUSSAWA*, [1927] P. 225; 96 L. J. P. 150; 137 L. T. 632; 43 T. L. R. 599; 71 Sol. Jo. 453.

*Annotation*:—*Apld. G. v. G.* (1928), 45 T. L. R. 7.

130b. *S. P. G. v. G.* (1928), 45 T. L. R. 7.

130c. — *Petition on behalf of several persons—Procedure.*—*Re CLAYTON'S PETITION* (1927), 43 T. L. R. 659; 71 Sol. Jo. 543.

130d. — *Hearing — Whether in camera.*—A petition filed under the above Act for the legitimation of a person who was born illegitimate, but whose parents were married subsequently to his birth, is not a proceeding which entitles petitioner to a hearing *in camera*.—*GREENWAY v. A.-G.* (1927), 44 T. L. R. 124; 71 Sol. Jo. 882; *sub nom. Re A. B.'s Petition*, 97 L. J. P. 104; *sub nom. Re C. D.'s Petition*, 138 L. T. 208.

## Part III.—Legitimation by Subsequent Marriage.

132. *Add. Annotations*:—*Mentd. Casdagli v. Casdagli*, [1919] A. C. 145; *Eustace v. Eustace*, [1924] P. 45; *Re Annesley, Davidson v.*

*Annesley*, [1926] Ch. 692; *A.-G. for Alberta v. Cook*, [1926] A. C. 444.

153. *Add. Annotation*:—*Mentd. R. v. Copestake, Ex p. Wilkinson* (1926), 90 J. P. 191.

## Part IV.—Legal Position of Bastard.

157. *Add. Annotation*:—*Consd. Re Phillips, Re Howard, Charter v. Ferguson*, [1919] 1 Ch. 128.

161. *Add. Annotations*:—*Mentd. Casdagli v. Casdagli*, [1919] A. C. 145; *Eustace v. Eustace*, [1924] P. 45; *Re Annesley, Davidson v. Annesley*, [1926] Ch. 692; *A.-G. for Alberta v. Cook*, [1926] A. C. 444.

162. *Add. Annotation*:—*Mentd. Re Annesley, Davidson v. Annesley*, [1926] Ch. 692.

168. *Add. Annotation*:—*Mentd. R. v. A.-G. of British Columbia*, [1924] A. C. 213.

183. *Add. Annotation*:—*Mentd. Boyce v. Wasbrough*, [1922] 1 A. C. 425.

195. *Add. Annotation*:—*Mentd. Re Dawson, Swainson v. Dawson*, [1919] 1 Ch. 102.

### PART II. SECT. 2, SUB-SECT. 1.

1. *Jurisdiction of court.*—*Held*: Legitimacy Declaration Act, 1858 (Imp.), gives the ct. jurisdiction to make a declaration of legitimacy upon a direct application for that purpose.—*Re G.*, [1922] 1 W. W. R. 978; 63 D. L. R. 365; 17 Alta. L. R. 473.—CAN.

### PART III. SECT. 1.

1. *Subsequent marriage of parents in England—Child acquiring domicile in*

*Ontario—Ontario Legitimation Act, 1921 (c. 53).*—*W.* was born out of wedlock in England; his parents subsequently married in England; & *W.* went to Ontario when twenty-four years of age, & acquired a domicile in Ontario:—*Held*: *W.* was legitimate.—*Re W.*, [1925] 2 D. L. R. 1177; 56 O. L. R. 611.—CAN.

### PART IV. SECT. 1.

1. *Nullius filius—Extent of rule.*

—*Held*: does not prevail in a ct. of eq.—*Re CONNOR*, [1919] 1 I. R. 361.—IR.

### PART IV. SECT. 2, SUB-SECT. 2.—A. (b).

1. *Right of Crown to escheat not affected—Although intestate legitimated per subsequent matrimonium.*—*Re W.*, [1925] 2 D. L. R. 1177; O. L. R. 611.—CAN.

## Part V.—Rights and Liabilities towards the Bastard.

- 204a. *S. P. Ex p. EMERSON* (1895), 11 T. L. R. 218, D. C.
206. *Add. Annotation:—Consd. G. v. G.* (1928), 45 T. L. R. 7.
207. *Add. Annotations:—Consd. G. v. G.* (1928), 45 T. L. R. 7. *Mentd. Secretary of State for Home Affairs v. O'Brien*, [1923] A. C. 603.
- 210a. *S. P. R. v. CLAYDON* (1859), 34 L. T. O. S. 46.
225. *Add. Annotation:—Consd. G. v. G.* (1928), 45 T. L. R. 7.
226. *Add. Annotations:—Consd. G. v. G.* (1928), 45 T. L. R. 7. *Mentd. Secretary of State for Home Affairs v. O'Brien*, [1923] A. C. 603.
- 241a. ——— *Permanent maintenance.]—*(1) A judgment recognising the right of an illegitimate child to perpetual maintenance against the putative father & his estate, is contrary to public policy.
- (2) The right to a posthumous affiliation order is a cause of action unknown in England. —*Re MACARTNEY, MACFARLANE v. MACARTNEY*, [1921] 1 Ch. 522; 90 L. J. Ch. 314; 124 L. T. 658; 65 Sol. Jo. 435.
- Annotation:—Generally; Mentd. Beatty v. Beatty*, [1924] 1 K. B. 807.
251. *Add. Annotation:—Mentd. Scott v. Pattison*, [1923] 2 K. B. 723.

## Part VI.—Affiliation Proceedings and Kindred Proceedings under Colonial Statutes.

259. *Add. Annotations:—Distd. Boyce v. Cox*, [1922] 1 K. B. 149. *Mentd. Grocock v. Grocock*, [1920] 1 K. B. 1.
262. *Add. Annotation:—Distd. Boyce v. Cox*, [1922] 1 K. B. 149.
- 262a. ——— *Under separation order.]—*An unmarried woman was delivered of a child. The putative father made payments for its maintenance within twelve months. Subsequently the mother married another man, who maintained the illegitimate child till the mother obtained a separation order on the ground of his cruelty. No provision was made in the order for maintenance of the illegitimate child:—*Held*: the mother was a "single woman" within 1872 Act, s. 3, the effect of a separation order being to confer on her the status of a *feme sole*.—*BOYCE v. Cox*, [1922] 1 K. B. 149; 91 L. J. K. B. 122; 126 L. T. 254; 85 J. P. 279; 38 T. L. R. 51; 66 Sol. Jo. 142; 20 L. G. R. 686; 27 Cox, C. C. 139, D. C.
263. *Annotations:—For "R. v. Suffolk JJ.* (1884), 12 J. P. 426" read "*R. v. Suffolk JJ.* (1848), 12 J. P. 426."
- Add. Annotations:—Refd. Brown v. Leech* (1924), 88 J. P. 208. *Mentd. Russell v. Russell*, [1924] A. C. 687.
264. *Add. Annotation:—Refd. Brown v. Leech* (1924), 88 J. P. 208.
267. *Add. Citation:—26 Cox, C. C. 129.*
- 274a. ——— *After death of father.]—Re MACARTNEY, MACFARLANE v. MACARTNEY*, No. 241a, *ante*.
- 278a. ——— *—.]—*(1) A woman who was with child went to stay at the house of her sister, who lived in a different petty sessional division from that in which the woman usually resided. The woman went home to

### PART V. SECT. 1.

198 i. *Father's right to custody—Father maintaining child.]—Held*: 1 & 2 Vict. c. 56, s. 53, imposed an obligation on the father to support & maintain an infant illegitimate son, which obligation the father was willing to fulfil, & had fulfilled until prevented by the mother, & the father was *primâ facie* entitled to the custody of the child. —*Re GAVAGAN*, [1922] 1 I. R. 148.—IR.

205 vi a. ——— *—.]—*WALTER v. CULBERTSON, [1921] S. C. 490; 58 Sc. L. R. 401.—SCOT.

205 ix a. ——— *—.]—Held*: a parent should not be deprived of the custody of an infant unless it is shown that the parent has abandoned or deserted it, or that his conduct has been such as to disentitle him to its custody, or that he has allowed it to be brought up by another person at that person's expense.—*Re P.*, [1922] 1 W. W. R. 853; 63 D. L. R. 430; 17 Alta. L. R. 493.—CAN.

sl. "Neglected child"—*Who is.]—*An illegitimate child whose mother is unable to maintain it is a "neglected child" within Children's Protection Act (Ontario), although cared & provided for by a third party.—*Re S.* (1919), 45 O. L. R. 48.—CAN.

sm. *Equal Guardianship of Infants Act, R. S. B. C., 1924 (c. 101)—Not applicable to illegitimate child.]—Re S., Re EQUAL GUARDIANSHIP OF INFANTS ACT*, [1927] 2 D. L. R. 91; [1927] 1 W. W. R. 441; 38 B. C. R. —CAN.

### PART V. SECT. 3.

227 ii. ——— *—.]—*In the case of the father of a legitimate child, if he has not waived or forfeited his right by conduct, the ct. will allow his wishes on religion to control the faith of the child, even after his death, but, in the case of the mother of an illegitimate child, will only do so so long as she is living, & the obligation to support the child remains. Where special facts nullify or negative the application of any rule of law or practice compelling the ct. to yield to the wishes of a parent as to the religion of a child, the ct. is bound solely to pay regard to the welfare of the child.—*Re CONNOR*, [1919] 1 I. R. 861.—IR.

### PART V. SECT. 4.

p i. ——— *Child born before Children of Unmarried Parents Act, 1921 (Ont) (c. 54).—Held*: the father is not liable to be prosecuted.—*R. v. O'DONNELL* (1923), 39 Can. Crim. Cas. 94.—CAN.

### PART VI. SECT. 1.

253 ii. ——— *—.]—*Under Children of Unmarried Parents Act, 1921, the father of an illegitimate child is liable for the maintenance & care of the mother before, at, & after the birth of the child, notwithstanding that the child is still-born.—*Re KIRKPATRICK & MOROUGHAN*, [1927] 3 D. L. R. 546; 60 O. L. R. 495.—CAN.

sn. *Birth before passing of Children of Unmarried Parents Act, 1923 (c. 50) (Alta.).—*The above Act applies, where its conditions are complied with, to a child born before the Act was passed or came into operation.—*ANDERTON v. SEROKA*, [1925] 2 D. L. R. 488; [1925] 1 W. W. R. 1019; 21 Alta. L. R. 100; *affg.* [1925] 1 W. W. R. 543.—CAN.

sp. *Birth outside Alberta—Children of Unmarried Parents Act, 1923 (c. 50) (Alta.) applicable.]—MUNRO v. LEEDHAM*, [1925] 2 D. L. R. 604; [1925] 1 W. W. R. 1113; 21 Alta. L. R. 75.—CAN.

### PART VI. SECT. 2.

st. *Who may lay complaint—Children of Unmarried Parents Act, 1923, (c. 50) (Alta.).—*The deputy A.-G. of Alberta may authorise another person to act for the Superintendent of Neglected & Dependent Children in laying a complaint under the above Act. Such authorisation may be sufficiently given by telegram.—*MUNRO v. LEEDHAM*, [1925] 2 D. L. R. 604; [1925] 1 W. W. R. 1113; 21 Alta. L. R. 75.—CAN.

sa i. ——— *—.]—*Where the affidavit filed by the mother stated that deft. was the father of the child, not "really the father" as required by Children of Unmarried Parents Act, s. 28:—*Held*: the omission of the word "really" was fatal, & the action should be dismissed.—*LANCASTER v. VAUGHAN* (No. 2) (1924), 33 B. C. R. 440.—CAN.

be confined, & fourteen days after the birth of her child she went back to her sister & stayed with her for a month. Eight days after the commencement of this visit the woman applied to a justice of the peace acting for the petty sessional division of the place where her sister resided for a summons against the man alleged by her to be the father of her child:—*Held*: the woman resided in that petty sessional division within 1872 Act, s. 3, so as to give the justices of that petty sessional division jurisdiction to make an affiliation order against the putative father, as that sect. did not require that the application should be made to a justice of the peace acting for the petty sessional division of the place where the woman usually or permanently resided.

(2) Where an affiliation order has been made which is not appealed against, or where there has been an appeal to quarter sessions against the order & the appeal has been dismissed, & subsequently an application is made to justices to enforce the order by the issue of a distress warrant, the justices have no jurisdiction to enter into any inquiry as to the validity of the original order.—*R. v. LANCASHIRE JJ., Ex p. TYRER*, [1925] 1 K. B. 200; 94 L. J. K. B. 331; 132 L. T. 382; 89 J. P. 17; 41 T. L. R. 103; 69 Sol. Jo. 194; 23 L. G. R. 32; 27 Cox, C. C. 711, D. C.

280. *Add. Annotation*:—*Refd. R. v. Lancashire JJ., Ex p. Tyrer* (1924), 88 J. P. Jo. 701.

285. *Add. Annotation*:—*Refd. Kenney v. Kenney* (1925), 133 L. T. 400.

293. *Add. Annotation*:—*Appld. Williams v. Letheren*, [1919] 2 K. B. 262.

306a. *S. P. DELOMBRE v. FOUQUAULT* (1909), 44 L. Jo. 263.

318. *Add. Annotation*:—*Refd. Thomas v. Jones*, [1920] 2 K. B. 399.

321. *Add. Annotation*:—*Refd. Thomas v. Jones*, [1920] 2 K. B. 399.

#### PART VI. SECT. 4.

317 xii. *Add "revsd. sub nom. RIDLEY v. WHIPP*, 22 C. L. R. 381."

317 xii a. ————.]—An isolated instance of familiarity in the presence of a third person & a statement by the putative father when taxed with the paternity of the child that other men besides him could be the father of it, do not amount to corroboration under Infant Life Protection Act, 1907, s. 19, of the evidence of complainant that deft. was the father of her child.—*FROST v. ALLEN* (1919), 15 Tas. L. R. 12.—AUS.

317 xxxiii a. ————.]—In an action by P. against L. for lying-in & medical expenses & aliment for her illegitimate child, L. denied on oath P.'s allegation of seduction:—*Held*: the corroborative evidence in regard to seduction required must be evidence *aliunde* which was inconsistent with deft.'s innocence.—*DU PLESSIS v. LEVY* (1925), 46 N. L. R. 249.—S. AF.

317 xxxiii b. ————.]—A denial of a conversation testified to by independent evidence:—*Held*: an implied admission which vested the evidence with a quality it did not previously possess, & corroboration of the mother's evidence in a material particular.—*PITTMAN v. BYRNE*, [1926] S. A. S. R. 207.—AUS.

317 xxxiii c. ————.]—Evidence of a false denial by deft. is not corroboration, where such denial is not of facts establishing, or con-

nected with, opportunities for intercourse at the critical time, & there is no evidence of opportunity, on the occasions referred to, which can cause the denial to give any particular colour to facts which have no suggestive significance.—*MORRISON v. TAYLOR*, [1927] V. L. R. 62; [1927] Argus. L. R. 30.—AUS.

317 xxxiii d. ————.]—*R. v. MOORE* (1927), 38 B. C. R. 425.—CAN.

317 xlv a. ————.]—Where reliance is placed upon opportunity of intercourse, that evidence must be supplemented by evidence of circumstances which lead to the inference that it was probable that advantage would be taken of the opportunity.—*RIDLEY v. WHIPP* (1916), 22 C. L. R. 381.—AUS.

317 xlv b. ————.]—On the hearing of a complaint under Illegitimate Children's Act, R.S.M., 1913 (c. 92), the corroboration of the mother's evidence required to support a filiation order may be supplied, not by mere proof of opportunity of intercourse, but by such proof coupled with the fact that deft. denies circumstances with respect to it which are otherwise proved & innocent in themselves & thereby gives to the proved opportunity a different complexion from what it would have borne had such false statements not been made.—*BARTLEY v. GALL*, [1925] 3 D. L. R. 585; [1925] 2 W. W. R. 669; 35 Man. L. R. 200.—CAN.

317 xlv c. ————.]—*Failure of defendant to call evidence or give*

322. *Add. Annotation*:—*Generally, Refd. Thomas v. Jones*, [1921] 1 K. B. 22.

323. *Add. Annotation*:—*Consd. Thomas v. Jones*, [1921] 1 K. B. 22.

325a. ————.]—*Appl.* was charged on complaint preferred by resp. with being the father of a bastard child of resp. *Appl.* was a farmer & a bachelor. *Resp.* was his house-keeper. On the morning of the birth when resp. was in labour, applt., who had no other female servant, lit a fire for her & took her some tea & brandy. He also sent for the doctor. After the birth he allowed her & the child to remain for five weeks & two days, until June 17, in his house. There was no evidence whether she was sufficiently recovered to have left at an earlier date. *Appl.* admitted that during those five weeks & two days he never asked resp. who was the father of her child. *Resp.* in her evidence said that during that time, though she did not fix the date except that it was before June 16, she asked applt. what he was going to do about the child, & he said that there was nothing for him to do but to pay. After resp. had left his house she wrote him a letter charging him with being the father of the child, & asking him if he meant to pay for its maintenance. To that letter he made no reply:—*Held*: the above facts did not afford any evidence corroborating the evidence of resp. in some material particular, as required by 1872 Act, s. 4.—*THOMAS v. JONES*, [1921] 1 K. B. 22; 90 L. J. K. B. 49; 124 L. T. 179; 85 J. P. 38; 36 T. L. R. 872, C. A.

334. *Add. Annotation*:—*Refd. Kenney v. Kenney* (1925), 133 L. T. 400.

345. *Add. Citation*:—2 L. M. & P. 130.

366a. *Variation of order—Adjudication of paternity—"Fresh evidence."*—On the application of resp., justices made an order adjudging

*evidence himself.*—*Held*: deft.'s conduct did not afford corroboration of pltf.'s case.—*FADDES v. M* [1923] S. C. 443.—SCOT.

317 xlix a. ————.]—*CLAIR v. HANKIN*, [1921] S. C. 933; 58 Sc. L. R. 624.—SCOT.

#### PART VI. SECT. 5.

g i. ———— *No evidence of means & expenses.*—An order made under Children of Unmarried Parents Act, 1923 (c. 50) (Alta.), fixing amounts to be paid by the putative father set aside, where it was made without evidence being adduced as to his means, the expenses incurred by the mother, or the respective abilities of the parents to provide for the child.—*ANDERTON v. SEROKA*, [1925] 2 D. L. R. 912; [1925] 2 W. W. R. 433; 21 Alta. L. R. 362.—CAN.

g ii. ———— *Variation of order.*—Where the mother craved an increase because of the cost of living due to the war:—*Held*: the amount of inlying expenses be unaltered, but decree granted for 4s. 6d. per week, in name of aliment, permission being granted to deft. to apply to the ct. should a change of circumstances arise.—*FORBES v. MATTHEW*, [1919] S. C. 242; 56 Sc. L. R. 137.—SCOT.

g iii. ————.]—The true criterion in Scotland is, not the rank or financial position of the parties, but the support beyond want which must be accorded to an illegitimate child.—*FRASER v. CAMPBELL*, [1927] S. C. 589.—SCOT.



that applt. was the father of her illegitimate child, & ordered him to make her a periodical payment. On a subsequent application by applt. under Criminal Justice Administration Act, 1914 (c. 58), s. 30 (3), to revoke the whole order, he tendered fresh evidence, which went only to show that he was not the father of the child. The justices refused to hear it, holding that they had no power to deal with that part of the order which adjudged the paternity:—*Held*: (1) the justices were right; (2) (AVORY & SHEARMAN, JJ.) there being nothing to show that the evidence tendered was of facts which had occurred since the original hearing, or had come to the knowledge of applt. since the hearing, that evidence was not "fresh evidence" within sect. 30 (3).—COLCHESTER v. PECK, [1926] 2 K. B. 366; 95 L. J. K. B. 1038; 135 L. T. 32; 90 J. P. 130; 42 T. L. R. 535; 28 Cox, C. C. 225, D. C.

*Annotation*:—As to (1) *Folld. R. v. Copestake, Ex p. Wilkinson* (1926), 90 J. P. 191.

366b. ———.]—(1) Criminal Justice Administration Act, 1914 (c. 38), s. 30 (3), while empowering justices to deal generally with an existing bastardy order, does not enable them to revoke that part of the order which consists of the adjudication of paternity.

(2) "Fresh evidence" must be of such a character that not merely is it relevant, but of such importance that it would have affected the judgment of any one if they had had the opportunity of hearing it at the original hearing of the case.—*R. v. COPESTAKE, Ex p. WILKINSON*, [1927] 1 K. B. 468; 96 L. J. K. B. 65; 136 L. T. 100; 90 J. P. 191; 24 L. G. R. 562, C. A.

367. *Add. Annotations*:—*Reid. Grocock v. Grocock*, [1920] 1 K. B. 1. *Mentd. Jones v. Jones*, [1924] P. 203.

367a. *Justices' discretion.*]—Under 1872 Act, s. 4, the magistrate has a discretion as to whether he will grant or refuse an order for payment of arrears due under an affiliation order, but he has no discretion to grant an order for payment of a portion only of the arrears enforceable by law.—*GROCOCK v. GROCOCK*, [1920] 1 K. B. 1; 88 L. J. K. B. 1068; 121 L. T. 466; 83 J. P. 185; 35 T. L. R. 509; 63 Sol. Jo. 627; 17 L. G. R. 623; 26 Cox, C. C. 485, D. C.

*Annotation*:—*Reid. Colchester v. Peck*, [1926] 2 K. B. 366.

372. *Add. Annotation*:—*Mentd. Marshall v. Malcolm* (1917), 87 L. J. K. B. 491.

372a. ——— *Application for warrant—Jurisdiction*

#### PART VI. SECT. 7, SUB-SECT. 2.

400 ii. ——— *Irregularity or illegality in proceedings.*]—Illegitimate Children's Act, R. S. S. 1920 (c. 156), s. 10, gives the ct. power at the instance of a putative father to rescind or vary an order. He thus has a means of relief, & *certiorari* may in the discretion of the superior ct. be refused.—*DWYER v. BULBECK*, [1923] 1 D. L. R. 597; 39 Can. Crim. Cas. 162; 16 Sask. L. R. 13; [1922] 3 W. W. R. 391.—CAN.

ri. ——— *Refusal to vary or rescind order.*]—The magistrate has no discretion to refuse to hear an application, but after hearing it he may refuse to rescind or vary his order. If the magistrate refuses to hear the application, applt. is entitled to a prerogative writ of *mandamus* to compel him to do

so.—*WHEATLEY v. HOWARD*, [1923] 3 D. L. R. 288; 2 W. W. R. 942.—CAN.

yi. ——— *Grounds for allowing appeal.*]—On appeal to a county ct. judge from an order of filiation made against deft. in a bastardy case by a stipendiary magistrate, the judge, after rehearing the case, disbelieved the evidence of the mother, who was contradicted in important particulars by independent witnesses, & contradicted her evidence before the magistrate, as to the paternity of the child:—*Held*: the appeal from the county ct. judge must be dismissed.—*MULGRAVE v. CLANCEY* (1925), 58 N. S. R. 105.—CAN.

yii. ——— *At what place.*]—In a complaint under Children of Unmarried Parents Act, R. S. B. C., 1924 (c. 34),

of justices to question validity of affiliation order.]—*R. v. LANCASHIRE JJ., Ex p. TYRER*, No. 278a, ante.

375. *Add. Annotation*:—*Consd. Firman v. Royal*, [1925] 1 K. B. 681.

379. *Add. Annotations*:—As to (1) *Appld. Grocock v. Grocock*, [1920] 1 K. B. 1. *Expld. Colchester v. Peck*, [1926] 2 K. B. 366.

384. *Add. Citation*:—*sub nom. R. v. SMITH*, 55 L. J. M. C. 147.

395. *Add. Annotation*:—*Reid. Marsland v. Taggart*, [1928] 2 K. B. 447.

403a. ——— *New evidence.*]—Complainant in an affiliation summons was a married woman who was not living apart from her husband at the material date, & an order on the evidence & on his own admission was made against one M. After the time for appealing against this order had expired, the rule in the present case was obtained on an affidavit by complainant's husband that he had cohabited with complainant at the material date & could have been the father of the child:—*Held*: the question of access or non-access was a question of fact for the justices, from which they were entitled to find that M. was the child's father; the ct. would not, in support of a rule for a *certiorari*, rehear a case upon further evidence on a disputed question of fact, & perform the functions of quarter sessions, to which, owing to lapse of time, an appeal could not be made.—*R. v. MARKHAM, Ex p. MARSH* (1923), 67 Sol. Jo. 518.

403b. ——— *Sufficiency of corroboration.*]—On a bastardy summons justices, having heard the evidence of the mother & such other evidence as was produced by her & other evidence tendered by the person alleged to be the father, made an order in these terms: "On hearing the complaint & the evidence of complainant & other evidence satisfactorily corroborating in a material particular her evidence & also the evidence tendered by deft., & being satisfied of the truth of the complaint, it is adjudged that deft. is the putative father of the child":—*Held*: the question whether the evidence of the mother was corroborated in some material particular by other evidence to the satisfaction of the justices & even if the other evidence did not corroborate the evidence of the mother, the justices had acted within their jurisdiction, & a writ of *certiorari* should not issue to quash their order.—*R. v. LINCOLNSHIRE JJ., Ex p. BRETT*, [1926] 2 K. B. 192; 95 L. J. K. B. 827; 135 L. T. 141; 90 J. P. 149; 28 Cox, C. C. 178, C. A.

s. 7 (1), "the cause" of the complaint within Summary Convictions Act, R. S. B. C., 1924 (c. 245), s. 77, is the seduction & not the birth of the child; & an appeal from the dismissal of the complaint is properly taken to the county ct. nearest the place where the seduction occurred.—*FERGUSON v. TAYLOR* (B. C.), [1926] 3 W. W. R. 203; 46 Can. Crim. Cas. 149.—CAN.

di. ——— *Under Illegitimate Children's Act, R. S. S., 1920 (c. 156).*]—An order made by a magistrate under s. 5 of the above Act may be varied by him on the application of either of the parties under s. 9, & may be rescinded or varied by him on the application of the putative father under s. 10.—*WHEATLEY v. HOWARD*, [1923] 3 D. L. R. 288; 2 W. W. R. 942.—CAN.

## BANKRUPTCY AND INSOLVENCY.

## Part I.—Bankruptcy Jurisdiction.

4. *Add. Annotations*:—*Re*d. *Re* Lister, *Ex p.* Bradford Overseers & Bradford Corpn., [1928] Ch. 149. *Mentd.* Victoria City v. Vancouver Island (Bp.), [1921] 2 A. C. 384; *Wise v. Lansdell*, [1921] 1 Ch. 420.
19. *Add. Annotation*:—*Mentd.* R. v. Norman, [1924] 2 K. B. 315.
26. *Add. Annotation*:—*Mentd.* R. v. Customs & Excise Comrs., [1928] A. C. 402.
27. *Add. Annotation*:—*Re*d. *Bowling v. Camp* (1922), 128 L. T. 342.
29. *Add. Annotation*:—*Mentd.* *Re* Moss, *Ex p.* Everitt (1923), 93 L. J. Ch. 98.
- 40a. ——— *How derived.*—*Re* PRIOR, *Ex p.* PRIOR, No. 1548a, *post*.
60. *Add. Annotations*:—*Consd.* *Scranton's Trustee v. Pearse*, [1922] 2 Ch. 87. *Re*d. *Re* Wigzell, *Ex p.* Hart, [1921] 2 K. B. 835; *Re* London County Commercial Reinsurance Office, [1922] 2 Ch. 67; *Re* Wilson, *Ex p.* Salaman, *The Trustee v. Keith, Prowse* (1925), 133 L. T. 814; *Re* Wait, [1927] 1 Ch. 606. *Mentd.* *Re* Harrington Motor Co., *Ex p.* Chaplin, [1928] Ch. 105.
69. *Add. Annotation*:—*Re*d. R. v. Customs & Excise Comrs., [1928], A. C. 402.
134. *Add. Annotation*:—*Mentd.* *Bickerdike v. Lucy*, [1920] 1 K. B. 707.
- 160a. ——— ———.]—A surgeon dispensing his own medicines:—*Held*: a trader within the bkpt. law.—*NICHOLSON v. COOPER* (1858), 31 L. T. O. S. 184.
161. *Add. Annotation*:—*Mentd.* *Re* Charters, *Ex p.* Trustee, [1923] B. & C. R. 94.
163. *Add. Annotation*:—*Mentd.* *The Joannis Vatis* (1921), 15 Asp. M. L. C. 506.
177. *Add. Annotation*:—*Re*d. *Bonham v. Maycock* (1928), 138 L. T. 736.
197. *Add. Annotation*:—*Mentd.* *Whitney v. I. R. Comrs.* (1925), 42 T. L. R. 58.
199. *Add. Annotation*:—*Mentd.* *Victoria City v. Vancouver Island* (Bp.), [1921] 2 A. C. 384.
- 218a. *S. P. R. v. COLE* (1698), 12 Mod. Rep. 243; 1 Ld. Raym. 443; *Holt, K. B.* 360; 88 E. R. 1293.
- Annotation*:—*Re*d. *Belton v. Hodges* (1832), 9 Bing. 365.
- 218b. *S. P. Ex p. ADAM* (1813), as reported in 1 Ves. & B. 493; 2 Rose, 36; 35 E. R. 191.
- Annotations*:—*Re*d. *Re* Smedley (1864), 10 L. T. 432. *Mentd.* *Re* Barrow, *Ex p.* Moulton (1832), 1 Deac. & Ch. 44; *Belton v. Hodges* (1832), 9 Bing. 365; *Wickham v. Wickham* (1855), 2 K. & J. 478; *Re* Deane, *Ex p.* Goldsmid (1857), 1 De G. & J. 257.
- 223a. ———.]—A person who buys goods under age cannot, when he comes of age, be bkpt. in respect of them.—*WHITLOCK'S CASE* (1725), *Cas. temp. King*, 46; 25 E. R. 215.
224. *Add. Annotation*:—*Appld.* *Re* L. A. & B. F. M., *Official Receiver v. The Debtors* (1926), 95 L. J. Ch. 258.
226. *Add. Annotation*:—*Appld.* *Re* L. A. & B. F. M., *Official Receiver v. The Debtors* (1926), 95 L. J. Ch. 258.
- 226a. ———.]—In the absence of debts actually enforceable against them infants cannot be made bkpt., even on their own petition.—*Re* A. & M., [1926] Ch. 274; 70 Sol. Jo. 607; *sub nom.* *Re* L. A. & B. F. M., *Ex p.* OFFICIAL RECEIVER v. THE DEBTORS, 95 L. J. Ch. 258; 134 L. T. 539; [1926] B. & C. R. 19, D. C.
230. *Add. Annotations*:—*Appld.* *Re* A. & M., [1926] Ch. 274. *Re*d. *Hawkins & Sunderland v. Duché* (1921), 90 L. J. K. B. 913; *Re* Debtors, *Ex p.* Debtor (1922), 92 L. J. Ch. 120. *Mentd.* *Re* A Debtor, [1922] 2 K. B. 109.
235. *Add. Annotation*:—*Appld.* *Re* L. A. & B. F. M., *Official Receiver v. The Debtors* (1926), 95 L. J. Ch. 258.
263. For "*Held*: she was subject . . . under 1883 Act, s. 24" read, "*Held*: such power of appointment was not separate property within Married Women's Property Act, 1882, s. 1 (5), & she could not be directed to appoint to her trustee in bkpcy. under 1883 Act, s. 24."
- Add. Annotations*:—*Appld.* *Re* Mathieson, [1927] 1 Ch. 283. *Re*d. *Re* Armstrong, *Ex p.* Boyd (1888), 21 Q. B. D. 264.
267. *Add. Annotations*:—*As to* (1) *Appld.* *Re* Debtor (No. 3 of 1926) (1926), 135 L. T. 689. *Re*d. *South Behar Ry. v. I. R. Comrs.*, [1925] A. C. 476.
- 274a. ——— *What is*—Professional artiste producing scenae.]—*Re* A DEBTOR (No. 3 of 1926) (1926), 135 L. T. 689; [1926] B. & C. R. 86, C. A.
- Annotation*:—*Re*d. *Re* Bankruptcy Notice (No. 292 of 1928) (1928), 44 T. L. R. 533.
- 274b. ——— *Engaging in speculative transactions.*]—A series of speculative transactions by a married woman, if they involve the making of genuine commercial contracts

## PART I. SECT. 1.

4 ii. ———.]—IMPERIAL BANK OF CANADA v. BARRER, [1921] 20 O. W. N. 282; 59 D. L. R. 523; 1 C. B. R. 485.—CAN.

20 iii. ———.]—Bkpcy. Act applies to debts & contracts, including leases, existing when it came into force.—*Re* MCKAY (1921), 51 O. L. R. 86; 2 C. B. R. 59; 64 D. L. R. 699.—CAN.

## PART I. SECT. 3, SUB-SECT. 1.

121 ii. ——— *Debts of former business unpaid.*]—A person who ceases

to carry on his business & becomes a farmer is not a person "engaged solely in farming," etc., so long as his debts in connection with his former business remain unpaid. He must be deemed to be still carrying on that business until all the debts are paid, & he is not protected by Bkpcy. Act, s. 8 (1).—*Re* GARTRELL, *Ex p.* KEARNS, [1923] 3 D. L. R. 406; [1923] 2 W. W. R. 855; 4 C. B. R. 103.—CAN.

## PART I. SECT. 3, SUB-SECT. 6.

266 i. *Judgment debt*—*Bankruptcy Act*, 1908, s. 26 (f).]—A bkpcy. notice under the above sub-sect. cannot be

issued against a married woman, against whom a creditor has recovered a judgment.—*Re* WALKER, *Ex p.* HINKEY, [1927] N. Z. L. R. 81.—N.Z.

267 i. *Carrying on business.*]—It is only in cases where a married woman carries on a trade or business that she is subject to Bkpcy. Act, 1919 (c. 36) (Can.).—*Re* STONE, [1925] 4 D. L. R. 518.—CAN.

267 ii. ——— *In partnership with husband.*]—*Held*: debtor was not carrying on business separately from her husband, & her adjudication in bkpcy. was irregular.—*Re* SCOTT (1924), 20 Tas. L. R. 43.—AUS.

- extending over a long period of time, may amount to carrying on a "business" within 1914 Act, s. 125 (1), so as to make her subject to the bkpcy. laws.—*Re BANKRUPTCY NOTICE* (No. 292 OF 1928) (1928), 44 T. L. R. 533, O. A.
276. *Add. Annotations*:—*Reid. Engelke v. Musmann*, [1928] A. C. 433. *Mentd. Musmann v. Engelke* (1927), 96 L. J. K. B. 824.
285. *Add. Annotation*:—*Consd. Food Controller v. Cork*, [1923] A. C. 647.
286. *Add. Annotations*:—*Consd. Re Webb* (Smithfield, London), [1922] 2 Ch. 369. *Reid. A.-G. v. De Keyser's Royal Hotel*, [1920] A. C. 508.
297. *Add. Annotation*:—*Mentd. Re Gunsbourg*, [1920] 2 K. B. 426.
312. *Add. Annotations*:—*Consd. Re Stanton, Hogg v. Maule* (1927), 44 T. L. R. 118. *Mentd. Re Stanton*, [1928] 1 K. B. 464.
321. *Add. Annotation*:—*Mentd. Hawkins & Sunderland v. Duché* (1921), 90 L. J. K. B. 913.
331. *Add. Annotation*:—*Reid. Hawkins & Sunderland v. Duché* (1921), 90 L. J. K. B. 913.
338. *Add. Annotation*:—*Apld. R. v. Central*

- Criminal Court JJ., *Ex p. L. C. C.*, [1925] 2 K. B. 43.
336. *Add. Annotation*:—*Mentd. Re Whaley, Ex p. Official Receiver*, [1921] 2 K. B. 623.
385. *Add. Annotation*:—*Mentd. Whitney v. I. R. Comrs.* (1925), 42 T. L. R. 58.
388. *Add. Annotation*:—*Apld. Re A Debtor*, [1922] 2 Ch. 470.
389. *Add. Annotation*:—*Consd. Re A Debtor*, [1922] 2 Ch. 470.
- 389a. ————.]—A debtor cannot avoid the operation of a bkpcy. notice, served upon him in England, by himself during the currency of the notice petitioning for & obtaining an award of sequestration of his estate under Bkpcy. (Scotl d) Act, 1913 (c. 20). A receiving order made in pursuance of the bkpcy. notice in England will, therefore, be valid, & cannot be set aside on the ground of the sequestration.—*Re A DEBTOR* (No. 199 OF 1922), [1922] 2 Ch. 470; 91 L. J. Ch. 577; 127 L. T. 832; 38 T. L. R. 683; 66 Sol. Jo. 521; [1922] B. & C. R. 151, C. A.

## Part II.—Acts of Bankruptcy.

397. *Add. Annotation*:—*Mentd. Whitney v. I. R. Comrs.* (1925), 42 T. L. R. 58.
409. *Add. Annotation*:—*Consd. Lipton v. Bell*, [1924] 1 K. B. 701.
410. *Add. Annotation*:—*Consd. Lipton v. Bell*, [1924] 1 K. B. 701.
419. *Add. Annotation*:—*Mentd. The Joannis Vatis* (1921), 15 Asp. M. L. C. 506.
421. *Add. Annotation*:—*Reid. Lipton v. Bell*, [1924] 1 K. B. 701.
428. *Add. Citations*:—*sub nom. Re PHILLIPS, Ex p. PHILLIPS*, 69 L. J. Q. B. 604; 82 L. T. 691; 44 Sol. Jo. 469; 7 Mans. 277, D. C.
- 434a. ————.]—An unstamped deed of arrangement, although admissible in evidence to prove an act of bkpcy., cannot, after it has ceased to be available as an act of bkpcy., be put in evidence without a

stamp where the fact that the deed is void for want of registration is relied upon by the trustee in a subsequent bkpcy. of the debtor to establish a title to the property comprised in the deed.—*Re SHAW, Ex p. OFFICIAL RECEIVER* (1920), 90 L. J. K. B. 204; [1920] B. & C. R. 156.

451. *Add. Citation*:—1 Sm. & G. 246, n.; 65 E. R. 106.
- 454a. ————.]—By indenture dated Feb. 21, 1921, made between bkpt., a retired produce broker, of the first part, & B., his solr., of the second part, & S. of the third part, after reciting that a receiving order had been made against bkpt. on Oct. 7, 1920, & B. had lodged a proof for £470 9s. 2d. for moneys expended & advanced as bkpt.'s solr. up to the date of the receiving order, & that since that date B. had continued to act as bkpt.'s

### PART I. SECT. 3, SUB-SECT. 7.

sa. *Assignee of debt—Assigned by debtor with consent of creditor.*—*Re STAR FLOORING CO.*, [1924] 3 D. L. R. 269; 4 C. B. R. 679.—CAN.

### PART I. SECT. 4, SUB-SECT. 1.

ci. *To deal with prosecution of fraudulent debtors.*—Under Bkpcy. Act, s. 93, the prosecution may be ordered & proceeded with in the ordinary way before the existing criminal cts. It does not require the judge in bkpcy. to hear evidence &, if he thinks fit, to commit accused to stand trial although under sect. 95 the judge in bkpcy. has a right to do so.—*R. v. GOLDHAMMER*, [1924] 3 D. L. R. 1007; Q. R. 36 K. B. 507; 5 C. B. R. 127.—CAN.

sb. *Under Bankruptcy Act, 1919 (c. 36)—To order stay of execution—Until receiving order dealt with.*—*Held*: the ct. had such power.—*Re THOMPSON POWDER CO., Re WINDING-UP ACT*, [1923] 1 D. L. R. 496; 3 C. B. R. 481.—CAN.

sc. *To order repayment of money—Paid by assignee to creditor—Mistake of law.*—*Held*: jurisdiction could not be excluded by a plea of payment by mistake of law.—*DEMPSEY v. PIPER*, [1921] N. Z. L. R. 753.—N.Z.

### PART I. SECT. 4, SUB-SECT. 4.

363 i. — *With intent to defeat creditors*—If debtor before his bkpcy. pays money fraudulently, with a view to concealing from his creditors his assets, the ct. will order repayment of such money.—*Re COHEN & SWEIGMAN, Ex p. ROSENBERG*, [1925] 1 D. L. R. 248; 5 C. B. R. 346.—CAN.

### PART I. SECT. 5.

388 xiv. — *Power of Scottish Court to confirm foreign sequestration & to authorise sale of property in Scotland.*—A petition was presented by the official receiver appointed by the Ct. of Chile in the sequestration of the estates of a deceased person resident there, craving the ct. to confirm the Chilean sequestration, to authorise petitioner to sell Scottish heritage belonging to deceased's estate, & to authorise petitioner to uplift the proceeds of certain Scottish policies of assurance on the life of deceased. The ct. granted authority to petitioner to sell the Scottish heritage on certain terms, under a declaration that such sale should not operate conversion, & on condition that petitioner should consign the balance of the proceeds in the name of the accountant of ct. to

abide the orders of the ct., but refused, as unnecessary, the cravo of the petition for authority to uplift the proceeds of the policies of assurance.—*ARAYA v. COGHILL*, [1921] S. C. 462; 58 Sc. L. R. 395.—SCOT.

### PART I. SECT. 7.

o. For "Order of Canadian Provincial Court—Where good throughout Canada," read "Order of provincial court—Good throughout Union."

oi. — *No request of other provincial court—Subsequent motion to remedy omission.*—Where a motion was made without such request, the ct. granted a similar motion, made after such request had been obtained, to remedy the omission.—*Re LEGACE & LEPINAY*, [1922] 3 W. W. R. 284; 70 D. L. R. 867.—CAN.

### PART II. SECT. 1.

sd. *Partner—Retirement more than six months before bankruptcy—Debt incurred during partnership.*—*Held*: such partner could not be joined as a party in bkpcy. proceedings against the partnership.—*Re STANDARD COOPERAGE CO.*, [1924] 2 D. L. R. 703; 4 C. B. R. 673.—CAN.



solr., & his bill of costs amounted to £217 10s. 1d., & that B. had undertaken to pay to a bank certain moneys due to them by bkpt. on realising his securities, & that there was lodged on behalf of bkpt. the sum of £1,350 with the official receiver to enable him to discharge the provable debts in the bkpcy., debtor assigned to B. so much of the £1,350 as should be payable to bkpt. & £2,050 payable to bkpt. under a certain agreement. B. was to hold the sums assigned to him upon trust, in the first place to pay & discharge all moneys due, or thenceforth becoming due to himself for costs, advances or otherwise, & in the next place to pay & discharge certain alleged debts of bkpt. at X., & lastly to apply the balance for the benefit of S. & her children. On Feb. 3, 1921, the above-mentioned receiving order was rescinded. At the date of the assignment bkpt. was living apart from his wife, to whom he had agreed to pay maintenance at the rate of £10 per week, & judgment had been recovered by H. for £58 6s. 11d. for the board & lodging of bkpt.'s wife. On Feb. 8, 1921, a writ had been issued by bkpt.'s wife for arrears of maintenance due to her from bkpt. On Feb. 11, 1921, H. issued a bkpcy. notice in respect of her judgment & a petition was filed on Apr. 30, 1921. A receiving order was made on June 3, 1921, & debtor was adjudged bkpt. on June 20, 1921:—*Held*: on the facts the assignment was executed with the intent to defeat & delay creditors, & was therefore fraudulent & void as an act of bkpcy. under 1914 Act, s. 1 (1) (b). —*Re PRIOR, Ex p. TRUSTEE*, [1922] B. & C. R. 1, C. A.

468. *Add. Annotations*:—*Expld. Re Fredericke & Whitworth, Ex p. Hibbard*, [1927] 1 Ch. 253. *Refd. Re Debtors* (No. 771 of 1926) (1926), 43 T. L. R. 9.

469. *Add. Annotation*:—*Consd. Lipton v. Bell*, [1924] 1 K. B. 701.

471. *Add. Annotations*:—*Consd. Re Cohen, Ex p. Trustee*, [1924] 2 Ch. 515. *Refd. Re Moyle, Ex p. Trustee*, [1924] B. & C. R. 22; *Re Drage, Palmer & Roberts v. Knight* (1926), 134 L. T. 765.

479. *Add. Annotation*:—*Refd. Herbert's Trustee v. Higgins*, [1926] Ch. 794.

488. *Add. Annotation*:—*Refd. Re Prior, Ex p. Trustee*, [1922] B. & C. R. 1.

489. *Add. Annotations*:—*Refd. Re Stanton, Hogg v. Maule* (1927), 44 T. L. R. 118. *Mentd. Re Stanton*, [1928] 1 K. B. 464.

501. *Add. Annotation*:—*Refd. Re Tabor, Ex p. Cork*, [1920] 1 K. B. 808.

523. *Add. Annotation*:—*Mentd. Re Mellor, Alvarez v. Dodgson*, [1922] 1 Ch. 312.

533. *Add. Annotation*:—*Refd. Re Davies, Ex p. Miles*, [1921] 3 K. B. 628.

544. *Add. Annotation*:—*Refd. Re Davies, Ex p. Miles*, [1921] 3 K. B. 628.

588. *Add. Annotation*:—*Mentd. Pole-Carew v. Western Counties & General Manure Co.*, [1920] 2 Ch. 97.

590. *Citations*:—For "21 W. R. 422" read "21 W. R. 402."

595. *Add. Annotation*:—*Consd. Re Gunsbourg*, [1920] 2 K. B. 426.

598. *Add. Annotation*:—*Refd. Re Gunsbourg*, [1920] 2 K. B. 426.

600. *Add. Annotations*:—*As to* (1) *Refd. Re Gunsbourg*, [1920] 2 K. B. 426. *As to* (2) *Refd. Re Davies, Ex p. Miles*, [1921] 3 K. B. 628.

763. *Add. Annotations*:—*Refd. Re Gunsbourg*, [1920] 2 K. B. 426. *Mentd. Scranton's Trustee v. Pearse*, [1922] 2 Ch. 87.

766. *Add. Annotation*:—*Mentd. R. v. Norman*, [1924] 2 K. B. 315.

779. *Add. Annotation*:—*Dlst. Re Fredericke & Whitworth, Ex p. Hibbard*, [1927] 1 Ch. 253.

787. *Add. Annotation*:—*Consd. Re A Bankruptcy Notice*, [1924] 2 Ch. 76.

788. *Add. Annotation*:—*Refd. Re Debtor* (1928), 45 T. L. R. 10.

797a. *Creditor who has assented to deed of arrangement—Deed void for want of registration.*—On June 11, 1921, applt. co. recovered judgment against debtor for a certain sum & costs. On Apr. 18, 1922, debtor executed a document in the form of a memorandum of agreement by which he assigned his property to trustees for the benefit of his creditors. The agreement provided (*inter alia*) that it should not be registered either as a composition or deed of arrangement or otherwise & contained a schedule of creditors & their debts. At the date of the agreement there were five bkpcy. petitions pending against debtor by creditors other than applt. co. As a result of negotiations between debtor & the five creditors & in consideration of his entering into the agreement of Apr. 18, 1922, the five creditors agreed to the dismissal of their petitions & signed letters dated Apr. 17, 1922, which were all in the same form, & contained a statement that it was understood that it was not intended to register the agreement as a deed of arrangement, by which they respectively agreed that so long as debtor complied with the terms of the agreement of Apr. 18, 1922, they would not bring any action against him in respect of their scheduled debts or attempt to set aside the agreement. On July 18, 1922, applt. co. signed a letter of assent in the same terms, which was also dated Apr. 17, 1922, & agreed to hand it over to debtor on receiving from him a promissory note or bill of exchange of a third party for £300. This condition debtor performed. The letter was not, however, handed over to debtor owing to the refusal by him to pay to applt. co. an agreed sum for costs, a term which the ct. held formed no part of the original bargain. Applt. co. subsequently issued a bkpcy. notice against debtor founded on its judgment debt. The registrar set the bkpcy. notice aside on the ground that applt. co. was bound by the agreement contained in the letter signed by it. On appeal:—*Held*: (1) the agreement of Apr. 18, 1922, being a deed of arrangement, was void for want of registration under 1914 (Deeds) Act, & the letter of assent, being an assent to a void instrument,

PART II. SECT. 2, SUB-SECT. 2.—A.

457 i. — *Transfer of property to near relatives—In return for promissory*

*notes*—*Not included in statement of affairs.*—An intent to defraud creditors presumed from the above transfer which took place within six months of

the bkpcy.—*R. v. TESSIER* (1921), 62 D. L. R. 479; 37 Can. Crim. Cas. 375. —CAN.

was also itself void; (2) as debtor & all the creditors who assented to the agreement knew from the terms of the instrument itself & from the statement contained in the letters signed by them that the agreement was void, & there was no representation that the agreement was valid, there was no question of estoppel, & applt. co. was not estopped from issuing the bkpcy. notice.—*Re A BANKRUPTCY NOTICE*, [1924] 2 Ch. 76; 93 L. J. Ch. 497; 68 Sol. Jo. 458; [1924] B. & C. R. 188; *sub nom. Re A BANKRUPTCY NOTICE* (No. 62 OF 1924), *Ex p. PETITIONING CREDITORS v. DEBTOR*, 131 L. T. 307, C. A.

*Annotation:—As to (2) Consd. Huddersfield Fine Worsteds v. Todd* (1925), 42 T. L. R. 52.

*Compare Nos. 8778a, 8782d, post, & original volume, p. 160, No. 1498.*

800. *Add. Annotation:—Folld. Re A Bankruptcy Notice*, [1924] 2 Ch. 76.

800a. *Change in judgment creditor—Judgment obtained by firm—No leave to issue execution.*—Where a firm consisting of several members has recovered in the firm name judgment against a debtor, the fact that a member has since retired from the firm does not render it necessary that the firm should obtain leave of the ct. under R. S. C., Ord. 42, r. 23, in order that a bkpcy. notice may be issued in the name of the firm, & a bkpcy. petition presented in that name.—*Re HILL, Ex p. HOLT & Co.*, [1921] 2 K. B. 831; 90 L. J. K. B. 734; 125 L. T. 736; [1921] B. & C. R. 12.

804a. ——— *Notice not good against partners not served.*—*Re DEBTORS* (No. 807 OF 1922), *Ex p. DEBTOR*, No. 887a, *post*.

811. *Add. Annotation:—Consd. Re Debtor* (1920), 90 L. J. K. B. 513.

857. *Add. Annotation:—Refd. Re L. A. & B. F. M., Official Receiver v. The Debtors* (1926), 95 L. J. Ch. 258.

866. *Add. Annotation:—Consd. Re A Debtor, Ex p. Debtor* (1922), 92 L. J. Ch. 410.

875. *Add. Citation:—15 Mans. 304.*

*Add. Annotation:—Consd. Re A Debtor, Ex p. Debtor* (1922), 92 L. J. Ch. 410.

875a. ——— *Judgment to pay creditor—Notice to pay registrar of county court.*—Where a county ct. judgment in form or effect directs payment to be made to the creditor the bkpcy. notice founded on it properly requires payment to be made to the creditor instead of to the registrar.—*Re A DEBTOR* (No. 16 OF 1922), *Ex p. THE DEBTOR* (1922), 92 L. J. Ch. 410; [1922] B. & C. R. 264, D. C.

PART II. SECT. 2, SUB-SECT. 10.—  
A. (g).

n. For “*Held*: the objection was sustainable” read “*Held*: the objection was not sustainable.”

se. *Costs of unsuccessful execution not included.*—*Re EVA*, [1927] N. Z. L. R. 652.—N. Z.

PART II. SECT. 2, SUB-SECT. 10.—C.

sl. *Time of service—Service out of time.*—A debtor summons was personally served on bkpt. two days too late.—*Held*: the condition of bkpcy. prior to the filing of a petition necessarily involved an act of bkpcy. which the ct. would assume was a proper ground for the adjudication.—*Re GORHAM*, [1924] 2 I. R. 46.—IR.

PART II. SECT. 2, SUB-SECT. 10.—  
G. (b).

939 i. *Must be mutual & in same right.*—*Re ANDERSON, Ex p. ALEX-*

J.S.

ANDER (1927), 27 S. R. N. S. W. 296; 44 N. S. W. W. N. 69.—AUS.

PART II. SECT. 2, SUB-SECT. 12.

sg. *Defaults.*—Defaults more than six months before presentation of a bkpcy. petition followed by demands for payment are not *per se* an act of bkpcy., but when further defaults take place within six months of the petition the whole form one continuing act of bkpcy.—*Re RAITBLAT*, [1925] 3 D. L. R. 446; 5 C. B. R. 765; *affg.*, [1925] 2 D. L. R. 1219; 5 C. B. R. 714.—CAN.

sh. *Failure to meet series of promissory notes.*—*Held*: an act of bkpcy.—*Re FOX, LESTER v. PORTER*, [1925] 1 D. L. R. 198; 5 C. B. R. 328.—CAN.

sk. *Failure to meet liabilities as they become due.*—The words “ceases to meet his liabilities as they become due” do not mean that when in any single case debtor makes default in

887a. ——— *Partner—Not at principal place of business.*—Where a judgment has been recovered against a firm, & a bkpcy. notice following the judgment has been served on one member of the firm, but not at the principal place of business of the firm, & a petition presented against the firm, a receiving order cannot be made against the firm other than the partner who was not served.—*Re DEBTORS* (No. 807 OF 1922), *Ex p. DEBTOR* (1922), 92 L. J. Ch. 120; [1922] B. & C. R. 119, C. A.

898. *Add. Annotation:—Consd. Re Debtor, Ex p. Debtor*, [1918–19] B. & C. R. 221.

923a. ——— *Issue of second notice by same creditor.*

—Creditors having obtained judgment issued a bkpcy. notice for £945, & served it on debtors. Debtors paid a sum of £100, including £5 for costs, nine days later, but in the belief that the notice would be disputed the creditors issued & served a fresh bkpcy. notice about two months later for £857, & that notice not having been complied with within seven days, a petition based on the fresh bkpcy. notice was presented & served. Debtors gave notice of an application to set aside service of the petition, but the registrar refused to do so, & made a receiving order on the fresh bkpcy. notice.—*Held*: (1) debtors could not refuse to comply with the fresh bkpcy. notice on the ground that as the previous notice had resulted in an act of bkpcy. this had put it out of the power of debtors to make any payment in compliance with the fresh notice or otherwise deal with their property; (2) if they did make a payment in compliance with the fresh notice it might be that if a trustee were appointed under the previous bkpcy. notice the payment might be set aside, & the money made available for the general body of creditors.—*Re DEBTORS* (No. 771 OF 1926) (1926), 43 T. L. R. 9; 70 Sol. Jo. 1089; *sub nom. Re FREDERICKE & WHITWORTH, Ex p. HIBBARD*, [1927] 1 Ch. 253; 96 L. J. Ch. 70; 136 L. T. 268; [1926] B. & C. R. 156, C. A.

938. *Add. Annotations:—Refd. Re Debtors* (No. 771 of 1926) (1926), 43 T. L. R. 9; *Re Fredericke & Whitworth, Ex p. Hibbard*, [1927] 1 Ch. 253.

963. *Add. Annotations:—Refd. Re Debtor* (No. 3 of 1926) (1926), 135 L. T. 689; *Re A Debtor*, [1927] 1 Ch. 97. *Mentd. South Behar Ry. v. I. R. Comrs.*, [1925] A. C. 476.

971. *Add. Annotation:—Refd. Re Debtor* (1928), 72 Sol. Jo. 860.

payment of a debt as & when due he commits an act of bkpcy., but a failure “to meet his liabilities as they become due” in some wider sense.—*Re CANADIAN CAP CO., Ex p. TRUSTEE*, [1924] 1 D. L. R. 617; 53 O. L. R. 506; 4 C. B. R. 185.—CAN.

sl. ———. The words “ceases to meet his liabilities as they become due” do not include a continuing default.—*BROWN v. KELLY-DOUGLAS & Co.*, [1923] 1 W. W. R. 1340; [1923] 2 D. L. R. 738; 32 B. C. R. 143.—CAN.

PART II. SECT. 4.

m i. ——— *Not statement showing insolvency prepared by creditors’ agent.*—*Re TENENBEIN, Re BANKRUPTCY ACT* (Man.), [1927] 4 D. L. R. 270; [1927] 2 W. W. R. 374.—CAN.

m ii. ———. *Re SHIRLEY* (N. B.), [1927] 2 D. L. R. 969; 8 C. B. R. 235.—CAN.

## Part III.—Petition.

- 1007a. —.]—*Re* AYRE, POTTS (1840), 10 L. J. Bcy. 26.
1011. *Add. Annotation*:—*Mentd. Re* Badische Co., Bayer Co., etc., [1921] 2 Ch. 331.
- 1016a. **Exercising powers under Law of Distress Amendment Act, 1908 (c. 53).**—A landlord obtained judgment against his tenant for £204 in respect of rent & fire insurance, & served on him a bkpcy. notice. The notice was not complied with, & a petition for a receiving order was presented. While the petition was pending, the landlord, as the premises were sublet, served on the subtenants a notice, under sect. 6 of the above Act, to pay their rents directly to him, & from one subtenant he received £62, the debt being thus reduced by that amount. A receiving order was afterwards made:—*Held*: as the claim still amounted to more than £50 the landlord had not, by exercising his powers under the above Act, precluded himself from proceeding under the bkpcy. notice in the normal way.—*Re* DEBTOR (1928), 45 T. L. R. 10; *sub nom. Re* DEBTOR (No. 549 of 1928), 72 Sol. Jo. 727, C. A.
1043. *Add. Annotation*:—*Reid. Re* L. A. & B. F. M., Official Receiver v. The Debtors (1926), 95 L. J. Ch. 258.
- 1047a. **Under voidable contract.**—A. employed L. as his agent to negotiate a loan for him with a money-lender. B., a money-lender, lent A. £60 on his promissory note for £100, & without the knowledge or consent of A. paid L. a commission. B. recovered judgment against A. for the amount of the promissory note in default of appearance, & issued a bkpcy. notice based on the judgment, & A. having failed to comply with the bkpcy. notice, B. presented a bkpcy. petition against him. On the hearing of the petition before the registrar it appeared for the first time that a commission had been paid by B. to L.:—*Held*: the act of bkpcy. was founded on a contract which was voidable by A., & the ct. ought not, within 1914 Act, s. 5 (3), to be satisfied with the proof of B.'s debt, & the receiving order must be rescinded.—*Re* A DEBTOR (No. 229 of 1927), [1927] 2 Ch. 367; 96 L. J. Ch. 381; 137 L. T. 507; [1927] B. & C. R. 127, C. A.
1048. *Add. Annotation*:—*Mentd. Maskell v. Hill*, [1921] 8 K. B. 157.
1050. *Add. Annotation*:—*Folld. Re* Debtors, [1927] 1 Ch. 19.
1051. *Add. Annotation*:—*Mentd. McDonald v. Nash*, [1924] A. C. 625.
- 1051a. —.]—A debt to be a good petitioning creditor's debt must be a liquidated sum, payable either immediately or at some certain future time at the date of the act of bkpcy. It is not sufficient that the debt should have become a liquidated sum in the interval between the act of bkpcy. & the presentation of the petition.—*Re* DEBTORS (No. 669 of 1926), [1927] 1 Ch. 19; 96 L. J. Ch. 33; 136 L. T. 182, C. A.
1065. *Add. Annotation*:—*Consd. Re* Debtors, [1927] 1 Ch. 19.
1066. *Add. Annotation*:—*Reid. Re* Debtors, [1927] 1 Ch. 19.
1067. *Add. Annotation*:—*Apld. Re* Debtor, *Ex p. Lawrence*, [1928] Ch. 665.
- 1077a. **Tender before bankruptcy notice—Whether creditor bound to accept.**—On Jan. 3, 1928, a creditor obtained judgment for £47, in respect of two overdue instalments of a debt, leaving the remaining £23 instalment, which only became due between the date of the writ & the judgment, untouched by the judgment. On Jan. 9, in response to the creditor's invitation, debtor tendered the £23 in cash, but the tender was refused. On Jan. 27 the creditor filed a bkpcy. notice in respect of the £47 judgment debt, & on Feb. 16 he filed a petition based on the two debts, & on non-compliance with the bkpcy. notice:—*Held*: though the two debts were still owing & amounted to over £50, so that the creditor was formally entitled to present a petition under 1914 Act, s. 4 (1), nevertheless the refusal before the bkpcy. notice of the £23 offered at his invitation, & refused only in order to keep the total debt over £50, was "sufficient cause" within sect. 5 (3) for making no order on the petition.—*Re* DEBTOR, *Ex p. LAWRENCE* (No. 21 of 1928), [1928] Ch. 665; *sub nom. Re* DEBTOR (No. 21 of 1928), *Ex p. PETITIONING CREDITOR v. DEBTOR*, 97 L. J. Ch. 255;

### PART III. SECT. 1, SUB-SECT. 1.—A.

b i. —.]—There is no power in an agent, acting under general power of attorney, to present an insolvency petition on behalf of his principal, unless the power expressly authorises such act.—*Re* OSMAN (1919), 40 N. L. R. 17.—S. AF.

b ii. *S.P. Ex p. GARBUTT* (1925), 46 N. L. R. 57.—S. AF.

998 ii. —.]—*No evidence when debt accrued—Motion unopposed.*—*Held*: petitioners were entitled to the relief which they claimed.—*FISHER v. WILKIE, LTD.*, [1920] 19 O. W. N. 251; 59 D. L. R. 502; 1 C. B. R. 376.—CAN.

### PART III. SECT. 1, SUB-SECT. 2.—A.

1026 ii. —.]—Where there is no privity of contract between the insolvent & the alleged creditor, no debt can exist which may be made the ground for a bkpcy. petition.—*Re* CANADIAN CHOCOLATE Co., [1924] 2 D. L. R. 508.—CAN.

1026 iii. —.]—A bkpcy. ct. should not proceed with a petition on a disputed debt until the ordinary cts. have settled the disputed question.—*Re* WHISTLE Co., [1925] 1 D. L. R. 1110; 5 C. B. R. 495.—CAN.

s i. **Debt contracted before Bankruptcy Act, 1919, in operation.**—A receiving order against a co. under the above Act may be based upon a debt owing to the co. by reason of its having undertaken, after the Act came into operation, the liabilities incurred by a firm before the Act came into operation.—*Re* STEWART MERCANTILE Co., LTD., [1921] 1 W. W. R. 740; 59 D. L. R. 412; 1 C. B. R. 367.—CAN.

s ii. —.]—*Judgment founded on cause of action partly arising before Act in operation.*—*Held*: such judgment was sufficient either as an available act of bkpcy., or as constituting a debt upon which to found a bkpcy. petition.—*Re* MAGUIRE, [1923] 1 D. L. R. 1188; 61 O. L. R. 63; 3 C. B. R. 880.—CAN.

s iii. —.]—Such a debt cannot be used as a ground for a bkpcy. petition.—*Re* SUTTON, [1924] 4 D. L. R. 315; 5 C. B. R. 75.—CAN.

am. **Debt contracted in province in which company not licensed to trade—No residential qualification.**—When a co. is not licensed to trade in a province & has no assets in that province, the mere fact that members of the co. have purchased raw furs when in that province does not confer on it a sufficient residential qualification to enable a bkpcy. petition to be presented against it in that province.—*Re* ROBINSON (R. S.) & SON, LTD., [1923] 1 D. L. R. 691; 3 C. B. R. 537.—CAN.

### PART III. SECT. 1, SUB-SECT. 2.—C. (a).

1050 iv. —.]—It is sufficient if the debt is actually owing, though not actually due or payable.—*Re* TUNNELL, LTD., *Ex p. WILLS & ANDERSON*, [1923] 4 D. L. R. 1018.—CAN.



p. LAWRENCE, 139

, D. C.

1078. *Add. Annotation*:—*Consd. Giles v. Kruyer*, [1921] 3 K. B. 23.

1110a. ——— Note given for illegal consideration—*Bona fide holder without notice.*—Where evidence has been given by a petitioner in support of his claim on a promissory note given for illegal consideration, showing his *bona fides* & want of notice of the illegality of the consideration, & there is no ground for disbelieving him, the ct. will not hold that he has not discharged the *onus* of proof which falls on him to prove the claim, & a receiving order should be made.—*Re A DEBTOR* (No. 4 OF 1922), *Ex p. PETITIONING CREDITOR*, [1922] B. & C. R. 116, O. A.

1115. *Add. Annotation*:—*Mentd. McDonald v. Nash*, [1924] A. C. 628.

1127. *Add. Annotation*:—*Refd. Re Debtors*, [1927] 1 Ch. 19.

1135. *Add. Annotation*:—*Refd. Re Debtors*, [1927] 1 Ch. 19.

1175. *Add. Annotation*:—*Dbtd. Re A Debtor, Ex p. Newburys* (1926), 95 L. J. Ch. 199.

1177a. ———.—Where the agent of certain creditors asked the trustee of a deed of assignment by debtor to furnish particulars of the deed, & later on, wrote to the trustee enclosing the creditors' account, & asking for an acknowledgment of the claim, & after receipt of particulars of the deed, including information that certain of debtor's property was to be sold, stood by for fourteen days, but subsequently presented a petition founded on the deed of assignment:—*Held*: there was sufficient acquiescence by the creditors to preclude them from relying on the deed as an act of bkpcy.—*Re A DEBTOR, Ex p. NEWBURYS, LTD.* (1926), 95 L. J. Ch. 199; [1926] B. & C. R. 23.

1178. *Add. Annotation*:—*Refd. Re A Debtor, Ex p. Petitioning Creditors*, [1924] B. & C. R. 105.

1179. *Add. Annotation*:—*Refd. Re Debtor*, [1928] Ch. 199.

1179a. Attendance at meeting of committee of inspection.]—About the end of 1922 debtor made an arrangement to pay his creditors in full by instalments, a committee being appointed to watch over his affairs. His trading was not prosperous & new debts were incurred. On Feb. 21, 1924, he executed a deed of assignment for the benefit of his creditors generally & a circular letter with a form of assent was sent to & received by petitioning creditors, who were new creditors. On Feb. 25, 1924, their director with their accountant attended the office of one of the trustees under the deed & suggested that they or some other new creditor should be repre-

sented on the committee of inspection. Petitioning creditors were then invited to attend the meeting of the committee on Mar. 26, 1924, & their director & their solr. attended accordingly, discussing & advising on certain matters. Petitioning creditors, however, refused to assent to the deed & presented a petition in bkpcy. grounded upon the execution of the deed as an act of bkpcy.:—*Held*: on the facts, petitioning creditors had so far recognised the deed as to preclude them from availing themselves of its execution as an act of bkpcy.—*Re A DEBTOR, Ex p. PETITIONING CREDITORS* (No. 24 OF 1924), (1924), 94 L. J. Ch. 42; [1924] B. & C. R. 105, D. C.

1182. *Add. Annotation*:—*Apld. Re A Debtor, Ex p. Newburys* (1926), 95 L. J. Ch. 199.

1210. *Add. Annotation*:—*Refd. Re Debtor*, [1928] Ch. 199.

1211. *Add. Citation*:—39 L. J. Bcy. 46.

1217. *Add. Citation*:—29 W. R. 268.

1253a. ——— Secretary duly authorised to present petition.]—The secretary of a limited co. was authorised under seal of the co. to present a bkpcy. petition, & at the commencement of the petition had so described himself, but had signed the petition in his own name without any description either before or after his name. Objection being taken on behalf of debtor that the petition was wrongly signed & attested & the consideration for the debt not truly stated, the county ct. registrar dismissed the petition:—*Held*: the petition amply informed debtor who petitioners were, & what the debt was in respect of which they were petitioning; there was no defect or irregularity & even if there were, it would come within 1914 Act, s. 147 (1), & the appeal must be allowed & a receiving order made & dated as of the date on which it should have been made in the county ct.—*Re MARSDEN, Ex p. SELLERS (E. H.) & SONS, LTD.* (1921), 91 L. J. Ch. 318; 126 L. T. 408; [1921] B. & C. R. 188, D. C.

1286a. ——— Details of debt—Petition by money-lender.]—Money-lenders' Act, 1927 (c. 21), s. 9 (2), applies to loans made before, as well as to those made after, the Act.—*Re DEBTOR* (No. 99 OF 1928) (1928), 97 L. J. Ch. 250; 139 L. T. 234; 72 Sol. Jo. 335; [1928] B. & C. R. 40, C. A.

1313. *Add. Citation*:—68 L. T. 589.

1326. *Add. Annotation*:—*Refd. Re Debtors*, [1927] 1 Ch. 19.

1345. *Add. Annotation*:—*Refd. Re Debtor* (1928), 45 T. L. R. 10.

1347. *Add. Annotation*:—*Consd. Re A Debtor, Ex p. Petitioning Creditor* (1920), 89 L. J. K. B. 432.

## PART III. SECT. 1, SUB-SECT. 2.—G.

*an. Order for alimony.*]—Upon a petition by a woman for a receiving order against her husband, based upon a failure to pay alimony:—*Held*: the order did not create a debt within Bkpcy. Act, s. 44.—*Re FREEDMAN*, [1924] 3 D. L. R. 517; 55 O. L. R. 206; 5 C. B. R. 47.—CAN.

## PART III. SECT. 1, SUB-SECT. 4.

1202i. *Within six months—When time begins to run—Ceasing to meet liabilities.*]—Where A. had failed to

pay liabilities on their due dates eighteen months prior to the presentation of the bkpcy. petition against him:—*Held*: the mere continuance of the failure to pay the same liabilities could not be said to be an act of bkpcy. occurring within six months before the presentation of the petition.—*BROWN v. KELLY-DOUGLAS & Co.*, [1923] 2 D. L. R. 738; 32 B. C. R. 148; [1923] 1 W. W. R. 1340.—CAN.

## PART III. SECT. 3, SUB-SECT. 1.—B.

*a i. ———.*]—All members of the firm must be named in a petition

for a receiving order against a partnership.—*Re CLUFF BROTHERS*, [1925] 4 D. L. R. 721.—CAN.

## PART III. SECT. 3, SUB-SECT. 2.

1261 i. ——— *On partners.*]—All members of the firm must be served with a petition for a receiving order against a partnership.—*Re CLUFF BROTHERS*, [1925] 4 D. L. R. 721.—CAN.

1275 ii. ——— *By whom—Solicitor.*]—*Re X.* (1920), 59 D. L. R. 617; 1 C. B. R. 459.—CAN.

## Part IV.—Receiving Order.

1453. *Add. Annotation*:—*Re*fd. *Re* A Debtor, [1927] 2 Ch. 367.

1454. *Add. Annotation*:—*Consd.* *Re* A Debtor, *Ex p.* Petitioning Creditor (1920), 89 L. J. K. B. 432.

1462. *Add. Annotation*:—*Expld. & Dlst.* *Re* A Debtor, *Ex p.* Petitioning Creditor (1920), 89 L. J. K. B. 432.

1467. *Add. Annotations*:—*Consd.* *Re* Forder, *Forder v. Forder* (1927), 96 L. J. Ch. 314. *Re*fd. *Re* Debtor, [1928] Ch. 199.

1482. *Citations*:—For “54 L. Jo. 444; 148 L. T. Jo. 178” read “89 L. J. K. B. 40.”

1483a. Debtor claiming indemnity—As surety for contingent liability of petitioning creditor.]—Petitioning co., of which debtor was formerly chairman, had lent debtor a large sum of money, & recovered judgment against him (on balance of account) for £2,065. A receiving order was made in the county ct. from which debtor appealed, alleging that

he had become surety for the co. for their bank overdraft with a limit of £5,000, & that he was entitled to be indemnified against this liability. No payment had been made by debtor on account of the bank overdraft. At a creditors' meeting the creditors were of opinion that debtor was insolvent & there was no alternative but bkpcy.:—*Held*: on the facts, petitioning creditors' obligation to indemnify debtor as surety in respect of his contingent liability for a debt due from petitioning creditors to a bank did not constitute “sufficient cause” for the dismissal of the petition.—*Re* A DEBTOR (No. 13 of 1922), *Ex p.* THE DEBTOR, [1923] B. & C. R. 54, C. A.

1488. *Add. Annotation*:—*Re*fd. *Re* Debtor, [1928] Ch. 199.

1489. *Add. Annotations*:—*Consd.* *Re* Forder, *Forder v. Forder* (1927), 96 L. J. Ch. 314. *Re*fd. *Re* Debtor, [1928] Ch. 199.

PART III. SECT. 3, SUB-SECT. 12.  
1379 iii. —.—.]—*Re* LITTLE, [1925] 1 D. L. R. 395; 56 O. L. R. 196; 5 C. B. R. 244; *revsq.*, [1924] 2 D. L. R. 1172.—CAN.

PART III. SECT. 3, SUB-SECT. 13.—B.

1408 ii. —.—.]—Where a judge before whom a bkpcy. petition was being tried had no knowledge of the law of another province, & a question arose concerning that law & he sent the case over to be tried in a competent ct. in that province:—*Held*: this was a reasonable course to pursue.—*Re* FAIRWEATHERS, *Ex p.* MONTREAL (City) (1921), 2 C. B. R. 342.—CAN.

PART IV. SECT. 1.

1459 ii. —.— *Authorised assignment made before conditions of composition deed fulfilled.*—*Re* LIPSON, [1923] 3 D. L. R. 1171; (1922), 52 O. L. R. 352; 2 C. B. R. 488.—CAN.

PART IV. SECT. 2, SUB-SECT. 1.

e. Read now “1461 i.”

1461 ii. *Authorised assignment*—*Be-*

*tween service & hearing of bankruptcy petition.*]—Bkpcy. Act, s. 4 (6), does not apply where debtor, with the palpable intention of choosing his own trustee, makes an assignment after he has been served with a petition in bkpcy. & before the return of the notice of hearing.—*Re* CROTEAU & CLARK Co., LTD., [1920] 48 O. L. R. 359; 56 D. L. R. 413; 1 C. B. R. 364.—CAN.

1461 iii. —.— *After but on same day as presentation of petition & appointment of interim receiver.*]—Although after the presentation of a petition in bkpcy. & appointment of an interim receiver debtor on the same day makes an assignment for the general benefit of his creditors to an authorised trustee other than the one asked for in the petition, the ct. will hear the petition on its return & may grant the same & appoint as trustee the person named therein.—*Re* PROGRESSIVE FARMERS Co., LTD., [1921] 3 W. W. R. 265; 1 C. B. R. 551.—CAN.

1461 iv. —.—.]—Motion by a creditor for a receiving order, after debtor had made an authorised assignment, dismissed as unnecessary, but with-

out prejudice to its being renewed if any necessity should arise.—*Re* WATERHOUSE (THOMAS) & Co. (1921), 64 D. L. R. 518; 50 O. L. R. 476.—CAN.

1464 i. *No other creditor—Other facilities for realising debt.*]—It is a sufficient cause for refusing a receiving order that the judgment creditor has equally good facilities for realising under the judgment itself, & that there is no other creditor.—*Re* STONE, [1925] 4 D. L. R. 518.—CAN.

*sp. Debtor in position to pay.*]—If debtor is in a position to pay petitioning creditor, no receiving order ought to be made against him without giving him some opportunity of paying or securing the debt.—*Re* MAGUIRE, [1923] 1 D. L. R. 1186; 51 O. L. R. 63; 3 C. B. R. 880.—CAN.

ii. —.—.]—The ct. refused an order sequestrating a debtor's estate when it was clear that the sequestration would not be for the benefit of the creditors.—*FINDLAY v. BEETAR* (1921), 42 N. L. R. 19.—S. AF.

1490. *Add. Annotation* :—*Consd. Re Debtor*, [1928] Ch. 199.
1491. *Add. Annotation* :—*Refd. Re Debtor*, [1928] Ch. 199.
- 1491a. ———.]—Debtor furnished a friend with a cheque for £500 as a deposit in connection with the underwriting of shares by a co. in which the friend was interested. The cheque was dishonoured & judgment obtained against debtor for £500 & £14 6s. costs. In Dec. 1926, the judgment creditors petitioned for a receiving order against debtor in respect of the judgment debt. From time to time arrangements were made for adjourning the petition, but in Mar. 1927, the petitioning creditors intimated that the conditions on which they would agree to the petition being dismissed were that debtor should pay £100 & provide a guarantee for payment of the balance of the debt & also agree to pay to them the costs of their proceedings against the underwriters as between solr. & client, & the costs of their proceedings against debtor, also as between solr. & client. Payment of the costs of proceedings against the underwriters was refused, but payment by debtor of solr. & client costs was agreed to, & sums of £50 & £144 were paid & the petition dismissed. In July petitioners again commenced proceedings for a receiving order in respect of a sum ascertained by deducting from the original debt & interest & costs as between solr. & client the payments of £50 & £144. A receiving order having been made:—*Held*: the acts of petitioners in seeking to obtain payment of their costs in the proceedings against the underwriters & in obtaining payment by debtor of their solr. & client costs amounted to extortion & an abuse of the process of the ct., & the case fell within 1914 Act, s. 5 (3), as being one where the ct. was satisfied that for sufficient cause no receiving order ought to be made, & the receiving order must be discharged.—*Re DEBTOR* (No. 883 OF 1927), [1928] Ch. 199; 97 L. J. Ch. 120; 138 L. T. 440; 72 Sol. Jo. 85; [1928] B. & C. R. 1, C. A.
1492. *Add. Annotation* :—*Refd. Re Debtor*, [1928] Ch. 199.
1493. *Add. Annotation* :—*Refd. Re Debtor*, [1928] Ch. 199.
1494. *Add. Annotation* :—*Appld. Re A Debtor*, *Ex p. Newburys* (1926), 95 L. J. Ch. 199.
1495. *Add. Annotation* :—*Refd. Re Debtor*, [1928] Ch. 199.
1496. *Add. Annotation* :—*Refd. Re Debtor*, *Ex p. Debtor*, [1918–19] B. & C. R. 221.
1498. *Add. Annotation* :—*Generally, Mentd. Re Lee*, *Ex p. Grunwaldt*, [1920] 2 K. B. 200.  
After this case add “*Compare No. 797a, ante.*”
- 1498a. Exercising powers under Law of Distress Amendment Act, 1908 (c. 53).]—*Re A DEBTOR*, No. 1016a, *ante.*
1500. *Add. Annotations* :—*Distd. Re Debtors*, *Ex p. Debtor* (1922), 92 L. J. Ch. 120. *Refd. Hawkins & Sunderland v. Duché* (1921), 90 L. J. K. B. 913; *Re A. & M.*, [1926] Ch. 274. *Mentd. Re A Debtor*, [1922] 2 K. B. 109.
- 1500a. Order against firm “other than” partner not served with bankruptcy notice.]—*Re DEBTORS* (No. 807 OF 1922), *Ex p. DEBTOR*, No. 887a, *ante.*
1508. *Add. Annotations* :—*Appld. Re A Debtor*, [1922] 2 K. B. 109. *Consd. Re Debtors*, *Ex p. Debtor* (1922), 92 L. J. Ch. 120; *Refd. Re A. & M.*, [1926] Ch. 274. *Mentd. Hawkins & Sunderland v. Duché* (1921), 90 L. J. K. B. 913.
1513. *Add. Annotation* :—*Refd. Re A Debtor*, [1920] 1 K. B. 461.
- 1515a. ——— Application opposed by official receiver.]—Where debtor applies to the registrar in bkpcy. to rescind a receiving order made against him, on the ground that all his debts have, since the making of the order, been paid in full, & the official receiver states that in his opinion the receiving order should not be rescinded until debtor has undergone a public examination. e registrar is not bound by that opinion, though in the independent exercise of his discretion he ought to give proper weight thereto.—*Re A DEBTOR* (No. 446 OF 1918), [1920] 1 K. B. 461; 89 L. J. K. B. 113; 64 Sol. Jo. 147; [1920] B. & C. R. 31; *sub nom. Re A DEBTOR*, *Ex p. THE DEBTOR v. PETITIONING CREDITORS & OFFICIAL RECEIVER*, 122 L. T. 354, C. A.
- 1519a. ——— All debts paid in full.]—*Re A DEBTOR* (No. 446 OF 1918), No. 1515a, *ante.*
1520. *Add. Citations* :—[1920] 1 K. B. 461; 89 L. J. K. B. 113; 122 L. T. 354; [1920] B. & C. R. 31.
- 1541a. ——— Failure to disclose security.]—*Re A DEBTOR* (No. 1507 OF 1921), No. 1367a, *ante.*
- 1545a. ——— Sequestration in Scotland.]—*Re A DEBTOR* (No. 199 OF 1922), No. 389a, *ante.*
- 1548a. ——— Power to make charging order on balance of funds in court.]—A debtor, against whom a receiving order had been made, paid money into ct. to satisfy his debts in full. The receiving order was then rescinded by an order which directed the official receiver, after paying the debts & deducting his costs, charges & expenses, to pay the balance in his hands to debtor. A subsequent unsatisfied judgment creditor applied to the registrar in bkpcy. for a charging order upon the balance of the funds in the hands of the official receiver :—*Held* : (1) the registrar had jurisdiction to make the order; (2) the registrar’s jurisdiction was derived through the jurisdiction of the judge of the High Ct. to whom for the time being bkpcy. matters were assigned exercising his bkpcy. jurisdiction.—*Re PRIOR*, *Ex p. PRIOR*, [1921] 3 K. B. 333; 90 L. J. K. B. 1222; *sub nom. Re DEBTOR*, *Ex p. DEBTOR* (No. 718 OF 1920), 125 L. T. 727; [1921] B. & C. R. 124, C. A.
- 1552a. ——— Receiving order discharged subject to condition—Condition not fulfilled—Rescission of discharging order.]—Debtor, a barrister, was entitled on the death of his mother to a vested remainder in tail of considerable value. His mother was seventy-five. The petition was filed on July 19, 1923. His present indebtedness amounted to about £6,000 & negotiations for a loan for that amount with an insurance co. had been going on since July 16, 1923. Owing to a delay in raising this loan, the registrar had made a receiving order on Nov. 21, 1923, from which debtor appealed; & upon debtor undertaking during the interval necessary to raise the loan, to insure his life immediately, i.e. from



Jan. 1, 1923, to Jan. 1, 1924, in order that, in the event of his death during that period, the unsecured creditors might be safeguarded, the Ct. of Appeal allowed the appeal, discharged the receiving order & dismissed the petition without prejudice to another petition being presented if the loan was not carried through & petitioning creditors' debt not paid on or before Jan. 1, 1924. Up to Dec. 20, debtor had not insured his life pursuant to his undertaking & petitioning creditors then moved to commit debtor for contempt. The Ct. of Appeal allowed debtor three hours within which to insure his life, & a certificate being produced showing that this had been done, the ct. made no order except that debtor should pay the creditors' costs. Subsequently debtor having again broken his undertaking by not completing

the insurance on his life, the Ct. of Appeal rescinded their order, with the result that the receiving order stood as originally made by the registrar.—*Re A Debtor, Ex p. THE DEBTOR* (No. 1088 of 1923), [1924] B. & C. R. 1, C. A.

1554. *Add. Annotations*:—*Mentd. Maatschappij voor Fondsenbezit v. Shell Transport & Trading Co.*, [1923] 2 K. B. 166; *Knight v. Ponsonby*, [1925] 1 K. B. 545.

1569. *Add. Annotation*:—*Consd. Re Forder, Forder v. Forder*, [1927] 2 Ch. 291.

1570. *Add. Annotation*:—*Apld. Re A Bankruptcy Notice*, [1924] 2 Ch. 76.

1579a. — *Effect of—On transactions pending appeal from receiving order.*—*Re WIGZELL, Ex p. HART*, No. 1893a, *post*.

## Part V.—Adjudication Order.

1603. *Add. Annotations*:—*Refd. Re Wilson, Ex p. Salaman, The Trustee v. Keith, Prowse* (1925), 133 L. T. 814; *Re Wait*, [1927] 1 Ch. 606. *Mentd. Re Wigzell, Ex p. Hart*, [1921] 2 K. B. 835; *Re London County Commercial Reinsurance Office*, [1922] 2 Ch. 67; *Scranton's Trustee v. Pearse*, [1922] 2 Ch. 87; *Re Harrington Motor Co., Ex p. Chaplin*, [1928] Ch. 105.

1619. *Add. Citation*:—11 Cox, C. C. 360.

1620. *Add. Annotation*:—*Refd. Hawkins & Sunderland v. Duché* (1921), 90 L. J. K. B. 913.

1624. *Add. Annotation*:—*Consd. Hawkins & Sunderland v. Duché* (1921), 90 L. J. K. B. 913.

1625. *Add. Annotation*:—*Refd. Hawkins & Sunderland v. Duché* (1921), 90 L. J. K. B. 913.

1627. *Add. Annotation*:—*Mentd. Re Cooke, Winckley v. Winterton*, [1922] 1 Ch. 292.

1636. *Add. Annotation*:—*Consd. Re Griffiths, Jones v. Jenkins*, [1926] Ch. 1007.

1637. *Add. Annotation*:—*Dbtd. Re Griffiths, Jones v. Jenkins*, [1926] Ch. 1007.

1638. After this case add "On duty to maintain wife."—*See HUSBAND & WIFE*, No. 595a."

1642. *Add. Citation*:—39 L. J. Bcy. 46.

1646. *Add. Annotation*:—*Mentd. R. v. Customs & Excise Comrs.*, [1928] A. C. 402.

1647. *Add. Annotation*:—*Refd. Holden v. Southwark Corpn.*, [1921] 1 Ch. 550.

1656. *Add. Annotation*:—*Consd. Re Boulton, Ex p. Moncrieff v. Official Receiver* (1926), 135 L. T. 461.

1657a. — — — — —.]—The partners of a firm, which was heavily indebted to the firm's bankers, formed a limited co. to take over the debt. They then, with the consent of the principal creditors of the firm, gave the bank a joint & several guarantee for payment of the transferred debt & of any sums due to the bank from the co. Upon the subsequent bkpcy. of the firm & the individual partners:—*Held*: (1) bkpts. had by the guarantee contracted a "debt provable in the bkpcy. without having at the time of contracting it any reasonable or probable ground of expectation of being able to pay it" within 1914 Act, s. 26 (3) (d), which covered not only a new & original debt, but also a debt in renewal of or in substitution for a previously existing debt, & their discharge must be suspended for a period of two years; (2) the ct., upon the particular facts of the case, granted each partner a certificate that his bkpcy. was "caused by misfortune without any misconduct on his part," the certificate to operate when the discharge took effect. Circumstances which may constitute "misfortune without any misconduct" within sect. 26 (4), discussed.—*Re BOULTON BROTHERS & Co.*, [1927] 1 Ch. 79; *sub nom. Re BOULTON BROTHERS & Co., Ex p. MONCRIEFF v. OFFICIAL RECEIVER*, 96 L. J. Ch. 90; [1927] B. & C. R. 1, C. A.

1667. *Add. Annotation*:—*Refd. Re Debtors*, [1927] 1 Ch. 19.

1670. *Citation*:—For "26 L. J. Bcy. 29" read "36 L. J. Bcy. 29."

### PART IV. SECT. 6.

1554 i. *In general—Debtor consenting to order.*—Where a petition for a receiving order has been filed & served, debtor should not make an authorised assignment, but should notify petitioning creditor, or his solr., that he, the debtor, consents to a receiving order.—*Re LALONDE*, [1924] 1 D. L. R. 1018; 55 O. L. R. 279; 4 C. B. R. 416.—CAN.

st. *On person holding himself out as member of partnership.*—A receiving order made against a partnership will include a person who has held himself out as a member thereof.—*Re MAIN CLOAK CO.*, [1925] 1 D. L. R. 290.—CAN.

### PART IV. SECT. 7.

1575 ii. — *To enable debtor to pay.*

—A receiving order directed not to issue for seven days & not then to issue if petitioner's claim, including the costs of the petition, satisfied.—*Re MAGUIRE*, [1923] 1 D. L. R. 1186; 51 O. L. R. 63; 3 C. B. R. 880.—CAN.

### PART V. SECT. 1.

d i. *Want of assets.*—Where there are no assets the making of an order for adjudication is in the discretion of the ct.—*Re BARAKAT*, [1920] N. Z. L. R. 134.—N.Z.

1598 iii. — — — — —.]—Sequestration of the estates of a debtor was pronounced in the sheriff ct. of L. in 1900. The trustee was subsequently discharged, but bkpt. never obtained his discharge. He, however, continued to

carry on business & incurred new debts. In 1922 one of the new creditors presented a petition in the same ct. for sequestration of debtor's estates:—*Held*: in the circumstances Bkpcy. (Scotland) Act, 1913 (c. 20), s. 16, did not make incompetent a new award of sequestration.—*COOK v. M'DOUGALL*, [1923] S. C. 86.—SCOT.

### PART V. SECT. 2, SUB-SECT. 1.

sv. *On chattel mortgage by debtor.*—The validity of a chattel mtge. given by debtor who is subsequently adjudicated bkpt must be determined as at the time of such adjudication.—*Re SAUNDERS ALBERTA COLLIERIES, LTD.*, [1925] 3 D. L. R. 323; [1925] 2 W. W. R. 122; 5 C. B. R. 727.—CAN.

1679. *Add. Annotation*:—*Mentd. McDonald v. Nash*, [1924] A. C. 625.
1731. *Add. Annotation*:—*Refd. Re Debtors*, [1927] 1 Ch. 19.
1735. *Add. Annotation*:—*Refd. McDonald v. Nash*, [1924] A. C. 625.
1766. *Add. Annotation*:—*Refd. Re Forder, Forder v. Forder*, [1927] 2 Ch. 291.
1771. *Add. Annotation*:—*Refd. Re Forder, Forder v. Forder*, [1927] 2 Ch. 291.
- 1775a. — Surplus assets after payment of composition.]—Bkpt. made a composition with his creditors, which was approved, & the cash required to satisfy the composition having been deposited with the official

receiver, the adjudication was annulled, but the order annulling the adjudication contained no reference to the vesting of surplus assets:—*Held*: although the order of annulment contained no express provision as to the vesting of any surplus assets, on payment of the composition the estate of debtor, i.e. the surplus after satisfying the composition, would, by necessary implication, revert in debtor.—*FLOWER v. LYME REGIS CORPN.*, [1921] 1 K. B. 488; 90 L. J. K. B. 355; 124 L. T. 463; 37 T. L. R. 145; 65 Sol. Jo. 133; [1920] B. & C. R. 138, C. A.

1781. *Add. Annotation*:—*Refd. Re Forder, Forder v. Forder*, [1927] 2 Ch. 291.

## Part VI. Official Receiver, Special Manager, and Interim Receiver.

- 1808a. On grant of administration—Estate of undischarged bankrupt—Whether estate of trustee divested—After-acquired property.]—An order under 1914 Act, s. 130, for the administration of the estate of a deceased undischarged bkpt. according to the law of bkpcy. is not a second or subsequent receiving order or adjudication within s. 39 so as to divest the estate of the trustee in bkpcy. in favour of the official receiver under the administration order; but bkpt.'s estate,

including any after-acquired property, remains vested in his trustee in bkpcy.—*Re SARJEANT*, [1923] 2 Ch. 302; 129 L. T. 825; *sub nom. Re SARJEANT, Ex p. OFFICIAL RECEIVER*, 92 L. J. Ch. 626; [1923] B. & C. R. 63.

1826. *Add. Annotation*:—*Refd. Re A Debtor*, [1920] 1 K. B. 461.
1853. *Add. Annotations*:—*Refd. Everett v. Griffiths*, [1920] 3 K. B. 163. *Mentd. More v. Weaver*, [1928] 2 K. B. 520.

## Part VII.—The Trustee and Committee of Inspection.

1889. *Add. Annotations*:—*Consd. Re Wigzell, Ex p. Hart*, [1921] 2 K. B. 835; *Scranton's Trustee v. Pearse*, [1922] 2 Ch. 87. *Distd. Re Wilson, Ex p. Salaman, The Trustee v. Keith, Prowse* (1925), 133 L. T. 814. *Refd. Re London County Commercial Reinsurance Office*, [1922] 2 Ch. 67; *Re Wait*, [1927] 1 Ch. 606. *Mentd. Re Harrington Motor Co., Ex p. Chaplin*, [1929] Ch. 105.
1890. *Add. Annotations*:—*Consd. Scranton's Trustee v. Pearse*, [1922] 2 Ch. 87. *Distd. Re Wilson, Ex p. Salaman, The Trustee v. Keith, Prowse* (1925), 133 L. T. 814. *Refd. Re Wigzell, Ex p. Hart*, [1921] 2 K. B. 835; *Re London County Commercial Reinsurance Office*, [1922] 2 Ch. 67.
1892. *Add. Annotation*:—*Mentd. Lipton v. Bell*, [1924] 1 K. B. 701.
1893. *Add. Citations*:—122 L. T. 35; [1918–19] B. & C. R. 249.
- Add. Annotations*:—*Consd. Re Wigzell, Ex p. Hart*, [1921] 2 K. B. 835; *Scranton's*

*Trustee v. Pearse*, [1922] 2 Ch. 87. *Distd. Re Wilson, Ex p. Salaman, The Trustee v. Keith, Prowse* (1925), 133 L. T. 814. *Mentd. Re Harrington Motor Co., Ex p. Chaplin*, [1928] Ch. 105.

- 1893a. Duty not to take advantage of mistake of fact.] A receiving order was made against a debtor, who thereupon applied for & obtained a stay of the advertisement of the receiving order & all proceedings thereunder pending an appeal therefrom. The appeal was subsequently dismissed & an order was made adjudicating him bkpt. At the date of the receiving order bkpt. had an account at a bank. After the making of the receiving order & pending the hearing of the appeal bkpt. paid into the bank £165 which he had collected from his debtors, & drew out of his account £199. The bank acted in good faith & received & paid those sums in the ordinary course of business without knowing that a receiving order had been

PART V. SECT. 3, SUB-SECT. 3.  
“(p. 188) L. — In filing petition—*not prejudiced.*—*Re HASTIE*, [1926] N. Z. L. R. 428.—N.Z.

PART VI. SECT. 8.  
*sw. When court will appoint.*—Petitioner must convince the ct. that an interim receiver is necessary to

protect the creditors' interests.—*Re CANADIAN COAL SUPPLY, Ex p. STAPLES BELL INC.*, [1924] 2 D. L. R. 831; 4 C. B. R. 577.—CAN.

*m l.* —.—*Re CANADIAN COAL SUPPLY, Ex p. STAPLES BELL INC.*, [1924] 2 D. L. R. 831; 4 C. B. R. 577.—CAN.

*ss. Order of appointment containing undertaking as to damages by petitioning*

*creditor—Undertaking not discharged on termination of appointment.*—*Re JACKSON*, [1926] 1 D. L. R. 1189; 58 O. L. R. 482.—CAN.

PART VII. SECT. 1.  
*ss. Representative of creditors—To enforce rights.*—*Re HERSH, Ex p. GOLDSTEIN*, [1923] 3 D. L. R. 101; 4 C. B. R. 84.—CAN.

made against bkpt. The trustee in bkpcy. claimed a declaration that the sums paid into the bank after the date of the receiving order vested in him as trustee:—*Held*: (1) the sums paid into the bank by bkpt. after the date of the receiving order became by virtue of 1914 Act, ss. 18 (1), 37 (1), 38 (a), the property of his trustee in bkpcy.; (2) the bank were not entitled to credit themselves with the payments out to bkpt., as those transactions took place after the date of the receiving order & were therefore not protected by sects. 45 & 46; (3) there was nothing dishonest in the trustee enforcing the rights given to him by the Act, & the action of the ct. in staying the advertisement & proceedings could not operate in any way in derogation of the rights of the trustee.—*Re WIGZELL, Ex p. HART*, [1921] 2 K. B. 835; *sub nom. Re WIGZELL, Ex p. TRUSTEE*, 90 L. J. K. B. 897; [1921] B. & C. R. 42; *sub nom. Re WIGZELL, Ex p. TRUSTEE v. BARCLAYS BANK, LTD.*, 125 L. T. 361; *sub nom. Re WIGZELL, HART v. BARCLAYS BANK*, 37 T. L. R. 526; 65 Sol. Jo. 493, C. A.

*Annotations*:—As to (2) *Distd. Re Wilson, Ex p. Salaman, The Trustee v. Keith, Prowse* (1925), 133 L. T. 814. As to (3) *Consd. Scranton's Trustee v. Pearse*, [1922] 2 Ch. 87. *Refd. Re London County Commercial Reinsurance Office*, [1922] 2 Ch. 67.

**1894a. Duty to recover statutory debt.]**

In 1919 debtor paid debt., a bookmaker, various cheques for bets lost on horse racing, & these cheques were cleared through various banks, as holders. On Aug. 30, 1920, debtor was adjudicated bkpt. & on Mar. 30, 1921, his trustee in bkpcy. by the direction of his committee of inspection, commenced an action to recover £955, the amount admitted to be due, if recoverable. The action was transferred to the judge in bkpcy. under Bkpcy. Rules, 1915, r. 123. Deft. took the point that such an action ought not to be brought by an officer of the ct., as the claim, however legal, was practically dishonest, & that all cts. must apply the rule in *Re Condon, Ex p. James*, No. 60, *ante*:—*Held*: the claim the trustee in bkpcy. was seeking to enforce was in respect of a debt which under Gaming Act, 1835 (c. 41), s. 2, & the decision of the House of Lords in *Sutlers v. Briggs* (see GAMING & WAGERING, Vol. XXV., p. 418, No. 213), was a statutory debt, & there was nothing in *Re Condon, Ex p. James*, or in any of the cases in which the rule in that case had been followed, which entitled the ct. to say that if & when a right of action in respect of such a debt vested in a trustee in bkpcy., it was a dishonest or dishonourable thing for him as an officer of the ct. to enforce it, & judgment for the trustee in bkpcy. must be entered in the action for the amount claimed.—*SCRANTON'S TRUSTEE v. PEARSE*, [1922] 2 Ch. 87; 91 L. J. Ch. 579; 127 L. T. 698; 38 T. L. R. 629; 66 Sol. Jo. 503; [1922] B. & C. R. 52, C. A.

*Annotation*:—*Refd. Re Wilson, Ex p. Salaman, The Trustee v. Keith, Prowse* (1925), 133 L. T. 814.

**1894b. — Duty to act equitably—Recovery of money paid to bankrupt with approval of official receiver.]**—On June 26, 1924, a receiving order was made against W. on a petition presented on May 25, 1924, in respect of an act of bkpcy. on May 1, 1924. W. was a promoter of boxing contests & had in view at the date of the presentation of

the petition boxing competitions, one of which was held at the Stadium, Wembley, on Aug. 9, 1924. He appealed against the receiving order, & pending that appeal the receiving order was not gazetted. His appeal having failed it was then gazetted on July 29, 1924. At an interview between W., his solr., the solr. for the Wembley authorities & A., the assistant official receiver, who under Bkpcy. Rules, 1915, r. 316, represented the official receiver, A. was told of the proposed boxing contest & the judge held on the evidence that at the interview W. told A. he desired notwithstanding the receiving order to be allowed to stage the contest as the only hope of providing assets to meet the claims of his creditors, & that it was arranged he could do so without any interference by the official receiver, on W. undertaking not to use the proceeds of the sale of tickets for his private purposes but only for discharging the expenses of the staging of the contest & to hand over any balance to the official receiver. On that arrangement being made W. proceeded with the negotiations for the contest & an agreement was executed by which he gave the Wembley authorities the right to collect all moneys paid for tickets at the turnstiles, & they were to have those moneys as a security for the payment by W. for the use of the Stadium. Various ticket agents paid W. for blocks of tickets to be sold by them to the public. The contest, which was held at the Stadium on Aug. 9, 1924, only realised after payment of all expenses £730 which W. paid to the official receiver. On Sept. 6, 1924, W. was adjudicated bkpt., & on Sept. 9, S. was appointed trustee in the bkpcy. On a motion by S. to recover from the various ticket agents all sums paid by them since the date of the receiving order to W. for tickets they had bought from him & to recover the money collected by the Wembley authorities at the turnstiles:—*Held*: A. had power to give his sanction to W.'s receipt of the proceeds of the sale of tickets to be applied by him in discharging expenses & the trustee in bkpcy. was bound by the sanction so given, but even if he were not so bound & even if A. exceeded his powers the trustee could not take the benefit of W.'s activities without accepting their burden, & the payment to W. of the moneys which the trustee claimed, being the direct result of the leave obtained by W. from A. to stage the boxing contests, it would be inequitable & unjust to make resps. pay these moneys over again for the benefit of W.'s creditors & to hold that the charge given to the Wembley authorities was nugatory.—*Re WILSON, Ex p. SALAMAN*, [1926] Ch. 21; 95 L. J. Ch. 58; 133 L. T. 814; 70 Sol. Jo. 65; [1925] B. & C. R. 96.

**1895. Add. Annotations:—***Consd. Re Wigzell, Ex p. Hart*, [1921] 2 K. B. 835; *Scranton's Trustee v. Pearse*, [1922] 2 Ch. 87. *Distd. Re Wilson, Ex p. Salaman, The Trustee v. Keith, Prowse* (1925), 133 L. T. 814.

**1896. Add. Annotations:—***Consd. Re Stokes, Ex p. Mellish*, [1919] 2 K. B. 256; *Re Thellusson, Ex p. Abdy*, [1919] 2 K. B. 735.

**1901. Add. Annotation:—***Mentd. Christoforides v. Terry*, [1924] A. C. 566.



2007. *Add. Annotation*:—Mentd. Toronto Ry. Toronto City, [1920] A. C. 446.

2028a. —.]—Where a trustee in bkpcy. with the sanction of the committee of inspection employs a solr. to do particular business, the principle on which the solr.'s bill of costs against the trustee is to be taxed is that of solr. & client, not as between solr. & his own client but that of "where the client & others are interested in a common fund," i.e. bkpt.'s estate, & on such a taxation the taxing master is not bound to allow copies of documents supplied to counsel at his request, nor the whole amount of the fees paid to counsel on the written authority of

the trustee. But where the trustee has honestly sanctioned an expenditure which is not excessive, the taxing master should take a liberal view as far as possible in allowing the amounts against the estate which have honestly been incurred on behalf of such trustee.—*Re LAVEY, Ex p. COHEN & COHEN*, [1921] 1 K. B. 344; 90 L. J. K. B. 246; 124 L. T. 572; [1920] B. & C. R. 171.

2064. *Add. Annotation*:—Mentd. Christoforides v. Terry, [1924] A. C. 566.

2071. *Add. Annotation*:—Mentd. Christoforides v. Terry, [1924] A. C. 566.

2101. *Add. Annotation*:—Mentd. Christoforides v. Terry, [1924] A. C. 566.

PART VII. SECT. 2, SUB-SECT. 2.

1911 ii. —. —.]—*Re LONDON BRIDGE WORKS, LTD.* (Ont.), [1926] 4 D. L. R. 1121.—CAN.

ki. —. —. *Not secured creditor who has not valued security.*—*Re LONDON BRIDGE WORKS, LTD.* (Ont.), [1926] 4 D. L. R. 1121.—CAN.

1943 i. *Who may appeal against decision on election—Custodian not being creditor.*—The custodian appointed by the official receiver after an authorised assignment under Bkpcy. Act, if he is not a creditor of the assignor, is not entitled to appeal from the decision of the official receiver as chairman of the first meeting of creditors who, after passing on the admission or rejection of proofs of claim for the purpose of voting, has declared a certain person elected as trustee.—*Re MCCOUBREY*, [1924] 2 D. L. R. 1123; [1924] 2 W. W. R. 348; 4 C. B. R. 642.—CAN.

PART VII. SECT. 2, SUB-SECT. 6.

1959 ii. —. —. *Conflict of interest & duty.*—Where a trust co. was an authorised trustee in the bkpcy. of a limited co., & certain directors & shareholders of the latter, having large claims against debtors' estate, were also shareholders of the trust co., one being also a director, it was considered undesirable that the trust co. should continue to act, & another trustee was appointed.—*Re SHAW (WALTER W.) CO., LTD.*, [1922] 3 W. W. R. 119; 68 D. L. R. 616.—CAN.

PART VII. SECT. 4, SUB-SECT. 2.

sb. *To employ bankrupt at remuneration—Approval of court.*—*Held*: the employment of bkpt. & the terms of his employment, including his remuneration, must have the approbation of the ct.; the subsequent approbation is unauthorised by Bkpt. & Insolvent Act, 1857, s. 276.—*Re MACKAY, McGUINNESS v. HOLLINGSHEAD* (1921), 55 I. L. T. 89.—IR.

so. *To accept tenders.*—When the trustee is accepting tenders, he must have the written authority of the inspectors to do so.—*Re BROWN TAXI CO. & DETROIT RADIATOR CO.* (1922), 65 D. L. R. 136.—CAN.

sd. *To dispose of property.*—When the trustee is selling stock or transferring property he must have the written authority of the inspectors to do so.—*Re BROWN TAXI CO. & DETROIT RADIATOR CO.* (1922), 65 D. L. R. 136.—CAN.

1983 i. *Payment—Power to make—To complete contract.*—Debtor agreed to purchase goods on condition that should he fail to complete payment he should lose all the money paid. When all the payments had been made save the last one debtor became bkpt.:—*Held*: the trustee might pay the last instalment & retain the goods.—*Re LEMIEUX & COPPING MOTOR DISTRIBUTORIES* (1922), 69 D. L. R. 105; 1 C. B. R. 464.—CAN.

PART VII. SECT. 5, SUB-SECT. 1.—A.

ji. —. —. *Some creditors not notified.*—If the trustee discovers that he has failed to send to some of the creditors a notice intended to be sent to all, he should notify those who have been overlooked to file their proofs & should advise them of what has taken place; it is not necessary to call a new meeting.—*Re CANADIAN CEREAL & FLOUR MILLS CO.* (1922), 67 D. L. R. 234; 51 O. L. R. 316; 2 C. B. R. 158.—CAN.

2001 i. *To realise to best advantage—Acceptance of tenders.*—The trustee must be governed by the advice of the inspectors & by ordinary business judgment in delaying the acceptance of any tender for the purchase of debtor's assets.—*Re CANADIAN CEREAL & FLOUR MILLS CO.* (1922), 67 D. L. R. 234; 51 O. L. R. 316; 2 C. B. R. 158.—CAN.

PART VII. SECT. 5, SUB-SECT. 1.—B. (b).

2008 ii a. —. —. *Accountant—Charge for clerk's time.*—Where an accountant's work is indispensable a trustee under Bkpcy. Act may be allowed to charge against the estate, as a disbursement subject to taxation, a fee for his partner's work as accountant provided the trustee renounces any profit thereby accruing to him. But payments made to the trustee's firm for the work of its employees must be disallowed as disbursements.—*Re BRYANT, ISARD & CO.*, [1925] 4 D. L. R. 157; 57 O. L. R. 471; 5 C. B. R. 799.—CAN.

si. *Costs incurred before appointment of inspectors.*—Solrs.' costs for services rendered prior to the appointment of inspectors are not taxable against the estate.—*Re STONEBERG* (1922), 69 D. L. R. 728; [1922] 2 W. W. R. 1328.—CAN.

PART VII. SECT. 5, SUB-SECT. 1.—B. (c).

gi. —. —. —.]—The taxation of a trustee in bkpcy.'s bill of fees & disbursements will be reopened when it appears *prima facie* that improper items have been included. Proof that the taxing master did not understand how far the inspectors had approved the accounts will establish such a *prima facie* case.—*Re J. STANLEY WRDLOCK, LTD.*, [1925] 2 D. L. R. 566; 5 C. B. R. 662.—CAN.

2031 i. *Basis of taxation of solicitor's charges—Amount of costs limited.*—*Re MESSERVEYS, LTD.*, [1924] 1 D. L. R. 1037; 4 C. B. R. 498.—CAN.

PART VII. SECT. 5, SUB-SECT. 1.—C. (a).

2035 i. *Order for payment—When granted—Proceeds of sale handed over to debtor.*—Where debtor parts with property to a trustee who, in fraud of creditors, disposes of it & hands over the proceeds of the sale to debtor, such a fraudulent trustee may be compelled to pay to the creditors the money

which he received a result of such sale.—*CAMERON v. MOSELEY*, [1923] 3 D. L. R. 267.—CAN.

PART VII. SECT. 5, SUB-SECT. 1.—H.

sk. *Trustee giving secret information to purchaser of part of estate—Right to set aside sale.*—*Re DAVIES FOOTWEAR CO., UNDERHILLS, LTD. v. BARBER* (1923), 53 O. L. R. 467; 4 C. B. R. 131.—CAN.

PART VII. SECT. 5, SUB-SECT. 2.—A.

2125 iv a. —. —. —. *"Cash receipts."*—The trustee is to be confined to five per cent. of the cash receipts in all circumstances, unless the inspectors in writing increase the amount & the ct. approves.—*Re BRYANT ISARD & CO.*, [1925] 4 D. L. R. 157; 57 O. L. R. 471; 5 C. B. R. 799; *varying* [1925] 1 D. L. R. 847; 5 C. B. R. 393.—CAN.

2125 iv b. —. —. —. *Meaning.*—*Re JOHNSTON*, [1925] 4 D. L. R. 226.—CAN.

sl. *Right to priority—Over Crown debts.*—The trustee is entitled to be paid his fees & expenses in priority to the Crown.—*Re CANADIAN CARPET & COMFORTER MANUFACTURING CO., Ex p. A.-G. FOR CANADA*, [1924] 4 D. L. R. 1307; 5 C. B. R. 54.—CAN.

sm. —. —. *Over claims for taxes.*—A trustee in bkpcy. is entitled to retain his fees & expenses out of the estate in priority to the Crown's claim for sales taxes.—*Re TORONTO METAL & WASTE CO.* (1921), 67 D. L. R. 111; 51 O. L. R. 287; 2 C. B. R. 138.—CAN.

sn. —. —. —.]—The claim of the trustee in bkpcy. for his expenses is payable in priority to the taxes owing by debtor to a municipality.—*Re ADAMS SHOE CO., Ex p. TOWN OF PENETANGUISHENE*, [1923] 4 D. L. R. 927.—CAN.

sp. —. —. —.]—The trustee in bkpcy.'s claim for his fees & expenses always precedes the Crown's claim for taxes under War Revenue Tax Act.—*Re DAVIS*, [1924] 3 D. L. R. 556; 4 C. B. R. 698.—CAN.

st. —. —. *Over claims by landlord.*—If the landlord's claim arose anterior to that of the Crown's claim for taxes, the trustee's claim for his fees & expenses will count after the landlord's claim.—*Re DAVIS*, [1924] 3 D. L. R. 556; 4 C. B. R. 698.—CAN.

Priority of debts generally, see cases in Part XII., *post*.

qi. *Power of court to enforce payment.*—The ct. will not dispose of a petition for an order for immediate payment of the trustee's costs.—*MEN'S ATTIRE REGISTERED v. HART* (1922), 68 D. L. R. 193; 2 C. B. R. 534.—CAN.

PART VII. SECT. 5, SUB-SECT. 2.—B. (b).

sw. *Duty to obtain indemnity—Value of estate uncertain.*—Where there is any doubt as to the value of the estate an authorised trustee should.

2163. *Add. Annotation*:—Mentd. Johnson v. Stephens & Carter & Golding, [1923] 2 K. B. 857.
2176. *Add. Annotation*:—Reid. Spencer v. Ashworth, Partington, [1925] 1 K. B. 589.

## Part VIII.—Proof of Debts.

2344. *Add. Annotation*:—Consd. *Re Moss, Exp.* Everitt (1923), 93 L. J. Ch. 98.
2353. *Citations*:—Delete "1 L. J. Bcy. 44."
2383. *Add. Annotation*:—Mentd. Steinberg v. Scala (Leeds), [1923] 2 Ch. 452.
2385. *Add. Citations*:—*affg.* S. C. *sub nom.* MORGAN v. HARDY (1887), 18 Q. B. D. 646, C. A.; *revsg.* (1886), 17 Q. B. D. 770.
- Add. Annotations*:—Reid. Baker v. Lloyd's Bank, [1920] 2 K. B. 322. Mentd. Joyner v. Weeks, [1891] 2 Q. B. 31; Anstruther-Gough-Calthorpe v. McOscar, [1924] 1 K. B. 716.
2411. *Add. Annotation*:—Mentd. Burrell v. Leven (1926), 42 T. L. R. 407.
2415. *Add. Citation*:—1 Ves. & B. 112.
2429. *Add. Citation*:—15 L. J. Bcy. 9.
2455. *Add. Annotation*:—Mentd. Richmond v. Savill, [1926] 2 K. B. 530.
2459. *Add. Annotation*:—Mentd. *Re Farrow's Bank*, [1921] 2 Ch. 164.
2463. *Add. Citations*:—*affg.* S. C. *sub nom.* MORGAN v. HARDY (1887), 18 Q. B. D. 646, C. A.; *revsg.* (1886), 17 Q. B. D. 770.
- Add. Annotations*:—Reid. Baker v. Lloyd's Bank, [1920] 2 K. B. 322. Mentd. Joyner v. Weeks, [1891] 2 Q. B. 31; Anstruther-Gough-Calthorpe v. McOscar, [1924] 1 K. B. 716.
2467. *Add. Annotations*:—Reid. *Re Lister, Ex p. Bradford Overseers & Bradford Corpn.*, [1926] Ch. 149. Mentd. Victoria City v. Vancouver Island (Bp.), [1921] 2 A. C. 384; Wise v. Lansdell, [1921] 1 Ch. 420.
2491. *Add. Annotation*:—Mentd. *Re Debtor* (1928), 72 Sol. Jo. 860.

before proceeding with its administration, obtain an indemnity from the creditors.—*Re GUMP* (1921), 69 D. L. R. 202; 51 O. L. R. 118; 2 C. B. R. 56.—CAN.

### PART VII. SECT. 6, SUB-SECT. 1.—B.

2159 i. *Receiver handing over assets to trustee—Whether lien for charges—Whether locus standi to impeach management of trustee.*—*Held*: (1) the interim receiver's fees & expenses were a first charge upon the assets, & should be paid in priority to other fees & expenses, in the administration thereof; (2) no one except the creditors can attack the trustee upon the ground that he has mismanaged the estate.—*Re GUMP* (1921), 69 D. L. R. 202; 51 O. L. R. 118; 2 C. B. R. 56.—CAN.

2159 ii. —.—.—*Before the making of the receiving order debtor co. made an assignment to T., an authorised trustee, who had no knowledge that a bkpy. petition had been filed before the assignment:—Held*: T. having acted innocently, ought to receive remuneration for his services, which must be treated as an expenditure of the trustee, ranking ahead of the claim of the Crown.—*Re TORONTO METAL & WASTE CO.* (1921), 67 D. L. R. 111; 51 O. L. R. 287; 2 C. B. R. 138.—CAN.

### PART VII. SECT. 9, SUB-SECT. 1.—C. (a).

sz. *For good cause.*—If a trustee in bkpy. acts throughout with the consent of the creditors, & if his appointment as trustee is confirmed at a general meeting of creditors, there can be no grounds for dismissing him from office.—*LANGLOIS v. LEMIRE, Re GARDNER* (1922), 65 D. L. R. 128.—CAN.

### PART VII. SECT. 9, SUB-SECT. 3.

2285 i. *Revocation of order of release—To enable trustee to administer after-acquired property—Estate administered in ignorance of existence of property.*—*Re WATSON* (1927), 61 O. L. R. 173.—CAN.

### PART VII. SECT. 10.

sz. *Power—To override creditors' instructions to trustee.*—Where at a creditors' first meeting they instruct the trustee to give priority to certain

claims:—*Semble*: it is not competent for the inspectors to override such instructions.—*Re OLYMPIA CAFE CO., LTD., Ex p. BEDALI*, [1927] 1 D. L. R. 907; [1927] 1 W. W. R. 131.—CAN.

sb. *Exercise of powers—Must act personally.*—*Re BROWN TAXI CO. & DETROIT RADIATOR CO.* (1922), 65 D. L. R. 136.—CAN.

2298 i. —.—.—*To consent to appointment of solicitor—No particular form necessary—Must be specific.*—*Re BRYANT, ISARD & CO. (Ont.)*, [1926] 4 D. L. R. 440; 7 C. B. R. 594; *varying*, [1925] 1 D. L. R. 34; 7 C. B. R. 93.—CAN.

### PART VIII. SECT. 4, SUB-SECT. 1.

2385 ii. —.—.—*Bankruptcy Act, s. 44.*—The above sect. does not give persons not otherwise entitled to recover from bkpt. a right to prove against his estate because of an obligation to a third person.—*Re EXCELSIOR ELECTRIC DAIRY MACHINERY, LTD.*, [1923] 3 D. L. R. 1176; (1922), 52 O. L. R. 225; 2 C. B. R. 599.—CAN.

so. *Debt due from association prohibited from dealing on credit system.*—*Held*: not provable.—*Re KELVINGTON GRAIN GROWERS' CO-OPERATIVE ASSOCN.*, [1924] 1 D. L. R. 249.—CAN.

### PART VIII. SECT. 4, SUB-SECT. 3.—B.

2427 i. *Bankruptcy of purchaser—Part delivery before bankruptcy—Cancellation of contract.*—The insolvent co. agreed to buy sugar, to be delivered in fixed monthly instalments. After certain deliveries had been made the sugar co. intimated that there would be no more deliveries until the outstanding account for previous deliveries was settled. The insolvent co. made no demand for deliveries & the sugar co. made no tender:—*Held*: the sugar co. could not be permitted to lie by until the whole period of the contract was up & then claim damages for the failure to call for delivery during each of the preceding months.—*Re ROCKLAND COCOA & CHOCOLATE CO.* (1921), 64 D. L. R. 644; 51 O. L. R. 19; 2 C. B. R. 43.—CAN.

2428 i. —.—.—*Resale by vendor—Proof for loss on resale.*—*Held*: the vendors could prove for such damages as they would have been entitled to recover against the insolvent for the breach of

the contract.—*Re HACHBORN* (1922), 67 D. L. R. 227; 51 O. L. R. 312; 2 C. B. R. 224.—CAN.

2438 i. —.—.—*Payment in foreign currency.*—*Held*: the vendor entitled to prove for an amount equivalent in value to the amount payable in foreign currency.—*Re MCKAY* (1922), 52 O. L. R. 466; 3 C. B. R. 462.—CAN.

2438 ii. —.—.—*Goods not reasonably fit for required purpose.*—*Held*: the value of the goods should be estimated, the damages incurred by the purchaser deducted, & the balance proved for.—*Re SCOTLAND WOOLLEN MILLS CO.*, [1923] 2 D. L. R. 274; 3 C. B. R. 636.—CAN.

sd. *Sale & purchase in bulk.*—Claim of purchaser to rank on estate of vendor disallowed.—*Re WHITE*, [1925] 1 D. L. R. 1189; 58 N. S. R. 1; 5 C. B. R. 511.—CAN.

### PART VIII. SECT. 4, SUB-SECT. 3.—C.

2448 iv. —.—.—*For full amount of rent due—Notwithstanding agreement for reduction of rent in consideration of compromise—Compromise not carried out.*—*Re MARTINS, LTD. (N. S.)*, [1926] 2 D. L. R. 685; 7 C. B. R. 485.—CAN.

### PART VIII. SECT. 4, SUB-SECT. 3.—D. (a).

2481 iv. —.—.—*Contingent on survivorship of wife.*—*Re LAING* (1921), 64 D. L. R. 637; 51 O. L. R. 11; 2 C. B. R. 38.—CAN.

### PART VIII. SECT. 4, SUB-SECT. 3.—D. (b) iii.

2526 ii. —.—.—*Re ANDREW MOTHERWELL ESTATE*, [1923] 4 D. L. R. 986; *affd.* 25 O. W. N. 359.—CAN.

ii. —.—.—*Held*: the surety could not rank on the estate before the creditor had been paid in full.—*Re COUGHLIN & CO., Ex p. GUARANTEE CO. OF NORTH AMERICA*, [1923] 4 D. L. R. 971; 3 W. W. R. 1177.—CAN.

2545 iii. —.—.—*The contingent liability of a surety who has not been called on to pay is a debt provable on the bkpy. of the principal debtor.*—*Re FROMENT, ALBERTA LUMBER CO. v. ALBERTA DEPARTMENT OF MINISTERS*, [1925] 3 D. L. R. 377; [1925] 2 W. W. R. 415; 5 C. B. R. 765.—CAN.



2591. *Add. Annotation*:—*Consd. Spencer v. Ashworth, Partington*, [1925] 1 K. B. 589.

2597. *Add. Citation*:—15 L. J. Bcy. 9.

2639. *Add. Annotations*:—*Mentd. Falcon v. Famous Players Film Co.* (1925), 42 T. L. R. 91; *Reckitt v. Barnett, Pembroke & Slater*, [1928] 2 K. B. 244.

2689. *Add. Annotation*:—*Mentd. Omnium Insce. Corp'n. v. United London & Scottish Insce.* (1920), 36 T. L. R. 886.

2770. *Add. Annotation*:—*Refd. Dewe v. Dewe, Snowden v. Snowden*, [1928] P. 113.

2771. *Add. Annotation*:—*Refd. Dewe v. Dewe, Snowden v. Snowden*, [1928] P. 113.

2806. *Add. Annotation*:—*Refd. Dewe v. Dewe, Snowden v. Snowden*, [1928] P. 113.

2812. *Add. Annotations*:—*Consd. Firman v. Royal*, [1925] 1 K. B. 681. *Mentd. Re Naters, Ainger v. Naters* (1919), 122 L. T. 154.

2815. *Add. Annotation*:—*Refd. Campbell v. Campbell*, [1922] P. 187.

2875. *Add. Annotation*:—*Mentd. Bowling v. Camp* (1922), 128 L. T. 342.

2901. *Add. Annotations*:—*Refd. Performing Right Soc. v. London Theatre of Varieties*, [1924] A. C. 1; *Re Wait*, [1927] 1 Ch. 606.

2902. *Add. Annotations*:—*Refd. Re Dent, Ex p. Trustee*, [1923] 1 Ch. 113; *Performing Right Soc. v. London Theatre of Varieties*, [1924] A. C. 1.

2902a. ———.]—By marriage articles in 1914, made between husband & wife & three trustees, it was agreed that, after the intended marriage, an indenture of settlement should be executed & that the husband would bring into settlement all property to which he then was or thereafter might become entitled, to be held, subject to life interests in favour of husband & wife, upon trusts to be mutually agreed between the trustees of the settlement. It was further agreed that the first trustees of the settlement should be the three trustees of the articles therein named, & that if they or either of them should fail to accept the trusteeship of the settlement, then such other person or persons as the spouses should nominate; & that in the meantime until the execution of the settlement the persons in whom such property should be vested should hold the same upon the trusts of the settlement. The marriage was solemnised on the day of the execution of the articles. On the death of his father on Feb. 22, 1918, the husband, under his will, became entitled in reversion, subject to the life interest of testator's widow, to a share in his residuary estate. On June 13, 1919, the trustees of the articles gave notice to the will trustees of the execution of the articles. On Oct. 21, 1920, the husband, in pursuance of his contract con-

tained in the articles, executed a settlement by which he assigned to the trustees thereof, of whom there were three & of whom one was also a trustee under the articles, but the other two were not, his interest under his father's will upon trusts for the benefit of his wife & children. On Dec. 5, 1921, the settlor was adjudicated bkpt. The trustee in bkpcy. moved for a declaration that the settlement & the transfer of the property purported to be made thereunder were void as against him:—*Held*: (1) the acquisition by bkpt. on his father's death of the property which was non-existent at the date of the articles did not operate under the well settled doctrine as a complete equitable assignment of that property as the persons to whom the property was attracted to be assigned & the trusts upon which such persons were to hold it were not ascertained at the date of such acquisition; (2) even if there had been an equitable assignment within that doctrine, it would not have operated as a transfer of property within the true meaning of 1914 Act, s. 42 (3); (3) the assignment contained in the settlement of Oct. 1920, operated as a transfer of property within that sub-sect. & was void by reason of its execution within two years of the commencement of the bkpcy.—*Re DENT, Ex p. TRUSTEE*, [1923] 1 Ch. 113; 92 L. J. Ch. 106; 67 Sol. Jo. 32; [1922] B. & C. R. 137.

2955. *Add. Annotation*:—*Distd. Re Pitchford*, [1924] 2 Ch. 260.

2978a. *Proof by plaintiff against bankrupt defendant—Stay of action after bankruptcy—Proof in bankruptcy for amount claimed in action.*—On Oct. 25, 1920, resp., a mtge. broker, hereinafter called pltf., issued a writ against debtor in the K. B. Div. to recover a sum of £650 for commission earned. On June 20, 1921, the action was set down for trial. On July 19, 1921, a receiving order was made against debtor. On Feb. 2, 1922, on the application of pltf. made in the action the action was stayed with liberty to pltf. to restore. On Mar. 6, 1922, pltf., instead of applying to restore the action, lodged his proof in the bkpcy. of debtor for £650. The official receiver rejected his proof, but on Jan. 17, 1923, the county ct. judge reversed the decision of the official receiver & admitted the proof. On Sept. 29, 1923, pltf. lodged a further proof for £46 17s. 9d. for his untaxed costs of the action, all of which were incurred before the date of the receiving order. On Oct. 31, 1923, the official receiver rejected that proof. Pltf. appealed, & on Feb. 11, 1924, the county ct. judge reversed his decision & ordered that the proof of the costs, amounting to £46 17s. 9d., should be admitted subject to taxation. On the appeal of the official receiver:—*Held*: (1) as pltf. had obtained no judgment dealing either with

2545 (v. ———.)—A surety who has not paid or been excused becomes on the insolvency of the principal debtor a conditional creditor, & may as such prove his claim against the insolvent estate.—*ROSSOUW, ETC. v. HODGSON*, [1925] App. D. 97.—S. AF.

25. *Creditor agreeing to pay off debt due to another creditor—Agreement not carried out.*—*Held*: the creditor was entitled to rank as a creditor for the amount which he had agreed to pay off.—*Re BENSON-JOHNSTON, LTD.*, [1924] 4 D. L. R. 575; 5 C. B. R. 196;

*affd.* [1925] 1 D. L. R. 999; 5 C. B. R. 414.—CAN.

#### PART VIII. SECT. 4, SUB-SECT. 3.—D. (b) iv.

2560 i. *Co-surety's liability to contribution.*—A surety can prove in the bkpcy. of a co-surety for contribution, although the proving surety has not paid the creditor anything.—*Re FROMENT, ALBERTA LUMBER CO. v. ALBERTA DEPARTMENT OF AGRICULTURE*, [1925] 3 D. L. R. 377; [1925] 2 W. W. R. 415; 5 C. B. R. 765.—CAN.

#### PART VIII. SECT. 4, SUB-SECT. 3.—L.

2903 i. *Continuing contracts generally—Debtor failing to complete.*—*Held*: the creditors were entitled to be paid the damages sustained in respect of the unexpired portions of the contract.—*Re MCKAY* (1922), 52 O. L. R. 466; 3 C. B. R. 462.—CAN.

2905 i. *Loan.*—*Re NODEN, HALLETT & JOHNSTON, Ex p. JOHNSTON (Ont.)*, [1927] 3 D. L. R. 700; 8 C. B. R. 295.—CAN.



his claim in the action or the costs thereof, but had elected to stay his action & to prove in bkpcy. for the amount claimed in the action, he was not entitled to prove for his untaxed costs of the action; (2) (ASTBURY, J.) the sum for which pltf. sought to prove in respect of his costs was not a debt or liability certain or contingent to which debtor was subject at the date of the receiving order or to which he might become subject before his discharge by reason of any obligation incurred before that date, within 1914 Act, s. 30 (3), & therefore was not provable.—*Re PITCHFORD*, [1924] 2 Ch. 260; *sub nom. Re PITCHFORD, Ex p. OFFICIAL RECEIVER*, 93 L. J. Ch. 541; [1924] B. & C. R. 118; *sub nom. Re PITCHFORD, Ex p. OFFICIAL RECEIVER v. HALL*, 131 L. T. 669, D. C.

2983. *Add. Annotations*:—*Reid. Re Pitchford*, [1924] 2 Ch. 260. *Mentd. London Steamship & Trading Corp. v. Russian Volunteer Fleet* (1926), 135 L. T. 607.

2989. *Add. Annotation*:—*Consd. Re Pitchford*, [1924] 2 Ch. 260.

2991. *Add. Annotation*:—*As to (1) Reid. Abraham v. Buckley*, [1924] 1 K. B. 903.

2993. *Add. Annotation*:—*Consd. Re Pitchford*, [1924] 2 Ch. 260.

3001. *Add. Citation*:—*sub nom. R. v. SUSSEX JJ.*, 14 J. P. Jo. 224.

3038. *Add. Annotation*:—*Consd. Re A Debtor*, [1927] 2 Ch. 367.

3049. *Add. Annotation*:—*Reid. Re L. A. & B. F. M., Official Receiver v. The Debtors* (1926), 95 L. J. Ch. 258.

3050. *Add. Annotation*:—*Reid. Re Debtor*, [1928] Ch. 199.

3052a. ——— *Parties represented by independent counsel.*—Although the ct. has power to go behind a judgment or com-

promise, in order to ascertain whether a petition founded thereon has been properly presented, it will not do so where the parties were represented by independent counsel at the time of such judgment or compromise, unless there is evidence that counsel acted improperly or without full knowledge of the facts.—*Re DEBTOR* (No. 27 of 1927), *Ex p. DEBTOR v. PETITIONING CREDITOR* (1928), 97 L. J. Ch. 167; [1928] B. & C. R. 34, D. C.

3054. *Add. Annotation*:—*Reid. Re A Debtor*, [1927] 2 Ch. 367.

3105a. *Creditor money-lender—Contract harsh & unconscionable.*—A trustee in bkpcy. has no power to reject or reduce a proof by a money-lender, on the ground that the contract is harsh & unconscionable, such power being vested in the ct. alone.—*Re ARMSTRONG, Ex p. LIPTON* (1926), 95 L. J. Ch. 184; [1926] B. & C. R. 21.

3134. *Add. Citations*:—*sub nom. Re BYROM, Ex p. ECKERSLEY*, 22 L. J. Bcy. 27; 17 Jur. 198.

3137. *Add. Annotation*:—*Mentd. Re Jubilee Cotton Mills*, [1922] 1 Ch. 100.

3140. *Add. Annotation*:—*Reid. Re Debtors*, [1927] 1 Ch. 19.

3152a. ——— ——— ———.]—The effect of Bkpcy. Rules, 1915, r. 262 read with rr. 26, 27, 28, is that subject to the ct.'s power to extend the time, which will only be exercised in very special circumstances, no application to reverse or vary the trustee's decision in rejecting a proof can be entertained unless it is made by notice of motion supported by affidavit & set down within 21 days of the decision, so that there is an effective application before the ct. within that period.—*Re BARLEY*, [1923] 1 Ch. 177; *sub nom. Re BARLEY, Ex p. HARRISON*, 92 L. J. Ch. 419; [1922] B. & C. R. 258.

#### PART VIII. SECT. 4, SUB-SECT. 7.

si. *Costs of solicitors retained to oppose granting of receiving order.*—*Held*: the solrs. were entitled to rank upon the estate of debtor for the amount of their costs so incurred.—*Re TUNNEL, LTD.*, [1924] 4 D. L. R. 862; 56 O. L. R. 110; 5 C. B. R. 73.—CAN.

#### PART VIII. SECT. 6, SUB-SECT. 1.

3018 v. ——— *Name & description of declarant.*—It is sufficient if the initials of the christian names & the full surname be given, & words setting forth the occupation or station in life of the declarant.—*Re MCCOUBREY, Re STRATTON & GREENSHIELDS, LTD.*, [1924] 4 D. L. R. 1227; [1924] 3 W. W. R. 587.—CAN.

3018 vi. ——— *Omission of "make oath & say"*—*Effect of substitution of words having same meaning.*—The declaration should not be rejected for such variance.—*Re MCCOUBREY, Re STRATTON & GREENSHIELDS, LTD.*, [1924] 4 D. L. R. 1227; [1924] 3 W. W. R. 587.—CAN.

3018 vii. ——— *Statement of account—Sufficiency of statement.*—The statement of account is *prima facie* properly referred to in a declaration only when it is "annexed & marked 'A.'" If, however, the statement is a proper one & is annexed to the declaration, though not so marked, & from an examination thereof in conjunction with the declaration or from other circumstances, it may reasonably be concluded that the statement is that referred to, it may be admitted.—*Re MCCOUBREY, Re STRATTON & GREENSHIELDS, LTD.*, [1924] 4 D. L. R. 1227; [1924] 3 W. W. R. 587.—CAN.

3020 i. *Proof on behalf of corpora*

tion.]—(1) The declarant need not expressly describe himself as one of the classes authorised to make the declaration.

(2) Where the declaration does not state that the deponent has knowledge of the facts deposed to it is objectionable & should be rejected.—*Re MCCOUBREY, Re STRATTON & GREENSHIELDS, LTD.*, [1924] 4 D. L. R. 1227; [1924] 3 W. W. R. 587.—CAN.

sj. *Interlineations & erasures.*—Although the declaration contains interlineations & erasures not duly initialed, it may be received, in the discretion of the official receiver, chairman, or trustee, if he is satisfied that the change was made before the declaration was sworn.—*Re MCCOUBREY, Re STRATTON & GREENSHIELDS, LTD.*, [1924] 4 D. L. R. 1227; [1924] 3 W. W. R. 587.—CAN.

3024 ii. ———.]—It is sufficient if made before a person authorised to take affidavits under Canada Evidence Act, R. S. C., 1906 (c. 145), s. 36.—*Re MCCOUBREY, Re STRATTON & GREENSHIELDS, LTD.*, [1924] 4 D. L. R. 1227; [1924] 3 W. W. R. 587.—CAN.

#### PART VIII. SECT. 6, SUB-SECT. 2.

sk. *Necessity for filing claim.*—Neither the ct. nor the trustee will consider a creditor's claim against bkpt.'s estate until it has been filed.—*Re CONTINENTAL PUBLISHING Co., Ex p. DAVIS & SIMMONS*, [1924] 1 D. L. R. 339; 4 C. B. R. 343.—CAN.

#### PART VIII. SECT. 7, SUB-SECT. 1.

3035 iv a. ——— ———.]—*Re UNION, INDIAN SUGAR MILLS Co., LTD. v. BRIJ LAL, JAGANNATH* (1927), 1 L. R. 49 All. 728.—IND.

3035 vi. ——— ———.]—The judge has

power to inquire into the consideration for the judgment debt.—*Re ALLAN GRAIN GROWERS' CO-OPERATIVE ASSOCN., Ex p. ROBINSON, LITTLE & Co.* (1922), 65 D. L. R. 347; 15 Sask. L. R. 295; [1922] 2 W. W. R. 142.—CAN.

3057 i. ——— *Except in regard to assessed taxes.*—Judgment was recovered by the A.-G. of the Irish Free State against R. for excess profits duty in respect of the four accounting periods ending Dec. 31, 1917, 1918, 1919, 1920. The assessments were made by the revenue officials of the Irish Free State subsequent to Mar. 31, 1923. On the petition of the A.-G., R. was adjudged bkpt.:—*Held*: the position behind the judgment could be examined to determine the question whether the A.-G. was a competent petitioning creditor in respect of the amount of the duties.—*Re READE*, [1927] 1 R. 31.—IR.

#### PART VIII. SECT. 8, SUB-SECT. 5.

3147 ii. ——— *To direct issue.*—*Held*: the bkpcy. judge had power to direct an issue to be tried.—*INTER-PROVINCIAL FLOUR MILLS, LTD. v. WESTERN TRUST Co.*, [1923] 2 D. L. R. 361; 16 Sask. L. R. 401; [1923] 1 W. W. R. 1068.—CAN.

3157 i. ——— *Evidence.*—The authorised trustee, or claimant, may use as evidence the whole or any part of examinations of directors of debtor corp. taken under Bkpcy. Act, s. 56.—*Re CHRISTIE GRANT, LTD.*, [1921] 3 W. W. R. 264; 1 C. B. R. 489.—CAN.

3157 ii. S. P. *Re DUMFERMLINE TRADING Co., Ex p. RELIABLE TRADING Co.* (1922), 66 D. L. R. 813; [1922] 2 W. W. R. 1274.—CAN.

3167. *Add. Annotation* :—Mentd. *Re* Pitchford,  
[1924] 2 Ch. 260.

—**Consd. *Re* Searle, Hoare,**

- 3178a. Debt arising out of harsh & unconscionable contract—Creditor money-lender.]—*Re ARMSTRONG, Ex p. LIPTON*, No. 3105a, *ante*.**

- 3200. Add. Annotation :—***Apld. Re Home & Colonial Insce.* (1928), 44 T. L. R. 718.

- 3210. Add. Annotation :—***Consd. Re Searle, Hoare,*  
[1924] 2 Ch. 325.

- 3210a. —.]—Where, after the admission by the trustee of a creditor's proof against bkpt.'s estate & that creditor's participation in a first dividend, it was ascertained that he had proved for & received more than he was entitled to, & upon an application to the ct. his proof was reduced:—*Held*: in the absence of any rule in bkpcy., the well-known principle of equity, that a beneficiary who has been overpaid is not entitled to receive any further payment out of the common fund, until the payments to the other beneficiaries are levelled up to the amount received by the overpaid beneficiary, was applicable with the result that the overpaid creditor was not entitled to participate in any future dividends in respect of his reduced proof without giving credit for the overpayment in respect of his original proof.

The mere fact that the trustee cannot recover either payments made to a creditor whose proof is subsequently expunged or

overpayments made to a creditor whose proof is subsequently reduced, does not prevent the operation of that equitable principle in the case of a proof in bkpcy. Nor does the judgment of JESSEL, M.R., in *Re Tail, Ex p. Harper* (see No. 3210), contain any statement inconsistent with that application of the principle.—*Re SEARLE, HOARE & Co.*, [1924] 2 Ch. 325; 68 Sol. Jo. 755; *sub nom. Re SEARLE, HOARE & Co.*, *Ex p. TRUSTEE*, 93 L. J. Ch. 571; 132 L. T. 21; [1924] B. & C. R. 114.

- 3214. Adā. Annotation:—Mentd. Re Maxson,**  
*Ex p. Trustee, [1919] 2 K. B. 330.*

- 3222. Add. Citation :—**[1918-19] B. & C. R. 276.

- 3224. Add. Annotation :—***Reid. Re Maxson, Ex p. Trustee* (1919), 88 L. J. K. B. 4.

- 3264a. ——— Dividend received.]—Applts. sold a quantity of rice to a purchaser. The purchase-money was not paid, & the vendors brought an action claiming the return of the goods on the ground that they had been obtained by the fraud of the purchaser. The purchaser became bkpt., & resps., who were the trustees in the bkpcy., were added as defts. The vendors afterwards proved for the price of the goods sold in the bkpcy. & received a dividend:—*Held*: they had elected to affirm the contract of sale, & the action could not be maintained.—KIN TYE LOONG v. SETH (1920), 89 L. J. P. C. 113 ; 123 L. T. 639 ; [1920] B. & C. R. 89, P. C.

- 3267. Add. Annotations:—**Mentd. The Joannis Vatis (No. 2), [1922] P. 213; The Goulandris, [1927] P. 182.

## Part IX.—Secured Creditors.

- 3334. Add. Annotation :—***Reid. Benton v. Campbell, Parker, [1925] 2 K. B. 410.*

- 3360.** *Add. Annotation :—***Refd. Re** Buch, [1927]  
W. N. 299.

**PART VIII. SECT. 10.**

- 3218 ii. ————.)—The creditor was allowed to amend his claim & set out the security which he held.—STERLING CLOTHING CO. v. MEN'S ATTIRE REGISTERED (1922), 66 D. L. R. 358; 2 C. B. R. 535.—CAN.

- 3218 iii. — *Proof made on footing of holding security—Security invalid.* — Claimant was allowed to amend his claim.—*Re DUMFERMLINE TRADING Co., Ex p. RELIABLE TRADING Co.* (1922), 66 D. L. R. 813; [1922] 2 W. W. R. 1274.—CAN.

**PART VIII. SECT. 12.**

- al. Claim rejected in part—Right of creditor to appeal.]—**A creditor received a notice from the trustee disallowing part of his claim & enclosing a cheque for the balance. The creditor clearly showed that he had no intention of accepting the cheque in full accord & satisfaction of his claim, but he cashed the cheque:—*Held*: the creditor was not thereby debarred from appealing from the disallowance by the trustee.—*Re COHEN & SWEIGMAN, Ex p. GELMAN*, [1925] 4 D. L. R. 359.—CAN.

- sm. Claim of Crown rejected—Position of Crown.]—Re WARDFOLD MANUFACTURING CO., [1926] 3 D. L. R. 333; 59 O. L. R. 195.—CAN.**

**PART IX. SECT. 1.**

- 3832 iv. — Appeal from decision of referee—Forbidding creditor to enforce**

*security.*—*Re* CANADIAN WESTERN STEEL CORPN. (1922), 69 D. L. R. 689; 2 C. B. R. 494.—CAN.

**b i. To advise as to validity of lien.]—**A judge of the Ct. of K. B. has jurisdiction to advise an assignee for the benefit of creditors on whether certain creditors have a mechanics' lien on the assets of the estate.—*Re BECK*, [1921] 3 W. W. R. 150.—CAN.

**PART IX. SECT. 2.**

**sn. Assignment of unpaid purchase-money under farm sale agreement to secure balance of purchase price of other property.**—*Held*: *pltf.* was a secured creditor.—**ANDERSON v. SERGE, [1924] 2 D. L. R. 1018; [1924] 1 W. W. R. 1260; 18 Sask. L. R. 255.—CAN.**

50. *Lease of property on crop-payment plan.*—Lessor held a secured creditor in respect of rent.—*Re TURNER* (1922), 65 D. L. R. 130; 15 Sask. L. R. 381; [1922]-2 W. W. R. 414.—CAN.

sp. —.]—*Held*: the lessor to the extent of his share of the crop reserved as rent was protected against the creditors of the lessee, notwithstanding a provision in the lease whereby the lessee's share of the crop was to be applied in payment of debts owing by the lessee to the lessor outside of the lease.—*Re DEMRY & DEMRY, TRUSTEE v. HALLAND*, [1924] 4 D. L. R. 1275; [1924] 3 W. W. R. 708.—CAN.

sq. Purchase of property by third party.—*Agreement to transfer on repayment.*—*Held*: the purchaser was a secured creditor.—*Re BOURGEOIS*,

[1923] 2 W. W. R. 204; 3 C. B. R. 841.—CAN.

**st. Judgment recovered before assignment—After passing of Bankruptcy Act, 1919.]—Held:** the assignment took precedence over the judgment.—**PARKER-EAKINS CO. v. ROYAL BANK OF CANADA** (1922), 65 D. L. R. 679.—**CAN.**

sv. —.]—*Re* AYLWARD, *Ex p.*  
MCMILLAN (P. E. I.), [1927] 4 D. L. R.  
305; 8 C. B. R. 352.—CAN.

**3347 ii. Seizure of goods under lien notes—Acquired with knowledge of insolvency—By holder of unregistered bill of sale.**—*Re MUSTARD*, [1923] 2 D. L. R. 922; 4 C. B. R. 140; *affd.* 24 O. W. N. 513.—**CAN.**

t (p. 358) i. —.]—The term "secured creditor" in Bkpcy. Act, s. 9, includes a creditor who has obtained a charging order against a fund in ct.—*Re KAPLAN, McLEAN (J. J. H.) ESTATE CO. v. NEWTON (Man.)*, [1926] 3 W. W. R. 593.—CAN.

t (p. 358) li. S. P. BORTOLUZZI v. KAPLAN (Man.), [1927] 1 D. L. R. 183. —CAN.

**sw. Distress.**—When a landlord distrains he becomes a secured creditor under Bkpcy. Act, but, in Alberta, his rights & priorities are not governed by that Act, but are subject to Landlord's Rights (Bkpcy.) Act, Alta., 1924 (c. 12), s. 3.—*Re HAMILTON & OAKES*, [1925] 2 D. L. R. 514; [1925] 1 W. W. R. 172; 5 C. B. R. 465.—CAN.

**3380 i. Appointment of receiver.]—**  
**An order appointing a receiver:—**



3363. *Add. Annotation*:—Mentd. *Giles v. Kruyer*, [1921] 3 K. B. 23.

3365. *Add. Annotation*:—Mentd. *Re Chiandetti, Ex p. Trustee* (1921), 91 L. J. K. B. 70.

3365a. —.]—*Re BUEB, Ex p. TRUSTEE* (1927), 64 L. Jo. 476; 164 L. T. Jo. 408.

3375a. *Deposit of securities*—To secure joint debt of firm—Debts due under separate personal guarantees of partners.]—The general rule in bkpcy., that, when a creditor seeks to prove against his debtor's estate, he must give up or value any security which if not retained by him would go to augment that estate, presupposes that the security is for the particular debt for which he seeks to prove, & does not apply to a case where the security is for a different debt.

Where, therefore, two of the partners of a firm deposited with the bankers of the firm securities which belonged to them individually to secure a joint debt of the firm, & also gave the bankers their separate personal guarantees up to a limited amount to pay the joint debt of the firm, & the firm subsequently, as debtors, executed a deed of assignment for the benefit of their creditors, which provided that in the administration

*Held*: not to be a charge, & a judgment creditor of bkpt. not by virtue of the order a secured creditor.—*Re PETERSON, Re HOLLOWAY*, [1925] 4 D. L. R. 1042; [1925] 3 W. W. R. 708.—CAN.

*xx. Judgment for tolls for water supplied by municipality.*]—*Held*: the city of K. was, by virtue of the charge given it by Water Act, B.C., 1914, s. 151, a secured creditor.—*Re KAM-LOOPS COPPER CO., Ex p. KAMLOOPS*, [1925] 3 D. L. R. 896; [1925] 2 W. W. R. 733; 35 B. C. R. 243.—CAN.

*(p. 360) i. — Joint & several note.*]—*Held*: the holder of the notes was not a secured creditor.—*HODGE v. MCLEAN & UNION BANK OF CANADA*, [1919] 3 W. W. R. 1108; 50 D. L. R. 125; 13 Sask. L. R. 85.—CAN.

*t (p. 362) i. Lien upon mining lands for wages.*]—*Held*: claimants were not secured creditors.—*Re REEVE DOBIE MINES, WAGE-EARNERS CLAIM* (1921), 64 D. L. R. 534; 50 O. L. R. 499; 1 C. B. R. 540.—CAN.

*sy. Wife taking security for money advanced to husband for business purposes.*]—*HAW v. HAW'S OFFICIAL ASSIGNEE*, [1927] N. Z. L. R. 366.—N.Z.

#### PART IX. SECT. 3.

*h i. —.*]—An assignment under Bkpcy. Act does not interfere with or lessen the rights of a secured creditor to enforce or retain his security.—*WHITE & CO. v. THE IONIA* (1922), 69 D. L. R. 94; 20 Exch. O. R. 327.—CAN.

*h ii. —.*]—In bkpcy. the rule of equality is absolute except where Bkpcy. Act itself gives priority to some debts over others.—*Re ORZY*, [1924] 1 D. L. R. 250; 53 O. L. R. 323; 3 C. B. R. 737.—CAN.

*h iii. —.*]—The rights of secured creditors remain unimpaired in the event of a receiving order or authorised assignment being made, & any proceedings taken to constitute a creditor a secured creditor or to realise on his security shall not, if legal, be interfered with or vacated.—*Re HAMILTON & OAKES*, [1925] 2 D. L. R. 514; [1925] 1 W. W. R. 172; 5 C. B. R. 465.—CAN.

3383 *xxi. — Mortgage on vessel—Right to enforce security in admiralty court.*]—*Held*: an assignment under Bkpcy. Act did not prevent the holder of a mtge. upon a vessel from enforcing his security before the Exch. Ct. in

*Admty.*—*WHITE & CO., LTD. v. THE IONIA*, [1921] 20 Exch. C. R. 327; 1 C. B. R. 415.—CAN.

3383 *xxii. — Security not realising sufficient to satisfy debt—Right to prove for balance.*]—If a creditor fails to file his claim in accordance with Bkpcy. Act, s. 46, he cannot proceed against the insolvent, after a composition has been confirmed, for payment of the composition dividend on the unrealized portion of his secured debt.—*DALEY & MORIN v. FOGEL* (1922), 68 D. L. R. 772.—CAN.

3386 *iv. —.*]—*Held*: a vendor secured by a lien note might seize the goods & obtain an order for sale, though he had not proved in the bkpcy.—*Re EMPIRE TRACTION CO., LTD.*, [1920] 3 W. W. R. 515.—CAN.

3386 *v. —.*]—A secured creditor may proceed to realise his security independently of any bkpcy. or winding-up proceedings.—*Re CANADIAN WESTERN STEEL CORPN.* (1922), 69 D. L. R. 689; 2 C. B. R. 494.—CAN.

*sz. Right to sue under Fraudulent Preferences Act, R. S. S., 1920 (c. 204).*]—If the security of a secured creditor is sufficient to satisfy his claim in full he cannot bring action under the above Act.—*BARRETT v. BARON*, [1925] 1 D. L. R. 474; [1925] 1 W. W. R. 87; 19 Sask. L. R. 207; 5 C. B. R. 448.—CAN.

*sa. Settlement of claim by trustee & secured creditor.*]—*Held*: creditor estopped from setting up a preference in respect of part of his claim, unless the settlement contains an express stipulation to the contrary.—*Re MARTIN MILK PRODUCTS*, [1925] 1 D. L. R. 533; 5 C. B. R. 281.—CAN.

*sb. Sufficiency of security—Presumption.*]—In the absence of evidence to the contrary, it is presumed that the security of a secured creditor is sufficient to realise his claim.—*ANDERSON v. SERGE*, [1924] 1 W. W. R. 1260; [1924] 2 D. L. R. 1018; 18 Sask. L. R. 255.—CAN.

#### PART IX. SECT. 4, SUB-SECT. 2.

*q i. — Guarantee by third party.*]—A guarantee by a third party or a charge on the property of a third party is outside Bkpcy. Act, s. 46 (3), & the creditor is not called upon to value the security.—*Re COUGHLIN & CO., Ex p. GUARANTEE CO. OF NORTH AMERICA*, [1923] 3 W. W. R. 1177; 4 D. L. R. 971.—CAN.

of the joint & separate estates of the debtors the rules prevailing in bkpcy. should be followed:—*Held*: as the bankers did not hold a charge on the securities so deposited for the debts due under the separate guarantees given by the two partners, & therefore, were not "secured creditors" within the definition in 1914 Act, s. 167, in respect of those debts, they were entitled to prove for them under the trusts of the deed of assignment against the estates of the two partners without giving credit for the value of those securities.—*Re DUTTON, MASSEY & CO., Ex p. MANCHESTER & LIVERPOOL DISTRICT BANKING CO.*, [1924] 2 Ch. 199; 93 L. J. Ch. 547; 131 L. T. 622; 68 Sol. Jo. 536; [1924] B. & C. R. 129, C. A.

3378. *Add. Annotation*:—Mentd. *Re Gunsbourg*, [1920] 2 K. B. 426.

3383. *Add. Annotation*:—Mentd. *Re A Debtor*, [1922] 2 K. B. 109.

3383a. —.]—*Re DUTTON, MASSEY & CO., Ex p. MANCHESTER & LIVERPOOL DISTRICT BANKING CO.*, No. 3375a, *ante*.

3412. *Add. Annotations*:—Consd. *Re A Debtor*, [1922] 2 K. B. 109.

*so. Effect of—On creditor's rights against sureties.*]—Where a creditor on filing a claim against bkpt. values his security, & such valuation is accepted, he is not thereby paid to the extent of the valuation so as to relieve the sureties from liability therefor.—*KUPROSKI v. ROYAL BANK OF CANADA*, [1926] 3 D. L. R. 801; [1926] S. C. R. 532; 7 C. B. R. 499.—CAN.

#### PART IX. SECT. 4, SUB-SECT. 3.

*e i. —.*]—Where a trustee took possession of goods upon which liens were held by virtue of an oral election to redeem at a valuation:—*Held*: he could not contend that it was invalid because not in writing.—*Re GUARANTEED BATTERIES, LTD.*, [1923] 3 D. L. R. 743; 53 O. L. R. 45; 3 C. B. R. 695.—CAN.

#### PART IX. SECT. 4, SUB-SECT. 4.—B.

*sd. Necessity for.*]—Under Bkpcy. Act, s. 6, no leave is necessary for a secured creditor to proceed to realise on his security.—*IMPERIAL LUMBER CO. v. JOHNSON*, [1923] 1 D. L. R. 1125; 1 W. W. R. 920; 3 C. B. R. 707.—CAN.

#### PART IX. SECT. 4, SUB-SECT. 5.—D.

3500 *v. —.*]—A bank held liens upon bkpt. co.'s personal property which it valued in pursuance of Bkpcy. Act. The goods were sold for a greater sum than the valuation:—*Held*: the bank was entitled to receive all moneys realised from the sale of the goods under lien, subject only to a claim for wages & the charges of local agents.—*Re GUARANTEED BATTERIES, LTD.*, [1923] 3 D. L. R. 743; 53 O. L. R. 45; 3 C. B. R. 695.—CAN.

3500 *vi. —.*]—A bank paid over to the trustee in bkpcy. the amount realised in excess of its claim, & subsequently it was found that payment of its claim fell short by the amount realised under a forged bill of lading:—*Held*: the bank was entitled to be repaid such shortage by the trustee.—*Re ADANAO GRAIN CO., LTD.*, [1922] 1 W. W. R. 849; 66 D. L. R. 772; 31 Man. L. R. 480.—CAN.

3500 *vii. — Right to payment in full.*]—A. & B. valued their securities in bkpcy. proceedings at amounts less than the principal sums covenanted to be paid. The trustee in bkpcy. having sold the mortgaged lands:—*Held*: A.



3505. *Add. Annotations*:—Consd. *Re Thellusson, Ex p. Abdy*, [1919] 2 K. B. 735; *Re Wigzell, Ex p. Hart*, [1921] 2 K. B. 835; *Refd. Scranton's Trustee v. Pearse*, [1922] 2 Ch. 87. *Mentd. Re Stokes, Ex p. Mellish*, [1919] 2 K. B. 256.

3558. *Add. Citation*:—*sub nom. Re EMERT, Ex p. ANDREWS*, 1 Madd. 573.

*Add. Annotations*:—*Refd. Dalby v. India & London Life Assce.* (1854), 18 Jur. 1024; *Crompton v. Huber* (1855), 25 L. T. O. S. 43.

## Part X.—Mutual Credit and Set-off in Bankruptcy.

3562. *Add. Annotations*:—Consd. *Re National Benefit Assce.*, [1924] 2 Ch. 539. *Refd. Paddy v. Clutton*, [1920] 2 Ch. 554; *Re City Life Assce.* (1925), 42 T. L. R. 45. *Mentd. Ellis' Trustee v. Dixon-Johnson*, [1924] 2 Ch. 451.

3566a. ———.]—*Ex p. EDWARDS* (1745), 1 Atk. 100; 26 E. R. 66, L. C.

*Annotation*:—*Refd. Ex p. Quinten* (1796), 3 Ves. 248.

3580. *Add. Annotation*:—*Refd. Re Lloyd's Furniture Palace, Evans v. The Co.*, [1925] Ch. 853.

3598. *Add. Annotation*:—*Refd. Re City Life Assce.* (1925), 42 T. L. R. 45.

3599. *Add. Annotation*:—*Expld. Giles v. Kruyer*, [1921] 3 K. B. 23.

3612. *Add. Annotation*:—*Mentd. Re Gunsbourg*, [1920] 2 K. B. 426.

3621. *Add. Annotations*:—*Mentd. The Countess*, [1921] P. 279; *Fooks v. Smith*, [1924] 2 K. B. 508.

3625. *Add. Annotation*:—Consd. *Re City Life Assce.* (1925), 42 T. L. R. 45.

3637a. *Equitable debt—Against legal debt.*]—Bkpcy. jurisdiction proceeds upon equitable principles & draws no distinction between equitable & legal rights for the purposes of administration; & debt. is entitled under 1914 Act, s. 31, to set off against a legal debt claimed by a trustee in bkpcy. an equitable debt due to him from bkpt., both debts being in existence before the date of the receiving order.—*MATHIESON'S TRUSTEE v. BURRUP, MATHIESON & Co.*, [1927] 1 Ch. 562; 96 L. J. Ch. 143; 136 L. T. 796; [1927] B. & C. R. 47.

3645. *Add. Annotation*:—*Mentd. Joachimson v. Swiss Bank Corp.*, [1921] 3 K. B. 110.

3648. *Add. Annotation*:—*Refd. Paddy v. Clutton*, [1920] 2 Ch. 554.

3653. *Add. Annotations*:—*Folld. Paddy v. Clutton*, [1920] 2 Ch. 554. *Distd. Re National Benefit Assce.*, [1924] 2 Ch. 339.

N.F. *Re City Life Assce.* (1925), 42 T. L. R. 45.

3654. *Add. Annotations*:—Consd. *Re City Life Assce.* (1925), 42 T. L. R. 45. *Mentd. Paddy v. Clutton*, [1920] 2 Ch. 554.

3655. *Add. Annotation*:—Consd. *Re A Debtor*, [1927] 1 Ch. 410.

3660. *Add. Annotation*:—*Refd. Ellis' Trustee v. Dixon-Johnson*, [1924] 2 Ch. 451.

3661. *Add. Annotation*:—*Refd. Ellis' Trustee v. Dixon-Johnson* (1924), 131 L. T. 652.

3662. *Add. Annotation*:—*Refd. Re A Debtor*, [1927] 1 Ch. 410.

3678. *Add. Annotations*:—Consd. *Paddy v. Clutton*, [1920] 2 Ch. 554; *Re National Benefit Assce.*, [1924] 2 Ch. 339. *Apld. Re City Life Assce.* (1925), 42 T. L. R. 45. *Refd. Ellis' Trustee v. Dixon-Johnson*, [1924] 2 Ch. 451.

3679. *Add. Annotation*:—*Refd. Benton v. Campbell, Parker*, [1925] 2 K. B. 410.

3680. *Add. Annotations*:—Consd. *Re City Life Assce.* (1925), 42 T. L. R. 45. *Refd. Ellis' Trustee v. Dixon-Johnson*, [1924] 2 Ch. 451.

3681. *Add. Annotations*:—*Mentd. A.-G. v. De Keyser's Royal Hotel*, [1920] A. C. 508; *Verschures Creameries v. Hull & Netherlands S.S. Co.*, [1921] 2 K. B. 608; *Edwards v. Motor Union Insce.*, [1922] 2 K. B. 249; *Anderson v. Equitable Life Assce. Soc. of United States* (1926), 134 L. T. 557.

3695. *Add. Annotation*:—*Refd. Baker v. Lloyd's Bank*, [1920] 2 K. B. 322.

3696a. *Shares deposited as security for debit balance owing to bankrupt—Unauthorised sale by bankrupt.*]—Deft. opened a speculative account with a firm of stockbrokers & deposited with them as security for any debit balance which might from time to time be owing by him on that account the indicia of

B. were entitled on allocation to payment of the full amount of their claims with interest.—*Re TURKETINE'S ES.* [1920] 1 I. R. 23.—IR.

ss. *Claim partly unsecured—Appropriation of payments to unsecured claim not permissible.*]—*MOORE v. WILLIAMS (A. R.) MACHINERY CO., LTD.*, [1925] 3 D. L. R. 1009.—CAN.

PART X. SECT. 1, SUB-SECT. 2.—B. (c).

3600 v. ———. *Rebates on insurance premiums.*]—Debtor co. were indebted to a broker upon accepted drafts for insurance premiums paid by him on their behalf, & arranged with the broker to cancel the insurance policies upon which he had paid the premiums represented by the unpaid drafts, & to have the amounts allowed by way of rebate for the unearned premiums paid by the insurance cos.

to the broker.—*Held*: the broker was entitled to apply the sum paid to him for rebates in reduction of the co.'s indebtedness, or by way of set-off against his claim for the amount of the premiums paid by him.—*Re FAIRWEATHERS, LTD.* (1921), 67 D. L. R. 590; 51 O. L. R. 438; 2 C. B. R. 202.—CAN.

3600 vi. ———. *Creditor for services rendered—Debtor for goods delivered by bankrupt—Agreement for services to be paid for by supply of goods.*]—*Held*: there was a right of set-off.—*Re MCMURTRY & Co., Ex p. JAMES (M. A.) & SONS*, [1924] 1 D. L. R. 737.—CAN.

PART X. SECT. 1, SUB-SECT. 3.

3646 i. *Arrears of rent—Against sum due for grass seed.*]—*Held*: the landlord could exercise the right of set-off.

—*Re GRANTHAM, Ex p. DOYLE*, [1923] 3 D. L. R. 94; 4 C. B. R. 168.—CAN.

3648 iii. ———.]—If shares in a co. are disclaimed by the official assignee upon the bkpcy. of a shareholder, & if for purposes of proof an estimate is made under Bkpcy. Act, 1908, s. 111, of the amount claimable in respect of future calls thereon, the co. may set off against such amount a sum due by the co. to bkpt. for goods supplied by him.—*Re ANDERSON*, [1924] N. Z. L. R. 1163.—N.Z.

PART X. SECT. 1, SUB-SECT. 4.

sm. *Claim by creditor to share of profits in business—Claim by insolvent for damages for breach of contract to purchase business.*]—*Held*: the case was one of mutual dealings.—*JEFFERY v. RANGOON OFFICIAL ASSIGNEE* (1927), 1 L. R. 6 Ran. 46.—IND.

title to various bonds & shares, including certain rubber shares. In 1920 the firm sold the rubber shares without the knowledge or authority of deft., who was kept in ignorance of the sale till after the bkpcy. of the firm. On Feb. 16, 1922, a receiving order was made against the firm & they were adjudicated bkpt. In Feb. 1923, the trustee in bkpcy. of the firm rendered deft. a final account, which, after giving credit to deft. for the proceeds of the sale of the shares, showed a balance due from deft. In an action to recover that balance the trustee claimed that the rights of the parties ought to be adjusted under the mutual credits clause of 1914 Act, as at the date of the receiving order. The judge, in ordering an account to be taken, directed that the value of the shares, to be ascertained when the account was certified, that being the date when the shares ought to have been returned to deft., should be set off against the claim of the trustee:—*Held*: the brokers could not have maintained an action for their debt if they were not in a position to hand over the shares against payment; & the trustee in bkpcy. had no higher right: no question of set-off arose under the mutual credits clause of 1914 Act, the right of deft. being to a return of the shares *in specie*; & in the special circumstances of the case the order of the judge was correct.—*ELLIS & Co.'s TRUSTEE v. DIXON-JOHNSON*, [1925] A. C. 489; 94 L. J. Ch. 221; 133 L. T. 60; 41 T. L. R. 336; 69 Sol. Jo. 395; [1925] B. & C. R. 54, H. L.

3697. *Add. Annotation*:—*Refd. Baker v. Lloyd's Bank*, [1920] 2 K. B. 322.

3702. *Add. Annotation*:—*Refd. Baker v. Lloyd's Bank*, [1920] 2 K. B. 322.

3707. *Add. Annotation*:—*Refd. Re City Life Assce.* (1925), 42 T. L. R. 45.

3714. *Add. Annotations*:—*As to (2) Consd. Re City Life Assce.*, [1926] Ch. 191. *Refd. Ellis' Trustee v. Dixon-Johnson*, [1924] 2 Ch. 451.

3719. *Add. Annotations*:—*Consd. Paddy v. Clutton*, [1920] 2 Ch. 554; *Ellis' Trustee v. Dixon-Johnson*, [1924] 2 Ch. 451. *Refd. Re*

*National Benefit Assce.*, [1924] 2 Ch. 339; *Re City Life Assce.* (1925), 42 T. L. R. 45.

3739. *Add. Annotations*:—*Consd. Paddy v. Clutton*, [1920] 2 Ch. 554; *Ellis' Trustee v. Dixon-Johnson*, [1924] 2 Ch. 451. *Refd. Re National Benefit Assce.*, [1924] 2 Ch. 339; *Re City Life Assce.* (1925), 42 T. L. R. 45.

3740. *Add. Annotations*:—*Consd. Re Debtors* (No. 771 of 1926) (1926), 43 T. L. R. 9. *Refd. Re Fredericke & Whitworth, Ex p. Hibbard*, [1927] 1 Ch. 253.

3740a. —.—.]—Applt., the managing director of a co. which was insolvent, recovered judgment against the co. for repayment of money lent by him to the co. Shortly afterwards, the provisional liquidator of the co., which was subsequently, in Apr. 1925, ordered to be wound up, paid to applt. the amount for which he had recovered judgment, & in Apr. 1926, an order was made in the winding up upon applt. to repay to the liquidator that amount, on the ground that the payment to him by the liquidator was void as a fraudulent preference. In consequence of applt.'s non-compliance with that order, a bkpcy. notice was served upon him, & a receiving order made against him, the registrar refusing to allow applt. to set off against the amount he had been so ordered to repay to the liquidator the sum for which he had recovered judgment against the co.:—*Held*: applt. had not, at the date of the receiving order, any valid or effectual right of set-off in respect of the sum he had been ordered to repay to the liquidator.—*Re A DEBTOR* (82 of 1926), [1927] 1 Ch. 410; 136 L. T. 349; *sub nom. Re MUMFORD, DEBTOR v. PETITIONING CREDITOR, Ex p. OFFICIAL RECEIVER*, 96 L. J. Ch. 75; [1926] B. & C. R. 165, D. C.

3741. *Add. Annotation*:—*Refd. Re A Debtor*, [1927] 1 Ch. 410.

3750a. —.—.]—*GROOM v. WEST* (1838), 8 Ad. & El. 758; 1 Per. & Dav. 19; 1 Will Woll. & H. 638; 8 L. J. Q. B. 25; 112 E. R. 1025; *sub nom. GOOM v. WEST*, 2 Jur. 940.

3769. *Add. Annotation*:—*Distd. Re Pennington & Owen*, [1925] Ch. 825.

## Part XI.—Joint and Separate Estates Bankruptcy of Firm or Partner.

3900. *Add. Annotations*:—*Refd. Re Biddulph, Ex p. Burton* (1843), 3 Mont. D. & De G. 364; *Stroud v. Gwyer* (1860), 28 Beav. 130.

3945a. Estate of undischarged bankrupt partner—Second bankruptcy of partner—Unsatisfied balance of joint liabilities in first bankruptcy.]—T. & M., partners in a firm, had been

adjudged bkpt.; bkpt. M.'s discharge had been refused, & there were unsatisfied joint debts in the bkpcy. of the firm; & a subsequent receiving order was made against M. under which he was again adjudged bkpt.:—*Held*: under 1914 Act, s. 33 (6) & s. 39 (1), the unsatisfied balance of the joint liabilities

### PART X. SECT. 5, SUB-SECT. 1.

3784 i. *How right to retain lost—Proof against bankrupt.*]—*Re LUSSIER*, [1927] 4 D. L. R. 637; 61 O. L. R. 177.—CAN.

### PART XI. SECT. 1.

3788 v. —.—.]—The separate creditors must be satisfied in full before the partnership creditors can rank, & as to partnership assets, the partnership creditors must first be satisfied in full before the separate creditors can rank.—*Re TAYLOR v. LEVEYS*, [1923] 3

D. L. R. 1134; 52 O. L. R. 201; 2 C. B. R. 390.—CAN.

3788 vi. —.—.]—*Re DAUM & PLAETZER, Ex p. MONROE* (Ont.), [1927] 4 D. L. R. 744; 8 C. B. R. 446.—CAN.

sp. *Effect of authorised assignment by firm.*]—An authorised assignment by a firm operates as an assignment also of the separate estate of each partner.—*Re COHEN & MAHLIN, CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD. v. SPIVAK*, [1927] 1 D. L. R. 577; [1927]

1 W. W. R. 162; 22 Alta. L. R. 487.—CAN.

st. *Motion by trustee to have debtor declared partner in bankrupt firm—Debtor entitled to be heard.*]—*Re POLLARD*, [1925] 4 D. L. R. 370.—CAN.

### PART XI. SECT. 3, SUB-SECT. 2.—O.

sz. *Money paid by partner under partnership agreement on death of bankrupt partner to deceased's estate.*]—*Re ENGELAND* (Ont.), [1926] 4 D. L. R. 1029.—CAN.

of the firm could be proved in the subsequent bkpcy. of M. by the trustee in the first bkpcy.—*Re Moss, Ex p. EVERITT* (1923), 93 L. J. Ch. 98; [1923] B. & C. R. 135.

4019. *Add. Annotation*:—Mentd. *The Kin Tye Loong v. Seth* (1920), 89 L. J. P. C. 113.

4068. *Add. Annotation*:—Mentd. *The Kin Tye Loong v. Seth* (1920), 89 L. J. P. C. 113.

4069. *Add. Annotations*:—*Refd. Re Gunsbourg*, [1920] 2 K. B. 426; *Moore v. Flanagan*, [1920] 1 K. B. 919. Mentd. *R. v. Paulson*, [1921] 1 A. C. 271; *Anderson v. Equitable Lite Assce. Soc. of United States* (1920), 134 L. T. 557; *Bennett v. Whitehead*, [1926] 2 K. B. 380.

4080. *Add. Annotation*:—Mentd. *The Kin Tye Loong v. Seth* (1920), 89 L. J. P. C. 113.

4102a. ———— *Separate personal guarantees of partners.*—*Re DUTTON, MASSEY & Co., Ex p. MANCHESTER & LIVERPOOL DISTRICT BANKING Co., No. 3375a, ante.*

4108. *Add. Annotation*:—*Consd. Re Dutton, Massey, Ex p. Manchester & Liverpool District Banking Co., [1924] 2 Ch. 199.*

4138. *Add. Annotation*:—Mentd. *Brocklebank v. R., [1925] 1 K. B. 52.*

4217. *Add. Annotations*:—*Apld. Houghton v. Nothard, Lowe & Wills, [1928] A. C. 1. Refd. Houghton v. Nothard, Lowe & Wills* (1927), 44 T. L. R. 76.

## Part XII.—Priority of Debts.

4279. *Add. Annotation*:—*Refd. Re Webb (Smithfield, London), [1922] 2 Ch. 369.*

4281a. ———— “Local rate”—Land drainage rate.]—A land drainage rate levied by a drainage board constituted under Land Drainage Acts, 1861 (c. 133), & 1918 (c. 17), is a local rate entitled to preferential payment within 1914

Act, s. 33 (1) (a).—*Re ELLWOOD, [1927] 1 Ch. 455; sub nom. Re ELLWOOD, Ex p. RIVER DEE DRAINAGE BOARD v. HOOSON, 96 L. J. Ch. 170; 136 L. T. 696; [1927] B. & C. R. 53, D. C.*

4284. *Add. Annotation*:—*Refd. Re Webb (Smithfield, London), [1922] 2 Ch. 369.*

### PART XI. SECT. 6, SUB-SECT. 1.

sa. *Right to claim for money advanced to partner after ineffective dissolution.*—*Re WALKER, [1920] 1 D. L. R. 274; 58 O. L. R. 141; 7 C. B. R. 4.—CAN.*

### PART XII. SECT. 1, SUB-SECT. 3.

sb. *Claim by Workmen's Compensation Board—For arrears of payment of assessments.*—*Claim refused.—WORKMEN'S COMPENSATION BOARD v. EDGAR, [1924] 3 D. L. R. 273; [1924] 2 W. W. R. 566; 20 Alta. L. R. 385.—CAN.*

sc. ———— *Extent of priority.*—*Re SYER, Ex p. WORKMEN'S COMPENSATION BOARD (Ont.), [1927] 3 D. L. R. 802; 8 C. B. R. 275.—CAN.*

### PART XII. SECT. 1, SUB-SECT. 4.

sd. *General rule*—The Crown has a prerogative right to be paid upon a distribution in bkpcy. in priority to other unsecured creditors, but it is merely a right of preference in the administration of the estate.—*Re TORONTO METAL & WASTE CO. (1921), 67 D. L. R. 111; 51 O. L. R. 287; 2 C. B. R. 138.—CAN.*

se. ————]—Where the Crown is an unsecured creditor for taxes owing by bkpt., the Crown will take preference over all other secured creditors in respect of those taxes.—*Re NOEL, Ex p. GRAVELBOURG TOWN* (1922), 65 D. L. R. 754; 2 C. B. R. 545.—CAN.

sf. ————]—*Re STANDARD PHARMACY, LTD., Re ALBERTA PROVINCE'S CLAIM (Alta.), [1926] 2 D. L. R. 300; [1926] 1 W. W. R. 773.—CAN.*

sg. *Trustees entitled to set off payment of taxes against claim of landlords for arrears of rent.*—*Re GRANTHAM, Ex p. DOYLE, [1923] 3 D. L. R. 94; 4 C. B. R. 168.—CAN.*

4280 ii. ———— *Water rate.*—*Re AN ARRANGING DEBTOR, [1921] 2 I. R. 1.—IR.*

4280 iii. ———— *Light rates.*—*Re MATHESON, Ex p. PRINCE ALBERT (CITY), [1924] 1 W. W. R. 129; [1924] 1 D. L. R. 260; 18 Sask. L. R.—CAN.*

4280 iv. ———— *Electric power rates.*—*Re DECKER'S DELICATESSEN, [1925] 1 D. L. R. 652; 56 O. L. R. 140; 5 C. B. R. 208.—CAN.*

bi. ————]—*Re INTERNATIONAL METAL WORKS, LTD., Ex p. R., [1925] 1 D. L. R. 309; 5 C. B. R. 378.—CAN.*

b ii. ————]—*CANADIAN CREDIT MEN'S TRUST ASSOCN. v. EDMONTON CITY, [1925] 2 D. L. R. 525; [1925] 1 W. W. R. 747; 21 Alta. L. R. 160; 5 C. B. R. 587.—CAN.*

c i. ———— *Business taxes.*—*Re WEST (F. E.) & Co. (1921), 62 D. L. R. 207; 50 O. L. R. 631; 2 C. B. R. 3.—CAN.*

c ii. ————]—Where a township or municipality is, by a provincial statute, made a preferred creditor in respect of business taxes, this preference disappears when the statute is repealed by a dominion statute.—*Re NOEL, Ex p. GRAVELBOURG TOWN* (1922), 65 D. L. R. 754; 2 C. B. R. 545.—CAN.

c iii. ————]—A municipal corpn. is not entitled by Bkpcy. Act, s. 51 (6), to priority over other creditors of bkpt., for business taxes in respect of which no distress has been made.—*Re CECILIAN CO. (1922), 69 D. L. R. 679; 51 O. L. R. 649; 2 C. B. R. 510.—CAN.*

c iv. ————]—A city is in respect of business tax a secured creditor.—*Re MATHESON, Ex p. PRINCE ALBERT (CITY), [1924] 1 D. L. R. 260; [1924] 1 W. W. R. 129; 18 Sask. L. R. 3.—CAN.*

c v. ————]—*Re STANDARD PHARMACY, LTD., Re ALBERTA PROVINCE'S CLAIM (Alta.), [1926] 2 D. L. R. 300; [1926] 1 W. W. R. 773.—CAN.*

c vi. ———— *Dominion taxes—Over taxes due to municipality.*—*Held: Dominion taxes preferred.—Re ADAMS SHOE CO., Ex p. TOWN OF PENETANGUISHENE, [1923] 4 D. L. R. 927.—CAN.*

c vii. ———— *Income tax.*—*Re LE BLANC, [1924] 3 D. L. R. 256.—CAN.*

c viii. ————]—*Held: balance of income tax entitled to priority.—Re ORR, [1924] 2 I. R. 120.—IR.*

c ix. ————]—*R. v. LITHWICK & COLE* (1921), 20 Exch. C. R. 293.—CAN.

c x. ———— *Poll tax.*—*Re LE BLANC, [1924] 3 D. L. R. 256.—CAN.*

c xi. ———— *Sales taxes.*—*Held: the Crown was entitled to priority over all other unsecured creditors in respect of*

sales taxes.—*Re WEST (F. E.) & Co. (1921), 68 D. L. R. 772; 60 O. L. R. 631; 2 C. B. R. 3.—CAN.*

c xii. ————]—*Held: a creditor could not rank as a secured creditor in priority to the claim of the Crown for taxes on sales of goods to debtor.—Re NICHOLSON SALES & SERVICE CORPN., [1924] 3 D. L. R. 593; 4 C. B. R. 692.—CAN.*

——— *War revenue taxes.*—*See cases in Part XII., Sect. 1, sub-sect. 6, post.*

c xiii. ———— *Taxes assessed prior to assignment.*—*Held: the city had a preferential lien on the goods of the assignor for the above taxes.—Re MCKENZIE, [1924] 1 W. W. R. 159; 4 C. B. R. 492.—CAN.*

d i. ————]—*Held: debtor's chattels subject to seizure for arrears of taxes by the municipality even in the hands of the trustee.—Re HARRISON* (1922), 69 D. L. R. 658; 51 O. L. R. 634; 2 C. B. R. 360.—CAN.

d ii. ————]—*Re LAURANCE* (1923), 55 O. L. R. 196; 4 C. B. R. 349.—CAN.

sl. *Claim of inspector of taxation.*—*Re MCKENZIE, [1924] 1 W. W. R. 159; 4 C. B. R. 492.—CAN.*

### PART XII. SECT. 1, SUB-SECT. 5.

sm. *Bias of court in favour of creditor.*—The right of a creditor for arrears of wages to stand as a preferred creditor will be construed by the ct. with a bias in favour of the creditor.—*Re CORSON SHOE CO., [1924] 1 D. L. R. 555.—CAN.*

4285 ix. ———— *After judgment recovered.*—The claim of a wage-earner to priority for his wages remains a claim for wages even after judgment has been recovered.—*BALL v. THORNE* (1920), 46 O. L. R. 261; 50 D. L. R. 85.—CAN.

4285 x. ———— *Earned within three months of bankruptcy.*—*Held: a workman could only rank as a preferred creditor for wages earned within three months of the bkpcy.—RODDEN v. GOODMAN* (1922), 67 D. L. R. 635.—CAN.

4285 xi. ————]—*Held: the director & president & the director & secretary-treasurer of bkpt. co. were entitled to priority for wages or salaries in respect of services rendered*



**4295a.** Helping employer to perfect invention—Under agreement for payment out of profits.]—Where a clerk assisted his master in perfecting an invention, for which a patent had been obtained, upon an agreement to be paid out of the profits, but which agreement had no reference to his duties as clerk:—*Held*: he was not precluded from

proving for his remuneration as a clerk, or from receiving three months' salary in full.—*Re ELLINS, Ex p. HICKIN* (1850), 3 De G. & Sm. 662; 19 L. J. Bcy. 8; 14 L. T. O. S. 469; 14 Jur. 405; 64 E. R. 651.

**4298.** *Add. Annotation*:—*Consd. Moriarty v. Regent's Garage & Engineering Co* (1920); 90 L. J. K. B. 783.

to bkpt. co. during the three months before the date of the assignment.—*Re EASTERN ONTARIO MILK PRODUCTS CO.*, [1923] 1 D. L. R. 591; 52 O. L. R. 67; 21 O. W. N. 483.—CAN.

**4285 xii.** ————.]—*Held*: a claim for wages was not entitled to priority not being earned within three months immediately preceding he receiving order.—*Re CONTINENTAL PUBLISHING CO.*, *Ex p. DAVIS & SIMMONS*, [1924] 1 D. L. R. 339; 4 C. B. R. 343.—CAN.

**4285 xiii.** *S. P. Re OLYMPIA CAFE CO., LTD.*, *Ex p. BEDALI (Man.)*, [1927] 1 D. L. R. 907; [1927] 1 W. W. R. 131.—CAN.

**4285 xiv.** ————.]—*Commission payable when goods shipped—Services rendered more than three months before bankruptcy—Goods shipped within three months of bankruptcy.*—*Held*: the salesman could not rank as a preferred creditor in respect of such commission.—*Re HERCULES RUBBER CO.*, *Ex p. ALLAN*, [1924] 1 D. L. R. 999; 4 C. B. R. 555.—CAN.

**4285 xv.** ————.]—*Allowance for expenses.*—Where a person is employed as a travelling salesman & is given his expenses in addition to his salary, he may claim to stand as a preferred creditor as regards both his salary & his expenses.—*Re CORSON SHOE CO.*, [1924] 1 D. L. R. 555.—CAN.

**4289 ia.** ————.]—A travelling salesman, selling goods on commission, was allowed by debtor co. to sell their goods at specified prices, any goods sold by him to be invoiced to the customer at the price at which he sold, & he to be allowed the difference between the net price & his selling price:—*Held*: not entitled to priority.—*Re SPECIALITY BAGS, LTD.*, [1923] 1 D. L. R. 827; 53 O. L. R. 355; 3 C. B. R. 617.—CAN.

**4292 i.** ————.]—*Accountant—Monthly salary—Part time employment.*—*Held*: he was a servant & entitled to rank as a preferred creditor.—*Re GORDEAN FURNITURE CO.*, *Ex p. SLADDEN*, [1923] 4 D. L. R. 1198; [1923] 3 W. W. R. 630.—CAN.

**4298 i.** ————.]—*Company official—Director.*—The mere fact that a director who claims priority for wages is a superior officer of a co. does not of itself deprive him of priority. The real question is whether the person making the claim has contracted to render service to the co. beyond what would come within the scope of his duties as a statutory officer.—*Re EASTERN ONTARIO MILK PRODUCTS CO.*, [1923] 1 D. L. R. 591; 21 O. W. N. 483; 52 O. L. R. 67.—CAN.

#### PART XII. SECT. 1, SUB-SECT. 6.

**h i.** ————.]—The preferential rights of a landlord are restricted as provided by Landlord & Tenant Act, s. 38, & a landlord cannot claim to rank as a preferred creditor in respect of sums voluntarily paid by him for taxes owing by bkpt.—*Re CRYSTAL*, [1926] 2 D. L. R. 840; 59 O. L. R. 44.—CAN.

**h ii.** ————.]—*Under Landlord's Rights (Bankruptcy) Act, 1924 (c. 12) (Alta.), s. 3.*—The above sect. entitles a landlord to priority to the extent of the amount limited thereby over all bkpt.'s secured creditors, including the Crown.—*Re STANDARD PHARMACY, LTD.*, *Re ALBERTA PROVINCE'S CLAIM (Alta.)*, [1926] 2 D. L. R. 300; [1926]

**h iii.** ————.]—*Cannot be deprived of preferential lien—Except by agreement.*—*Re MILNER, Ex p. FORBES (Ont.)*, [1926] 2 D. L. R. 988; 7 C. B. R. 319.—CAN.

**si.** ————.]—*Special covenant.*—*Held*: notwithstanding a clause in a lease as to acceleration rent, the landlord was only entitled to rent for the time the premises were occupied by the trustee.—*CANADIAN CREDIT MEN'S TRUST ASSOCN. v. MONKA* (1924), 34 B. C. R. 99.—CAN.

**sn.** *Arrears of rent—Priority over War revenue taxes.*—*Re SOLOMONS BOCHNER FUR CO.*, [1924] 1 D. L. R. 685; 53 O. L. R. 497; 24 O. W. N. 42.—CAN.

**sp.** ————.]—The Crown claiming under War Revenue Tax Act & a landlord for arrears of rent rank *inter se* according to their priority in time.—*Re DAVIS*, [1924] 3 D. L. R. 556; 4 C. B. R. 698.—CAN.

**sq.** ————.]—*Sales tax.*—*Re CALCUS CO., LTD.*, *Ex p. MCGUIRE*, [1925] 3 D. L. R. 809; 57 O. L. R. 272; 5 C. B. R. 763; *revsq.*, [1925] 2 D. L. R. 246.—CAN.

**sr.** ————.]—*Taxes due under Income War Tax Act, 1917.*—*Re HUMBERSTONE COAL CO., LTD.*, *Ex p. NATIONAL TRUST CO., LTD.*, [1925] 3 D. L. R. 154; [1925] 2 W. W. R. 68; 5 C. B. R. 719; *revsq.*, [1925] 1 W. W. R. 964; 5 C. B. R. 639.—CAN.

**st.** ————.]—*Fees & expenses of trustee.*—The trustee's claim for his fees & expenses always precedes the Crown's claim for taxes under War Revenue Tax Act, but if the landlord's claim arose anterior to that of the Crown, then the trustee's claim will count after the landlord's & will precede the Crown's claim.—*Re DAVIS*, [1924] 3 D. L. R. 556; 4 C. B. R. 698.—CAN.

**sw.** *Covenant by tenant to pay taxes & other expenses.*—A landlord can only rank as a preferred creditor in respect of arrears of rent, & this is so even where the lease stipulates that the tenant shall make other payments, namely a portion of the taxes & costs of heating the premises.—*Re STANLEY MILLS CO.* (1924), 27 O. W. N. 123; *affg.*, [1924] 3 D. L. R. 40; 4 C. B. R. 655.—CAN.

**sx.** *Costs of distress.*—*Re MCKENZIE*, [1924] 1 W. W. R. 159; 4 C. B. R. 492.—CAN.

#### PART XII. SECT. 1, SUB-SECT. 9.

**i i.** ————.]—*Debt not being debt for taxes, rates or assessments.*—The Crown in the right of a province has no priority over other creditors of bkpt. with respect to a debt due to it which is not a debt for taxes, rates or assessments.—*Re CARDSTON U. F. A. CO-OPERATIVE ASSOCN., LTD.*, *Re PROVINCE OF ALBERTA*, [1925] 4 D. L. R. 897; [1925] 3 W. W. R. 651.—CAN.

**i ii.** ————.]—*Re STANDARD PHARMACY, LTD.*, *Re ALBERTA PROVINCE'S CLAIM (Alta.)*, [1926] 2 D. L. R. 300; [1926] 1 W. W. R. 773.—CAN.

**r i.** ————.]—*Sales taxes.*—Sales taxes due to the Dominion Govt. under Special War Revenue Act (Dom.), 1915 (c. 8), as enacted by 10 & 11 Geo. 5, c. 71, are merely debts due to the Crown, not expressly charged upon the assets of debtor.—*Re WEST (F. E.) & Co.* (1921), 62 D. L. R. 207; 50 O. L. R. 631; 2 C. B. R. 3.—CAN.

*mitted as settler's effects.*—*Held*: to take priority over the lien for costs given an execution creditor.—*Re WILEY, Re ANTHONY SALT CO., Re CROWN'S CUSTOMS DUTIES CLAIM*, [1925] 4 D. L. R. 790; [1925] 3 W. W. R. 683.—CAN.

**r iii.** ————.]—*Health Insurance contributions.*—On a claim for arrears due in respect of Health Insurance contributions, alleged to be recoverable as Crown debts ranking next after the usual preferential payments:—*Held*: Health Insurance contributions were recoverable only as a civil debt.—*Re LINDSAY*, [1926] N. 128.—IR.

**r iv.** ————.]—*Debt due to Land Commission.*—*Held*: a preferential debt.—*Re MALONEY*, [1926] I. R. 202.—IR.

**sa.** *Surety paying Crown debt.*—A surety who has paid the indebtedness of the principal debtor to the Crown is entitled to stand in the same position as the Crown & to exercise its remedies for the recovery of the debt.—*Re PATHE FRERES PHONOGRAPH CO. OF CANADA* (1921), 64 D. L. R. 628; 50 O. L. R. 644; 2 C. B. R. 21.—CAN.

#### PART XII. SECT. 1, SUB-SECT. 10.

*Fees & expenses of trustee.*—See cases in Part VII., Sect. 5, sub-sect. 2, A., *ante*.

**t i.** ————.]—*CRAWFORD & Co. v. HUNTERS & Co.* (1817), 1 Nfld. L. R. 43.—NFLD.

**t ii.** ————.]—*FERGUS & GLEN INSOLVENT ESTATE* (1831) 2 Nfld. L. R. 27.—NFLD.

**4331 i.** *Judgment creditor—Registered certificate of judgment.*—A judgment creditor of a bkpt., who has registered a certificate of judgment with the district registrar, is not entitled to a lien against the estate for the costs incurred in obtaining the judgment.—*Re YAWOSKI* (1922), 66 L. R. 570; [1922] 1 W. W. R. 296; 2 C. B. R. 181.—CAN.

**d i.** ————.]—*Held*: the trustee must pay the sheriff's fees & charges, including poundage & the costs of the execution creditor in priority to all other charges or claims.—*Re TORONTO METAL & WASTE CO.* (1921), 67 D. L. R. 111; 51 O. L. R. 287; 2 C. B. R. 138.—CAN.

**sb.** *Costs of action continued by trustee—With authority of court.*—*Held*: costs incurred after the insolvency preferred.—*MYERSON v. GREEN & HOMES* (1922), 68 D. L. R. 209.—CAN.

**m i.** *Price of goods supplied to debtor—With approval of trustee—For continuation of business after bankruptcy.*—*Held*: accounts for such goods preferred.—*Re MORRIS*, [1923] 3 D. L. R. 848; 53 O. L. R. 36.—CAN.

**so.** *Money-lender.*—In no case can a person who lends money to another before the latter's bkpcy. rank as a preferred creditor for the money so loaned.—*RODDEN v. GOODMAN* (1922), 67 D. L. R. 635.—CAN.

**sd.** *Solicitor—Costs of preparing authorised assignment.*—*Re JACOBSON, Ex p. GOLDBERG (N. B.)*, [1927] 2 D. L. R. 363; 8 C. B. R. 258.—CAN.

**se.** *Arrears of maintenance of lunatic.*—A person of unsound mind having died insolvent, arrears due for maintenance to the institution where he had been kept were allowed after debts due to the Crown, & in priority to the taxed costs of his committee.—*Re MAGUIRE*, [1923] 1 I. R. 108.—IR.

**4384a. Wife**—In respect of annuity for maintenance of husband's household.]—Where an annuity is secured to a wife by an antenuptial settlement to be expended in maintaining the husband's household, the wife cannot, on the husband's bkpcy., claim to be paid the amount in preference to the other creditors.—*BIRKETT v. PURDOM*, [1895] A. O. 371; 11 R. 184, H. L.

**4385a. ——— Bond to secure annuity taken in payment.**]—Where a woman lends money to her husband [to help him in his business] & then accepts from him, in lieu of the money lent, a bond to secure an annuity payable by him for her life, & he subsequently is adjudicated bkpt. or dies insolvent, she may claim in the bkpcy., or in the administration by the ct. of his estate, for the value of the annuity in competition with the creditors of the husband.—*Re SLADE, CREWKERNE UNITED BREWERIES, LTD. v. SLADE*, [1921] 1 Ch. 160;

89 L. J. Ch. 556; 124 L. T. 232; 64 Sol. Jo. 668.

**4386. Add. Annotation** :—*Consd. Re Slade, Crewkerne United Breweries v. Slade*, [1921] 1 Ch. 160.

**4388. Add. Annotation** :—*Refd. Re Wombwell* (1921), 37 T. L. R. 625.

**4342. Add. Annotations** :—*Refd. Re Wilson, Ex p. Salaman, The Trustee v. Keith, Prowse* (1925), 133 L. T. 814. *Mentd. Re Wigzell, Ex p. Hart*, [1921] 2 K. B. 835; *Scranton's Trustee v. Pearse*, [1922] 2 Ch. 87.

**4345. Add. Annotation** :—*Refd. Dennistoun v. Dennistoun* (1925), 69 Sol. Jo. 477.

**4353. Add. Annotation** :—*Refd. Re Slade, Crewkerne United Breweries v. Slade*, [1921] 1 Ch. 160.

**4357. Add. Annotation** :—*Refd. Re Slade, Crewkerne United Breweries v. Slade*, [1921] 1 Ch. 160.

## Part XIII.—Distribution of Estate and Payment of Dividends.

**4366a. Agreement for distribution contrary to bankruptcy laws—Void.**]—*STAINES v. WAINWRIGHT* (1839), 6 Bing. N. C. 174; 8 Scott, 280; 9 L. J. C. P. 107; 133 E. R. 68.

*Annotation* :—*Distd. Prince v. Haworth*, [1905] 2 K. B. 768.

**4373. Add. Annotation** :—*Mentd. The Kin Tye Loong v. Seth* (1920), 89 L. J. P. C. 113.

**4403. Add. Annotations** :—*Apld. Re Home & Colonial Insee.* (1928), 44 T. L. R. 718. *Refd. Re Gurwicz, Ex p. Trustee* (1919), 88 L. J. K. B. 740.

**4424. Add. Annotations** :—*Mentd. Falcon v. Famous Players Film Co.* (1925), 42 T. L. R. 91; *Reckitt v. Barnett, Pembroke & Slater*, [1928] 2 K. B. 244.

**4484a. ——— Proof subsequently reduced.**]—*Re SEARLE, HOARE & Co.*, No. 3210a, ante.

**4487. Add. Annotation** :—*Refd. Dewe v. Dewe, Snowdon v. Snowdon*, [1928] P. 113.

**4494. Add. Annotation** :—*Refd. Re Home & Colonial Insee.* (1928), 44 T. L. R. 718.

## Part XIV. Administration in Bankruptcy of Estates of deceased Insolvents.

**4545. Add. Annotation** :—*N.F. Latter v. Jukes* (1926), 42 T. L. R. 723.

**4547. Add. Annotation** :—*Refd. Re Sarjeant* [1923] 2 Ch. 302.

**4549. Add. Annotation** :—*Mentd. Re Wigzell, Ex p. Hart*, [1921] 2 K. B. 835.

**4556. Add. Annotation** :—*Refd. Re Webb* (Smithfield, London), [1922] 2 Ch. 369.

**4559a. Administration of estate of undischarged bankrupt—Right to after-acquired property.**]—*Re SARJEANT*, No. 1808a, ante.

## Part XVI.—Miscellaneous Practice and Procedure.

**4602. Add. Annotation** :—*Mentd. Re Foster, Barnato v. Foster*, [1920] 3 K. B. 306.

**4627. Add. Annotation** :—*Mentd. Scott v. North-*

*umberland & Durham Miners' Permanent Relief Fund Friendly & Approved Soc.*, [1920] 1 K. B. 174.

**PART XII. SECT. 2, SUB-SECT. 1.**  
**4385 viii. ——— Payment of debt by wife as surety for husband.**]—*Held* : wife not a deferred creditor.—*Re BARRON, Ex p. BARRON*, [1924] 4 D. L. R. 1307; 4 C. B. R. 624.—CAN.

the judge to go behind the declared dividend.—*McLENNAN v. CARTER*, [1927] 1 D. L. R. 375; 59 N. S. R. 64.—CAN.

collateral proceedings.—*HOULDING v. CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD.*, [1921] 2 W. W. R. 899; 14 Sask. L. R. 356.—CAN.

**PART XIII. SECT. 6.**  
**21. Refund—Action in county court to recover money paid in error.**]—*Held* : not maintainable, it not being open to

**PART XVI. SECT. 3, SUB-SECT. 1.**  
**4606 1. Part of examination.**—A portion merely of an examination under Bkpcy. Act of a person alleged to have property of debtor in his possession cannot be admitted in evidence in

**PART XVI. SECT. 3, SUB-SECT. 2.**  
**21. Motion for trial of bankruptcy action—Adjournment to take oral evidence.**]—*Re FULTON*, [1925] 4 D. L. R. 1001.—CAN.

4633. *Add. Annotations*:—*Re*fd. *Re* Drage, Palmer & Roberts v. Knight (1926), 134 L. T. 765. *Mentd.* *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515; *Re* Hoyle, *Ex p.* Trustee, [1924] B. & C. R. 22.

4638. *Add. Annotations*:—*Re*fd. *Re* Drage, Palmer & Roberts v. Knight (1926), 134 L. T. 765. *Mentd.* *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515; *Re* Hoyle, *Ex p.* Trustee, [1924] B. & C. R. 22.

4661. *Add. Annotation*:—*Mentd.* *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515.

4665. *Add. Annotation*:—*Consd.* *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515.

4665a. — Necessary before other side entitled to refer to contents.]—On June 29, 1923, resps., having received from bkpt. an order for goods, on the same day delivered them to bkpt. together with an invoice bearing the same date, which subsequently at bkpt.'s request was post-dated to July 10. On July 20, bkpt., although fully realising his insolvency, sent to resps. & to 107 other creditors cheques which were all post-dated to July 31 in settlement of their several accounts. On July 31 bkpt. gave notice to his creditors that he was about to suspend payment. Not one of those post-dated cheques was paid on presentation; but on July 30, the day preceding the act of bkpcy., bkpt. paid in cash to resps., who had no knowledge of bkpt.'s financial difficulties, the amount he owed them less discount. On Aug. 30, 1923, on a creditor's petition presented on Aug. 3, an order of adjudication was made against bkpt. Upon a motion by the trustee in bkpcy. for a declaration that the payment to resps. was a fraudulent preference under 1914 Act, s. 44 (1), resps. filed an affidavit in opposition, which contained statements which revealed a voluntary offer on July 30 on the part of bkpt. to resps. to pay the amount due to them in cash; & the question was then raised whether the trustee had the right, which he claimed, to read those statements as admissions by resps. of the absence of pressure & of the

entirely voluntary nature of the payment:—*Held*: (1) the practice in the Bkpcy. Ct., differing in this respect from the practice in the Ch. Div., was that where an affidavit had been filed by a resp. to an application, applt. was only entitled to refer to the contents thereof after resp. on opening his case had elected to read it; (2) where a bkpt. in imminent expectation of bkpcy. voluntarily pays a particular creditor with the result of giving him a preference in fact, & the reason for such payment is unexplained, a *prima facie* case of fraudulent preference is established; therefore, the trustee having proved a *prima facie* case of fraudulent preference & the creditors having withdrawn their affidavit in opposition, & there being therefore no evidence to the contrary, the trustee was entitled to succeed on his application.—*Re* COHEN, *Ex p.* TRUSTEE, [1924] 2 Ch. 515; 94 L. J. Ch. 73; [1924] B. & C. R. 143; *sub nom.* *Re* COHEN, *Ex p.* TRUSTEE v. SNOW (W. R.) & Co., 69 Sol. Jo. 35, C. A.

*Annotation*:—*As to* (2) *Distd.* *Re* Drage, Palmer & Roberts v. Knight (1926), 134 L. T. 765.

4671. *Add. Annotation*:—*Re*fd. *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515.

4704a. — — — — — Whether barred by lapse of time.]—In the circumstances: *Held*: a solr.'s petition that his bill might be paid was not barred by the fact that the items occurred more than six years before the demand for payment.—*Re* FISHER, *Ex p.* BRUTTON (1845), De G. 116; 1 New Pract. Cas. 159; 14 L. J. Bcy. 15; 4 L. T. O. S. 321; 9 Jur. 96.

4705. *Add. Annotation*:—*Re*fd. Knight v. Knight, [1925] Ch. 835.

4753. *Add. Annotation*:—*Mentd.* *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515.

4771a. — — — — —]—WILLASEY v. MASHITER (1834), 3 My. & K. 293; 40 E. R. 112.

4772a. — — — — —]—WHALLEY v. WILLIAMSON (1843), 6 Man. & G. 269; 6 Scott, N. R. 948; 134 E. R. 894.

4772b. — — — — —]—SHEA v. BOSCHETTI, *Re* PEILE (1858), 25 Beav. 561; 53 E. R. 751.

## Part XVII.—Appeals.

4794. *Add. Annotation*:—*Re*fd. *Re* Griffiths, Jones v. Jenkins, [1926] Ch. 1007.

4818. *Add. Annotation*:—*Re*fd. *Re* Mathieson (1926), 70 Sol. Jo. 1161.

### PART XVI. SECT. 4.

*sk.* *Ex parte* order—*Rescission*—*Non-disclosure of true state of affairs.*]—*Re* GORDON BROTHERS, LTD. (Ont.), [1926] 3 D. L. R. 131; 7 C. B. R. 576.—CAN.

### PART XVI. SECT. 5, SUB-SECT. 1.

—.]—*Held*: as the work done by the solr. in collecting the debts due to debtor was of real benefit to his estate, & was done with the tacit sanction of the ct., the costs of the solr. should be paid to him out of the money lodged by him with the official assignee.—*Re* MALONEY, [1928] I.

*sn.* *Of successful application for recovery of property intrusted to bankrupt—Payable out of estate.*]—*Re* NEVILLE & GREEN (Ont.), [1926] 3 D. L. R. 407; 7 C. B. R. 631; *varying*, [1926] 2 D. L. R. 1025.—CAN.

*sp.* *Rights of solicitor—Amount of fees—Estate not realised by trustee.*]—*Re* CAPLAN, [1925] 3 D. L. R. 964; 5 C. B. R. 826.—CAN.

### PART XVII. SECT. 2.

*sz.* *Order involving amount exceeding \$500.*]—An appeal lies on the question whether a creditor for an amount over \$500 shall be entitled to rank on bkpt.'s estate as a secured creditor or merely as an ordinary creditor, being an appeal involving an amount exceeding \$500.—*APEX LUMBER Co. v. JOHNSTONE*, [1925] 3 D. L. R. 1050; [1925] 3 W. W. R. 360.—CAN.

*sa.* *Order on question of procedure.*]—No appeal lies from a decision on a question of procedure.—*WINTER v. CAPILANO TIMBER Co.* (1926), 37 B. C. R. 91; [1926] 2 W. W. R. 536.—CAN.

### PART XVII. SECT. 3.

4815 i. *Application for leave—Within what time—Extension of time—Leave to appeal to Supreme Court of Canada.*]—*Re* HUDSON FASHION SHOPPE, LTD., *Ex p.* ROYAL DRESS CO., [1926] 1 D. L. R. 515; 58 O. L. R. 298.—CAN.

*sd.* *Grounds for granting leave—Landlord's preferential claim for rent endangered—By claim of Crown—Under War Revenue Act, 1915.*]—*Re* CALCUS CO., LTD., [1925] 2 D. L. R. 228; 5 C. B. R. 514.—CAN.

*st.* — — — — — *Question of great importance & general interest.*]—*BOILEY v. McNULTY*, [1927] 2 D. L. R. 1010; [1927] S. C. R. 275.—CAN.

*sj.* — — — — — *Whether hotel-keeper "trader" within Landlord & Tenant Act, C. S. N. B., 1903 (c. 153), s. 47.*]—*Re* HOTEL DUNLOP, LTD., *QUINN v. GUERNSEY*, [1927] 1 D. L. R. 810; [1927] S. C. R. 134.—CAN.



4819. *Add. Annotation* :—*Refd. Re Mathieson* (1926), 70 Sol. Jo. 1161.
4831. *Add. Annotation* :—*Mentd. Re Cohen, Ex p. Trustee*, [1924] 2 Ch. 515.
4835. *Add. Annotation* :—*Mentd. Richmond v. Savill*, [1926] 2 K. B. 530.
4836. *Add. Annotation* :—*Refd. Re A Debtor*, [1928] Ch. 199.
4840. *Add. Annotation* :—*Mentd. Hawkins & Sunderland v. Duché* (1921), 90 L. J. K. B. 913.
4857. *Add. Annotation* :—*Refd. Re Barley*, [1923] 1 Ch. 177.
4860. *Add. Annotation* :—*Consd. Re Barley*, [1923] 1 Ch. 177.
4869. *Add. Annotation* :—*Consd. Re Barley*, [1923] 1 Ch. 177.
4873. *Add. Annotation* :—*Consd. Re Barley*, [1923] 1 Ch. 177.
4876. *Add. Annotation* :—*Refd. Re Barley*, [1923] 1 Ch. 177.
4884. *Add. Annotation* :—*Mentd. Re Mellor, Alvarez v. Dodgson*, [1922] 1 Ch. 312.
4888. *Add. Annotation* :—*Consd. Re Barley*, [1923] 1 Ch. 177.
4894. *Add. Annotation* :—*Refd. Re Barley*, [1923] 1 Ch. 177.

## Part XVIII.—Order of Discharge.

5023. *Add. Annotation* :—**Consd. *Re* Kutner**, [1921] 3 K. B. 93.
- 5035a. **Payment of money in consideration of—Void.**—**MURRAY v. REEVES** (1828), 8 B. & C. 421; 2 Man. & Ry. K. B. 423; Dan. & Ll. 161; 108 E. R. 1099; *sub nom.* **MURRAY v. REID**, 6 L. J. O. S. K. B. 348.
- Annotations* :—**Apld.** **Hall v. Dyson** (1852), 17 Q. B. 785. **Consd.** **Levita's Claim**, [1894] 3 Ch. 365. **Refd.** **Gilmour v. King** (1833), 3 Tyr. 581.
- 5035b. **S. P. HALL v. DYSON** (1852), 17 Q. B. 785; 21 L. J. Q. B. 224; 18 L. T. O. S. 63, 223; 16 Jur. 270; 117 E. R. 1481.
- Annotations* :—**Consd.** **McKewan v. Sanderson** (1873), L. R. 15 Eq. 229; **McKewan v. Sanderson**, [1875] L. R. 20 Eq. 65; **Levita's Claim**, [1894] 3 Ch. 365. **Refd.** **Hills v. Mitson** (1853), 8 Exch. 751; **Lound v. Grimwade** (1888), 39 Ch. D. 605; **Kearley v. Thomson** (1890), 24 Q. B. D. 742; **Windhill L. B. of Health v. Vint** (1890), 63 L. T. 366.
- 5038a. —.]—A bill of exchange given to buy off opposition to bkpt.'s last examination & the allowance of the certificate :—**Held** : void *ab initio*.—**REEVES v. HAWKES** (1862), 6 L. T. 53.
- 5039a. —.]—**Held** : a fraud on other creditors. —**ROGERS v. KINGSTON** (1825), 2 Bing. 441; 10 Moore, C. P. 97; 3 L. J. O. S. C. P. 77; 130 E. R. 376.
- Annotation* :—**Refd.** **Sweenie v. Sharp** (1826), 12 Moore, C. P. 163.
- 5039b. —.]—**Held** : the agreement was illegal.—
- HILLS v. MITSON** (1853), 8 Exch. 751; 22 L. J. Ex. 273; 155 E. R. 1555.
- Annotation* :—**Refd.** **Lound v. Grimwade** (1888), 39 Ch. D. 605.
- 5039c. **S. P. HUMPHREYS v. WELLING** (1862), 1 H. & C. 7; 32 L. J. Ex. 33; 6 L. T. 250; 158 E. R. 780.
5043. *Add. Annotation* :—**Refd.** **Anderson v. Daniel** (1923), 93 L. J. K. B. 97.
5050. *Add. Annotation* :—**Consd. *Re* Kutner**, [1921] 3 K. B. 93.
5052. After this case add “*See, also*, Nos. 1654–1657a, *ante*.”
- 5093a. — **Meaning of “debt.”**—**Re BOULTON BROTHERS & CO.**, No. 1657a, *ante*.
5262. *Add. Annotation* :—**As to** (2) **Refd. *Re* Kutner**, [1921] 3 K. B. 93.
- 5264a. — **Condition suspending discharge until larger dividend than ten shillings in the pound paid.**—The Ct. of Bkpcy. is not empowered by 1914 Act, s. 26, to suspend the discharge of a bkpt. until a dividend higher than 10s. in the pound—in this case 15s. in the pound—has been paid to his creditors.—**Re KUTNER**, [1921] 3 K. B. 93; 90 L. J. K. B. 1264; 125 L. T. 458; 37 T. L. R. 667; [1921] B. & C. R. 113; *sub nom.* **Re KUTNER, Ex p. DEBTOR v. OFFICIAL RECEIVER**, 65 Sol. Jo. 604, C. A.

**PART XVII. SECT. 9.**

**sk. Jurisdiction of Court of Appeal of British Columbia**—The above ct. when acting as an appeal ct. in bkpcy. has complete jurisdiction over costs.—**Re KWONG TAI CHONG CO. (ASSIGNMENT OF) (1922)**, 65 D. L. R. 132; [1922] 2 W. W. R. 229; *sub nom.* **CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD. v. JANG BOW KEE & YIN SHEE**, 31 B. C. R. 40.—CAN.

**PART XVIII. SECT. 3, SUB-SECT. 1.**

5013 1. *Whose interests court must consider—Public interests.*—On considering the application of a debtor for his discharge under Bkpcy. Act, regard must be had not only to the interests of bkpt. & his creditors, but also to the interests of the public.—*Re SCOTCH HARDWARE CO.*, [1923] 1 D. L. R. 1201; [1923] 1 W. W. R. 960; 3 C. B. R. 734.—CAN.

5014 1. — *Bankrupt.*]—*Re* JONES,  
[1926] N. Z. L. R. 318.—N.Z.

d i. — *Reasons of trustee's report.*]—  
Re MCKENZIE (Man.), [1926] 4 D. L. R.  
210.—CAN.

**PART XVIII. SECT. 5, SUB-SECT. 1.—**  
**C. (b) ii.**

**5073 H. ———.]—The test as to whether a debtor's book-keeping methods are those usual & proper in the business carried on by him is whether debtor can at any time tell therefrom just how he stands to his assets & liabilities.—*Re* MORDEN (1922), 66 D. L. R. 332; [1922] 1 W. W. R. 519; 2 C. B. R. 189.—CAN.**

**5081 II. —. ]—Even when a debtor pays less than fifty cents in the dollar to unsecured creditors & has not kept proper books of account, he may obtain his discharge if the bkpcy. appears to have been an honest one & he produces reasonable excuses for his failure to keep account books.—Re COVINGTON, [1923] 4 D. L. R. 946.—CAN.**

5081 Ill. —.—.]—*Re* NEWSOME (Ont.),  
[1927] 3 D. L. R. 828 ; 8 C. B. R. 279.—  
CAN.

**PART XVIII. SECT. 5, SUB-SECT. 2.**

5238 i. *For what period—Not less than minimum period—Miscon uct.*—*Re McCORMACK (Ont.), [1927] 2 D. L. R. 492; 8 C. B. R. 211.—CAN.*

**z i.** ———.—J—Debtor had misrepresented his financial position for the purpose of obtaining credit. The court fixed the time for discharge at three years from the date of the order.—*Re THIESSEN*, [1924] 1 D. L. R. 588; [1924] 1 W. W. R. 197; 34 Man. L. R. 125.—CAN.

**PART XVIII. SECT. 5. SUB-SECT. 3.**

5269 iii. ———.—]—Where the assets of the assignors, a partnership, were not equal to fifty cents in the dollar on their unsecured liabilities, & the ct. was not fully satisfied with explanations on certain matters given by a partner asking for his discharge, an order was made for his discharge on his consenting to judgment against him.—*Re SCEPTRE HARDWARE CO.*, [1923] 1 D. L. R. 1201; [1923] 1 W. W. R. 966; 3 C. B. R. 734.—CAN.

5277. *Add. Annotations*:—Mentd. *Re Taylor, Ex p. Bolton*, [1909] 1 K. B. 103; *Re Barley*, [1923] 1 Ch. 177.
5283. *Add. Annotations*:—Refd. *Re Barley*, [1923] 1 Ch. 177. Mentd. *Re Walmsley, Ex p. The Bankrupt* (1907), 98 L. T. 55.
5328. *Add. Annotations*:—Mentd. *Re Dent, Ex p. Trustee*, [1923] 1 Ch. 113; *Performing Right Soc. v. London Theatre of Varieties*, [1924] A. C. 1.
- 5352a. ——— Illegal agreement with creditor—Debt not revived.]—TABRAM v. FREEMAN (1834), 4 R. & Ad. 887; 2 Cr. & M. 451; 4 Tyr. 180; 3 L. J. Ex. 135; 110 E. R. 694.  
*Annotation*:—Refd. *Wilkin v. Manning* (1854), 9 Exch. 575.
- 5364a. Liability under annuity deed.]—DOUGLAS v. SMITH (1849), 13 Jur. 294.
5367. *Add. Citation*:—sub nom. *Re MERCHANT TRADERS' SHIP, LOAN & INSURANCE ASSOCN., Ex p. CHAPPELL*, 19 L. T. O. S. 29.
5387. *Add. Annotation*:—Refd. *Dewe v. Dewe, Snowdon v. Snowdon*, [1928] P. 113.
- 5387a. On forfeiture clause—Conditional discharge.]—(1) The discharge from bkpcy. of a life tenant with the common form protected life interest, such discharge being conditional on his paying a sum of money, does not have the effect of putting an end to the operation of the forfeiture clause if the money has not in fact been paid.  
(2) Where there is a trust of a fund under the terms of which the trustees are bound to apply the income of the fund in a particular way on a given future contingency, the person who takes the income as a result of that trust on the happening of the contingency is a person who has an interest of a kind which, but for the forfeiture clause, is capable of vesting in his trustee in bkpcy.—*Re CLARK, CLARK v. CLARK*, [1926] Ch. 833; 95 L. J. Ch. 325; 135 L. T. 666; 70 Sol. Jo. 344; [1926] B. & C. R. 77.
5397. *Add. Citations*:—Bail Ct. Cas. 151; 17 Jur. 165.
5399. *Add. Annotation*:—Mentd. *Spencer v. Hemmerde*, [1922] 2 A. C. 507.
- 5399a. Revives debt.]—HATT v. VERDIER (1770), 2 Wm. Bl. 724; 96 E. R. 425.
- 5399b. *S. P. BEST v. BARKER* (1782), 8 Price, 533, n.; 146 E. R. 1286; sub nom. *BEST v. BARBER*, 3 Doug. K. B. 188.  
*Annotations*:—Consd. *Wilson v. Kemp* (1815), 3 M. & S. 595. *Apld. Sweeney v. Sharp* (1826), 12 Moore, C. P. 163. *Refd. Blackburn v. Ogle* (1820), 8 Price, 526; *Drew v. Jefferies* (1820), 8 Price, 531.
- 5402a. *S. P. HORTON v. MOGGRIDGE* (1816), 6 Taunt. 563; 128 E. R. 1154.
- 5424a. *S. P. TURNER v. SCHOMBERG* (1745), 2 Stra. 1233; 93 E. R. 1152.  
*Annotation*:—Folld. *Bailey v. Dillon* (1759), 2 Burr. 736.
- 5424b. *S. P. WILSON v. KEMP* (1815), 3 M. & S. 595; 105 E. R. 733.  
*Annotations*:—N.F. *Blackburn v. Ogle* (1820), 8 Price, 526. Consd. *Re Ganderer* (1822), 1 L. J. O. S. K. B. 16; *Peers v. Gadderer* (1822), 1 B. & C. 116.
5455. *Add. Annotation*:—Refd. *Indian & General Investment Trust v. Borax Consolidated*, [1920] 1 K. B. 539.

## Part XIX.—Statement of Affairs and Discovery of Property.

5475. *Citations*:—For “24 Q. B. D. 406” read “24 Q. B. D. 466.”
- 5475a. ——— Letter returned marked “gone away.”]—Bkpt. cannot escape service of an order of the ct. by leaving his last known address, & there is nothing in 1914 Act, nor in Bkpcy. Rules, to say that a registered letter which does not reach debtor is not good service. Where, therefore, a copy of an order that bkpt. should attend at a specified time & place for his adjourned public examination, had been sent by registered letter & returned through the post, marked “gone away,” a warrant was ordered to be issued for his arrest.—*Re LEVY* (1924), 68 Sol. Jo. 419; sub nom. *Re LEVY, Ex p. OFFICIAL RECEIVER*, [1924] B. & C. R. 19, D. C.
5482. *Add. Citation*:—sub nom. *Re TEMPLE, Ex p. TEMPLE*, 2 Rose, 22.
- 5495a. ———.]—The object of the public examination of debtor is not merely to obtain a full & complete disclosure of his assets & the facts relating to the bkpcy. in the interests of his creditors, but is also for the protection of the public; & debtor is not entitled to refuse to answer questions put to him at his public examination on the ground that by so doing he may incriminate himself.
- In the course of his public examination debtor refused to answer a question on the ground that he might thereby incriminate himself. On the case coming on before the judge he interviewed debtor in his private room & on his return into ct. stated (1) that he was not satisfied that an answer to the question would result in further assets or secure rights for the creditors, & (2) that he was satisfied that there were serious personal reasons why it would be to debtor's detriment to answer the question in public:—*Held*: neither of the reasons given by the judge for declining to order debtor to answer the question was a sufficient reason.—*Re PAGET, Ex p. OFFICIAL RECEIVER*, [1927] 2 Ch. 85; 96 L. J. Ch. 377; 137 L. T. 369; 43 T. L. R. 455; 71 Sol. Jo. 489; [1927] B. & C. R. 118, C. A.
- 5495b. ——— Answers disclosing secret formulas for manufacturing proprietary articles.]—*Re KEENE*, No. 5811a, post.
5496. For “All matters considered on application for discharge” read “All matters considered on application for discharge.”  
*Add. Annotation*:—Folld. *Re Paget, Ex p. Official Receiver*, [1927] 2 Ch. 85.

PART XVIII. SECT. 6.  
g 1. ——— Creditor without notice of insolvency.]—The ct., on the application of a creditor, annulled the composition order & the discharge & made a receiving order.—*Re MCKAY, Ex p.*

MASON, [1924] 4 D. L. R. 307; 5 C. B.

PART XVIII. SECT. 7, SUB-SECT. 2—D.

a. Liability for necessities—Medical

.]—*Held*: debtor's discharge did not free him from liability to pay for necessities which included medical expenses.—*Re REYNOLDS*, [1924] 4 D. L. R. 104; 5 C. B. R. 69.—OAN.

- 5499a. Questions as to loss of property.]—*Held*: though the words "with intent to deceive or to defraud" were absent from 1914 Act, s. 157 (1) (c), the jury had still to consider whether debt. knowingly & with intent to deceive or to evade the Act either made statements that were unsatisfactory in the sense that they were untrue or grossly exaggerated or intentionally evasive, or made statements without caring whether they were true or not.—*R. v. PHILLIPS* (1921), 85 J. P. 120.
5500. *Add. Annotation*:—*Mentd.* Eshugbayi Eleko. v. Nigeria Government Administering Officer, [1928] A. C. 459.
5505. *Add. Annotation*:—*Reid.* *Re* Paget, *Ex p.* Official Receiver, [1927] 2 Ch. 85.
5512. *Add. Annotation*:—*Mentd.* Anderson v. Daniel (1923), 93 L. J. K. B. 97.
5594. *Add. Annotation*:—*Mentd.* *Re* Gunsbourg, [1920] 2 K. B. 426.
5631. *Add. Annotation*:—*Mentd.* Eshugbayi Eleko v. Nigeria Government Administering Officer, [1928] A. C. 459.
5647. *Add. Annotation*:—*Mentd.* Eshugbayi Eleko v. Nigeria Government Administering Officer, [1928] A. C. 459.

## Part XX. Property Available for Distribution amongst Creditors.

5684. For the words "Admission or rejection of proofs."—*See, generally*, Part VIII., *ante*," following this case, read "Admission or rejection of proofs, *see, generally*, Part VIII., *ante*."
5686. *Add. Annotation*:—*Mentd.* Ord v. Ord, [1923] 2 K. B. 432.
5696. *Add. Annotation*:—*Reid.* *Re* Wethered, *Ex p.* Salaman, [1926] Ch. 167.
5747. *Add. Annotations*:—*Reid.* *Re* Webb (Smithfield, London), [1922] 2 Ch. 369. *Mentd.* A.-G. v. De Keyser's Royal Hotel, [1920] A. C. 508.
5749. *Add. Annotations*:—*Consd.* *Re* Debtors (No. 771 of 1926) (1926), 43 T. L. R. 9. *Expld.* *Re* Fredericke & Whitworth, *Ex p.* Hibbard, [1927] 1 Ch. 253.
5754. *Add. Annotations*:—*Apld.* *Re* Collins, [1925] Ch. 556. *Distd.* Earle v. Hemsworth R. D. C. (1928), 44 T. L. R. 605.
5760. *Add. Annotations*:—*Consd.* *Re* Debtors (No. 771 of 1926) (1926), 43 T. L. R. 9. *Expld.* *Re* Fredericke & Whitworth, *Ex p.* Hibbard, [1927] 1 Ch. 253.
- 5760a. — Money paid in compliance with subsequent bankruptcy notice.]—*Re* DEBTORS (No. 771 of 1926), No. 923a, *ante*.
5761. *Add. Annotation*:—*Reid.* *Re* A Debtor, [1928] Ch. 199.
5766. *Add. Annotation*:—*Consd.* Lipton v. Bell, [1924] 1 K. B. 701.
5769. *Add. Annotation*:—*Reid.* *Re* Gunsbourg, [1920] 2 K. B. 426.
- 5775a. —.]—On Sept. 20, 1917, debtor transferred his assets, including certain furniture, to a co. formed by him. On Sept. 27 he committed an act of bkpcy. upon which a petition was presented on Oct. 8, & a receiving order was made against him on Oct. 24, followed by an adjudication on Dec. 12. After the date of the receiving order part of the furniture was sold by the co. to a *bonâ fide* purchaser for value without notice, by whom it was resold to another purchaser in the same position. On Feb. 3, 1919, the transfer of Sept. 20, 1917, was held to be fraudulent & void & an act of bkpcy., & the co. was ordered to deliver to the trustee all the property comprised in that sale. The value of the property having been found by the registrar, a further order was made against the co. to pay the amount of that value to the trustee. No payment having been made under that order the trustee claimed to recover the furniture or its value from the ultimate purchaser:—*Held*: the title of the trustee related back to the act of bkpcy. of Sept. 20, 1917, & neither the original nor any subsequent transferee could establish any title as against the trustee.—*Re* GUNSBURG, [1920] 2 K. B. 426; *sub nom.* *Re* GUNSBURG, *Ex p.* TRUSTEE, 89 L. J. K. B. 725; [1920] B. & C. R. 50; *sub nom.* *Re* GUNSBURG, *Ex p.* COOK, 123 L. T. 353; 36 T. L. R. 485; 64 Sol. Jo. 498, C. A.
- Annotations*:—*Apld.* *Re* Dombrowski, *Ex p.* Trustee, (1923), 92 L. J. Ch. 415. *Mentd.* *Re* Wigzell, *Ex p.* Hart, [1921] 2 K. B. 835.

### PART XX. SECT. 2.

5689 iv. — Registered judgment as security for loan.]—A judgment by confession given by a person who is at the time solvent as security for a present advance of money & recorded to bind lands under Nova Scotia Registry Act, R. S., 1900 (c. 137), s. 16, is a valid security as against the authorised assignee under an assignment in bkpcy. subsequently made.—*Re* RHODENIZER ESTATE & NOVA SCOTIA TRUST CO., [1923] 1 D. L. R. 1055; 56 N. S. R. 179.—CAN.

5713 v. —.]—The authorised trustee is not entitled to possession or control of any property by lien agree-

ments for store fixtures & fittings purchased by debtor, especially if nothing has been paid on account of such purchases, & bkpt. has no official interest in the property.—*Re* ALIOTIS & CLIBIS (1921), 63 D. L. R. 346; 55 N. S. R. 64.—CAN.

5718 vi. — Lease granted to bankrupt free of rent—Stipulation that lease not seizable by creditors.]—*Held*: the property could not be used for the benefit of bkpt.'s creditors.—*LEGAULT v. DUFRESNE* (1922), 66 D. L. R. 136.—CAN.

ti. — —.]—As an assignment only vests the property of debtor in the assignee subject to the rights of secured creditors, it can only affect

the equity of redemption in the property.—*WHITE & CO. v. THE IONIA* (1922), 69 D. L. R. 94; 20 Exch. C. R. 327.—CAN.

### PART XX. SECT. 3, SUB-SECT. 2.

sm. Under Canadian Bankruptcy Act.]—The English Acts & the Canadian Act distinguished as to the time to which the trustee's title relates back.—*Re* COHEN & MAHLIN, CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD. v. SPIVAK (Alta.), [1926] 3 D. L. R. 942; [1926] 3 W. W. R. 34; *reversd.* [1927] 1 D. L. R. 577; [1927] 1 W. W. R. 162; 22 Alta. L. R. 487; 8 C. B. R. 23.—CAN.



- 5775b. —.]—Bkpt., when he was hopelessly insolvent, transferred his business to a one-man co., which was an act of bkpcy. Subsequently the two resps. advanced £1,000 each & received four debentures of £250 each respectively containing a charge on the undertaking & assets of the co. Resps. had no notice of the fact that the transfer to the co. was a fraudulent conveyance within 1914 Act:—*Held*: although resps. were *bond fide* purchasers for value without notice, as the transfer was an act of bkpcy. to which the title of the trustee related back, the trustee was entitled to the assets so transferred as property divisible amongst the creditors of bkpt.—*Re DOMBROWSKI, Ex p. TRUSTEE* (1923), 92 L. J. Ch. 415; [1923] B. & C. R. 32.
5776. *Add. Annotations*:—*Refd. Re Gunsbourg* [1920] 2 K. B. 426. *Mentd. Scranton's Trustee v. Pearse*, [1922] 2 Ch. 87.
5783. *Add. Annotation*:—*Mentd. Sorrell v. Smith*, [1925] A. C. 700.
5786. *Add. Annotation*:—*Consd. Re Gunsbourg*, [1920] 2 K. B. 426.
5791. *Add. Annotations*:—*Mentd. Burchell v. Thompson*, [1920] 2 K. B. 80; *Commercial Credit Co. of Canada v. Fulton*, [1923] A. C. 798.
5798. To the cross-reference before this case add "see, also, COUNTY COURTS, Vol. XIII., p. 498, No. 488."
5805. *Add. Annotation*:—*Refd. Lipton v. Bell*, [1924] 1 K. B. 701.
- 5807a. *Balance of sequestrator's account in registry.*—*Re LITTLE HALLINGBURY, ESSEX* (1837), 1 Curt. 556; 163 E. R. 195.
- 5811a. **Secret formulas for manufacturing proprietary articles.**—Debtor, against whom a receiving order had been made, had carried on business in the manufacture & sale in England, France & America of certain proprietary articles made according to secret formulas invented by him & his brother with whom he was in partnership. In his public examination he was required to disclose these formulas in writing to his trustee. The debtor & his brother had each of them agreed not to disclose the secret. Upon the dissolution of the partnership bkpt. retained the assets & goodwill of the business in England & America, while his brother continued to carry it on in France. The formulas had never been committed to writing. Bkpt. refused to disclose them on the ground that they existed only in his brain as the result of his skill & capacity, & that to disclose

them would be a breach of his agreement with his brother:—*Held*: the formulas were part of the goodwill & assets of his business, & he was bound to communicate them to his trustee.—*Re KEENE*, [1922] 2 Ch. 475; 91 L. J. Ch. 484; 127 L. T. 831; 38 T. L. R. 663; 66 Sol. Jo. 503; [1922] B. & C. R. 103, C. A.

5819. *Add. Annotation*:—*Mentd. Re Rush, Warre v. Rush*, [1922] 1 Ch. 302.
- 5821a. **Life interest in remainder.**—*Re SILBER'S SETTLEMENT, PUBLIC TRUSTEE v. SILBER*, [1920] W. N. 77.
- 5826a. —.]—*Re CLARK, CLARK v. CLARK*, No. 5387a, *ante*.
5827. *Add. Annotations*:—*Appld. Re Nelson, Norris v. Nelson*, [1928] Ch. 920, n. *Refd. Re Evans, Public Trustee v. Evans*, [1920] 2 Ch. 304; *Re Smith, Public Trustee v. Aspinall*, [1928] Ch. 915.
5831. *Add. Annotations*:—*Appld. Re Nelson, Norris v. Nelson*, [1928] Ch. 920, n. *Refd. Re Evans, Public Trustee v. Evans*, [1920] 2 Ch. 304; *Re Smith, Public Trustee v. Aspinall*, [1928] Ch. 915.
5835. *Add. Annotation*:—*Refd. Re Clark, Clark v. Clark*, [1926] Ch. 833.
5845. *Add. Annotations*:—*Appld. Re Smith, Public Trustee v. Aspinall*, [1928] Ch. 915. *Refd. Re Evans, Public Trustee v. Evans*, [1920] 2 Ch. 304; *Re Nelson, Norris v. Nelson*, [1928] Ch. 920, n.
5850. *Add. Annotations*:—*Consd. Re Forder, Forder v. Forder*, [1927] 2 Ch. 291. *Refd. Re Evans, Public Trustee v. Evans*, [1920] 2 Ch. 304.
5851. *Add. Annotation*:—*Distd. Re Forder, Forder v. Forder*, [1927] 2 Ch. 291.
5858. *Add. Annotation*:—*Consd. Re Wombwell* (1921), 37 T. L. R. 625.
- 5859a. — Of property partly of bankrupt & partly of third party—Good to extent of third party's property.—Bkpt. was entitled to reversionary interests in certain property subject to mtges. then vested in his father, & before his bkpcy. he joined with his father in executing a settlement in which provision was made that the son's interest should determine in the event of his bkpcy.:—*Held*: bkpt. was to be treated as settlor of the equity of redemption & therefore the provision for forfeiture on bkpcy. was void to that extent, but as to the father's mtges. bkpt. was not the settlor, & therefore the provision for forfeiture was valid to that extent.—*Re WOMBWELL* (1921), 125 L. T.

PART XX. SECT. 4, SUB-SECT. 1.—E.  
*sn. Money placed in bank to credit of bankrupt.*—*Held*: the bank could not apply the moneys to satisfy debtor's liability to the bank, it being a fraudulent preference.—*Re LONGMORE, Ex p. ROYAL BANK & RIDER*, [1923] 2 D. L. R. 873; 3 C. B. R. 818.—CAN.

*gi. Money from sale of chattels—Sold under void bills of sale.*—The ct. made an order for payment to the official assignee of the value of the chattels seized & sold by the money-lender.—*TURNBULL'S ESTATE (OFFICIAL ASSIGNEE OF) v. GOLDSTEIN* (1921), 29 C. L. R. 377; 21 S. R. N. S. W. 695; 38 N. S. W. W. N. 170.—AUS.

*sa. Money paid in circumstances giving bankrupt no right of recovery.*—*Held*: the assignment did not vest the moneys so paid in the trustee.—

*SALTER & ARNOLD, LTD. v. DOMINION BANK* (1922), 68 D. L. R. 757; [1922] 2 W. W. R. 280.—CAN.

*sd. Money supplied to provide bail for bankrupt.*—*Held*: the money never was the property of bkpt.—*MORRIS v. KLINE, DEMERS, GARNISHEE* (1922), 68 D. L. R. 222; 2 C. B. R. 521.—CAN.

*ji. Money illegally paid to solicitors by former trustee.*—The ct. ordered the solrs.' bill to be retaxed & a reference to be made to inquire into the validity of the solrs.' retainer.—*Re BRYANT ISARD & CO.*, [1924] 3 D. L. R. 487; 5 C. B. R. 6.—CAN.

*st. Money from sale by lender of securities for loan—Customer's securities wrongfully deposited with lender by bankrupt.*—Circumstances in which:—*Held*: the money so paid to the

trustee belonged to the customer.—*Re THOMPSON, SONS & CO., NEWTON v. HAMILTON*, [1927] 1 D. L. R. 943; [1927] 1 W. W. R. 308; 36 Man. L. R. 312.—CAN.

PART XX. SECT. 4, SUB-SECT. 2.—D. (a).

5846 III. —.]—A., by will, inherited property which was declared by the will to be unseizable, but he was given power to dispose of it:—*Held*: A. could not assert the unseizable quality of his property in bkpcy. proceedings.—*CRAIG v. KENNEDY* (1922), 68 D. L. R. 78; 2 C. B. R. 528.—CAN.

*oi. — Clause forfeiting deposit on lessee's bankruptcy.*—*Re ABRAHAM* (1925), 59 O. L. R. 164; [1926] 3 D. L. R. 971.—CAN.

437; 37 T. L. R. 625; *sub nom. Re WOMBWELL, Ex p. TRUSTEE*, [1921] B. & C. R. 17.

5861a. In mortgage—Whether void as against bankruptcy laws.]—A provision in a mtge. to the effect that, if the mtgor. is made bkpt., a larger sum shall be paid to the mtgee. than would have been paid had the mtgor. not been made bkpt., is void, as being in contravention of the bkpcy. laws, & the security held by the mtgee. will be, notwithstanding such provision, a security for the amount actually advanced & no more.—*Re JOHNS, WORRELL v. JOHNS*, [1928] 1 Ch. 737; 97 L. J. Ch. 346; 139 L. T. 333; 72 Sol. Jo. 486.

5865. *Add. Annotation*:—*Consd. Re Wombwell* (1921), 37 T. L. R. 625.

5870. *Add. Annotation*:—*Appld. Re Johns, Worrell v. Johns*, [1928] Ch. 737.

5872. *Add. Annotation*:—*Consd. Re Griffiths, Jones v. Jenkins*, [1926] Ch. 1007.

5884. *Add. Annotation*:—*Consd. Re Griffiths, Jones v. Jenkins*, [1926] Ch. 1007.

5885. *Add. Annotation*:—*Refd. Re Clark, Clark v. Clark*, [1926] Ch. 833.

5890. *Add. Annotation*:—*Consd. Re Griffiths, Jones v. Jenkins*, [1926] Ch. 1007.

5897. *Add. Annotation*:—*Distd. Re Forder, Forder v. Forder*, [1927] 2 Ch. 291.

5898. *Add. Annotations*:—*Consd. Re Forder, Forder v. Forder*, [1927] 2 Ch. 291. *Refd. Re Evans, Public Trustee v. Evans*, [1920] 2 Ch. 304.

5899. *Add. Annotation*:—*Consd. Re Griffiths, Jones v. Jenkins*, [1926] Ch. 1007.

5902a. "On bankruptcy or until he suffered any act or thing or any event happened whereby he would be deprived of right to receive income"—Order of Probate Court setting apart whole income for children of beneficiary.]—In 1887, C. settled the proceeds of property as to the income upon himself for life determinable on his bkpcy. or until he suffered any act or thing or any event happened whereby, if payable to him absolutely, he would be deprived of the right to receive the income or any part thereof. By an order in 1895 after the dissolution of C.'s marriage, it was ordered that the trustees should set apart the whole of the income of the settled funds which was then payable to him, & apply it for the children of the marriage until majority. C. became bkpt. in 1904, & his youngest child attained twenty-one in 1910:—*Held*: the above order was an act or event antecedent to his bkpcy. by which C.'s interest in the whole income was determined for a substantial period, & a forfeiture took place at the time the order was made, & nothing passed to the trustee in bkpcy.—*Re CAREW'S TRUSTS, GELLIBRAND v. CAREW* (1910), 103 L. T. 658; 55 Sol. Jo. 140.

5905. *Add. Annotation*:—*Consd. Re Forder, Forder v. Forder*, [1927] 2 Ch. 291.

5908. *Add. Annotation*:—*Consd. Re Griffiths, Jones v. Jenkins*, [1926] Ch. 1007.

5909a. "Shall do some act" whereby income would be assigned—Authority to pay income to trustee of composition scheme—No notification of authority to trustee.]—B. was entitled

to the income of one-third share of the residuary estate of testatrix unless & until he should be or become bkpt. or should do or suffer some act or thing whereby such share of income should be wholly or partially assigned, charged or incumbered or until he should die, whichever event should first happen, & from & after his death or bkpcy. or the doing or suffering such act as aforesaid such share & the income thereof should be held upon trust for his issue. Shortly after the death of testatrix B. entered into a scheme for composition with his creditors, & he then signed an authority to the trustees of testatrix's will "until further notice" to pay to the trustee under the scheme "the income now due or to accrue due" to B. from her estate. It appeared that there had been no communication by B. to the trustee of the scheme for composition concerning the authority given to the trustees of the will until after these proceedings had been taken in the matter:—*Held*: in these circumstances the authority given to the trustees of the will did not operate as a good equitable assignment of B.'s interest in testatrix's estate & did not work a forfeiture thereof, inasmuch as in the absence of communication concerning the authority, the same remained simply a bare authority which was revocable.—*Re HAMILTON, FITZGEORGE v. FITZGEORGE* (1921), 124 L. T. 737, C. A.

5913. *Add. Annotation*:—*Refd. Re Forder, Forder v. Forder*, [1927] 2 Ch. 291.

5916. *Add. Annotation*:—*Consd. Re Forder, Forder v. Forder*, [1927] 2 Ch. 291.

5920. *Add. Annotation*:—*Consd. Re Griffiths, Jones v. Jenkins*, [1926] Ch. 1007.

5922. *Add. Annotation*:—*Distd. Re Griffiths, Jones v. Jenkins*, [1926] Ch. 1007.

5922a. "By any deed or document anticipate, charge, assign, or otherwise dispose of"—Debtor presenting bankruptcy petition.]—*Held*: the forfeiture clause had not taken effect.—*Re GRIFFITHS, JONES v. JENKINS*, [1926] Ch. 1007; 95 L. J. Ch. 429; 136 L. T. 57; 70 Sol. Jo. 735; [1926] B. & C. R. 56.

5924. *Add. Annotation*:—*Expld. Re Forder, Forder v. Forder*, [1927] 2 Ch. 291.

5925. *Add. Annotation*:—*Consd. Re Forder, Forder v. Forder*, [1927] 2 Ch. 291.

5931. *Add. Annotations*:—*Consd. Re Forder, Forder v. Forder*, [1927] 2 Ch. 291. *Refd. Re Evans, Public Trustee v. Evans*, [1920] 2 Ch. 304.

5932. *Add. Annotation*:—*Appld. Re Evans, Public Trustee v. Evans*, [1920] 2 Ch. 304.

5932a. — Bankruptcy before death of testator.]—Testator directed that if an annuitant should become bkpt. or insolvent he should forfeit the annuity:—*Semble*: such a direction applied only to future events, & no forfeiture would be incurred by an insolvency during testator's lifetime.—*Re DRAPER* (1888), 57 L. J. Ch. 942; 58 L. T. 942; 36 W. R. 783.

*Annotation*:—*Folld. Re Strange, Lamb v. Bossi Leu* (1916), 60 Sol. Jo. 640.

5932b. "Until he shall forfeit same in case of bankruptcy"—Existing bankruptcy known to testator.]—*Re EVANS, PUBLIC TRUSTEE v. EVANS*, No. 5936a, *post*.

PART XX. SECT. 4, SUB-SECT. 2.—  
D. (b).

vi. — Charge as collateral security

for advance on mortgage.]—*Held*: on the charge being given by applt. the interest appointed to him became

forfeited.—*McQUADE v. MORGAN* (1927), 39 C. L. R. 222; [1927] Argus L. R. 258; 1 A. L. T. 61.—AUS.



5983. *Add. Annotation*:—*Reid. Re Forder, Forder v. Forder*, [1927] 2 Ch. 291.
5984. *Add. Annotation*:—*Reid. Re Forder, Forder v. Forder*, [1927] 2 Ch. 291.
5985. *Add. Annotation*:—*Appld. Re Forder, Forder v. Forder*, [1927] 2 Ch. 291.
- 5985a. — Bankruptcy at & after determination of prior life interest—Annulled after income payable.]—B. was bequeathed an interest during his life in the income of testator's residuary estate, & by his will testator directed that, if any beneficiary thereunder should become bkpt., such beneficiary should forfeit his share which should thereupon devolve as provided for in the event of his death. Testator died in 1910 & on Apr. 16, 1914, B. was adjudicated bkpt. On Dec. 14, 1925, B.'s life interest fell into possession, & on Apr. 7, 1926, he procured the annulment of his bkpcy. Between Dec. 14, 1925, & the date of the annulment the trustees received income in respect of the residuary estate, but dealt only with such part as did not include the income in respect of B.'s interest, no payment being made in respect of that by them:—*Held*: as after Dec. 14, 1925, the trustees received sums in respect of the income of testator's estate which they could have been asked to hand over to the trustee in the bkpcy. of B. before the annulment of his bkpcy., there existed something upon which the forfeiture could operate, the test being whether there was any actual income of the share which could be treated by the trustees as payable to, or retained for, or appropriated for, the residuary legatee, & the annulment was not in time to prevent the operation of the forfeiture clause.—*Re FORDER, FORDER v. FORDER*, [1927] 2 Ch. 291; 96 L. J. Ch. 314; 137 L. T. 538; [1927] B. & O. R. 84, C. A.
5986. *Add. Annotations*:—*Appld. Re Forder, Forder v. Forder*, [1927] 2 Ch. 291. *Reid. Re Evans, Public Trustee v. Evans*, [1920] 2 Ch. 304.
- 5986a. "Unless he attempts to become bankrupt"—Whether applicable to bankruptcy in invitum or generally.]—Testator, by his will dated Dec. 21, 1911, devised & bequeathed his real & personal estate to his trustees upon trust to sell & convert with power to postpone, & proceeded: "Out of my estate I desire my trustees to pay to my son H. an annuity of £156 to be paid monthly, unless he attempts to assign it or to become bkpt. In these events it shall be entirely optional with my trustees to pay him the annuity, my wish & intention being that the money is to be for his personal use to keep him from want. If they think his conduct or circumstances deserves or requires it, I authorise them to increase the annuity to £260 per annum, payable as & on the condition stated." Testator then directed that the residue of the income of his estate should be paid to his wife during her life or widowhood, & that after her death or remarriage it should be applied for the maintenance of his daughter until she attained the age of twenty-five years, & that upon her attaining that age the whole of the residue of his property should be given to her. By a codicil to his will, dated Sept. 10, 1918, testator devised two freehold farms to his son H. for the term of his life or "until he shall do some act to effectuate a sale or mtge. thereof or which shall forfeit the same in the case of bkpcy.," in either of which events the farms were to fall back into & form part of his residuary estate. Testator died on Sept. 13, 1918, leaving his widow, his daughter, & his son H. surviving. On Nov. 3, 1911, a receiving order had been made against H. on a creditor's petition, the act of bkpcy. being the failure to comply with a bkpcy. notice, & on Nov. 24, 1911, he was adjudged bkpt. Testator made his will & codicil with knowledge of these facts. On Jan. 22, 1919, H. obtained his discharge, but his creditors had not been paid in full, & the bkpcy. had not been annulled. On a summons taken out by the trustees for the determination of the questions whether the legacy given to H. by the will had become forfeited by his bkpcy., & whether the freeholds devised to him by the codicil belonged to him or formed part of the residuary estate:—*Held*: (1) the words "unless he attempts to become bkpt." in the will must be read in their strict grammatical sense & as so read did not apply to a bkpcy. in invitum or bkpcy. generally, & therefore no forfeiture of the annuity had occurred on which the discretionary trust arose, & consequently the annuity was payable to the trustee in H.'s bkpcy.; (2) the words of devise in the codicil though phrased in words of futurity applied under the doctrine of *Trappes v. Meredith*, No. 5932, ante, to the past bkpcy. of H., & there was no principle upon which the ct. would be justified in holding that the doctrine was not applicable to legal estates, & consequently the devised freeholds had ever since the death of testator formed part of his residuary estate.—*Re EVANS, PUBLIC TRUSTEE v. EVANS*, [1920] 2 Ch. 304; 89 L. J. Ch. 525; 123 L. T. 735; 36 T. L. R. 674, C. A.
5946. *Add. Annotation*:—*Generally, Mentd. Re Conyngham, Conyngham v. Conyngham*, [1920] 2 Ch. 495.
5953. *Add. Annotation*:—*Reid. Re Blyth Shipbuilding & Dry Docks Co., Forster v. Blyth Shipbuilding & Dry Docks Co.*, [1926] Ch. 494.
5958. *Add. Annotations*:—*Consd. Anglo-Baltic & Mediterranean Bank v. Barber*, [1924] 2 K. B. 410; *Re Harrington Motor Co., Ex p. Chaplin*, [1928] Ch. 105. *Distd. Hood's Trustees v. Southern Union General Insce. Co. of Australasia*, [1928] Ch. 793. *Reid. Re Harrington Motor Co.* (1927), 44 T. L. R. 58.
- 5958a. —.]—H., who had taken out a policy of insurance in deft. co. against third party risks, was involved in an accident whereby C. was seriously injured by H.'s motor car. C. commenced proceedings against H. for damages, but before obtaining judgment H. was adjudicated bkpt. & the official receiver was appointed the trustee in the bkpcy. The trustee informed the co., in reply to a question put by them, that he did not propose to take any part in C.'s action against H. H. subsequently purported for an agreed sum to release the co. from their liability under the policy to indemnify him in respect of any judgment obtained against him by C. Shortly afterwards C. obtained judgment against H. for damages for the injuries sustained by him. Subsequently H. committed a second act of bkpcy. & was adjudicated bkpt. for the second time, & a trustee was appointed. In an action



the two trustees jointly for a declaration (*inter alia*) that deft. co. were liable to indemnify H. & or plffs. against the damages awarded to O. & that the agreement by which H. purported to release the co. was null & void:—*Held*: (1) the benefit of the indemnity vested in the trustee under the first bkpcy., notwithstanding that C.'s claim, being one in respect of a tort for which judgment was not obtained till after the commencement of the first bkpcy., was not provable in such bkpcy.; (2) the benefit of the indemnity having vested in the trustee in the first bkpcy., his right thereto could not be affected by any subsequent agreement between deft. co. & H.; (3) the trustee in the first bkpcy. was not estopped by his refusal to take part in C.'s action against H. from asserting his claim against deft. co.—*HOOD'S TRUSTEES v. SOUTHERN UNION GENERAL INSURANCE CO. OF AUSTRALASIA*, [1928] Ch. 793; 97 L. J. Ch. 467; 139 L. T. 536, C. A.

5963. *Add. Annotation*:—*Mentd. Re Blyth Shipbuilding & Dry Docks Co., Forster v. Blyth Shipbuilding & Dry Docks Co.*, [1926] Ch. 494.

5965. *Add. Annotations*:—*Mentd. Maatschappij voor Fondsenbezit v. Shell Transport & Trading Co.*, [1923] 2 K. B. 166; *Knight v. Ponsonby*, [1925] 1 K. B. 545.

6052. *Add. Annotation*:—*Reid. Re Pennington & Owen*, [1925] Ch. 825.

6074. *Add. Annotation*:—*Distd. Re Wilson, Ex p. Salaman, The Trustee v. Keith, Prowse* (1925), 133 L. T. 814.

6092. *Add. Annotation*:—*Mentd. Re Rush, Warre v. Rush*, [1923] 1 Ch. 56.

6111. *Add. Annotation*:—*Consd. Bergerem v. Marsh* (1921), 91 L. J. K. B. 80.

6113. *Add. Annotation*:—*Appld. Bergerem v. Marsh* (1921), 91 L. J. K. B. 80.

6115a. — *Bankruptcy abroad.*—Testator by his will declared himself to be residing in London, & domiciled in England. He subsequently resided in Algiers & carried on business as a coal merchant there until his death. On a petition presented by him in his lifetime to the ct. in Algiers he was declared bkpt. by the French ct. after his death, & a "syndic" was appointed there to whom creditors' claims might be sent. The effect of the order on the evidence was to vest in the French "syndic" the whole of bkpt.'s estate, including assets accruing after the commencement of the bkpcy. In a subsequent creditor's adminis-

tration action in England, K., an English creditor, was appointed administrator & after a grant of administration with the will annexed, proceeded to advertise for creditors. The French "syndic" now claimed that the assets in this country should be transferred to him, admitting that if his application was successful the costs of administration here would have to be deducted:—*Held*: a bkpcy. order having been made by a French ct. of competent jurisdiction the "syndic" was entitled to the whole of the assets wheresoever situate, & these must be handed to him after deducting the costs, charges & expenses of the administration proceedings here.—*Re BURKE, KING v. TERRY* (1919), 51 L. Jo. 430; 148 L. T. Jo. 175.

*Annotation*:—*Reid. Bergerem v. Marsh* (1921), 91 L. J. K. B. 80.

6115b. — — — — —.]—In 1913 deft., a domiciled Englishman, entered into an hotel partnership with other persons in Belgium in connection with the Ghent Exhibition. Deft. became tenant of a house in Ghent for a period of eight months from Apr. 1913, & employed clerks & other persons. The partnership incurred heavy liabilities, & by a decree of the Commercial Ct. at Ghent, dated Aug. 9, 1913, the partnership & its members were declared to be insolvent pursuant to an article of the Belgian Civil Code. The decree was pronounced by the ct. without notice to deft., but subsequently, in accordance with the recognised procedure, he was notified of the decree & appeared by solr. to show cause why it should be dissolved. It was, however, affirmed by the Ct. of Appeal. Pltf., trustee in the bkpcy., brought an action in England alleging that deft. was possessed of assets within the jurisdiction of the English cts. & claiming a declaration that all deft.'s assets had become vested in pltf. as trustee:—*Held*: (1) the decree of the Belgian ct. was valid inasmuch as deft. had submitted to the jurisdiction, (2) the proceedings were not contrary to natural justice, inasmuch as deft. had been afforded an opportunity of being heard; (3) subject to the decision of other issues not before the ct., there should be a declaration that pltf. was entitled to all the movable assets of deft., wherever situate, & to the appointment of a receiver.—*BERGEREM v. MARSH* (1921), 91 L. J. K. B. 80; 125 L. T. 630; [1921] B. & C. R. 195.

6115c. — — — — —.]—*Re KOOPERMAN* (1928), 72 Sol. Jo. 400.

PART XX. SECT. 4, SUB-SECT. 2.—E.

5961 II. — *Premium paid by bankrupt*—Where payments due to a co. issuing a policy were not by the policy itself expressed to be payable during the lifetime of the assured or for seven years at least:—*Held*: the policy was not within the protection afforded by Life Insurance Act, 1908, s. 65, & the policy-moneys passed to the official assignee of the deceased policy-holder.—*LONDON & LANCASHIRE INSURANCE CO., LTD. v. FISHER*, [1924] N. Z. L. R. 1286.—N.Z.

5961 III. — *Property transferred before assignment in bankruptcy.*—A trustee in bkpcy. is not entitled to recover insurance on a building burned after the assignment in bkpcy., but which stood on land transferred prior to the assignment.—*CANADIAN CREDIT*

*MEN'S TRUST ASSCOON., LTD. v. WINNIPEG FIRE UNDERWRITERS' AGENCY (Alta.)*, [1926] 3 D. L. R. 528; [1926] 2 W. W. R. 541.—CAN.

5967 II. — *In action of tort.*—Damages for personal injuries do not vest in the trustee in bkpcy.—*Re HOLLISTER (Ont.)*, [1926] 3 D. L. R. 707; 7 C. B. R. 629.—CAN.

*sq. Rights under contract—Cancellation before receiving order.*—*Held*: the trustee in bkpcy. had no rights under the contract in the name of bkpt., it having been rightly cancelled.—*Re DOLLAR TAXI CO., Ex p. TRUSTEE*, [1924] 3 D. L. R. 97; 4 C. B. R. 867.—CAN.

*st. Proceeds of company's by directors—To discharge personal guarantees of directors.*—*Held*: the transaction was not fraudulent.—*Re*

*UNITED EXHIBITORS*, [1925] 3 D. L. R. 446; 5 C. B. R. 779.—CAN.

PART XX. SECT. 4, SUB-SECT. 3.—B.

*sv. Proceeds of sale—Bill of sale given by husband to wife—To secure loan by wife.*—*Held*: the proceeds derived from realisation of the security effected after an act of bkpcy., but before actual adjudication, were money lent to the husband by the wife for the purpose of his trade or business at the date of bkpcy., & as such, assets in the husband's estate.—*Re HAW*, [1926] N. Z. L. R. 558.—N.Z.

*sw. Chattels in ostensible possession of husband—Onus of proof.*—*Held*: the onus was on the wife to prove that they were her property.—*Re McELLAND'S ESTATE*, [1923] 4 D. L. R. 395; 3 C. B. R. 849.—CAN.

- A. instructed his broker to purchase on his behalf two hundred shares in a co. The broker instructed a firm of brokers to effect the purchase. The firm duly purchased the shares & sent a transfer of the shares to the broker, prepared in the name of A. The broker had in the meantime filed his petition in bkpcy. & the transfer passed to the official receiver & from him to the trustee in bkpcy. of the broker. It was claimed by the firm & also by A. :—*Held*: it was "property held by bkpt. on trust" within the exception contained in 1914 Act, s. 38, & it must be handed over to A.—*BARBER & SONS v. RIGLEY* (1922), 38 T. L. R. 650 ; 66 Sol. Jo. 577.

**6208a.**     -] — In the circumstances (see No. 6208):—*Held*: C. had a lien on the goods for his debt.—*BURN v. CARVALHO* (1834), 7 Sim. 109; 58 E. R. 777, *subsequent proceedings* (1839), 4 My. & Cr. 690, L. C.

**Annotations:—** **Consd.** *Frith v. Forbes* (1862), 31 L. J. Ch. 793. **Refd.** *Hutchinson v. Heyworth* (1838), 9 Ad. & El 375.

6249. *Add. Annotation*.—Mentd. The Kronprinsessan Margareta, The Parana, etc., [1921] 1 A. C. 486.

**6263. Add. Annotation :—**Mentd. Banque Belge v. Hambrouck, [1921] 1 K. B. 321.

**r i. ———.]—Although a foreign Bkpcy. Act cannot, of its own force, operate beyond the country which enacted it, yet private international law & the comity of nations operating on the general principles relating to movable property will recognise its extra-territorial effect, so far at least as it deals with personal property, especially where, as in the case of the U.S. Bkpcy. Act, the Act does not expressly confine itself to property within the United States, but extends to "all property" of bkpt.; & the fact that the U.S. Bkpcy. Act is given effect in Canada only by comity of nations is not a ground for holding that it should be given no greater effect in Canada than would be given to the Canadian Bkpcy. Act in the United States.—WILLIAMS v. RICE (Man.), [1926] 3 D. L. R. 225 ; [1926] 2 W. W. R. 192.—CAN.**

**8a. *Insolvency in South Africa—Property in Ireland.***—By an order of the Supreme Ct. of the Union of South Africa the estate of an insolvent was sequestrated for the benefit of his creditors; subsequently a trustee of the estate was elected, & was declared entitled to administer the estate in accordance with Insolvency Act, 1916. The insolvent was entitled to certain freehold & leasehold property in Ireland. Under the law of the Union of South Africa the trustee was entitled to the immovable property of the insolvent situate in Ireland, so far as such right did not conflict with the law in Ireland. The Supreme Ct. of South Africa having requested the Irish ct to act in its aid, the trustee applied for an order vesting the property in him:—*Held*: he was entitled to such order.—*Re BOLRON*, [1920] 2 I. R. 324.—**IR.**

6124 i. *Payments to accrue under building contract—Retention money.*]—*Held*: moneys already earned by the assignor, although not already due & payable to him, could be assigned by him, & their assignment was not invalidated by bkpcy. intervening before such moneys became due & payable, & this principle was applic-

able to retention money kept back in respect of progress payments under a building contract.—OFFICIAL ASSIGNEE v. SHARPE, [1921] N. Z. L. R. 460.—N.Z.

**6128 1. Book debts—Assignment to incorporated bank.]—Held:** the assignment of all book debts then due or accruing due or thereafter to become due was a general assignment of book debts within Bkpey. Act, s. 30, but was valid.—**SAPERA TOBACCO CO. v. ROYAL BANK OF CANADA** (1922), 63 D. L. R. 58; 2 C. B. R. 309; 52 O. L. R. 131.—**CAN.**

**6128 ii.** — *Assignment not registered—No provincial legislation providing for registration.*]—*Held*: assignment void as against trustee in bkpcy — **ROYAL BANK OF CANADA v. EASTERN TRUST CO.**, [1923] 1 D. L. R. 498; [1923] S. C. R. 177.—**CAN.**

6128 ill. *Future book debts.*]—*Re*  
GORDON STORE, LTD., *Ex p.* STANDARD  
BANK, [1923] 4 D. L. R. 279; 3  
C. B. R. 816.—CAN.

**6128 iv.** —.—.—To be valid against a trustee in bkpry. any assignment of future book debts must be rigidly according to Bkpry. Act, s. 30.—*Re* WALTON, [1924] 4 D. L. R. 706; 5 C. B. R. 112.—CAN.

6138 iv. —. —.—*Re* STANDARD IMPORTS, LTD., *Ex p.* CANADIAN EXPRESS Co. (1922), 68 D. L. R. 396; 2 C. B. R. 206.—CAN.

6133 v. —.—.]—*Re* WILSON (Ont.),  
[1926] 1 D. L. R. 584; 7 C. B. R. 437.—  
CAN.

6139 iv. ———.]—As against an assignee in bkpey. one who has as principal consigned goods to bkpt. under an agency contract by which the property did not pass to bkpt. may recover the goods or the proceeds thereof, provided & so far as they can be identified.—*Re COCKS ESTATE & CONSORT TRADING Co.* (1922), 65 D. L. R. 778; [1921] 3 W. W. R. 434.—CAN.

**6189 v. — Money entrusted to.]—**  
**Held:** the payer could only rank as a preferred creditor if the trust money

could be traced to a particular fund.—  
*Re* DOMINION TICKET, ETC. CORPN.,  
*Ex p.* AKER, [1924] 2 D. L. R. 807.—  
**CAN.**

**6150 i. Broker—Securities sold for client—Proceeds paid into broker's general account.]—Held: as the money could not be distinguished in any way from other moneys in the general account of the brokers the client could not claim it & could only sue for breach of contract.—DALPHE v. FAIRBANKS, GOSSELIN & Co. (1922), 66 D. L. R. 335 : 2 C. B. R. 524.—CAN.**

**sb. Sole beneficiary—Widow's claim to share of estate.]—**Where a widow claims under Widows Relief Act, R. S. A., 1922 (c. 145), s. 10, to the unadministered portion of her husband's estate, such portion does not vest in the trustee in bkpcy. of the sole beneficiary under the husband's will.—*Re McIntyre*, [1925] 4 D. L. R. 127; [1925] 3 W. W. R. 172.—CAN.

50. *Specific purpose—Stock certificate deposited with agent—For sale.*—Bkpt. sold a portion of the shares & had the remainder fraudulently transferred into his own name:—*Held*: the trustee must return the shares.—DENMAN v. TOUSAW, HART & ANDERSON & BELL TELEPHONE CO. (1922), 66 D. L. R 572.—CAN.

sd. ————.]—*Held*: it was necessary for petitioner accurately to identify the certificate which he claimed from the insolvent.—*MCKAY v. TURGEON* (1922), 67 D. L. R. 607.—**CAN.**

6261 i. *General rule—Fund undistinguishable.*—In order to give rise to a right to follow moneys as trust moneys mixed with the trustee's personal moneys there must have existed a trust fund capable of being identified & followed.—*Re CHRISTIE GRANT, LTD., Ex p. CANADIAN EXPRESS Co.*, [1923] 1 D. L. R. 505; 32 Man. L. R. 375; [1922] 3 W. W. R. 1161.—CAN.

6261 H. S.P. OGILVIE FLOUR MILLS  
CO., LTD. v. CANADIAN CREDIT MEN'S  
TRUST ASSOCN., LTD., [1925] 4 D. L. R.  
969; [1925] 3 W. W. R. 686.—CAN.



6270. *Add. Annotation*:—*Re*fd. *Banque Belge v. Hambrouck*, [1921] 1 K. B. 321.

6272. *Add. Annotations*:—*As to* (1) *Re*fd. *Banque Belge v. Hambrouck*, [1921] 1 K. B. 321. *As to* (2) *Re*fd. *Banque Belge v. Hambrouck*, [1921] 1 K. B. 321; *Re* *Wait*, [1927] 1 Ch. 606.

6295a. *Life interest falling into possession—During third bankruptcy—Right of trustee under previous bankruptcies.*—*Re* *SILBER'S SETTLEMENT, PUBLIC TRUSTEE v. SILBER*, [1920] W. N. 77.

6298. *Citations*:—For "*CHIPPENDALE v. TOMLINSON* (1752), 1 Cooke's Bankrupt Laws, 7th ed., p. 406" read "*CHIPPENDALE v. TOMLINSON* (1785), 4 Doug. K. B. 318; 1 Cooke's Bankrupt Laws, 8th ed., p. 428; 99 E. R. 900."

*Add. Annotations*:—*Distd.* *Beckham v. Drake* (1849), 2 H. L. Cas. 579. *Consd.* *Re Roberts*, [1900] 1 Q. B. 122. *Re*fd. *Re Elswood* (1855), 26 L. T. O. S. 96; *Wadling v. Oliphant* (1875), 1 Q. B. D. 145.

6308. *Add. Annotation*:—*Mentd.* *Hoystead v. Taxation Comr.*, [1926] A. C. 155.

6313. *Add. Annotation*:—*Mentd.* *Hoystead v. Taxation Comr.*, [1926] A. C. 155.

6317. *Add. Annotation*:—*Mentd.* *Hoystead v. Taxation Comr.*, [1926] A. C. 155.

6324. *Add. Annotation*:—*Re*fd. *Dyster v. Randall*, [1926] Ch. 932.

6331. *Add. Citation*:—*sub nom.* *Re CLAYTON & BEAUMONTS' CONTRACT*, 2 Mans. 345.

6334. *Citations*:—For "[1918] 2 Ch. 389" read "[1918] 2 Ch. 339."

6347. *Add. Annotation*:—*Re*fd. *Chillingworth v. Esche*, [1923] 1 Ch. 576.

6348. *Add. Annotation*:—*Re*fd. *Dyster v. Randall*, [1926] Ch. 932.

6349. *Add. Annotation*:—*Mentd.* *Hoystead v. Taxation Comr.*, [1926] A. C. 155.

6267 i. *Agent to sell goods—Right to proceeds of sale.*—Money received by a commission agent from sales of his customers' property is, after deduction therefrom of the agent's commission & expenses, money held by him in a fiduciary capacity, & if it is mixed by the agent with his own money in his general banking account & he become bkpt., the money can be followed by the *cestuis que trust* if it is still traceable; otherwise they have no recourse other than proving their claims in the bkpcy.—*SALTER & ARNOLD, LTD. v. DOMINION BANK*, [1923] 3 W. W. R. 257.—CAN.

#### PART XX. SECT. 6.

6283 i. "*Working tools*" — *Law agent's library.*—*Held*: law reports, statutes, & legal text-books, forming the professional library of a practising law-agent, were not necessary "*working tools*."—*PENELL v. ELGIN*, [1926] S. O. 9.—SCOT.

h i. ————*Re* *TRENWITH*, [1922] 3 W. W. R. 1205.—CAN.

h ii. ————*Effect of mortgage.*—Where the owner of an urban homestead mortgages it, the exemption rights of the owner are confined to the equity of redemption.—*Re* *BELL*, [1922] 1 W. W. R. 1015; 67 D. L. R. 66; 32 Man. L. R. 9 at p. 13.—CAN.

h iii. ————"*Building occupied*" — *By debtor.*—Debtor was the registered owner of a lot on which was a two-storey building, in the upper storey of which he & his wife had dwelt continuously since his purchase of the lot. The lower storey was used

mainly as a store, in which debtor's wife carried on a business, but in the rear part was stored some coal, wood & household furniture. The store & dwelling had an outside entrance as well as an inside one. A lean-to had been erected by debtor, which had an outside entrance only:—*Held*: the property was within Exemptions Act, s. 2, cl. 10, & was under Bkpcy. Act, s. 10, excepted from an assignment under that Act.—*Re* *SKEELE*, [1923] 1 D. L. R. 589; [1923] 1 W. W. R. 117; 3 C. B. R. 589.—CAN.

h iv. ————*By partner—Partnership property.*—Under Bkpcy. Act a lot & building belonging to a partnership passes to the authorised assignee under an assignment by the partnership, although part of the building is occupied as a home by one of the partners.—*Re* *DOROVITCH, DOROVITCH v. CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD.*, [1925] 1 D. L. R. 21; [1924] 3 W. W. R. 681.—CAN

h v. ————*Exempt from seizure under execution.*—*Held*: not property divisible amongst bkpt.'s creditors.—*TRADERS TRUST CO. v. COHEN (Man.)*, [1927] 3 W. W. R. 473.—CAN.

#### PART XX. SECT. 7, SUB-SECT. 1.—A. (a).

6286 iii. ————*The after-acquired property of a debtor is available among creditors under a receiving order but not under an authorised assignment.*—*Re* *LIPSON*, [1923] 3 D. L. R. 1171; 52 O. L. R. 352; 2 C. B. R. 488.—CAN.

6291 iv a. ————*Under intestacy.*—*Held*: to vest in the trustee.—*Re*

6352. *Add. Annotation*:—*Consd.* *Re Wigzell, Ex p. Hart*, [1921] 2 K. B. 835.

6366. *Add. Annotations*:—*Distd.* *Re Wilson, Ex p. Salaman, The Trustee v. Keith, Prowse* (1925), 133 L. T. 814. *Re*fd. *Re Cohen, Ex p. Official Receiver*, [1919] 2 K. B. 271; *Re Wigzell, Ex p. Hart*, [1921] 2 K. B. 835.

6390a. *Property acquired between two insolvencies—Assignees under second insolvency entitled.*—*CURTIS v. SHEFFIELD* (1836), 8 Sim. 176; 5 L. J. Ch. 377; 59 E. R. 70.

*Annotation*:—*Consd.* *Re Clagetts Estate, Fordham v. Clagett* (1882), 20 Ch. D. 637.

6395. *Add. Annotation*:—*Re*fd. *Re Mathieson* (1926), 70 Sol. Jo. 1161.

6398. *Add. Annotation*:—*Re*fd. *Re Mathieson* (1926), 70 Sol. Jo. 1161.

6399. *Add. Annotation*:—*Mentd.* *Re Lee, Ex p. Grunwaldt*, [1920] 2 K. B. 200.

6409. *Add. Annotation*:—*Mentd.* *Parr v. A.-G.*, [1926] A. C. 239.

6410. *Add. Annotation*:—*Mentd.* *Parr v. A.-G.*, [1926] A. C. 239.

6415. *Add. Annotation*:—*As to* (2) *Re*fd. *Watson v. Haggitt* (1927), 44 T. L. R. 90.

6449. *Add. Citation*:—*sub nom.* *Re PLIMMER, Ex p. SPELLER*, 14 C. B. 159, n.

*Add. Annotation*:—*Re*fd. *Graham v. Furber* (1853), 2 C. L. R. 10.

6464. *Add. Annotation*:—*Mentd.* *Lamb v. Wright*, [1924] 1 K. B. 857.

6477. *Add. Annotations*:—*Re*fd. *Re Tabor, Ex p. Cork*, [1920] 1 K. B. 808; *Re Kaufman Segal & Domb, Ex p. The Trustee*, [1923] 2 Ch. 89.

6483. *Add. Annotation*:—*Re*fd. *Lamb v. Wright*, [1924] 1 K. B. 857.

6507a. ————*In name of agent—Delivery orders in hands of buyers.*—Bkpt., who carried on business as a merchant, had for some years dealt with plf's. in vacuum flasks, which

LUSSIER, [1927] 4 D. L. R. 637; 61 O. L. R. 177.—CAN.

6293 v. ————*An insolvent has power to dispose of any property he may acquire after being declared insolvent, & all persons dealing with him bona fide & for a consideration will be discharged from making a further payment to the official assignee, provided the transactions took place before the official assignee intervened & claimed the property on behalf of insolvent's estate.*—*CHHOTÉ LAL v. KEDAR NATH* (1924), 1 L. R. 46 All. 565.—IND.

#### PART XX. SECT. 7. SUB-SECT. 1.—A. (b).

sl. *Agreement between trustee, bankrupt & employer—Interference by court.*—*Re* *LOUNSBURY (N. B.)*, [1927] 4 D. L. R. 1040.—CAN.

#### PART XX. SECT. 7, SUB-SECT. 1.—B. (a).

vi. ————*Application to bankruptcy by authorised assignment.*—*Re* *GADSBY, Ex p. WHITE & ELLIOTT*, [1925] 3 D. L. R. 1159.—CAN.

#### PART XX. SECT. 9, SUB-SECT. 1.

6416 i. "*Goods*," "*goods & chattels*" — *Goods of third party—Intermingled with bankrupt's property by third party.*—*Held*: the entire property became assets to satisfy the creditors.—*Re* *PROGRESSIVE FARMERS, Re HOLDEN NATIONAL CO.'S CLAIM* (1921), 62 D. L. R. 631; 2 C. B. R. 551.—CAN.



came from Germany. The bills of lading in respect of the goods were made out "to order" & the charges were paid by S., a forwarding agent employed by bkpt. The goods on arrival were stored at a wharf in the name, & for the account, of S. When a sale had taken place S. signed a delivery order which bkpt. handed to the buyers against payment for the goods. Between Aug. 3 & Sept. 7, 1927, pliffs. purchased a number of cases of vacuum flasks & paid bkpt. for them prior to the commencement of the bkpcy., the receiving order being made on Sept. 24. Bkpt., upon payment being made for the goods, handed to pliffs. delivery orders for the goods signed by S. & addressed to the wharfingers. These delivery orders had not been presented at the wharf at the date of the bkpcy., & when they were presented shortly afterwards the wharfingers, acting on S.'s instructions, refused to deliver the goods. The trustee in bkpcy. claimed that the goods were in the possession, order or disposition of bkpt. at the date of the receiving order & formed part of bkpt.'s estate under 1914 Act, s. 38 (c):—*Held*: pliffs. had not by their conduct in any way induced a belief that the goods were in the possession, order or disposition of bkpt. in such circumstances that he was the reputed owner thereof, & the trustee was not entitled to the goods as forming part of bkpt.'s estate.—*SIMEONS (C.) & Co. v. DURAND'S TRUSTEE*, [1928] 2 K. B. 66; 97 L. J. K. B. 537; 138 L. T. 612; [1928] B. & C. R. 19.

6514. *Add. Annotation*:—*Consd. Re Tabor, Ex p. Cork*, [1920] 1 K. B. 808.

6515. *Add. Annotations*:—*Consd. Re Tabor, Ex p. Cork*, [1920] 1 K. B. 808; *Re Kaufman Segal & Domb, Ex p. The Trustee*, [1923] 2 Ch. 89.

6516a. *On business premises.*—The custom of hiring furniture which exists in the case of hotel proprietors, & is so notorious as to exclude the doctrine of reputed ownership in the event of the bkpcy. of the hotel proprietor whether the particular furniture was hired or not, does not extend to furniture in the possession of traders generally, *e.g.* a wholesale grocer.—*Re TABOR, Ex p. CORK*, [1920] 1 K. B. 808; *sub nom. Re TABOR, Ex p. TRUSTEE*, 89 L. J. K. B. 352; 122 L. T. 799; 36 T. L. R. 191; [1919] B. & C. R. 299.

*Annotations*:—*Folld. Re Kaufman Segal & Domb, Ex p. Trustee*, [1923] 2 Ch. 89. *Refr. French v. Gething*, [1922] 1 K. B. 236.

6519. *Add. Annotations*:—*Consd. Re Tabor, Ex p. Cork*, [1920] 1 K. B. 808. *Folld. Re Kaufman Segal & Domb, Ex p. The Trustee*, [1923] 2 Ch. 89.

6523. *Add. Annotation*:—*Refr. Re Blyth Shipbuilding & Dry Docks Co., Forster v. Blyth Shipbuilding & Dry Docks Co.*, [1926] Ch. 494.

6524. *Add. Annotation*:—*Mentd. Re Blyth Ship-*

*building & Dry Docks Co., Forster v. Blyth Shipbuilding & Dry Docks Co.*, [1926] Ch. 494.

6525. *Add. Annotations*:—*Refr. Lamb v. Wright*, [1924] 1 K. B. 857; *Simeons v. Durand's Trustee*, [1928] 2 K. B. 66.

6561. *Add. Annotation*:—*Refr. French v. Gething*, [1922] 1 K. B. 236.

6584. *Add. Annotation*:—*Mentd. Richmond v. Savill*, [1926] 2 K. B. 530.

6613. *Add. Annotation*:—*Refr. Lamb v. Wright*, [1924] 1 K. B. 857.

6614. *Add. Annotation*:—*Mentd. Re Allester*, [1922] 2 Ch. 211.

6625. *Add. Annotation*:—*Refr. Re Wethered, Ex p. Salaman*, [1926] Ch. 167.

6647. *Add. Citations*:—*sub nom. Re PLIMMER, Ex p. SPELLER*, 14 C. B. 159, n.

*Add. Annotation*:—*Refr. Graham v. Furber* (1853), 2 C. L. R. 10.

6657. *Add. Annotation*:—*Consd. Re Collins*, [1925] Ch. 556.

6659. *Add. Annotation*:—*Appld. Re Collins*, [1925] Ch. 556.

6659a. ———.]—For some years before his bkpcy. a surveyor & assessment specialist with a staff of clerks had entered into contracts with clients for personal service in the latter capacity. Under these contracts he had to value his clients' properties for rating purposes & give expert evidence on their appeals, his remuneration being a percentage of the reduction of their assessments when obtained. He mortgaged these contracts & the sums to become due on completion thereof to a mtgee., who by special arrangement with the mtgor. gave no notice to the clients so as not to imperil the mtgor.'s business position, the mtgor. being allowed to collect the fees when due in his own name & hand them over to the mtgee. At the date of the mtgor.'s bkpcy., some fees (a) were due on completed contracts, but some fees (b) were still unearned. The trustee employed bkpt. & some of his staff to carry out the uncompleted contracts & earn fees (b):—*Held*: (1) though the work to be done under the contracts required a certain amount of technical skill on which bkpt.'s clients relied, it was nevertheless part of bkpt.'s business, so that the fees (a) due at the date of the bkpcy. were due to him "in the course of his trade or business" & being in his order & disposition by the consent of the mtgee. belonged to the trustee under 1914 Act, s. 38 (c); (2) the mtge. of fees (b) earned since the bkpcy. was inoperative against the trustee.—*Re COLLINS*, [1925] 1 Ch. 556; 133 L. T. 479; *sub nom. Re COLLINS, Ex p. SALAMAN (TRUSTEE)*, 95 L. J. Ch. 55; [1925] B. & C. R. 90.

6689. *Add. Annotation*:—*Refr. Re Wethered, Ex p. Salaman*, [1926] Ch. 167.

6701. *Add. Annotations*:—*Folld. Birmingham Banking Co. (Official Liquidators) v. Carter* (1872), 20 W. R. 354. *Refr. Semphill v.*

PART XX. SECT. 9, SUB-SECT. 3.—  
B. (b) 1.

6621 H. ——— *Second mortgage of.*  
In 1905, C. the owner of a life policy of assurance, mortgaged it to the insurance co. In Apr. 1907, C. mortgaged the policy & the lands to B., who gave no notice to the co. till Nov. 1920. In

June, 1907, C. was adjudicated bkpt. In 1915 the insurance co. were paid the amount due on their mtge. & handed the policy to the assignees. In 1920 the assignees surrendered the policy to the insurance co., & received its surrender value, & B. applied for payment of the amount due to him on his mtge.:—*Held*: the equity of redemp-

tion in the mtge. was "goods & chattels" within Irish Bkpt. & Insolvent Act, 1857 (c. 60), s. 313, & was at the date of the bkpcy. "in the possession, order, or disposition of bkpt." by the consent & permission of the true owner.—*Re CLANCARTY*, [1921] 2 I. R. 377.—IR.

Queensland  
L. T. —  
38 L.

Investment Co. (1878), 29  
Rabbinge (1878),

6706. *Add. Annotation*:—*Re*fd. Simeons v. Durand's Trustee, [1928] 2 K. B. 66.
6735. *Add. Annotation*:—*Re*fd. English Insce. v. National Benefit Assce. (1928), 44 T. L. R. 801.
6740. *Add. Annotation*:—*Mentd.* Bickerdike v. Lucy, [1920] 1 K. B. 707.
6742. *Add. Annotation*:—*Re*fd. Lamb v. Wright, [1924] 1 K. B. 857.
6744. *Add. Annotation*:—*Distd.* Lamb v. Wright, [1924] 1 K. B. 857.
6745. *Add. Annotation*:—*Re*fd. Lamb v. [1924] 1 K. B. 857.
- 6745a. Whether mere visible employment of goods in trade or business sufficient.]—(1) In order that goods may come within 1914 Act, s. 38 (c), the consent or permission of the true owner must be given not only to their being in the possession, order or disposition of bkpt., but also to their being used in his trade or business. (2) In order that goods may be in the possession, order or disposition of bkpt. in his trade or business within the clause they must be not merely visibly employed in his trade or business, but acquired & used for the purposes of the business.—*LAMB v. WRIGHT & Co.*, [1924] 1 K. B. 857; 93 L. J. K. B. 366; 130 L. T. 703; 40 T. L. R. 290; 68 Sol. Jo. 479; [1924] B. & C. R. 97.
- 6745b. Fees due on completed contracts to surveyor & assessment specialist.]—*Re* COLLINS, No. 6659a, *ante*.
6746. *Add. Annotations*:—*Re*fd. Simeons v. Durand's Trustee, [1928] 2 K. B. 66. *Mentd.* *Re* Kaufman Segal & Domb, *Ex p.* The Trustee, [1923] 2 Ch. 89; Lamb v. Wright, [1924] 1 K. B. 857.
- 6751a. Must be given both to possession & to use in trade or business.]—*LAMB v. WRIGHT & Co.*, No. 6745a, *ante*.
6762. *Add. Annotation*:—*Re*fd. Lamb v. Wright, [1924] 1 K. B. 857.
6777. *Add. Annotation*:—*Re*fd. *Re* Wethered, *Ex p.* Trustee (1925), 134 L. T. 264.
6794. *Add. Annotation*:—*Re*fd. Lamb v. Wright, [1924] 1 K. B. 857.
6798. *Add. Annotation*:—*Re*fd. Lamb v. Wright, [1924] 1 K. B. 857.
- 6802a. ———.]—In Jan. 1922, G. purchased from bkpts. certain chattels used by them in their business as clothiers, & subsequently in consideration of the option to purchase & the hire-rent agreed upon let them on hire to bkpts. at a monthly rental. The chattels consisted of cutting tables, work tables, machines, stools, etc. The agreement was determinable in the event (*inter alia*) of a receiving order in bkpcy. being made against the hirers, upon which all payments made by the hirers were forfeitable & the chattels were to be delivered to the owner. On Sept. 6, 1922, a receiving order was made against the hirers; on Sept. 21 they were adjudicated

bkpt., & on Sept. 25 a trustee in the bkpcy. was appointed. On motion by the trustee for a declaration that the chattels formed part of the estate of bkpts. as being in their order & disposition with the consent of the true owner:—*Held*: there was no proof of a general custom of hiring out chattels such as were specified in the agreement, nor was such a custom recognised by the cts. The inference of ownership was inevitable that by reason of the possession & user of the goods in the trade or business of the trader they "must" be the property of bkpts.—*Re* KAUFMAN SEGAL & DOMB, *Ex p.* TRUSTEE, [1923] 2 Ch. 89; 92 L. J. Ch. 218; 128 L. T. 650; 67 Sol. Jo. 333; [1923] B. & C. R. 1

6818. *Add. Annotation*:—*Re*fd. Lamb v. Wright, [1924] 1 K. B. 857.
6819. *Add. Annotations*:—*Distd.* *Re* Kaufman Segal & Domb, *Ex p.* The Trustee, [1923] 2 Ch. 89. *Re*fd. Lamb v. Wright, [1924] 1 K. B. 857; Simeons v. Durand's Trustee, [1928] 2 K. B. 66.
6821. *Add. Annotations*:—*Re*fd. Lamb v. Wright, [1924] 1 K. B. 857; Simeons v. Durand's Trustee, [1928] 2 K. B. 66.
6824. *Add. Annotation*:—*Re*fd. Lamb v. Wright, [1924] 1 K. B. 857.
6853. *Add. Annotation*:—*Re*fd. English Insce. v. National Benefit Assce. (1928), 44 T. L. R. 801.
- 6858a. Judgment debt.]—S., a customer of bkpt., a stockbroker, became indebted to him in respect of Stock Exchange transactions in a sum for which bkpt., on Dec. 18, 1923, recovered judgment. Later, S. became similarly indebted to bkpt. in a further sum. On Jan. 15, 1924, bkpt. assigned both debts to W. to secure £500, & covenanted with him that, in the event of his refraining from giving notice of the assignment to S., he, bkpt., would, on payment of the debts or any part thereof, hand the cheque or other form of payment to W. On Feb. 27, 1924, bkpt. committed an act of bkpcy. In Mar. 1924, J., who acted as solr. for both bkpt. & W. in the matter of the assignment, on the instructions of both & without disclosing same, made an agreement with S. for the liquidation of the two debts, whereby S. undertook to pay the aggregate amount thereof by monthly instalments, the first instalments being allocated to the payment of the later of the two debts & the subsequent ones to the payment of the judgment debt; & S. further agreed to deliver promissory notes payable to bkpt. or order to cover the instalments allocated to the later debt. J. received the notes from S. & as agent of W., collected the amounts as they fell due on the notes & paid part thereof to W. & retained the balance. After payment J. returned the notes to S. to be cancelled. At that time neither J. nor W. nor S. had notice of any available act of bkpcy. On Sept. 18, 1924, a receiving order was made, at which date S. had paid & W. had received from J. sums amounting to £90 in respect of the later debt. Upon receiving notice of the receiving order, J.

PART XX. SECT. 9, SUB-SECT. 5.—A. ; so induced.—*Re* ROBERTS, [1924] 1 D. L. R. 386.—CAN.

6752 i. Delivery of goods to trustee—*After notice stopping goods in transitu—Withdrawal of notice on innocent misrepresentation of trustee.*—*Held*: the trustee could not rely on a withdrawal

PART XX. SECT. 9, SUB-SECT. 6.—A. 6799 ii. ———.]—Where there was no immediate delivery of a car

to the purchaser nor any change of possession:—*Held*: the sale & transfer were void as against the trustee.—*FITZGERALD v. MCMORROW*, [1923] 4 D. L. R. 619; 52 O. L. R. 883; 3 C. B. R. 29.—CAN.

gave notice to S. of the assignment. On Sept. 25, 1924, an order of adjudication was made, & on Oct. 7, 1924, appct. was appointed trustee. In Apr. 1925, W. died, & his exor. was made resp. to the motion by which a declaration was sought that the two debts were at the commencement of the bkpcy. in the order & disposition of bkpt. & property of bkpt. divisible amongst his creditors:—*Held*: (1) the earlier debt, which, admittedly, arose in the course of bkpt.'s business, was, notwithstanding its conversion into a judgment debt, none the less at the commencement of the bkpcy. a debt due in the course of his business & in the order & disposition of bkpt. & divisible amongst his creditors; (2) the agreement between bkpt. & S. & the deposit of the notes by bkpt. with W. having been effected after the commencement of the bkpcy., in the absence of knowledge on the part of either S. or W. of an available act of bkpcy., & the ct. inferring an agreement by W. with bkpt., in consideration of the deposit of the notes, not to enforce payment of the advance so long as S. paid the amounts as & when they fell due, constituted valid transactions for valuable consideration within 1914 Act, s. 45, & apart from such inference, the forbearance of W. on the strength of the deposit of the notes to sue & his acceptance of the instalments constituted sufficient consideration for the deposit of the notes; (3) even if the trustee was entitled to recover the instalments paid after the date of the receiving order, the amount paid before that date was a payment protected by sect. 45 (b); & the judgment debt formed part of the property of bkpt. divisible amongst his creditors, while the claim in respect of the other debt should be dismissed.—*Re WETHERED, Ex p. SALAMAN*, [1926] Ch. 167; 70 Sol. Jo. 324; *sub nom. Re WETHERED, Ex p. SALAMAN'S TRUSTEE, TRUSTEE v. BANCE*, 95 L. J. Ch. 127; 134 L. T. 264; [1925] B. & C. R. 265.

6859. *Add. Annotations*:—N.F. *Re Tabor, Ex p. Cork*, [1920] 1 K. B. 808; *Re Kaufman Segal & Domb, Ex p. The Trustee*, [1923] 2 Ch. 89.

6863. *Citations*:—For "5 Ch. App. 520" read "8 Ch. App. 520."

*Add. Annotation*:—Mentd. *French v. Gething*, [1922] 1 K. B. 236.

6867. *Add. Annotation*:—Refd. *Re Tabor, Ex p. Cork*, [1920] 1 K. B. 808.

6868. *Add. Annotation*:—Folld. *Re Tabor, Ex p. Cork*, [1920] 1 K. B. 808.

6869. *Add. Annotation*:—Consd. *Re Tabor, Ex p. Cork*, [1920] 1 K. B. 808.

6873. *Add. Annotations*:—Refd. *Re Tabor, Ex p. Cork*, [1920] 1 K. B. 808; *Re Kaufman Segal & Domb, Ex p. The Trustee*, [1923] 2 Ch. 89.

6879. *Add. Annotation*:—Refd. *Lamb v. Wright*, [1924] 1 K. B. 857.

PART XX. SECT. 9, SUB-SECT. 8.—A.

6859 i. *Duty of court*—To take notice of alleged custom.—Where it is proved that no less than 57 funeral cars & hearses were supplied in Ireland under hire-purchase agreement by one firm between Nov. 23, 1912, & Mar. 8, 1923, the ct. will draw the conclusion that the custom of hiring funeral hearses on the hire-purchase system is sufficiently notorious. The test in such

cases is what is the state of knowledge of persons who have made themselves acquainted with the nature & custom of the particular situation.—*Re TORRENS*, [1924] 2 I. R. 1, 4; 58 I. L. T. 30.—IR.

PART XX. SECT. 9, SUB-SECT. 8.—B.

sa. *Undertaker*—Custom to hire hearses & funeral carriages.—*Re TORRENS*, No. 6859 i., ante.—IR.

6879a. *Clothiers*—Custom to hire machines.]—*Re KAUFMAN SEGAL & DOMB, Ex p. TRUSTEE*, No. 6802a, ante.

6881. *Add. Annotations*:—Apld. *Re Tabor, Ex p. Cork*, [1920] 1 K. B. 808. Folld. *Re Kaufman Segal & Domb, Ex p. The Trustee*, [1923] 2 Ch. 89.

6881a. ———.]—*Re TABOR, Ex p. CORK*, No. 6516a, ante.

6882a. ——— *Antique furniture*.]—A custom exists in the antique furniture trade to deliver goods to a dealer on approval. In the event of the bkpcy. of such dealer, goods upon his premises are not in his order & disposition within 1914 Act, s. 38.—*Re FORD, Ex p. TRUSTEE v. RESTELL, BROWN & Co.* (1928), 97 L. J. Ch. 334; *sub nom. Re FORD, Ex p. HAWKINS*, 44 T. L. R. 643; *sub nom. Re FORD, RESTALL, BROWN & CLENNELL, LTD.'S CASE*, 72 Sol. Jo. 517.

*Annotation*:—Apld. *Re Ford, Powell's Case* (1928), 72 Sol. Jo. 517.

6882b. ——— *Sent by private customer*.]—*Re FORD, POWELL'S CASE* (1928), 72 Sol. Jo. 517.

6885. *Add. Annotations*:—Refd. *Lamb v. Wright*, [1924] 1 K. B. 857; *Simeons v. Durand's Trustee*, [1928] 2 K. B. 66.

6888. *Add. Annotation*:—Consd. *Re Tabor, Ex p. Cork*, [1920] 1 K. B. 808.

6889. *Add. Annotations*:—Apld. *Re Tabor, Ex p. Cork*, [1920] 1 K. B. 808. Refd. *French v. Gething*, [1922] 1 K. B. 236.

6890. *Add. Annotation*:—Refd. *Re Tabor, Ex p. Cork*, [1920] 1 K. B. 808.

6890a. ———.]—*Re TABOR, Ex p. CORK*, No. 6516a, ante.

6892. *Add. Annotation*:—Mentd. *Re Morris, Mayhew v. Halton*, [1921] 1 Ch. 172.

6898. *Add. Annotation*:—Refd. *French v. Gething*, [1922] 1 K. B. 236.

6911. *Add. Annotation*:—Refd. *Re Chiandetti, Ex p. Trustee* (1921), 91 L. J. K. B. 70.

6912. *Add. Annotation*:—Refd. *Re Chiandetti, Ex p. Trustee* (1921), 91 L. J. K. B. 70.

6912a. ——— *Goods sold in interpleader action—Proceeds in court*.]—*Re CHIANDETTI, Ex p. TRUSTEE*, No. 7113a, post.

6915. *Add. Annotations*:—Consd. *Re Chiandetti* (1921), 91 L. J. K. B. 70. Mentd. *Re Fairley*, [1922] 2 Ch. 791.

6916. *Add. Annotation*:—Mentd. *Re Fairley*, [1922] 2 Ch. 791.

6916a. ———.]—*Re CHIANDETTI, Ex p. TRUSTEE*, No. 7113a, post.

6918. *Add. Annotation*:—Consd. *Re Fairley*, [1922] 2 Ch. 791.

6918a. ——— *Subsequent withdrawal & return of nulla bona*.]—On Jan. 14, 1921, the sheriff, in executing a writ of *fi. fa.* for £144, levied on debtor's goods, but on Jan. 29 being paid £72, on account of the debt in addition to costs, fees, & possession money, he withdrew by arrangement reserving a right of re-entry

PART XX. SECT. 10, SUB-SECT. 3.—B.

b (p. 810). *Add "affd. sub nom. MARTIN v. FOWLER*, 46 S. C. R. 119."

fi. ———.]—Payment of proceeds of sale:—*Held*: a preferential payment & void.—*ZEIDMAN & LAMARRE v. AMERICAN FURNITURE CO. & LAVERY* (1922), 66 D. L. R. 99; 2 C. B. R. 547.—CAN.



Annotation :—Consd.  
1. 302.

for £72 balance. He retained the £72 received on account for fourteen days & then paid it to the execution creditors. On Mar. 16 the sheriff made a second levy, but on being paid £53 on account of the debt in addition to fees & possession money, he again withdrew reserving a right of re-entry for the £19 balance. After retaining the £53 for fourteen days he paid it to the execution creditors. On Apr. 26 the sheriff made a third levy, but the goods seized being found on interpleader to belong to a third party, he finally withdrew & made a return of *nulla bona* on May 2. On Sept. 8 a petition in bkpcy. based on an act of bkpcy. of Aug. 19 was presented. A receiving order was made on Sept. 29 followed by an adjudication on Oct. 1 & an order for summary administration on Oct. 3 :—*Held* : the execution was completed within 1914 Act, ss. 40, 41, by the return of *nulla bona* on May 2, & the trustee had no title to the £72 & £53 realised by that completed execution.

*Qu* : whether the trustee would in any case have been entitled to the moneys paid before June 8, the earliest possible date to which his title could relate back under sect. 37.—*Re FAIRLEY*, [1922] 2 Ch. 791 ; *sub nom. Re FAIRLEY, Ex p. OFFICIAL RECEIVER*, 92 L. J. Ch. 140 ; [1922] B. & C. R. 127 ; *sub nom. Re FAIRLEY, Ex p. LOW & BONAR, LTD.*, 38 T. L. R. 893, D. C.

6919. *Add. Annotation* :—Consd. *Re Fairley*, [1922] 2 Ch. 791.

6920. *Add. Annotations* :—*As to* (1) Consd. *Re Fairley*, [1922] 2 Ch. 791. *Refd. Re Chiangetti* (1921), 91 L. J. K. B. 70.

6921. *Add. Annotation* :—Consd. *Re Fairley*, [1922] 2 Ch. 791.

6931. *Add. Annotation* :—Mentd. *Ideal Films v. Richards*, [1927] 1 K. B. 374.

6954. *Add. Annotation* :—*Refd. Re Chiangetti* (1921), 91 L. J. K. B. 70.

6955. *Add. Annotation* :—*Refd. Re Fairley*, [1922] 2 Ch. 791.

6961. *Add. Annotations* :—*Refd. Re Wigzell, Ex p. Hart*, [1921] 2 K. B. 835 ; *Re Wilson, Ex p. Salaman, The Trustee v. Keith, Prowse* (1925), 133 L. T. 814 ; *Re Wait*, [1927] 1 Ch. 606. Mentd. *Re London County Commercial Reinsurance Office*, [1922] 2 Ch. 67 ; *Scranton's Trustee v. Pearse*, [1922] 2 Ch. 87 ; *Re Harrington Motor Co., Ex p. Chaplin*, [1928] Ch. 105.

6962. *Add. Annotations* :—Mentd. *Re Gunsbourg*, [1920] 2 K. B. 426 ; *Scranton's Trustee v. Pearse*, [1922] 2 Ch. 87.

6964. *Add. Annotation* :—N.F. *Latter v. Jukes* (1926), 42 T. L. R. 723.

6965a. "Any other petition"—Notice not given within fourteen days.]—A sheriff, on behalf of an execution creditor, levied an execution against debtor for more than £20, & received the money from debtor to avoid a sale. Within fourteen days of the payment the sheriff received notice of a bkpcy. petition on which an order would have been made had not debtor in the meanwhile filed his own petition on which a receiving order was made as a matter of course. Notice of this second petition was given to the sheriff more than fourteen days after the payment, but while the money was still in his hands pending the result of the first petition. The trustee in bkpcy. & the execution creditor both claimed the money :—*Held* : the words in 1914 Act, s. 41 (2), "or on any other petition of which the sheriff has notice," were not to be qualified by the addition of the words "within the said fourteen days" so as to permit the sheriff to pay the proceeds of the execution to the execution creditor because notice of the second petition on which the receiving order was made was not given within fourteen days of the receipt of such proceeds. The sheriff must hold, in the first instance, to see whether a receiving order would be made, & if he had notice of another petition, even after the lapse of fourteen days, then he must hold to see whether an order would be made on that other petition, or on any petition.—*LATTER v. JUCKES & PAGE*, [1927] 1 K. B. 17 ; 96 L. J. K. B. 137 ; 136 L. T. 177 ; 42 T. L. R. 723 ; 70 Sol. Jo. 905 ; [1926] B. & C. R. 133, C. A.

6966. *Add. Annotation* :—*Refd. Re British Salicylates*, [1918–19] B. & C. R. 160.

6979. *Add. Annotations* :—*Refd. Latter v. Jukes & Page*, [1927] 1 K. B. 17. Mentd. *The James W. Elwell*, [1921] P. 351.

7006. *Add. Annotation* :—Mentd. *The Joannis Vatis*, [1922] P. 92.

7006a. — Sale after bankruptcy—Of goods sufficient to satisfy two executions—One delivered after bankruptcy.]—*Held* : the assignees might recover in trover for such of the goods as were sold after the sheriff had raised money enough to satisfy the first execution.—*STEAD v. GASCOIGNE* (1818), 8 Taunt. 527 ; 129 E. R. 488.

*Annotations* :—*Refd. Giles v. Grover* (1832), 9 Bing. 128 ; *Batchelor v. Vyse* (1834), 4 Moo. & S. 552 ; *Aldred v. Constable* (1844), 6 Q. B. 370.

7008a. Stay of proceedings—When ordered.] *GIBSON v. HUMPHREY* (1833), 1 Cr. & M. 544 ;

PART XX. SECT. 10, SUB-SECT. 4.—A.

6934 II. — *Bankruptcy Act*, s. 11 (3).]—Until a sheriff with whom a writ of execution has been placed receives a copy of the assignment by debtor as provided by the above sect. "or publication of notice in the *Gazette* as provided by the Act," he is not safe in not attaching debtor's goods. A statement made by the solr. for the assignee to a sheriff's officer that an assignment has been made, does not amount to notice to the sheriff, & is not a ground for depriving him of the costs of a levy made after such statement.—*TOWERS v. SOLOMON*, [1922] 1 W. W. R. 1077 ; 2 C. B. R. 579.—CAN.

J.S.

6934 III. — *Extra Judicial Seizures Act*, R. S. A., 1922 (c. 96).]—Bkpcy. Act, 1919, s. 11 (3), does not apply to property seized under the above Act.—*Re HAMILTON & OAKES*, [1925] 2 D. L. R. 514 ; [1925] 1 W. W. R. 172 ; 5 C. B. R. 465.—CAN.

PART XX. SECT. 10, SUB-SECT. 4.—C.

6983 III. —.]—While a sheriff is not entitled to poundage unless he has obtained some money for the execution creditor, yet r. 495 contemplates that the sheriff is to receive something, even though no money has been realised by him, since it provides that he is to be entitled to poundage "or such less sum as a judge may deem

reasonable."—*MOROSCHAN v. MOROSCHAN*, [1921] 2 W. W. R. 147 ; 14 Sask. L. R. 233 ; 59 D. L. R. 353 ; 1 C. B. R. 493.—CAN.

6983 IV. — *Seizure after authorised assignment*.]—*TOWERS v. SOLOMON*, [1923] 1 W. W. R. 1184 ; 3 C. B. R. 806.—CAN.

6990 I. *Possession money—Sheriff continuing in possession—After notice of assignment*.]—The costs to which the execution creditor is entitled are the costs of execution up to the time notice of the assignment is given the sheriff.—*BAKER v. RICHARDS*, [1918] 2 W. W. R. 902 ; *affd.* 59 S. C. R. 656 ; 49 D. L. R. 684.—CAN.

15

l. 68; 3 Tyr. 588; 2 L. J.  
l. R. 516, Ex. Ch.

*Annotation*:—*Reid. Moon v. Raphael* (1835), 2 Bing. N. C.

7032. *Add. Annotations*:—*Reid. Re Webb* (Smithfield, London), [1922] 2 Ch. 369. *Mentd. A.-G. v. De Keyser's Royal Hotel*, [1920] A. C. 508.

7051. *Add. Annotation*:—*Mentd. The James W. Elwell*, [1921] P. 351.

7058. *Add. Annotations*:—*Reid. Latter v. Jukes Page*, [1927] 1 K. B. 17. *Mentd. The James*

7079. *Add. Citation*:—*sub nom. Re PLUMMER, Ex p. TRUSTEE*, 69 L. J. Q. B. 936; 48 W. R. 634; 44 Sol. Jo. 572; 7 Mans. 367, C. A.

*Add Annotation*:—*Reid. Re Mathieson*, [1927] 1 Ch. 283.

7085. *Add. Annotation*:—*Reid. Re Mathieson*, [1927] 1 Ch. 283.

7086. *Add. Annotation*:—*Reid. Re Mathieson*, [1927] 1 Ch. 283.

7087. *Add. Citation*:—*subsequent proceedings* (1805), 11 Ves. 377.

7089a. *Declaration of trust without consideration—Credit in account of money to wife.*—*Held*: not binding on bkpt.'s creditors.—*Re SMITH, Ex p. SMITH* (1812), 1 Rose, 208.

*Annotation*:—*Consd. Parsons v. Coke* (1858), 27 L. J. Ch. 828.

7091. *Add. Annotation*:—*Reid. Re Mathieson*, [1927] 1 Ch. 283.

7094. *Add. Annotation*:—*Reid. Re Mathieson*, [1927] 1 Ch. 283.

7096a. *Settlement of property in exercise of general power of appointment.*—*Held*: not within 1914 Act, s. 42.—*Re MATHIESON*, [1927] 1 Ch. 283; 71 Sol. Jo. 18; *sub nom. Re MATHIESON, MOORE (TRUSTEE) v. MATHIESON*, 96 L. J. Ch. 104; [1927] B. & C. R. 30; *sub nom. Re MATHIESON, Ex p. TRUSTEE*, 136 L. T. 528, C. A.

7098b. *Property accruing "after marriage in right of wife."*—*Property devolving on a husband*

on the intestacy of his deceased wife is property that has accrued to the husband after marriage in right of his wife within the exception to 1914 Act, s. 42.—*Re BOWER WILLIAMS, Ex p. TRUSTEE*, [1927] 1 Ch. 441; 96 L. J. Ch. 136; 136 L. T. 752; 43 T. L. R. 225; 71 Sol. Jo. 122; [1927] B. & C. R. 21, C. A.

7098. *Add. Annotation*:—*Reid. Jagger v. Jagger*, [1926] P. 93.

7104. *Add. Annotations*:—*As to* (1) *Reid. Re Charters, Ex p. Trustee*, [1923] B. & C. R. 94. *As to* (2) *Consd. Re Charters, Ex p. Trustee*, [1923] B. & C. R. 94.

7105. *Add. Annotation*:—*Reid. Re Wombwell* (1921), 37 T. L. R. 625.

7106. *Add. Annotation*:—*Consd. Re Charters, Ex p. Trustee*, [1923] B. & C. R. 94.

7109. *Add. Annotation*:—*Consd. Re Charters, Ex p. Trustee*, [1923] B. & C. R. 94.

7111. *Add. Annotation*:—*Mentd. Re Gunsbourg*, [1920] 2 K. B. 426.

7113. *Add. Annotation*:—*Mentd. Denny (Trustee) v. Denny & Warr*, [1919] 1 K. B. 583.

7113a. — *Gift by brother to sister.*—By a deed of gift dated Oct. 7, 1919, debtor, who was adjudged bkpt. on Nov. 23, 1920, "in consideration of his natural love & affection for the donee" purported to assign & convey to his sister, resp., "the business carried on by him at 58a, Old Compton Street, Soho, & the stock-in-trade, wine & produce in & about the premises." At the date of the deed petitioning creditors were proceeding to enforce judgment under R. S. C., Ord. 14, & on Mar. 18, 1920, obtained final judgment against debtor for £527 7s. 4d. for goods sold & costs. On Mar. 20, 1920, execution was levied. Upon such levy being made, resp. claimed under the deed of gift the whole of the furniture & stock seized by the sheriff. An interpleader summons was taken out by the sheriff, & upon the hearing thereof, on Mar. 26, 1920, the master ordered claimant

PART XX. SECT. 10, SUB-SECT. 8.

y (p. 830) i. — *Memorandum that title subject to costs of prior execution.*—On an assignment under Bkpcy. Act, where there are executions recorded against land of the assignor, the registrar of land titles, in making transmission of title to the assignee, should make a memorandum that the title is subject to a lien for costs of the first execution which was lodged with the sheriff & to a lien for costs of registration & sheriff's fees of all the executions.—*Re LAND TITLES ACT, SASKATCHEWAN GENERAL TRUST CORPN., LTD.'s CASE*, [1923] 3 W. W. R. 628.—CAN.

7069 i. *Garnishee order.*—A debt was attached by a garnishee order under a judgment which was still subsisting:—*Held*: a receiving order under Bkpcy. Act, s. 11, did not rank in priority to such garnishment.—*Re BLOUIN, GAGNON v. GRAIN & PROVISION CO.*, [1924] 1 D. L. R. 332; Q. R. 35 K. B. 161.—CAN.

st. *Payment by contractor to prevent removal & sale by sheriff of sub-contractor's plant & materials.*—*Bankruptcy of sub-contractor.*—*Effect of.*—*Re STEWART (Ont.)*, [1926] 2 D. L. R. 7 C. B. R. 680.—CAN.

PART XX. SECT. 11, SUB-SECT. 1.

7078 ii. — *Bankruptcy Act, s. 29.* "in the above sect.

COHEN & MAHLIN, CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD. v. SPIVAK (Alta.), [1926] 3 D. L. R. 942; [1926] 3 W. W. R. 34; *revid.* [1927] 1 D. L. R. 577; [1927] 1 W. W. R. 162; 22 Alta. L. R. 487; 8 C. B. R. 23.—CAN.

7078 iii. *S. P. TRADERS TRUST CO. v. COHEN (Man.)*, [1927] 3 W. W. R. 473.—CAN.

7086 ii a. — *Held*: a gift not being hedged about with conditions was not a settlement within Bkpcy. Act, 1908, s. 75.—*BRAITHWAITE v. BRAITHWAITE*, [1923] N. Z. L. R. 1186.—N.Z.

ji. — *Where insured, under a policy of life insurance, declares it to be for the benefit of his wife, the trust created is not invalidated by his subsequent insolvency, & creditors of insured have no rights which would interfere with the rights of his wife even though the endowment policy matures during the life of insured.*—*BANK OF BRITISH NORTH AMERICA v. EDGEcombe* (1919), 46 N. B. R. 105.—CAN.

sg. *Conveyance of property to wife & sons.*—*Where a transfer in the nature of a settlement was made for the purpose of defeating creditors.*—*Held*: though it would not be set aside, yet the creditors might seek payment of their claims out of the property

transferred.—*KIEHL v. FUSSEL* (1922), 68 D. L. R. 780.—CAN.

ri. *Purchase of property & ment of money in wife's name.*—*Where property had been acquired & money invested by a husband in the name of his wife for the purpose of defeating his creditors.*—*Held*: the property belonged to the husband, & the proceeds received by the wife from a sale of furniture owned by the husband should be paid to a receiver.—*McCURDY v. NEVE* (1923), 51 N. B. R. 123.—CAN.

sj. *Declaration of trust in favour of wife.*—*In pursuance of alleged antenuptial settlement.*—*Held*: a settlement within Bkpcy. Act, s. 29 (1), & null & void.—*Re ALIOTIS & CLIRIS*, [1923] 1 D. L. R. 348; 56 N. S. R. 43; 3 C. B. R. 600.—CAN.

PART XX. SECT. 11, SUB-SECT. 2.

hi. — *Purchased by husband for wife.*—*To trustee during minority of wife.*—*Transfer to wife at majority.*—*Held*: not a settlement on the wife in consideration of marriage & void as against the trustee.—*Re McELLAND'S ESTATE*, [1923] 4 D. L. R. 395; 3 C. B. R. 849.—

PART XX. SECT. 11, SUB-SECT. 3.

7107 iii. — *Question of fact.*—*Re GRANT (N. S.)*, [1926] 1 D. L. R. 681; 7 C. B. R. 254.—CAN.

to pay into ct. \$800 or give security for such amount, & in default the sheriff was authorised to sell the property seized & pay the proceeds into ct. to abide the result of an issue directed to be tried between claimant & execution creditors. Pursuant to the the sheriff sold the goods on Apr. 28, & on May 20, 1920, paid the sum of \$202 12s. 2d. into ct. On Nov. 3, 1920, the parties to the interpleader summons agreed to divide the money between them & to withdraw the record; these terms were embodied in an order of the master of that date. In the meantime, however, a receiving order was made on Nov. 1, 1920, & petitioning creditors, the execution creditors, informed the official receiver of the sum of money being in ct. & of the terms of settlement so agreed as aforesaid. Thereupon the official receiver intervened, & on Nov. 1, 1920, gave notice in writing to the Paymaster-General of the Supreme Ct. of the receiving order, & this notice had the effect of preventing the order being acted upon. The trustee moved for a declaration that the deed of gift was void as against him:—*Held*: (1) the deed of gift was a voluntary settlement &, being made within two years of the bkpcy., was void; (2) the execution having been completed & the proceeds held by the sheriff for fourteen days, the trustee's title was barred, because, although the execution was not completed before the sheriff had been in possession for twenty-one days, the act of bkpcy. thereby created had not occurred within three months of the presentation of the petition & was not therefore available to establish the trustee's title.—*Re CHIANDETTI, Ex p. TRUSTEE* (1921), 91 L. J. K. B. 70; 37 T. L. R. 984; [1921] B. & C. R. 82.

7118. *Add. Annotation*:—*Consd. Re Charters, Ex p. Trustee*, [1923] B. & C. R. 94.

7119a. — Donee taking over liability for mortgage debt.]—By an indenture dated July 19, 1920, a husband assigned his reversionary interest under a will to his wife, subject to a mtge.; & the wife covenanted expressly to pay the mtge. debt & interest & to indemnify the husband against his liability under the mtge. The husband was adjudged bkpt. on June 20, 1922, within two years of the assignment. On motion by the trustee in the bkpcy. for a declaration that the assignment was void against him as being a voluntary settlement under 1914 Act, s. 42:—*Held*: there was ample consideration in the assignment, & the wife was a "purchaser" for valuable consideration within the sect.—*Re CHARTERS, Ex p. TRUSTEE*, [1923] B. & C. R. 94.

7122. *Add. Citation*:—*sub nom. Re MACDONALD, Ex p. McCULLUM*, [1920] 1 K. B. 205; 122 L. T. 316.

7124. *Add. Annotation*:—*Reid. Re Gunsbourg*, [1920] 2 K. B. 426.

#### PART XX. SECT. 12, SUB-SECT. 1.

7164 x. —.]—A preference & a fraudulent preference are vitally different. Bkpcy. Act prohibits a fraudulent preference only; & to constitute a fraudulent preference there must be present two circumstances, a preference in fact & an intention on the part of debtor to prefer.—*BURNS v. AL BANK OF CANADA, BURNS v. HAM* (1922), 69 D. L. R. 608; 51 L. L. R. 584; 2 C. B. R. 241.—CAN.

7164 xi. —.]—Where the delivery of goods was not a disposition in the ordinary course of business & the effect was to prefer debts:—*Held*: it should be set aside.—*JACOBSON, ETC. v. JACOBSON, ETC.* (1920), App. D. 75.—S. AF.

7167 xvi. —.]—Where a mtgee. knew the mtgor. could not meet his current liabilities but believed he had more than sufficient property to pay his debts, & the conveyances

*Add. Annotations*:—*Consd. Re Gunsbourg*, [1920] 2 K. B. 426. *Mentd. Re Wigzell, Ex p. Hart*, [1921] 2 K. B. 835.

7127. *Add. Annotation*:—*Reid. Re Gunsbourg*, [1920] 2 K. B. 426.

7129. *Add. Annotations*:—*Reid. Re Gunsbourg*, [1920] 2 K. B. 426; *Re Mathieson*, [1927] 1 Ch. 283.

7133. *Add. Annotation*:—*Reid. Re Gunsbourg*, [1920] 2 K. B. 426.

7134. *Add. Annotations*:—*Consd. Re Gunsbourg*, [1920] 2 K. B. 426. *Reid. Re Wigzell, Ex p. Hart*, [1921] 2 K. B. 835.

7135. *Add. Annotation*:—*Reid. Re Mathieson*, [1927] 1 Ch. 283.

7136. *Add. Annotation*:—*Consd. Re Gunsbourg*, [1920] 2 K. B. 426.

7138. *Add. Annotation*:—*Reid. Re Gunsbourg*, [1920] 2 K. B. 426.

7140. *Add. Annotation*:—*Mentd. In the Estate of Plant, Wild v. Plant*, [1926] P. 139.

7142. *Add. Annotation*:—*Reid. Re Mathieson*, [1927] 1 Ch. 283.

7147. *Add. Annotation*:—*Mentd. In the Estate of Plant, Wild v. Plant*, [1926] P. 139.

7148. *Add. Annotation*:—*Reid. Re Mathieson*, [1927] 1 Ch. 283.

7153a. —.]—*Re DENT, Ex p. TRUSTEE*, No. 2902a, *ante*.

7156. *Add. Annotation*:—*Reid. Re Debtor* (1928), 72 Sol. Jo. 860.

7158. *Add. Annotation*:—*Reid. Re Debtor* (1928), 72 Sol. Jo. 860.

7159. *Add. Annotation*:—*Reid. Re Mathieson*, [1927] 1 Ch. 283.

7161a. *Covenant to settle all property to which settlor might become entitled—Settlement of reversionary interest.*—*Re DENT, Ex p. TRUSTEE*, No. 2902a, *ante*.

7164. *Add. Annotations*:—*Apprvd. Re Cohen, Ex p. Trustee*, [1924] 2 Ch. D. 515. *Mentd. Re Prior, Ex p. Trustee*, [1922] B. & C. R. 1.

7165. *Add. Annotations*:—*Reid. Re Cohen, Ex p. Trustee*, [1924] 2 Ch. 515. *Mentd. Re Prior, Ex p. Trustee*, [1922] B. & C. R. 1.

7166a. —.]—To constitute a fraudulent preference three conditions must be fulfilled; (1) that the payment is made by a person unable to pay his debts as they become due from his own money; (2) that it in fact prefers one creditor over others; (3) that the dominant motive with which the payment was made was a desire to prefer that creditor to whom the payment was made. If a voluntary payment in fact gives a creditor a preference & the reason for such payment is unexplained, then a presumption of preference arises. The existence of an explanation ousts the presumption of preference.—*Re DRAGE (J.) & SONS, PALMER & ROBERTS v. KNIGHT* (1926), 134 L. T. 765.

were not made to give the mtgee. an unjust preference, who acted *bond fide* & without intent to delay creditors:—*Held*: the mtge. was valid.—*ROBINSON v. PETERS* (1919), 47 N. B. R. 1.—CAN.

7167 xvii. —.]—Knowledge that debtor has ceased to be able to meet his liabilities as they become due will render payments within three months of the bkpcy. by debtor to a creditor fraudulent & voidable as against the trustee in bkpcy.—



7171. *Add. Annotation*:—*Reid. Re Cohen, Ex p. Trustee*, [1924] 2 Ch. 515.

7172. *Add. Annotation*:—*Reid. Re Cohen, Ex p. Trustee*, [1924] 2 Ch. 515.

7172a. —.]—(1) Debtor was adjudged bkpt. on his own petition on July 6, 1923, & for a long time prior to that date had been hopelessly insolvent. On June 22, 1923, bkpt. paid applt. £146 by a customer's cheque & on June 21 & 23, 1923, he transferred goods to applt. of the value of £378 in discharge of his indebtedness. Debtor was able to pay his creditors 2s. in the pound, but the transfer of the goods to applt. was arranged on a basis that the debt was worth 20s. in the pound & the goods were not of the class with which applt. was in the habit of dealing, & applt. knew that debtor was unable to pay his debts, & the transaction took place on the eve of bkpcy. when debtor must have known he had no chance of pulling round. The

threat of applt. to place the matter in other hands, which amounted to consulting a solr., had no terrors for debtor:—*Held*: the payment & transfer were made with a view to prefer applt. & not in consequence of any pressure which applt. brought to bear upon bkpt.

(2) In establishing a case of fraudulent preference in addition to giving evidence of insolvency the trustee must give some evidence of a view to prefer.—*Re HOYLE, Ex p. TRUSTEE*, [1924] B. & C. R. 22, D. C.

7177. *Add. Citation*:—40 L. T. 404.

7183. *Add. Annotation*:—*Mentd. Reckitt v. Barnett, Pembroke & Slater*, [1928] 2 K. B. 244.

7183a. *Payment to agent of creditor—Whether payment to "person in trust for creditor."*—*Re MORANT, Ex p. TRUSTEES*, No. 7414a, *post*.

7217. *Add. Annotation*:—*Mentd. Re Cohen, Ex p. Trustee*, [1924] 2 Ch. 515.

SON v. TAYLOR, *Re CANADIAN CAP CO., LTD.* (1922), 70 D. L. R. 853.—CAN.

7167 xviii. —.]—Where certain transactions were impeached as being preferential:—*Held*: the *prima facie* presumption of their invalidity had not been rebutted by showing that they were made as required by Bkpcy. Act, s. 32, since they were made with knowledge on the part of the creditor that debtor was "insolvent," as defined by sect. 2 (t), & therefore were not made in good faith.—*Re LONGMORE* (1922), 52 O. L. R. 570; 3 C. B. R. 200.—CAN.

7167 xix. —.]—Where three partners bought out the fourth & took \$1500 from A. for a quarter share in the partnership, & subsequently A. advanced \$400 on the security of a chattel mtge. knowing the firm was insolvent:—*Held*: the mtge. was void as against creditors.—*Re UNITY MANUFACTURING CO., MOORE'S CLAIM*, [1923] 1 D. L. R. 84; 3 C. B. R. 396.—CAN.

7167 xx. —.]—A bank is in no different position from that of any other creditor in relation to the provisions of Bkpcy. Act, & where a bank knows its customer to be insolvent, it cannot within the three months limited by sect. 31 accept from him or appropriate any money standing to his credit towards liquidation of a liability by the customer to the bank.—*SALTER & ARNOLD, LTD. v. DOMINION BANK*, [1923] 3 W. W. R. 257.—CAN.

7167 xxi. —.]—To make a security given a creditor a fraudulent preference under Fraudulent Preferences Act, R. S. S. 1920 (c. 204), s. 4, there must be a concurrence of intent on the part of both debtor & creditor. If the person taking the security be innocent of any fraudulent intent, he cannot be affected by the fact that there was such an intent, unknown to him, in the mind of debtor.—*WOLFE v. SMITH & BRUER*, [1923] 3 D. L. R. 54; [1923] 3 W. W. R. 375.—CAN.

7167 xxii. —.]—*Re THOMPSON, Ex p. TRUSTEES*, [1923] 4 D. L. R. 1028.—CAN.

7167 xxiii. —.]—*Re FOX, LESTER v. PORTER*, [1925] 1 D. L. R. 198; 5 C. B. R. 328.—CAN.

7167 xxiv. —.]—*Re VOGUE FUR SHOP, LTD., Ex p. PAQUET CO.*, [1925] 1 D. L. R. 785; 5 C. B. R. 386.—CAN.

7167 xxv. —.]—*Re FULTON*, [1926] 2 D. L. R. 277; 58 O. L. R. 400.—CAN.

g i. — *Valuable consideration not given*.—Lack of consideration will usually imply a suggestion that a conveyance was made unduly to prefer one creditor, & where the result

of such conveyance is that the grantor's creditors will be defrauded the conveyance will be set aside without proof, apart from the nature of the conveyance itself, of the fraudulent intent of the grantor & the grantee.—*DOTY v. MARKS*, [1924] 3 D. L. R. 687; 55 O. L. R. 147.—CAN.

7169 iii. — *Transactions between relatives*.—Where transactions are between near relations, the *onus* is on the parties to those transactions to show that they were not made fraudulently as against creditors, & for this purpose evidence in corroboration is required.—*BROWN v. BULMER* (1922), 65 D. L. R. 180.—CAN.

7169 iv. —.]—In transactions between relatives having the effect of defeating the claims of a seller's creditors, even if the purchaser has full knowledge of the seller's intent to defraud, such knowledge is not of itself sufficient to render the transaction void, if it is found to have been *bona fide* for full value.—*WAGNER v. HARTOWS*, [1923] 1 D. L. R. 186; [1922] 3 W. W. R. 1050.—CAN.

7169 v. —.]—*Re READY & CASS*, [1924] 2 D. L. R. 528; 33 B. C. R. 371.—CAN.

7169 vi. —.]—Creditors, knowing of the insolvency of debtor, made a composition of their debts giving an extension of time. Within three months debtor was made bkpt.:—*Held*: *prima facie* this agreement constituted a fraudulent preference which the creditors preferred must rebut.—*Re DALE & CARROLL*, [1924] 4 D. L. R. 597; 5 C. B. R. 139.—CAN.

7169 vii. —.]—The *onus* of proof of an intention by debtor to prefer a particular creditor lies on the official assignee.—*Re HARDY* (No. 2), [1922] N. Z. L. R. 613.—N.Z.

7172 i. — *What must be proved*.—B., who was in possession of business premises under a lease not in writing from pltf., made an assignment to deft. co. for the benefit of creditors, & on the same day executed a surrender of the lease:—*Held*: as the surrender preceded the assignment, it was not invalid as a fraudulent preference or a fraudulent parting with property in fraud of creditors.—*BELL v. CHARTERED TRUST & EXECUTOR CO., CHARTERED TRUST & EXECUTOR CO. v. BELL & BURSEY* (1919), 46 O. L. R. 192; 49 D. L. R. 113; 17 O. W. N. 88.—CAN.

7173 i. — *"Transfer."*—A mtge. under Sask. Land Titles Act is a "transfer" within the meaning of Bkpcy. Act, s. 2 (2), notwithstanding the provision in the former Act that a mtge. shall have effect as security but shall not operate as a transfer of the land

thereby charged.—*Re CARSON*, [1922] 1 W. W. R. 204; 2 C. B. R. 187; 63 D. L. R. 352; 15 Sask. L. R. 94.—CAN.

7173 ii. —.]—*Re MARITIME RADIO CORPN., LTD. (N. B.)*, [1927] 2 D. L. R. 450; 8 C. B. R. 153.—CAN.

#### PART XX. SECT. 12, SUB-SECT. 2.

m i. *Property conveyed to creditor by registered conveyance—Unregistered by conveyance to debtor without notice*.—*Held*: property must pass to the trustee in bkpcy.—*Re McCUAIG & BRAY*, [1924] 3 D. L. R. 44; 2 W. W. R. 373; 4 C. B. R. 660.—CAN.

#### PART XX. SECT. 12, SUB-SECT. 3.

7186 vi. —.]—In order to make a payment a fraudulent preference within Bkpcy. Act, 1908, s. 79, it is not necessary that the payment should be made in actual contemplation of bkpcy.—*Re LINNEY (H.) & CO., LTD.*, [1925] N. Z. L. R. 907.—N.Z.

l (p. 863) i. — *Creditor having made inquiries*.—Where in fulfilment of an agreement, a lien note was given by debtor by way of collateral security for advances to be made by the creditor, who had made the fullest inquiries into the financial position of debtor & had failed to discover his insolvency:—*Held*: the giving of the lien note could not be construed as a fraudulent preference.—*Re HUGHES MUSIC SALES CO., CO-OPERATIVE MUSIC SUPPLY CO. v. GOLD MEDAL FURNITURE MANUFACTURING CO.*, [1924] 2 D. L. R. 706; 4 C. B. R. 565.—CAN.

#### PART XX. SECT. 12, SUB-SECT. 4.—A.

t (p. 865) i. — *Creditor with knowledge of insolvency*.—Actual intent to defraud creditors necessary, although creditor aware of debtor's insolvency.—*HICKERSON v. PARRINGTON* (1892), 18 A. R. 635.—CAN.

w i. —.]—The *bona fides* of a transaction is negatived if the creditor who receives payments from debtor has knowledge of debtor's insolvency. But if the creditor has no such knowledge & the transaction is one arising out of the ordinary course of business, the fact that debtor was insolvent when he made the payments will not render such payments a fraudulent preference.—*Re SPEAL, Ex p. LUCAS*, [1924] 1 D. L. R. 191.—CAN.

e (p. 865) i. —.]—To constitute a preference under Bkpcy. Act, s. 31, there must be a common or concurrent view, i.e. intent on the part of debtor & the creditor to create a preference.—*Re BELL*, [1922] 1 W. W. R. 1015; 2

7225. *Add. Citation* :—12 L. T. 22.

7225a. ———.]—*Re COHEN, Ex p. TRUSTEE*, No. 4665a, *ante*.

7228. *Add. Annotations* :—*Reid. Re Prior, Ex p. Trustee*, [1922] B. & C. R. 1; *Re Cohen, Ex p. Trustee*, [1924] 2 Ch. 515.

7236. *Add. Annotation* :—*Consd. Re Davies, Ex p. Miles*, [1921] 3 K. B. 628.

7237. *Add. Annotation* :—*Reid. Re Cohen, Ex p. Trustee*, [1924] 2 Ch. 515.

7237a. ——— *Payment in fact giving preference.*]

C. B. R. 271; 67 D. L. R. 66; 32 Man. L. R. 9.—CAN.

c (p. 865) ii. ———.]—*Re GOLDSTEIN*, [1923] 1 D. L. R. 864; 53 O. L. R. 60.—CAN.

c (p. 865) iii. ———.]—The intention of debtor to yield to the dictates of his conscience & to fear the consequence of his crime, negatives the intention to prefer. At any rate, the intention of debtor is not enough, the creditor, too, must intend to obtain a preference.—*Re CARSON*, [1924] 4 D. L. R. 492; 55 O. L. R. 649; 4 C. B. R. 688.—CAN.

c (p. 865) iv. ———.]—To constitute a fraudulent preference there must be an intention on the part of debtor to prefer the creditor in question & an intention on the part of that creditor to be preferred. Therefore where A. was a creditor of B., bkpt., & C. paid A. what B. owed him, & C. was therefore substituted in the place of A., as creditor of B.:—*Held*: as the money paid by C. never became assets in the hands of B., the transaction could not be set aside.—*Re NIAGARA HATS, LTD., TRUSTEE v. BANK OF MONTREAL*, [1924] 4 D. L. R. 953.—CAN.

c (p. 865) v. ———.]—If a partner makes a payment to a creditor with intent to prefer him, & there is a like intent on the part of the creditor to be preferred, this will be a fraudulent preference & may be set aside by the trustee.—*Re ROSEDALE PRODUCE CO., Ex p. MCGOWAN*, [1924] 1 D. L. R. 321; 4 C. B. R. 277.—CAN.

c (p. 865) vi. ———.]—*SALTER & ARNOLD, LTD. v. DOMINION BANK*, [1926] 3 D. L. R. 684; [1926] S. C. R. 621; 7 C. B. R. 639.—CAN.

c (p. 865) vii. ———.]—A payment made by debtor to a creditor within three months of an assignment in bkpcy. is not deemed fraudulent, unless both creditor & debtor have a concurrent or mutual view or intent to effect a preference.—*Re DEMERY & DEMRY, TRUSTEE v. HALLAND*, [1924] 4 D. L. R. 1275; [1924] 3 W. W. R. 708; 34 Man. L. R. 534; 5 C. B. R. 293; *reussg.*, [1924] 4 D. L. R. 309; [1924] 3 W. W. R. 147; 5 C. B. R. 87.—CAN.

c (p. 865) viii. ———.]—*Re STEEVES, NOVA SCOTIA TRUST CO. v. BISHOP*, [1925] 2 D. L. R. 233; 5 C. B. R. 554.—CAN.

c (p. 865) ix. ———.]—Where the trustee in bkpcy. of a partnership seeks to set aside a transfer, charge, or payment as a preference, the trustee must show that such transfer, charge or payment was made by the firm to a firm creditor with concurrent intent on the part of both the debtors & their creditor that, as a result of such transaction, the creditor should obtain a preference over other creditors of the firm.—*Re COHEN & MAHLIN, CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD. v. SPIVAK (Alta.)*, [1927] 1 D. L. R. 577; [1927] 1 W. W. R. 162; 22 Alta. L. R. 487; 8 C. B. R. 28.—CAN.

c (p. 865) x. ———.]—*Re BOAK (GEO. E.) & SON (N. S.)*, [1926] 1 D. L. R. 1179; 7 C. B. R. 477.—CAN.

c (p. 865) xi. ———.]—*Re DEMERY (Ont.)*, [1926] 2 D. L. R. 120; 7 C. B. R. 271.—CAN.

c (p. 865) xii. ———.]—*Re KINNI-BURGH (Ont.)*, [1927] 3 D. L. R. 748; 8 C. B. R. 303.—CAN.

c (p. 865) xiii. ———.]—*ROBINSON v. MCCAULEY (Man.)* (1913), 24 W. L. R. 617; 4 W. W. R. 930; 13 D. L. R. 437.—CAN.

7224 viii. ———.]—Preference must be given voluntarily by debtor, & where a creditor demands a transfer or a mtge., such a demand imports pressure & will be sufficient to rebut the suggestion of preferring that creditor.—*COPE v. WILLIAMS* (1922), 65 D. L. R. 377.—CAN.

p (p. 866) i. ———.]—*Bankruptcy Act*, 1908, s. 79 (3).—"Good faith" in the above sub-sect. means absence of knowledge that a preference was intended.—*Re LINNEY (H.) & CO., LTD.*, [1925] N. Z. L. R. 907.—N.Z.

7228 x. ———.]—A debtor who was unable to pay a certain creditor obtained from her a further loan secured by a mtge. Shortly after debtor made an authorised assignment. The original debt was not included in the mtge., & at the time the creditor was not aware of any available act of bkpcy. on the part of debtor:—*Held*: there was no intention to prefer, & the creditor might reasonably conclude that the loan would enable debtor to carry on his business, & the mtge. was declared valid.—*Re GOLDSTEIN*, [1923] 1 D. L. R. 864; 53 O. L. R. 60.—CAN.

7228 xi. ———.]—There is no fraudulent preference unless bkpt.'s real, dominant, & substantial motive was a desire to prefer the particular creditor over his other creditors. If his real reason was something else, some benefit, to be obtained for himself, the transaction cannot be attacked as a fraudulent preference.—*OFFICIAL ASSIGNEE v. WAIRARAPA FARMERS' CO-OPERATIVE SOCIETY, LTD.*, [1925] N. Z. L. R. 1.—N.Z.

7235 ii. ———.]—Where an assignment of a book debt had been made within three months preceding the authorised assignment:—*Held*: the burden of establishing that it was not a preference was cast upon the assignee-creditor, & evidence of pressure would be of no avail to support the transaction.—*Re WEBB* (1921), 64 D. L. R. 633; 51 O. L. R. 5; 2 C. B. R. 16.—CAN.

7235 iii. ———.]—*Re PROGRESSIVE FARMERS CO., Ex p. BROWN BROTHERS & BURNSTAD, LTD.*, [1923] 1 W. W. R. 833; 3 C. B. R. 702.—CAN.

a (p. 868) i. ———.]—Where a debtor agreed with a creditor that he should have some special advantage if debtor became bkpt., & the result was to avoid a distribution under Bkpcy. Act of bkpt.'s property:—*Held*: the agreement was void.—*Re WETMORE, Ex p. BAIRD & PETERS*, [1924] 4 D. L. R. 66.—CAN.

d (p. 868) i. ———.]—Although a previous agreement to give security may serve to rebut the intention to prefer in giving security by one in insolvent circumstances, if

*Re DRAGE (J.) & SONS, PALMER & ROBERTS v. KNIGHT*, No. 7166a, *ante*.

7238. *Add. Annotations* :—*Reid. Re Hoyle, Ex p. Trustee*, [1924] B. & C. R. 22; *Re Drage, Palmer & Roberts v. Knight* (1926), 134 L. T. 765. *Mentd. Re Cohen, Ex p. Trustee*, [1924] 2 Ch. 515.

7239. *Add. Annotation* :—*Reid. Re Cohen, Ex p. Trustee*, [1924] 2 Ch. 515.

7249. *Add. Citation* :—12 L. T. 22.

the transaction is attacked after sixty days, yet under Assignments Act, ss. 39 & 41, if the giving of security is attacked within sixty days the transaction is utterly void & nothing will rebut such a null.—*HODGE v. MCLEAN & UNION BANK OF CANADA*, [1919] 2 W. W. R. 855; 12 Sask. L. R. 298.—CAN.

d (p. 868) ii. ———.]—Pltf. co., a creditor of a trading firm, obtained from their debtors a chattel mtge. & an assignment of book-debts. The firm afterwards made an assignment to deft. for the benefit of creditors. Pltf. co. sought to establish its priority over the assignment to deft.:—*Held*: as deft.'s assignment was not made within sixty days after the transaction with pltf. co., & the transaction was not attacked within sixty days, there was no statutory presumption of invalidity under Assignments & Preferences Act, R. S. O. 1914 (c. 134), s. 5.—*CRAIG (W. G.) & CO., LTD. v. GILLESPIE* (1920), 47 O. L. R. 529; 54 D. L. R. 514.—CAN.

d (p. 868) iii. ———.]—A conveyance attacked as a preference within sixty days of its execution is void, regardless of the intent in giving it & of the pressure exerted to obtain it, if at the time of its execution debtor was in insolvent circumstances or unable to pay his debts in full & the conveyance had the effect of giving a preference, as defined by Assignments Act, R. S. M., 1913 (c. 12), s. 42, over the execution creditor attacking it.—*TROTTER v. PEDLAR*, [1921] 1 W. W. R. 233; 56 D. L. R. 717.—CAN.

p (p. 869) i. ———.]—*Transaction within three months of insolvency.*—*BRISCOE v. STANDARD BANK* (1923), 53 O. L. R. 623; 3 C. B. R. 863.—CAN.

p (p. 869) ii. ———.]—If a creditor knows debtor is insolvent before he enters into a transaction with him & the effect is to give to that creditor a preference, it makes no difference what was the motive, view, or interest of debtor if bkpcy. intervenes within three months, as the creditor could not possibly rebut the presumption of undue preference, & the transaction will be deemed fraudulent & set aside.—*Re LAVINE*, [1924] 3 D. L. R. 318; 4 C. B. R. 664.—CAN.

p (p. 869) iii. ———.]—*Held*: a creditor to whom bkpt. had made certain payments within three months prior to the assignment had not rebutted the presumption that such payments were preferential, & such payments were fraudulent & void.—*Re BLACK & WHITE HAT SHOP, LTD., NEWTON v. FINESILVER*, [1925] 4 D. L. R. 245; [1925] 2 W. W. R. 782.—CAN.

#### PART XX SECT. 12, SUB-SECT. 4.—B.

sk. *Pressure—Must be actual.*—“Pressure,” in Bkpcy. Act, s. 31 (2), means actual pressure in its original sense, the pressure which is brought to bear by a creditor upon his debtor, & not some secret motive under the impulse of which debtor acts, but which is not actual pressure.—*Re BELL*, [1922] 1 W. W. R. 1015; 2



7267. *Add. Annotation*:—*Reid. Re Cohen, Ex p. Trustee*, [1924] 2 Ch. 515.

7267a. ———.]—*Re HOYLE, Ex p. Trustee*, No. 7172a, *ante*.

7268. *Add. Annotation*:—*Reid. Re Cohen, Ex p. Trustee*, [1924] 2 Ch. 515.

7270. *Add. Annotation*:—*Reid. Re Cohen, Ex p. Trustee*, [1924] 2 Ch. 515.

7318. *Add. Annotations*:—*Consd. Re Cohen, Ex p. Trustee*, [1924] 2 Ch. 515. *Reid. Re Hoyle, Ex p. Trustee*, [1924] B. & C. R. 22; *Re Drage, Palmer & Roberts v. Knight* (1926), 134 L. T. 765.

7323. *Add. Citation*:—*sub nom. MORGAN v. BAKER*, 2 Jur. 1068.

7327. *Add. Annotation*:—*Mentd. Ellis' Trustee v. Dixon-Johnson*, [1924] 2 Ch. 451.

7334. *Add. Annotation*:—*Consd. Re Davies, Ex p. Miles*, [1921] 3 K. B. 628.

7339a. *Agreement to assign interests*—In consideration of advance—No memorandum of agreement within Statute of Frauds.]—By a parol agreement between a lender & D., the former agreed to lend & did lend D. £2,000 in consideration of the latter's promise to assign certain interests. About a year later, in pursuance of this agreement, D. assigned these interests to the lender, & became bkpt. immediately afterwards. At the time of the assignment no memorandum of the above agreement within Stat. Frauds, s. 4, was in existence, but it was recited in the assignment:—*Held*: the assignment, notwithstanding the failure of bkpt. to set

up the statute in answer to the claim by the lender for the performance of the agreement, did not constitute a fraudulent preference or a fraudulent conveyance under 1914 Act, & was valid as against the trustee in bkpcy.—*Re DAVIES, Ex p. MILES*, [1921] 3 K. B. 628; *sub nom. Re DAVIES, Ex p. Trustee*, 91 L. J. K. B. 81; [1921] B. & C. R. 92.

7340. *Add. Annotation*:—*Apld. Re Davies, Ex p. Miles*, [1921] 3 K. B. 628.

7341. *Add. Annotation*:—*Mentd. Re Cohen, Ex p. Trustee*, [1924] 2 Ch. 515.

7351. *Add. Annotation*:—*Mentd. Re Cohen, Ex p. Trustee*, [1924] 2 Ch. 515.

7355. *Add. Annotation*:—*Mentd. Re Mellor, Alvarez v. Dodgson*, [1922] 1 Ch. 312.

7359. *Add. Annotation*:—*Consd. Re Stanley* (1924), 69 Sol. Jo. 36.

7360. *Add. Annotation*:—*Consd. Re Stanley* (1924), 69 Sol. Jo. 36.

7361a. ———.]—Where a payment has been made to a principal creditor with the intent to prefer a guarantor of the debt, 1914 Act, s. 44, enables the trustee in bkpcy. to recover payment from the person actually preferred. Circumstances (*see p. 811, post*) in which:—*Held*: no case of fraudulent preference had been established.—*Re STANLEY (G.) & Co.*, [1925] Ch. 148; 94 L. J. Ch. 187; 133 L. T. 37; 69 Sol. Jo. 36; [1925] B. & C. R. 1.

7362. *Add. Annotation*:—*Mentd. Re Cohen, Ex p. Trustee*, [1924] 2 Ch. 515.

C. B. R. 271; 67 D. L. R. 66; 32 Man. L. R. 9.—CAN.

sl. ———.]—The absence of fraudulent intention in the circumstances in which the fund is taken does not constitute "pressure" within Bkpcy. Act, s. 31 (2).—*Re CARSON*, [1924] 4 D. L. R. 492; 55 O. L. R. 649; 4 C. B. R. 683.—CAN.

7258 vi. ———.]—*GRANT v. VAN NORMAN* (1882), 7 A. R. 526.—CAN.

7258 vii. ———.]—*MANSOOKHLAL DOLATCHAND & Co. v. NAGARDASS MOOLCHAND* (1928), 1 L. R. 6 Ran. 536.—IND.

7271 viii. ———.]—Evidence disclosing a dominant motive such as fear of prosecution or disgrace, impelling debtor to give the security, is admissible to rebut the *prima facie* presumption raised by Bkpcy. Act, s. 31 (2).—*Re BELL* (1922), 67 D. L. R. 66; 32 Man. L. R. 9; [1922] 1 W. W. R. 1015.—CAN.

#### PART XX. SECT. 12, SUB-SECT. 4.—C.

m i. ———.]—Moneys improperly drawn by an exor. from the funds of testator's estate & applied to exor.'s own uses were restored by him within three months before he was declared a bkpt.:—*Held*: the restoration was not a preferential payment within Bkpcy. Act, s. 31. The estate was not a "creditor" of the exor. within the sect., though in some sense a creditor.—*Re CARSON*, [1924] 4 D. L. R. 492; 55 O. L. R. 649; 4 C. B. R. 683.—CAN.

#### PART XX. SECT. 12, SUB-SECT. 4.—E.

r (p. 889) i. *Security to cover advance & past debt*.]—A security given for such a purpose:—*Held*: to be given for valuable consideration & *bona fide*, & under pressure, & an action on behalf of other creditors attacking the security was dismissed with costs.—*BANQUE D'HONORABLE v. JEANNOTTE*, [1923] 1 W. W. R. 28; 16 Sask. L. R. 523.—CAN.

7347 v. ———.]—An incorporated co.,

being in fact insolvent, made in favour of its president, a creditor, as guarantor, a mtge. on its plant to secure him for moneys paid to the co., & by the co. to its bankers, in reduction of the co.'s liability within two months of the co. being adjudged bkpt.:—*Held*: the transaction was free from any taint of fraud; the co. entered into it for the sole object & in the *bona fide* expectation & belief that it would thereby be enabled to carry on its business successfully, & not with the view of preferring either the president or the bank to the co.'s other creditors.—*BURNS v. ROYAL BANK OF CANADA, BURNS v. GRAHAM* (1922), 69 D. L. R. 608; 51 O. L. R. 564; 2 C. B. R. 241.—CAN.

7347 vi. ———.]—A debtor gave a creditor a mtge. & the effect of that was to give the mtgee. a preference:—*Held*: when the mtge. was created, as debtor had not been sued by his creditors & his sole reason for giving the mtge. was that he might continue his business & pay off his other creditors, this was not a fraudulent preference.—*Re BARTER*, [1923] 1 D. L. R. 919; 3 C. B. R. 631.—CAN.

7347 vii. ———.]—A preference to be fraudulent must be given with the intention of creating rights additional to those possessed by other creditors, & where a preference is given not to give one creditor an unfair advantage over other creditors, but to enable debtor to extinguish a past debt & to carry on his business & the preferred creditor has no knowledge of any available act of bkpcy. on the part of debtor, such a preference is not fraudulent within Bkpcy. Act.—*Re BUCHANAN*, [1923] 1 D. L. R. 391; 3 C. B. R. 427.—CAN.

7347 viii. ———.]—*CANADIAN BANK OF COMMERCE v. TREACY*, [1924] 2 W. W. R. 193; 2 D. L. R. 759.—CAN.

#### PART XX. SECT. 12, SUB-SECT. 4.—F.

7359 ii. ———.]—The trustee in bkpcy. of H. under an authorised assignment sought to recover payments made by H., when in a hopeless

state of insolvency, for the purpose, as his creditors, debts, knew, of preferring them so that his guarantors might be as far as possible relieved. The payments were made within a few days of H.'s voluntary assignment, & some were made after the assignment:—*Held*: debts had not at the times of payment notice of any "available act of bkpcy." committed by H.; the transactions were all before Bkpcy. Act, 1921 (c. 17), s. 3, but the payments were not made "in good faith."—*BRISCOE v. MOLSONS BANK* (1922), 69 D. L. R. 675; 51 O. L. R. 644.—CAN.

#### PART XX. SECT. 12, SUB-SECT. 4.—G.

7381 iv. ———.]—*Re ASSAF & DABOUS (Ont.)*, [1927] 1 D. L. R. 24; 7 C. B. R. 689.—CAN.

7388 ii. ———.]—*Conveyance of property for past consideration—Creditor with knowledge of existence of other creditors.*]—*Re DAVID*, [1925] 4 D. L. R. 1046; *affg.*, [1925] 1 D. L. R. 164; 5 O. B. R. 323.—CAN.

sm. *Sale by creditor—Collusive sale—Payment of proceeds of sale to creditor.*]—*Held*: the transaction must be set aside for it was not really only a "payment of money to a creditor," saved out of the general provisions of Assignments & Preferences Act; R. S. O. 1914 (c. 134), by sect. 6. The transaction was substantially an appropriation of goods in part payment of a preferred creditor's claim, & the proceeds of the sale could be reached by the assignee under sect. —*MACFIE v. CATER* (1921), 84 D. 511; 50 O. L. R. 452.—CAN.

sn. *Cheque obtained from Three days before bankruptcy—Accepted by bank on day of bankruptcy.*]—*Held*: a cheque does not operate as an assignment of the funds of drawer in hands of the person on whom it is drawn; & unless payment was made by the drawee before the assignment it was not a payment protected by Assignments & Preferences Act, s. 6 (1); but if paid before the assignment it



7391. *Add. Annotation*:—*Mentd. Re Cohen*, [1924] 2 Ch. 515.

7393. *Add. Annotation*:—*Mentd. Re Cohen, Ex p. Trustee*, [1924] 2 Ch. 515.

7393a. *Payment of proceeds of sale of shares—Payment before transfer.*—Certain stock-brokers within a fortnight of a receiving order being made against them sold shares for a client & paid the proceeds to him before the transfer was executed. The sale was effected by what is called "a put through" by which a jobber lends his name as purchaser, but no money is paid:—*Held*: the payment was made without pressure & was a fraudulent preference.—*Re FELLOWES, O'BRIEN, GORDON & TOOTAL (CARRYING ON BUSINESS AS ELLIS & Co.)* (1924), 68 Sol. Jo. 478.

7395. *Add. Annotation*:—*Mentd. Re Stanton, Hogg v. Maule*, [1928] 1 K. B. 464.

was a payment in cash at the date when the cheque was paid by the bank.—*ROWLATT v. GARMENT (J. & G.) MANUFACTURING Co.* (1921), 64 D. L. R. 88; 49 O. L. R. 166.—CAN.

7395 iii. — *Mortgagee party to fraud.*—Debtor granted a mtge. to certain of his creditors. No money changed hands & at the time it was known to debtor & to the creditors, the mtgees., that debtor was insolvent. The mtge. was part of a scheme to give an undue preference:—*Held*: void under Assignments for Benefit of Creditors Act, 1898 (P. E. 1) (c. 4), & might be set aside as against the trustee in bkpcy.—*CAMPBELL v. GALLANT, CROCKETT & ROYAL BANK OF CANADA, Re MILLIGAN ESTATE* (1922), 70 D. L. R. 320.—CAN.

a (p. 901) i. *Assignment for creditors.*—Creditors who take under a composition affecting substantially the whole of debtor's property are entitled to the protection of Bkpcy. Act, s. 82, as against the official assignee, upon debtor shortly afterwards being adjudicated bkpt., provided the payment was before adjudication & that the creditors had not at the time of such payment notice of any available act of bkpcy committed before that time & acted in good faith.—*Re COCHRANE*, [1925] N. Z. L. R. 15.—N.Z.

so. *Dissolution of partnership—Act injurious to partnership creditors—Preference given to separate creditors.*—*Re ASSAF & DABOUS (Ont.)*, [1927] 1 D. L. R. 24; 7 C. B. R. 689.—CAN.

## PART XX. SECT. 12, SUB-SECT. 5.

7407 i. *How time calculated—Assignment executed but not filed—Subsequent re-execution & filing.*—An authorised assignment dated, executed, & delivered on Aug. 11, was re-executed on Sept. 11, & then filed:—*Held*: the assignment was not revocable at the will of assignor; as soon as the trustee accepted the assignment it took effect as of the day of its original execution.—*Re LONGMORE* (1922), 52 O. L. R. 570; 3 C. B. R. 900.—CAN.

— *of Ontario.*—A chattel — 3. *Impeached as a fraudulent preference under r. 120 by the trustee was made more than three months before the assignment to the trustee:—Held*: although the chattel mtge. did not come within Bkpcy. Act, s. 81, the trustee could attack it as fraudulent under the laws of Ontario quite apart from the Act.—*Re DAVISON*, [1923] 4 D. L. R. 1049; 58 O. L. R. 2.

## XX. SECT. 12, SUB-SECT. 6.

For "— In what court proceedings may be taken" read "In what court proceedings may be taken."

m (p. 903) i. —.]—The fact that a fraudulent transfer was made in a province other than that in which the authorised assignment was made, does not deprive the ct. of the latter province with original jurisdiction with respect to the authorised assignment of jurisdiction to set aside the fraudulent transfer.—*Re COHEN & MAHLIN, CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD. v. SPIVAK (Alta.)*, [1926] 3 D. L. R. 942; [1926] 3 W. W. R. 34; *reversd.* [1927] 1 D. L. R. 577; [1927] 1 W. W. R. 162; 22 Alta. L. R. 487; 8 C. B. R. 23.—CAN.

7412 ii. — *Prior assignment of same property to same parties.*—The fact of a prior assignment does not affect the right to set aside a later assignment of the same property to the same parties, & the setting aside of the later assignment does not affect rights under the prior assignment.—*HODGE v. MCLEAN & UNION BANK OF CANADA*, [1919] 3 W. W. R. 1108; 50 D. L. R. 123; 13 Sask. L. R. 85.—CAN.

7412 iii. — *Denial by transferee that property belongs to bankrupt.*—The words "property belonging to debtor" in Bkpcy. Act, s. 56 (8), have practically the same meaning as "property of debtor" used in sect. 25, & include property of debtor which has been dealt with by himself by transfer to a creditor, & the fact that an alleged fraudulent transferee from bkpt. does not admit that the property in question belongs to bkpt. does not prevent an application being brought under the above sect. & Bkpcy. Rule 120, for the delivery of the property to the trustee.—*Re HOULDRING*, [1921] 2 W. W. R. 521; 14 Sask. L. R. 277; 59 D. L. R. 233.—CAN.

7412 iv. — *Discharge of bankrupt's liability by transaction.*—A trustee in bkpcy. has no right to set aside a transfer made by bkpt. to a creditor whereby bkpt.'s liability to the creditor is discharged, even though the transfer amounts to a fraudulent preference.—*Re REGAL PHONOGRAPH CO., Ex p. TRUSTEE*, [1924] 1 D. L. R. 947; 4 C. B. R. 418.—CAN.

7412 v. — *As against the Crown.*—The provisions of Bkpcy. Act, 1908, relating to fraudulent preference do not bind the Crown.—*OFFICIAL ASSIGNEE v. R.*, [1922] N. Z. L. R. 266.—N.Z.

7412 vii. — *Person claiming property in question as owner & not as creditor not proper party.*—*Re STERNBERG, Ex p. TRIEFUS & STRIPP, LTD.*, [1925] 2 D. L. R. 203; 5 C. B. R. 237; *varving.* [1924] 2 D. L. R. 492; 4 528.—CAN.

7414 iv. —.]—In Assignments Act, R. S. B. 1909 (c. 142), s. 39, "sixty days thereafter" means sixty

7396. *Add. Annotation*:—*Reid. Re Cohen, Ex p. Trustee*, [1924] 2 Ch. 515.

7404. *Add. Annotation*:—*Consd. Re Cohen, Ex p. Trustee*, [1924] 2 Ch. 515.

7405. *Add. Annotation*:—*Mentd. Re Cohen, Ex p. Trustee*, [1924] 2 Ch. 515.

7409. *Add. Annotations*:—*Mentd. Burchell v. Thompson*, [1920] 2 K. B. 80; *Commercial Credit Co. of Canada v. Fulton*, [1923] A. C. 798.

7412. *Add. Annotation*:—*Mentd. Sorrell v. Smith*, [1925] A. C. 700.

7414a. — *Payment to agent of creditor—Agent paying over sum to principal in course of business.*—A payment by a debtor to an agent who receives the money in the ordinary course of his employment for the use of a creditor is not a payment in favour of a "person in trust for any creditor," within

days after the date of the conveyance & not after the date of some prior agreement upon which such conveyance may have been made, & "such transaction" means the conveyance & not such prior agreement.—*HODGE v. MCLEAN & UNION BANK OF CANADA*, [1919] 3 W. W. R. 1108; 50 D. L. R. 123; 13 Sask. L. R. 85.—CAN.

w (p. 904) i. — *After settlement by trustee of preferred creditor's claim.*—*Re TAYLOR (Ont.)*, [1926] 2 D. L. R. 877; 7 C. B. R. 550.—CAN.

sp. — *Note given by purchaser of debtor's stock-in-trade indorsed to creditor—Note in hands of bona fide holder for value.*—*Held*: the creditor could not be compelled to share ratably with the other creditors.—*ROBERTSON v. HOLLAND* (1888), 16 O. R. 532.—CAN.

sq. *Position of trustee—Cannot appropriate & reprobate—Promissory notes transferred to & discounted by creditor.*—*Re LONGMORE* (1922), 52 O. L. R. 570; 3 C. B. R. 200.—CAN.

st. — *Estoppel by conduct.*—S. made a bill of sale of certain chattels to deft. in order to protect the chattels against his creditors. Shortly afterwards S. made an assignment under Bkpcy. Act to plff., who later sold at public auction the assets of S. not included in the bill of sale. On the same occasion the auctioneer sold, on instructions of S., the chattels included in the bill of sale & paid the proceeds to S. who left Canada without paying them to deft.:—*Held*: plff., having refrained from attacking the bill of sale earlier & having allowed the sale to proceed & the moneys to be paid to S., it was too late to hold deft. liable.—*Re STEVENSON, IMPERIAL CANADIAN TRUST CO., LTD. v. NORTH AMERICAN LUMBER & SUPPLY CO., LTD.*, [1924] 2 W. W. R. 245; 4 C. B. R. 632; [1924] 2 D. L. R. 104.—CAN.

sw. *Avoidance of transfer fraudulent under general laws.*—The right of a trustee in bkpcy. to take proceedings to avoid a transfer made by bkpt. which is in fraud of his creditors under general laws is impliedly authorised by Bkpcy. Act & the rules thereunder.—*Re COHEN & MAHLIN, CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD. v. SPIVAK (Alta.)*, [1926] 3 D. L. R. 942; [1926] 3 W. W. R. 34; *reversd.* [1927] 1 D. L. R. 577; [1927] 1 W. W. R. 162; 22 Alta. L. R. 487; 8 C. B. R. 23.—CAN.

1 (p. 906) i. —.]—*Bankruptcy Act, s. 35—Bankruptcy Rules, r. 120.*—*Re COHEN & MAHLIN, CANADIAN CREDIT MEN'S TRUST ASSOCN., v. SPIVAK (Alta.)*, [1926] 3 D. L. R. 942; [1926] 3 W. W. R. 34.

1914 Act, s. 44. The effect of that sect. is not to render the personal liability of an agent to repay a debt, payment of which he has received on behalf of his principal, greater than his liability in a case where money has been paid to him for the use of his principal in circumstances which entitle the person paying it to recover it back, even though it should turn out that, in fact, the payment constituted a fraudulent preference within the sect.

M. being indebted to G. & also to a co. for the price of goods supplied, on Jan. 14, 1921, paid to C. & B., agents of G. & the co. &, to the knowledge of debtor, authorised to receive the payment, the sum of £1,500 in settlement of the amounts respectively owing to G. & the co. The agents in the ordinary course of their employment received that sum for the use of their principals & paid over part thereof to G. & the balance to the co., such payment being made in good faith, in the belief that the payment was a good & valid payment, in ignorance of the impending bkpcy. of debtor & long before any claim by the trustees in the bkpcy. On Feb. 11, 1921, debtor committed an act of bkpcy. by assigning his property in favour of his creditors, & on Mar. 12, 1921, a receiving order was made against him on which he was adjudicated bkpt. Upon a motion by the trustees of bkpt. for an order on C. & B. as agents, neither of their principals having been made resps., to repay the £1,500 on the ground that the payment was void against the trustees as a fraudulent preference:—*Held*: (1) C. & B. received the money merely as agents of & for the use of the creditors in the ordinary course of their employment, & not as "persons in trust for any creditor" within 1914 Act, s. 44; (2) the circumstances under which the money was received & paid over precluded appcts. from recovering the money, even though it were proved that the payment, in fact, constituted a fraudulent preference, as to which the ct. did not consider it to be necessary to decide. *Semble*: (3) the personal liability of a person to whom payment has been made "in trust for any creditor" under 1914 Act, s. 44, must depend upon the facts of each case; in particular, whether the trustee had acted in good faith & whether he still held the money or had paid it over to the creditor before having received notice that the payment constituted a fraudulent preference.—*Re MORANT, Ex p. TRUSTEES*, [1924] 1 Ch. 79; 93 L. J. Ch. 104; 130 L. T. 398; [1923] B. & C. R. 145.

7418. *Add. Annotation*:—*Mentd. Sorrell v. Smith*, [1925] A. C. 700.

PART XX. SECT. 13, SUB-SECT. 1.

7430 v. —.—.]—*MERCHANTS BANK OF CANADA v. KEN MCCLARY & Co.*, [1921] 1 W. W. R. 940; 14 Sask. L. R. 187.—CAN.

PART XX. SECT. 13, SUB-SECT. 2.—  
A. (a).

aa. *Failure to make proper inquiries*.—By Bkpcy. Act a creditor who takes a mtge. & fails to make the proper inquiries will be held to have knowledge of the insolvency of the mtgor. at the time of giving the mtge., & the mtge. will be set aside as a fraudulent preference.—*Re THOMPSON, Ex p. TRUSTEES*, [1923] 4 D. L. R. 1028.—CAN.

ab. —.—.]—Where the circumstances under which a debt is paid are such that a strong suspicion would arise in the mind of an ordinary business man as to the *bona fides* of the payment, the payee ought to inquire closely into all the circumstances. Otherwise, if the payer becomes bkpt., the payment will be construed as a fraudulent preference.—*Re STERNBERG* (1924), 27 O. W. N. 212; *varying*, [1924] 2 D. L. R. 492; 4 C. B. R. 528.—CAN.

PART XX. SECT. 13, SUB-SECT. 2.—  
A. (b).

ac. *General rule*.—When a person knows of an act of bkpcy. or wilfully

7420. *Add. Citation*:—10 B. & S. 371.

7428. *Add. Annotations*:—*Consd. Re A Bankruptcy Notice*, [1924] 2 Ch. 76. *Reid. Huddersfield Fine Worsteds v. Todd* (1925), 42 T. L. R. 52. *Mentd. Edwards v. Motor Union Insce.* (1922), 128 L. T. 276.

7430. *Add. Annotation*:—*Reid. Re Gunsbourg*, [1920] 2 K. B. 426.

7438. *Add. Annotations*:—*Reid. Re Wigzell, Ex p. Hart*, [1921] 2 K. B. 835. *Mentd. Scranton's Trustee v. Pearce*, [1922] 2 Ch. 87.

7438a. —.—.]—A father, having a power of appointment over a fund in favour of his children, agreed with his son to pay his debts, & then to appoint to him a portion of the fund equal to the amount of his debts, which he was then to hand over to the father. The father paid the debts, & made the appointment, when the son became bkpt.:—*Held*: the trustee had no right to the fund appointed.—*Re ANGERSTEIN, Ex p. ANGERSTEIN* (1874), 9 Ch. App. 479; 43 L. J. Bcy. 131; 30 L. T. 446; 22 W. R. 581, L. JJ.

*Annotations*:—*Mentd. Re Pettit's Estate* (1876), 1 Ch. D. 478; *Marbella Iron Ore Co. v. Allen* (1878), 47 L. J. Q. B. 601; *Pitts v. La Fontaine* (1880), 6 App. Cas. 482; *Fraser v. Province of Brescia Steam Tram. Co.* (1887), 56 L. T. 771; *Re Branson, Ex p. Trustee*, [1914] 2 K. B. 701.

7439. *Add. Annotation*:—*Mentd. Re Mellor, Alvarez v. Dodgson*, [1922] 1 Ch. 312.

7440. *Add. Annotation*:—*Reid. Re Gunsbourg*, [1920] 2 K. B. 426.

7442. *Add. Annotation*:—*Reid. Re Gunsbourg*, [1920] 2 K. B. 426.

7463. *Add. Annotation*:—*Mentd. French v. Gething*, [1922] 1 K. B. 236.

7483a. —.— 1914 Act, s. 45.]—*Re WETHERED, Ex p. SALAMAN*, No. 6858a, *ante*.

7490. *Add. Annotation*:—*Reid. Re Gunsbourg*, [1920] 2 K. B. 426.

7512. *Add. Annotation*:—*Mentd. Re Gunsbourg*, [1920] 2 K. B. 426.

7519. *Add. Annotation*:—*Mentd. The Joannis Vatis*, [1922] P. 92.

7520. *Add. Annotation*:—*Consd. Herbert's Trustee v. Higgins*, [1926] Ch. 794.

7543. *Add. Annotation*:—*Consd. Herbert's Trustee v. Higgins*, [1926] Ch. 794.

7546a. —.— That bankruptcy notice served on debtor—& of petitioning creditor's intention to take bankruptcy proceedings.]—Deft. to an action, in which the trustee in bkpcy. claimed that certain farm stock in a bill of sale given to deft. by bkpt. was in the reputed ownership of bkpt. & formed part of his estate, had been informed of the service on bkpt. of a bkpcy. notice, & later had been informed by the petitioning creditor that he was going to take bkpcy. proceedings against his debtor:—*Held*: a mere state-

refrains from making such inquiries as would give him such knowledge, or where the facts are such that an act of bkpcy. had been committed, such a person will be deemed to have notice.—*Re HERRSH, Ex p. GOLDSTEIN*, [1923] 3 D. L. R. 101; 4 C. B. R. 84.—CAN.

7537 iv. —.— That debtor financially embarrassed.]—*Held*: not of itself knowledge of insolvency.—*Re WEBB* (1921), 64 D. L. R. 633; 51 O. L. R. 5; 2 C. B. R. 16.—CAN.

7537 v. —.— That debtor hard pressed for money.]—*Held*: not sufficient to infer that a creditor had constructive notice of an act of bkpcy.—*Re ROBBINS, Ex p. ROOT*, [1924] 3 D. L. R. 90; 4 C. B. R. 670.—CAN.



ment of intention to take bkpcy. proceedings amounted at most to a threat to file a petition, &, falling short of a notice of the actual presentation of a petition, it was not constructive notice of an available act of bkpcy.—**HERBERT'S TRUSTEE v. HIGGINS**, [1926] Ch. 794; 95 L. J. Ch. 303; 135 L. T. 321; 42 T. L. R. 525; 70 Sol. Jo. 708; [1926] B. & C. R. 26.

**7574. Add. Annotation:—**Refd. *Herbert's Trustee v. Higgins*, [1926] Ch. 794.

**7577. Add. Annotations:—**Refd. *Re Chiangetti* (1921), 91 L. J. K. B. 70. **Mentd. *Re Fairley***, [1922] 2 Ch. 791.

**7578. Add. Annotation:—**Mentd. *Re Fairley*, [1922] 2 Ch. 791.

**7601. Add. Citation:—**revsg. S. C. sub nom. *Re Wix, Ex p. CHATTERBY*, 29 W. R. 400.

**7603a. — Employee of company—Refusal of company to pay—Termination of employment alleged.]—**Bkpt., after his adjudication, entered into an agreement of service in writing for one year at a salary of £1,000, the agreement being signed in the name of a joint stock co., underneath which was the name of the managing director followed by the words, "managing director." An order was subsequently made by a registrar, under 1914 Act, s. 51 (2), that £300 out of a sum of £416 13s. 4d. due under the agreement from the co. &/or its managing director to bkpt. be forthwith paid by them to the trustee of the estate of bkpt. When the registrar made that order the only parties before the ct. were the trustee & bkpt. Neither the co. nor its managing director paid the £300, but alleged that nothing was due to bkpt. upon the ground that he had broken the agreement by absenting himself from his employment. The trustee then served a notice of motion in the High Ct. upon the co. & its managing director asking for a declaration that he was entitled to the £300 from resps. as forming part of the property of bkpt., & for an order for payment of that amount. The judge found that no dismissal had taken place nor had bkpt., by his conduct, given notice of his intention not to perform the contract which could be treated by resps. as an anticipatory breach. No point was taken as to whether the managing director was properly made a resp.:—**Held: in the circumstances there must be a declaration & order for payment in terms of the notice of motion.—***Re LAVEY, Ex p. TRUSTEE*, [1920] 1 K. B. 674; 89 L. J. K. B. 24; 122 L. T. 592; [1920] B. & C. R. 43; *subsequent proceedings*, [1920] B. & C. R. 186.

**7626. Add. Annotation:—**Refd. *Allen v. Royal Bank of Canada* (1925), 41 T. L. R. 625.

**7636. Add. Annotation:—**Mentd. *Brown v. Gregson*, [1920] A. C. 860.

**7638. Add. Annotations:—**Refd. *Re Leeds &*

*Batley Breweries & Bradbury's Lease, Bradbury v. Grimble*, [1920] 2 Ch. 548; *McIlroy v. Clements* (1923), 67 Sol. Jo. 402; *Rider v. Ford*, [1923] 1 Ch. 541.

**7639a. Contract for sale of goods.]—***HUSSEY v. FIDALL* (1899), 12 Mod. Rep. 324; *Holt*, K. B. 95; 3 Salk. 59; 88 E. R. 1353.

**Annotation:—**Refd. *Hitchin v. Campbell* (1772), 2 Wm. Bl. 827.

**7648a. — Assuming management of farm.]—****Held:—**a sufficient election to take the term.—*THOMAS v. PEMBERTON* (1816), 7 Taunt. 206; 129 E. R. 83.

**7648b. — Milking cows.]—****Held:—**assignees, having allowed bkpt.'s cows to remain upon the demised premises for two days & ordered them to be milked there, thereby became tenants to the lessor.—*W. CH v. MYERS* (1816), 4 Camp. 368; 171 E. R. 117, N. P.

**7649a. —.]—**Where assignees put a term up to auction, to ascertain whether it was of value, without giving themselves out to be the proprietors, &, there being no bidders, interfered no further in the matter, & never received rents:—**Held: they were not answerable in covenant to the lessor.—***TURNER v. RICHARDSON* (1806), 7 East, 335; 3 Smith, K. B. 330; 103 E. R. 129.

**Annotations:—**Consd. *Copeland v. Stephens* (1818), 1 B. & Ald. 593. **Distd.** *Hanson v. Stevenson* (1818), 1 B. & Ald. 303. **Apld.** *Lindsay v. Limbert* (1827), 12 Moore, C. P. 209. **Consd.** *Williams v. Taylor* (1869), 21 L. T. 612; *Titterton v. Cooper* (1882), 9 Q. B. D. 473. **Refd.** *Hill v. Dobie* (1818), 2 Moore, C. P. 342; *Williams v. Bosanquet* (1819), 1 Brod. & Bing. 238; *Doe d. Palmer v. Andrews* (1827), 4 Bing. 348; *Wollaston v. Hakewill* (1841), 3 Man. & G. 297; *Mackley v. Pattenden* (1861), 30 L. J. Q. B. 225; *Levi v. Ayers* (1878), 3 App. Cas. 842; *Hill v. East & West India Dock Co.* (1884), 9 App. Cas. 448. **Mentd.** *Clark v. Calvert* (1819), 8 Taunt. 742.

**7649b. S. P. CARTER v. WARNE**, No. 9026a, *post*.

**7649c. —.]—**Where assignees for the purpose of preventing a distress paid arrears of rent due, at the same time intimating to the landlord that they did not mean to take to the lease unless it could be advantageously disposed of, & the effects were soon after sold & the lease was at the same time put up to sale by order of the assignees, but there were no bidders for it:—**Held: they were not liable to the landlord as assignees of the lease.—***WHEELER v. BRAMAH* (1813), 3 Camp. 340; 170 E. R. 1404.

**Annotations:—**Consd. *Copeland v. Stephens* (1818), 1 B. & Ald. 593. **Distd.** *Hanson v. Stevenson* (1818), 1 B. & Ald. 303. **Refd.** *Hancock v. Welsh* (1816), 1 Stark. 347; *Doe d. Palmer v. Andrews* (1827), 4 Bing. 348; *Goodwin v. Noble* (1857), 8 E. & B. 587.

**7650a. — Carrying on business for benefit of creditors.]—**Where the assignee kept bkpt. in the premises, carrying on the business for the benefit of the creditors from Nov. 15, 1823, until Apr. following, but on Dec. 22, 1823, had disclaimed the lease by letter to the landlord:—**Held: the assignee, notwithstanding such disclaimer, had elected to accept the lease.—***CLARK v. HUME* (1825), Ry. & M. 207; 171 E. R. 995.

**PART XX. SECT. 13, SUB-SECT. 2.—C.**

**7581 vi. —.]—**Every payment made by bkpt. within a short time of his bkpcy. is regarded with suspicion by the ct. as likely to be a fraudulent preference. The onus is on the payee to show that he had no knowledge of an available act of bkpcy., actual or constructive, that he gave some consideration for the payment & that he was actuated by no fraudulent motive in accepting such payment.—*Re HOWARD GRAHAM & Co., Ex p.*

*GRAHAM*, [1923] 2 D. L. R. 1024; 3 C. B. R. 855.—CAN.

**7581 vii. —.]—***Re GROCERY SPECIALTY Co., Re SHULMAN*, [1923] 2 D. L. R. 316; 3 C. B. R. 46; *affd.*, 24 O. W. N. 90.—CAN.

**PART XX. SECT. 16, SUB-SECT. 1.**

**11. — Right of trustee to give notice of intention to retain—Acceptance of rent by lessors.]—****Held: Bkpcy. Act,**

s. 13 (15), extends sect. 52 (5) to all cases where proceedings are taken under sect. 13 so as to enable either trustee or debtor himself to overcome the forfeiture & elect to retain the demised premises for the whole or any part of the term. If this construction of the Act was wrong, the lessors had waived their rights by acceptance of rent with full knowledge of the circumstances & notice of election to retain.—*Re MCKAY* (1921), 51 O. L. R. 86; 2 C. B. R. 59; 64 D. L. R. 699.—CAN.



7652a. To prevent distress.]—WHEELER v. BRAMAH, No. 7649c, ante.

7653a. ———.]—Held: to amount to an acceptance of the lease.—PAGE v. GODDEN (1818), 2 Stark. 309; 171 E. R. 655.

7662. Add. Annotation:—Mentd. Spencer v. Ashworth, Partington, [1925] 1 K. B. 589.

7665. Add. Annotation:—Mentd. Betts v. Price (1924), 40 T. L. R. 589.

7670a. ———.]—CARTWRIGHT v. GLOVER (1861), 2 Giff. 620; 30 L. J. Ch. 324; 3 L. T. 880; 7 Jur. N. S. 857; 9 W. R. 408; 66 E. R. 260.

Annotation:—Reid. Wilson v. Wallani (1880), 5 Ex. D. 155.

7681. Add. Annotation:—Mentd. Gray v. Spyer, [1922] 2 Ch. 22.

7681a. ——— Statutory tenancy—Under Rent Restriction Acts.]—PARKINSON v. NOEL, No. 7782b, post.

7685. Add. Annotation:—Mentd. Richmond v. Savill, [1926] 2 K. B. 530.

7686. Add. Annotation:—Mentd. Richmond v. Savill, [1926] 2 K. B. 530.

7689. Add. Citation:—sub nom. Re CLAYTON & BEAUMONTS' CONTRACT, 2 Mans. 345.

7689a. Shares—Subject to equitable charge.]—The registered owner of fully paid shares in a private co. charged them in favour of W., & handed him the certificates & a blank transfer. He subsequently gave other equitable charges to other mtgees. On the owner's bkpcy. his trustee disclaimed "all my interest" in the shares under 1914 Act, but, as the blank transfer was not completed & lodged & none of the mtgees. applied for a vesting order, bkpt.'s name remained on the register:—Held: (1) as between himself & the co., bkpt., so long as his name remained on the register, was entitled to vote in respect of the shares, though, as between himself & the mtgees., he could only vote as they dictated; (2) the trustee could not have disclaimed more than the equity of redemption in the shares. Qu.: whether a trustee can disclaim unincumbered fully paid shares.—WISE v. LANSDELL, [1921] 1 Ch. 420; 90 L. J. Ch. 178; 124 L. T. 502; 37 T. L. R. 167; [1920] B. & C. R. 145.

7692. Add. Annotation:—Reid. Re Wait, [1926] Ch. 962.

7693a. Sub-contract for sale of land—Contract for purchase of land need not be disclaimed.]—Where a person, who is subsequently adjudicated bkpt., has entered into a contract for the purchase of land & into a sub-contract to sell the same land with a building thereon to be erected by him, his trustee in bkpcy. is entitled to disclaim the sub-

of sale without being obliged to disclaim the contract of purchase. If the sub-purchaser has paid a deposit he has a lien upon such interest in the land as bkpt. possessed before his bkpcy., including the right, if any, to specific performance of the contract of purchase of the land; he may also prove in the bkpcy. for any damage for breach of the agreement to build, but he is not entitled to specific performance of the contract to build, & his equity is subject to the overriding equity of the original vendor.—Re GOUGH, HANNING v. LOWE (1927), 96 L. J. Ch. 239; 71 Sol. Jo. 470; [1927] B. & C. R. 137, D. C.

7704. Add. Annotations:—Reid. Wise v. [1921] 1 Ch. 420; Re Lister, Ex p. Bradford Overseers & Bradford Corp., [1926] Ch. 149. Mentd. Victoria City v. Vancouver Island (Bp.), [1921] 2 A. C. 384.

7735. Add. Citations:—sub nom. Re WEGG, Ex p. HANBURY, 12 L. J. Bcy. 43; sub nom. Re WEGG, Ex p. BANBURY, 7 Jur. 660.

7751. Add. Annotations:—Consd. Re Hyams, Ex p. Lindsay v. Hyams (1923), 93 L. J. Ch. 184. Reid. Re Lister, Bradford Overseers & Corp., v. Durrance (1925), 42 T. L. R. 143.

7756. Add. Annotation:—Consd. Re Lister, Bradford Overseers & Corp. v. Durrance (1925), 42 T. L. R. 143.

7756a. ——— Right to compensation.]—Where the tenant of a farm held on a verbal tenancy becomes bkpt., & the trustee, having entered into possession of the farm, subsequently disclaims the tenancy, he is excluded from all benefit as well as liability thereunder, including the tenant-right or right to compensation under custom or statute for unexhausted improvements by the tenant, & the amount fixed for compensation having been paid by the incoming tenant to the landlord, to whom arrears of rent are due, the landlord is not bound to account for such payment.—Re WADSLEY, BETTINGSON'S REPRESENTATIVE v. TRUSTEE (1925), 94 L. J. Ch. 215; [1925] B. & C. R. 76, D. C.

—— Liability for rates for period of occupation until disclaimer.]—Where a trustee in bkpcy. goes into occupation of onerous property & subsequently disclaims the property, he is liable to pay the rates on the property for the period of his occupation.—Re LISTER, BRADFORD OVERSEERS & CORPN. v. DURRANCE (1925), 95 L. J. Ch. 145; 42 T. L. R. 143; 89 J. P. Jo. 692, C. A.; sub nom. Re Lister, Ex p. Bradford Overseers & Bradford Corp., [1926] Ch. 149; sub nom. Re Lister, Ex p. Bradford Overseers & Corp. v. Durrance, 134 L. T. 178; 90 J. P. 33; 24 L. G. R. 67; [1926] B. & C. R. 5.

#### PART XX. SECT. 16, SUB-SECT. 5.

7672 i. Within what time—Extension of time—Power of court to grant.]—Re ROGERS (DECEASED) (1926), 26 S. R. N. S. W. 526; 43 N. S. W. W. N.

7676 i. Sufficiency of disclaimer Delay in taking decisive steps.]—virtue of Bkpcy. Act, s. 52, when the trustee does not decide, within a month after the bkpcy., to retain premises held under a tenancy not yet expired, this is taken to be a disclaimer of the premises & puts an end to the tenancy & also to a sub-tenancy created by the tenant.—

v. DUFRESNE (1922), Q. R. 60 S. C. 525.—CAN.

7676 ii. ——— Verbal disclaimer—No consent of creditors.]—Held: the assignee could not make a disclaimer of a debt without the consent of the creditors.—BROWN v. SIDNEY [1920] 28 B. O. R. 73.—CAN.

#### PART XX. SECT. 16, SUB-SECT. 5.—E.

7761 i. On trustee—Right to remove fixtures.]—Where A. purchased a tenant's interest in leased premises including trade fixtures & the last tenant had made an assignment for the benefit of creditors to deft., who

gave a disclaimer:—Held: the fixtures belonged to deft., & he had the right to remove them within the three months' delay given by Creditors' Trusts Deeds Act, s. 56 (1).—MITE v. TAYLOR, [1919] 2 W. 882.—CAN.

sd. On creditors—Disclaimer of —A secured creditor put in a claim against bkpt.'s estate for assets, which assets the trustee claimed:—Held: the order the trustee to accept those as part of the estate.—Re CAN. CARPET & COMFORTER MANUFACTURING CO., Ex p. A. G. FOR CANADA, [1924] 4 D. L. R. 1207; 5 C. B. R. 8

7765. *Add. Annotation*:—*Mentd.* Richmond v. Savill, [1926] 2 K. B. 530.

7766. *Add. Annotation*:—*Mentd.* Richmond v. Savill, [1926] 2 K. B. 530.

7767. *Add. Annotation*:—*Mentd.* Richmond v. Savill, [1926] 2 K. B. 530.

7769. *Add. Annotations*:—*Refd.* Harrison v. Holland, [1921] 3 K. B. 297; Chillingworth v. Esche, [1923] 1 Ch. 576. *Mentd.* Cohen v. Sellar, [1926] 1 K. B. 536.

7775. *Add. Annotation*:—*Mentd.* Richmond v. Savill, [1926] 2 K. B. 530.

7776. *Add. Annotation*:—*Mentd.* Richmond v. Savill, [1926] 2 K. B. 530.

7778. *Add. Annotations*:—*Consd.* *Re* Hyams, *Ex p.* Lindsay v. Hyams (1923), 93 L. J. Ch. 184. *Refd.* *Re* Lister, Bradford Overseers & Corp'n. v. Durrance (1925), 42 T. L. R. 143.

7778a. a debtor has been adjudicated bkpt. & his trustee has disclaimed a lease belonging to him, the property thereby demised reverts in the landlord under 1914 Act, s. 54 (2), & he may obtain an order for delivery of possession. Neither the subsequent annulment of the bkpcy. nor the acceptance by the landlord from debtor of rent due for a period ending before the disclaimer operates to revert any interest in the lease in debtor.—*Re* HYAMS, *Ex p.* LINDSAY v. HYAMS (1923), 93 L. J. Ch. 184; 130 L. T. 237; [1923] B. & C. R. 173, C. A.

7782a. Rights as to statutory tenancy.—Under Rent Restriction Acts.]—The effect of a disclaimer by a trustee in bkpcy. of bkpt.'s interest in a quarterly tenancy is to deprive the tenant of any further interest in the demised premises, & consequently, he is debarred from relying on a statutory tenancy therein under the above Acts.—*REEVES v. DAVIES*, [1921] 2 K. B. 486; 90 L. J. K. B. 675; 125 L. T. 354; 37 T. L. R. 431, C. A.

*Annotations*:—*Consd.* *Roe v. Russell*, [1928] 2 K. B. 117. *Refd.* *Mellows v. Low*, [1923] 1 K. B. 522; *Parkinson v. Noel*, [1923] 1 K. B. 117.

7782b. —.]—A statutory tenancy under Increase of Rent & Mortgage Interest Restrictions Act, 1920 (c. 17), is "property" of the tenant within 1914 Act, s. 167.

Pltfs. having let to deft. a dwelling-house to which the Act of 1920 applied, deft. retained possession of it after the expiration

7770 ii. — *Right to possession*.]—A monthly tenant remained in possession after being adjudicated insolvent. The official assignee having disclaimed interest:—*Held*: the landlord was entitled to an order for possession.—*Re* ABUBAKER HAJI ABDULLA (1924), 1 L. R. 48 Bom. 580.—IND.

7787 iii. —.]—A disclaimer of a lease by an assignee for the benefit of creditors:—*Held*: to operate as a forfeiture & not as a surrender, & to effect the termination of a sub-lease granted by the assignor.—*KERR v. CAPITAL GROCERY, LTD.*, [1921] 1 W. W. R. 1231; 59 D. L. R. 388; 1 C. B. R. 490.—CAN.

7788 i. — *Liability to ejectment*.]—Where a tenant, who has replaced bkpt. on disclaimer of the lease by the trustee, has begun an action of ejectment against the sub-tenant, who refuses to quit the premises, if the latter does not avail himself of his rights under 11 & 12 Geo. 5, c. 17, s. 48, but contests the action & allows it to proceed to judgment, he cannot then

present a petition invoking his rights.—*SEGUIER v. DUFRESNE* (1922), Q. R. 60 S. C. 526.—CAN.

#### PART XX. SECT. 16, SUB-SECT. 6.

7815 i. *In what cases*—*Trustee electing not to take*.]—The order for possession under Bkpt. & Insolvent Act, 1857 (Ir.), s. 271, is consequential upon the order to assignees to elect, & though the judge has a discretion, yet upon the assignees electing not to take the premises, there is a *prima facie* duty upon the judge to make the order for possession unless good reason is shown to the contrary, the object of the sect, being to protect the landlord from being left with a bkpt. tenant.—*KEANE* (1922), 67 I. L. T. 5.—IR.

#### PART XX. SECT. 17, SUB-SECT. 8.

*claimed by*  
—*Held*: the prohibition  
ord's Rights (Bkpcy.)  
(c. 12), s. 3,

of the term under the provisions of that Act. Deft. was afterwards adjudicated bkpt., & the trustee in bkpcy. disclaimed any interest in the house. In an action by pltfs. against deft. for possession of the house & mesne profits:—*Held*: (1) the statutory tenancy to which deft. became entitled under the Act of 1920 was "property" within 1914 Act, s. 167, & passed under sect. 53 to his trustee in bkpcy; (2) on disclaimer thereof by the trustee that interest in the premises ceased to exist & was no longer available for the benefit of deft., & consequently pltfs. were entitled to judgment.—*PARKINSON v. NOEL*, [1923] 1 K. B. 117; 92 L. J. K. B. 361; 128 L. T. 538; 67 Sol. Jo. 184; 21 L. G. R. 130.

*Annotations*:—*Consd.* *Keeves v. Dean*, *unn v. l'ellegriani*, [1923] 2 K. B. 804. *Refd.* *Mellows v. v.*, [1923] 1 K. B. 522; *Roe v. Russell*, [1928] 2 K. B. 117.

7789a. On mortgagee—Of shares—Bankrupt's name still on register.]—*WISE v. LANSDELL*, No. 7689a, ante.

7791. *Add. Annotations*:—*Refd.* *Wise v. Lansdell*, [1921] 1 Ch. 420; *Re* Lister, *Ex p.* Bradford Overseers & Bradford Corp'n., [1926] Ch. 149. *Mentd.* *Victoria City v. Vancouver Island (Bp.)*, [1921] 2 A. C. 384.

7801a. — — —.]—*NAISH v. TATLOCK* (1794), 2 Hy. Bl. 319; 126 E. R. 573

*Annotations*:—*Consd.* *Vincent v. Godson* (1853), 1 Sm. & G. 384. *Refd.* *How v. Kennet* (1835), 3 Ad. & El. 659. *Mentd.* *Richardson v. Hall* (1819), 1 Brod. & Bing. 50; *Nation v. Tozer* (1834), 1 Cr. M. & R. 172; *Seaton v. Booth* (1836), 4 Ad. & El. 528.

7801b. — — —.]—*BEARD v. DAVIDSON* (1843), 1 L. T. O. S.

7811. *Add. Annotation*:—*Consd.* *Re* Farrow's Bank, [1921] 2 Ch. 164.

7821. *Add. Annotations*:—*Refd.* *Re* Hyams, *Ex p.* Lindsay v. Hyams (1923), 93 L. J. Ch. 184; *Re* Lister, Bradford Overseers & Corp'n. v. Durrance (1925), 42 T. L. R. 143.

7832. *Add. Annotations*:—*Refd.* *Re* Hyams, *Ex p.* Lindsay v. Hyams (1923), 93 L. J. Ch. 184; *Re* Lister, Bradford Overseers & Corp'n. v. Durrance (1925), 42 T. L. R. 143.

7835. *Add. Annotations*:—*Refd.* *Re* Hyams, *Ex p.* Lindsay v. Hyams (1923), 93 L. J. Ch. 184; *Re* Lister, Bradford Overseers & Corp'n. v. Durrance (1925), 42 T. L. R. 143.

7836. *Add. Annotations*:—*Refd.* *Re* Hyams, *Ex p.* Lindsay v. Hyams (1923), 93 L. J. Ch. 184; *Re* Lister, Bradford Overseers & Corp'n. v. Durrance (1925), 42 T. L. R. 143.

for rent not applicable to above property, the estate having no beneficial interest therein.—*Re* HAMILTON & OAKES, [1928] 2 D. L. R. 514; [1925] 1 W. W. R. 172; 5 C. B. R. 465.—CAN.

#### PART XX. SECT. 17, SUB-SECT. 4.

f i. —.]—A sheriff who has seized & is in possession under a landlord's distress warrant prior to the tenant making an authorised assignment under Bkpcy. Act, is bound to hand over the goods to the trustee in bkpcy. on demand.—*Re* WORK & DAY ESTATE, [1921] 2 W. W. R. 94; 58 D. L. R. 377; 1 C. B. R. 553.—CAN.

#### PART XX. SECT. 17, SUB-SECT. 5.

d i. — *Goods seized by landlord*—*Liability for costs of seizure*.]—*Held*: the trustee was entitled to the possession of the goods without paying the costs of the seizure.—*GARDNER v. GUY STREET GARAGE* (1922), 70 D. L. R. 57.—CAN.



7867a. One year's rent due before registration of composition deed.]—WILLIAMS v. CADBURY (1867), L. R. 2 C. P. 453; 36 L. J. C. P. 233; 16 L. T. 354; 15 W. R. 905.

Annotations:—Distd. Selby v. Greaves (1868), L. R. 3 C. P. 594. Follid. Re Douglas, Ex p. Ryder (1871), 6 Ch. App. 413.

7870. Add. Annotation:—Mentd. Richmond v. Savill, [1926] 2 K. B. 530.

7878. Add. Annotation:—Apld. Re Johns, Worrell v. Johns, [1928] Ch. 737.

7918. Add. Citation:—12 L. T. 25.

7949. Add. Annotations:—Apld. Farey v. Cooper,

[1927] 2 K. B. 384. Rejd. Boorne v. Wicker, [1927] 1 Ch. 667.

7950. Add. Annotations:—Apld. Farey v. Cooper, [1927] 2 K. B. 384. Rejd. Boorne v. Wicker, [1927] 1 Ch. 667.

7950a. ———.]—If bkpt. join with his trustee in selling the goodwill & business previously carried on by bkpt., & agrees with the purchaser not to carry on a similar business within a prescribed district, such agreement is binding on him.—BUXTON & HIGH PEAK PUBLISHING & GENERAL PRINTING CO. v. MITCHELL (1885), 1 Cab. & El. 527.

7951. Add. Annotation:—Mentd. Pirie v. Richardson (1926), 70 Sol. Jo. 1023.

## Part XXI.—Actions, Arbitrations, and other Legal Proceedings by and against Trustee and Bankrupt.

7971. Add. Annotation:—Mentd. Prosperity v. Lloyds Bank (1923), 39 T. L. R. 372.

7974. Delete the words "the damage suffered, if any . . . claim should be made."

7984. Add. Annotation:—Consd. Wilson v. United Counties Bank, [1920] A. C. 102.

7987. Add. Annotation:—Mentd. Ford v. Radford (1920), 36 T. L. R. 658.

7992. Add. Annotations:—As to (1) Rejd. Ellis v. Torrington (1919), 89 L. J. K. B. 369. Generally, Mentd. Re Harrington Motor Co., Ex p. Chaplin, [1928] Ch. 105.

7868 ii. ———.]—Re WILLIAMSON (1927), 38 B. C. R. 479.—CAN.

### PART XX. SECT. 18, SUB-SECT. 2.

h i. ——— Nature of trustee's title.]—DOE d. RANKIN v. ANDREWS (1883), 22 N. B. R. 425.—CAN.

sf. Interference by court.]—Re GOLDBERG (Ont.), [1927] 4 D. L. R. 775; 8 C. B. R. 463.—CAN.

### PART XXI. SECT. 3, SUB-SECT. 1.

k (p. 977) i. ——— Production of power of attorney.]—A trustee resident in Ontario was replaced by a trustee resident in Quebec, who was authorised to proceed with the action of the former trustee but failed to produce any power of attorney:—Held: production not necessary.—MORRIS v. KLINE, DEMERS, GARNISHER (1922), 66 D. L. R. 330.—CAN.

sg. Duty to sue in official name.]—Pltf., in his official capacity as trustee in bkpcy., used his own name instead of his official title in an action:—Held: to avoid any difficulty the action should be treated as an issue directed under Bkpcy. Rule 120, as the form of action only affected the question of costs. It was of no real consequence as Bkpcy. Act, s. 16, providing that the trustee may sue in his own name, is permissive.—FITZGERALD v. McMORROW, [1923] 4 D. L. R. 619; 52 O. L. R. 383; 3 C. B. R. 29.—CAN.

7998 ii. ———.]—Except in those cases where a creditor is authorised under Bkpcy. Act, s. 35, to take proceedings, any proceeding to be taken for the benefit of bkpt.'s or authorised assignor's estate must be taken by the trustee or authorised assignee.—HOULDING v. CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD., [1921] 2 W. W. R. 899; 14 Sask. L. R. 356.—CAN.

8000 iii. ——— Proceedings begun in wrong court.—Transfer of proceedings.]—Where proceedings had been com-

menced in the wrong ct.:—Held: the proceedings should be continued under Bkpcy. Act, r. 120; & an order transferring the proceedings to the bkpcy. side should be made if necessary.—SALTER & ARNOLD, LTD. v. DOMINION BANK, [1922] 3 W. W. R. 209; 68 D. L. R. 762.—CAN.

8000 iv. ——— Application at chambers for declaration.—Matter within jurisdiction of Bankruptcy Court.]—Where there was no question in the action that could not be fully & effectually dealt with by the judge in bkpcy. in the summary way provided by r. 120:—Held: the application must be referred to the judge in bkpcy. to be dealt with by him, an interim injunction to stand in the meantime.—EASTERN TRUST CO. v. LLOYD MANUFACTURING CO., [1923] 2 D. L. R. 852; 56 N. S. R. 246; 3 C. B. R. 710.—CAN.

8000 v. ——— Action to set aside settlement made by bankrupt.]—A trustee in bkpcy. brought action in the Supreme Ct. to set aside a settlement made by bkpt. in favour of deft. & voidable under Bkpcy. Act, s. 29:—Held: the action was improperly taken; the trustee should have proceeded under r. 120, which provides a summary method of disposing of matters of this kind by a motion in chambers, which may afterwards take the form of an issue or trial; the ct. should discountenance costly proceedings when summary & inexpensive proceedings are open to the trustee.—STILLWATER LUMBER & SHINGLE CO. v. CANADA LUMBER & TIMBER CO., [1923] 2 D. L. R. 900; 32 B. C. R. 81; [1923] 1 W. W. R. 1333.—CAN.

8000 vi. ——— Proceedings to set aside sale or transfer by bankrupt.]—An action by a trustee in bkpcy. to set aside a conveyance by debtor must be commenced as prescribed by r. 120, by summary application to the bkpcy. judge in chambers, & not by a writ of summons in the Ct. of K. B.—Re

8002. After this case add "See, now, Order of the Lord Chancellor, dated Aug. 15, 1921 [1921] W. N. 362."

8025a. ——— Sale of goods.—After making of vesting order.]—FORD v. DABBS (1843), 5 Man. & G. 309; 6 Scott, N. R. 192; 12 L. J. C. P. 134; 134 E. R. 583.

Annotations:—Rejd. Williams v. Chambers (1847), 10 Q. B. 337; Jackson v. Burnham (1852), 8 Exch. 173.

8033. Add. Annotation:—Rejd. Anglo-Baltic & Mediterranean Bank v. Barber, [1924] 2 K. B. 410.

VISCOUNT GRAIN GROWERS CO-OPERATIVE ASSOCN.'S TRUSTEE v. BRUMWELL & ROYAL BANK, [1924] 3 D. L. R. 803; [1924] 3 W. W. R. 54; 5 C. B. R. 94.—CAN.

8000 vii. ——— Appellate court.—Appeal against judgment in favour of bankrupt.—Judgment assigned by bankrupt to third party.]—Held: the trustee in bkpcy. had a right to resume the action in the interest of the estate.—FREEDMAN v. HART, Re BAITTLE (1922), 68 D. L. R. 288; 2 C. B. R. 536.—CAN.

sj. Assent of inspectors.—Whether necessary.—Motion for directions.]—Re JACOBSON, Ex p. GOLDBERG (N. B.), [1927] 2 D. L. R. 363; 8 C. B. R. 258.—CAN.

sk. Application for interim injunction.—Undertaking as to damages.]—Held: should be made binding on a trustee in bkpcy. personally, when suing in his official capacity, unless the ct. is satisfied that the estate in his hands will be sufficient to answer damages. A trustee is under no obligation to take such a proceeding without proper indemnity from the creditors.—BRENNER'S TRUSTEE v. BRENNER, [1923] 3 D. L. R. 1097; 52 O. L. R. 374; 3 C. B. R. 84.—CAN.

### PART XXI. SECT. 3, SUB-SECT. 2.

sl. Against holder of lien note on chattels.—Description of chattels alleged insufficient.]—Held: the trustee had no status to attack the lien note & it was valid as against him. The holder of the note must, on demand by the trustee, identify the chattels within ten days.—Re GAUDREAU, Ex p. CARRUTHERS (1922), 68 D. L. R. 783.—CAN.

8028 ii. ——— Action already brought by bankrupt.]—Held: it might be continued by the trustee.—BRENNER v. AMERICAN METAL CO., [1920] 19 O. W. N. 289; 55 D. L. R. 702; 1 C. B. R. 375.—CAN.



8034. *Add. Annotation*:—*Mentd. Ord v. Ord*, [1923] 2 K. B. 432.

8040. *Add. Annotation*:—*Mentd. Robinson v. Midland Bank* (1925), 41 T. L. R. 402.

8051. *Add. Annotation*:—*Mentd. Re Gunsbourg*, [1920] 2 K. B. 426.

8064. *Add. Annotation*:—*Reid. Ord v. Ord*, [1923] 2 K. B. 432.

8069. *Add. Annotation*:—*Mentd. Howell v. Evans* (1926), 134 L. T. 570.

8081. *Add. Annotation*:—*Mentd. Ord v. Ord*, [1923] 2 K. B. 432.

8092. *Add. Annotations*:—*Mentd. Bradford v. Price* (1923), 92 L. J. K. B. 871; *Jones (Holloway) v. Woodhouse*, [1923] 2 K. B. 117.

8097. *Add. Annotation*:—*Consd. Knight v. Ponsonby*, [1925] 1 K. B. 545.

8104a. — Costs of carrying out order of court.]— Upon a motion by a trustee in bkpcy. to which bkpt.'s wife was resp. a declaration was made that certain furniture which was upon premises occupied by bkpt. & his wife formed part of the property of bkpt. divisible among the creditors, & the ct. ordered the wife to account on oath before a registrar for the furniture & to pay the taxed costs of & incident to the motion. At the end of the declaration & order a provision was inserted, at the request of, & by way of indulgence to, the wife that, with a view to the furniture being bought by or on behalf of the wife from the trustee at a valuation by an independent valuer to be appointed by the parties or in case of difference to be appointed by the judge, & the wife undertaking not to part with or dispose of the furniture, execution should not issue except by leave of the judge. The furniture was valued by a firm of valuers selected by the wife out of three firms suggested by the trustee, & bought by or on behalf of the wife at a price based upon the

valuation. Upon the taxation of the trustee's solrs.' bill of costs, the taxing master disallowed as against the wife the fee paid by the trustee to the firm of valuers, upon the ground that the costs relating to the purchase of the furniture by or on behalf of the wife under the valuation did not come within the order, & were not costs of carrying it out. On a motion by the solrs. to review the taxation:—*Held*: the taxation must be reviewed & the fee for the valuation allowed as against the wife, inasmuch as it formed part of the costs of carrying out the order & was therefore within the rule that where costs of suit are given generally by decree at the hearing, the subsequent costs of working out the directions of the decree will be included.—*Re LAVEY, Ex p. HEN & COHEN*, [1920] 3 K. B. 625; 90 L. J. K. B. 31; [1920] B. & C. R. 182; *subsequent proceedings*, [1921] 1 K. B. 344.

8104b. Costs of transcript of shorthand notes of evidence.]—The trustee by motion applied against resp. to impeach certain transactions & gave formal notice by letter that he would read in support of the motion the transcript of the shorthand notes of the evidence given by witnesses at a private sitting. This motion was dismissed with costs. On taxing resp.'s bill of costs the taxing master disallowed part of the transcript as irrelevant to the motion & reduced counsel's fees accordingly. On motion for a review of taxation:—*Held*: having regard to the terms of the notice to read the transcript resp.'s solr. was justified in bespeaking & paying for the whole of the transcript, & it was his duty to supply the whole transcript to counsel, & accordingly, resp. was entitled to all the costs of & consequential upon so doing.—*Re MARKS, Ex p. VANN*, [1923] B. & C. R. 92.

8034 ii. — Unpaid purchase price of shares—Sold by broker.]—Where a trustee in bkpcy. gave shares belonging to bkpt.'s estate to a broker to be sold by him & the broker became bkpt.:—*Held*: the trustee was entitled to sue the purchaser for the price of the shares.—*FINLAYSON v. BALFOUR, WHITE & CO., Re THORNTON DAVIDSON & CO.* (1922), 70 D. L. R. 66.—CAN.

sm. Action to recover money paid by bankrupt in breach of trust.]—The trustee in bkpcy. has no right of action, at least without authority from the cestuis que trust, to recover trust money which was held by bkpt. & paid by him in breach of trust to others.—*SALTER & ARNOLD, LTD. v. DOMINION BANK*, [1922] 2 W. W. R. 280; 68 D. L. R. 757.—CAN.

ki. Proceedings to recover land acquired collusively by third party.]—*TRUSTEE, ETC. v. PARUK* (1921), 42 N. L. R. 1.—S. AF.

li. Proceedings to set aside writ—Issued by mortgagee to enforce security.]—An assignment under Bkpcy. Act does not prevent the holder of a mtge. upon a vessel from enforcing his security before the Exch. Ct. in Admty., & a motion by the assignee to set aside the writ of summons & warrant of arrest issued in the ct. by the mtgee. against the ship should be dismissed with costs. The only right of the assignee under Bkpcy. Act is to defend the action & he cannot otherwise interfere therein.—*WHITE & CO. v. THE IONIA* (1922), 69 D. L. R. 94; 20 Exch. C. R. 327.—CAN.

sn. Proceedings to impeach sale of goods under Bulk Sales Act, 1917.]—

*Re PACKER*, [1927] 3 D. L. R. 330; 60 O. L. R. 402.—CAN.

#### PART XXI. SECT. 3, SUB-SECT. 6.

8099 v. — — — — —.]—*BURNS v. GRAHAM*, [1923] 4 D. L. R. 1111; 53 O. L. R. 226; 4 C. B. R. 190.—CAN.

8099 vi. — — — — —.]—*Action commenced without obtaining indemnity from creditors.*—*Held*: if it were necessary under Bkpcy. Act, s. 68 (2), & r. 54, that a special reason for awarding costs against the trustee personally should be assigned, it was the failure to arrange an indemnity before indulging in speculative litigation knowing that he had no assets.—*THORNE v. CANADIAN STEERING WHEEL CO.*, [1923] 4 D. L. R. 1127; 52 O. L. R. 460; 2 C. B. R. 445.—CAN.

8099 vii. — — — — —.]—*Held*: Bkpcy. Act, s. 68 (2), provides that "subject to the provisions of this Act & to General Rules, the costs of & incidental to any proceeding in ct. . . shall be in the discretion of the ct. . . The word "ct." has impliedly a wider meaning than that given in the interpretation clause, & the sect. applies to the Ct. of Appeal. In the present case the clause making the trustee personally liable should not be struck out.—*Re KWONG TAI CHONG CO.'S ASSIGNMENT* (1922), 65 D. L. R. 132; [1922] 2 W. W. R. 229, *sub nom. CANADIAN CREDIT MEN'S TRUST ASSOCIATION, LTD. v. JANG BOW KEE & YIN SHEE*, (1922), 31 B. C. R. 40.—CAN.

#### PART XXI. SECT. 4.

8105 iv. — — — — —.]—If a creditor desires

to proceed against the trustee in another province he must apply to the ct. having original jurisdiction for an order under Bkpcy. Act, s. 71 (2), & the judge possessing discretionary powers would be entitled to consider whether in all the circumstances it was advisable to ask for the assistance of a bkpcy. ct. in another province. When the cts. of any one province are seized with the administration of an insolvent estate, they should not permit any other ct. to interfere except with its leave or concurrence.—*Re BRYANT, ISARD & CO.*, [1924] 1 D. L. R. 217; 4 C. B. R. 317.—CAN.

so. Action to recover possession—Of partly built ship—For purpose of completion.]—A judge of the Bkpcy. Ct. may grant an application for recovery from the trustee in bkpcy. of possession of ships partly built & materials in connection therewith, & the necessary portion of bkpt.'s building yards claimed by appct. under a lien to secure the completion & delivery of ships in accordance with bkpt.'s contract & which prior to the order declaring the bkpcy. had been taken possession of by appct., & subsequently by the trustee. Such appct., although not a "creditor" or "secured creditor" under Bkpcy. Act, comes within the words "any other person aggrieved by any act or decision of the trustee" in sect. 39.—*R. v. HODGES*, [1921] 2 W. W. R. 388; 1 C. B. R. 530.—CAN.

sp. Action for goods sold & delivered.]—*Held*: may be brought in the name of the original creditor, notwithstanding that he has made an

8114. *Add. Annotation*:—*Reid. Re Wait*, [1926] Ch. 962.
8115. *Add. Annotation*:—*Mentd. Re Blyth Shipbuilding & Dry Docks Co., Forster v. Blyth Shipbuilding & Dry Docks Co.*, [1926] Ch. 494.
- 8138a. ——— *After-acquired property.*—An undischarged bkpt. can maintain an action in relation to after-acquired property subject to the right of his trustee to intervene & claim it.—*DYSTER v. RANDALL & SONS*, [1926] Ch. 932; 95 L. J. Ch. 504; 135 L. T. 596; 70 Sol. Jo. 797; [1926] B. & C. R. 113, C. A.
8167. *Add. Annotation*:—*Mentd. Manton v. Brocklebank*, [1923] 1 K. B. 406.
- 8168a. *S. P. MATTHEWS v. DICKINSON* (1817), 7 Taunt. 399; 1 Moore, C. P. 104; 129 E. R. 160.
- Annotation*:—*Consd. Whitworth v. Hall* (1831), 2 B. & Ad. 695.
- 8172a. ———.]—*OWEN v. LAVERY* (1900), 16 T. L. R. 375, C. A.
8195. *Add. Annotations*:—*Distd. Re Lee, Ex p. Grunwaldt*, [1920] 2 K. B. 200. *Consd. Huddersfield Fine Worsteds v. Todd* (1925), 134 L. T. 82. *Mentd. Edwards v. Motor Union Insee.*, [1922] 2 K. B. 249.
8200. *Add. Annotations*:—*Consd. Knight v. Ponsonby*, [1925] 1 K. B. 545. *Reid. Maatschap-pij voor Fondsenbezit v. Shell Transport & Trading Co.*, [1923] 2 K. B. 166.
- 8276a. ——— *Action for specific performance of agreement—Time for disclaiming agreement unexpired.*—*POTROCK v.* (1894), 38 Sol. Jo. 273.
- 8281a. ——— *To apply for judgment in default of defence—Draft minutes to be shown to official receiver.*—Where after action brought & receiving order in bkpcy. was made against debt., on a motion for judgment on minutes in default of defence the ct. made the order in the terms of the minutes, but directed that before it was drawn up the draft minutes should be shown to the official receiver, who was to be at liberty to apply to the ct. with regard thereto if he should think fit.—*HATTON v. DENISON* (1926), 70 Sol. Jo. 565.
- 8290a. ——— *Defendant making substantial counter-claim.*—An action against a debt. who makes a substantial counterclaim, & against whom a receiving order has been made after writ issued, will be stayed pending the result of an application to adjudicate him bkpt.—*FRANCO v. DUTTO*, [1923] W. N. 40.
8304. *Annotations*:—For "*Re Somes, Stewart v. Somes* (1895), 73 L. J. 359" read "*Re Somes, Stewart v. Somes* (1895), 73 L. T. 359."
8306. *Add. Citations*:—*previous proceedings, sub nom. Re SOMES, STEWART v. SOMES* (1895), 73 L. T. 359, C. A.
8331. *Annotation*:—For "*Mentd. Re Bagley*, [1911] 1 K. B. 317, C. A.," read "*N.F. Re Bagley*, [1911] 1 K. B. 317."
8332. For "*Held: it was necessary*," etc., read "*Held: it was not necessary*," etc.
- Add. Annotation*:—*Mentd. Re A Bankruptcy Notice*, [1924] 2 Ch. 76.

## Part XXII. The Debtors Acts and Bankruptcy Offences Generally.

8346. *Add. Annotation*:—*Mentd. Rutter v. Rutter* (1921), 124 L. T. 796.
8408. *Add. Annotation*:—*Reid. Jenkins v. Jenkins*, [1928] 2 K. B. 501.
8410. *Add. Annotation*:—*Mentd. Jordy v. Vanderpump* (1920), 64 Sol. Jo. 324.
8435. *Add. Annotation*:—*Consd. Re Whaley, Ex p. Official Receiver*, [1921] 2 K. B. 623.
- 8435a. *Motion to commit by official receiver acting as trustee—Necessity for affidavit.*—Bkpts. were musical artists, & on Sept. 16, 1920, the registrar made orders for each of

assignment for the general benefit of his creditors.—*KRIENKE v. SCHAFFER*, [1919] 1 W. W. R. 990.—CAN.

### PART XXI. SECT. 5, SUB-SECT. 1.—C.

*h i.* ———.]—*Held: bkpt. had no right of action, such right being vested solely in the official assignee.*—*TIMMINOS v. TREADGOLD*, [1923] N. Z. L. R. 73.—N.Z.

### PART XXI. SECT. 6, SUB-SECT. 1.

*a i.* ——— *For debt due from one member of bankrupt firm.*—*Held: after an authorised assignment no such action could be brought against bkpt. without leave.*—*Re TAYLOR v. LEVEYS*, [1923] 3 D. L. R. 1134; 52 O. L. R. 201; 2 C. B. R. 390.—CAN.

*i i.* ——— *Bankruptcy Act Amendment Act, 1923 (c. 31), s. 10.*—*Re CANADIAN HART PRODUCTS*, [1927] 2 D. L. R. 60 O. L. R. 219.—CAN.

*i ii.* ——— *By Canadian creditor in foreign court.*—*Held: the Superior Ct. of Quebec sitting in bkpcy. had power to stay proceedings instituted*

in the United States by a Canadian creditor.—*Re MOUNT ROYAL LUMBER & FLOORING CO., MORGAN LUMBER CO. v. SCOTT*, [1927] 2 D. L. R. 868; Q. R. 42 K. B. 277.—CAN.

### PART XXI. SECT. 7, SUB-SECT. 1.—A.

*8237 vii.* ———.]—*A trustee to whom an assignment has been made under Bkpcy. Act may, with the permission of the inspectors, under sect. 20 (1), proceed with an action begun by debtor before the assignment, without any leave to proceed, so far as bkpcy. proceedings are concerned. But the trustee cannot proceed with the action in the name of the insolvent, nor in his own name, but only in the official name of the trustee.*—*Re BRENNER (N.) & Co., Ltd.*, [1921] 49 O. L. R. 71; 58 D. L. R. 640; 19 O. W. N. 445.—CAN.

### PART XXI. SECT. 8.

*n i.* ——— *Order giving creditor right to bring proceedings—Appeal from.*—*A judge sitting in bkpcy. having granted a petition by resp., under Bkpcy. Act, s. 35, to be authorised to take certain proceedings in the name of the trustee,*

but at resp.'s own expense & risk, the Ct. of K. B. held it was a mere preparatory judgment & one not subject to the control of that ct.:—*Held: special leave to appeal to the Supreme Ct. of Canada should not be granted.*—*MERCHANTS BANK OF CANADA v. ANGERS* (1921), 67 D. L. R. 604; 62 S. C. R. 354.—CAN.

——— *To set aside preferential transactions—Rights of creditors not joining in action.*—*Held: creditors attacking transactions, & taking all the risk, cannot be compelled, in the event of success, to share the fruits of their success with those creditors who declined to share the risk.*—*Re LONGMORE* (1922), 52 O. L. R. 570; 3 C. B. R. 200.—CAN.

*r i.* ——— *To proceed with appeal—To Privy Council.*—Where one creditor applied for & obtained an order under Bkpcy. Act, s. 85, allowing him to proceed, in the name of the trustee, but at his own expense & for his own benefit—*Held: an appeal to the Privy Council did not lie.*—*Re ANDREW OF CANADA, LTD.* (1924), 294; 5 C. B. R. 107.—CAN.



them to pay \$4 a week out of their respective salaries under 1914 Act, s. 51 (2). On Jan. 13, 1921, upon the application of the official receiver as trustee, under sect. 53 (1) of the Act, no trustee having been appointed, & it appearing to the ct. that bkpts., as partners, were then in receipt of at least \$200 a week under a contract with the A. Co., the above orders were varied, & orders were made that during the continuance of the engagement of bkpts. at the A. each should pay weekly \$25 out of his salary to the official receiver during the bkpcy., the first payment to be made on Jan. 15, 1921, with liberty to bkpts. to apply in the event of the employment with the A. Co. being determined. Appeals from these orders were dismissed by the Ct. of Appeal. Bkpts. having made default in payment of instalments under the orders, the official receiver as trustee applied for a committal of bkpts. for contempt of ct. under sect. 22 (4) of the Act. It was objected that each application should be supported by affidavit & not by a report of the official receiver:—*Held*: the official receiver's report was sufficient evidence in support of the application in each case, & an order for committal must be made.—*Re WHALEY, Ex p. OFFICIAL RECEIVER*, [1921] 2 K. B. 623; 125 L. T. 511; *sub nom. Re WHALEY, Ex p. OFFICIAL RECEIVER, Re SCOTT, Ex p. OFFICIAL RECEIVER*, 90 L. J. K. B. 892; 37 T. L. R. 645; [1921] B. & C. R. 1.

8447. *Add. Annotation*:—*Reid. Smythe v. Wiles*, [1921] 2 K. B. 66.

8448a. *Summonses against co-respondent—For damages & for costs—Priority.*—Where damages & costs are awarded against a co-resp. & petitioner takes out two judgment summonses against him, one in respect of the costs & the other in respect of the damages, an order will go in respect of the payment of costs first.—*Re WINTER, Ex p. WILLIAMS* (1927), 44 T. L. R. 41; 71 Sol. Jo. 1002.

8459. *Add. Annotation*:—*Mentd. Campbell v. Campbell*, [1922] P. 187.

8463. *Add. Annotations*:—*Reid. Edwards v. Porter* (1924), 41 T. L. R. 57. *Mentd. Sutherland v. Hannevig*, [1921] 1 K. B. 336.

8471. *Add. Annotation*:—*Reid. Nesom v. Metcalfe*, [1921] 1 K. B. 400.

## PART XXII. SECT. 2.

k i. —.]—*Fraudulent Debtors Arrest Act, R. S. O., 1914 (c. 83)*, enacts that before a writ of *ca. sa.* will be issued, it must be shown that debtor has been guilty of an intent to defraud his creditors. Where debtor had assigned all his property for the benefit of his creditors & then left Ontario & had subsequently returned with the object of settling pltf.'s claim & had resided unmolested in Ontario for some time:—*Held*: no fraudulent intent shown.—*CANADA LUMBER Co. v. GAFFNEY*, [1923] 4 D. L. R. 594.—CAN.

k ii. — *Under Absconding Debtors' Act, R. S. O., 1877 (c. 68)—Debt must be due when writ issued.*—*KYLE v. BARNES* (1883), 10 P. R. 20.—CAN.

## PART XXII. SECT. 3, SUB-SECT. 1.

8534 iv. — *Prosecution—In what court.*—Upon a motion to quash the orders of a police magistrate on the ground that only a judge in bkpcy had power to act in such a case:—*Held*: since the offence was an indictable offence it ought to be prosecuted &

carried on under the Criminal Code like any other offence of a criminal nature, & motion dismissed.—*R. v. ROY*, [1923] 2 D. L. R. 1182; 39 Can. Crim. Cas. 347; 4 C. B. R. 90.—CAN.

t i. —.]—To justify a committal of a judgment debtor under Arrest & Imprisonment for Debt Act for concealing or making away with his property "in order to defeat, delay, or defraud his creditors or any of them," a fraudulent intent must be shown. Neither due & reasonable appropriation of property or income to the maintenance & health of himself & his family, according to circumstances, nor, of themselves, improvidence or "great carelessness" in expenditure, import a fraudulent intent. Continuous wilful & extravagant squandering of debtor's income in self-indulgence might be carried to such a degree as would manifest a fraudulent intention to contravene the statute.—*CUTLER v. CHIFFEY*, [1921] 1 W. W. R. 686.—CAN.

t ii. —.]—*Affidavits used on an application for a writ of under Absconding Debtors*

8475. *Add. Annotation*:—*Reid. Nesom v. Metcalfe*, [1921] 1 K. B. 400.

8479. *Add. Annotation*:—*Reid. Nesom v. Metcalfe*, [1921] 1 K. B. 400.

8480. *Add. Annotation*:—*Reid. Nesom v. Metcalfe*, [1921] 1 K. B. 400.

8484. *Add. Annotation*:—*Consd. Nesom v. Metcalfe*, [1921] 1 K. B. 400.

8485. *Add. Annotation*:—*Consd. Nesom v. Metcalfe*, [1921] 1 K. B. 400.

8486. *Add. Annotation*:—*Reid. Nesom v. Metcalfe*, [1921] 1 K. B. 400.

8496a. — Evidence of means—Sufficiency of evidence.]—Where a county ct. judge has made an order on a judgment summons for payment of the judgment debt by instalments, & a subsequent application is made for a committal order for non-payment of the instalments, the effective "order or judgment" is the instalment order & not the original judgment, & on the application for a committal order the judge cannot make the order unless he has affirmative evidence of means since the date of the instalment order, & is not entitled to rely on the evidence previously given on the hearing of the application for the instalment order, nor on his disbelief of debtor's evidence denying means, unless there is reasonably direct evidence of means since the date of the instalment order.—*NESOM v. METCALFE*, [1921] 1 K. B. 400; 90 L. J. K. B. 273; 124 L. T. 606; 37 T. L. R. 111, D. C.

8499a. — Sufficiency of evidence of debtor's means.]—Prohibition refused.—*EDWARD v. WYVILL* (1885), 2 T. L. R. 210, C. A.

8501. *Add. Annotation*:—*Reid. Nesom v. Metcalfe*, [1921] 1 K. B. 400.

8506. *Add. Annotation*:—*Mentd. Freeborn v. Leeming* (1925), 89 J. P. 179.

8511. *Add. Annotation*:—*Mentd. Gilbert v. Gilbert & Boucher*, [1928] P. 1.

8513. *Add. Annotation*:—*Consd. Nesom v. Metcalfe*, [1921] 1 K. B. 400.

8521. *Add. Annotation*:—*Consd. R. v. Central Criminal Court JJ., Ex p. L. C. C.*, [1925] 2 K. B. 43.

8534a. — Intent to defraud—Burden of proof.]—On the hearing of a charge against bkpt.

Act, R. S. S., 1920 (c. 58), s. 3, alleging that debts were "badly involved" & "financially embarrassed," setting out a newspaper advertisement by debts of certain chattels for sale & giving deponents' opinions from their "experience" in dealing with debts. that they were attempting to sell with intent to defraud creditors:—*Held*: insufficient to justify granting the application.—*CANADIAN BANK OF COMMERCE v. KENZIE*, [1923] 2 W. W. R. 993.—CAN.

t iii. —.]—*Held*: the affidavit of pltf. stating merely that he had good reason to believe & did verily believe that debt. "has assigned, transferred & disposed of his personal property & effects by a bill of sale with intent & design to defraud his creditors" was insufficient. The affidavit must show "such facts & circumstances as form the grounds of such beliefs," as required by the K. B. Div. Rules.—*Dow v. DAYMENT*, [1923] 1 D. L. R. 772; 32 Man. L. R. 402; [1922] 3 W. W. R. 1119.—CAN.

t iv. —.]—On a prosecution under the Criminal Code, s. 417, the



under 1919 Act, s. 154 (4) (5), proof that deft. has been in possession of property to the value there specified does not throw upon him the burden of showing that he has not concealed or fraudulently removed any part of it after or within six months before the presentation of the petition; but proof that during that period deft. has concealed or removed a part of his property to that value throws upon him the burden of showing that in doing so he had no intent to defraud.—*R. v. BRIXTON PRISON (GOVERNOR), Ex p. SHURE*, [1926] 1 K. B. 127; 95 L. J. K. B. 361; 134 L. T. 317; 28 Cox, C. C. 126; [1926] B. & C. R. 1, D. C.

8562. *Add. Annotation*:—Mentd. *R. v. Manchester Local Profiteering Committee, Ex p. L. & Y. Ry.* (1920), 89 L. J. K. B. 1089.

8565a. ————] — *R. v. DORRINGTON* (1927), 20 Cr. App. Rep. 1, C. C. A.

8571. *Add. Annotation*:—Mentd. *R. v. Manchester Local Profiteering Committee, Ex p. L. & Y. Ry.* (1920), 89 L. J. K. B. 1089.

8576. *Add. Annotation*:—Mentd. *R. v. Manchester Local Profiteering Committee, Ex p. L. & Y. Ry.* (1920), 89 L. J. K. B. 1089.

8583. *Add. Annotation*:—Mentd. *R. v. Pickering* (1921), 15 Cr. App. Rep. 175.

8587a. ———— *Obligation to disclose bankruptcy absolute.*]—The obligation imposed by 1914 Act, s. 155 (a), on an undischarged bkpt. to disclose his position to the person from whom he seeks credit is absolute. It is no defence that he took steps to have such information conveyed or that he had reasonable grounds to believe that it has been conveyed, if in fact it had not.—*R. v. LEINSTER (DUKE)*, [1924] 1 K. B. 311; 93 L. J. K. B. 144; 130 L. T. 318; 87 J. P. 191; 40 T. L. R. 33; 68 Sol. Jo. 211; 27 Cox, C. C. 574; 17 Cr. App. Rep. 176; [1924] B. & C. R. 78, C. C. A.

8633a. *Bankrupt guilty of gambling—Severity of sentence.*]—*R. v. BREWIN* (1926), 19 Cr. App. Rep. 154, C. C. A.

## Part XXIII. Compositions and Schemes and Deeds of Arrangement.

8645. *Add. Annotations*:—Apld. *Re Ellis*, [1925] Ch. 564. Refd. *Huddersfield Fine Worsteds v. Todd* (1925), 42 T. L. R. 52. Mentd. *Re Lee, Ex p. Grunwaldt*, [1920] 2 K. B. 200; *Re A Bankruptcy Notice*, [1924] 2 Ch. 76.

8645a. ———— *To entertain claim to enforce right adverse to deed—Creditor not entitled to benefit of deed.*]—In 1922 applt. entered into the employment of debtor as manageress of his business, & as a condition of such employment she lent him a sum of £500 for the repayment of which he gave her a charge on his share & interest in his business. In 1924 debtor executed a deed of arrangement for the benefit of his creditors generally. The deed was expressed to be made between debtor of the first, the trustee of the second part, three named creditors of the third part, & "the several persons, companies, & partnership firms, being creditors of debtor, whose names & seals are set out & affixed to the schedule hereto, or who shall otherwise in writing assent to these presents, hereinafter called 'the creditors'" of the fourth part. Applt., who refused to consent to the

deed, applied under the above sect. for a declaration that she was entitled as against the trustee of the deed to a charge on all the share & interest, with the exception of chattels, of debtor in his business, & for an order that the trustee should hand over & execute such documents as might be necessary for the purpose of transferring the share & interest to applt. The registrar in bkpcy. dismissed the application on the ground that he had no jurisdiction under the sect. to entertain it. On appeal:—*Held*: (1) the object of the sect. was to provide a trustee or *cestui que trust* under a deed of arrangement with a summary means of obtaining a determination of questions arising in the administration of the trusts of the deed similar to that provided by originating summons in the Ch. Div. under R. S. C. Ord. 55, r. 3; (2) applt. was not a creditor entitled to the benefit of the deed; creditors so entitled were those defined as such by the deed, & applt., not having assented to the deed, did not come within that category; (3) applt.'s claim was not for the enforcement

intent & not the effect is to be looked at, & where the effect of a conveyance is merely to prefer one creditor over another, the intent to prefer not being an intent to defraud, there is no offence.—*R. v. CREW*, [1926] 4 D. L. R. 841; 46 Can. Crim. Cas. 123; 59 O. L. R. 201.—CAN.

s. 1. ———— *Giving undue preference.*]—A., convicted of a contravention of Insolvency Act, 32 of 1916, s. 139 (3), had shortly before he surrendered his estate made payments to two creditors, & there was no proof to rebut the inference that he intended to prefer these creditors:—*Held*: the conviction should be sustained.—*R. v. ISMAIL* (1920), App. D. 316.—S. AF.

PART XXII. SECT. 3, SUB-SECT. 2.

8544 ii. ———— *Insolvency Act, 32 of*

1916, s. 136 (3).]—The offence created by this sect. consists in the disposal by insolvent otherwise than in the ordinary course of business of property which he has obtained on credit, & the jury should be directed to confine their attention to the mode of disposal of the property purchased on credit.—*R. v. ABRAHAMSON* (1920), App. D. 283.—S. AF.

PART XXII. SECT. 3, SUB-SECT. 3

8555 ii. ————]—*PARAK v. R.* (1919), 40 N. L. R. 328.—S. AF.

PART XXII. SECT. 3, SUB-SECT. 6.

st. *Procedure for commencing & carrying on prosecution.*]—Where bkpt. is charged with indictable offences under Bkpcy. Act, s. 89, & orders to prosecute are made under sect. 93, the

prosecution must be commenced & carried on under Criminal Code, & a justice of the peace or police magistrate has jurisdiction to receive the information, hold the preliminary investigation & commit for trial. Upon a committal if the judge who made the order presides at the trial, he acts not as a judge in bkpcy., but as a judge of the Supreme Ct.—*R. (EMERY) v. ROY*, [1923] 2 W. W. R. 400.—CAN.

PART XXIII. SECT. 3, SUB-SECT. 1.

sw. *Meeting duly summoned not held—Meeting held on following day—No proper adjournment of first meeting.*]—*Held*: the meeting was irregular & all business done void, because the first proposed meeting was not adjourned according to the rules.—*Re WHOLESALE GROCERS, LTD.*, [1923] 2 D. L. R. 491; 3 C. B. R. 650.—CAN.

of the trusts or the determination of any questions arising under the deed within the above sect., but was a claim to enforce a right adverse & paramount to the deed.—*Re ELLIS*, [1925] Ch. 564; 41 T. L. R. 474; *sub nom. Re ELLIS, Ex p. MYTTENAERE*, 94 L. J. Ch. 239; [1925] B. & C. R. 81; *sub nom. Re A DEED OF ARRANGEMENT* (No. 9 of 1924), 133 L. T. 306, C. A.

**8665. Add. Annotation :—***Reid. Everett v. Griffiths*,  
[1924] 1 K. B. 941.

**8768. Add. Annotations:—***Reid. Re Ellis*, [1925] Ch. 564; *Huddersfield Fine Worsteds v. Todd* (1925), 42 T. L. R. 52. *Mentd. Re Lee, Ex p. Grunwaldt*, [1920] 2 K. B. 200; *Re A Bankruptcy Notice*, [1924] 2 Ch. 76.

**8771a. Unstamped deed—Admissibility in evidence  
—To prove non-registration.]—***Re SHAW, Ex p.*  
**OFFICIAL RECEIVER, No. 434a, ante.**

8778a. - .]—In 1904 debtor who was heavily indebted, & against whom bkpcy. proceedings were pending, signed an instrument under which a trustee was to receive the whole of debtor's income &, after making certain deductions, to distribute the balance among the creditors, & in consideration of the arrangement the creditors agreed that all proceedings in bkpcy. or otherwise were to be stayed & to accept payment of their debts by instalments & to release debtor from all claims or demands in respect of their debts. The instrument provided that no document executed by debtor should be registered under the above Act. A number of the then creditors including appct. assented to the instrument, which was never registered under the Act. The arrangement was carried out until the death of debtor, which occurred in Nov. 1918, appct. receiving *pro rata* amounts on his debt between Aug. 1905 & July 1917. The debt carried interest at 4 per cent. & the payments under the arrangement to appct. were not sufficient to cover

the interest so that an amount exceeding the original debt was still owing to appct. In Feb. 1919, an administration order under 1914 Act, s. 130, was made upon a creditor's petition for the administration of deceased debtor's estate as being a person who had died insolvent, & the estate was being administered by the official receiver. At the time of debtor's death there was in the hands of the trustee under the instrument a sum of £465 8s. 3d. which the official receiver claimed on the ground that it formed part of the general estate of debtor, & the trustee paid the amount to him upon the terms that the official receiver was to be in the same position as he would have been if the money had remained in the trustee's hands. On a motion by appct. for a declaration that the £465 8s. 3d. was held by the trustee on behalf of the assenting creditors, including appct., was divisible amongst them, & that appct. was entitled to prove in the administration of the estate for the balance due to him from debtor after giving credit for all sums received or receivable under the arrangement : —*Held* : (1) the instrument was a deed of arrangement within 1887 Act, s. 4 (2), upon the ground that it was an assignment of property by debtor for the benefit of his creditors generally & also upon the ground that it was an agreement for a composition ; (2) not having been registered it was void under sect. 5 of the Act ; (3) as the instrument was void it created no trust for the benefit of the creditors, & the trustee under the instrument held the £465 8s. 3d. to the use of the official receiver as the representative of debtor, & was bound to repay it to him ; (4) as the only direction to apply the money received by the trustee was contained in the void instrument & all parties knew & acted upon the assumption that it was invalid, deceased debtor would not have been, nor was the official receiver as his repre-

**PART XXIII. SECT. 3, SUB-SECT. 2.**

m i. — *Wife of bankrupt.*—The wife of bkpt. is not barred by her status as wife from voting on a resolution to wind up her husband's estate under a deed of arrangement, although the effect of the resolution is to prevent the election of a trustee.—*MACNAUGHT v. SIEVWRIGHT*, [1927] S. C. 285.—**SCOT.**

8677 ii. ——— *Proxy for company.*—A proxy need not be under the co.'s seal, unless expressly required by the Act of incorporation, or by the articles of assocn.; if it is so required the burden of establishing its necessity is on the person alleging it.

A proxy which purports to be signed by the co., under which is subscribed the name of the person who affixes the signature of the co. & who so describes himself that the chairman can conclude he is an officer or employee of the co., is *prima facie* evidence of authority, & the chairman should receive it & permit the person named therein to vote.—*Re McCoubrey, Re Stratton & Greenshields, Ltd.*, [1924] 4 D. L. R. 1227; [1924] 3 W. W. R. 587.—CAN.

8682 i. — *In respect of what debts — Unliquidated damages.*—Where there is a claim for unliquidated damages, they must be assessed before the claimant can have any right to vote.—*Re ANDREW MOTHERWELL ESTATE*, [1923] 4 D. L. R. 986; *affd.* 25 O. W. N. 359.—CAN.

8682 II. ————.]—*Held*: valuation by the ct. a condition precedent.—*Re* ARTHUR FUEL Co. (Man.), [1927] 1 D. L. R. 646; [1927] 1

**J.B.**

**W. W. R. 158.—CAN.**

**8684 iv. —.**—Since Bkpcy. Act, 1921 (c. 17), s. 12, Bkpcy. Act, 1919 (c. 36), s. 13 (3) must be construed as meaning that in the calculation of proved debts, the two-thirds in value may be composed partly of debts less than \$25, but as regards voting, creditors whose claims are less than \$25 are to be excluded. Under Bkpcy. Act, 1919, s. 42, no one whose claim is for less than \$25 may vote.—*Re BLUEBIRD FASHION SHOPS, LTD.* [1921] 59 D. L. R. 549.—CAN.

sa. *Appeal from decision of chairman—Rights of creditor who has not filed proof at time of meeting.*—A creditor is entitled to exercise his rights provided he has duly proven his claim in accordance with Bkpcy. Act & Rules prior to the hearing of the appeal. The ct. may adjourn the hearing of the appeal to permit of such proof, provided that the creditor has not delayed unreasonably in making it.—*Re MCCOUBREY, Re STRATTON & GREENSHIELDS, LTD.*, [1924] 4 D. L. R. 1227; [1924] 3 W. W. R. 587.—CAN.

sb. — On technical grounds—  
Necessity to raise objection before  
decision given—Discretion of court.]—  
Re McCoubrey, Re Stratton &  
Greenshields, Ltd., [1924] 4 D. L. R.  
1227; [1924] 3 W. W. R. 587.—CAN.

30. — *Application by creditor to be added or substituted as appellant.*— Not allowed, since the latter creditor had a right of appeal, & the rights of the creditor applying to be added would not be affected by the non-

joinder or non-substitution. — *Re McCoubrey, Re Stratton & Greenshields, Ltd.*, [1924] 4 D. L. R. 1227; 1924] 3 W. W. R. 587.—CAN.

**sd** — *That creditor entitled to vote—*  
*Objection at meeting.*—*Held*: not a  
condition precedent.—*Re* ARTHUR  
FUEL CO. (Man.), [1927] 1 D. L. R.  
646; [1927] 1 W. W. R. 158.—**CAN.**

**PART XXIII. SECT. 5, SUB-SECT. 1.**

sk. *Effect of.*)]—A composition or scheme of arrangement, though approved by the ct. & by statute binding on all the creditors, is at bottom only a contract between the parties. Creditors' rights are only suspended during the composition period. There is no obligation, legal or moral, which can debar the composition creditors, if the composition has been annulled, from claiming to rank on the assets of the estate *pari passu* with the creditors whose claims have arisen since the composition.—*Re LIPSON*, [1924] 3 D. L. R. 761; 55 O. L. R. 215; 24 O. W. N. 382.—CAN.

sm. — —.]—*Held*: a judicial hypothec upon real assets of debtor, resulting from registration, was postponed to an authorised assignment subsequently made by debtor for the benefit of his creditors.—ROYAL BANK OF CANADA v. LARUE, [1928] A. C. 187; 97 L. J. P. C. 49; 138 L. T. 562; 44 T. L. R. 267.—CAN.

**sp. Authorized assignment by partner on behalf of firm—No authority by other partner.]—Held: Invalid.—Re SQUIRES BROTHERS, [1922] 3 W. W. R. 30; 68 D. L. R. 571.—CAN.**



sentative, estopped from setting up its invalidity & claiming from the trustee any money still in his hands; (5) equally there was no estoppel which prevented appct. from setting up the invalidity of the instrument & proving in the administration for the balance due to him from debtor; (6) as the instrument was void the release of the debts it contained was of no effect; (7) as under the instrument there was only a provision for payment to the creditors of debtor's income so long as he lived, no promise to pay the balance of the debts could be implied from the payments which had been made so as to take the debts out of the operation of the statutes of limitation, & appct.'s right to prove in the administration for the balance due to him was therefore barred.—*Re LEE, Ex p. GRUNWALDT*, [1920] 2 K. B. 200; 89 L. J. K. B. 364; 123 L. T. 31; [1919] B. & C. R. 287.

*Annotations*.—As to (3), (4), (5) & (6) *Consd. Re A Bankruptcy Notice*, [1924] 2 Ch. 76. *Reid. Huddersfield Fine Worsteds v. Todd* (1925), 42 T. L. R. 52.

8779. *Add. Annotation*.—*Mentd. Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669.

8781. *Add. Annotation*.—*Mentd. Lipton v. Bell*, [1924] 1 K. B. 701.

8782a. **Assignment of property to trustees for benefit of creditors—Assignment not to be registered.**—*Re A BANKRUPTCY NOTICE*, No. 797a, *ante*.

8782b. **Authority to realise trader's estate & to apply proceeds in payment of creditors.**—A letter signed by debtor in the following form: "I hereby authorise you to realise my estate including stock-in-trade, book debts, furniture, & all other assets & to apply the proceeds first in payment of the costs, charges, & preferential claims, etc., & secondly to pay the balance to my creditors *pro rata*":—*Held*: (1) not an "assignment of property" within sect. 1 (2) (a) of the above Act; (2) not a deed of arrangement within sub-sect. 1.—*LIPTON (B.), LTD. v. BELL*, [1924] 1 K. B. 701; 40 T. L. R. 163; *sub nom. LIPTON (B.), LTD. v. BELL, HAYES v. BELL*, 93 L. J. K. B. 563; 130 L. T. 749; 68 Sol. Jo. 521; [1924] B. & C. R. 82, C. A.

8782c. **Document discharging debtor—Constituting assignment for benefit of creditors generally.**—*Pltf.'s claim was for £148, the amount of two bills of exchange drawn by pltf., accepted by deft. & dishonoured on presentation. Deft. pleaded in his defence that the cause of action was merged in a deed of arrangement executed by him in favour of creditors. By that document the consenting creditors of deft. accepted the following terms for the settlement of all debts owing by deft. to them: "(1) all the goods which have been removed from M.'s office & given to M. & Co., in trust on behalf of creditors, should be handed over to the creditors . . . (2) M.*

*undertakes to pay to the above trustee for the creditors £80 payable . . . (3) M. also undertakes to pay on his own account (certain creditors named therein) who shall be excluded from the list of the general creditors. I agree to these terms"* :—*Held*: the agreement was for the benefit of three or more creditors, made by a debtor who was at the date of the execution of the deed insolvent, & was a deed of arrangement within sect. 1 of the above Act, & was void owing to non-registration.—*LANDSBERG v. MENDEL*, [1924] W. N. 46.

8782d. **Deed of arrangement made by insolvent debtor.**—A debtor, who was insolvent, under a scheme for the composition of his debts, which amounted to about £150,000, entered into a deed of arrangement with his creditors under which he agreed to pay his trade creditors, including pltf.s, a composition of their claim, together with certain profits out of his business up to Apr. 30, 1926, & he covenanted to carry on that business up to that date, the creditors covenanting to release him from the full amount of his liability. Some of his creditors, whose claims amounted to £150 were not parties to the scheme or deed, & acting under legal advice, debtor did not register the deed. After paying his trade creditors, including pltf.s, a small portion of the composition, debtor sold his business & entered into another scheme of arrangement with his creditors, to which pltf.s. refused to be parties, & they sued for the original debt owing to them, less the amount which they had received under the composition :—*Held*: (1) the deed came within Deeds of Arrangement Act, 1914 (c. 47), s. 1 (1) (b), & not being registered, was void; (2) pltf.s, who had assented to the deed, were not estopped by such assent from denying the validity of the deed; (3) assuming that they were so estopped, debtor, by selling his business before Apr. 30, 1926, had not fulfilled the conditions of the deed under which he would be released from his original liability, & therefore pltf.s. were relegated to their original rights & were entitled to succeed on their claim. The authorities on the doctrine of estoppel as applicable to deeds of arrangement considered.—*HUDDERSFIELD FINE WORSTEDS, LTD. v. TODD* (1925), 134 L. T. 82; 42 T. L. R. 52.

8787. *Add. Annotations*.—*Reid. Re Ellis*, [1925] Ch. 564; *Huddersfield Fine Worsteds v. Todd* (1925), 42 T. L. R. 52. *Mentd. Re Lee, Ex p. Grunwaldt*, [1920] 2 K. B. 200; *Re A Bankruptcy Notice*, [1924] 2 Ch. 76.

8788. *Add. Annotations*.—*Reid. Huddersfield Fine Worsteds v. Todd* (1925), 134 L. T. 82. *Mentd. Re Lee, Ex p. Grunwaldt*, [1920] 2 K. B. 200.

8789. *Add. Annotation*.—*Reid. Re A Bankruptcy Notice*, [1924] 2 Ch. 76.

PART XXIII. SECT. 5, SUB-SECT. 2.—A.

*st. Under Bankruptcy Act—Deed of assignment.*—The title of an assignee is not complete as against third persons until registration.—*TOWERS v. SOLOMON*, [1922] 1 W. W. R. 1077; 2 C. B. R. 579.—CAN.

PART XXIII. SECT. 5, SUB-SECT. 2.—B.

*sa. Necessity for.*—An assignment

under Bkpcy. Act must be accepted for registration though not accompanied by the affidavit provided for by Homesteads Act, 1920, s. 7, & by Assignment Act, s. 7a.—*Re LAND TITLES ACT, Re CITY GARAGE & MACHINE CO., LTD.*, [1921] 1 W. W. R. 371; 59 D. L. R. 416; 1 C. B. R. 482.—CAN.

PART XXIII. SECT. 6, SUB-SECT. 1.—A.

*Non-assenting creditors*

*not opposing.*—*Re HOWE*, [1921] 20 O. W. N. 244; 59 D. L. R. 457; 1 C. B. R. 482.—CAN.

8810 i. **Reasonable security provided.**—In a composition scheme, if one of the creditors obtains an advantage over the others the ct. will scrutinise the scheme very closely. Where under a scheme all the creditors would receive more than 50 per cent. & it was reasonable & provided for immediate payment of all but one of



8872. *Add. Annotation*:—*Reid. Re Griffiths, Jones v. Jenkins*, [1926] Ch. 1007.

8882a. —.]—*FLOWER v. LYME REGIS CORPN.*, No. 1775a, *ante*.

8923. *Add. Annotation*:—*Reid. Re Griffiths, Jones v. Jenkins*, [1926] Ch. 1007.

8929a. — Debtor expecting execution—Deed valid.]—*BOWEN v. BRAMIDGE* (1833), 6 C. & P. 140.

8929b. — Execution paid out by debtor—Money not recoverable by trustee.]—*BOYLE v. BLACKSTOCK* (1863), 8 L. T. 641.

8933a. — & sale of effects thereunder by trustees—Property protected—Although purchaser allowing debtor to retain possession.]—*LEONARD v. BAKER* (1813), 1 M. & S. 251; 105 E. R. 94.

*Annotation*:—*Reid. Latimer v. Batson* (1825), 4 B. & C. 652.

8933b. — Although balance unsold remaining in debtor's possession.]—*WOODERMAN v. BALDOCK* (1819), 8 Taunt. 676; 129 E. R. 547; *sub nom. WOODHAM v. BALDOCK*, 3 Moore, C. P. 11.

*Annotations*:—*Reid. Aldred v. Constable* (1844), 3 L. T. O. S. 299; *Hickman v. Cox* (1858), 30 L. T. O. S. 279; *Barker v. Furlong*, [1891] 2 Ch. 172.

8933c. —.]—*Held*: from the date of the deed of assignment the trustee was the legal owner of debtor's property, & the possession taken by him was effectual, so that there was no

the creditors, but the creditor who financed the scheme would be entitled to be paid in full, the ct. ratified the composition as the most advantageous that could be proposed.—*Re GARDNER, Ex p. CROFT & SONS, LTD.*, [1921] 19 O. W. N. 25; 59 D. L. R. 555; 1 C. B. R. 424.—CAN.

8811 i. *Whether bound to refuse to approve—Fraudulent conduct.*]—The ct. will approve of a compromise between debtor & his creditors which is in the best interests of the creditors, even where debtor has obtained credit by false & fraudulent representations, where debtor by his discharge is not relieved from liability for the full claim of a creditor from whom he obtained credit by false & fraudulent representations, & he is still liable to prosecution.—*Re CHMELNITSKY*, [1922] 3 W. W. R. 114; 68 D. L. R. 492.—CAN.

#### PART XXIII. SECT. 6, SUB-SECT. 1.—B.

8825 ii. —.]—Where the judge refused to sanction an arrangement on the ground that there was evidence of recklessness, not to say dishonest, trading on debtor's part for some years previously, & he adjudged debtor bkpt.:—*Held*: on the facts, there was no sufficient ground for overruling the wishes of the majority of the creditors accepting debtor's proposal for an arrangement, & the order of adjudication must be discharged. Principles which should guide the ct. in dealing with arrangements under Irish Bkpt. & Insolvent Act, 1857 (c. 60), considered.—*Re C.*, [1926] 1 L. R. 14.—IR.

#### PART XXIII. SECT. 6, SUB-SECT. 2

8843 iv. —.]—In special circumstances under Bkpcy. Rule, 68 (2), the ct. may set aside a composition, although it has been ratified, & may order bkpt. to make another which will provide greater security for the creditors. But where a composition has been ratified, & is a reasonable & fair attempt to pay creditors as much as possible, there can be no grounds for setting it aside.—*ROSENTHAL v. HOFF & HART* (1922), 67 D. L. R. 628; Q. P. R. 120.—CAN.

st. *Absence of information & undervaluation.*]—*Held*: the proposal was not "reasonable & proper"—*Re GASTON*, 2 I. R. 179.—IR.

#### PART XXIII. SECT. 6, SUB-SECT. 5.

8860 ii. —.]—*Re C.*, No. 8825 ii, *ante*.—IR.

8865 i. — *Enhanced value of assets.*]—An offer of a composition was passed by the requisite majority of creditors, & confirmed by the ct. Later, the property was sold for a price which considerably increased the value. An opposing creditor then applied for an order setting aside the arrangement:—*Held*: a composition passed by the requisite majority of creditors & confirmed by the ct. cannot be upset except for fraud.—*Re Q., AN ARRANGING DEBTOR*, [1923] 2 I. R. 89.—IR.

#### PART XXIII. SECT. 8, SUB-SECT. 3.—A.

k (p. 1090) i. —.]—*Re COBOURG FELT CO., Ex p. WEAVER*, [1925] 2 D. L. R. 997; 5 C. B. R. 622.—CAN.

st. *Judgment.*]—Under an assignment in trust for the benefit of creditors of all the assignor's property the assignee is entitled to an assignment of a bond which a purchaser under an agreement of sale with the assignor has entered into to protect the assignor against his (the purchaser's) default under the agreement, & if before such assignment of the bond the assignor has obtained judgment on it, the trustee has a right to an assignment of the judgment.—*Re HIRSCH v. ALTON, INTERIOR TRUST CO. v. MACKENZIE*, [1925] 4 D. L. R. 695; [1925] 1 W. W. R. 429; 34 Man. L. R. 650; 5 C. B. R. 545.—CAN.

so. *Assigned property—Collection Act, R. S. N. S., 1923 (c. 232).*]—*Re POLSON, TRUSTEE v. THOMPSON & SUTHERLAND, LTD.*, [1926] 1 D. L. R. 330; 58 N. S. R. 345.—CAN.

#### PART XXIII. SECT. 8, SUB-SECT. 3.—B.

8948 ii. —.]—Payment into ct. under a garnishee summons, under Alberta practice, is not payment to the

property of debtor which the sheriff could seize.—*NORTH EASTERN RY. CO. v. SPARK* (1877), 37 L. T. 143.

9023. *Add. Annotation*:—*Mentd. Kimber Coal Co. v. Stone & Rolfe*, [1926] A. C. 414.

9026a. — Putting up property for sale.]—Assignees of debtor's property, in trust for the creditors, may put up a lease for sale, to try whether it can be made beneficial, without rendering themselves chargeable as assignees of the lease.—*CARTER v. WARNE* (1830), 4 C. & P. 191; *Mood & M.* 479, N. P.

*Annotations*:—*Consd. How v. Kennet* (1835), 3 Ad. & El. 659; *White v. Hunt* (1870), L. R. 6 Exch. 32.

9029. *Add. Annotation*:—*Mentd. Sun Bldg. Soc. v. Western Suburban Bldg. Soc.*, [1921] 2 Ch. 83.

9032a. —.]—*Re LEE, Ex p. GRUNWALDT*, No. 8778a, *ante*.

9074. *Add. Annotation*:—*Reid. Goldfarb v. Bartlett & Kremer*, [1920] 1 K. B. 639.

9081. *Add. Annotation*:—*Mentd. Conquer v. Boot*, [1928] 2 K. B. 336.

9094. *Add. Annotation*:—*Reid. Re Lee, Ex p. Grunwaldt*, [1920] 2 K. B. 200.

9109a. —.]—*Re LEE, Ex p. GRUNWALDT*, No. 8778a, *ante*.

9181a. Assent by assignor of debt—Not sufficient assent.]—*PINDER v. COQUI* (1866), 15 W. R. 22.

garnishing creditor under Bkpcy. Act, s. 11 (1), so as to prevent a subsequent authorised assignment taking precedence over the garnishment.—*WESTERN CANADA FLOUR MILLS CO., LTD. v. WHITE BAKERY*, [1921] 1 W. W. R. 828; 59 D. L. R. 621; 1 C. B. R. 390.—CAN.

#### PART XXIII. SECT. 9, SUB-SECT. 1.—C.

sp. *To fix date of creditors' meeting.*—When an authorised trustee takes over the estate of bkpt. as though he were sequestrator, he has authority to fix the date of the creditors' meeting & may change the date where it is impossible to give proper notice, & any meeting held on a date not so finally fixed by the trustee is illegal.—*LEFAIVRE & GAGNON v. DE LISLE* (1922), 66 D. L. R. 264.—CAN.

sq. *To apply to court—For approval of composition arrangement.*]—*Re SHAW* (1920), 59 D. L. R. 619; 1 C. B. R. 368.—CAN.

st. — *For directions.*]—A trustee has the right to apply to the ct. for directions in connection with the administration of the estate, but is not entitled, prior to an authorised assignment or receiving order, to bring into ct. persons who may be entitled to certain assets, in order to determine their legal rights.—*Re GELLER BROTHERS*, [1924] 2 D. L. R. 590; 54 O. L. R. 283; 4 C. B. R. 108.—CAN.

sw. *To attack chattel mortgage—For non-compliance with Chattel Mortgage Act.*]—An authorised assignee or trustee in bkpcy. can maintain an action to set aside a transaction for want of compliance with the provisions of Bills of Sale & Chattel Mfgo Act, even although the transaction was complete before Bkpcy. Act came into force.—*HOULDRING v. CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD.*, [1921] 2 W. W. R. 899; 14 Sask. L. R. 356.—CAN.

sx. —.]—*Re HAMER, Ex p. ROYAL BANK OF CANADA*, [1922] 1 W. W. R. 1241; 66 D. L. R. 800; 15 Sask. L. R. 165.—CAN.

**Cases 9198a—9619. ENGLISH AND EMPIRE DIGEST SUPPLEMENT.**

- 9198a. ———. J. GRUNWALDT, No. 8778a, *ante*.
- 9198b. ———.]—HUDDERSFIELD FINE WORSTEDS, LTD. v. TODD, No. 8782d, *ante*. Compare No. 797a, *ante*, & original volume, p. 160, No. 1498.
- 9229a. ———.]—HUDDERSFIELD FINE WORSTEDS, LTD. v. TODD, No. 8782d, *ante*.
- 9253a. S. P. CECIL v. PLAISTOW (1794), 1 Anst. 202; 145 E. R. 844.  
*Annotation*:—Apld. Britten v. Hughes (1829), 5 Bing. 480.
9276. *Add. Annotation*:—Mentd. Camillo Tank S.S. Co. v. Alexandria Engineering Works (1921), 38 T. L. R. 134.
- 811a. Right to take proceedings under 1914 (Deeds) Act, s. 23—Claim to enforce right adverse to deed.]—*Re* ELLIS, No. 8645a, *ante*.
9486. *Add. Annotation*:—*Re* City Life Assce. (1925), 42 T. L. R. 45.
9543. *Add. Annotations*:—*Re* Drage, Palmer & Roberts v. Knight (1926), 134 L. T. 765. Mentd. *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515; *Re* Hoyle, *Ex p.* Trustee, [1924] B. & C. R. 22.
9575. *Add. Annotations*:—Apld. Farey v. Cooper, [1927] 2 K. B. 384. *Re* Boorne v. Wicker, [1927] 1 Ch. 667.
9576. *Add. Annotations*:—Apld. Farey v. Cooper, [1927] 2 K. B. 384. *Re* Boorne v. Wicker, [1927] 1 Ch. 667.
- 9576a. —.]—A debtor, who has assigned his business & goodwill to a trustee for the benefit of creditors, is not precluded, in the absence of express stipulation to the contrary, from soliciting the customers of the old business, notwithstanding that the deed of assignment contains a covenant by him to aid to the utmost of his power the realisation of the property assigned & the distribution of the proceeds thereof amongst the creditors. In such a case debtor cannot be restrained from canvassing the customers, nor can a third person be restrained from instigating debtor to do so.—FAREY v. COOPER, [1927] 2 K. B. 384; 96 L. J. K. B. 1046; 37 L. T. 720; 43 T. L. R. 803, C. A.
9619. *Add. Annotation*:—*Re* Jenkins v. Jenkins, [1928] 2 K. B. 501.

**PART XXIII. SECT. 10, SUB-SECT. 2.**  
—C (a).

§ (p. 1133) l. — As regards priority of subsequent creditors.]—*Re* THOUN, [1925] 4 D. L. R. 242.—CAN.

**PART XXIII. SECT. 12, SUB-SECT. 1.**

9612 iii. —.]—Where conveyances made by the assignee for the benefit of creditors to pltfs. were made & accepted in satisfaction of pltfs.' claim

against debtor:—*Held*: debt. was thereby freed from liability as surety.—UNION BANK OF CANADA v. MAKEPEACE (1919), 44 O. L. R. 202; 15 O. W. N. 179; 46 D. L. R. 193.—CAN.

# BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

## Part I.—In General.

10. *Add. Annotations* :—*Re*ld. *Robinson v. Marsh*, [1921] 2 K. B. 640. *Mentd.* *McDonald v. Nash*, [1924] A. C. 625.
13. *Add. Annotations* :—*Re*ld. *Robinson v. Marsh*, [1921] 2 K. B. 640; *Sutters v. Briggs*, [1922] 1 A. C. 1. *Mentd.* *Re Farrow's Bank*, [1923] 1 Ch. 41.
14. *Add. Annotation* :—*Consd.* *Re Swinburne, Sutton v. Featherley*, [1926] Ch. 38.
- 14a. ———.]—A lady, in her last illness, gave a cheque for £700 to a person with whom she had lived for some time, & the cheque was duly presented but not honoured, owing to the signature being of a very shaky & doubtful character. The donor died before the cheque could be again presented :—*Held* : the cheque not having been paid, there was no valid & effectual gift of the money to the donee.—*Re SWINBURNE, SUTTON v. FEATHERLEY*, [1926] 1 Ch. 38; 95 L. J. Ch. 104; 134 L. T. 121; 70 Sol. Jo. 64, C. A.
15. *Add. Annotation* :—*Mentd.* *Allen v. Royal Bank of Canada* (1925), 41 T. L. R. 625.
22. *Add. Annotation* :—*Mentd.* *Scott v. Barclays Bank*, [1923] 2 K. B. 1.
23. *Add. Annotations* :—*Mentd.* *Gooch, Ex p. Judd*, [1921] 2 K. B. 503; *McDonald v. Nash*, [1924] A. C. 625.
28. *Add. Annotation* :—*Mentd.* *Joachimson v. Swiss Bank Corpn.*, [1921] 3 K. B. 110.
37. *Add. Annotations* :—*Re*ld. *McDonald v. Nash*, [1924] A. C. 625; *Ouellette v. Canadian Pacific Ry.*, [1925] A. C. 569; *Auchteroni v. Midland Bank*, [1928] 2 K. B. 294. *Mentd.* *Despatie v. Tremblay*, [1921] 1 A. C. 702; *Samuel v. Dumas*, [1924] A. C. 431; *Gilbert v. Gilbert & Bougher* (1927), 96 L. J. P. 137; *Tilling-Stevens Motors v. Kent County Council & Transport Minister* (1928), 139 L. T. 265.

## Part II.—Requirements of Form.

81. *Add. Annotation* :—*Re*ld. *London & Montrose Shipbuilding & Repairing Co. v. Barclays Bank* (1925), 31 Com. Cas. 67.
82. *Add. Annotations* :—*Consd.* *London & Montrose Shipbuilding & Repairing Co. v. Barclays Bank* (1925), 31 Com. Cas. 67. *Mentd.* *Brown v. Swan* (1921), 37 T. L. R. 787; *Sutters v. Briggs*, [1922] 1 A. C. 1; *Re Farrow's Bank*, [1923] 1 Ch. 41; *Underwood v. Bank of Liverpool*, *Underwood v. Barclays Bank*, [1924] 1 K. B. 775; *Importers Co. v. Westminster Bank*, [1927] 2 K. B. 297.
95. *Add. Annotation* :—*Re*ld. *McDonald v. Nash*, [1924] A. C. 625.
161. *Add. Annotations* :—*Mentd.* *Re Chesterman's Trusts, Mott v. Browning*, [1923] 2 Ch. 466; *Uliendahl v. Pankhurst Wright* (1923), 39 T. L. R. 628; *Peyrae v. Wilkinson*, [1924] 2 K. B. 166.
191. *Add. Annotation* :—*Re*ld. *McDonald v. Nash*, [1924] A. C. 625.
205. *Add. Annotations* :—*Apld.* *Auchteroni v. Midland Bank*, [1928] 2 K. B. 294. *Mentd.*

### PART I. SECT. 1.

14 i. — *Revocable mandate—Revoked by death.*]—The authority of a bank to pay a cheque ceases on notice of the drawer's death.—*CURLEY v. BRIGGS* (ADMINISTRATOR OF DRURY ESTATE), [1920] 2 W. W. R. 1025; 53 D. L. R. 351.—CAN.

14 ii. *S. P. KENDRICK v. DOMINION BANK & BOWNAS* (1920), 47 O. L. R. 372; 18 O. W. N. 138.—CAN.

14 i. —.]—Its nature & negotiability discussed.—*CHAMPAKLAL GOPALDAS v. KESHURICHAND NAGANMAL* (1925), I. L. R. 50 Bom. 765.—IND.

### PART II. SECT. 1, SUB-SECT. 1.

sa. *Note made by married woman—Effect of restraint upon anticipation.*]—Where a promissory note was made by a married woman :—*Held* : the promissory note was in fact, as well as in form, a valid unconditional promise on the part of the maker to pay a sum certain in money. *Effect of Married Women's Property Act, R. S. O., 1914 (c. 149), ss. 4 (2), 5 (2), discussed.*—*ANDERSON v. McLAREN*, [1924] 1 D. L. R. 1076; 56 O. L. R. 26.—CAN.

r i. —.]—An instrument is not a negotiable promissory note where

there is not an unconditional promise, as required by Bills of Exchange Act, s. 176.—*Re MITCHELL & UNION BANK OF CANADA*, [1923] 4 D. L. R. 1132; 52 O. L. R. 523, *rearg. sub nom. Re STEVENSON & MITCHELL*, 21 O. W. N. 331.—CAN.

r ii. —.]—Where a cheque was drawn & given under the condition that it was not to become effective unless a loan was granted by a certain bank :—*Held* : the cheque could not be detached from the condition, & the condition not having been fulfilled, the cheque could not be recovered on.—*JONES v. THOMAS & NORMAN* (1922), 65 D. L. R. 491.—CAN.

79 i. *As per memorandum of agreement—Memorandum meaningless.*]—*Held* : there was a good promissory note.—*CANADIAN BANK OF COMMERCE v. LIVINGSTON (P. E. I.)* (1909), 6 E. L. R. 459.—CAN.

### PART II. SECT. 1, SUB-SECT. 2.

h i. —.]—*Alleged maker denying signature.*]—Where an expert on handwriting said deft.'s signatures were genuine, but the judge held, after seeing enlargements of them, that they were forged :—*Held* : the absence of any evidence by pltf. & the uncertain nature of the other evidence justified

the judge in dismissing the action.—*EASTERN TOWNSHIPS INVESTMENTS CO. v. MCLENNAN* (1919), 29 B. C. R. 1.—CAN.

### PART II. SECT. 1, SUB-SECT. 3.

sb. *"Sixty days after sight"—Sum certain with interest for indefinite period.*]—*Held* : the document was not a bill of exchange.—*ROSENHAIN & CO. v. COMMONWEALTH BANK OF AUSTRALIA*, [1922] V. L. R. 787; 31 C. L. R. 46.—AUS.

sc. *Cheque payable to "Ministre de la Voirie"—No time for payment stated.*]—An instrument in the form of a cheque drawn upon B. by A. payable to the order of the "Ministre de la Voirie" :—*Held* : not "payable on demand" & not a "cheque" within Bills of Exchange Act, s. 165.—*LEDOUC v. LA BANQUE D'HOCHELAGA*, [1926] 1 D. L. R. 433; [1926] S. C. R. 76.—CAN.

### PART II. SECT. 1, SUB-SECT. 4.

k (p. 25) i. —.]—*At stated rate for uncertain time.*]—*Held* : the document was not a bill of exchange.—*ROSENHAIN & CO. v. COMMONWEALTH BANK OF AUSTRALIA*, [1922] V. L. R. 787; 31 C. L. R. 46.—AUS.



- Despatie v. Tremblay*, [1921] 1 A. C. 702; *McDonald v. Nash*, [1924] A. C. 625; *Samuel v. Dumas*, [1924] A. C. 431; *Ouellette v. Canadian Pacific Ry.*, [1925] A. C. 569; *Gilbert v. Gilbert & Bougher* (1927), 96 L. J. P. 137; *Tilling-Stevens Motors v. Kent County Council & Transport Minister* (1928), 139 L. T. 265.
207. *Add. Annotation*:—*Refd. Lloyds Bank v. Chartered Bank of India, etc.* (1927), 44 T. L. R. 165.
208. *Add. Annotation*:—*Apld. Goldman v. Cox* (1924), 40 T. L. R. 744.
- 209a. ————]—Pltf., who was a Pole, & could not read English unless it was printed, bought goods from one A. Cohen, & certain cheques were made out in favour of "A. Cohen" by a clerk in the employment of pltf. & were signed by pltf. The clerk afterwards forged the name of the payee by inserting "S" before "A. Cohen" & forged the indorsement & got the cheques cashed by deft., who obtained payment for the cheques on presentation. In an action for money received by deft. to the use of pltf.:—*Held*: as the cheques were, before signature, made out to a real creditor & not to a fictitious person pltf. was entitled to recover.—*GOLDMAN v. COX* (1924), 40 T. L. R. 744; 69 Sol Jo. 10, C. A.
215. *Add. Annotations*:—*Refd. Robinson v. Marsh*, [1921] 2 K. B. 640; *McDonald v. Nash*, [1924] A. C. 625.
241. *Add. Annotations*:—*Consd. London & Montrose Shipbuilding & Repairing Co. v. Barclays Bank* (1925), 31 Com. Cas. 67; *Mentd. Brown v. Swan* (1921), 37 T. L. R. 787; *Sutters v. Briggs*, [1922] 1 A. C. 1; *Re Farrow's Bank*, [1923] 1 Ch. 41; *Underwood v. Bank of Liverpool*, *Underwood v. Barclays Bank*, [1924] 1 K. B. 775; *Importers Co. v. Westminster Bank*, [1927] 2 K. B. 297.
242. *Add. Annotations*:—*Consd. Lloyds Bank v. Chartered Bank of India, Australia & China* (1928), 97 L. J. K. B. 609. *Mentd. Underwood v. Bank of Liverpool*, *Underwood v. Barclays Bank*, [1924] 1 K. B. 775.
275. *Add. Annotation*:—*Mentd. Allen v. Royal Bank of Canada* (1925), 41 T. L. R. 625.
292. *Add. Annotation*:—*Mentd. Allen v. Royal Bank of Canada* (1925), 41 T. L. R. 625.
- 292a. *Memorandum for purchase of goods*.—*Held*: an agreement, & not a promissory note.—*ELLIS v. ELLIS* (1820), Gow, 216, N. P.
- 295a. *Statement of sum borrowed & received*.—"Which I promise never to repay."—*Held*: pltf. was well entitled upon the lending on one side, & the borrowing on the other, notwithstanding the words in the conclusion of the note.—*ANON. (circa 1716)*, cited in 2 Atk. at p. 32; 26 E. R. 416, N. P.
- Annotation*:—*Refd. Simpson v. Vaughan* (1739), 2 Atk. 31.

## Part III.—Classification of Instruments.

341. *Add. Annotations*:—*Refd. Sutters v. Briggs*, [1922] 1 A. C. 1. *Mentd. The Joannis Vatis* (1921), 91 L. J. P. 182.
347. *Add. Annotation*:—*Mentd. McDonald v. Nash*, [1924] A. C. 625.
363. *Add. Annotation*:—*Mentd. Jones v. Waring & Gillow*, [1926] A. C. 670.

## Part IV.—Date of Instrument.

383. *Add. Annotation*:—*Mentd. Maskell v. Hill*, [1921] 3 K. B. 157.

## Part V.—Computation of Time of Payment.

422. *Add. Annotation*:—*Mentd. Joachimson v. Swiss Bank Corpn.*, [1921] 3 K. B. 110.
- 441a. ————]—Where a promissory note, repayable by instalments, provides that if any instalment should not be paid "punctually" the whole of the balance is immediately to become payable, the use of the word "punctually" does not deprive the maker of the note of the three days of grace allowed by 1882 Act, s. 14, "in every case where the bill itself does not otherwise provide."—*SCHAEVERIEN v. MORRIS* (1921), 37 T. L. R. 366.

### PART III. SECT. 1.

- ed. Cheque payable to "cash or order."*—*Held*: payable to bearer.—*JUDMAIER v. STANDARD BANK OF CANADA (Alta.)*, [1927] 1 W. W. R. 270.—CAN.

## Part VI.—Acceptance.

- |   |                              |  |
|---|------------------------------|--|
| <p>judg, [1921] 2 N. B. 593; McDonald v. Nash, [1924] A. C. 625.</p>    | <p>Refd. Re Gooch, Ex p.</p> | <p>505. Add. Annotation.—Mentd. Daines v. National Provincial Bank (1927), 96 L. J. K. B. 801.</p> |
| <p>490. Add. Annotation:—Mentd. McDonald v. Nash, [1924] A. C. 625.</p> | <p></p>                      | <p>545. Add. Annotation:—Refd. Sassoon v. International Banking Corpn., [1927] A. C. 711.</p>      |

## Part VII.—Inchoate Instruments.

555. *Add. Annotation* :—*Consd. McDonald v. Nash*, [1924] A. C. 625.
563. *Add. Annotation* :—*Refd. Smith* (1928), 139 L. T. 250.
565. *Add. Annotations* :—*Consd. McDonald v. Nash*, [1924] A. C. 625. *Refd. Lickbarrow v. Mason* (1793), 6 East, 20, n.
- 567a. —.]—*Re GOOCH, Ex p. JUDD*, No. 2096a, *post*.
- 567b. —.]—*MCDONALD (GERALD) & Co. v. NASH & Co.*, No. 2096b, *post*.
- 577a. —.]—Where a bill of exchange on duly stamped paper is presented for signature to the acceptor by the drawer, & the former signs at the request of the latter with knowledge that the drawer intends to convert the document into a bill of exchange & negotiate it as such, it is immaterial, as against a holder in due course, whether the document was in blank or fully filled in when presented to the drawer for signature.—*DUNN (M.), LTD. v. JEFFERSON* (1925), 69 Sol. Jo. 695, 725.
584. *Add. Annotation* :—*Refd. Guildford Trust v. Goss* (1927), 136 L. T. 725.
585. *Add. Annotation* :—*Refd. Lloyds Bank v. Chartered Bank of India, Australia & China* (1928), 97 L. J. K. B. 609.
587. *Add. Annotation* :—*Dbtd. Jones v. Waring & Gillow*, [1926] A. C. 670.
- . — Particular purpose—Fraudulent use for another purpose.]—A cheque was signed in blank by one of the partners in a syndicate, in the belief that the stamp of the syndicate would be subsequently affixed & the cheque used for the ordinary business of the syndicate. It was made payable to another partner, & was indorsed by a third partner, who believed the same as the drawer, as well as by the payee. The payee, in fraud of the other two partners, did not affix the stamp of the syndicate & used the cheque for the purpose of raising a loan from money-lenders, for which he gave a promissory note binding him to repay an agreed sum by monthly instalments. When one of the instalments fell due, the cheque was tendered in payment & was dishonoured upon presentation, & the money-lenders then sued the drawer & the indorser :—*Held* : the drawer & indorser were liable on the cheque, as there had been nothing to put plffs. on inquiry whether a fraud was being perpetrated by the payee, & as both defts., when signing the document, had intended that the document should be negotiated as a cheque, the cheque could not be regarded as a document given in escrow.—*GUILDFORD TRUST, LTD. v. GOSS* (1927), 136 L. T. 725 ; 43 T. L. R. 167.

## Part VIII.—Delivery.

595. *Add. Annotation*:—**Re**ld. McDonald v. Nash, [1924] A. C. 625.
596. *Add. Annotation*:—**Re**ld. Lloyds Bank v. Chartered Bank of India, etc. (1927), 44 T. L. R. 165.
635. *Add. Annotation*:—**Men**td. Marbé v. George Edwardes (Daly's Theatre) (1927), 96 L. J. K. B. 980.
639. *Add. Annotations*:—**Men**td. *Re* Chesterman's Trusts, Mott v. Browning, [1923] 2 Ch. 466; Uliendahl v. Pankhurst Wright (1923), 39 T. L. R. 628; Peyrae v. Wilkinson, [1924] 2 K. B. 166.
643. *Add. Annotation*:—**Expl**d & **Dist**d. Jones v. Waring & Gillow, [1926] A. C. 670.
663. *Add. Annotation*:—**Men**td. Saunders v. Young's Brewery (1925), 42 T. L. R. 136.

**PART VI. SECT. 2.**

sm. Acceptance by wife.}—Held:  
not binding on husband.—*ECOLLE v.*  
*MERCHANTS BANK OF CANADA*, [1923]  
8 D. L. R. 1103; 52 O. L. R. 188.—  
CAN.

**PART VI. SECT. 8, SUB-SECT. 1.**

sp. Indorsement "will accept on arrival of goods."—Held: the words when applied to a bill on demand meant "will pay," & no further acceptance was necessary. — HUMPHEYS v. TAYLOR, [1921] N. Z. L. R. 343.—N. Z.

**PART VII. SECT. 1.**

586 vi. — *& place of payment.*]— Where instead of handing over a note, applt.'s solr. filled in a place for payment, & discounted it with resp. &

kept the money, & resp. filled in his own name as payee, & the note was not paid at maturity & no notice of dishonour was given to applt. — *Held*: the solt. had no authority to neg<sup>t</sup>iate the note, & resp. had no authority to fill in his name as payee, & he could not recover from applt. — *KNOTT v. ABBOT*, [1923] N. Z. L. R. 1072. — N.Z.

**PART VIII. SECT. 4. SUB-SECT. 1.—A.**

611 vill. —.]—Oral evidence is not admissible to show an agreement contemporaneous with the making of a note that the liability of the maker is contingent on the happening of some event.—**RUTHENIAN FARMERS ELEVATOR CO. v. GNIAZDOSKI**, [1922] 3 W. W. R. 19; 68 D. L. R. 656; 32 Man. L. R. 322.—**CAN.**

629 i. ——— Until death of maker.]—  
BONHAM v. BONHAM (1920), 48 O. L. R.

434; 57 D. L. R. 459; 19 O. W. N.  
268.—CAN.

637 iv. —.]—Evidence of alleged conditions attached to the payment of a promissory note, *e.g.* payment out of a particular fund, is not admissible, as it would vary the terms of the written document.—**GUGGISBERG v. WEBER**, [1924] 1 D. L. R. 336; 1 W. W. R. 137; 18 Sask. L. R. 6.—**CAN.**

638 1. *Excluding liability if goods rejected.*—An action by payee against the maker of a promissory note given for the price of goods was dismissed, on the ground that deft. had exercised, as under a contemporaneous oral agreement he was entitled to do, the right of rejecting & returning the goods.—NATIONAL MANUFACTURING CO. v. STEP, [1922] 1 W. W. R. 814; 65 D. L. R. 284; 17 Alta. L. R. 308.—CAN.

## Part IX.—Capacity and Authority of Parties.

687. *Add. Annotation* :—**Refd.** Kreditbank Cassel G.m.b. H. v. Schenkers, [1926] 2 K. B. 450.

691a. ———.]—*Re* ADANSONIA FIBRE CO., MILES' CLAIM (1874), 9 Ch. App. 635; 43 L. J. Ch. 732; 31 L. T. 9; 22 W. R. 889, L. JJ.

*Annotation* :—**Consd.** Yorkshire Banking Co. v. Beatson (1880), 5 C. P. D. 109.

691b. ———.]—FLEMING v. MCNAIR (1812), cited in 3 Dow, at p. 229; 3 E. R. 1048, H. L.

*Annotations* :—**Consd.** Davison v. Robertson (1815), 3 Dow. 218. **N.F.** Yorkshire Banking Co. v. Beatson (1880), 5 C. P. D. 109.

692. *Add. Annotation* :—**Mentd.** Rye v. Purcell, [1926] 1 K. B. 446.

692a. ———.]—In order to take a case out of the principle, that every partner in a mercantile or ordinary trading partnership is liable upon bills, drawn by a partner in the recognised trading business of the firm, for a transaction incident to the business of the firm, although such partner's name does not appear upon the face of the instrument, & although he be a sleeping & secret partner, it must be established that the holder of the bills knew, at the time he received them, that the transaction was a private contract not within the scope of the partnership.—BUNARSEE DASS v. GHOLAM HOSSEIN (1870), 13 Moo. Ind. App. 358; 20 E. R. 585, P. C.

693a. ———.]—SUTTON v. GREGORY (1797), Peake, Add. Cas. 150; 170 E. R. 226, N. P.

694a. ———.]—If one partner draw or indorse a bill in the partnership name, it will *prima facie* bind the firm, although passed by the partner to a separate creditor in discharge of his own debt, unless there be evidence of covin between such separate debtor & creditor, or at least of the want of authority, either express or to be implied, in the debtor partner to give the joint security of the firm for his separate debt.—RIDLEY v. TAYLOR (1810), 13 East, 175; 104 E. R. 336.

*Annotations* :—**Consd.** Frankland v. M'Gusty (1830), 1 Knapp. 274; *Re* Acraman, *Ex p.* Bushell (1844), 3 Mont. D. & De G. 615. **Distd.** Levenson v. Lane (1862), 13 C. B. N. S. 278. **Refd.** Lloyd v. Ashby (1825), 2 C. & P. 138; Wintle v. Crowther (1831), 1 Cr. & J. 316; *Re* Riches, *Ex p.* Darlington District Joint Stock Banking Co. (1865), 34 L. J. Bey. 10.

694b. ———.]—Bills drawn by one partner for a separate debt in the partnership name cannot be recovered upon as against the firm, unless pltf. can prove either a direct assent from the other partners, or circumstances from which such assent might have been reasonably presumed.—FRANKLAND v. M'GUSTY (1830), 1 Knapp, 274; 12 E. R. 324, P. C.

*Annotations* :—**Consd.** *Re* Wardley & Hodson, *Ex p.* Thorpe (1836), 2 Deac. 16. **Refd.** Levenson v. Lane (1862), 13 C. B. N. S. 278.

694c. ———.]—**Note made for self & partner—Partner bound.**—LANE v. WILLIAMS (1692), 2 Vern. 277; 23 E. R. 779; *subsequent proceedings* (1693), 2 Vern. 292.

*Annotations* :—**Consd.** Devaynes v. Noble, Sleech's Case (1816), 1 Mer. 539. **Refd.** Bank of Australasia v. Breillat (1847), 6 Moo. P. C. C. 152.

694d. ———.]—SMITH v. JERVES & BAILY (1727), 2 Ld. Raym. 1484; 92 E. R.

464; *sub nom.* SMITH v. BAILY, 11 Mod. Rep. 401.

695a. ———.]—**With addition of partnership name—Firm bound.**—GALWAY (LORD) v. MATTHEW & SMITHSON (1808), 1 Camp. 403; 170 E. R. 1000, N. P.; *subsequent proceedings, sub nom.* GALLWAY (LORD) v. MATHEW & SMITHSON, 10 East, 264.

*Annotations* :—**Consd.** Rooth v. Quin & Janney (1819), 7 Price, 193. **Appld.** *Re* Clarke, *Ex p.* Buckler (1844), 3 L. T. O. S. 284.

696a. ———.]—In an action against partners, on a bill of exchange, it is no legal objection that the bill has been drawn or indorsed by one in his own name only. The liability of the parties may be collected from their course of business & other circumstances, showing that the partner who drew or indorsed had authority to bind the partnership by that mode of drawing or indorsing. Nor is it sufficient for the other partners to show that, in the particular instance, the partner who drew or indorsed the bill in question violated his private instructions in so doing.—SOUTH CAROLINA BANK v. CASE (1828), 8 B. & C. 427; 2 Man. & Ry. K. B. 459; 108 E. R. 1101; *sub nom.* SOUTH CAROLINA BANK v. CASE, BECKETT v. SAME, Dan. & Ll. 103; 6 L. J. O. S. K. B. 364.

*Annotations* :—**Expld.** Smith v. Craven (1831), 1 Cr. & J. 500. **Dbtd.** Nicholson v. Ricketts (1860), 2 E. & E. 497. **Consd.** *Re* Adanson Fibre Co., Miles' Claim (1874), 9 Ch. App. 635; Yorkshire Banking Co. v. Beatson (1880), 5 C. P. D. 109. **Refd.** Vere v. Ashby (1829), 10 B. & C. 288; Beckham v. Knight (1838), 4 Bing. N. C. 243; Trueman v. Loder (1840), 11 Ad. & El. 589.

698a. ———.]—**After dissolution.**—A bill drawn & accepted after dissolution of partnership, though dated before, does not bind the retiring partner.—WRIGHT v. PULHAM (1816), 2 Chit. 121; *sub nom.* WRIGHTSON v. PULLAN, 1 Stark. 375; 171 E. R. 501.

701a. ———.]—A bill, though drawn on a partnership, & accepted by one of the partners, if for a separate debt of one of them, shall not bind the partnership, if the party knew the consideration of the bill. *Aliter*, if in the hands of a *bona fide* indorsee without notice.—WELLS v. MASTERMAN (1790), 2 Esp. 731; 170 E. R. 512, N. P.

*Annotations* :—**Refd.** Levenson v. Lane (1862), 13 C. B. N. S. 278; Ellston v. Deacon (1866), L. R. 2 C. P. 20.

701b. ———.]—A partnership acceptance, given in discharge of the several debt of one of two partners, cannot be proved against the joint estate, by a person who took it in discharge of such several debt, though it was left for acceptance at the house of business of the partnership, & thence returned accepted, unless the holder makes out that it was accepted in the partnership name, with the knowledge & assent of the other partner.—*Re* O'NEILL, *Ex p.* GOULDING (1829), 8 L. J. O. S. Ch. 19, L. C.

*Annotations* :—**Refd.** Levenson v. Lane (1862), 13 C. B. N. S. 278; *Re* Riches & Marshall's Trust Deed, *Ex p.* Darlington, etc., Banking Co. (1865), 4 De G. J. & Sm. 581.

702a. ———.]—**Bill not addressed to partnership address.**—Deft., a cheesemonger at A., carried on at W. the hosiery trade in partnership with C., but in his own name. C.



accepted, in the name of deft., a bill of exchange drawn for goods supplied to the partnership, & which was addressed to deft. at A. :—*Held*: the acceptance was binding on deft., although the bill was not addressed to the place where the partnership business was carried on.—*STEPHENS v. REYNOLDS* (1860), 5 H. & N. 513; 29 L. J. Ex. 278; 2 L. T. 222; 157 E. R. 1283; *subsequent proceedings*, 2 F. & F. 147.

*Annotations*:—*Consd.* Yorkshire Banking Co. v. Beatson (1), Leeds & County Banking Co. v. Same (1879), 4 C. P. D. 204. *Refd.* Yorkshire Banking Co. v. Beatson (1880), 5 C. P. D. 109.

709a. ——— Not for partnership purposes—*Firm not bound.*—*SHEPPARD v. DRY* (1840), cited in Byles on Bills, 18th ed., p. 56, n. (l).

713a. ——— For private debt—*Firm not bound.*—*ARDEN v. SHARPE & GILSON* (1797), 2 Esp. 524; 170 E. R. 442, N. P.

713b. ——— ———.]—*RIDLEY v. TAYLOR*, No. 694a, *ante*.

713c. ——— Bill or note indorsed by partner in own name.]—*SOUTH CAROLINA BANK v. CASE*, No. 696a, *ante*.

715. *Add. Annotation*:—*Mentd.* Brocklebank v. R., [1925] 1 K. B. 52.

722. *Add. Annotation*:—*Refd.* Underwood v. Bank of Liverpool, Underwood v. Barclays Bank, [1924] 1 K. B. 775.

726. *Add. Annotation*:—*Mentd.* Bow's Emporium v. Brett (1927), 44 T. L. R. 194.

734. *Add. Annotations*:—*Distd.* Goldman v. Cox (1924), 40 T. L. R. 744. *Refd.* Jones v. Waring & Gillow, [1926] A. C. 670.

737. *Add. Annotation*:—*Refd.* Jones v. Waring & Gillow, [1926] A. C. 670.

738. *Add. Annotation*:—*Mentd.* London & Montrose Shipbuilding & Repairing Co. v. Barclays Bank (1925), 31 Com. Cas. 67.

746. *Add. Annotations*:—*Consd.* Goldman v. Cox (1924), 40 T. L. R. 423; Reckitt v. Barnett, Pembroke & Slater, [1928] 2 K. B. 244. *Refd.* Underwood v. Bank of Liverpool, Underwood v. Barclays Bank, [1924] 1 K. B. 775; Australian Bank of Commerce v. Perel, [1926] A. C. 737; Jones v. Waring & Gillow, [1926] A. C. 670; Lloyds Bank v. Chartered Bank of India, Australia & China (1928), 97 L. J. K. B. 609.

755. *Add. Annotations*:—*Consd.* Underwood v. Bank of Liverpool, Underwood v. Barclays Bank, [1924] 1 K. B. 775; Reckitt v. Barnett, Pembroke & Slater, [1928], 2 K. B. 244.

757. *Add. Annotations*:—*Refd.* Underwood v. Bank of Liverpool, Underwood v. Barclays Bank, [1924] 1 K. B. 775; Liggett (Liverpool) v. Barclays Bank, [1927] 137 L. T. 443; Lloyds Bank v. Chartered Bank of India, Australia & China (1928), 97 L. J. K. B. 609.

759. *Add. Annotation*:—*Refd.* Reckitt v. Barnett, Pembroke & Slater, [1928] 2 K. B. 244.

#### PART IX. SECT. 5.

763 va. ——— "President" & "Mgr." added after signatures.]—*Held*: the individual defts. were personally liable on the note.—*LOCZKA v. RUTHENIAN FARMERS' CO-OPERATIVE CO., LTD.*, [1922] 2 W. W. R. 782; 68 D. L. R. 535; 32 Man. L. R. 137.—*CAN.*

763 vb. ——— "Pres." "Secy." added after signatures.]—Whether those signing a promissory

note signed it as officials of a limited co. or as individuals, is a question of intent, & the intent must be gathered from the face of the document itself, & where, on a series of notes made to the same person at one time, a rubber stamp containing the name of the co. & two lines was impressed on the notes & the signers signed on the two lines & added the words "Pres." & "Secy." after their signatures & were in fact the president & secretary of the co. respectively:—*Held*: the notes were made by the co.—*SCHAFER v. TUBBY, SMITH & CO., LTD.*, [1924]

763a.

"Directors" added after signatures—Acceptance by company—Drawer requiring indorsement by directors.]—A bill of exchange addressed to a limited co. was accepted in the following form: "Accepted payable at the W. Bank—A.B. & C.D., directors—Fashions Fair Exhibition, Ltd." The drawer when sending the bill to the co. for acceptance stated in his letter that as a condition of his doing the work for which the bill was drawn he should require it to be indorsed by the directors as well as accepted by the co. Accordingly the same two directors signed the bill also on the back, "Fashions Fair Exhibition, Ltd. A.B. & C.D., directors," & one of them when returning the accepted bill drew attention in his letter to the fact that it was duly indorsed by two directors of the co. as requested by you." In an action against A.B. & C.D. as indorsers of the bill:—*Held*: (1) they were personally liable, upon the ground that if the indorsement was to be treated as that of the co. it gave no greater validity to the bill than was already contained in the acceptance, & therefore under 1882 Act, s. 26 (2), the construction that it was the personal indorsement of defts. was to be adopted; (2) even if the indorsement stood by itself, as defts.' signature did not in terms say that they were signing on behalf of the co., the addition to their names of the word "directors" must be treated as a word of description only & not as excluding their liability; (3) the ct. were entitled to look at the surrounding circumstances under which the bill was signed, including the letters which passed between the parties on the subject of the indorsement, from which it was to be inferred that defts. by indorsing intended to guarantee the payment of the bill.—*ELLIOTT v. BAX-IRONSIDE*, [1925] 2 K. B. 301; 91 L. J. K. B. 807; 133 L. T. 624; 41 T. L. R. 631, C. A.

*Annotation*:—As to (1) *Consd.* Kettle v. Dunster & Wakefield (1927), 43 T. L. R. 770.

763b. ——— "Receiver" added after signature.]—Pltf., who had been appointed receiver on behalf of the debenture-holders of a co., sued defts. as acceptors of bills of exchange, which were signed by "R., Receiver, F. Ltd." as drawer. They had been accepted in respect of goods supplied by the co. to defts., & pltf. had stated that it must be "clearly understood that I am in no way accepting any liability or responsibility whatever in respect of the orders themselves":—*Held*: (1) the above were not "surrounding circumstances" from which the intention of the parties could be inferred, & such intention must be gathered from the terms of the document alone; (2) the words "Receiver, F. Ltd." were words of description only, & the bills did not purport to have been drawn on behalf of

1 D. L. R. 468; 1 W. W. R. 213.—*CAN.*

763 vc. "Director" "Secretary" added after signatures.]—A promissory note was granted in the following terms: "Four months after date we promise to pay... [C. D.] Director, [E. F.] Secretary. The Fraserburgh Empire Ltd." The body of the note & the words appended to the signatures had all been written by the same person, not one of the signatories, before signature:—*Held*: the two signatories were personally liable.—*BREBNER v. HENDERSON*, [1925] S. C. 643.—*SCOT.*

the co.; (3) pltf. was entitled to recover against defts. upon the bills.—*KETTLE v.*

*DUNSTER & WAKEFIELD* (1927), 138 L. T. 158; 43 T. L. R. 770.

## Part X.—Consideration.

772. *Add. Annotation*:—*As to* (1) *Refd. Jones v. Waring & Gillow*, [1926] A. C. 670.
773. *Add. Annotations*:—*Refd. Robinson v. Marsh*, [1921] 2 K. B. 640; *Sutters v. Briggs*, [1922] 1 A. C. 1; *Re Farrow's Bank*, [1923] 1 Ch. 41.
786. *Add. Annotation*:—*Mentd. Allen v. Royal Bank of Canada* (1925), 41 T. L. R. 625.
801. *Add. Annotation*:—*Refd. Sutters v. Briggs*, [1922] 1 A. C. 1.
803. *Add. Annotations*:—*Distd. Burrell v. Leven* (1926), 42 T. L. R. 407; *Richardson v. Moncrieffe* (1926), 43 T. L. R. 32. *Refd. Robinson v. Marsh*, [1921] 2 K. B. 640; *Sutters v. Briggs*, [1922] 1 A. C. 1. *Mentd. Jeffrey v. Bamford*, [1921] 2 K. B. 351; *Greenhalgh v. Union Bank of Manchester*, [1924] 2 K. B. 153.
823. *Add. Annotation*:—*Refd. Stott v. Shaw & Lee*, [1928] 2 K. B. 26.
826. *Add. Annotation*:—*Mentd. Fettes v. Robertson* (1921), 37 T. L. R. 581.
835. *Add. Annotation*:—*Mentd. Holt v. Markham* (1922), 128 L. T. 719.
837. *Add. Annotation*:—*Refd. Sutters v. Briggs*, [1922] 1 A. C. 1.
868. *Add. Annotation*:—*Consd. Jones v. Waring & Gillow*, [1926] A. C. 670.
895. *Add. Annotation*:—*Refd. Allen v. Royal Bank of Canada* (1925), 41 T. L. R. 625.
- 896a. Under 1882 Act, s. 21 (2)—*Payee*.—The original payee of a cheque is not a "holder in due course" within the above sect.—*JONES (R. E.), LTD. v. WARING & GILLOW, LTD.*, [1926] A. C. 670; 95 L. J. K. B. 913; 135 L. T. 548; 42 T. L. R. 644; 70 Sol. Jo. 756; 32 Com. Cas. 8, H. L.
- Annotation*:—*Refd. Lloyds Bank v. Chartered Bank of India, Australia & China* (1928), 97 L. J. K. B. 609.
897. *Add. Annotation*:—*Apprvd. Jones v. Waring & Gillow*, [1926] A. C. 670.
899. *Add. Annotation*:—*Refd. Jones v. Waring & Gillow*, [1926] A. C. 670.
901. *Add. Annotation*:—*Consd. Sutters v. Briggs*, [1922] 1 A. C. 1.
902. *Add. Annotations*:—*Consd. Sutters v. Briggs*, [1922] 1 A. C. 1. *Refd. Brown v. Swan* (1921), 37 T. L. R. 787; *Robinson v. Marsh*, [1921] 2 K. B. 640. *Mentd. Jeffrey v. Bamford*, [1921] 2 K. B. 351; *Maskell v. Hill*, [1921] 3 K. B. 157; *Cohen v. Hall*, [1922] 2 K. B. 37; *Ford v. Blurton*, *Ford v. Sauber* (1922), 38 T. L. R. 801; *Scranton's Trustee v. Pearce*, [1922] 2 Ch. 87.
917. *Add. Annotations*:—*Consd. Auchteroni v. Midland Bank*, [1928] 2 K. B. 294; *Reckitt v. Barnett, Pembroke & Slater*, [1928] 2 K. B. 244.
922. *Add. Annotations*:—*Consd. Reckitt v. Barnett, Pembroke & Slater*, [1928] 2 K. B. 244. *Mentd. Falcon v. Famous Players Film Co.* (1925), 42 T. L. R. 91.
935. *Add. Annotation*:—*Refd. Humphrey & Denman v. Kavanagh* (1925), 41 T. L. R. 378.
942. *Add. Annotation*:—*Refd. Sutters v. Briggs*, [1922] 1 A. C. 1.
943. *Add. Annotations*:—*Distd. Soc. Anon. des Grands Etablissements de Touquet Paris-Plage v. Baumgart* (1927), 96 L. J. K. B. 789. *Mentd. Aksionairnoye Obschestvo A. M. Luther v. Sagor*, [1921] 3 K. B. 532; *Robinson v. Marsh*, [1921] 2 K. B. 640.
945. *Add. Annotation*:—*Refd. Maskell v. Hill*, [1921] 3 K. B. 157.

### PART X. SECT. 1, SUB-SECT. 3.

795 i. *Forbearance to sue—Surety*.—*Held*: the giving of a note to avoid suit constituted deft. a principal debtor, & his equities as a surety were gone.—*ALLIANCE TRUST CO. v. JOHNSON*, [1920] 2 W. W. R. 800; 15 Alta. L. R. 479.—CAN.

### PART X. SECT. 1, SUB-SECT. 4.

st. *Extension of credit*.—*FULLER & CO. v. HOLLAND (N. S.)* (1910), 9 E. L. R. 110.—CAN.

### PART X. SECT. 1, SUB-SECT. 5.

ex. *Sale of improvements by quitclaim deed*.—*DUBE v. MORNEAULT* (1920), 48 N. B. R. 200; 55 D. L. R. 512.—CAN.

### PART X. SECT. 2.

844 ii. —.—.—*CANADIAN BANK OF COMMERCE v. COLWELL* (1923), 56 N. S. R. 347.—CAN.

### PART X. SECT. 3.

855 i. *Liability of accommodating party—Not entitled to notice of dishonour*.—*CODVILLE CO. v. JORDAN*, [1922] 1 W. W. R. 1280; 63 D. L. R. 694.—CAN.

856 vi. —.—.—*Subsequent indorser not entitled to benefit of col-*

*lateral security*.—*SMITH v. FRALICK* (1856), 5 Gr. 612.—CAN.

sa. *Right of accommodating party—To sue—On warehouse receipt indorsed by accommodated party*.—*Held*: pltf. could not recover, for there was no debt contracted at the time of the indorsement.—*COCKBURN v. SYLVESTER* (1877), 1 A. R. 471.—CAN.

### PART X. SECT. 5.

896 iv. —.—.—*UNION BANK OF CANADA v. ANTONIOU*, [1921] 1 W. W. R. 649; 56 D. L. R. 338; 61 S. O. R. 253.—CAN.

896 v. —.—.—*WEICKER v. MORTIMER*, [1922] 2 W. W. R. 725; 15 Sask. L. R. 436.—CAN.

896 vi. —.—.—*ALLAHABAD BANK, LTD., LAHORE v. RATTAN CHAND CRAWLA* (1927), 1 L. R. 8 Lah. 702.—IND.

897 vi. —.—.—*GUNNE, LTD. v. WARK*, [1924] 1 D. L. R. 377, 51 N. B. R. 292.—CAN.

897 vii. —.—.—*MARSHALL v. ROGERS*, [1924] 1 D. L. R. 888.—CAN.

907 i. *"Complete & regular on face of it"*.—*Instrument signed in blank*.—A party who knows that a note has been signed in blank & negotiated to him before being filled out is not a holder in due course.—*SAVARD v. TREMBLAY* (1922), Q. R. 34 K. B. 458.—CAN.

913 iii. —.—.—*Pltf. purchased a 1916 model motor-truck from G. A cash payment was made on account & promissory notes given for the balance. G. assigned the agreement & notes to defts. for valuable consideration, of which pltf. had due notice. Later pltf. found the truck was a 1913 model but continued to use it. He then brought an action for cancellation of the notes:—Held: defts. were holders of the notes in due course & had discharged any onus for the fraudulent conduct of G. of which they had no notice.—FRASER v. MCGREGOR, JOHNSTON & THOMAS, LTD.* (1922), 31 B. C. R. 306.—CAN.

913 iv. —.—.—*BANK OF AUSTRALASIA v. CURTIS*, [1927] N. Z. L. R. 247.—N.Z.

### PART X. SECT. 6, SUB-SECT. 2.—A.

940 i. *Smuggling*.—*WALLBRIDGE v. FOLLETT* (1846), 2 U. C. R. 280.—CAN.

942 i. *Gaming—Gambling in grain futures*.—*Promissory note unenforceable*.—*BANK OF TORONTO v. SWEENEY, BANK OF TORONTO v. COCHRANE, BANK OF TORONTO v. BORTS*, [1927] 2 W. W. R. 597; 21 Sask. L. R. 670.—CAN.

946 iii. —.—.—*MACWILLIAMS v. HIGGINS*, [1927] 2 D. L. R. 781; [1927] 1 W. W. R. 772; 36 Man. L. R. 458.—CAN.

946 iv. —.—.—*Promissory note un-*

- Compounding felony.]—GUTHORN v. FELLOWS** (1717), 2 Eq. Cas. Abr. 160; 5 Vin. Abr. 408, pl. 20; 22 E. R. 136, L. C.
959. *Add. Annotation*:—**Mentd. Maskell v. Hill**, [1921] 3 K. B. 157.
960. *Add. Annotations*:—**Refd. Robinson v. Marsh**, [1921] 2 K. B. 640; **Sutters v. Briggs**, [1922] 1 A. C. 1. **Mentd. Maskell v. Hill**, [1921] 3 K. B. 157.
964. *Add. Annotation*:—**Apld. Greenberg v. Cooperstein**, [1926] Ch. 657.
971. *Add. Annotation*:—**Refd. Sutters v. Briggs**, [1922] 1 A. C. 1.
995. *Add. Annotation*:—**Consd. Jones v. Waring & Gillow**, [1926] A. C. 670.
1033. *Add. Annotation*:—**Refd. Bernard v. Williams** (1928), 139 L. T. 22.
1037. *Annotations*:—Delete "**Barwick v. S. E. & O. Ry. Cos.**, [1920] 2 K. B. 387; **Bombay & Persia Steam Navigation Co. v. MacLay**, [1920] 3 K. B. 402; **Markwald v. A.-G.**, [1920] 1 Ch. 348."
- Add. Annotations*:—**Refd. Maclaine v. Eccott** (1924), 132 L. T. 173. **Mentd. Buerger v. New York Life Assce.** (1927), 96 L. J. K. B. 930; **Jaeger v. Jaeger Co.** (1927), 44 R. P. C. 437; **Sassoon v. International Banking Corp.**, [1927] A. C. 711.
1038. *Add. Annotations*:—**Refd. The Penelope**, [1928] P. 180. **Mentd. French Marine v. Compagnie Napolitaine d'Eclairage et de Chauffage par le Gaz**, [1921] 2 A. C. 494.
1052. *Add. Annotation*:—**Refd. Robinson v. Marsh**, [1921] 2 K. B. 640.
1053. *Add. Annotation*:—**Distd. Guildford Trust v. Pohl & Maritch** (1928), 72 Sol. Jo. 171.
1054. *Add. Annotation*:—**Refd. Jones v. Waring & Gillow**, [1926] A. C. 670.
- 1054a. **TRUST, LTD. v. POHL & MARITCH** (1928), 72 Sol. Jo. 171.
1093. *Add. Annotation*:—**Refd. Allen v. Royal Bank of Canada** (1925), 41 T. L. R. 625.
1096. *Add. Annotation*:—**Mentd. R. v. Jenkins, R. v. Evans-Jones** (1923), 87 J. P. 115.
1123. *Add. Annotation*:—**Mentd. Maskell v. Hill**, [1921] 3 K. B. 157.
1132. *Add. Annotation*:—**Refd. Robinson v. Marsh**, [1921] 2 K. B. 640.

## Part XI.—Negotiation and Transfer.

1161. *Add. Annotations*:—**Refd. Sutters v. Briggs**, [1922] 1 A. C. 1. **Mentd. The Joannis Vatis** (1921), 91 L. J. P. 182.
1163. *Add. Annotation*:—**Refd. McDonald v. Nash**, [1924] A. C. 625.
1178. *Add. Annotation*:—**Refd. Sutters v. Briggs**, [1922] 1 A. C. 1.
1188. *Add. Annotation*:—**Refd. Jenkins v. Jenkins**, [1928] 2 K. B. 501.

enforceable. The fact that the magistrate consented to the withdrawal of the charge is immaterial.—**BECKER v. BACHMAN** (Alta.), [1927] 2 D. L. R. 1144; [1927] 2 W. W. R. 32.—CAN.

m. Read now "946a i."

n i. *Transaction in breach of licensing laws.*—**Held**: plffs. could not recover on bills of exchange given in payment for intoxicating liquors sold by their agent in a local option district.—**WILSON CO. v. MAYFLOWER BOTTLING CO.** (N. S.) (1913), 13 E. L. R. 489; 14 D. L. R. 711.—CAN.

n ii. —.—**Held**: there was no legal consideration for the cheque on which plff. sued, & he could not recover.—**SKALE v. BECKER**, [1926] 1 D. L. R. 723; 59 O. L. R. 551.—CAN.

### PART X. SECT. 7.

993 v. —.— *Assignment by vendor of rights under contract to third party—Property in goods never passing to purchaser.*—**MONTICELLO STATE BANK v. KILLORAN**, [1920] 3 W. W. R. 542.—CAN.

### PART X. SECT. 8, SUB-SECT. 1.

s i. —.— *Verbal agreement that note to be operative only on happening of specified event.*—**DENNIS v. IVEY & BOYCE**, [1920] 3 W. W. R. 744.—CAN.

ii. —.— *Note given to show fictitious assets—Estoppel of maker.*—**HAY v. ALLEN**, [1921] 1 W. W. R. 33.—CAN.

s iii. —.—**KLOTZ v. JOUAN**, [1925] 3 D. L. R. 105.—CAN.

s iv. —.—**DEVLIN v. MOORE'S MILLS CREAMERY, LTD.** (N. B.), [1927] 3 D. L. R. 479.—CAN.

### PART X. SECT. 8, SUB-SECT. 2.

1040 ii. —.—**Held**: The maker of a post-dated cheque the con-

sideration for which has failed & payment of which he has stopped, is liable thereon to a bank which in good faith & without knowledge of the facts has before its date received it by indorsement from the payee & given credit therefor to the payee.—**UNION BANK OF CANADA v. TATTERSALL**, [1920] 2 W. W. R. 497; 52 D. L. R. 407; 15 Alta. L. R. 350.—CAN.

### PART X. SECT. 9, SUB-SECT. 1.

1059 xv. —.—**Held**: Where notes were nullities for fraud, & the signer was not estopped by any negligence on her part:—**Held**: the third party, although a holder in due course, had no right to recover from her.—**DUNSKA v. KESTEVEN**, [1922] N. Z. L. R. 1032.—N.Z.

1059 xvi. —.—**Held**: Where there was a defect in the payee's title, of which the indorsee had notice:—**Held**: he was not entitled to recover.—**DARROCK v. BURNS** (1927), 48 N. L. R. 320.—S. AF.

### PART X. SECT. 9, SUB-SECT. 2.

1073 i. —.— *Husband & wife.*—**FRYERS & CO., LTD. v. STEEVES** (N. B.), [1927] 4 D. L. R. 1077.—CAN.

### PART X. SECT. 10, SUB-SECT. 1.

1093 i. *Add "varied"*, [1917] 1 W. W. R. 1177."

### PART X. SECT. 10, SUB-SECT. 2.—B (a).

1096 ix. —.—**Held**: Fraud is no defence where an action on a note is brought by a holder in due course. It merely shifts the burden to plff. to show that he took the note before maturity, in good faith, for value & with no notice of the fraud.—**CANADIAN BANK OF COMMERCE v. PEEBLES**, [1924] 1 D. L. R. 225.—CAN.

### PART XI. SECT. 4.

g (p. 185) i. —.—**Held**: To be the holder of a promissory note & entitled to sue on it in his own name, plff. must be either the payee or the indorsee in possession of the note.—**BARNEY v. LAUZON**, [1923] 2 W. W. R. 19.—CAN.

*ment to evade counterclaim.*—**Held**: Deft. made a note in favour of C., who lost it. C. made an assignment of it to J. in order that J. might bring an action thereon & so prevent deft. bringing a counterclaim against C. Just before trial the note was found & indorsed to J.:—**Held**: C. must be joined as plff., & deft. allowed to bring in his counterclaim.—**JONES & COLQUHOUN v. FINCH** (1922), 66 D. L. R. 822.—CAN.

m (p. 188) ii. —.— *Indorsement in consideration of advances—Advances repaid.*—**Held**: an action might be brought either in the name of the indorser or holder.—**CLOW**, [1920] 1 W. W. R. 1060.—CAN.

m (p. 188) iii. —.— *On account of "payee."*—An indorsement was not struck out & action was brought on the note in the name of the payee. At the trial the judge allowed plff. to amend by adding the indorsee as co-plff., deft. having objected that plff. had no right of action; & judgment was given for the indorsee, but costs were given deft. against the payee, the original plff. Deft. appealed on the grounds that no amendment should have been allowed, & plff. was not entitled to judgment. Appeal dismissed.—**JACKSON MACHINES, LTD. v. MICHALUOK**, [1923] 2 W. W. R. 572; 67 D. L. R. 182; 15 Sask. L. R. 467.—CAN.

d (p. 189) i. —.— *Payee of note.*—**BELCHER v. DIXON**, [1923] N. Z. L. R. 273.—N.Z.



1190. *Add. Annotation* :—*Refd.* Robinson v. Marsh, [1921] 2 K. B. 640.
1196. *Add. Annotation* :—*As to* (2) *Consd.* Republica de Guatemala v. Nunez, [1927] 1 K. B. 669.
1248. *Add. Annotations* :—*Consd.* *Re* Gooch, *Ex p.* Judd, [1921] 2 K. B. 593. *Refd.* McDonald v. Nash, [1924] A. C. 625.
1250. *Add. Annotations* :—*Apld.* *Re* Gooch, *Ex p.* Judd, [1921] 2 K. B. 593. *Apprvd.* McDonald v. Nash, [1924] A. C. 625.
1306. *Add. Annotation* :—*Refd.* *Re* Wethered, *Ex p.* Salaman, [1926] Ch. 167.
1312. *Add. Annotation* :—*Consd.* Importers Co. v. Westminster Bank, [1927] 1 K. B. 809.
1318. *Add. Annotation* :—*Refd.* Sutters v. Briggs, [1922] 1 A. C. 1.
1319. *Add. Annotation* :—*Refd.* Robinson v. Midland Bank (1925), 41 T. L. R. 402.
1324. *Add. Annotations* :—*Refd.* Sutters v. Briggs, [1922] 1 A. C. 1. *Mentd.* The Joannis Vatis (1921), 91 L. J. P. 182.
1334. *Add. Annotation* :—*Consd.* McDonald v. Nash, [1924] A. C. 625.

## Part XII.—General Duties of Holder.

1388. *Add. Annotation* :—*Mentd.* The St. George, [1926] P. 217.
1397. *Add. Annotations* :—*Refd.* Jaeger v. Jaeger Co. (1927), 44 R. P. C. 437; Sassoon v. International Banking Corp., [1927] A. C. 711. *Mentd.* Maclaine v. Eccott (1924), 132 L. T. 173; Buerger v. New York Life Assce. (1927), 96 L. J. K. B. 930.
1407. *Add. Annotation* :—*Refd.* Joachimson v. Swiss Bank Corp., [1921] 3 K. B. 110.
1418. *Add. Annotation* :—*Mentd.* Joachimson v. Swiss Bank Corp., [1921] 3 K. B. 110.
1459. *Add. Annotation* :—*Refd.* Baines v. National Provincial Bank (1927), 96 L. J. K. B. 801.
1461. *Add. Annotation* :—*Refd.* Baines v. National Provincial Bank (1927), 96 L. J. K. B. 801.
1463. *Add. Annotation* :—*Refd.* Baines v. National Provincial Bank (1927), 96 L. J. K. B. 801.
1477. After this case add “Bill accepted payable at bank—Presentment over counter—Validity.”—See BANKERS, No. 600a, *ante*.”
1488. *Add. Annotation* :—*Mentd.* Baines v. National Provincial Bank (1927), 96 L. J. K. B. 801.

### PART XI. SECT. 9.

*e i.* — *Bank selling assets to another bank.*—Where one bank sells its assets to another bank under Bank Act, ss. 99 to 111, & the agreement for sale has been approved by the Governor in Council, the purchasing bank may sue in its own name in respect of a promissory note, part of the assets acquired, notwithstanding that the note has not been indorsed by the selling bank as required by Bills of Exchange Act.—BANK OF MONTREAL v. IRVINE & FEINSTEIN, [1924] 3 D. L. R. 752; 2 W. W. R. 1047.—CAN.

### PART XI. SECT. 15, SUB-SECT. 1.

*sg.* *Indorsed written opposite signature.*—A promissory note was signed by W. & M. on the face of the note & opposite M.'s signature the word “indorsed” was written by a salesman in the service of plff. co., to which the note was made payable:—*Held*: M. did not sign the note with the intention of indorsing it, but as maker, though as between him & W. only as a surety, & the word “indorsed” was merely a memorandum intended to show that M. was a surety.—GORRIE (A. D.) Co., LTD. v. WHITFIELD & MICHAUD (1920), 48 O. L. R. 605; 58 D. L. R. 326; 19 O. W. N. 336.—CAN.

### PART XI. SECT. 15, SUB-SECT. 2.

*company.*—If a co. authorises that its bank may accept for deposit cheques “purporting to be indorsed by any one director or the secretary or treasurer,” an indorsement is good which is made by one who is a director & secretary though he does not purport to sign as director or secretary.—UNION BANK OF CANADA v. TATTERSALL, [1920] 2 W. W. R. 497; 52 D. L. R. 407; 15 Alta. L. R. 350.—CAN.

*k ii.* — — —.—BRECHT v. HEFFEL, [1923] 3 D. L. R. 40; 2 W. W. R. 1135.—CAN.

*k iii.* — — —.—IMPERIAL BANK

OF CANADA v. DENNIS, [1925] 3 D. L. R. 488; 57 O. L. R. 203.—CAN.

*k iv.* — — —.—FIDELITY TRUST CO. v. TERMINAL LAND & INVESTMENT CO. (Ont.), [1927] 4 D. L. R. 532.—CAN.

*sj.* *Member of syndicate.*—An indorsement by one of the members of a syndicate, carrying on the business of travelling a stallion, in the syndicate's name of a promissory note made payable to the syndicate or its order:—*Held*: to be a valid indorsement.—RILEY v. REED, [1925] 2 D. L. R. 737; [1925] 2 W. W. R. 286; 19 Sask. L. R. 368.—CAN.

### PART XI. SECT. 15, SUB-SECT. 3.—A.

1311 i. *Must be written on instrument—Writing on face of note.*—Where the intention of all parties is that a signature is for the purpose of indorsement, it makes no difference where the signature is placed.—SIMONIN v. PHILION, [1922] 2 W. W. R. 1280; 66 D. L. R. 673.—CAN.

— *Allonge.*—Before finding that a sheet of paper is an allonge to a promissory note, the ct. should scrutinise the evidence & material with the greatest care, & the evidence in favour of such a finding should be of the strongest character.—BARNEY v. LAUZON, [1923] 3 D. L. R. 140; 2 W. W. R. 19.—CAN.

1313 i. *Must be signed—Name misspelt—In cheque—Name properly spell in indorsement.*—Although the word “limited” be omitted from a payee co.'s name in a cheque, there being no doubt of the co. being the intended payee, an indorsement of the cheque is effective by the proper signature of the payee on the back of it.—UNION BANK OF CANADA v. TATTERSALL, [1920] 2 W. W. R. 497; 52 D. L. R. 407; 15 Alta. L. R. 350.—CAN.

### PART XI. SECT. 15, SUB-SECT. 3.—E.

*sl.* *After advance made—Relation back.*—*Held*: the indorsement related back to the time when the note was given & the money paid.—CANADIAN

BANK OF COMMERCE v. COLWELL (1923), 56 N. S. R. 347.—CAN.

### PART XI. SECT. 15, SUB-SECT. 4.

1356 i. — — —.—“Pay to order of M. Bank to credit of” payee.—*Held*: a restrictive indorsement, & the indorsee & holder is not entitled to recover from the maker, who has paid in good faith the amount of the note to the payee.—MERCHANTS BANK OF CANADA v. BRETT, [1923] 2 D. L. R. 264; 32 Man. L. R. 529; [1923] 1 W. W. R. 607.—CAN.

*f i.* — — —.—O'DONOGHUE v. HEMBROFF (1871), 19 Gr. 95.—CAN.

### PART XI. SECT. 17.

1367 iii. — *Apparent cancellation of indorsement.*—*Held*: it is for the holder to prove in order to establish his title by reason of Bills of Exchange Act, ss. 143, 144, that the apparent cancellation was not intended to be one.—ROYAL BANK OF CANADA v. ALLEN, [1919] 3 W. W. R. 1063; 49 D. L. R. 572; 15 Alta. L. R. 171.—CAN.

### PART XII. SECT. 2, SUB-SECT. 1.

1405 xiii. — — —.—RAM SARUP v. HARDHO PRASAD (1927), 1 L. R. 50 AM. 309.—IND.

### PART XII. SECT. 2, SUB-SECT. 2.—A. (b).

1432 iii. — — —.—Cheque in circulation six months:—*Held*: an unreasonable time & not recoverable.—BALLEM v. FRIED, [1923] 4 D. L. R. 1203.—CAN.

1434 ii. — *Cheque mislaid—Delay not causing damage.*—*Held*: the drawer was not discharged by the cheque not having been presented within a reasonable time.—KING & BOYD v. PORTER, [1925] N. 107.—IR.

### PART XII. SECT. 2, SUB-SECT. 7.—B. (a).

1530 xxv. — — —.—*Acceleration of date of payment.*—(1) A promissory note in the body of it made payable at a particular place must be presented

1628. *Add. Annotation*:—Mentd. *Brown v. Swan* (1921), 37 T. L. R. 787.
1629. *Add. Annotation*:—Mentd. *Sutters v. Briggs*, [1922] 1 A. C. 1.
1637. *Add. Annotation*:—Mentd. *Joachimson v. Swiss Bank Corp.*, [1921] 3 K. B. 110.
1638. *Add. Annotation*:—Refd. *Smith v. Wood* (1928), 139 L. T. 250.
1664. *Add. Annotation*:—Mentd. *Robinson v. Midland Bank* (1925), 41 T. L. R. 402.
1688. *Add. Annotations*:—Mentd. *Goldman v. Cox* (1924), 40 T. L. R. 744; *Jones v. Waring & Gillow*, [1926] A. C. 670.
1715. *Add. Annotation*:—Refd. *Brown v. Swan* (1921), 37 T. L. R. 787.
1751. *Add. Annotation*:—Mentd. *Baines v. National Provincial Bank* (1927), 96 L. J. K. B. 801.

## Part XIII.—Liability of Parties.

1983. *Add. Annotations*:—Refd. *Re Wait*, [1927] 1 Ch. 606. Mentd. *Ratner v. London Joint City & Midland Bank* (1922), 38 T. L. R. 253.
1991. *Add. Annotation*:—Consd. *Auchteroni v. Midland Bank*, [1928] 2 K. B. 294.
1993. *Add. Annotation*:—Refd. *Joachimson v. Swiss Bank Corp.*, [1921] 3 K. B. 110.
1994. *Add. Annotation*:—Consd. *Re Swinburne, Sutton v. Featherley* (1925), 70 Sol. Jo. 64.
2004. *Add. Annotation*:—Refd. *Akt. Dampskibs Steinstad v. Pearson* (1927), 137 L. T. 533.
- 2040a. ———.]—DUNN (M.), LTD. v. JEFFERSON, No. 577a, ante.
- 2049a. On bills drawn against confirmed credit—Bills not presented to bank.]—Applts., merchants at Calcutta, sold goods to merchants in London at c.i.f. price, payment by drafts against a confirmed credit, to be opened by the buyers. On shipment of the goods

applts. drew on the buyers bills payable to resps., who negotiated them with notice that they were drawn against a confirmed credit opened by the buyers with the E. Bank. Applts. handed to resps. with the bills the shipping documents, also a memorandum describing the bills as D/A, i.e., documents against acceptance, drafts. Resps. handed the documents to the buyers against their acceptances, which were dishonoured upon maturity. Resps. sued applts. as drawers of the bills:—*Held*: resps. were entitled & bound to treat the description of the bills as D/A drafts as a direction to hand the documents to the drawers on their acceptance, & applts. had no defence, set-off or counterclaim in respect of the loss of the rights which they would have had under the confirmed credit, if the documents had been handed to the E. Bank for presentation.—SASSOON (M. A.)

for payment there, before an action thereon is brought against the maker. (2) The fact that the date of payment has been accelerated by virtue of a collateral agreement does not render presentment unnecessary.—*MORGAN v. SHAW*, [1926] 1 D. L. R. 828; [1926] 1 W. W. R. 483; 36 B. C. R. 454.—CAN.

### PART XII. SECT. 2, SUB-SECT. 9.

1563 ii. ——— *Specified place having ceased to exist.*]—*SPARKS v. HAMILTON* (1920), 47 O. L. R. 55; 17 O. W. N. 427.—CAN.

w i. ——— *Agreement for extension of time.*]—*NEWMAN v. BROWNE (W. R.) & SON*, [1925] 1 D. L. R. 676; 56 O. L. R. 148.—CAN.

sm. *Payee without funds.*]—*Held*: non-presentment of a cheque did not affect the holder's right to recover, there being evidence that the maker had not funds to meet it & no evidence of damage to him through non-presentment.—*CLOW v. DOULI*, [1920] 1 W. W. R. 1660.—CAN.

### PART XII. SECT. 2, SUB-SECT. 10.

g i. ———.]—*GUNSOLLY v. ENGSTROM*, [1924] 2 W. W. R. 382.—CAN.

### PART XII. SECT. 2, SUB-SECT. 11.

p i. ———.]—Owing to the long period of time before presenting a note for payment, & in the absence of evidence of the circumstances under which it was given & indorsed:—*Held*: the indorser was discharged.—*BANK OF MONTREAL v. MCNEILL & MCNEILL*, [1924] 2 W. W. R. 165; 33 B. C. R. 263.—CAN.

### PART XII. SECT. 4, SUB-SECT. 1.

sn. *To accommodation maker—Of promissory note.*]—*Held*: he is not entitled to notice of dishonour, even

though it be known to the payee that he is such a maker.—*CODVILLE CO. v. JORDAN*, [1922] 1 W. W. R. 1280; 63 D. L. R. 694.—CAN.

### PART XII. SECT. 4, SUB-SECT. 6.—C.

d i. ———.]—A letter in the following terms: "We humbly demand from you £550, being amount owing on a promissory note made by F. & indorsed by you to the C. Co., & of which we are the holders":—*Held*: a sufficient notice of dishonour.—*NRES v. BOTTING*, [1928] N. Z. L. R. 209.—N.Z.

1807 i. ——— *Name of indorser wrongly stated.*]—*Held*: under Bills of Exchange Act, s. 106, notice of dishonour was dispensed with.—*BROCK & PATTERSON, LTD. v. CROCKETT*, [1923] 4 D. L. R. 1204; 56 N. S. R. 132.—CAN.

### PART XII. SECT. 4, SUB-SECT. 8.—B.

1869 iii. ——— *Express promise.*]—An express promise to pay with full knowledge of the facts & when the indorser is aware that he has had no notice of dishonour is a waiver of his right to notice.—*CANADIAN BANK OF COMMERCE v. BROOKDALE COLLIERIES, LTD.*, [1923] 1 D. L. R. 138; 1 W. W. R. 877.—CAN.

1874 i. ——— *Coupled with request for time.*]—*Held*: sufficient to hold him liable for payment notwithstanding the previous failure to give the statutory notice of dishonour.—*IMPERIAL BANK v. TRUSTS & GUARANTEE CO.*, [1921] 1 W. W. R. 801; 57 D. L. R. 693; 16 Alta. L. R. 343.—CAN.

s i. ———.]—If there is no express promise, yet there may be such an admission of liability as to warrant the ct. in inferring that notice was actually received, & for this purpose it is not enough to show

merely that the indorser did not repudiate his liability.—*CANADIAN BANK OF COMMERCE v. BROOKDALE COLLIERIES, LTD.*, [1923] 1 D. L. R. 138; 1 W. W. R. 877.—CAN.

1884 i. ——— *Agreement postponing time of payment—Between maker & indorser.*]—*NEWMAN v. BROWNE (W. R.) & SON*, [1925] 1 D. L. R. 676; 56 O. L. R. 148.—CAN.

### PART XII. SECT. 4, SUB-SECT. 9.

1937 i. *On liability of—Indorser.*]—If no notice of dishonour is given to the indorser, he is discharged from his liability as against the payee.—*SIMONIN v. PHILLION*, [1922] 2 W. W. R. 1280; 66 D. L. R. 673.—CAN.

1937 ii. ———.]—*ARMSTRONG-LOGAN AGENCY, LTD. v. EHMANN*, [1923] 3 W. W. R. 806.—CAN.

### PART XII. SECT. 5, SUB-SECT. 1.—A.

1946 i. *General rule.*]—Where the notes are "foreign bills" under Bills of Exchange Act, s. 25, protest upon non-payment is necessary to hold the indorser.—*SPARKS v. HAMILTON* (1920), 47 O. L. R. 55; 17 O. W. N. 427.—CAN.

### PART XII. SECT. 5, SUB-SECT. 1.—B.

o i. ———.]—*BANK OF TORONTO v. BENNETT* (1925), 57 O. L. R. 326.—CAN.

### PART XIII. SECT. 1.

1994 i. *Cheque—Not equitable assignment.*]—*ROWLATT v. GARMENT (J. & G.) MANUFACTURING CO.* (1921), 64 D. L. R. 88; 49 O. L. R. 166.—CAN.

### PART XIII. SECT. 2, SUB-SECT. 1.

1996 v. ———.]—*CLARKSON v. LAWSON* (1856), 14 U. C. R. 67.—CAN.

& SONS, LTD. v. INTERNATIONAL BANKING CORPN., [1927] A. C. 711; 96 L. J. P. C. 153; 137 L. T. 501, P. C.

2060. *Add. Annotation*:—*Reid. McDonald v. Nash*, [1924] A. C. 625.

2070. *Add. Annotation*:—*Reid. McDonald v. Nash*, [1924] A. C. 625.

2088. *Add. Annotation*:—*Consd. McDonald v. Nash*, [1924] A. C. 625.

2092. *Add. Annotations*:—*Distd. McDonald v. Nash*, [1924] A. C. 625. *Reid. Re Gooch, Ex p. Judd*, [1921] 2 K. B. 593.

2095. *Add. Annotation*:—*Consd. Re Gooch, Ex p. Judd*, [1921] 2 K. B. 593.

2096. *Add. Annotations*:—*Distd. Re Gooch, Ex p. Judd*, [1921] 2 K. B. 593; *McDonald v. Nash*, [1924] A. C. 625.

2096a. —.]—J. sold certain goods to C., Ltd., of which G. was managing director & in which he was largely interested. In payment for these goods J. drew a bill of exchange to his own order at three months for £450 upon C., Ltd., who accepted it, & it was indorsed by G. before J. had indorsed it as payee, & his name appeared below that of G. The bill was indorsed by G. in order to enable J. to discount it, & for no consideration moving from J. to G., who was to be under no liability to J. The bill was discounted by J.'s bank & was not met at maturity. An arrangement was subsequently made by which C., Ltd., paid £100 in cash to the bank in part satisfaction & the bank received two bills drawn by J. to his own order & accepted by C., Ltd., for £175 each at one month & two months respectively. These bills were indorsed by G. before they were signed by J. either as drawer or payee. They were afterwards indorsed by J., whose name appeared on the bills below that of G. The first bill not having been met at maturity, J. took it up & sued C., Ltd., & G. upon the bill & recovered judgment, & afterwards presented a petition in bkpcy. in the county ct. against G., founded on the judgment debt, upon which a receiving order was made against him. On appeal:—*Held*: (1) J. had authority under 1882 Act, s. 20, to fill in his own name as drawer & payee; (2) there was sufficient consideration passing from J. to G. to entitle J. to sue G. on the bill notwithstanding the order in which the signatures appeared on the bill; (3) by reason of the agreement between J. & G., G. could not have set up any defence against J. arising out of his own prior indorsement; (4) the judgment debt was a good petitioning creditor's debt & the receiving order was rightly made.—*Re GOOCH, Ex p. JUDD*,

[1921] 2 K. B. 593; 90 L. J. K. B. 932; 125 L. T. 583; [1921] B. & O. R. 100, C. A.  
*Annotation*:—*As to* (1) *Apld. McDonald v. Nash*, [1924] A. C. 625.

2096b. —.]—In May, 1920, applts. sold to A. & Co. 19,000 cases of tinned soup at the price of 10s. per case, cash against delivery order. A. & Co., being unable to find the money, applied for financial assistance to resps., who undertook as between themselves & A. & Co. to find 75 per cent. of the money, there being then about 16,000 cases which had not been taken up. On Aug. 10, 1920, at a meeting between applts., resps. & A. & Co., it was agreed that resps. should indorse a series of eight bills of exchange, seven for £1,000 each & one for £117 odd, to be drawn by applts. on A. & Co. payable six months after date to applts.' order, & that applts., in consideration of the bills being duly indorsed by resps., should hand to resps. delivery orders for the balance of the cases. These bills were at once drawn by applts. on A. & Co. expressed to be payable to applts.' order, & were accepted by A. & Co. & indorsed by resps. Room was left above the name of resps. for the indorsement of the name of any person to whom applts. should direct payment. Resps. then handed the bills to applts. in exchange for the delivery orders. One bill having been discharged, applts. shortly before the remaining bills became due indorsed their name as payee on the bills above resps.' signature. Applts. duly presented the bills to A. & Co., who dishonoured them. They then gave notice of dishonour & claimed payment from resps., who denied liability. In an action by applts. to recover the amount of the bills against resps. as indorsers:—*Held*: (1) on the facts resps. must be taken to have intended to make themselves liable to applts. on the bills; (2) the bills, when handed to applts., were wanting in a material particular within 1882 Act, s. 20, by reason of the absence of any indorsement by applts. above the signature of resps., & applts. had implied authority to fill in their name as payees, as they did, over the name of resps.; & when so filled up, the bills became retrospectively enforceable.—*McDONALD (GERALD) & CO. v. NASH & CO.*, [1924] A. C. 625; 93 L. J. K. B. 610; 131 L. T. 428; 40 T. L. R. 530; 68 Sol. Jo. 594; 29 Com. Cas. 313, H. L.

*Annotations*:—*As to* (2) *Reid. Elliott v. Bax-Ironside*, [1925] 2 K. B. 301; *Kreditbank Cassel G. m. b. H. v. Schenkers*, [1926] 2 K. B. 450.

2097. *Add. Annotations*:—*Apld. Re Gooch, Ex p. Judd*, [1921] 2 K. B. 593. *Apprvd. McDonald v. Nash*, [1924] A. C. 625.

PART XIII. SECT. 3, SUB-SECT. 1.

2052 ii. —.]—*LEE v. BLAKE*, [1924] 4 D. L. R. 369; 55 O. L. R. 310.—CAN.

PART XIII. SECT. 4, SUB-SECT. 1.—A.

2058 v. —.]—An indorsement does not conclusively establish a liability to pay, but indorsement is *prima facie* evidence of an agreement to pay.—*LEE v. BLAKE*, [1924] 4 D. L. R. 369; 55 O. L. R. 310.—CAN.

PART XIII. SECT. 4, SUB-SECT. 2.

2085 vi. —.]—*Indorsement obtained by misrepresentation of drawer—Negligence of indorser*.—*HANCOCK & CO., LTD. v. JOHNSTONE*, [1923] N. Z. L. R. 639.—N.Z.

PART XIII. SECT. 6.

2098 v. —.]—*PARKER WOOD & CO., LTD. v. RICHARDS* (1925), 46 N. L. R. 277.—S. AF.

2098 vi. —.]—R. signed promissory notes in favour of H. S. also signed the notes below R.'s signature as "surety & co-principal debtor in solidum".—*Held*: S.'s liability was that of a surety & not of a joint maker with R.—*SHUTER v. RIDGWAY* (1926), 47 N. L. R. 149.—S. AF.

yi. —.]—A person who has placed his signature on a promissory note below that of the maker in the place where the maker usually signs, without adding anything to indicate

that he has signed as indorser only, will be held to be a maker unless there is competent evidence to prove that he was not.—*TRIGGS v. ENGLISH*, [1924] 4 D. L. R. 937; 3 W. W. R. 566.—CAN.

2101 xxii. —.]—A person who has placed his signature on the back of a promissory note, before delivery to or indorsement by the payee, is liable as surety under an *aval*, & is not in the position of an ordinary indorser.—*MORI & CO. v. CASSIM'S TRUSTEE*, [1924] App. D. 720.—S. AF.

2101 xxiii. —.]—A person who indorses his name on a promissory note before negotiation thereof



2103. *Add. Annotation* :—*Reid. McDonald v. Nash*, [1924] A. O. 625.
2111. *Add. Annotation* :—*Generally, Mentd. Sassoon v. International Banking Corpn.*, [1927] A. O. 711.
2116. *Add. Annotation* :—*Mentd. Re Wait*, [1926] Ch. 962.
2118. *Add. Annotations* :—*Reid. The Kronprinsessan Margareta, The Parana, etc.*, [1921] 1 A. O. 486. *Mentd. Folkes v. King*, [1923] 1 K. B. 282; *Laurie & Morewood v. Dudin* (1926), 184 L. T. 309.
2136. *Add. Annotation* :—*Mentd. Brown v. Swan* (1921), 37 T. L. R. 787.
2145. *Add. Annotation* :—*Mentd. Bowling v. Camp* (1922), 128 L. T. 342.
2161. *Add. Annotations* :—*N.F. Uliendahl v. Pankhurst Wright* (1923), 39 T. L. R. 628; *Peyrae v. Wilkinson*, [1924] 2 K. B. 166. *Reid. Re Chesterman's Trusts, Mott v. Browning*, [1923] 2 Ch. 466.
2169. *Add. Annotation* :—*Reid. Robinson v. Marsh* [1921] 2 K. B. 640.
2176. *Add. Annotation* :—*Mentd. Swift v. Board of Trade* (1924), 93 L. J. K. B. 529.
- 2205a. ———— *Illegality of payment during war.*—Bills of exchange which were

accepted before the war, & which became due after war was declared, were held by the drawer, who was resident in Germany, & was an enemy for the purpose of the Trading with the Enemy Acts. After the declaration of peace the holder sued the acceptors, claiming interest from the dates when the bills respectively matured :—*Held* : as there was no breach of duty in not paying the bills as long as the war continued, & as payment did not become legal until the declaration of peace with Germany on Jan. 10, 1920, interest was only recoverable from that date.—*BIEDERMANN v. ALLHAUSEN & Co.* (1921), 37 T. L. R. 662.

2214. *Add. Annotation* :—*Mentd. Soc. Anon. des Grands Etablissements de Touquet Paris-Plage v. Baumgart* (1924), 96 L. J. K. B. 789.
2225. *Add. Annotation* :—*Folld. Dresdner Bank v. Russo-Asiatic Bank*, [1923] 1 Ch. 209.
2229. *Add. Annotation* :—*Mentd. Sassoon v. International Banking Corpn.*, [1927] A. O. 711.
2249. *Add. Annotation* :—*Reid. Akt. Dampskibs Steinstad v. Pearson* (1927), 137 L. T. 533.
2256. *Add. Annotation* :—*Mentd. Sassoon v. International Banking Corpn.*, [1927] A. O. 711.

## Part XIV.—Discharge.

2269. *Add. Annotation* :—*Mentd. Robinson v. Marsh*, [1921] 2 K. B. 640.
2280. *Add. Annotation* :—*Reid. Société des Hôtels Le Touquet Paris-Plage v. Cummings*, [1922] 1 K. B. 451.
2286. *Add. Annotation* :—*Mentd. Société des Hôtels Le Touquet Paris-Plage v. Cummings*, [1922] 1 K. B. 451.
2308. *Add. Annotation* :—*Reid. Société des Hôtels Le Touquet Paris-Plage v. Cummings*, [1922] 1 K. B. 451.
2314. *Add. Annotation* :—*Reid. Société des Hôtels Le Touquet Paris-Plage v. Cummings*, [1922] 1 K. B. 451.
- 2318a. *Agreement to pay money—Consideration uncertain.*—A beneficiary under testator's will was a debtor of his who had owed him money under a promissory note given in 1877, & had, in 1882, entered into an agreement with testator to pay him a certain sum of money for which no distinct consideration could be clearly ascertained :—*Held* : (1)

there was a presumption of law that the promissory note had been discharged by accord & satisfaction on the entrance into the later agreement : (2) there was no presumption that the money still due under the agreement had been forgone by testator.—*WOODCOCK v. EAMES* (1925), 69 Sol. Jo. 444.

2362. *Add. Annotation* :—*Reid. Jones v. Waring & Gillow*, [1926] A. O. 670.
2364. *Add. Annotations* :—*Distd. Goldman v. Cox* (1924), 40 T. L. R. 744. *Reid. Jones v. Waring & Gillow*, [1926] A. O. 670.
2368. *Add. Annotations* :—*Reid. Jones v. Waring & Gillow*, [1926] A. O. 670. *Mentd. Holt v. Markham* (1922), 128 L. T. 719.
2370. *Add. Annotations* :—*Reid. Jones v. Waring & Gillow*, [1926] A. O. 670. *Mentd. Holt v. Markham*, [1923] 1 K. B. 504.
2391. *Add. Annotation* :—*Consd. Jenkins v. Jenkins*, [1928] 2 K. B. 501.
2393. *Add. Annotation* :—*Reid. Jenkins v. Jenkins*, [1928] 2 K. B. 501.

is not an indorser, but an *aval* or surety for the maker.—*CASSIMJEE v. MAHARAJ* (1926), 46 N. L. R. 151.—S. AF.

### PART XIII. SECT. 10.

11. ———— *Note signed by surety before principal—Liable as maker.*—*FRASER v. CUMMINGS & LEOPOLD* (1921), 67 D. L. R. 767.—CAN.

### PART XIII. SECT. 11, SUB-SECT. 2.—A.

2175 III. ———— *GANPAT TUKARAM MALI v. SOPANA TUKARAM MALI* (1927), 1 L. R. 52 Bom. 88.—IND.

2177 II. ———— *PUBLIC TRUST v. GLADSTONE*, [1921] N. Z. L. R.

### PART XIII. SECT. 11, SUB-SECT. 3.

2227 III. ———— *Held* : as debts,

the makers of the note, were bound without protest, the notarial fees could not be recovered from them.—*GOWANS v. CROCKER PRESS CO.* (1920), 46 O. L. R. 24; 50 O. L. R. 58.—CAN.

### PART XIII. SECT. 11, SUB-SECT. 6.

b. *Add "Revd. on other grounds*, 56 S. O. R. 165."

### PART XIV. SECT. 2, SUB-SECT. 4.

11. *Mortgage to secure present & future advances—Given during currency of note.*—*Held* : the mtge. not being strictly coextensive with the note, the remedy on the note was not merged in the mtge., & debt. was liable.—*O'NEILL v. LYE*, [1923] N. Z. L. R. 1039.—N.Z.

sp. *Payment under garnishment pro-*

*ceedings by judgment creditor of payee.*—*Held* : in the circumstances no answer to the indorsee's claim.—*CLOW v. DOULL*, [1920] 1 W. W. R. 1060.—CAN.

sp. *Notes given to secure advances—Made in prepayment of purchase-money—Delivery of goods.*—*Held* : the payees were entitled to recover the balance due on the first note given prior to the contract, but as regards the notes given subsequently the goods delivered must be credited against the advances made, & the plea of payment must prevail.—*TYRER CO. v. EUREKA LUMBER CO.* (1922), 55 N. S. R. 441.—CAN.

st. *Note due to deceased—Not sale of goods to executor personally.*—*MCKENZIE v. McDONALD (P. E. I.)*, [1927] 2 D. L. R. 67.—CAN.

**2393a. Joint maker appointed holder's executor.]—**During the lifetime of testator the exor. named in his will & three other persons made a joint & several promissory note payable to him. After the death of testator & probate of the will the exor. brought an action on the promissory note against one of the other makers thereof:—*Held*: the action was not maintainable, inasmuch as the effect of pltf.'s appointment as exor. was at common law that the debt was discharged by release at the date of the death of testator, & in equity that it was discharged by payment at the date of probate, so that in either case the debt had ceased to exist before the action.—*JENKINS v. JENKINS*, [1928] 2 K. B. 501; 97 L. J. K. B. 400; 139 L. T. 119; 44 T. L. R. 483; 72 Sol. Jo. 319, D. C.

**2396. Add. Annotation :—Mentd. Fettes v. Robertson** (1921), 37 T. L. R. 581.

**2416a. ——— Verbal agreement for acceptance of composition.]—**Pltf. was the holder of a bill of exchange accepted by deft. for goods supplied. Before the bill became due deft. had made a verbal offer to his creditors to pay a composition in discharge of his liabilities. At a meeting of the creditors, which was attended by pltf.'s agent, the creditors passed a resolution accepting deft.'s offer. The resolution was reduced to writing & was signed by a number of the creditors, including pltf.'s agent, but not by deft. The creditors subsequently executed a deed assigning their debts to deft.'s solr. in consideration of deft.'s solr. paying the amounts owing to them under the composition. Pltf. was not a party to that deed. In an action by the holder of the bill against the acceptor, for the amount of the bill :—*Held*: upholding a contention of pltf., which was not raised in the cts. below, 1882 Act, s. 62, had not been complied with, as pltf. had neither renounced his rights under the bill in writing, nor delivered the bill up to the acceptor &, therefore, pltf. was entitled to recover the full amount of the bill.—*RIMALT v. CARTWRIGHT* (1924), 93 L. J. K. B. 823; 132 L. T. 40; 40 T. L. R. 803; 68 Sol. Jo. 788; [1924] B. & C. R. 239, C. A.

**2446. Add. Annotation :—Mentd. Brown v. Swan** (1921), 37 T. L. R. 787.

**2473. Add. Annotation :—Refd. McDonald v. Nash,** [1924] A. C. 625.

#### PART XIV. SECT. 4.

**2401 i. At what time—Before maturity**—No necessity for evidence of discharge to be in writing.]—*LYONS v. SMITH*, [1922] 3 W. W. R. 684; 70 D. L. R. 101.—CAN.

#### PART XIV. SECT. 7, SUB-SECT. 1.

**2458 ii. ——— Decreased.]—Held**: a material alteration.—*BELLAMY v. PORTER* (1913), 13 D. L. R. 278; 4 O. W. N. 1171; 28 O. L. R. 572.—CAN.

#### PART XIV. SECT. 9.

**2558 i. ——— Release of one.]—**In an action on a promissory note by the original payee against two joint makers, it is no defence for one of the makers, in the absence of any writing or delivery up of the note, to allege that he has been verbally released by the payee.—*GOODMAN v. ARMSTRONG* (1926), 47 N. L. R. 452.—S. AF.

**2559 iii. ———]**—*BUECKERT v. FRIESEN*, [1927] 2 D. L. R. 873; [1927] 1 W. W. R. 825; 36 Man. L. R. 462.—CAN.

#### PART XIV. SECT. 10, SUB-SECT. 2.—A.

**2600 viii. ———]**—If the holder of a promissory note has, without the knowledge or consent of an indorser of the note, agreed to give an extension of time for payment to the maker while the note is still current, the indorser is thereupon discharged from liability.—*LIEBENBERG ESTATE v. STANDARD BANK OF SOUTH AFRICA, LTD.*, [1927] App. D. 502.—S. AF.

#### PART XIV. SECT. 11.

**oi. ——— First note destroyed.]—***Held*: the original indebtedness was discharged & the second note was not a renewal but a satisfaction.—*CRISTAL v. SIMOVITCH* (1922), 70 D. L. R. 801.—CAN.

#### PART XIV. SECT. 12, SUB-SECT. 1.

**2639 i. a. ———]**—The relation of principal & surety is created by indorsement of a bill for accommodation, & if a creditor discharges the principal debtor, the surety is also dis-

**2484. Add. Annotation :—Distd. Hong Kong & Shanghai Bank v. Loo Lee Shi**, [1928] A. C. 181.

**2485. Add. Annotation :—Mentd. Bowling v. Camp** (1922), 128 L. T. 342.

**2485a. ———]**—A banknote issued by applt. bank, payable to bearer on demand, was accidentally mutilated. The bank declined to pay on presentation of a document which was proved to have been patched together from the fragments. This document, though it did not show the number of the note, showed clearly its other main features:—*Held*: as the identity of the document as a note of the bank was established, & it contained all the elements necessary to render it valid & effectual as a negotiable instrument, the bank was liable to pay the holder.—*HONG KONG & SHANGHAI BANK v. LO LEE SHI*, [1928] A. C. 181; 97 L. J. P. C. 35; 138 L. T. 529; 44 T. L. R. 233; 72 Sol. Jo. 68, P. C.

#### SUB-SECT. 4.—WHETHER APPARENT (Vol. VI., p. 383).

After " See 1882 Act, s. 64 (1) " add the following case :—

**2513a. General rule.]—**An alteration is " apparent " within 1882 Act, s. 64 (1), if it is of such a kind that it would be observed & noticed by an intending holder scrutinising the document which he contemplates taking with reasonable care.—*WOOLLATT v. STANLEY* (1928), 138 L. T. 620.

**2518. Add. Annotations :—Apld. Auchteroni v. Midland Bank**, [1928] 2 K. B. 294. **Mentd. Joachimson v. Swiss Bank Corp.**, [1921] 3 K. B. 110.

**2552. Add. Annotations :—Mentd. New York Life Insce. v. Public Trustee**, [1924] 1 Ch. 15; *Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669.

**2553. Add. Annotation :—Refd. Jenkins v. Jenkins**, [1928] 2 K. B. 501.

**2555. Add. Annotation :—Refd. Jenkins v. Jenkins**, [1928] 2 K. B. 501.

**2556. Add. Annotation :—Mentd. Société des Hôtels Le Touquet Paris-Plage v. Cummings**, [1922] 1 K. B. 451.

**2559. Add. Annotation :—As to (2) Refd. Jenkins v. Jenkins**, [1928] 2 K. B. 501.

**2666. Add. Annotation :—Refd. Jenkins v. Jenkins**, [1928] 2 K. B. 501.

charged.—*HARRIS v. LERNER*, [1924] 2 D. L. R. 518; 30 R. L. N. S. 63.—CAN.

#### PART XIV. SECT. 12, SUB-SECT. 3.

**sv. Deposit with creditor of securities as collateral to notes—Securities entrusted to principal debtor for collection.]—**Premium-notes, indorsed by G. & F., were deposited with pltf. as security collateral to two notes made by G. & indorsed by F. Pltf. entrusted some of these notes to G. for collection, & G. failed to pay over all that he collected:—*Held*: both G. & F. were liable.—*ROUTLEY v. GORMAN & CORAN* (1920), 47 O. L. R. 420; 18 O. W. N. 173.—CAN.

#### PART XVI. SECT. 3.

**sw. Instrument taken in good faith.]—**Pltf. bought stolen bearer bonds in good faith:—*Held*: pltf. had acquired a good title.—*GAREY v. DOMINION MANUFACTURERS, LTD.*, [1925] 1 D. L. R. 99; 56 O. L. R. 159.—CAN.

2677. *Add. Annotation*:—*Refd.* *Smith v. Wood* (1928), 139 L. T. 250. 2686. *Add. Annotation*:—*Refd.* *McDonald v. Nash*, [1924] A. C. 625.

## Part XVIII.—Conflict of Laws.

2775. *Add. Annotations*:—*Generally*, *Mentd.* *Mac-laine v. Eccott* (1924), 132 L. T. 173; *Buerger v. New York Life Assce.* (1927), 96 L. J. K. B. 930; *Jaeger v. Jaeger Co.* (1927), 44 R. P. C. 437; *Sassoon v. International Banking Corp.*, [1927] A. C. 711.
2779. *Add. Annotation*:—*Refd.* *Soc. Anon. des Grands Etablissements de Touquet Paris-Plage v. Baumgart* (1927), 96 L. J. K. B. 789.
2781. *Add. Annotations*:—*Distd.* *Soc. Anon. des Grands Etablissements de Touquet Paris-Plage v. Baumgart* (1927), 96 L. J. K. B. 789. *Mentd.* *Aksionairnoye Obschestvo A. M. Luther v. Sagor*, [1921] 3 K. B. 532; *Robinson v. Marsh*, [1921] 2 K. B. 640.
2783. *Add. Annotations*:—*Apld.* *Soc. Anon. des Grands Etablissements de Touquet Paris-Plage v. Baumgart* (1927), 96 L. J. K. B. 789. *Mentd.* *Aksionairnoye Obschestvo A. M. Luther v. Sagor*, [1921] 3 K. B. 532.
2784. *Add. Annotations*:—*Apld.* *Soc. Anon. des Grands Etablissements de Touquet Paris-Plage v. Baumgart* (1927), 96 L. J. K. B. 789. *Mentd.* *Sutters v. Briggs*, [1922] 1 A. C. 1.
2789. *Add. Annotations*:—*Refd.* *Koechlin v. Kestenbaum*, [1927] 1 K. B. 889; *Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669.
2790. *Add. Annotation*:—*Refd.* *Koechlin v. Kestenbaum*, [1927] 1 K. B. 889.
- 2791a. — Validity of indorsement—Liability of acceptor in England.—A bill of exchange was drawn in France by E. upon resps. in London to the order of M. It was sent to London, was accepted by resps. payable at a London bank, & returned to France, where it was indorsed by E. in his own name, on behalf, & with the authority, of M., to applts. On presentation for payment, resps. refused to meet it on the ground that it did not bear the indorsement of M., the payee, but merely the indorsement of E. In an action on the bill against resps. as acceptors evidence was given that by French law indorsement might be validly made by a duly authorised agent signing his own name:—*Held*: applts. as indorsees obtained a good title to the bill by virtue of 1882 Act, s. 72, & were entitled to recover the amount thereof from resps. as acceptors.—*KOECHLIN ET CIE. v. KESTENBAUM BROTHERS*, [1927] 1 K. B. 889; 96 L. J. K. B. 675; 137 L. T. 216; 43 T. L. R. 352; 32 Com. Cas. 267, C. A.
2792. *Add. Annotation*:—*As to* (2) *Consd.* *Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669.
2794. *Add. Annotations*:—*Apld.* *Koechlin v. Kestenbaum*, [1927] 1 K. B. 889; *Refd.* *Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669.
2800. *Add. Annotation*:—*Mentd.* *McDonald v. Nash*, [1924] A. C. 625.
2812. *Add. Annotations*:—*Refd.* *Buerger v. New York Life Assce.* (1927), 96 L. J. K. B. 930. *Mentd.* *Perlak Petroleum Maatschappij v. Deen*, [1924] 1 K. B. 111.
2814. *Add. Annotation*:—*Mentd.* *The Colorado*, [1923] P. 102.
2824. *Add. Annotations*:—*Expld.* *Re Visser, Holland v. Drukker*, [1928] Ch. 877. *Refd.* *Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669.

## Part XIX.—Cheques.

2841. *Add. Annotation*:—*Refd.* *Lloyds Bank v. Chartered Bank of India, Australia & China* (1928), 97 L. J. K. B. 609.
2846. *Add. Annotation*:—*Mentd.* *Sutters v. Briggs*, [1922] 1 A. C. 1.
2847. *Add. Annotations*:—*Generally*, *Refd.* *Sutters v. Briggs*, [1922] 1 A. C. 1; *Re Farrow's Bank*, [1923] 1 Ch. 41; *Importers Co. v. Westminster Bank*, [1927] 2 K. B. 297. *Mentd.* *British & North European Bank v. Zalstein*, [1927] 2 K. B. 92.
2849. *Add. Annotations*:—*Consd.* *London & Montrose Shipbuilding & Repairing Co. v. Barclays Bank* (1925), 31 Com. Cas. 67. *Refd.* *Lloyds Bank v. Chartered Bank of India, Australia & China* (1928), 97 L. J. K. B. 609.
2850. *Add. Annotation*:—*Refd.* *Underwood v. Bank of Liverpool, Underwood v. Barclays Bank*, [1924] 1 K. B. 775.
2851. *Add. Annotations*:—*Consd.* *Lloyds Bank v. Chartered Bank of India, Australia & China* (1928), 97 L. J. K. B. 609; *Reckitt v. Barnett, Pembroke & Slater*, [1928] 2 K. B. 244. *Refd.* *Underwood v. Bank of Liverpool, Underwood v. Barclays Bank*, [1924] 1 K. B. 775. *Mentd.* *Goldman v. Cox* (1924), 40 T. L. R. 423; *Australian Bank of Commerce v. Perel*, [1926] A. C. 737; *Jones v. Waring & Gillow*, [1926] A. C. 670.
2852. *Add. Annotations*:—*Apprvd.* *Sutters v. Briggs*, [1922] 1 A. C. 1. *Refd.* *Brown v. Swan* (1921), 37 T. L. R. 787. *Mentd.* *Jeffrey v. Bamford*, [1921] 2 K. B. 351; *Maskell v. Hill*, [1921] 3 K. B. 157; *Robinson v. Marsh*, [1921] 2 K. B. 640; *Cohen v. Hall*, [1922] 2 K. B. 37; *Ford v. Blurton, Ford v. Sauber* (1922), 38 T. L. R. 801; *Scranton's Trustee v. Pearse*, [1922] 2 Ch. 87.



## Part XX.—Negotiable Instruments other than Bills of Exchange, Promissory Notes, and Cheques.

2862. *Add. Annotation*:—Mentd. Underwood v. Bank of Liverpool, Underwood v. Barclays Bank, [1924] 1 K. B. 775.
2866. *Add. Annotation*:—Mentd. New York Life Insce. v. Public Trustee, [1924] 2 Ch. 101.
2873. *Add. Annotations*:—Consd. Auchteroni v. Midland Bank, [1928] 2 K. B. 294; Reckitt v. Barnett, Pembroke & Slater, [1928] 2 K. B. 244.
2887. *Add. Annotation*:—Refd. Lloyds Bank v. Chartered Bank of India, Australia & China (1928), 97 L. J. K. B. 609.
2891. *Add. Annotations*:—As to (1) Refd. Republica de Guatemala v. Nunez, [1927] 1 K. B. 669. As to (2) Refd. Republica de Guatemala v. Nunez, [1927] 1 K. B. 669.
2898. *Add. Annotation*:—Mentd. Re Richards, Jones v. Rebbeck, [1921] 1 Ch. 513.
2902. *Add. Annotation*:—Mentd. Lowther v. Harris, [1927] 1 K. B. 393.
2908. *Add. Annotation*:—Mentd. Allen v. Royal Bank of Canada (1925), 41 T. L. R. 625.
2911. *Add. Annotations*:—Refd. Commonwealth Trust v. Akotey (1925), 94 L. J. P. O. 167. Mentd. Diamond Alkali Export Corp'n. v. Bourgeois, [1921] 3 K. B. 443; McDonald v. Nash, [1924] A. C. 625; Jones v. Waring & Gillow, [1926] A. C. 670.

## Part XXI.—I.O.U.'s.

2924. *Add. Annotations*:—Apld. Soc. Anon. des Grands Etablissements de Touquet Paris-Plage v. Baumgart (1927), 96 L. J. K. B. 789. Mentd. Aksionairnoye Obschestvo A. M. Luther v. Sagor, [1921] 3 K. B. 532.
2928. *Add. Annotation*:—Mentd. Camillo Tank S.S. Co. v. Alexandria Engineering Works (1921), 38 T. L. R. 134.
2929. *Add. Annotation*:—Mentd. Camillo Tank S.S. Co. v. Alexandria Engineering Works (1921), 38 T. L. R. 134.

## Part XXII.—Actions on and in Connection with Negotiable Instruments.

2976. *Add. Annotation*:—Consd. Jenkins v. Jenkins, [1928] 2 K. B. 501.
- 2976a. One joint maker appointed holder's executor—Action by executor against one of other makers.]—JENKINS v. JENKINS, No. 2393a, ante.
2978. *Add. Annotation*:—Mentd. Robinson v. Marsh, [1921] 2 K. B. 640.
- . *Add. Annotation*:—Mentd. Robinson v. Marsh, [1921] 2 K. B. 640.
3053. *Add. Annotation*:—Mentd. Jones v. Waring & Gillow, [1925] 2 K. B. 612.
3056. *Add. Annotation*:—Refd. Underwood v. Bank of Liverpool, Underwood v. Barclays Bank, [1924] 1 K. B. 775.

## Part XXIII.—Securities for Negotiable Instruments.

3120. *Add. Annotations*:—As to (2) Refd. Aman v. Southern Ry. (1925), 42 T. L. R. 31.
- Generally, Mentd. Ellis' Trustee v. Dixon, Johnson, [1924] 2 Ch. 451.

PART XX. SECT. 2, SUB-SECT. 7.  
*sz. Lien note.*—Held: not a promissory note.—CANADIAN BANK OF COMMERCE v. JOHNSON, [1925] 4 D. L. R. 511; [1925] 3 W. W. R. 328.—CAN.

*sy. —.*—Held: not a promissory note.—METCALFE v. ADAIR (Man.), [1927] 1 D. L. R. 982; [1927] 1 W. W. R. 331; 36 Man. L. R. 255.—CAN.

PART XXII. SECT. 1.

2951 *via.* — — — —

SON v. RICHARDSON, [1922] 3 W. W. R. 453.—CAN.

PART XXII. SECT. 7.

*sz. Pleading—Striking out—When ordered.*—NEEDLES v. SLOVAP, [1922] 2 W. W. R. 649; 60 D. L. R. 273; 16 Sask. L. R. 448.—CAN.

*sd. Discovery—Examination for—Action by indorsee.*—EMPIRE FINANCIALS, LTD. v. NANCE, [1920] 1 W. W. R. 694; 61 D. L. R. 231.—CAN.

PART XXII. SECT. 11, SUB-SECT. 4.

*d i. — & to prove collateral agreement—For "working out" of note.*—MALLOUGH v. DICK, [1927] 2 D. L. R. 370; [1927] 1 W. W. R. 544; 22 Alta. L. R. 425.—CAN.

*d ii. To show that note signed as trustee only.*—Evidence not admissible.—CANADIAN CREDIT MEN'S TRUST ASSOCIATION v. ANDERSON (1917), 37 D. L. R. 805.—CAN.

## Part XXV.—Stamp Duties.

3125. *Add. Annotation*:—*Refd.* *Midland Bank v. I. R. Comrs.*, [1927] 2 K. B. 465.

3126. *Add. Annotation*:—*Midland Bank v. I. R. Comrs.*, [1927] 2 K. B. 465.

3127. *Add. Annotation*:—*Mentd.* *Garrard v. James*, [1925] Ch. 616.

3146a. “*Chequelet.*”—A bank issued documents to its customers in the form of receipts for payment by them to the customer of sums under £2, & agreed with its customers that they would pay to persons presenting these documents to them signed by a customer the sums named therein & would debit the customer's account therewith, it being their avowed intention that the documents should be used for the same purpose as cheques, & the object being to avoid the stamp duty on cheques:—*Held*: the documents were bills of exchange within Stamp Act, 1891 (c. 39),

s. 32.—*MIDLAND BANK, LTD. v. INLAND REVENUE COMRS.*, [1927] 2 K. B. 465; 96 L. J. K. B. 1006; 137 L. T. 817; 43 T. L. R. 754; 71 Sol. Jo. 622.

3170. *Add. Annotation*:—*Mentd.* *Allen v. Royal Bank of Canada* (1925), 41 T. L. R. 625.

3172. *Add. Annotation*:—*Refd.* *Lemon v. Austin Friars Investment Trust* (1925), 133 L. T. 790.

3173. *Add. Annotation*:—*Refd.* *Midland Bank v. I. R. Comrs.*, [1927] 2 K. B. 465.

3175. *Add. Annotation*:—*Mentd.* *J. nes v. Waring & Gillow*, [1926] A. C. 670.

3209. *Add. Annotations*:—*Refd.* *Auchteroni v. Midland Bank*, [1928] 2 K. B. 294. *Mentd.* *Joachimson v. Swiss Bank Corp.*, [1921] 3 K. B. 110.

3240. *Add. Annotation*:—*Mentd.* *Koechlin v. Kestenbaum*, [1927] 1 K. B. 889.

### PART XXV. SECT. 2, SUB-SECT. 1.

sk. *Time for stamping—Whether after acceptance & indorsement.*—*BUTLER v. EVANS* (1873), 9 N. S. R. (3 G. & O.) 171.—CAN.

### PART XXV. SECT. 2, SUB-SECT. 2.

sm. *Time for stamping.*—*HENDERSON v. GESNER* (1866), 25 U. C. R. 184.—CAN.

sn. ———.] — *Held*: a promissory note before being negotiated could be stamped by the maker on the day of the making thereof, though after it had been signed & indorsed by the payee.—*BANK OF OTTAWA v. McLAUGHLIN* (1883), 8 A. R. 543.—CAN.

### PART XXV. SECT. 4, SUB-SECT. 8.

3263 v. —.]—An unstamped cheque

is admissible in evidence & may amount to an earnest or part payment.—*SYKES v. GECK*, [1920] 1 W. W. R. 741.—CAN.

### PART XXV. SECT. 6, SUB-SECT. 1.

i. ———.]—*TRAVIS v. GLASIER* (1870), 2 Han. 215.—CAN.

ii. ———.]—*BANK OF NOVA SCOTIA v. CUSHING* (1882), 21 N. B. R. 498.—CAN.

## BILLS OF SALE.

## Part I.—Objects and Application of Bills of Sale Acts.

6. *Add. Annotation* :—*Refd. National Provincial & Union Bank of England v. Lindsell* (1921), 91 L. J. K. B. 196.
7. *Add. Annotation* :—*Mentd. French v. Gething*, [1922] 1 K. B. 236.

## Part II. What Transactions are Bills of Sale and require Registration.

11. *Add. Annotation* :—*Refd. French v. Gething*, [1922] 1 K. B. 236.
12. *Add. Annotation* :—*Mentd. National Provincial & Union Bank of England v. Lindsell* (1921), 91 L. J. K. B. 196.
- 15a. — *Sale—Re-letting to seller.*—*BRITISH, RAILWAY TRAFFIC & ELECTRIC CO. v. KAHN*, [1921] W. N. 52.
35. *Add. Annotation* :—*Refd. Re Wait*, [1927] 1 Ch. 606.
41. *Add. Annotation* :—*Refd. National Provincial & Union Bank of England v. Lindsell* (1921), 91 L. J. K. B. 196.
42. *Add. Annotation* :—*Mentd. French v. Gething*, [1922] 1 K. B. 236.
44. *Add. Annotations* :—*Expld. & Apld. French v. Gething*, [1922] 1 K. B. 236. *Mentd. Canvey Island Comrs. v. Preedy*, [1922] 1 Ch. 179.
52. *Add. Annotation* :—*Mentd. Stephenson v. Thompson*, [1924] 2 K. B. 240.
82. *Add. Annotations* :—*As to* (1) *Consd. Wrightson v. McArthur & Hutchisons*, [1921] 2 K. B. 807. *As to* (2) *Refd. Wrightson v. McArthur & Hutchisons*, [1921] 2 K. B. 807.
90. *Add. Annotations* :—*Apld. Re Allester*, [1922] 2 Ch. 211. *Mentd. Wrightson v. McArthur & Hutchisons*, [1921] 2 K. B. 807.
93. *Add. Annotation* :—*Refd. Wrightson v. McArthur & Hutchisons*, [1921] 2 K. B. 807.
- 93a. **Room on borrower's premises.**  
Deft. co., in order to secure pltf. against loss

on a certain contract & in consideration of pltf. giving further time within which to pay for the goods, set aside certain specified goods in two rooms on defts.' premises, which were locked up & the keys handed to pltf., no other goods being in those two rooms. The terms of the transaction were recorded in two letters written by deft. co. to pltf., one letter written before the keys were handed over, & the second letter subsequently. The second letter contained the words: "The goods to be locked up, the keys in your possession, & you to have the right to remove same as desired." The co. went into liquidation & the liquidator claimed that the transaction was invalid under Companies Act, 1908 (c. 69), s. 93 (1) (c), as being a charge created or evidenced by an instrument which if executed by an individual would require registration as a bill of sale. Pltf. brought an action claiming a declaration that the goods were in his possession, & that he was entitled to remove them:—*Held*: possession of the goods passed to pltf. by the delivery of the keys of the rooms in which they were locked up, notwithstanding that those rooms were on defts.' premises, inasmuch as defts. had conferred upon pltf. a licence to make the necessary entry in order to use the keys, which licence could not be revoked, & therefore the transaction was valid as against the liquidator, & pltf. was entitled to remove the goods.—*WRIGHTSON v. MCARTHUR & HUTCHISONS*, [1921] 2 K. B. 807; 90 L. J. K. B. 842; 125 L. T. 383; 37 T. L. R. 575; 65 Sol. Jo. 553; [1921] B. & C. R. 136.

## PART I.

sa. *Bills of Sale & Chattel Mortgage Act, R. S. M., 1913 (c. 17)*—*Not applicable to mortgage of equity in mortgaged goods.*—The above Act does not apply to a chattel mtge. which expressly covers not the goods themselves referred to therein but any interest or equity which mtgor. may have in them after the claim of a prior named mtgee. shall have been satisfied.—*BANQUE D'HOCHELAGA v. BROWNSTONE*, [1925] 3 D. L. R. 176; [1925] 2 W. W. R. 348; 35 Man. L. R. 62.—CAN.

sb. *Crop Payments Act, 1924 (c. 147), ss. 2, 3*—*Effect of—Alienation by landlord, vendor or mortgager.*—*Re CROP PAYMENTS ACT, Re BILLS OF SALE & CHATTEL MORTGAGE ACT (1926)*, 36 Man. L. R. 34; [1926] 2 W. W. R. 844.—CAN.

sd. *Contract made outside jurisdiction—Provincial Act not applicable.*—*NATIONAL CASH REGISTER CO. v.*

*LOVETT, MOORE v. NATIONAL CASH REGISTER CO.* (1906), 1 E. L. R. 321.—CAN.

## PART II. SECT. 1.

10 H. *Add "revsd."*, [1920] 3 W. W. R. 421."

## PART II. SECT. 2.

sm. *Declaration reserving to maker powers of management & disposition—No power in cestui que trust to seize or take possession.*—*PURCELL v. DEPUTY FEDERAL TAXATION COMR.* (1920), 28 C. L. R. 77.—AUS.

## PART II. SECT. 3, SUB-SECT. 2.

28 i. *Add "revsd."*, [1922] 3 W. W. R. 421."

## PART II. SECT. 4.

t i. — *Goods paid for but not delivered.*—*Held*: registration not required under Bills of Sale Act in order to protect purchaser's right to goods subsequently manufactured & paid for under the agreement, the property in which had passed to him but which

were still on vendor's premises.—*ALLEN-STOLTZE LUMBER CO., LTD. v. SUMMIT LAKE LUMBER CO., LTD.*, [1920] 3 W. W. R. 895.—CAN.

sp. *"Customer's agreement"—& "trust receipts."*—*Re DOMINION SHIP-BUILDING & REPAIR CO., LTD.* (1923), 53 O. L. R. 485; 24 O. W. N. 30.—CAN.

## PART II. SECT. 5, SUB-SECT. 4.

80 i. *Following alleged sale to vendor.*—C. purchased an automobile, paying partly in cash & partly by post-dated cheque. Later requiring money to finance his business, he borrowed \$1,400 from pltf., giving in return a hire-purchase agreement as to the automobile. C. continued in possession of the car:—*Held*: the document was an assurance & came within Bills of Sale Act.—*RITHER (R. P.) & Co. v. SCARFF* (1920), 29 B. C. R. 70.—CAN.



95. *Add. Annotation*:—*Mentd. Re Kaufman Segal & Domb, Ex p. The Trustee*, [1923] 2 Ch. 89.
97. *Add. Annotation*:—*Consd. French v. Gething*, 22] 1 K. B. 236.
98. *Add. Annotation*:—*Refd. National Provincial & Union Bank of England v. Lindsell* (1921), 91 L. J. K. B. 196.
- 98a. Letter assigning chattel in hands of third party—Or proceeds of sale—As security for overdraft.]—The owner of a motor car which was in the hands of debt., a motor engineer, for the purpose of repairs, & which he had instructed debt. to sell on his behalf when repaired, had an account at pltfs.' bank, which was overdrawn. Being requested by pltfs. to give security for the overdraft he wrote to debt. a letter authorising him "to hold the car to the order of" the bank "or the proceeds when sold," & sent a copy of that letter to pltfs. The letter was not registered as a bill of sale. The car having been sold & the price received by debt., pltfs. claimed the proceeds:—*Held*: the letter in question created one entire charge upon the car & the proceeds which represented it, & the equitable assignment of the proceeds could not be severed from the assignment of the car itself; the letter was consequently a bill of sale & void for want of registration & for non-compliance with the statutory form.—*NATIONAL PROVINCIAL & UNION BANK OF ENGLAND v. LINDSELL*, [1922] 1 K. B. 21; 91 L. J. K. B. 196; 126 L. T. 319; 66 Sol. Jo. (W. R.) 11; [1921] B. & C. R. 209.
- Annotation*:—*Refd. Re North Wales Produce & Supply Soc.*, [1922] 2 Ch. 340.
101. *Add. Annotation*:—*Mentd. Re Chaplin & Staffordshire Potteries Waterworks Co.'s Contract*, [1922] 2 Ch. 824.
104. *Add. Annotation*:—*Expld. & Apld. Shears v. Jones*, [1922] 2 Ch. 802.
107. *Add. Annotation*:—*Mentd. Re Davies, Ex p. Miles*, [1921] 3 K. B. 628.
108. *Add. Annotation*:—*Consd. Re Johns, Worrell v. Johns*, [1928] Ch. 737.
- 110a. —.]—An agreement to execute a bill of sale, to secure payment of a debt, in the event of the debt not being paid by a certain date, is a bill of sale within 1882 Act, & is void unless the requirements of that Act as to registration are complied with.—*SHEARS & SONS, LTD. v. JONES*, [1922] 2 Ch. 802; 92 L. J. Ch. 28; 128 L. T. 218; 66 Sol. Jo. 682; [1922] B. & C. R. 211.
112. *Add. Annotation*:—*Refd. Re Wethered, Ex p. Trustee* (1925), 134 L. T. 264.

## Part III. Instruments not within the Expression "Bill of Sale."

127. *Add. Annotation*:—*Mentd. Re Debtor* (1928), 72 Sol. Jo. 860.
128. *Add. Annotations*:—*Folld. French v. Gething*, [1922] 1 K. B. 236. *Refd. Canvey Island Comrs. v. Preedy*, [1922] 1 Ch. 179.
132. *Add. Annotation*:—*Mentd. The James W. Elwell*, [1921] P. 351.
133. *Add. Annotations*:—*Refd. The Harlow*, [1922] P. 175; *Merchants' Marine Insce. v. North of England Protecting & Indemnity Asscn.* (1926), 42 T. L. R. 724.
138. *Add. Annotation*:—*Refd. Re Allester*, [1922] 2 Ch. 211.
- 138a. Letter of trust on redelivery for realisation of pledged bills of lading.]—A limited co. pledged bills of lading with a bank to secure an overdraft. When it was time to sell the goods, the co. in accordance with the well-established mercantile practice obtained the bills of lading from the bank for realisation on the terms stated in the usual letter of trust given by the co. to the bank, to wit, that the co. received the bills of lading in trust on the bank's account & undertook to hold the goods when received & the proceeds when sold as the bank's trustees & to remit the entire net proceeds as realised:—*Held*: the letter of trust was not a bill of sale at all within the definition of 1878 Act, s. 4. *Semble*: if it had been so, it would on the evidence have been a document "used in the ordinary course of business" within the exception in that definition.—*Re ALLESTER (D.), LTD.*, [1922] 2 Ch. 211; 91 L. J. Ch. 797; 127 L. T. 434; 38 T. L. R. 611; 66 Sol. Jo. 486; [1922] B. & C. R. 190.
- 138b. Agreement for sale of growing crop.]—An agreement for the sale of a growing crop is a transfer of "goods" within 1878 Act, s. 4, & is therefore excepted from the definition of "bill of sale" in that sect. as being a "transfer of goods in the ordinary course of business of any trade or calling."—*STEPHENSON v. THOMPSON*, [1924] 2 K. B. 240; 93 L. J. K. B. 771; 131 L. T. 279; 88 J. P. 142; 40 T. L. R. 513; 68 Sol. Jo. 536; 22 L. G. R. 359; [1924] B. & C. R. 170, C. A.
- 144a. Society incorporated under Industrial & Provident Societies Act, 1893 (c. 39).]—Upon a claim by a debenture-holder in the winding up of a society incorporated under the above Act to be declared a secured creditor, the question arose whether the debenture, by which the property of the society present & future was charged to secure the repayment of the principal sum & interest, was void by reason of Bills of Sale Acts, as to all or any of the assets of the society thereby charged:—*Held*: (1) the society was not an incorporated co. within the exception from 1882 Act, mentioned in sect. 17 of that Act; (2) the property charged by the debenture, although described in general terms, was severable; & accordingly,

W. W. R. 176; 21 Sask. L. R. 478.—CAN.

### PART II. SECT. 6.

st. To give security—Registration necessary.]—*Re MCINTYRE, TRUSTEE v. CANADA METAL CO., LTD. (ONT.)*, [1925] 2 D. L. R. 889; 5 C. B. R. 629.—CAN.

### PART III. SECT. 5.

sw. Lien note—No collateral contract to transfer property in goods back to seller.]—*Held*: not a chattel mtge.—*O'BRIEN v. STEBBINS & MULLEN*, [1927] 3 D. L. R. 274; [1927] 2

### PART III. SECT. 6.

142 iv. —.]—*GORDON MACKAY & Co., LTD. v. CAPITAL TRUST CO., LTD.*, [1927] 2 D. L. R. 1150; S. C. R. 374; 8 C. B. R. 216.—CAN.

the debenture was a valid charge upon such of the assets of the society as did not consist of personal chattels within 1878 Act, s. 4.—*Re NORTH WALES PRODUCE & SUPPLY SOCIETY*, [1922] 2 Ch. 340; 91 L. J. Ch. 415; 127 L. T. 288; 38 T. L. R. 518; 66 Sol. Jo. 439; [1922] B. & C. R. 12.

148. *Add. Annotations*:—*Reid. Re North Wales Produce & Supply Soc.*, [1922] 2 Ch. 340; *National Provincial Bank of England v. Charnley* (1923), 93 L. J. K. B. 241.
149. *Add. Annotations*:—*Reid. Re North Wales Produce & Supply Soc.*, [1922] 2 Ch. 340;

*National Provincial Bank of England v. Charnley* (1923), 93 L. J. K. B. 241.

151. *Add. Annotation*:—*Apld. Re North Wales Produce & Supply Soc.*, [1922] 2 Ch. 340.
155. *Add. Annotation*:—*Apld. Lemon v. Austin Friars Investment Trust* (1925), 133 L. T. 790.
156. *Add. Annotations*:—*Consd. Lemon v. Austin Friars Investment Trust*, [1926] Ch. 1. *Reid. Dey v. Rubber & Mercantile Corp.*, [1923] 2 Ch. 528.
158. *Add. Annotation*:—*Reid. Re North Wales Produce & Supply Soc.*, [1922] 2 Ch. 340.

## Part IV.—Subject-Matter of Bills of Sale “Personal Chattels.”

160. *Add. Annotation*:—*Reid. Herbert's Trustee v. Higgins*, [1926] Ch. 794.
168. *Add. Annotation*:—*Reid. Re North Wales Produce & Supply Soc.*, [1922] 2 Ch. 340.
176. *Add. Annotation*:—*Mentd. Vaudeville Electric Cinema v. Muriset*, [1923] 2 Ch. 74.
190. *Add. Annotation*:—*Distd. Stephenson v. Thompson*, [1924] 2 K. B. 240.
191. *Add. Annotation*:—*Mentd. Re Mellor, Alvarez v. Dodgson*, [1922] 1 Ch. 312.
- 198a. *Growing crops*.]—*STEPHENSON v. THOMPSON*, No. 138b, *ante*.
200. *Add. Annotation*:—*Generally, Mentd. Re Chaplin & Staffordshire Potteries Waterworks Co.'s Contract*, [1922] 2 Ch. 824.

## Part V.—Statutory Requirements.

207. *Add. Annotation*:—*Mentd. Gordon v. Goldstein*, [1924] 2 K. B. 779.
209. *Add. Annotation*:—*Mentd. Commercial Credit Co. of Canada v. Fulton*, [1923] A. C. 798.
- 213a. — *Substantial accuracy—Payment of loan*

### PART IV. SECT. 2.

a i. — *Goods in possession of third party—Claiming possession on his own behalf.*—*Held*: Bills of Sale Act did not apply.—*PRETE v. LAUZON & FENSON*, [1923] 3 D. L. R. 1152; 52 O. L. R. 334.—CAN.

### PART IV. SECT. 4, SUB-SECT. 3.

o i. —.]—When a mtgee. enters into possession, he becomes entitled to any crops growing on the land as against a mtgee. of the crops under a chattel mtge. executed after his mtge. & before possession taken; but, if the crops are out at the time of possession taken, the holder of the chattel mtge. would have priority.—*HARRISON v. CARBERRY ELEVATOR Co. (Man.)* (1908), 7 W. L. R. 535.—CAN.

a i. — *Chattel mortgage including cut grain—Amount of cut grain not specified.*—*Held*: mtge. not valid even in part.—*NORTH AMERICAN LUMBER Co. v. BANK OF MONTREAL*, [1922] 1 W. W. R. 1265; 65 D. L. R. 348; 15 Sask. L. R. 375.—CAN.

a ii. — *Lease by mortgagee in possession to guarantor of mortgagor's debt to bank—Profits from crop to be applied in reduction of debt.*—*Held*: the above arrangement did not violate *Chattel Mtge. Act*, R. S. C., 1920 (c. 200), s. 20, as an attempt to create a security on a growing crop, since it did not come within any instrument mentioned therein.—*BURNS & BROWN v. ZULAU & DOERF* (Sask.), [1926] 1 W. W. R. 943.—CAN.

197 x. —.]—Security on grain given to a bank in Oct. 1921, in respect

to advances made in the spring of 1920:—*Held*: invalid in respect to 1921 crop as there was no proof that 1921 crop was intended as the security, & if there was such an agreement made in 1920 as to 1921 crop it was bad as covering property not then in existence.—*NORTH AMERICAN LUMBER Co. v. BANK OF MONTREAL*, [1922] 1 W. W. R. 1265; 65 D. L. R. 348; 15 Sask. L. R. 375.—CAN.

197 xi. —.]—*Held*: an agreement only intended to operate as security for payment, payable when the crop was harvested, was void under R. S. M., 1913 (c. 17), s. 33.—*HASCALL v. ROYAL BANK OF CANADA*, [1923] 2 W. W. R. 504; 33 Man. L. R. 230.—CAN.

197 xii. —.]—*Held*: a security on crops to be grown in futuro was invalid under R. S. S., 1920 (c. 200), s. 20.—*RICHLAND FARM, LTD. v. VERMETTE*, [1923] 3 W. W. R. 74.—CAN.

197 xiii. —.]—*DALTON v. EATON*, [1924] 1 D. L. R. 493; 1 W. W. R. 246; 18 Sask. L. R. 92.—CAN.

—.]—*PROCTOR v. ANDERSON & NORTHERN ELEVATOR Co., LTD., ERMAN & PROCTOR & MALLERY*, [1921] 3 W. W. R. 39.—CAN.

ki. — *Transaction not bona fide.*—*Ptlf.* claimed the right to take certain wheat in A.'s possession. A. wanted some of it for seed. It was agreed that *ptlf.* would purchase the wheat from A. at a price which was equal to the amount of A.'s indebtedness to *ptlf.*, & *ptlf.* would immediately re-sell it to A. at a price per bushel which made the total price at about the same as on

*ptlf.*'s purchase. This was carried out, & to secure the purchase price *ptlf.* took from A. a seed grain mtge. on the crop to be grown:—*Held*: as A. did not require the whole of the wheat for seed, & as the price fixed had no relation to the value of the wheat but was fixed with reference to the debt owing by A. to *ptlf.*, the actual value being much less than the price agreed on, the transaction could not be considered a *bona fide* sale to A., & *ptlf.*'s mtge. was invalid.—*LYNCH v. TURNEY (Sask.)*, [1923] 3 D. L. R. 7; [1923] 2 W. W. R. 876; *reversg.*, [1923] 1 D. L. R. 1198.—CAN.

sa. *Binder twine chattel mortgage—To secure price of twine used in previous year.*—*Held*: may be validly granted in the following year over the crops of that year, & is entitled to priority.—*FENNELL v. UNION BANK OF CANADA*, [1923] 3 W. W. R. 79.—CAN.

### PART V. SECT. 1, SUB-SECT. 2.—A.

b i. — *Not amount secured.*—*HENTON v. INTERNATIONAL HARVESTER Co.*, [1926] 2 D. L. R. 962; [1926] 2 W. W. R. 118; 22 Alta. L. R. 102.—CAN.

### PART V. SECT. 1, SUB-SECT. 2.—B.

h i. — *Misstatement as to currency.*—The fact that a bill of sale states that the consideration was paid in “lawful money of Canada,” whereas it was in fact paid in United States currency, does not invalidate the bill of sale.—*FIRST NATIONAL BANK OF MINNEAPOLIS v. MANN & CONWAY*, [1926] 3 D. L. R. 648; [1926] 2 W. W. R. 525; 19 Sask. L. R. 546.—CAN.

by cheque.]—Pltf. granted a bill of sale over certain furniture to a money-lender, &, as she was unable to pay him the first instalment when it became due, defts. agreed to advance to her £1,000 on another bill of sale for the purpose of paying him off & of having her furniture released from the first bill of sale. Pltf. accordingly received a cheque for £1,000 from defts., & after receiving it she executed the second bill of sale, which stated that the consideration for it was £1,000 paid to pltf. In an action by pltf. to restrain defts. from disposing of the furniture comprised in the second bill of sale, pltf. relied on 1882 Act, s. 8, & she contended that the real consideration was the payment off of the money-lender & the release of her furniture from the first bill of sale:—*Held*: the consideration for the second bill of sale was the loan of £1,000, & as a cheque was a good payment until dishonoured there was no need to state in the second bill of sale that the payment was by cheque, & therefore, as the consideration was correctly stated in the second bill of sale, the action failed.—*D'USEZ v. TRAFFICS & DISCOVERIES, LTD.* (1924), 40 T. L. R. 441.

220. *Add. Annotation*:—*Consd. Stott v. Shaw & Lee*, [1928] 2 K. B. 26.

228a. & grantor's creditors paid by grantee.]—(1) On June 24, 1925, the parties to a bill of sale for £1,000 entered into an agreement that the grantee should pay, as he then did, £600 to creditors of the grantor in satisfaction of their debt, that the existing bill of sale should be cancelled, & that the grantor should give to the grantee a new bill of sale for £1,600. The new bill of sale provided that "in consideration of £1,600 paid to" the grantor "by" the grantee "on June 24, 1925," the grantor assigned the chattels to the grantee:—*Held*: the new bill of sale truly set forth the consideration for which it was given, as required by 1882 Act, s. 8.

(2) A bill of sale provided that the grantor would pay the grantee the principal sum of £1,600 with the interest then due "on Dec. 24, 1925." A contemporaneous mtge. of other property, given as part of the same transaction & as a collateral security for the principal sum, provided as follows: "The mtgor." (the grantor of the bill of sale) "hereby covenants with the mtgee." (the grantee) "to pay to him on Dec. 24 next £1,600 with interest thereon, & it is hereby agreed & declared that (subject to the right of the mtgee. to require repayment of the principal on Dec. 24 next according to the foregoing covenant by the mtgor. or at any time thereafter) the principal money hereby secured shall be repaid by instalments of not less than £20" on specified dates; these provisions not being contained in the bill of sale:—*Held*: the bill of sale by being made contemporaneously with, & as part of the same transaction as, the mtge. containing

that clause for repayment of the principal by instalments, was not made or given subject to a "defeasance or condition" within 1878 Act, s. 10 (3), & the fact that that clause was not contained in the body of the bill of sale or written on the same paper or parchment therewith did not avoid the registration of the bill of sale under that sub-sect.—*STOTT v. SHAW & LEE, LTD.*, [1928] 2 K. B. 26; 97 L. J. K. B. 556; 139 L. T. 302; 44 T. L. R. 493; [1928] B. & C. R. 24, C. A.

230. *Add. Annotation*:—*Mentd. Henshall v. Widdison* (1923), 130 L. T. 607.

237. *Add. Annotation*:—*Distd. Henshall v. Widdison* (1923), 130 L. T. 607.

237a. ———.]—Pltf., H., had a number of betting transactions with deft., W., a book-maker, since 1918. Pltf. lost various bets & paid his losses by cheques. He won other bets for which he was paid by various cheques. Eventually, pltf. obtained judgment against deft. for £692 10s. Execution was levied at the instance of the judgment creditor whereupon deft.'s wife, claimant in the interpleader proceedings which followed, claimed the goods seized, alleging that they belonged to her because her husband, the judgment debtor, had given her a bill of sale covering them to secure the repayment of a sum of £600 which she had advanced to him. The judgment creditor contended that the bill of sale was bad because it did not truly state the consideration. The bill of sale contained the words "In consideration of a sum of £600 now paid . . ." & the judgment creditor said that the £600 was not paid at the time of making the bill of sale, & therefore was not "now paid," as therein stated, but was paid some time later. It was therefore contended that the bill of sale was not a good bill of sale because the statement that the money was "now paid" was untrue. According to the evidence, deft.'s wife had borrowed the £600 from her mother to help her husband, & she handed the £600 over to her husband to pay his debts at 6 p.m., on the same day that the bill of sale was executed:—*Held*: there was evidence in the present case on which the county ct. judge could find that the £600 was "now paid" within the meaning of the statement in the bill; the bill of sale was executed, & the money was paid over by claimant at substantially the same time; the bill was therefore valid & the appeal must be dismissed.—*HENSHALL v. WIDDISON* (1923), 130 L. T. 607. D. C.

240. *Add. Annotation*:—*Mentd. Herbert's Trustee v. Higgins*, [1926] Ch. 794.

273. *Add. Annotation*:—*Refd. Commercial Credit Co. of Canada v. Fulton*, [1923] A. C. 798.

279. *Add. Annotations*:—*Refd. Westen v. Fairbridge*, [1923] 1 K. B. 667; *Gordon v. Goldstein*, [1924] 2 K. B. 779.

282. *Add. Annotation*:—*Consd. Wilkins v. New*

#### PART V. SECT. 1, SUB-SECT. 2.— C. (a).

§ 1. ———.]—*MOWAT v. CLEMENT* (1886), 3 Man. L. R. 585.—CAN.

227 vii. ———.]—*Re GAUDREAU, Ex p. ROYAL BANK OF CANADA*, [1922] 3 W. W. R. 79; 66 D. L. R. 831.—CAN.

§ 1. ——— & notes under discount  
—Notes subsequently taken up

grantee.]—*Held*: the chattel mtge. was valid.—*FISH v. HIGGINS* (1884), 2 Man. L. R. 65.—CAN.

#### PART V. SECT. 2, SUB-SECT. 1.

§ 1. Situation of chattels not properly designated.—Description by which premises generally known.—*Held*: sufficient, if not likely to mislead & chattels

capable of being identified.—*Re COMFORTER & CUSHION MANUFACTURING Co., Ex p. HENDERSON (J. B.) & Co.* (ONT.), [1926] 1 D. L. R. 30.—CAN.

§ 1. One mortgage form attached to part of another mortgage form.—*Held*: void for uncertainty.—*HENTON v. INTERNATIONAL HARVESTER Co.*, [1926] 2 D. L. R. 962; [1926] 2 W. W. R. 118; 22 Alta. L. R. 102.—CAN.



Saville Securities & Hawkings (1922), 39 T. L. R. 85.

**283a.** Rights under preceding oral agreement.]—Where, after oral negotiations, a bill of sale of furniture is granted to secure a loan of money with an agreed sum for interest, & the bill is found to be bad, the lender is entitled to recover the principal money lent & interest by virtue of the contract created by the oral negotiations which preceded the granting of the bill of sale.—*WILKINS v. NEW SAVILLE SECURITIES, LTD. & HAWKINGS (G. F.) & SON* (1922), 39 T. L. R. 85.

*Annotation*:—*Folld. Bradford Advance Co. v. Ayers*, [1924] W. N. 152.

**283b.** .]—When a bill of sale is void under 1882 Act, s. 9, it is void for all purposes, including the covenant to pay interest. But where a loan has been negotiated purporting to be under a bill of sale which turns out in fact to be void, an action will lie for money had & received, with an obligation to repay the loan & interest at a reasonable rate.—*BRADFORD ADVANCE CO., LTD. v. AYERS*, [1924] W. N. 152.

**288.** *Add. Annotation*:—*Consd. Gordon v. Goldstein*, [1924] 2 K. B. 779.

**288a.** Joint parties—Joint assignment—Of property owned by one party.]—By a bill of sale a husband & wife, who were therein together called "the grantor", purported to assign to the grantee the chattels described in the schedule thereto, which in fact belonged to the wife alone:—*Held*: inasmuch as "the grantor" was not the true owner of the chattels at the time when the bill of sale was executed, except as against the grantor the bill of sale was void under 1882 Act, s. 5.—*GORDON v. GOLDSTEIN*, [1924] 2 K. B. 779; 94 L. J. K. B. 21; 132 L. T. 155; [1924] B. & C. R. 245.

*Annotation*:—*Expld. Gamago v. Payne* (1925), 42 T. L. R. 138.

**289.** *Add. Annotations*:—*Consd. Westen v. Fairbridge*, [1923] 1 K. B. 667; *Distd. Gordon v. Goldstein*, [1924] 2 K. B. 779.

**291.** *Add. Annotation*:—*Mentd. Herbert's Trustee v. Higgins*, [1926] Ch. 794.

**292.** *Add. Annotation*:—*Mentd. Commercial*

*Credit Co. of Canada v. Fulton*, [1923] A. O. 798.

**297.** *Add. Annotation*:—*Refd. Commercial Credit Co. of Canada v. Fulton*, [1923] A. C. 798.

**299.** *Add. Annotation*:—*Refd. Re North Wales Produce & Supply Soc.*, [1922] 2 Ch. 340.

**301.** *Add. Annotation*:—*Expld. & Apld. Re North Wales Produce & Supply Soc.*, [1922] 2 Ch. 340.

**302.** *Add. Annotation*:—*Expld. Re North Wales Produce & Supply Soc.*, [1922] 2 Ch. 340.

**302a.** ——— Other property of industrial society—Charged by debenture.]—*Re NORTH WALES PRODUCE & SUPPLY SOCIETY*, No. 144a, ante.

**329.** *Add. Annotations*:—*Mentd. Edwards v. Motor Union Insce.*, [1922] 2 K. B. 249; *Re A Bankruptcy Notice*, [1924] 2 Ch. 76; *Russian Commercial & Industrial Bank v. Comptoir d'Escompte de Mulhouse, Banque Internationale de Commerce de Petrograd v. Goukasson* (1924), 40 T. L. R. 837; *Huddersfield Fine Worsteds v. Todd* (1925), 42 T. L. R. 52.

**352.** *Add. Annotation*:—*Mentd. Henshall v. Widison* (1923), 130 L. T. 607.

**372.** *Add. Annotation*:—*Refd. Commercial Credit Co. of Canada v. Fulton*, [1923] A. C. 798.

**409.** *Add. Annotation*:—*Mentd. Wilkins v. New Saville Securities & Hawkings* (1922), 39 T. L. R. 85.

**417.** *Add. Annotation*:—*Consd. Herbert's Trustee v. Higgins*, [1926] Ch. 794.

**418.** *Add. Annotation*:—*Refd. Herbert's Trustee v. Higgins*, [1926] Ch. 794.

**420.** *Add. Annotation*:—*Apld. Herbert's Trustee v. Higgins*, [1926] Ch. 794.

**420a.** ——— "Cows, nineteen short-horns & one Jersey cow."—*Held*: farm stock described in the schedule to a bill of sale as above were specifically described within 1882 Act, s. 4.—*HERBERT'S TRUSTEE v. HIGGINS*, [1926] Ch. 794; 95 L. J. Ch. 303; 135 L. T. 321; 42 T. L. R. 525; 70 Sol. Jo. 708; [1926] B. & C. R. 26.

**423.** *Add. Annotation*:—*Apld. Herbert's Trustee v. Higgins*, [1926] Ch. 794.

**427.** *Add. Annotation*:—*Mentd. Lowther v. Harris*, [1927] 1 K. B. 393.

**PART V. SECT. 2, SUB-SECT. 3.**  
*eg Sufficiency of—Small present payment—& extension of time for payment.*]—*Held*: sufficient.—*IMPERIAL LUMBER YARDS, LTD. v. FERGUSON, COCKSHUTT PLOW CO., CLAIMANT*, [1922] 2 W. W. R. 133; 65 D. L. R. 758.—CAN.

**PART V. SECT. 2, SUB-SECT. 4.**  
**293 v.** ——— *Reference to description in another instrument.*]—*Held*: goods & chattels must be so set out on the face of the instrument as to be easily identifiable, & a reference to another instrument cannot suffice; & as to subsequently acquired goods the mtge. was null & void.—*Re RINN*, [1923] 3 D. L. R. 986; 33 Man. L. R. 163; [1923] 1 W. W. R. 1190; 3 C. B. R. 928.—CAN.

**q i.** ———.]—When a mtge. of a car was made by H., he was owner of only one undivided half-share in the car:—*Held*: notwithstanding the consent of his partner to the mtge., it was valid only to the extent of H.'s half share: the fact that shortly after giving the security H. became the sole owner did

not operate retrospectively under *Chattels Transfer Act*, s. 21.—*BOWDEN v. R.*, [1921] N. Z. L. R. 249.—N.Z.

**PART V. SECT. 2, SUB-SECT. 6.—G.**

**pi.** ——— *Rights of grantor.*]—The covenant implied in instruments by way of security over stock which, while forbidding the removal of stock without the grantee's consent, permits a sale by the grantor in the ordinary course of business, provided that the number of stock is not thereby reduced below the number stated in the security, does not require as a condition of a valid sale that the proceeds be paid to the grantee.—*NATIONAL BANK OF NEW ZEALAND v. DALGETY & Co.*, [1925] N. Z. L. R. 250.—N.Z.

**PART V. SECT. 2, SUB-SECT. 8.—B.**

**415 xi.** ———.]—*BANQUE D'HOCHELAGA v. HAYDEN & GILLESPIE ELEVATOR CO.*, [1922] 1 W. W. R. 1054; 63 D. L. R. 514; 17 Alta. L. R. 277.—CAN.

**m. (p. 73) i.** ——— "Eight pure bred red poll cows."—A bill of sale of cattle

described them as "eight pure bred red poll cows named as follows, giving the names, in the possession of W. R. & pasturing on a named timber reserve":—*Held*: (1) the description was sufficient, in the absence of evidence that claimant had red poll cows other than those covered by the bill of sale so as to make those covered thereby difficult of identification; (2) the onus was on the party attacking the bill of sale to show that the cows described were incapable of identification even on making proper inquiries.—*ROBIL-LARD v. MCCULLOUGH*, [1926] 3 D. L. R. 178; [1926] 2 W. W. R. 350; 20 Sask. L. R. 559.—CAN.

**n. (p. 73) i.** ——— "Issue of" named "animal."—It is not a sufficient description to describe an animal as the issue of another animal when the animal has at the date of the mtge. ceased to follow its dam for nurture.—*RESER v. BEWLEY*, [1922] 1 W. W. R. 1134; 65 D. L. R. 58; 17 Alta. L. R. 548.—CAN.

**k. (p. 74) i.** ———.]—*KING v. DOMINION BANK*, [1920] 3 W. W. R. 295.—CAN.

434. *Add. Annotation*:—Mentd. Gordon v. Goldstein, [1924] 2 K. B. 779.
435. *Add. Annotation*:—Refd. Stott v. Shaw & Lee, [1928] 2 K. B. 26.
439. *Add. Annotation*:—Consd. Stott v. Shaw & Lee, [1928] 2 K. B. 26.
- 439a. ————.]—STOTT v. SHAW & LEE, LTD., No. 228a, ante.
444. *Add. Annotation*:—Refd. Wilkins v. New Saville Securities & Hawkings (1922), 39 T. L. R. 85.
450. *Add. Annotation*:—Consd. Stott v. Shaw & Lee, [1928] 2 K. B. 26.
452. *Add. Annotation*:—Mentd. Herbert's Trustee v. Higgins, [1926] Ch. 794.
453. *Add. Annotation*:—Consd. Stott v. Shaw & Lee, [1928] 2 K. B. 26.
495. *Add. Annotation*:—Refd. Commercial Credit Co. of Canada v. Fulton, [1923] A. C. 798.
498. *Add. Annotation*:—Consd. Commercial Credit Co. of Canada v. Fulton, [1923] A. C. 798.
552. *Add. Annotation*:—Expld. Gordon v. Goldstein, [1924] 2 K. B. 779.
563. *Add. Annotation*:—Mentd. Herbert's Trustee v. Higgins, [1926] Ch. 794.
574. *Add. Annotation*:—Mentd. Commercial Credit Co. of Canada v. Fulton, [1923] A. C. 798.
575. *Add. Annotation*:—Mentd. Harrods v. Stanton, [1923] 1 K. B. 516.

PART V. SECT. 3.

pl. ———— *Reference in schedule to earlier mortgage.*—OTAGO FARMERS CO-OPERATIVE ASSOCN. OF NEW ZEALAND, LTD. v. MCGOWAN, [1925] N. Z. L. R. 482.—N.Z.

PART V. SECT. 4, SUB-SECT. 1.

466 i. *Non-compliance with statutory requirements—How far mortgage valid.*—Bills of Sale Act, N. B. 1903 (c. 142), s. 5, affords no protection for a mtge. not executed & attested in accordance with s. 3 subsequent to another mtge. also not in accordance with s. 3. Such prior mtge. is good as between the parties & those who are not protected by s. 5.—MEADE v. DESCHENE, [1923] 2 D. L. R. 332.—CAN.

PART V. SECT. 5, SUB-SECT. 1.

o i. ————.]—Chattel mtges. unregistered under such an agreement:—Held: void as against a mtgee. of the land claiming the chattels under a distress under an attornment clause in his mtge.—McDOUGALL & SECORD, LTD. v. MERCHANTS BANK OF CANADA, [1920] 1 W. W. R. 364; 51 D. L. R. 309.—CAN.

PART V. SECT. 5, SUB-SECT. 2.

o i. ———— *Declaration as to bona fides sworn six days before execution.*—Held: mtge. null & void as against the trustee in bkpy. of the mtgor.—Re GIBBONS, [1924] 3 D. L. R. 619; 5 C. B. R. 16.—CAN.

PART V. SECT. 5, SUB-SECT. 3.

492 ii. ————.]—Held: a document not a "true copy" was null & void against purchasers.—COMMERCIAL CREDIT CO. OF CANADA, LTD. v. FULTON BROTHERS, [1923] A. C. 798; 93 L. J. P. C. 12; 130 L. T. 72; 39 T. L. R. 684; [1923] B. & C. R. 102.—CAN.

PART V. SECT. 5, SUB-SECT. 4.—A.

o (p. 86) i. ———— *Bill for future advances.*—ROBINSON v. PETERS (1919), 47 N. B. R. 1.—CAN.

o (p. 86) ii. ———— *Effect of omission—Part of goods delivered.*—Held: bill valid where there was an immediate delivery followed by an actual & continued change of possession, & where goods had been sold & the proceeds were lying in the sheriff's hands.—KIPPAN v. McCAW, [1924] 1 D. L. R. 601; 1 W. W. R. 65; 34 Man. L. R. 64.—CAN.

q (p. 86) i. ————.]—Re McDONAGH (Ont.), [1926] 3 D. L. R. 36; 7 C. B. R. 686.—CAN.

m (p. 86) i. ———— *Omission of statement as to knowledge.*—CRAIG (W. G.) & Co., LTD. v. GILLESPIE (1920), 47 O. L. R. 529; 54 D. L. R. 514.—CAN.

q (p. 87) i. ———— *Bank taking mortgage—Local manager—Without written authority.*—Held: sufficient.—Re GAUDREAU, Ex p. ROYAL BANK OF CANADA, [1922] 3 W. W. R. 79; 66 D. L. R. 831.—CAN.

506 va. ————.]—While it is very desirable, the absence of date is not fatal, as the Ordinance does not prescribe any form of affidavit.—BANQUE D'HOCHELAGA v. HAYDEN & GILLESPIE ELEVATOR CO., [1922] 1 W. W. R. 1054; 63 D. L. R. 514; 17 Alta. L. R. 277.—CAN.

PART V. SECT. 5, SUB-SECT. 4.—B.

sh. *Presumption of accuracy—Absence of evidence to rebut.*—Re GAUDREAU, Ex p. ROYAL BANK OF CANADA, [1922] 3 W. W. R. 79; 66 D. L. R. 831.—CAN.

g (p. 88) i. ———— *Necessity for affidavit—Bill executed under corporate seal of company.*—LIVERGOOD v. TAYLOR, [1920] 3 W. W. R. 62.—CAN.

g (p. 88) ii. *S. P. LIVERGOOD v. HOME*, [1920] 3 W. W. R. 67.—CAN.

k (p. 88) i. ————.]—The absence of the date of execution of a chattel mtge. from the affidavit of the witness renders the mtge. invalid.—NORTH AMERICAN LUMBER CO., LTD. v. BANK OF MONTREAL, [1922] 1 W. W. R. 1265; 65 D. L. R. 348; 15 Sask. L. R. 375.—CAN.

k (p. 88) ii. ————.]—Re LAWSON, Ex p. SHANKEY, [1925] 1 D. L. R. 1100.—CAN.

n (p. 88) i. ————.]—The affidavit must strictly comply with the form in the statute, or the mtge. is void against creditors of mtgor.—Re RAPER, Ex p. JAMIESON, [1924] 4 D. L. R. 789; 5 C. B. R. 184.—CAN.

p (p. 89) i. ———— *Omission of material fact.*—PROCTOR v. ANDERSON & NORTHERN ELEVATOR CO., LTD., EEMAN & PROCTOR & MALLERY, [1921] 3 W. W. R. 39.—CAN.

d (p. 90) i. ———— *Misstatement—Whether bill vitiated.*—Re BLAIR, Ex p. MAPLE LEAF MLLG. CO. (Ont.), [1927] 3 D. L. R. 477; 8 C. B. R. 329.—CAN.

r (p. 91) i. ————.]—KEOUGH v. PRICE (1877), 27 C. P. 309.—CAN.

r (p. 91) ii. ———— *Not filled in.*—Held: the affidavit of bona fides was insufficient.—McINTYRE v. UNION BANK (1885), 2 Man. L. R. 305.—CAN.

PART V. SECT. 5, SUB-SECT. 5.—D.

596 iii. ———— *Not stated in mortgage—Stated in affidavit.*—The statement of the address of the agent of mtgee. in the affidavit of bona fides is sufficient to satisfy the statutory requirements, although mtgee.'s address is not stated in the mtge. itself.—IMPERIAL LUMBER YARDS, LTD. v. FERGOUSON, COCKSHUTT PLOW CO., CLAIMANT, [1922] 2 W. W. R. 133; 65 D. L. R. 758.—CAN.

PART V. SECT. 5, SUB-SECT. 8.

l (p. 101) i. ————.]—If the mtgee., during the currency of a mtge. & before renewal becomes necessary, takes actual possession of the goods & makes no sale or change of title, the mtge. remains valid & effective without renewal.—McCABE v. COSTE, [1922] 3 W. W. R. 465; 70 D. L. R. 25.—CAN.

l (p. 101) ii. *S. P. —Re BLACKBURN, Ex p. MOFFATT*, [1925] 2 D. L. R. 1206; 5 C. B. R. 698.—CAN.

n (p. 102) i. ————.]—Re NATHAN CRYSTAL, Ex p. HAWTHORNE, [1925] 4 D. L. R. 1078.—CAN.

o (p. 102) i. ————.]—Re KERR, Ex p. MARTIN (Ont.), [1926] 4 D. L. R. 705; 7 C. B. R. 605.—CAN.

t (p. 102) i. ———— *Statement filed after proper time.*—Held: the chattel mtge. was void.—Re NATHAN CRYSTAL, Ex p. HAWTHORNE, [1925] 4 D. L. R. 1078.—CAN.

616 iii. ————.]—McCABE v. COSTE, [1922] 3 W. W. R. 465; 70 D. L. R. 25.—CAN.

616 iv. ————.]—McDONALD v. CAREY, [1923] 3 D. L. R. 1018; 2 W. W. R. 972.—CAN.

616 v. ————.]—When an order permitting the filing of a renewal statement is obtained on an *ex parte* application while the question of the rights of the chattel mtgee. are *coram judice* in other proceedings, the mtgee.'s position should not be taken to have been bettered in any way thereby.—Re BILL'S ESTATE, [1924] 4 D. L. R. 876; 3 W. W. R. 475.—CAN.

616 vi. ———— *From what date time for subsequent renewals fixed.*—McCABE v. COSTE, [1922] 3 W. W. R. 465; 70 D. L. R. 25.—CAN.

618 vii. ————.]—Where debt. purchased goods from mtgor., paying full value & knew of the mtge., but considered he was entitled as a matter of law to rely upon mtgee.'s failure to file renewal:—Held: debt. was not a purchaser in good faith.—CANADIAN BANK OF COMMERCE v. MUNROE, [1925] 1 D. L. R. 368; [1925] 1 W. W. R. 1.—CAN.

## Part VI.—Avoidance.

648. *Add. Annotation*:—*Consd. Shears v. Jones*, [1922] 2 Ch. 802.
663. *Add. Annotation*:—*Mentd. Stephenson v. Thompson*, [1924] 2 K. B. 240.
672. *Add. Annotations*:—*Expld. & Apld. French v. Gething*, [1922] 1 K. B. 236. *Mentd. Canvey Island Comrs. v. Preedy*, [1922] 1 Ch. 179.
673. *Add. Annotation*:—*Consd. French v. Gething*, [1922] 1 K. B. 236.
- 673a. ———.]—By a post-nuptial deed in May, 1914, a husband gave his wife certain household furniture in the house in which the husband & wife lived together. The furniture remained in the house, which continued to be occupied by the husband & wife. The deed was not registered under 1878 Act. Execution creditors under a judgment recovered in 1920 against the husband levied execution at the house. The wife claimed the furniture. In an interpleader issue between the wife & the execution creditors:—*Held*: the furniture was not in the possession or apparent possession of the husband within 1878 Act, s. 8, nor in his order & disposition or reputed ownership within Married Women's Property Act, 1882 (c. 75), s. 10.—*FRENCH v. GETHING*, [1922] 1 K. B. 236; 91 L. J. K. B. 276; 126 L. T. 394; 38 T. L. R. 77; 66 Sol. Jo. 140; [1922] B. & C. R. 30, C. A.
678. *Add. Annotation*:—*Consd. French v. Gething*, (1921), 91 L. J. K. B. 276.
689. *Add. Annotation*:—*Consd. National Provincial & Union Bank of England v. Charnley*, [1924] 1 K. B. 431.
695. *Add. Annotations*:—*Consd. National Provincial & Union Bank of England v. Charnley*, [1924] 1 K. B. 431; *Re Wait*, [1926] Ch. 962. *Refd. Performing Right Soc. v. London Theatre of Varieties*, [1924] A. C. 1.
704. *Add. Annotation*:—*Refd. National Provincial & Union Bank of England v. Charnley*, [1924] 1 K. B. 431.
706. *Add. Annotations*:—*Consd. Kursell v. Timber Operators & Contractors* (1926), 95 L. J. K. B. 569. *Refd. Performing Right Soc. v. London Theatre of Varieties*, [1924] A. C. 1; *Re Wait*, [1927] 1 Ch. 606. *Mentd. Re Smith, Franklin v. Smith*, [1928] Ch. 10.
- 708a. ———.]—The grantor of a bill of sale described the goods in the schedule thereto as his own, though, in fact, the true owner was *pltf.*, his wife. The bill of sale was given as security for a loan to the grantor from *deft.*, & at the time of its execution the wife made a statutory declaration that the goods were those of her husband. One firm of solrs. acted for all the parties in this transaction. On a claim by the wife to the goods:—*Held*: she was estopped from denying that the goods were those of her husband, & thus showing that the bill of sale was void as against *deft.* under 1882 Act, s. 5.—*WESTEN v. FAIRBRIDGE*, [1923] 1 K. B. 667; 92 L. J. K. B. 577; 129 L. T. 221; 67 Sol. Jo. 403; [1923] B. & C. R. 86.
709. *Add. Annotation*:—*Mentd. Waller v. Thomas*, [1921], 1 K. B. 541.
- 710a. ——— Voluntary deed of gift by husband —Declared void after date of bill.]—A man who was in debt executed a deed of gift of his furniture in favour of his wife, who thereafter granted a bill of sale upon the furniture to a person who took for value & without notice. Subsequently the deed of gift was declared void under 13 Eliz. c. 5 as being in fraud of creditors. The furniture having been taken in execution by a judgment creditor the bill of sale holder claimed the furniture under the bill of sale. Interpleader proceedings were instituted in which the execution creditor alleged that the bill of sale was void under 1882 Act, s. 5, on the ground that the grantor was not the "true owner" of the furniture at the time of the execution of the bill of sale:—*Held*: until the deed of gift was set aside the donee thereunder was the "true owner" of the furniture, & as she had conveyed the furniture to a purchaser for value without notice before the deed of gift was set aside, claimant obtained a good title under the bill of sale.—*HARRODS, LTD. v. STANTON*, [1923] 1 K. B. 516; 92 L. J. K. B. 403; 128 L. T. 685; [1923] B. & C. R. 70, D. C.
718. *Add. Annotation*:—*Refd. Wilkins v. New*

## PART VI. SECT. 2.

r (p. 107) i. ———.]—*LIVERGOOD v. HOME*, [1920] 3 W. W. R. 67.—CAN.

r (p. 107) ii. ———.]—The creditors entitled to the protection of Chattel Mtge. Act, R. S. S., 1920 (c. 209), are all creditors of the seller, & not merely those whose claims have been prosecuted to judgment.—*FIRST NATIONAL BANK OF MINNEAPOLIS v. MANN & CONWAY*, [1925] 3 D. L. R. 648; [1925] 2 W. W. R. 525; 19 Sask. L. R. 546.—CAN.

r (p. 107) iii. ———.]—"Creditor" in Bills of Sale Act, R. S. A., 1922 (c. 151), s. 12, includes a simple contract creditor.—*LAPIERRE v. TWIN CITY GRAVEL & CONCRETE CO., LTD. & TERWILLEGGER (Alta.)*, [1926] 3 W. W. R. 775.—CAN.

s (p. 107) i. ——— Obtaining judgment subsequently to sale.]—*Held*: "creditors."—*MICKELSON v. NASH-SMINGTON CO.*, [1923] 3 W. W. R. 843.—CAN.

t (p. 109) i. ——— Before judgment recovered by creditor.]—*Held*: mtgee. was entitled to maintain her

right as such.—*HENRY v. SEXSMITH* (1921), 64 D. L. R. 373; 50 O. L. R. 278.—CAN.

t (p. 109) ii. ——— Subsequent seizure & disposal of goods by grantee.]—*Held*: a defective bill of sale could not be perfected by a seizure & disposal of the goods thereunder as against creditors who had already seized the goods under execution.—*Re SCRAGG*, [1925] 1 D. L. R. 240; [1924] 3 W. W. R. 905.—CAN.

t (p. 109) iii. ——— Grantor remaining in possession—Whether bill avoided.]—*SHERIFF v. MCKEEN* (1883), 23 N. B. R. 184.—CAN.

d (p. 109) i. ———.]—*SLOAN v. OTTAWA CAR MANUFACTURING CO.* (1921), 64 D. L. R. 333; 50 O. L. R. 235.—CAN.

o (p. 109) i. ——— Seizure under lien subsequently obtained.]—*Re MUSTARD*, [1923] 2 D. L. R. 922; 4 C. B. R. 140; *affd.*, 24 O. W. N. 513.—CAN.

sk. Against principal—Agent granting bill without authority.]—*ALLEN v.*

*NORFOLK CO-OPERATIVE DAIRY CO., LTD.*, [1923] N. Z. L. R. 715.—N.Z.

## PART VI. SECT. 3, SUB-SECT. 1.—A.

h (p. 110) i. Chattels subsequently taken by bargainee.]—A bill of sale void under the statute cannot be made valid by any subsequent possession taken by the bargainee.—*KIPPAN v. MCCAW*, [1924] 1 D. L. R. 601; 1 W. W. R. 65; 34 Man. L. R. 64.—CAN.

b (p. 114) i. ———.]—*YOUNG v. MAGEE*, [1924] 3 D. L. R. 426; 3 W. W. R. 816; 20 Alta. L. R. 431.—CAN.

## PART VI. SECT. 3, SUB-SECT. 1.—B.

l (p. 116) i. ———.]—The "change of possession" required by Bills of Sale Ordinance, C. O., 1898 (c. 43), s. 9, must be open.—*DOMINION LUMBER CO. v. ALBERTA FISH CO.*, [1921] 3 W. W. R. 619.—CAN.

## PART VI. SECT. 3, SUB-SECT. 2.—A.

686 xi. ———.]—*LIQUID CARBONIC CO. v. ROUNTREE*, [1924] 1 D. L. 1092; 54 O. L. R. 75.—CAN.



Saville Securities  
T. L. R.

719. Add. Wale & Supply Soc., [1922] 2 Ch. 340.

722. Add. Annotations:—Consd. Re A Bankruptcy Notice, [1924] 2 Ch. 76; Huddersfield Fine Worsteds v. Todd (1925), 42 T. L. R. 52.

Reid. Edwards v. Motor Union Insce., [1922] 2 K. B. 249; Russian Commercial & Industrial Bank v. Comptoir d'Escompte de Mulhouse, Banque Internationale de Commerce de Petrograd v. Goukassow (1924), 40 T. L. R. 837.

723a. Owner—Statutory declaration that goods belonged to grantor.]—WESTEN v. FAIRBRIDGE, No. 708a, ante.

## Part VII.—Rights and Liabilities of Parties

797. Add. Annotation:—Mentd. Re Mellor, Alvarez v. Dodgson, [1922] 1 Ch. 312.

809. Add. Annotation:—Reid. Re Wait, [1927] 1 Ch. 606.

830a. ———.]—In June, 1921, a bill of sale, which was duly registered, was given to secure £400 with interest at 24 per cent. *per annum*. An agreement was afterwards made by which the present claimant agreed with the grantor of the bill of sale to pay to the grantee £450 then owing thereon & to lend to the grantor a further sum of £550 upon having the payment of these sums, making together £1,000 with interest thereon, secured

by a transfer of the £450 then owing on the bill of sale & the securities for the same. Subsequently, in Nov., 1921, a deed was made between the parties to the bill of sale & claimant, by which, in pursuance of the agreement & in consideration of £450 then paid to the grantee of the bill of sale by claimant, the grantee assigned to claimant the principal & interest secured by the bill of sale & all securities therefor, & the grantee also at the request of the grantor assigned to claimant the goods comprised in the bill of sale free from all equity of redemption under the bill of sale, but subject to a proviso for redemp-

### PART VI. SECT. 6, SUB-SECT. 2.

740 i. *Second bill to cure invalidity—Second bill valid.*]—Where goods have been sold *bona fide* & a bill of sale given which is invalid because it was not duly registered, & the seller gives the buyer a new bill of sale, even after the period for registration dating from the execution of the first, which is registered before the seller's creditors are in a position to proceed against the goods, it will entitle the buyer to hold them as against the creditors.—FIRST NATIONAL BANK OF MINNEAPOLIS v. MANN & CONWAY, [1925] 3 D. L. R. 648; [1925] 2 W. W. R. 525; 19 Sask. L. R. 546; *reversd.*, [1925] 1 W. W. R. 899.—CAN.

### PART VII. SECT. 1, SUB-SECT. 2.

c i. ———.]—TULLY v. ANDREWS (1921), 59 D. L. R. 687.—CAN.

### PART VII. SECT. 1, SUB-SECT. 3.

756 x. ———.]—DORMAN v. CRAPPER (1914), 27 W. L. R. 599; 6 W. W. R. 551; 17 D. L. R. 121; 7 Sask. L. R. 229.—CAN.

### PART VII. SECT. 2, SUB-SECT. 2.—B.

d i. ———.]—*Proceedings to cancel principal security.*]—Where it was the intention that a breach of agreement to purchase land should give a right of distress under a collateral chattel mtge.:—*Held*: the right to seize under the mtge. was not curtailed by reason of proceedings to cancel the agreement.—COOK v. ORR, [1924] 1 D. L. R. 920; 1 W. W. R. 1027.—CAN.

### PART VII. SECT. 2, SUB-SECT. 3.

y i. ———.]—KNIGHT v. T. S. PATILLO Co., [1927] 3 D. L. R. 13; 59 N. S. R. 357.—CAN.

sl. *Necessity to obtain leave of court—Jurisdiction of court on application.*]—RUDDER v. LUNDIN, *Re EXTRA-JUDICIAL SEIZURES ACT*, [1922] 2 W. W. R. 974; 67 D. L. R. 657.—CAN.

### PART VII. SECT. 2, SUB-SECT. 4.—A. (b).

802 iii. ———.]—KING v. KUHN (1887), 4 Man. L. R. 413.—CAN.  
802 iv. ———.]—Where a trader

gives a chattel mtge. upon his stock-in-trade & it is shown either by the express terms of the mtge., or by necessary implication, that the intention of the parties is that the mtgor. shall remain in possession of the stock-in-trade mortgaged, & carry on business therewith in the ordinary course of trade, a purchaser from him of any of the mortgaged goods, *bona fide*, & in the ordinary course of business, will obtain title to such goods freed from the mtge.; but if the mtge. on its true construction does not contemplate that the mtgor. is to be at liberty to dispose of the mortgaged goods in the ordinary course of his trade, a purchaser of such mortgaged goods will hold the same subject to the mtge.—SANKATCHEWAN CO-OPERATIVE ELEVATOR CO., LTD. v. CANADIAN PACIFIC RY. CO., [1924] 3 D. L. R. 525; 2 W. W. R. 910.—CAN.

r i. ———.]—*Prior mortgage.*]—The purchaser from a mtgor. in good faith of movables mortgaged without possession takes them free from the mtgee.'s lien.—BACKER, KLORASANCE v. AHMED ESMAIL JAMAL (1927), 1 L. R. 5 Ran. 633.—IND.

807 ii a. ———.]—A second chattel mtge. made in good faith, & for valuable consideration, takes priority over a prior unfiled chattel mtge., even if the second mtgee. has actual notice of the prior mtge.—ROFF v. KRECKER (1892), 8 Man. L. R. 230.—CAN.

810 i a. ———.]—*By bill of sale.*]—D. executed a bill of sale, duly registered, assigning to the Crown (*inter alia*) all after-acquired chattels. D. subsequently executed in favour of deft. another bill of sale over certain farm implements acquired since the first bill of sale. Upon the sale of these implements the Crown claimed the proceeds on the ground that upon their acquisition they became subject to the security of the Crown. Deft. was aware that the Crown held a chattel security, but believed it comprised other chattels than those contained in his security:—*Held*: the title acquired by the Crown was equitable only, & since deft. acquired a good title at law for value & without notice of the special provision in the

Crown's security, the legal title prevailed over the equitable title: & deft.'s knowledge of the existence of the former bill of sale did not amount to constructive notice of its contents.—R. v. CANTERBURY FARMERS CO-OPERATIVE ASSOCN., LTD., [1924] N. Z. L. R. 513.—N.Z.

### PART VII. SECT. 2, SUB-SECT. 4.—B.

r i. ———.]—*Title of chattel mortgagees not derived from "tenant" within Distress Act, R. S. A., 1922 (c. 97), s. 5—Mortgagees protected from distress.*]—CRYSTALL v. OLSEN (Alta.), [1927] 3 D. L. R. 85; [1927] 2 W. W. R.

814 ii. ———.]—*After removal of goods by grantor.*]—Deft. leased a house to P., who gave a bill of sale of goods to pltf. & received from him a lease of the goods for two years. Before a quarter's rent came due, P. moved the goods off the premises; deft. followed them & distrained for the rent; pltf. gave notice that he was owner of the goods & forbade the sale, but deft., believing the bill of sale to be fraudulent, sold the goods under the distress:—*Held*: deft. was liable.—PIDGEON v. MILLIGAN (1871), N. B. Dig. 282.—CAN.

### PART VII. SECT. 3.

a i. ———.]—In order for an assignee of a chattel mtge. to recover the debt secured thereby in an action by him alone against mtgor., his assignment must be absolute & in writing & notice thereof in writing must have been given to mtgor.—BELLEMARE v. GAMACHE, [1921] 2 W. W. R. 584.—CAN.

b i. ———.]—The assignee of a bill of sale & lien notes, which are in effect a chattel mtge., can stand in no better position than the original holder thereof, & must hold the same subject to existing equities, & he is liable in damages for any unwarranted sale by him of the chattels covered by the bill of sale & lien notes.—SCOTT v. MOOSE JAW MOTORS, LTD. & J. HANNA, LTD., [1924] 4 D. L. R. 279; 2 W. W. R. 1234.—CAN.

b ii. ———.]—TRADERS TRUST CO. v. CRAWFORD, [1926] 1 D. L. R. 1167; 58 O. L. R. 381.—CAN.

tion in the deed, & the grantor covenanted with claimant to pay to her on a specified date the £1,000 with interest at 6 per cent. *per annum*. The latter deed was not registered as a bill of sale under the Bills of Sale Acts:—*Held*: the deed was not a “transfer or assignment” of the registered bill of sale within 1878 Act, s. 10, but was a new bill of sale which itself required to be registered &, therefore, claimant was not entitled to rely upon the registered bill of sale as assignee thereof.—*MARSHALL & SNELGROVE, LTD. v. GOWER*, [1923] 1 K. B. 356; 92 L. J. K. B.

499; 128 L. T. 829; [1928] B. & O. R. 81, D. C.

831. *Add. Annotation*:—*Consd. Marshall & Snelgrove v. Gower*, [1923] 1 K. B. 356.

834. *Add. Annotation*:—*Mentd. French v. Gething* (1921), 91 L. J. K. B. 276.

836. *Add. Annotation*:—*Mentd. Waller v. Thomas*, [1921] 1 K. B. 541.

846. *Add. Annotations*:—*Refd. Performing Right Soc. v. London Theatre of Varieties*, [1924] A. C. 1 *Re Wait*, [1927] 1 Ch. 606.

#### PART VII. SECT. 4.

*Chattels taken by mortgagee.*—*TINANT v. SIMON* (1922), 67 D. L. R. 773.—CAN.

## BONDS.

### Part III.—Validity.

- 119a. — Warden of fleet—Pleading.]—HUGGINS v. BAMBRIDGE (1740), Willes, 241; 125 E. R. 1152.
- 155a. —.]—If a bond to secure an annuity contain a recital of the payment of the consideration, & the annuity has been paid for

several years, the actual payment of the consideration will be presumed, though there be no receipt indorsed, & though the subscribing witness have no recollection of the subject.—HASLAM v. DIGGLES (1824), 1 C. & P. 398; 171 E. R. 1247, N. P.

### Part VI.—Operation and Incidents.

317. *Add. Annotation*:—*Appld.* Lawrence v. [1927] 2 K. B. 111.
355. *Add. Annotation*:—*Mentd.* Putsman v. Taylor, [1927] 1 K. B. 637.

### Part VII.—Performance or Breach of Condition.

413. *Add. Citation*:—*sub nom.* MOORWOOD v. DICKENS, 3 Bulst. 148.
456. *Add. Citation*:—*sub nom.* FOREWOOD v. DICTON, 1 Roll. Rep. 296.
536. *Citations*:—For “BROWN’S CASE (1550), Benl. 8; Ben. & D. 35; 73 E. R. 937,” read “BROWN’S CASE (1500), cited Benl. 8; Ben. & D. 35; 73 E. R. 937.”
547. *Add. Annotation*:—*Refd.* Cantiere Navale Triestina v. Russian Soviet Naptha Export Agency, [1925] 2 K. B. 172.

### Part VIII.—Amount Recoverable on Breach of Condition.

569. *Add. Annotation*:—*Refd.* Campbell v. Pollak, [1927] A. C. 732.
577. *Add. Annotation*:—*Mentd.* Re Eyre-Williams, Williams v. Williams, [1923] 2 Ch. 533.

### Part IX.—Assignment.

680. *Add. Annotation*:—*Appld.* Re City Life Assce., [1926] Ch. 191.
691. *Add. Annotation*:—*Refd.* Republica de Guatemala v. Nunez, [1927] 1 K. B. 669.

#### PART III. SECT. 3, SUB-SECT. 13.

*sa.* Penalty bond—Omission of penal sum in obligatory clause.]—*Held*: this omission did not render the bond uncertain & ineffectual.—GREAT WEST LIFE ASSURANCE CO. v. CAMPBELL (Man.), [1927] 3 W. W. R. 645.—CAN.

#### PART VII. SECT. 1, SUB-SECT. 1.

366 ii. — On both obligors.]—*Held*: not necessary.—FORTUNE v. COCKBURN (1863), 22 U. C. R. 359.—CAN.

#### PART VII. SECT. 2, SUB-SECT. 5.

t i. — Selection of land during lifetime of obligor & obligee.]—BURN-

HAM v. RAMSAY (1872), 32 U. C. R. —CAN.

#### PART VIII. SECT. 3.

q i. — Conveyance of land—Failure to obtain title.]—*Held*: the damages were not confined to the purchase-money paid & interest.—PLUMER v. SIMONTON (1858), 16 U. C. R. 220.—CAN.



## Part X.—Discharge.

700. *Add. Citation* :—Cited 6 Co. Rep. 44 b.  
*Add. Annotation* :—*Refd.* Enes Case (1627),  
 Litt. 58.
- 701a. *S. P. ENE'S CASE* (1627), Litt. 58; 124  
 E. R. 135.
712. *Add. Annotation* :—*Refd.* Allen v. Royal  
 Bank of Canada (1925), 41 T. L. R. 625.
749. *Add. Annotation* :—*Mentd.* *Re A Bankruptcy*  
*Notice*, [1924] 2 Ch. 76.

- 796a. *Payment by one—Whether co-obligor*  
*released.*—Assignment of bond to co-obligor,  
 who pays it, is of no use.—*WOFFINGTON v.*  
*SPARKS* (1754), 2 Ves. Sen. 569; 28 E. R. 363.
803. *Add. Annotation* :—*Mentd.* The Koursk,  
 [1924] P. 140.
814. *Add. Annotation* :—*Mentd.* *Re Eyre-Williams*,  
*Williams v. Williams*, [1923] 2 Ch. 533.

## Part XII.—Actions on Bonds.

828. *Add. Annotation* :—*Consd.* Way v. Bishop,  
 [1928] Ch. 647.
- 947a. — — — — —.]—*CANNEL v. BUCKLE* (1724), 2  
 P. Wms. 243; 2 Eq. Cas. Abr. 23; 24 E. R.  
 715, L. C.
- Annotations* :—*Refd.* Harvey v. Ashley (1748), 3 Atk. 607;  
 Drury v. Drury (1761), 2 Eden, 39; Wright v. Cadogan  
 (1764), 2 Eden, 239; Durnford v. Lane (1781), 1 Bro. C. C.  
 106; Caruthers v. Caruthers (1794), 4 Bro. C. C. 500; Field  
 v. Moore, Field v. Brown (1855), 7 De G. M. & G. 691.

- 950a. — — — — —.]—*WATKYNs v. WATKYNs* (1740), 2  
 Atk. 96; 26 E. R. 460.

*Annotations* :—*Refd.* Slesch v. Thorington (1754), 2 Ves.  
 Sen. 560. *Mentd.* Becket v. Becket (1760), 1 Dick.  
 340; Wright v. Morley, Morley v. St. Alban (1805), 11  
 Ves. 12; Duncan v. Duncan (1815), 19 Ves. 394.

953. *Add. Annotation* :—*Refd.* Davey v. Robinson,  
 [1923] 1 K. B. 563.

## PART XII. SECT. 2.

860 III. — *Bond in penal sum.*—  
 Summary judgment cannot be ob-  
 tained in an action on a bond in a  
 penal sum guaranteeing the payment  
 of a smaller sum.—*WESTERN DO-*  
*MINION INVESTMENT CO. v. McMILLAN*,  
 [1925] 1 W. W. R. 566.—CAN.

## PART XII. SECT. 3, SUB-SECT. 3.

sm. *Extension of time for payment in*  
*consideration of higher rate of interest.*—

*Held* : the proper time for applying to  
 amend in order to raise the above  
 defence was at the trial, & not on  
 appeal.—*WESTERN DOMINION INVEST-*  
*MENT CO. v. McMILLAN*, [1925] 4  
 D. L. R. 562.—CAN.

## PART XII. SECT. 6.

d i. — *Alternative pleas of payment*  
*& denial of execution.*—The plea of  
 payment will not amount to an  
 admission of the bond, & will not  
 relieve pltf. from the necessity of

proving the alleged loss of the bond.—  
*MUHAMMAD ZAFAR v. ZAHUR HUSAIN*  
 (1926), 1. L. R. 49 All. 78.—IND.

## PART XII. SECT. 8.

a i. — *At instance of obligee of*  
*earlier bond—Obligor's property in-*  
*sufficient to satisfy both bonds.*—*Held* :  
 there was no equity to restrain pro-  
 ceedings on the judgment obtained by  
 the obligee of the second bond.—  
*NEWENHAM v. MOUNTCASHIEL* (1872),  
 19 Gr. 530.—CAN.

## BOUNDARIES, FENCES AND PARTY-WALLS.

## Part I.—Boundaries.

8. *Add. Citation*:—109 L. T. 820.
10. *Add. Annotations*:—*Generally, Referred. Re* Boundary between Canada & Newfoundland in Labrador Peninsula (1927), 137 L. T. 187. *Mentd.* British Controlled Oilfields *v.* Stagg (1922), 127 L. T. 209.
20. *Add. Annotation*:—*Mentd.* R. *v.* Electricity Comrs., *Ex p.* London Electricity Joint Committee, [1924] 1 K. B. 171.
39. *Add. Annotations*:—*Referred. Re* Boundary between Canada & Newfoundland in Labrador Peninsula (1927), 137 L. T. 187. *Mentd.* British Controlled Oilfields *v.* Stagg (1922), 127 L. T. 209.
67. *Add. Annotation*:—*Mentd.* Brighton & Hove General Gas Co. *v.* Hove Bungalows (1923), 93 L. J. Ch. 197.
94. *Add. Annotations*:—*Consd.* Brighton & Hove General Gas Co. *v.* Hove Bungalows, [1924] 1 Ch. 372. *Mentd.* Barwick *v.* S. E. & C. Ry., [1921] 1 K. B. 187.

## Part II.—Fences.

- 131.** *Add. Annotations* :—**Mentd.** Michael v. Phillips (1923), 130 L. T. 142; Jacobs v. Batavia & General Plantations Trust (1924), 93 L. J. Ch. 520.
- 138.** *Add. Annotation* :—**Consd.** Reigate Corp'n. v. Surrey County Council, [1928] Ch. 359.
- 139.** *Add. Annotations* :—**Mentd.** Bromley v. Mercer, [1922] 2 K. B. 126; Fairman v. Perpetual Investment Bldg. Soc., [1923] A. C. 74
- 145.** *Add. Annotations* :—**As to** (1) **Appld.** Noble v. Harrison, [1926] 2 K. B. 332; St. Anne's Well Brewery Co. v. Roberts (1928), 92 J. P. 180. **Refd.** Ilford U. C. v. Beal, [1925] 1 K. B. 671. **Generally, Mentd.** Edwards v. Birmingham Navigations, [1924] 1 K. B. 341; Smith v. G. W. Ry. (1926), 135 L. T. 112.
- 146.** *Add. Annotation* :—**Refd.** Glasgow Corp'n. v. Taylor, [1922] 1 A. C. 44.
- 148.** *Add. Annotation* :—**Distd.** Sack v. Jones, [1925] Ch. 235.
- 154a.** **Spiked Iron fence—On bank.]—Held** : not a nuisance.—**GIBSON v. PLUMSTEAD BURIAL BOARD** (1897), 13 T. L. R. 273, C. A.
- 155.** *Add. Annotations* :—**Consd.** Bromley v. Mercer, [1922] 2 K. B. 126. **Refd.** Glasgow Corp'n. v. Taylor, [1922] 1 A. C. 44. **Mentd.** Edwards v. Birmingham Navigations, [1924] 1 K. B. 341.
- 157.** *Add. Annotation* :—**Refd.** Coleshill v. Manchester Corp'n., [1928] 1 K. B. 776.
- 158.** *Add. Annotation* :—**Refd.** Coleshill v. Manchester Corp'n., [1928] 1 K. B. 776.
- 159.** *Add. Annotation* :—**Refd.** Coleshill v. Manchester Corp'n., [1928] 1 K. B. 776.
- 163.** *Add. Annotations* :—**Consd.** Hardy v. C. L. Ry. (1920), 124 L. T. 136; Glasgow Corp'n. v. Taylor, [1922] 1 A. C. 44; Coleshill v. Manchester Corp'n., [1928] 1 K. B. 776. **Refd.** Mersey Docks & Harbour Board v. Procter, [1923] A. C. 253. **Mentd.** Fairman v. Perpetual Investment Bldg. Soc., [1923] A. C. 74; Sutcliffe v. Clients Investments Co., [1924] 2 K. B. 746; Harnett v. Fisher (1926), 135 L. T. 724; De Freville v. Dill (1927), 96 L. J. K. B. 1056.
- 168.** *Add. Annotations* :—**Consd.** Coleshill v. Manchester Corp'n., [1928] 1 K. B. 776. **Refd.** Sutcliffe v. Clients Investment Co., [1924] 2 K. B. 746. **Mentd.** Fairman v. Perpetual Investment Bldg. Soc., [1923] A. C. 74.
- 169.** *Add. Annotation* :—**Refd.** Ilford U. C. v. Beal, [1925] 1 K. B. 671.
- 171.** *Add. Annotations* :—**Folld.** Canvey Island Comrs. v. Preedy, [1922] 1 Ch. 179. **Refd.** Brighton & Hove Gas Co. v. Hove Bungalows (1923), 88 J. P. 61.
- 171a.** ————.]—**Pltfs.** were incorporated, under Canvey Island (Sea Defences) Act, 1883, for protecting Canvey Island from inundation by the sea. They succeeded former comrs. appointed by an Act of 1792 (32 Geo. 3, c. 31), which contained a power for these comrs. under s. 13 to erect a new sea wall further inward, on giving compensation to the owner whose land was taken for this purpose. In 1813 the new wall was built, & £150 given as compensation to the owner of the land taken. Under the Act of 1883 the property & rights of the former

**PART I. SECT. 1, SUB-SECT. 2.—A.**  
 m (p. 264) l. ———.]—PIERS v. WHIT-  
 ING, [1923] 3 D. L. R. 879.—CAN.  
 p (p. 264) l. ———.]—KINGSTON  
 v. HIGHLAND (1920), 47 N. B. R. 324.—  
 CAN.  
 p (p. 264) H. S. P. KANEEN v. MEL-  
 LISH (1922), 70 D. L. R. 327.—CAN.  
 b (p. 264) l. ———.]—A.-G.  
 FOR ONTARIO v. BOOTH (1923), 53  
 O. L. R. 374.—CAN.

**PART I. SECT. 1; SUB-SECT. 3.**  
r (p. 267) 1. ——— *Where mound*  
v. KOVACZ, [1922]

3 W. W. R. 102; 68 D. L. R. 793.—  
CAN.

**r (p. 267) ii. ————.]—**  
**Held:** evidence of the existence &  
location at one time of a certain mound,  
according to the rules governing sur-  
veys, was a proper way of establishing  
the boundary line.—**CAIN v. COPELAND,**  
[1922] 2 W. W. R. 1025; 67 D. L. R.  
581; 16 Sask. L. R. 529.—**CAN.**

*r* (p. 267) III. ——— *Where posts destroyed by fire.*—BARRY v. DES-ROSIERS (1908), 14 B. C. R. 126; 9 W. L. R. 633.—CAN.

8 (p. 267)

v. CURRY (1823-1900), 3 Ont. Dig.  
5823.—CAN.

r (p. 267) v. ——— Point of com-  
 mencement.]—HOOVER v. SABOURIN  
 (1874), 21 Gr. 333.—CAN.

W (p. 269) 1. — *Survey not conclusive.*—R. v. CROSBY (1892), 21 O. R. 591.—CAN.

**PART II. SECT. 2, SUB-SECT. 1.—A.**

sd. *Park*, adjoining railway—No obligation on municipal corporation to construct fence.}—**RICHARDSON v. CANADIAN NATIONAL RY. CO.**, [1927] 2 D. L. R. 801; 32 Can. Ry. Cas. 411; 60 O. L. R. 296.—**CAN.**

**-.]--ARTLEY**

comrs. were vested in pltfs. who had power under that Act to hold lands. Pltfs. claimed to be owners in possession of the foreshore between the new & the old wall. Deft. claimed under a conveyance of Apr. 1919 to be the freeholder in possession of a strip of land comprising part of this foreshore, & to be entitled as of right to excavate & remove shells & other drift even although, as pltfs. alleged, it deprived the new wall of protection & support, & exposed it to injury by the action of wind & water. The greater risk to the wall in consequence of deft.'s action was established by the evidence. In an action by pltfs. to restrain deft. from so removing the drift, & from trespassing on their land:—*Held*: (1) assuming the strip in question to be deft.'s freehold, pltfs. were still entitled to an injunction restraining him from so removing drift from the strip as to expose their wall & works & the lands protected thereby to greater risk of inundations of the sea; (2) pltfs. had established

their statutory title under the Acts of 1792 & 1883 to the whole of the land taken & set out pursuant to s. 13 of the first Act, & had exercised specific acts of ownership over the foreshore; the possession of pltfs. & of deft. being at most doubtful or equivocal the law attached possession to the title; deft., therefore, was a trespasser, & must be restrained from excavating or removing stones, shingle, shell or soil from the particular strip of foreshore & from otherwise trespassing on same.—*CANVEY ISLAND COMRS. v. PREEDY*, [1922] 1 Ch. 179; 91 L. J. Ch. 203; 126 L. T. 445; 86 J. P. 21; 66 Sol. Jo. 182; 20 L. G. R. 125.

203. After this case add, "Power of commissioners to direct repair of fences, see COMMONS, No. 939a."

204. *Add. Annotation*:—*Refd. Mersey Docks & Harbour Board v. Procter*, [1923] A. C. 253.

205. *Add. Annotation*:—*Distd. Sack v. Jones*, [1925] Ch. 235.

### Part III.—Party-Walls.

240. *Add. Annotations*:—*As to* (2) *Refd. Sack v. Jones*, [1925] Ch. 235; *Brooke v. Bool*, [1928] 2 K. B. 578.

249. *Add. Annotations*:—*Refd. Sack v. Jones*, [1925] Ch. 235; *St. Anne's Well Brewery Co. v. Roberts* (1928), 92 J. P. 95.

250. *Add. Annotation*:—*Apld. Sack v. Jones*, [1925] Ch. 235.

251. *Add. Annotations*:—*Apld. Sack v. Jones*, [1925] Ch. 235; *Simpson v. Weber* (1925), 133 L. T. 46. *Mentd. Hansford v. Jago*, [1921] 1 Ch. 322.

251a. *Right of support—By adjoining house.*—Pltf. & deft. were the owners of adjoining houses, separated by a party-wall, & with implied mutual rights of support. Pltf. alleged that owing to lack of repair & underpinning deft.'s house was subsiding, dragging

the party-wall over, & thereby damaging pltf.'s house:—*Held*: pltf.'s allegations had not been substantiated by the evidence. *Semble*: even if they had been substantiated pltf. would have had no cause of action.—*SACK v. JONES*, [1925] Ch. 235; 94 L. J. Ch. 229; 133 L. T. 129.

257. *Add. Annotation*:—*Refd. Ilford U. C. v. Beal*, [1925] 1 K. B. 671.

271a. — *No agreement for lease.*—*TAYLOR v. REED* (1815), 6 Taunt. 249; 128 E. R. 1030. *Annotation*:—*Refd. Collins v. Wilson* (1828), 1 Moo. & P. 454.

309. *Add. Annotation*:—*Refd. Brooke v. Bool*, [1928] 2 K. B. 578.

310. *Add. Annotations*:—*As to* (2) *Refd. Sack v. Jones*, [1925] Ch. 235; *Brooke v. Bool*, [1928] 2 K. B. 578.

### Part IV.—Evidence of Boundaries.

318. *Add. Annotation*:—*Mentd. Falcon v. Famous Players Film Co.* (1925), 42 T. L. R. 91.

320. *Add. Annotation*:—*Mentd. Belton v. Bass, Ratcliffe & Gretton*, [1922] 2 Ch. 449.

323. *Add. Annotations*:—*Refd. Aksionairnoye Obschestvo A. M. Luther v. Sagor*, [1921]

1 K. B. 456. *Mentd. Duff Development Co. v. Kelantan Government*, [1924] A. C. 797; *The Fagernes*, [1927] P. 311.

332. *Add. Annotation*:—*Refd. British Thomson-Houston Co. v. British Insulated & Helsby Cables*, [1924] 2 Ch. 160.

#### PART II. SECT. 2, SUB-SECT. 4.

*sn. Forest reserve.*—It is no defence to an action for recovery of a penalty from the owner of stock grazing on a forest reserve without a permit, that the reserve was not enclosed by a "lawful fence" as defined in the Fence Ordinance.—*MINISTER OF INTERIOR FOR CANADA v. NELSON*, [1920] 1 W. W. R. 129.—CAN.

#### PART III. SECT. 1, SUB-SECT. 3.—C. (b).

i. — *Wall built & used only by*

*adjoining owner.*—*Held*: deft. was answerable, as the injury was the direct result of negligence in the original construction of the wall.—*MCQUILLAN v. RYAN* (1921), 64 D. L. R. 482; 50 O. L. R. 337.—CAN.

ii. — *Party wall undermined—Extent of liability.*—*JEFFREY (F. W.) & SONS, LTD. v. COPELAND FLOUR MILLS, FINLAYSON v. COPELAND FLOUR MILLS*, [1923] 4 D. L. R. 1140; 52 O. L. R. 617.—CAN.

#### PART IV. SECT. 1.

h i. — *Surveyors giving conflicting evidence—Duty of court to accept evidence of surveyor making first examination.*—*SHUPE v. LANGENBURG RURAL MUNICIPALITY*, [1920] 3 W. W. R. 706.—CAN.

*sp. Subsequent conveyances—Acts of possession.*—*MATTHEWS v. GOODE* (1923), 56 N. S. R. 543.—CAN.



339. *Add. Annotation* :—**Mentd.** British Thomson-Houston Co. v. British Insulated & Helsby Cables, [1924] 2 Ch. 160.
343. *Add. Annotation* :—**As to** (3) **Consd.** Stoney v. Eastbourne R. C. & Devonshire (1926), 95 L. J. Ch. 312.
355. *Add. Annotation* :—**Mentd.** British Thomson-Houston Co. v. British Insulated & Helsby Cables, [1924] 2 Ch. 160.
359. *Add. Annotation* :—**Apld.** Stoney v. Eastbourne R. C. & Devonshire (1926), 95 L. J. Ch. 312.
402. *Add. Annotation* :—**Consd.** Stoney v. Eastbourne R. C. & Devonshire (1926), 135 L. T. 281.
416. *Add. Annotation* :—**Mentd.** Falcon v. Famous Players Film Co. (1925), 42 T. L. R. 91.
417. *Add. Annotation* :—**Mentd.** Hodgson v. McCreagh (1923), 92 L. J. Ch. 426.

# BUILDING CONTRACTS, ENGINEERS AND ARCHITECTS.

## Part II.—The Contract.

18. *Add. Annotation* :—*Refd. Boot (London) v. Uttoxeter U. D. C.* (1924), 88 J. P. 118.
20. *Add. Annotations* :—*Consd. Re Meyrick's Settlement, Meyrick v. Meyrick*, [1921] 1 Ch. 311. *Refd. Cohen v. Sellar*, [1926] 1 K. B. 536.
21. *Add. Annotation* :—*Refd. United States Shipping Board v. Durrell*, [1923] 2 K. B. 739.
34. *Add. Annotation* :—*Refd. Kelantan Government v. Duff Development Co.*, [1923] A. C. 395.
38. *Add. Annotation* :—*Refd. Bean v. Flaxton* R. D. C. (1928), 139 L. T. 320.
39. *Add. Annotations* :—*Distd. A.-G. v. Denby*, [1925] Ch. 596. *Apld. Bean v. Flaxton* R. D. C. (1928), 139 L. T. 320.
47. *Add. Annotation* :—*Refd. British & Foreign Marine Insce. v. Gaunt*, [1921] 2 A. C. 41.
49. *Add. Annotation* :—*Mentd. British & Beningtons v. North Western Cachar Tea Co.*, [1923] A. C. 48.
51. *Add. Annotation* :—*Consd. United States Shipping Board v. Durrell*, [1923] 2 K. B. 739.
56. *Add. Annotation* :—*Refd. United States Shipping Board v. Durrell*, [1923] 2 K. B. 739.
59. *Add. Annotation* :—*Refd. United States Shipping Board v. Durrell*, [1923] 2 K. B. 739.
- 65a. —.]—By a contract in writing dated Feb. 21, 1912, defts. agreed to build a steamer for, & deliver her to, pltf. on or before Feb. 28, 1913. The contract contained the following exceptions clause :—“ If the steamer is not delivered entirely ready to the purchaser at the above-mentioned time, the builders hereby agree to pay to the purchaser for liquidated

damages, & not by way of penalty, the sum of £10 sterling for each day of delay & in deduction of the price stipulated in this contract, being excepted only the cause of force majeure &/or strikes of workmen of the building yard where the vessel is being built, or the workshops where the machinery is being made, or at the works where steel is being manufactured for the steamer, or any works of any sub-contractor." As a result of the universal coal strike of 1912 the works from which defts. obtained their materials for other ships they were building got behindhand; the ship in turn to be built before pltf.'s occupied the berth that was intended to be occupied by pltf.'s much longer than otherwise she should have done, & consequently pltf.'s steamer was late in being laid down. The steamer having been delivered after the contract date, pltf. claimed damages:—*Held*: (1) the general dislocation of the business of defts. & those from whom they obtained materials operating indirectly on the completion of pltf.'s steamer, by preventing the completion of the vessel prior in turn, constituted a case of force majeure within the exceptions clause & excused defts. in respect of the delay so caused; (2) delay due to breakdown of machinery was, but delay due to bad weather was not, covered by the exception of force majeure.—*MATSOUKIS v. PRIESTMAN & Co.*, [1915] 1 K. B. 681; 84 L. J. K. B. 967; 113 L. T. 48; 13 Asp. M. L. C. 68; 20 Com. Cas. 252.

**Annotation :—***Refd.* *Lebeaupin v. Crispin*, [1920] 2 K. B. 714.

- 70. Add. Annotations:—**Consd. *Alexander v. Weber*, [1922] 1 K. B. 642. Refd. *Re A Debtor*, [1927] 2 Ch. 367.

### Part III.—Certificates.

76. *Add. Annotation:—Mentd. Charles v. Cardiff Collieries* (1928), 44 T. L. R. 448.
88. *Add. Annotation:—Mentd. Hirji Mulji v. Cheong Yue S.S. Co., [1926] A. C. 497.*
87. *Add. Annotation:—Mentd. Putsman v. Taylor, [1927] 1 K. B. 637.*

**PART II. SECT. 1.**

11. ——— *Forfeiture of deposit.* —  
**BAYNES & HORIE v. VANCOUVER**  
**BOARD SCHOOL TRUSTEES (B. C.),**  
**[1927] 2 D. L. R. 698.—CAN.**

**PART II. SECT. 2. SUB-SECT. 1.**

**sa. Repugnant provisions.]**—A provision for payment on the basis of cost plus a percentage if the actual cost is more or less than the contract price is repugnant where the contractor has made an absolute covenant to do the work & furnish the material for a definite sum.—*GIT v. FORBES* (1921), 62 S. C. R. 1; 59 D. L. R. 155.—CAN.

**PART II. SECT. 2, SUB-SECT. 8.**

sh. Contract to put old houses "in first class shape."—*Held*: the phrase must have reference to their capacity for taking on repairs, which could be only those which their aged condition permitted.—**HOUSE REPAIR & SERVICE CO., LTD. v. MILLER (1921), 64 D. L. R. 115; 49 O. L. R. 205.—CAN.**

**PART II. SECT. 3, SUB-SECT. 2.—C.**

52 iii. ———.]—Where the architect ordered additional work, & at that time it was apparent that the work originally contracted for could not be completed within the time fixed, but there was no application for extension nor intimation from the owner of an intention to enforce a claim for damages for delay:—*Held*: the contract should not be construed so as to impose upon the contractor the obligation of completing the work, including additions, within the time fixed.—*GRIER v. GEORGAS* (1923), 54 O. L. R. 580.—CAN.

**PART III. SECT. 1.**

78 xxvii. —.]—DIXON v. SOUTH AUSTRALIAN RAILWAYS COMBS. (1923), 34 C. L. R. 71.—AUS.

**84 1. — Certifier improperly influenced.]—Held:** the issue of the certifier's certificate was not a condition precedent to the right of the contractor to recover payment.—

**NORTHERN CONSTRUCTION Co. v. R.,**  
[1925] 2 D. L. R. 582.—CAN.

**sq. — Alteration of contract in many details.]—Held:** a final certificate was not a condition precedent to the bringing of an action by the contractor for the balance due.—**McMANUS v. GRAVELBOURG**, [1925] 1 D. L. R. 995.—**CAN.**

**PART III. SECT. 3, SUB-SECT. 2.—A.**

102 iv. ———.]—D'AMOURS v.  
TROIS-PISTOLES, [1924] 4 D. L. R. 501.  
—CAN.

**PART III. SECT. 3. SUB-SECT. 2.—C.**

108 II. —.]—*Held*: as soon as a dispute arose & was notified by either party the architect's certificate was eliminated as determining, or as part of the machinery for determining, the amount due to the contractor.—*PIGGOTT v. TOWNSEND* (1926), 27 S. R. N. S. W. 25; 44 N. S. W. W. N. 26.—**AUS.**

## Part IV.—Price.

129. *Add. Annotations* :—*Refd. Larrinaga v. Soc. Franco-Americaine des Phosphates de Medulla* (1923), 92 L. J. K. B. 455. *Mentd. Isaacs v. McAllum*, [1921] 3 K. B. 377.
- 129a. *Work abandoned.*—*SMALL & SONS, LTD. v. MIDDLESEX REAL ESTATES, LTD.*, [1921] W. N. 245.
132. *Add. Annotation* :—*Refd. Colley v. Overseas Exporters*, [1921] 3 K. B. 302.
144. *Annotation* :—For "[1910]" read "[1919]."
145. *Add. Annotation* :—*Refd. Moriarty v. Regent's Garage Co.*, [1921] 1 K. B. 423.
- 147a. ————.]—*SMALL & SONS, LTD. v. MIDDLESEX REAL ESTATES, LTD.*, [1921] W. N. 245.

## Part V.—Payment.

171. *Add. Annotation* :—*Consd. Re Mahmoud & Ispahani*, [1921] 2 K. B. 716.

## Part VI.—Alterations, Additions and Omissions.

213. *Add. Annotation* :—*Mentd. British & Foreign Marine Insce. v. Gaunt*, [1921] 2 A. C. 41.
215. *Add. Annotation* :—*Refd. Wisbech R. C. v. Ward*, [1927] 2 K. B. 556.

## Part VII.—Maintenance and Defect Clauses.

222. *Add. Annotation* :—*Consd. Murphy v. Hurly*, [1922] 1 A. C. 369.

### PART IV. SECT. 1.

*i.* ————.]—*CONSTRUCTION CO. v. SHAW*, [1923] 3 D. L. R. 893; 3 W. W. R. 301.—CAN.

*r i.* ————.]—*TORONTO RADIATOR MANUFACTURING CO. v. ALEXANDER* (1895), 2 Terr. L. R. 120.—CAN.

*st. Percentage on cost—How calculated.*—A contract entered into between pltf. & defts. for the construction of a vessel by pltf. for defts. provided that defts. were to pay pltf. an agreed sum for the use of their plant, consisting of yard, sheds, machinery, etc., & in addition ten per cent. above the cost of all labour & material which entered into the construction of the vessel:—*Held*: the ten per cent. must be restricted to labour & material supplied by pltf. & should not be extended to include engines, tanks, & other articles which were provided by defts. & with the supplying of which pltf. had nothing to do.—*BOEHNER v. BACKMAN* (1922), 55 N. S. R. 325.—CAN.

### PART IV. SECT. 2.

135 *i.* *General rule.*—*FISHER v. COX* (1921), 54 N. S. R. 226; 57 D. L. R. 567.—CAN.

135 *ii.* ————.]—*LA CROIX BROTHERS & Co. v. COOK* (Sask.), [1926] 4 D. L. R. 747; [1926] 3 W. W. R. 385.—CAN.

136 *iv.* ————.]—*WEBSTER v. MCINTOSH* (Sask.), [1927] 3 D. L. R. 115; [1927] 2 W. W. R. 838.—CAN.

136 *v.* ————.]—*EVANS v. DRAPER* (Sask.), [1927] 4 D. L. R. 1079; [1927] 3 W. W. R. 507.—CAN.

*h* (p. 367) *i.* ————.]—*SPEIRS, LTD. v. PETERSEN*, [1924] S. C. 428.—SCOT.

146 *iii.* ————.]—*WILLIAMS v. STEWART & CAMERON, LTD.*, [1923] 4 D. L. R. 855, 3 W. W. R. 1024.—CAN.

*sz. How calculated.*—The amount to which a contractor is entitled on a quantum meruit is the value of the work from the point of view of the value of the services rendered by him, not the benefit to the person for whom the work is done. Meaning of "cost" discussed.—*JAMIESON CONSTRUCTION CO., LTD. v. LACOMBE & NORTH WESTERN RY.*, [1926] 2 D. L. R. 653; [1926] 1 W. W. R. 628; 22 Alta. L. R. 165.—CAN.

### PART V.

*g* (p. 373) *i.* ————.]—*Ascertained by intention of parties.*—*HANSON v. PARKS*, [1925] 3 D. L. R. 1103.—CAN.

*r i.* ————.]—*Held*: to make the 20 per cent. retained by the owner a valid security for completion of the work, the architect in certifying 80 per cent. due should base his estimate on the proportion that the value of the work done bore to the cost of the entire undertaking.—*HOPGOOD v. FERRER* (1921), 62 D. L. R. 419; 62 S. C. R. 534.—CAN.

*h* (p. 374) *i.* ————.]—*Owner giving promissory notes in default of cash—Notes discounted with bank & interest paid.*—*SMITH v. McCUTCHEON*, [1922] 1 W. W. R. 306; 67 D. L. R. 554; 31 Man. L. R. 413.—CAN.

*sb. Under cost plus percentage agree-*

*ment—Part of material supplied by owner—Right of contractor to percentage on cost of such material.*—*SMITH v. McCUTCHEON*, [1922] 1 W. W. R. 306; 67 D. L. R. 554; 31 Man. L. R. 413.—CAN.

### PART VII.

*r i.* ————.]—*Defect due to unsuitability of subject-matter of contract—Method of repair.*—*Held*: the obligation of the contractor was not affected by the alleged fact that the material was not suitable to the climatic conditions. If a method of repair as satisfactory but less expensive than that called for by the contract could be secured by the owner, he should be bound to accept it.—*BLOME v. REGINA (CITY)*, [1920] 1 W. W. R. 311; 50 D. L. R. 93; 13 Alta. L. R. 94.—CAN.

*sd. Liability of contractor for defects—Materials supplied by contractor.*—*WEBSTER v. MCINTOSH* (Sask.), [1927] 3 D. L. R. 115; [1927] 2 W. W. R. 838.—CAN.

222 *i.* *Notice to remedy defects—Failure to comply with—Liability of contractor.*—Where a contractor was notified of defects by the owner & wrongly insisted that they were trifling & could be fixed up at slight expense, but the owner refused to accept repairs of that sort & employed a carpenter to do the necessary work:—*Held*: the contractor had all the notice & opportunity to repair properly which he could have claimed, even if the contract had expressly provided for such notice.—*WEBSTER v. MCINTOSH* (Sask.), [1927] 3 D. L. R. 115; [1927] 2 W. W. R. 838.—CAN.



## Part VIII.—Breach of the Contract.

230. *Add. Annotation*:—*Mentd. Britannia Hygienic Laundry Co. v. Thornycroft* (1926), 135 L. T. 83.

230a. — *Excess of cost of completion over contract price.*—By a contract in writing dated May 12, 1916, deft. agreed to build for pltf. a house, subject to the conditions set forth in the schedule thereto, for the sum of £1,900. The conditions provided (*inter alia*) that deft. should begin the works immediately after possession of the site was given to him, & should regularly proceed with & complete the same within six months after the date of the plans being passed by the local authority, & that if deft. should suspend the works or should not proceed with them with due diligence, pltf. by his architect should have power to give notice to deft. requiring him to proceed, & on failure of deft. to comply with such notice for thirty days pltf. should be entitled to enter upon & take possession of the works & site & employ any other person to complete the works. On July 10, 1916, the plans were duly passed. On July 14, 1916, an order was made by the Minister of Munitions under the powers of the Defence of the Realm (Consolidation) Regulations, 1914, which provided that on & after July 20, 1916, no person should without licence from the Minister of Munitions commence or carry on any building or construction work. On July 21 deft. applied for a licence to proceed, & continued to work fairly well until Aug. 12, when he ceased to proceed with due diligence with the deliberate intention, as the ct. held, of ensuring that the licence should be refused & that he should thereby be enabled to put an end to the contract. On Sept. 9 pltf.'s architect gave him thirty days' notice to proceed with the works. On Sept. 30, before the expiration

of the notice, the Minister of Munitions refused to grant the licence to proceed. In an action by pltf. for damages for breach of contract:—*Held*: deft. could not take advantage of the intervention of the Minister of Munitions, which was brought about by his own act, & the proper measure of damages was what it cost pltf. to complete the house substantially as it was originally intended & in a reasonable manner at the earliest moment he was allowed to proceed with the work, less any amount that would have been due & payable to deft. by pltf., had deft. completed the house to the roofing-in at the time agreed by the terms of his contract.—*MERTENS v. HOME FREEHOLDS Co.*, [1921] 2 K. B. 526; 90 L. J. K. B. 707; 125 L. T. 355, C. A.

238. *Add. Annotation*:—*Mentd. Admiralty Comrs. v. S.S. Chekiang*, [1926] A. C. 637.

265a. — *]*—A bill will not lie to compel the performance of an agreement to build an house.—*ERRINGTON v. AYNESLY* (1788), 2 Bro. C. C. 341; 2 Dick. 692; 21 E. R. 440.

*Annotation*:—*Mentd. Flint v. Brandon* (1803), 8 Ves. 159.

270. *Add. Annotation*:—*Mentd. Abrahams v. Reisch*, [1922] 1 K. B. 477.

273a. — *Non-compliance with building regulations.*—Deft. agreed to erect a house according to a plan to be approved by pltf., & according to the regulations of Metropolitan Building Acts. Pltf. approved a plan, but it was objected to by the Board of Works:—*Held*: deft. must specifically perform his contract, subject to the plan being modified to conform with the regulations of the Board of Works.—*CUBITT v. SMITH* (1864), 11 L. T. 298; 28 J. P. 820; 10 Jur. N. S. 1123.

*Annotation*:—*Refd. Wolverhampton Corpn. v. Emmons*, [1901] 1 K. B. 515.

## Part IX.—Excuses for Non-Performance.

279. *Add. Annotations*:—*Refd. Larrinaga v. Soc. Franco-Americaine des Phosphates de Medulla* (1923), 92 L. J. K. B. 455. *Mentd. Isaacs v. McAllum*, [1921] 3 K. B. 377.

282. *Add. Annotations*:—*As to (2) Refd. Mertens v. Home Freeholds Co.*, [1921] 2 K. B. 526;

*Dominion Coal Co. v. Maskinonge S.S. Co.*, [1922] 2 K. B. 132; *Larrinaga v. Soc. Franco-Americaine des Phosphates de Medulla* (1923), 92 L. J. K. B. 455; *Cantiere Navale Triestina v. Handelsvertretung der Russe Soz. Fod. Naphtha Export* (1925), 94 L. J. K. B. 579;

## PART VIII. SECT. 1.

k i. — *Different contractors for building & joiner work.*—A builder contracted to carry out the building & plastering work in connection with the erection of a house, & another contractor undertook to carry out the joiner work. The builder finished his work, & the owner accepted possession of the house & paid two instalments of the account. Afterwards the outside walls began to crack, & it was discovered that the walls were off the plumb. In an action by the builder for the balance of his account, the owner averred that the defect in the walls was occasioned by the use of faulty materials in the construction of the concrete floors by the builder. The builder averred that the damage to the walls was caused by the use of

unseasoned timber in the construction of the roof by the other contractor. Neither of these averments was established at the proof, but either of them might have been the cause of the cracking of the walls:—*Held*: breach of contract had not been established against pursuer, & he was entitled to decree for the balance of the contract price.—*CARRUTHERS v. MACGREGOR*, [1927] S. C. 816.—*SCOT.*

## PART VIII. SECT. 2 SUB-SECT. 1.

(p. 389) i. Where no time had been set for the completion of a roof, which deft. agreed to build on pltf.'s hotel, & at the expiration of a reasonable time the contractor left it unfinished, & the owner agreed to the contractor undertaking to complete it within a further

period:—*Held*: the contractor was not liable in damages where, within that period, the unfinished condition of the roof resulted in its destruction by a storm & consequential damage by rain to the hotel.—*DUMONT v. LANDRY* (Sask.), [1927] 3 D. L. R. 605; [1927] 2 W. W. R. 869.—*CAN.*

e (p. 389) i. — *Right to general damages—Not where no evidence of loss beyond specific damage.*—*EVANS v. DRAPER* (Sask.), [1927] 4 D. L. R. 1079; [1927] 3 W. W. R. 507.—*CAN.*

## PART VIII. SECT. 3, SUB-SECT. 1.

243 i. — *Deduction of value of incomplete work with fifty per cent. thereon—Penalty.*—*MACDONALD v. NORTH WEST BISCUIT Co.*, [1924] 1 D. L. R. 987; 1 W. W. R. 795.—*CAN.*

Kursell v. Timber Operators & Contractors, [1927] 1 K. B. 298; Hyman v. Hyman, Hughes v. Hughes (1928), 139 L. T. 416; The Penelope, [1928] P. 180.

285a. — — — Brought about by contractor's own act.]—MERTENS v. HOME FREEHOLDS Co., No. 230a, ante.

## Part X.—Forfeiture.

293. *Add. Annotation* :—*Re*ld. United States Shipping Board v. Durrell, [1923] 2 K. B. 739.

295. *Add. Annotation* :—*Ment*d. Bhagchand Dagdusa Gujrathi v. Secretary of State for India in Council (1927), 43 T. L. R. 617.

## Part XI.—Materials.

312. *Add. Annotation* :—*As to* (1) *Ap*ld. *Re* Blyth Shipbuilding & Dry Docks Co. Forster v. Blyth Shipbuilding & Dry Docks Co., [1926] Ch. 494.

315. *Add. Annotation* :—*Ment*d. Behnke v. Bede Shipping Co., [1927] 1 K. B. 649.

316. *Add. Annotation* :—*Re*ld. *Re* Blyth Shipbuilding & Dry Docks Co., Forster v. Blyth Shipbuilding & Dry Docks Co., [1926] Ch. 494.

318. *Add. Annotation* :—*Ap*ld. *Re* Blyth Shipbuilding & Dry Docks Co., Forster v. Blyth Shipbuilding & Dry Docks Co., [1926] Ch. 494.

319. *Add. Annotation* :—*Dist*d. *Re* Blyth Shipbuilding & Dry Docks Co., Forster v. Blyth Shipbuilding & Dry Docks Co., [1926] Ch. 494.

319a. — — —.]—A shipbuilding contract provided for payment of the price of the vessel by instalments, the first to be paid on the signing of the contract, the next when the keel was laid, & others at various stages in the progress of the ship's construction. She was to be constructed under the inspection of the purchasers' surveyor, to whose

approval the quality of the material used & the workmanship were to be subject. Clause 6 provided that from & after payment by the purchasers to the builders of the first instalment on account of the price the vessel & all materials & things appropriated for her should thenceforth, subject to the lien of the builders for unpaid purchase-money including extras, become & remain the absolute property of the purchasers. After the first instalments of the purchase-money had been paid & the vessel had been partly constructed, a receiver was appointed in an action commenced by debenture-holders of the shipbuilding co. for enforcing their security :—*Held* : certain worked material lying in the yard ready to be incorporated into the hull of the vessel & approved by the purchasers' surveyor, had not been "appropriated for her" within the above clause so as to become the property of the purchasers.—*Re* BLYTH SHIPBUILDING & DRY DOCKS CO., FORSTER v. BLYTH SHIPBUILDING & DRY DOCKS CO., [1926] Ch. 494; 95 L. J. Ch. 350; 134 L. T. 643, C. A.

*Annotation* :—*Re*ld. Behnke v. Bede Shipping Co., [1927] 1 K. B. 649.

## Part XII. Assignment and Devolution of Rights and Liabilities.

340. *Add. Annotation* :—*Re*ld. Earle v. Hemsworth R. D. C. (1928), 44 T. L. R. 758.

341. *Add. Annotations* :—*As to* (1) *Cons*d. *Re* National Benefit Assce., [1924] 2 Ch. 339. *As to* (3) *Ap*ld. *Re* City Life Assce., [1926] Ch. 191. *As to* (4) *Cons*d. *Re* National Benefit Assce., [1924] 2 Ch. 339.

342. *Add. Annotation* :—*Re*ld. Jones v. Oceanic Steam Navigation Co., [1924] 2 K. B. 730.

342a. — — —.]—*Held* : retention money, although not becoming payable until a later date than the assignment, constituted a debt or legal thing in action which could be assigned, &

could be sued for in an action without joining the assignors as parties.—*G. & T. EARLE, LTD. v. HEMSWORTH RURAL DISTRICT COUNCIL* (1928), 44 T. L. R. 758, C. A.

344. *Add. Annotations* :—*Re*ld. Cottage Club Estates v. Woodside Estate Co. (Amersham) (1927), 97 L. J. K. B. 72; *Re* Wait, [1927] 1 Ch. 606; Earle v. Hemsworth R. D. C. (1928), 44 T. L. R. 758.

345. *Add. Annotations* :—*Re*ld. Lawrence v. Hayes, [1927] 2 K. B. 111; Earle v. Hemsworth R. D. C. (1928), 44 T. L. R. 605.

345a. *Effect of*—On contractor's rights under

PART XI. SECT. 2, SUB-SECT. 1.  
a l. — — —.]—An unpaid builder as

such has no lien upon the building in his possession for the balance due to him, unless under the contract for con-

struction.—*N. P. A. CHELLIAR FIRM v. SHARMA* (1927), 1 L. R. 6 Ran. 87.—*IND.*

arbitration clause.]—Building contractors assigned to a bank all money due & to become due to them under a building contract, which contained an arbn. clause, & the proper notice of the assignment was served on the building owners. Disputes having arisen regarding a claim by the contractors for compensation & extra payment, recourse was had to arbn. :—*Held* : (1) the arbitrator had jurisdiction to entertain the arbn., since the contractors' rights under the arbn. clause did not constitute a "legal" or "other remedy" for the debt within Law of Property Act, 1925 (c. 20), s. 136 (1), & were not passed

& transferred to the bank by the assignment; (2) the arbitrator had to consider not merely the terms of the contract within the limits of the document, but also the application & enforcement of those terms, having regard to the whole legal position which the parties had created, including the relinquishment by the contractors themselves by the assignment of their right to claim the debt, & he must make his award in favour of the building owners.—COTTAGE CLUB ESTATES v. WOODSIDE ESTATES Co. (AMERSHAM). [1928] 2 K. B. 463; 97 L. J. K. B. 72; 139 L. 353; 44 T. L. R. 20; 33 Com. Cas. 97.

## Part XV.—Arbitration Clauses.

386. *Add. Annotation* :—*Refd.* Charles v. Cardiff Collieries (1928), 44 T. L. R. 448.

387. *Add. Annotation* :—*Consd.* Czarnikow v. Roth, Schmidt, [1922] 2 K. B. 478.

388. *Add. Annotation* :—*Refd.* Czarnikow v. Roth, Schmidt, [1922] 2 K. B. 478.

388a. Clause restricting time for opening reference —“Until after completion of works”—*Meaning of.*]—The form of building contract issued by the Royal Institute of British Architects provides, by condition 31 in the schedule thereto, that should the building owner not pay the builder any sum certified by the architect within the time limited by the contract, the builder is to be at liberty to determine the contract & recover from the building owner payment for all work executed. Condition 32 provides that in case any difference shall arise between the building owner & the builder as to the construction of the contract or as to any matter arising thereunder, such difference is to be referred to arbn., but that “such reference . . . shall not be opened until after the completion of the works.” During the progress of certain

works which were being carried out under a building contract in the above form the building owner neglected to pay the builder a sum certified by the architect within the stipulated time, & thereupon the builder determined the contract under condition 31. The builder commenced arbn. proceedings while the contract works were still uncompleted, & the arbitrator made an award in his favour for the money due to him under the contract :—*Held* : the words “until after the completion of the works” in condition 32 meant until after completion of the whole of the works contracted for, & not merely until after completion of so much of the works as the builder was under the circumstances bound to perform; consequently the arbn. was premature & the arbitrator had no jurisdiction to make the award; or at all events the validity of the award was sufficiently doubtful to render it improper to enforce it summarily.—SMITH v. MARTIN, [1925] 1 K. B. 745; 94 L. J. K. B. 645; 133 L. T. 196, C. A.

395. *Add. Annotation* :—*Mentd.* Hirji Mulji v. Cheong Yue S.S. Co., [1926] A. C. 497.

## Part XVI.—Architects and Engineers.

425. *Add. Annotations* :—*Folld.* Boynton v. Richardson (1924), 69 Sol. Jo. 107. *Consd.* Wisbech R. D. C. v. Ward (1927), 91 J. P. 200.

425a. — — — Interim certificates.]—Pltfs., a local authority, made a contract with builders under which deft. was the architect.

### PART XIII. SECT. 2, SUB-SECT. 2.

372 ii. — *Mechanic's lien action pending against sub-contractor—Liability for sales tax.*]—HOPE (HENRY) & SONS, LTD. v. SHREHY (RICHARD) & SONS (1922), 52 O. L. R. 237.—CAN.

e i. — — —.]—Contractors :—*Held* : entitled to damages for breach of contract by sub-contractors by reason of materials not being delivered in time.—HOPE (HENRY) & SONS, LTD. v. SHREHY (RICHARD) & SONS, (1922), 52 O. L. R. 237.—CAN.

### PART XV. SECT. 1.

a i. — — —.]—A contract for the construction of a covered way from the mainland to a lighthouse contained an arbn. clause, the first part of which referred all disputes, whenever arising, as to the contract & its execution to the employers' engineer, while the second part referred any dispute or claim arising after, or consequent on,

the completion of the contract to another engineer. A dispute having arisen as to the rate payable for the removal of certain rock, the contractors refused to continue the work, & the employers took the work out of their hands. An action having been brought by the contractors for payment of sums alleged to be due under the contract & for damages :—*Held* : as the work was still in progress, the first part of the arbn. clause applied, it being immaterial that the work had been taken out of the hands of the pursuers, & action sisted to allow the arbn. to proceed.—CRAWFORD v. NORTHERN LIGHTHOUSES COMRS., [1925] S. C. (H. L.) 22.—SCOT.

### PART XV. SECT. 4.

e i. — — —.]—A building contract contained a clause referring all disputes arising under the contract to the arbn. of the employers' engineer, who in fact superintended & directed the work :—*Held* : as the contractors had agreed

to the appointment of the engineer as arbiter, they could not object to his acting upon the ground that he was an interested party with a bias.—CRAWFORD v. NORTHERN LIGHTHOUSES COMRS., [1925] S. C. (H. L.) 22.—SCOT.

### PART XVI. SECT. 1.

e i. — — — *Unqualified person.*]—*Held* : a person illegally employed could not thereby found a claim for admission to the Association of Professional Engineers as being a person “practising as a professional engineer” under Engineering Profession Act, Mar. 1920 (c. 38), s. 7.—*Re* ENGINEERING PROFESSION ACT, *Re* JOHNSON, [1922] 3 W. W. R. 424; 70 D. L. R. 161.—CAN.

st. *Termination of appointment—By verbal cancellation given to architect's assistant—Record of cancellation made by architect.*]—*Held* : effective.—ROWLEY v. COOK, [1920] 2 W. W. R. 331; 52 D. L. R. 709.—CAN.



The Ministry of Health had the right to require the use of materials which the Disposals Board had for sale. While the houses were in course of erection deft. gave interim certificates, & he also gave documents under which pl'tfs. paid the Board for articles supplied by the Board. Under these certificates & documents pl'tfs. had to pay both the builders & the Board for the same material. In an action by pl'tfs. to recover the amount from deft. on the ground of negligence:—*Held*: as the certificates were only interim certificates, & as deft. on going into the figures with pl'tfs. had indicated to them that the amount paid to the Disposals Board was to be deducted from the final balance due to the contractors, deft. had not been guilty of

**negligence, & the action failed—WISBECH  
RURAL DISTRICT COUNCIL v. WARD, [1928] 2  
K. B. 1; 97 L. J. K. B. 56; 138 L. T. 308; 91  
J. P. 200; 44 T. L. R. 62; 26 L. G. R. 10, C. A.**

**428. Add. Annotation :—**Consd. Wisbech R. C. v. Ward, [1927] 2 K. B. 556.

484. *Add. Annotation* :—Dist. Nixon v. Erith  
U.D.C., [1924] 1 K. B. 87.

**486. Add. Annotation :—***Reid. Nixon v. Erith*  
U. D. C., [1924] 1 K. B. 819.

**452a. ——— General Housing Memorandum  
No. 4.]—ELKINGTON v. WANDSWORTH CORPN.  
(1924), 41 T. L. R. 76 ; 88 J. P. Jo. 702.**

**458. Add. Annotation :—***Apld. Higgins v. Northampton County Borough* (1926), 90 J. P. 82.

**PART XVI. SECT. 2, SUB-SECT. 2.**

k l. — *In giving decisions.*—Where the owner's engineer is made arbitrator, he must guard against being unduly influenced by his employers; & if it appears that he is so biased as to be likely not to decide fairly, then the contractor will not be bound by his decision.—*BLOME v. REGINA (CITY)*, [1920] 1 W. W. R. 311; 60 D. L. R. 93; 13 Alta. L. R. 94.—CAN.

**PART XVI. SECT. 3, SUB-SECT. 1.**

d. i. — — —.]—Plff. :—*Held* : entitled to payment for plans adopted & used, although there was no express contract to that effect.—**SINCLAIR v. LAND SETTLEMENT BOARD (B.C.)**, [1925] 2 D. L. R. 1050.—**CAN.**

g i. — Work done before registra-

*tion as architect.*—A person employed as an architect who is not registered, & whose employment is discontinued before he becomes registered, cannot recover for his services.—*ROWLEY v. COOK*, [1920] 2 W. W. R. 331; 52 D. L. R. 709.—CAN.

**PART XVI. SECT. 3, SUB-SECT. 2.**

**k i. Plans approved by employer—To be used at future date.]—Held: employer bound to pay, even though the building contemplated was never erected.—QUIRK v. TOWN OF SYDNEY MINES (1923), 56 N. S. R. 281.—CAN.**

**PART XVI. SECT. 3, SUB-SECT. 3.**

**' 445 ii. —.]—An architect employed to prepare plans is entitled to be paid a fair remuneration for his work, notwithstanding that the employer does not benefit by the work & does**

not erect the buildings contemplated by the plans.—*HUTCHINSON v. ZIVE* (1927), 48 N. L. R. 451.—S. AF.

**PART XVI. SECT. 8, SUB-SECT. 4.**

c (p. 445) l. ———.]—Pltf., an architect, prepared plans for & superintended the erection of a building estimated to cost \$175,000. After \$50,000 had been expended, pltf. rendered a partial account based upon the estimated cost at 3½ per cent., amounting to \$6,125, intimating that the full charge for his services would be 5 per cent. of the estimated cost. Def't. considered the claim excessive, & dispensed with pltf.'s further services:—*Held*: pltf. should be awarded for his services up to the time of his dismissal, including damages for dismissal, the sum of \$8,000.—*COBB v. ROY*, [1921] 54 N. S. R. 135; 57 D. L. R. 212.—CAN.

## BUILDING SOCIETIES.

## Part III.—Rules.

17. *Add. Annotation*:—*Apld. Re Quinn & National Catholic Benefit & Thrift Soc.'s Arbitration*, [1921] 2 Ch. 318.
20. *Add. Annotation*:—*Consd. Re Quinn & National Catholic Benefit & Thrift Soc.'s Arbitration*, [1921] 2 Ch. 318.

## Part IV.—Officers.

36. *Add. Annotation*:—*Refd. Deuchar v. Gas Light & Coke Co.*, [1924] 2 Ch. 426.
37. *Add. Annotation*:—*Refd. Sun Permanent Benefit Bldg. Soc. v. Western Suburban & Harrow Road Permanent Bldg. Soc.*, [1921] 2 Ch. 438.
41. *Add. Annotation*:—*Mentd. Sun Permanent Benefit Bldg. Soc. v. Western Suburban & Harrow Road Permanent Bldg. Soc.*, [1921] 2 Ch. 83.
54. *Add. Annotation*:—*Mentd. Sun Permanent Benefit Bldg. Soc. v. Western Suburban & Harrow Road Permanent Bldg. Soc.*, [1921] 2 Ch. 83.
- 65a. *S. P. R. v. HASTIE* (1863), Le & Ca. 269; 1 New Rep. 335; 32 L. J. M. C. 63; 7 L. T. 695; 27 J. P. 85; 9 Jur. N. S. 235; 9 Cox, C. C. 264; 169 E. R. 1391; *sub nom.* *R. v. HARTIE*, 11 W. R. 293, C. O. R.

## Part VII.—Advances.

109. *Add. Annotation*:—*Mentd. Sun Permanent Benefit Bldg. Soc. v. Western Suburban & Harrow Road Permanent Bldg. Soc.* (1921), 91 L. J. Ch. 74.
110. *Add. Citation*:—*subsequent proceedings*, [1921] 2 Ch. 438, C. A.
- 110a. ——— *Rights & benefits under—Whether transferable.*—*SUN BUILDING SOCIETY v. WESTERN SUBURBAN & HARROW ROAD BUILDING SOCIETY*, No. 230a, *post*.
111. *Add. Annotation*:—*Generally, Mentd. Sun Permanent Benefit Bldg. Soc. v. Western Suburban & Harrow Road Permanent Bldg. Soc.*, [1921] 2 Ch. 438.
112. *Add. Annotations*:—*As to (1) Refd. Sun Permanent Benefit Bldg. Soc. v. Western Suburban & Harrow Road Permanent Bldg. Soc.*, [1921] 2 Ch. 438. *As to (3) Refd. Sun Permanent Benefit Bldg. Soc. v. Western Suburban & Harrow Road Permanent Bldg. Soc.*, [1921] 2 Ch. 438. *As to (4) Refd. Sun Permanent Benefit Bldg. Soc. v. Western Suburban & Harrow Road Permanent Bldg. Soc.*, [1921] 2 Ch. 438.
119. *Add. Citation*:—*subsequent proceedings*, [1921] 2 Ch. 438, C. A.
143. *Add. Annotation*:—*Mentd. Campbell v. Pollak*, [1927] A. C. 732.
144. *Add. Annotation*:—*Mentd. Campbell v. Pollak*, [1927] A. C. 732.
146. *Add. Annotation*:—*Refd. Sun Permanent Benefit Bldg. Soc. v. Western Suburban & Harrow Road Permanent Bldg. Soc.* (1921), 91 L. J. Ch. 74.
184. *Add. Annotations*:—*Refd. Sweet v. Macdiarmid (or Henderson)* (1920), 7 Tax Cas. 640; *Inland Revenue Comrs. v. Hay* (1924), 8 Tax Cas. 636.

## Part VIII.—Borrowing and Loans.

- 187a. *For purchase of mortgages—Whether purpose of society.*—*SUN BUILDING SOCIETY v. WESTERN SUBURBAN & HARROW ROAD BUILDING SOCIETY*, No. 230a, *post*.
190. *Add. Annotation*:—*Refd. Sun Permanent Benefit Bldg. Soc. v. Western Suburban & Harrow Road Permanent Bldg. Soc.*, [1921] 2 Ch. 83.
198. *Add. Annotations*:—*As to (2) Refd. Bowling v. Cox*, [1926] A. C. 751. *Generally, Mentd. Dominion Coal Co. v. Mackinonge S.S. Co.*, [1922] 2 K. B. 132; *Boston Corpn. v*

## PART VII. SECT. 2.

n i. ——— *Right to partial release of mortgaged property.*—*ALMON v. FAIRBANKS* (1876), 10 N. S. R. (1 R. & C.) 407.—CAN.

## PART VII. SECT. 3.

sd. *Assumption of mortgage by purchaser—Monthly instalments unpaid—*

*Rights of purchaser.*—*STARK v. SHEPHERD* (1881), 29 Gr. 316.—CAN.

## PART VII. SECT. 4.

124 i. *Determination of amount payable—Liability for losses incurred in management of society.*—*Held*: under the mtge. in question & the bye-laws & rules of the society, the society could not charge against the mtge. a share of

losses incurred in the management of the society.—*LEE v. CANADIAN MUTUAL LOAN CO.* (1908), 23 C. L. T. 165; 5 O. L. R. 471; 2 O. W. R. 370.—CAN.

## PART VII. SECT. 5, SUB-SECT. 2.

t. For the existing "*Held*" paragraph read "*Held*: pltf. was entitled to foreclose for the whole amount due, to be computed according to the rules."

- Fenwick (1923), 129 L. T. 766; Holt v. Markham, [1923] 1 K. B. 504; Cantiare San Rocco S. A. v. Clyde Shipbuilding & Engineering Co., [1924] A. C. 226; Anchor Donaldson v. Crossland (1928), 45 T. L. R. 97.
199. *Add. Annotations*:—Mentd. Liggett (Liverpool) v. Barclays Bank (1927), 137 L. T. 443; Lloyds Bank v. Chartered Bank of India, Australia & China (1928), 97 L. J. K. B. 609.
202. *Add. Annotation*:—Refd. Joachimson v. Swiss Bank Corpn., [1921] 3 K. B. 110.
204. *Add. Annotation*:—Mentd. Sun Permanent Benefit Bldg. Soc. v. Western Suburban & Harrow Road Permanent Bldg. Soc., [1921] 2 Ch. 83.
214. *Add. Annotations*:—Mentd. Liggett (Liverpool) v. Barclays Bank (1927), 137 L. T. 443; Lloyds Bank v. Chartered Bank of India, Australia & China (1928), 97 L. J. K. B. 609.
220. *Add. Annotations*:—Refd. Bowling v. Cox, [1926] A. C. 751. Mentd. Dominion Coal Co. v. Mackinonge S.S. Co., [1922] 2 K. B. 132; Boston Corpn. v. Fenwick (1923), 129 L. T. 766; Holt v. Markham, [1923] 1 K. B. 504; Cantiare San Rocco S. A. v. Clyde Shipbuilding & Engineering Co., [1924] A. C. 226; Anchor Donaldson v. Crossland (1928), 45 T. L. R. 97.
223. *Add. Annotation*:—Mentd. Sun Permanent Benefit Bldg. Soc. v. Western Suburban & Harrow Road Permanent Bldg. Soc., [1921] 2 Ch. 83.

## Part IX.—Investment or Other Application of Surplus Funds.

228. *Add. Annotation*:—Refd. Sun Permanent Benefit Bldg. Soc. v. Western Suburban & Harrow Road Permanent Bldg. Soc., [1921] 2 Ch. 438.
230. *Add. Citation*:—*subsequent proceedings*, [1921] 2 Ch. 438, C. A.
- 230a. ——— **Insufficient surplus funds to carry out purchase.**—Although a building society may transfer its mtges. either to an individual or to another building society, yet if it agrees to sell those securities to a purchaser & makes no stipulation as to what it is that the purchaser is to take under such agreement for sale, the only conclusion that can be drawn is that it agrees to transfer such benefits as it itself enjoys, & that it cannot do. Pltf. society was in liquidation, & in May, 1919, its liquidators entered into a contract with deft. society for the sale to deft. society of thirty-seven of the freehold & leasehold mtges. of pltf. society for £6,400. Deft. society having declined to complete, pltf. society issued a writ for specific performance. Subsequently the parties by agreement stated a special case for the opinion of the ct. as to, amongst other things, whether the contract was *ultra vires* deft. society, because it had not at the date of the contract surplus funds properly available for investment, & whether pltf. society could transfer the mtges. without the consent of the mtgors. Both these points were decided in favour of pltf. society:—*Held*: (1) although the contract might be *intra vires* in its inception, notwithstanding that deft. society had not sufficient surplus funds to carry it out, yet if at the time when an order was made for its specific performance deft. society had not sufficient surplus funds the effect of the order would be to require the society, which was not an investing society, to invest moneys which were not its surplus funds in a security in which it had no power to invest them; (2) a further effect of the order, if made, would be to require deft. society to borrow money to pay for the mtges.; & as its borrowing powers could not be resorted to except for borrowing for the purposes of the society, & as the purchase of the mtges. was not one of those purposes, the order would be an order requiring deft. society to do an *ultra vires* act; therefore no order for specific performance ought in the circumstances to be made; (3) having regard to the fact that the mtges. in question were building society mtges., pltf. society was not in a position to transfer to deft. society all the rights & benefits to which under them it was itself entitled, pltf. society was not ready & willing to perform its part of the contract, & consequently it could not enforce the contract.—*SUN BUILDING SOCIETY v. WESTERN SUBURBAN & HARROW ROAD BUILDING SOCIETY*, [1921] 2 Ch. 438; 91 L. J. Ch. 74; 125 L. T. 782; 37 T. L. R. 844; 65 Sol. Jo. 734, C. A.

## Part X.—Disputes.

242. *Add. Citation*:—37 J. P. 468. L. C. C. (1927), 137 L. T. 49.
251. *Add. Annotation*:—Refd. Northwood v. 277. *Add. Citation*:—37 J. P. 468.

## Part XIII.—Dissolution.

307. *Add. Citation*:—*subsequent proceedings*, [1921] 2 Ch. 438, C. A.
370. *Add. Annotations*:—As to (2) Refd. Bowling v. Cox, [1926] A. C. 751. Generally, Mentd. Dominion Coal Co. v. Mackinonge S.S. Co., [1922] 2 K. B. 132; Boston Corpn. v. Fenwick (1923), 129 L. T. 766; Holt v. Markham, [1923] 1 K. B. 504; Cantiare San Rocco S. A. v. Clyde Shipbuilding & Engineering Co., [1924] A. C. 226; Anchor Donaldson v. Crossland (1928), 45 T. L. R. 97.



## BURIAL AND CREMATION.

### Part I.—Rights and Duties of Executors and Others as to Burial.

- 20a. Not freehold estate—No personal estate—3 & 4 Will. 4, c. 104.]—*CARTER v. BEARD* (1839); 10 Sim. 7; 3 Jur. 532; 59 E. R. 514.  
*Annotations*:—*Reid. Re Rhodes, Rhodes v. Rhodes* (1890), 44 Ch. D. 94. *Mentd. Wentworth v. Tubb* (1841), 1 Y. & C. Ch. Cas. 171.
45. *Add. Annotation*:—*As to* (2) *Reid. Kent v. Atkinson*, [1923] P. 142.
47. *Add. Annotation*:—*Reid. Barnett v. Cohen*, [1921] 2 K. B. 461.
- 56a. — Verbal instructions by deceased for elaborate funeral.]—*Re READ, GALLOWAY v. HARRIS* (1892), 36 Sol. Jo. 626.

### Part III.—Burial in Churches and Churchyards.

121. *Add. Annotation*:—*Reid. R. v. North, Ex p. Oakey* (1926), 43 T. L. R. 60.
138. *Add. Annotation*:—*Reid. Capel St. Mary, Suffolk v. Packard*, [1927] P. 289.

### Part V.—Fees on Burial in Churchyard or Cemetery.

165. *Add. Citation*:—*sub nom. ANON.*, 1 Vent. 274.

### Part VII.—Provision of Land for Burial Grounds.

201. *Add. Annotation*:—*Generally, Reid. R. v. North, Ex p. Oakey* (1926), 43 T. L. R. 60.

### Part VIII.—Provision of Burial Grounds under Burial Acts.

204. *Add. Annotation*:—*Consd. Nicholl v. Llantwit Major Parish Council*, [1924] 2 Ch. 214.
223. *Add. Annotation*:—*Reid. Rotunda Hospital, Dublin v. Coman* (1920), 7 Tax. Cas. 517.
- 228a. Power to acquire land by exchange.]—*NICHOLL v. LLANTWIT MAJOR PARISH COUNCIL*, No. 291a, *post*.
231. *Add. Annotation*:—*As to* (1) *Appld. Hoskyns-Abrahall v. Paignton U. D. C.*, [1928] Ch. 671.
- 262a. —.]—The rights of the grantee of a grave or vault in a cemetery, under Cemeteries Clauses Acts, are rights of interment of the dead therein, of erecting or constructing a monument or vault, & of keeping such monument or vault in reasonably good repair, subject to the regulations of the burial authority, & with its consent. The grantee has no freehold interest in the grave or vault, & no right to use same for the purpose of performing private rites or ceremonies, or to open & enter the vault or tomb for the purpose of depositing any articles therein, without the consent of the burial authority.—*HOSKYNs-ABRAHALL v. PAIGNTON URBAN COUNCIL*, [1928] Ch. 671; 97 L. J. Ch. 225; 139 L. T. 115; 92 J. P. 103; 26 L. G. R. 431; *affd.*, 92 J. P. Jo. 848, C. A.

#### PART III. SECT. 6, SUB-SECT. 2.

136 i. *Removal*—To another part of churchyard.]—Where a proposed extension of the fabric of a Scottish Episcopal church entailed encroachment on part of the graveyard surrounding the church, the ct., in the exercise of the *nobile officium*, authorised the removal, subject to certain conditions, of the gravestones, & their re-erection upon or near the fabric of the new building.—*Cemeteries Act*, [1926] S. C. 750.—SCOT.

#### PART VIII. SECT. 5.

260 i. *Extent of right*—To A. “& his heirs & assigns.”—Under Cemetery Act, R. S. A., 1922 (c. 166), the purchaser of a lot cannot get by a conveyance, even when expressed to be to his heirs & assigns, a title in fee simple without restriction or limitation. The title which he obtains may properly be described as an easement.—*STRATHCONA CEMETERY Co. v. TAYLOR*, [1924] 3 D. L. R. 625; 2 W. W. R. 970; 20 Alta. L. R. 459.—CAN.

260 ii.

To whom right of

*burying passes*.]—The right of burying in the lot succeeds, speaking generally, to the next-of-kin of deceased.—*STRATHCONA CEMETERY Co. v. TAYLOR*, [1924] 3 D. L. R. 625; 2 W. W. R. 970; 20 Alta. L. R. 459.—CAN.

#### PART IX. SECT. 1.

*ad. Prohibiting employment of hired labour to improve burial plots*.]—*Held*: reasonable & within the directors' powers.—*STRATHCONA CEMETERY Co. v. TAYLOR*, [1924] 3 D. L. R. 625; 2 W. W. R. 970; 20 Alta. L. R. 459.—CAN.

## Part X.—Position of Burial Grounds.

274. *Add. Annotation*:—*Mentd. Graigola Merthyr Co. v. Swansea Corpn.*, [1928] Ch. 235. | 277. *Add. Annotation*:—*Reid. A.-G. v. Hodgson*, [1922] 2 Ch. 429.

## Part XI.—Closed and Disused Burial Grounds.

284. *Add. Annotation*:—*Reid. Swift v. Board of Trade*, [1925] A. C. 520.
291. *Add. Annotation*:—*Consd. Nicholl v. Llantwit Major Parish Council*, [1924] 2 Ch. 214.
- 291a. —.]—A parish council being the duly constituted burial authority for the parish took from pltf., in consideration of a covenant to redeem the tithe rentcharges charged on the land being conveyed & on adjoining land retained by pltf., a conveyance of land "to hold the same . . . according to the true intent & meaning" of the Burial Acts. The land proved unfit & was never used for interments, & it was never fenced off or consecrated, nor did it adjoin any burial ground. The council agreed with pltf., with the approval of the parish meeting, to exchange the land for other land suitable for use as a burial ground:—*Held*: (1) the land first acquired by the council had never been "set apart for the purposes of interment" & was not therefore a "disused burial ground," so as to be subject to the restriction imposed by 1884 Act, s. 3; (2) the council had power to effect the exchange by virtue of the powers to sell land not required for interments & to buy land for the purposes of interment conferred respectively by 1852 Act, ss. 28 & 26, as extended by 1853 Act, s. 7.—*NICHOLL v. LLANTWIT MAJOR PARISH COUNCIL*, [1924] 2 Ch. 214; 93 L. J. Ch. 602; 131 L. T. 634; 68 Sol. Jo. 718.
292. *Add. Annotation*:—*Consd. Nicholl v. Llantwit Major Parish Council*, [1924] 2 Ch. 214.
300. *Add. Annotations*:—*Consd. St. Nicholas Acons v. L. C. C.*, [1928] A. C. 469. *Mentd. Hurley v. Stepney B. C.* (1923), 67 Sol. Jo. 767.
- 300a. *Urinal*.]—A borough council petitioned for a faculty to authorise the conversion of a consecrated churchyard, which had been wholly closed for interments by Order in Council, into an open space, & the laying out & maintenance of it as such. Authority was sought for laying out & maintaining part of the churchyard as a playground for children & for the erection upon it of urinals & a small toolshed:—*Held*: (1) the proposed urinals were "buildings" within 1884 Act, s. 2, & Open Spaces Act, 1887 (c. 32), s. 4, & the ct. had no jurisdiction to authorise their erection; (2) the proposed toolshed was necessary for the laying out & maintaining of the churchyard as an open space, & was not a "building" within the above Acts; (3) the facts proved justified the authorisation of games in the converted churchyard, but organised games, such as cricket & football, the laying out of tennis courts & the erection of swings & other structures should be prohibited. Faculty decreed, but not to issue until the council had made bye-laws embodying the above prohibitions & prescribing the hours during which the churchyard should be open to the public, so as to prevent any nuisance to the occupants of adjoining houses, & had carried a copy thereof into the diocesan registry for approval by the chancellor.—*BERMONDSEY BOROUGH COUNCIL v. MORTIMER*, [1926] P. 87.
- 300b. *Toolshed*.]—*BERMONDSEY BOROUGH COUNCIL v. MORTIMER*, No. 300a, *ante*.
- 300c. *Underground chamber*.]—*St. Nicholas Acons (Rector & Churchwardens) v. London County Council*, No. 309a, *post*.
309. *Add. Annotation*:—*Distd. St. Nicholas Acons v. L. C. C.*, [1928] A. C. 469.
- 309a. —.]—A brick built chamber intended to contain machinery for transforming electric current, with a roof of asphalt supported by steel girders & reinforced concrete, but so constructed that the roof does not project above the ground level, if erected in a churchyard closed for burials by Order in Council, would constitute a "building" erected "upon a disused burial ground" within 1884 Act, s. 3, & an ecclesiastical ct. has no jurisdiction to grant a faculty authorising the erection of such a building in such a situation.—*St. Nicholas Acons (Rector & Churchwardens) v. London County Council*, [1928] A. C. 469; 97 L. J. P. C. 113; 139 L. T. 530; 92 J. P. 185; 44 T. L. R. 656; 26 L. G. R. 583, P. C.
315. *Add. Annotation*:—*Generally, Reid. Bermondsey B. C. v. Mortimer*, [1926] P. 87.
- 323a. — *Playground for children—Tennis courts & swings*.]—*BERMONDSEY BOROUGH COUNCIL v. MORTIMER*, No. 300a, *ante*.
330. *Add. Annotation*:—*Consd. St. Nicholas Acons, London v. L. C. C.*, [1928] P. 102.

## Part XVI.—Registration of Burials.

375. *Add. Annotations*:—*As to* (1) *Consd. Glamorgan County Council v. Glasbrook*, [1924] 1 K. B. 879. *As to* (2) *Consd. Glamorgan County Council v. Glasbrook*, [1924] 1 K. B. 879. *Reid. Brocklebank v. R.*, [1925] 1 K. B. 52. *As to* (3) *Reid. Marshal Shipping Co. v. Board of Trade*, [1923] 2 K. B. 343.

PART XI. SECT. 1, SUB-SECT. 2.—A. 284 l. *Compulsory sale—Basis of compensation*.]—On expropriation of a cemetery, the trustees can only claim value as cemetery & cannot have the value of sand & gravel deposits beneath it, that not being part of value to the owners.—*R. v. MIDDLETON CHURCH TRUSTEES* (1920), 56 D. L. R. 60.—CAN.

## Part XIX.—Taxation and Rating of Burial Grounds and Burial Fees.

388. *Add. Annotation* :—*Mentd.* Durham County Council *v.* Tanfield Overseers, [1923] 2 K. B. 333.
389. *Add. Annotations* :—*Refd.* Poplar' Assmt. Com. *v.* Roberts, [1922] 2 A. C. 93; Harper *v.* Hedges, [1923] 2 K. B. 314.

### PART XIX.

*sm. Taxes—Whether land in use for purposes of cemetery.*—BURNABY DIS-

TRICT CORPN. *v.* OCEAN VIEW DEVELOPMENT, LTD., [1923] 3 D. L. R. 1073; 32 B. C. R. 413.—CAN.  
m i.

*valuation.*—FALKIRK PARISH COUNCIL *v.* STIRLINGSHIRE ASSESSOR, [1928] S. C. 405.—SCOT.

*Method of*



## CARRIERS.

## Part I.—Who is a Common Carrier.

- 4a. —Defts., furniture removers & warehousemen, contracted to carry pltf.'s furniture from L. to H., the contract being subject to a condition that the contractors would not be responsible for loss or damage caused by fire. Part of the furniture, which was loaded on a motor lorry, was destroyed by fire, occasioned by the negligence of defts.' servants, the remaining portion being damaged by the fire. Pltf. sued defts. for the value of the goods damaged & destroyed:—*Held*: defts. were not liable, inasmuch as the condition that they would not be responsible for fire protected them from liability, since the clause would be of no effect unless it referred to fire caused by the negligence of defts., as, not being common carriers, they would not in any event be liable for loss caused by accidental fire.—*TURNER v. CIVIL SERVICE SUPPLY ASSOCN., LTD.*, [1926] 1 K. B. 50; 95 L. J. K. B. 111; 134 L. T. 189.
- Annotation*:—*Folld. Fagan v. Green & Edwards* (1925), 70 Sol. Jo. 185.
- 4b. .]—Defts., furniture removers & warehousemen, contracted to carry pltf.'s goods from L. to O., the contract being subject to a condition that defts. would not be responsible for fire. The goods, which were loaded on a motor van, were destroyed while in transit by fire, which was occasioned by the negligence of defts.' servants. Pltf. sued defts. for the value of the goods:—*Held*: as defts. were bailees only & not common carriers, &, therefore, not liable for an accidental fire, the condition must be construed as exempting them from liability for fire arising from their own negligence, as otherwise the condition would be of no effect.—*FAGAN v. GREEN & EDWARDS, LTD.*, [1926] 1 K. B. 102; 95 L. J. K. B. 363; 134 L. T. 191; 70 Sol. Jo. 185.
- 5a. Upon terms limiting liability.]—*GREAT NORTHERN RY. CO. v. L. E. P. TRANSPORT & DEPOSITORY, LTD.*, No. 234a, *post*.
6. *Add. Annotation*:—As to (3) *Refd. G. N. Ry. v. L. E. P. Transport & Depository*, [1922] 2 K. B. 742.
- 12a. — — —.]—*TURNER v. CIVIL SERVICE SUPPLY ASSOCN., LTD.*, No. 4a, *ante*.
- 12b. —*FAGAN v. GREEN EDWARDS, LTD.*, No. 4b, *ante*.
- 14a. — Of goods accompanied by passenger.]—By London County Council (Tramways & Improvements) Act, 1911, s. 42: "Every passenger travelling upon any of the council's tramways may take with him his personal luggage, not exceeding 28 lbs. in weight, without any charge . . . all such luggage to be carried by hand" under certain conditions. In respect to luggage which did not fulfil these conditions, council were entitled to make such charge as they thought fit. Pltf., wishing to send a parcel of goods weighing some 50 lbs. to a customer, instructed his servant to convey it by one of defts.' tramcars. The servant did so, & in addition to paying his own fare paid 2d. for the parcel. When he arrived at his destination the servant claimed his parcel, but found that it had been lost. In an action brought by pltf. claiming damages:—*Held*: the provisions of sect. 42 of the private Act being inconsistent with one of the peculiar features of a common carrier, who was bound to carry all goods of the class which he proposed to carry, for all & sundry & irrespective of the fact that the goods were accompanied by a passenger, the London County Council were not common carriers of goods so as to be entitled to the benefit of Carriers Act, 1830 (c. 68).—*ROSENTHAL v. LONDON COUNTY COUNCIL* (1924), 131 L. T. 563; 88 J. P. 157; 22 L. G. R. 527.
16. *Add. Annotation*:—*Consd. G. N. Ry. v. L. E. P. Transport & Depository*, [1922] 2 K. B. 742.
17. *Add. Annotation*:—*Refd. G. N. Ry. v. L. E. P. Transport & Depository*, [1922] 2 K. B. 742.
18. *Add. Annotation*:—*Refd. G. N. Ry. v. L. E. P. Transport & Depository*, [1922] 2 K. B. 742.
31. *Add. Annotations*:—*Refd. G. N. Ry. v. L. E. P. Transport & Depository*, [1922] 2 K. B. 742; *Turner v. Civil Service Supply Assocn.*, [1926] 1 K. B. 50.

## Part II.—Private Carriers and Forwarding Agents.

43. *Add. Annotation*:—As to (1) *Refd. Phillips v. Britannia Hygienic Laundry Co.*, [1923] 1 K. B. 539.
44. *Add. Annotation*:—Generally, *Refd. Pratt v. Patrick*, [1924] 1 K. B. 488.
45. *Add. Annotation*:—*Refd. Troy v. Eastern*
- Co. of Warehouses Insce. & Transport of Goods, etc. (Petrograd) (1921), 91 L. J. K. B. 632.
46. *Add. Citation*:—15 Asp. M. L. C. 208.
47. *Add. Citations*:—91 L. J. K. B. 632; 15 Asp. M. L. C. 387.

## PART I. SECT. 1.

4 i. *Carrying on business as carrier—Furniture remover.*—Deft., a carrier & forwarding agent, tendered for the removal of pltf.'s furniture in the following terms: "We beg to quote £120. This price includes all transit charges, including delivery to house & unpacking, also risk of breakage, the value of any one package not to exceed £10." This tender was ac-

cepted:—*Held*: deft. was not in this transaction a common carrier, & Mercantile Law Act, 1918, s. 19, did not apply.—*WILSON v. NEW ZEALAND EXPRESS CO., LTD.*, [1923] N. Z. L. R. 201.—N.Z.

5 i. *Carrier of goods—Of all persons—For hire.*—*MATHEWSON v. MITCHELL, POOLEY v. MITCHELL*, [1925] 4 D. L. R. 384—CAN.

## PART I. SECT. 2.

15 i. *Haulage contractor—Person towing damaged motor cars.*—Persons engaged in the business of towing damaged motor cars are common carriers, & as such are entitled to retain the thing transported until payment for services rendered.—*TERRY v. AUTOMOBILE OWNERS ASSOCN.* (1927), Q. R. 65 S. C. 390.—CAN.

## Part III.—The Contract at Common Law.

51. *Add. Annotation*:—*Refd.* G. N. Ry. v. L. E. P. Transport & Depository, [1922] 2 K. B. 742.
58. *Add. Annotations*:—*As to* (1) *Appld.* Canadian Pacific Ry. v. Kelvin Shipping Co. (1927), 138 L. T. 369. *As to* (2) *Refd.* Buerger v. Cunard S.S. Co., [1925] 2 K. B. 646.
61. *Add. Annotation*:—*Mentd.* G. N. Ry. v. L. E. P. Transport & Depository, [1922] 2 K. B. 742.
66. *Add. Annotations*:—*As to* (1) *Refd.* G. N. Ry. v. L. E. P. Transport & Depository, [1922] 2 K. B. 742. *As to* (2) *Refd.* G. N. Ry. v. L. E. P. Transport & Depository, [1922] 2 K. B. 742.
82. *Add. Annotation*:—*Refd.* G. N. Ry. v. L. E. P. Transport & Depository, [1922] 2 K. B. 742.
85. *Add. Annotations*:—*Mentd.* The Empress (1923), 92 L. J. P. 42; Ellis' Trustee v. Dixon-Johnson, [1924] 2 Ch. 451; Pratt v. Patrick, [1924] 1 K. B. 488.
- 90a. ———.]—*GREAT NORTHERN RY. CO. v. L. E. P. TRANSPORT & DEPOSITORY, LTD., No. 234a, post.*
- 92a. ———.]—Chests of tea of resps. were delivered to a railway co. for conveyance from A. to C. The railway broke down, & by an arrangement between the railway co. & applts., who were common carriers by water, applts. agreed to convey the tea by a special flotilla by river to a point at which it could be put on the railway again:—*Held*: in so doing, applts. had not so far departed from their usual course of business as to take these journeys out of their usual business as carriers, & they were liable for the loss of the tea which was destroyed by fire while on board one of their boats.—*INDIA GENERAL NAVIGATION & RY. CO. v. DEKHARI TEA CO.* (1923), 93 L. J. P. C. 108; 130 L. T. 554; 16 Asp. M. L. C. 285, P. C.
96. *Add. Annotations*:—*Refd.* Pratt v. Patrick, [1924] 1 K. B. 488. *Mentd.* G. N. Ry. v. L. E. P. Transport & Depository, [1922] 2 K. B. 742.
97. *Add. Annotation*:—*Mentd.* G. N. Ry. v. L. E. P. Transport & Depository, [1922] 2 K. B. 742.
98. *Add. Annotation*:—*Mentd.* G. N. Ry. v. L. E. P. Transport & Depository, [1922] 2 K. B. 742.
114. *Add. Annotations*:—*As to* (1) *Refd.* United States Shipping Board v. Bunge & Born (1924), 41 T. L. R. 73. *As to* (2) *Refd.* Buerger v. Cunard S.S. Co., [1925] 2 K. B. 646.
149. *Annotations*:—After "*As to* (2)" add "*Refd.*"
151. *Add. Annotation*:—*Refd.* Prager v. Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566.

## PART III. SECT. 3, SUB-SECT. 1.—A.

t i. ———.]—The *onus* is on the carrier to prove that the loss is not due wholly or in part to his negligence, & that he took all known means a reasonably prudent carrier should take to preserve goods from damage.—*CANADIAN NORTHERN QUEBEC RY. CO. v. PLEET*, [1923] 4 D. L. R. 1112; 26 Can. Ry. Cas. 238.—CAN.

t ii. ———.]—In accordance with a rule of the Canadian freight classification approved by Railway Board, goods were loaded by the owners, plts., & under the standard bill of lading, carriers are not liable for any loss or damage caused by the act or default of the shipper or owner. An accident happened through the flooring of a car giving way on account of the weight placed on it by plts. The defective flooring was known to both parties, but plts. alone knew the use the cars were to be put to:—*Held*: the accident should be attributed to plts.' method of loading rather than to any breach of duty on part of defts.—*CANADIAN WESTINGHOUSE CO., LTD. v. CANADIAN PACIFIC RY. CO.* (1923), 54 O. L. R. 238.—CAN.

t iii. ———.]—*Default of consignee.* *HATFIELD & CO. v. CANADIAN PACIFIC RY. (N. B.)*, [1926] 2 D. L. R. 93.—CAN.

t iv. ———.]—*Position of Indian railways.*—A railway co. in India under Indian Railways Act, 1890, is not an insurer, but is under the duty of taking a certain measure of reasonable care.—*GREAT INDIAN PENINSULA RY. CO., LTD. v. JESRAJ PATWARI* (1927), 1 L. L. R. 55 Calc. 132.—IND.

77 ii a. ———.]—*NORTHERN GRAIN CO. v. CANADIAN NATIONAL RY. & GRAND TRUNK PACIFIC RY.*, [1922] 3 W. W. R. 733; 70 D. L. R. 281.—CAN.

77 v. ———.]—*Through sub-contractor's negligence.*—When a carrier undertakes for reward to carry goods & entrusts the carriage of them to a

sub-contractor, & the goods are subsequently lost through the sub-contractor's negligence or that of his servants, the carrier is liable, because there has been a breach of his undertaking that ordinary care will be exercised in the carriage of the goods.—*WILSON v. NEW ZEALAND EXPRESS CO., LTD.* (No. 2), [1924] N. Z. L. R. 465.—N.Z.

77 vi. *S. P. WILSON v. NEW ZEALAND EXPRESS CO., LTD.* (No. 3), [1924] N. Z. L. R. 890.—N.Z.

85 iii. ———.]—*Goods were damaged*:—*Held*: defts. were not excused from liability by any special contract in the bills of lading issued after delivery taken of the goods, & having failed to show that the damage was not caused by their fault or neglect, they were liable.—*EDGETT, LTD. v. PACIFIC GREAT EASTERN RY. CO.*, [1923] 1 W. W. R. 684; 32 B. C. R. 37.—CAN.

91 i. ———.]—*Goods destroyed*—*No written contract limiting liability.*—*Held*: applts. were common carriers & were liable to owners for goods destroyed by fire without proof of negligence.—*INDIA GENERAL NAVIGATION & RY. CO. v. DEKHARI TEA CO., LTD.* (1923), L. R. 51 Ind. App. 29.—IND.

## PART III. SECT. 3, SUB-SECT. 1.—B.

100 i. ———.]—*Goods stolen from carrier's warehouse at destination*—*Carrier making no warehouse charge.*—*Held*: holding the goods at owner's risk, defts. could not be found liable for the loss unless they were guilty of wilful neglect or misconduct.—*BROWN v. DOMINION EXPRESS CO.* (1921), 67 D. L. R. 325; 51 O. L. R. 359.—CAN.

100 ii. ———.]—*Consignee with notice of arrival*—*Bonded goods*—*Carrier liable.*—*GEORGE v. CANADIAN NORTHERN RY. CO.*, (1922) 63 O. L. R. 94.—CAN.

100 iii. ———.]—*Carrier not liable*—*Failure of consignee to remove goods within reasonable time.*—*DYAMANT & PZADKAWOLSKI v. CANADIAN EXPRESS CO.*, [1923] 3 D. L. R. 1122; 52 O. L. R. 114.—CAN.

## PART III. SECT. 3, SUB-SECT. 1.—D.

105 i. *Illegality as defence.*—*Pltf.* shipped by deft. co. intoxicating liquor, intending to have it sold in Ontario in violation of provincial statute & of Dominion legislation. *Pltf.* in the shipping bill declared "that this shipment is of a class & shipped under conditions permitted by law." Part of the goods were stolen from defts. car at destination:—*Held*: *pltf.* could not recover, as the cause of action was founded upon an illegal contract.—*MAJOR v. CANADIAN PACIFIC RY. CO.*, [1922] 3 W. W. R. 512.—CAN.

## PART III. SECT. 3, SUB-SECT. 2.—B.

st. *Who are.*—While there was in Ireland an internal rebellion, with an army employed to support it, armed raiders took goods from a ry. co. who were common carriers:—*Held*: the raiders were "King's Enemies," & the co. was not bound to reimburse the owner.—*SECRETARY OF STATE FOR WAR v. MIDLAND GREAT WESTERN RY. CO. OF IRELAND*, [1923] 2 I. R. 102.—IR.

## PART III. SECT. 4.

155 i. *Effect of delay*—*Consignee may refuse goods*—*Measure of damages.*—*LECLERC v. R.* (1920), 62 D. L. R. 324; 20 Exch. C. R. 236.—CAN.

## PART III. SECT. 5.

h i. ———.]—*DEVLIN v. GRAND TRUNK RY. CO. OF CANADA* (1870), 30 U. C. R. 537.—CAN.

159 ix. ———.]—*PORTAGE MILLING & TRANSFER CO. v. GRAND TRUNK PACIFIC RY. CO.*, [1923] 3 D. L. R. 84; 33 Man. L. R. 91; [1923] 2 W. W. R. 88.—CAN.

159 x. ———.]—*Delay in delivery.*—*HATFIELD & SCOTT, LTD. v. CANADIAN PACIFIC RY. CO.* (1921), 57 D. L. R. 458.—CAN.

159 xi. ———.]—*INDIA GENERAL NAVIGATION & RY. CO., LTD. v. GIRIDHARILAL GOBERDHONE*

201. *Add. Annotation*:—*Refd. Prager v. Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566.*  
 208. *Add. Annotations*:—*Refd. Transoceanica Soc.*

*Italiana di Navigazione v. Shipton, [1923] 1 K. B. 31; Prager v. Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566.*

## Part IV.—Modifications of the Common Law Contract.

232. *Add. Annotation*:—*As to (1) Refd. G. N. Ry. v. L. E. P. Transport & Depository, [1922] 2 K. B. 742.*

.]—A carrier who regularly receives for carriage upon terms limiting his liability may be under the obligations & subject to the liabilities of a common carrier in so far as the limitation of liability does not extend. He does not by limiting his liability assume for all purposes the position of a bailee for reward who is liable only for negligence of himself or his servants, unless the limitation of liability is so extensive as to be inconsistent with the profession or contract of a common carrier.

A consignor who tenders to carriers for carriage goods apparently harmless but in fact dangerous, whether the carriers are common carriers bound by the custom of the realm to carry goods provided they are safe & fit for carriage or whether they are a railway co. bound by statute to afford reasonable facilities for the receiving, forwarding & delivering of goods, must give warning of the danger; otherwise he impliedly warrants that the goods are safe & fit for carriage.

Forwarding agents delivered to a railway co. for carriage certain carboys containing a corrosive fluid & also certain bales of felt goods on the terms of consignment notes exempting the co. from liability in certain events & stating that they did not undertake to carry dangerous goods except on special conditions. The carboys were insufficient to contain the fluid, which escaped & injured the felt goods. The co. professed to carry the felt goods as common carriers. The owner of the felt goods claimed damages against the co., & the co. paid £437 in settlement of the claim. In an action by the co. against the forwarding agents to recover this sum as damages for breach of warranty:—*Held*: (1) the terms of the consignment notes did not prevent the co. from being, as they professed to be, common carriers of the felt goods; (2) the co. were therefore liable as insurers, & without proof of negligence, to the owner of the felt goods; (3) they were entitled to recover from the forwarding agents, as upon an implied warranty that the carboys were fit to be carried, the amount they had paid to the owner of the felt goods

DAS (1927), 1. L. R. 54 Cal. 430.—IND.

165 ii. ——— *Goods damaged.*—Where goods are damaged in transit & have been in the hands of a number of carriers, the vendor must prove the damage took place while in the custody of the carrier he is suing.—*ROSE & LAFLAMME, LTD. v. CAMPBELL, WILSON & STRATHDEE, LTD. & GRAND TRUNK PACIFIC RY. CO., [1923] 1 D. L. R. 397.—CAN.*

165 iii. ——— *Short delivery.*—*Held*: defts. had discharged the onus of showing that they had transferred the goods in good order & condition to another carrier in the usual course for conveyance or delivery, & they thereupon ceased to be liable.—*HARRIS v. DUBLIN & SOUTH EASTERN RY. CO., [1927] 1. R. 137.—IR.*

sg. *What consignee must prove*—That goods in good condition when shipped—That goods actually passed over line of defendants.—*NOVA SALES CO. v. CANADIAN PACIFIC RY., [1925] 3 D. L. R. 919.—CAN.*

### PART III. SECT. 6.

*Goods sent to specified wharf.*—evidence of a constructive delivery, which imposed on the carrier the duty of taking the goods on board.—*MORRISON v. THOMPSON (1877), 11 N. S. R. (2 R. & C.) 411.—CAN.*

### PART III. SECT. 7, SUB-SECT. 1.

d i. ———.]—Goods carried by defts. for pltf.:—*Held*: at owner's risk while in defts.' warehouse at point of destination.—*BROWN v. DOMINION EXPRESS CO. (1921), 67 D. L. R. 325; 51 O. L. R. 359.—CAN.*

d ii. ———.]—When goods entrusted to a shipowner, trading as a common carrier, have reached their destination & been stored pending removal by the consignee, the carrier ceases to be liable as an insurer.—*OAKLEY v. WHITEHOUSE & CO. (1921), 17 Tas. L. R. 125.—AUS.*

e i. S. P. O'NEILL v. GREAT WESTERN RY. CO. (1857), 7 C. P. 203.—CAN.

f ii. ———.]—*SECRETARY OF STATE v. HAR KISHAN DAS-KURA MAL (1925), 1. L. R. 7 Lah. 370.—IND.*

### PART III. SECT. 7, SUB-SECT. 2.

182 ii. ———.]—*PREMIER LUMBER CO. v. GRAND TRUNK PACIFIC RY. CO., [1923] 1 D. L. R. 649; [1923] S. C. R. 84; 1 W. W. R. 473.—CAN.*

182 iii. ———.]—*NORTHERN ELECTRIC CO., LTD. v. CANADIAN PACIFIC RY. CO. & FILLMORE RURAL TELEPHONE CO., LTD. & WIBERG, [1923] 3 D. L. R. 781; 3 W. W. R. 278.—CAN.*

### PART III. SECT. 7, SUB-SECT. 3.

p i. ——— *Delivery without requiring surrender of bills of lading—Delivery after indorsement of bills of lading as security.*—*Held*: the carriers were liable.—*HICKMAN GRAIN CO. v. CANADIAN PACIFIC RY. CO., [1927] 1 D. L. R. 851; 1 W. W. R. 317; 32 C. R. C. 333; 36 Man. L. R. 322.—CAN.*

p ii. ———.]—*CAMPBELL v. CANADIAN PACIFIC & CANADIAN NATIONAL RY. COS. (1924), 30 Can. Ry. Cas. 380.—CAN.*

### PART III. SECT. 7, SUB-SECT. 5.

s i. ———.]—*Held*: a consignee by delay in accepting delivery cannot extend the period of the contractor's liability as such.—*PORTAGE MILLING & TRANSFER CO. v. GRAND TRUNK PACIFIC RY. CO., [1923] 2 W. W. R. —CAN.*

sk. *Rights of carrier—To sell—Must be exercised with reasonable diligence.*—*DAVIS v. ELLIOT (1924), 55 O. L. R. 583.—CAN.*

### PART III. SECT. 7, SUB-SECT. 6.

199 i. *When justified—Refusal of consignee to pay charges.*—*PATEL v. KEELER & CO., [1923] App. D. 506.—S. AF.*

### PART III. SECT. 7, SUB-SECT. 7.

201 i. *Whether agent for sale of necessity—Perishable goods—Sale without communicating with owner.*—Where goods carried by a railway co. are liable to perish while in its possession because of the consignee's delay in taking delivery, the co. has the right to advertise & sell the goods without any notice to the consignor, whether or not there are any tolls payable.—*ALBERTA POTATO & VEGETABLE CO. v. CANADIAN PACIFIC RY. CO. (Alta.), [1927] 2 D. L. R. 813; [1927] 2 W. W. R. 65; 32 Can. Ry. Cas. 356.—CAN.*

### PART III. SECT. 8.

e. *Add "revised."* (1921), 64 D. L. R. 316; 50 O. L. R. 223."

e i. ———.]—*NAZZARENO v. ALGOMA EASTERN RY. CO. (1922), 70 D. L. R. 268.—CAN.*

### PART IV. SECT. 1, SUB-SECT. 2.

sl. *Condition requiring notice of loss—Absence of notice bar to right of action.*—*PREMIER LUMBER CO. v. GRAND TRUNK PACIFIC RY. CO., [1923] 1 D. L. R. 649; [1923] S. C. R. 84; 1 W. W. R. 473.—CAN.*

sm. *S. P. NORTHERN ELECTRIC CO., LTD. v. CANADIAN PACIFIC RY. CO. & FILLMORE RURAL TELEPHONE CO., LTD. & WIBERG, [1923] 3 D. L. R. 781; 3 W. W. R. 278.—CAN.*

sn. *United States freight classification.*—A contract of carriage of goods from the United States to Canada made according to a freight classification in use in the United States, whereby the carrier's liability was limited to a certain amount:—*Held*: to be authorised by Railway Act, 1919 (c. 68), s. 322 (4), & such classification & limitation were binding on the shipper.—*SPORLE v. GREAT NORTHERN RY. CO., [1925] 3 D. L. R. 302; [1925] 2 W. W. R. 385; 30 Can. Ry. Cas. 186; 35 B. C. R. 232.—CAN.*



- for the damage done to his goods.—**GREAT NORTHERN RY. Co. v. L. E. P. TRANSPORT & DEPOSITORY, LTD.**, [1922] 2 K. B. 742; 91 L. J. K. B. 807; 127 L. T. 664; 38 T. L. R. 711, C. A.
241. *Add. Annotation*:—**Refd.** *Dew v. United British S.S. Co.* (1928), 139 L. T. 628.
262. *Add. Annotations*:—**Refd.** *The Christel Vinnen*, [1924] P. 61; *Elder, Dempster v. Paterson, Zochonis, Griffiths Lewis Steam Navigation Co. v. Paterson, Zochonis*, [1924] A. C. 522.
265. *Add. Annotations*:—**Consd.** *Turner v. Civil Service Supply Assocn.*, [1926] 1 K. B. 50; *Forbes, Abbott & Lennard v. G. W. Ry.* (1927), 44 T. L. R. 97. **Refd.** *Fagan v. Green & Edwards*, [1926] 1 K. B. 102.
266. *Add. Annotations*:—*As to* (1) **Apld.** *Gosse Millard v. Canadian Government Merchant Marine, American Can Co. v. Same*, [1927] 2 K. B. 432. (*See* [1928] 1 K. B. 717.) **Refd.** *Layton v. General Steam Navigation Co.* (1923), 130 L. T. 662. *As to* (2) **Refd.** *Rutter v. Palmer*, [1922] 2 K. B. 87; *Fagan v. Green & Edwards* (1925), 70 Sol. Jo. 185. *Generally, Mentd.* *Wasserman v. Blackburn* (1926), 43 T. L. R. 95.
267. *Add. Annotations*:—**Refd.** *Ambatielos v. Anton Jurgens Margarine Works*, [1922] 2 K. B. 185; *Rutter v. Palmer*, [1922] 2 K. B. 87.
271. *Add. Annotations*:—*As to* (1) **Apprvd. & Apld.** *L. & N. W. Ry. v. Neilson*, [1922] 2 A. C. 263. *As to* (2) **Apprvd. & Apld.** *L. & N. W. Ry. v. Neilson*, [1922] 2 A. C. 203. **Consd.** *Buerger v. Cunard S.S. Co.*, [1925] 2 K. B. 646.
300. *Add. Annotation*:—*As to* (2) **Consd.** *Ehinger v. S. E. & C. Ry. & Pullman Car Co.* (1922), 38 T. L. R. 678.
302. *Add. Annotation*:—**Refd.** *Rosenthal v. L. C. C.* (1924), 131 L. T. 563.
342. *Add. Annotations*:—*As to* (1) **Refd.** *Rosenthal v. L. C. C.* (1924), 131 L. T. 563. *As to* (2) **Consd.** *Rosenthal v. L. C. C.* (1924), 131 L. T. 563.
347. *Add. Annotations*:—*As to* (2) **Apld.** *G. N. Ry. v. L. E. P. Transport & Depository*, [1922] 2 K. B. 742. *As to* (3) **Apld.** *G. N. Ry. v. L. E. P. Transport & Depository*, [1922] 2 K. B. 742.
351. *Add. Annotations*:—**Refd.** *G. N. Ry. v. L. E. P. Transport & Depository*, [1922] 2 K. B. 742; *Forbes, Abbott & Lennard v. G. W. Ry.* (1927), 44 T. L. R. 97.
352. *Add. Annotation*:—*As to* (1) **Refd.** *Brown v. Harrison* (1927), 96 L. J. K. B. 1025.
376. *Add. Annotation*:—*As to* (4) **Refd.** *Nunan v. Southern Ry.*, [1924] 1 K. B. 223.
381. *Add. Annotation*:—*As to* (1) **Consd.** *G. N. Ry. v. L. E. P. Transport & Depository*, [1922] 2 K. B. 742.
408. *Add. Annotation*:—*As to* (1) **Refd.** *G. N. Ry. v. L. E. P. Transport & Depository*, [1922] 2 K. B. 742.
411. *Add. Annotation*:—*As to* (1) **Refd.** *G. N. Ry. v. L. E. P. Transport & Depository*, [1922] 2 K. B. 742.
416. *Add. Annotation*:—*Generally, Mentd.* *G. N. Ry. v. L. E. P. Transport & Depository*, [1922] 2 K. B. 742.
426. *Add. Annotations*:—*As to* (2) **Apld.** *Re City Equitable Fire Insce.*, [1925] Ch. 407. **Refd.** *Metropolitan Water Board v. L. & N. E. Ry.* (1924), 131 L. T. 123.
436. *Add. Annotation*:—*As to* (1) **Refd.** *Elder, Dempster v. Paterson, Zochonis, Griffiths Lewis Steam Navigation Co. v. Paterson, Zochonis*, [1924] A. C. 522.
442. *Add. Annotations*:—*As to* (2) **Consd.** *Re City Equitable Fire Insce.* (1924), 40 T. L. R. 853; *Metropolitan Water Board v. L. & N. E. Ry.* (1924), 131 L. T. 123.
452. *Add. Annotations*:—**Overd.** *L. & N. W. Ry. v. Neilson*, [1922] 2 A. C. 263. **Consd.** *Buerger v. Cunard S.S. Co.*, [1925] 2 K. B. 646.
453. *Add. Annotation*:—**Consd.** *Neilson v. L. & N. W. Ry.*, [1922] 1 K. B. 192.
454. *Add. Citations*:—[1922] 1 K. B. 192; *affd. sub nom. LONDON & NORTH WESTERN RY. Co. v. NEILSON*, [1922] 2 A. C. 263; 91 L. J. K. B. 680; 38 T. L. R. 653; 66 Sol. Jo. 502, H. L.
- Add. Annotations*:—**Apld.** *Buerger v. Cunard S.S. Co.*, [1925] 2 K. B. 646. **Refd.** *Turner v. Civil Service Supply Assocn.*, [1926] 1 K. B. 50.
460. *Add. Citations*:—*affd.*, [1922] 1 A. C. 178; 91 L. J. K. B. 423; 127 L. T. 1; 38 T. L. R. 359; 27 Com. Cas. 247, H. L.

## PART IV. SECT. 1, SUB-SECT. 4.—A.

*o i.* — Goods lost—No proof of misconduct of carrier's servants—Carrier not liable.—**SOUTH AFRICAN RYS. v. CONRADIE**, [1922] App. D. 137.—S. AF.

## PART IV. SECT. 1, SUB-SECT. 7.

*s i.* — "Value at place & time of shipment."—*Held*: the value must not be calculated at the cost price to the owner at the place where he bought the goods, but at the market value of the goods at the place & time of shipment.—**THOMPSON v. CANADIAN PACIFIC**

**RY. Co.** (1922), 52 O. L. R. 306.—CAN.

*so.* Goods exceeding declared value—Shipper bound by declared value.—**SPORLE v. GREAT NORTHERN RY. Co.**, [1925] 3 D. L. R. 302; [1925] 2 W. W. R. 385; 30 Can. Ry. Cas. 186; 35 B. C. R. 232.—CAN.

## PART IV. SECT. 2, SUB-SECT. 4.—B.

*p.* — — — — —.—**TAMBOLI v. GREAT INDIAN PENINSULA RY. Co.** (1927), 55 L. R. Ind. App. 67.—IND.

*o (p. 69) i.* Must be approved

*by Railway Commissioners Board—Onus of proof of approval on carrier.* **SPORLE v. GREAT NORTHERN RY. Co.**, [1924] 4 D. L. R. 184; 3 W. W. R. 136; 34 B. C. R. 140.—CAN.

*1 (p. 69) i.* — — — — —.—**PURAN DAS v. EAST INDIAN RY. Co.** (1927), 1 L. R. 6 Pat. 718.—IND.

*1 (p. 69) ii.* — — — — —.—**SHEO NARAIN v. EAST INDIAN RY.** (1927), 1 L. R. 50 All. 246.—IND.

*n (p. 69) i.* — — — — —.—**MASON & RISCH PEANO Co. v. CANADIAN PACIFIC RY. Co.** (1908), 8 W. L. R. 951; 1 Sask. L. R. 213; 8 Can. Ry. Cas. 369.—CAN.

## Part V.—Carriage of Persons.

480. *Add. Annotation*:—*Refd.* Phillips v. Britannia Hygienic Laundry Co., [1923] 1 K. B. 539.

516. *Add. Annotations*:—*Consd.* Brandon v. Osborne Garrett, [1924] 1 K. B. 548; The Paludina, [1925] P. 40. *Refd.* Singleton Abbey (Owners) v. Paludina (Owners), The Paludina (1926), 95 L. J. P. 135.

536. *Add. Annotation*:—*Refd.* Singleton Abbey (Owners) v. Paludina (Owners), The Paludina (1926), 95 L. J. P. 135.

560. *Add. Annotation*:—*As to* (2) *Refd.* Sharpe v. Southern Ry. (1925), 133 L. T. 693.

560a. — *Warning not heard by passenger—Passenger asleep.*—Pltf. was a passenger on defts.' railway to G. by a train which arrived at that station while it was still daylight. Owing to the train being too long for the platform at G., upon its arrival there the hindmost carriage, in which pltf. was, stopped short of the platform. A porter shouted to the passengers to keep their seats, but pltf., who was asleep, did not hear him. On waking pltf. realised that he was at G. station, &

fearing that he might be carried on, got out in a hurry without looking to see what he was stepping on. There being a drop of five feet from the carriage floor to the ground, he fell & was injured:—*Held*: even if in the circumstances defts. were negligent, of which the ct. thought there was no evidence, pltf.'s act in getting out without looking where he was going was contributory negligence, & defts. were not responsible.—*SHARPE v. SOUTHERN RY. CO.*, [1925] 2 K. B. 311; 94 L. J. K. B. 913; 133 L. T. 693; 60 Sol. Jo. 775, C. A.

571. *Add. Annotation* —*Distd.* Sharpe v. Southern Ry., [1925] 2 K. B. 311.

572. *Add. Annotation*:—*Refd.* Sharpe v. Southern Ry. (1925), 133 L. T. 693.

573. *Add. Annotation*:—*As to* (1) *Consd.* Sharpe v. Southern Ry., [1925] 2 K. B. 311.

578. *Add. Annotation*:—*Appld.* Broome v. Agar (1928), 138 L. T. 698.

579a. *S. P. WHITEHOUSE v. MIDLAND RY. CO.* (1866), 30 J. P. 760.

## PART V. SECT. 2, SUB-SECT. 1.

483 i. *Not liable for mere accident—Apart from negligence or misconduct.*—*MILLS v. CANADIAN PACIFIC STEAMSHIPS, LTD.* (1926), Q. R. 65 S. C. 148.—*CAN.*

483 ii. ————*]*—*MARCHESSEAU v. CANADIAN NATIONAL RYS.* (1926), Q. R. 42 K. B. 355.—*CAN.*

488 i. — *Caused by act of stranger.*—If an accident is due to the train leaving the metals, *prima facie* the railway co. is guilty of negligence. If an accident is caused to a train by evilly-disposed persons over whom the railway co. had no control or any reason to anticipate that they intended to carry out their design in the sector in which the accident occurred, the railway co. will not be liable for negligence or for damages.—*JEWAN RAM KHETTRY v. EAST INDIAN RY. CO.* (1924), I. L. R. 51 Calc. 861.—*IND.*

490 ii. ———— *Opening carriage door.*—While a street car was backing up to a platform which it had overrun, a passenger opened one of the rear doors without the knowledge of the conductor or motorman. The door, which opened outwards & projected over the platform, struck pltf., who was standing on the platform waiting for a car. The conductor was inside the car collecting fares, & had left the door unlocked & unguarded, although the motorman had informed him that he was going to back up:—*Held*: defts. were liable.—*ODEGAARD v. WINNIPEG ELECTRIC CO.*, [1927] 4 D. L. R. 387; [1927] 2 W. W. R. 589; 36 Man. L. R. 592.—*CAN.*

497 ii. — *Driver of omnibus stooping down to recover tickets on floor.*—*BRADLEY v. BELL BUS CO.*, [1928] N. Z. L. R. 204.—*N.Z.*

512 i. — *Act done in course of employment.*—Pltf., a passenger upon a south-bound car of an electric street ry. co., got off at a stopping place, & crossing behind the car, attempted to pass over the rails used by the north-bound cars, & was struck by a car & injured. She had followed the directions given her by the conductor of the south-bound car:—*Held*: pltf. was entitled to recover. The way pltf. was directed to take was dangerous & this was known to the conductor.—*FORSTER v. TORONTO RY. CO.* (1921), 67 D. L. R. 441; 51 O. L. R. 136.—*CAN.*

## PART V. SECT. 2, SUB-SECT. 3.

k i. ———— *Bye-law prohibiting passengers from riding on car platforms.*—Where it was proved that pltf. could not, by exercise of reasonable care, have avoided the accident, that there was standing room inside the car, but standing passengers prevented him from going in:—*Held*: pltf. was entitled to recover.—*KIME v. HAMILTON RADIAL ELECTRIC RY. CO.* (1921), 50 O. L. R. 113; 64 D. L. R. 191.—*CAN.*

## PART V. SECT. 2, SUB-SECT. 5.

p. *Add* "reversd. (1920), 48 O. L. R. 386; 19 O. W. N. 221."

p i. *Train stopping before reaching station—No duty to warn passengers.*—*GRAND TRUNK RY. CO. OF CANADA v. MURPHY*, [1924] 1 D. L. R. 450; [1924] S. C. R. 101; 29 Can. Ry. Cas. 398.—*CAN.*

q i. ————*]*—*As* as the entrance doors of a street car are open while the car is standing at a passenger landing place there is an implied invitation extended to intending passenger to enter the car, & it is the duty of the conductor in charge of the car to afford them a reasonable opportunity to do so in safety. He is therefore negligent in giving the signal to start the car before the entrance doors are closed & all persons attempting to board the car are safely on.—*WILSON v. WINNIPEG ELECTRIC RY. CO.*, [1922] 2 W. W. R. 610; 68 D. L. R. 617.—*CAN.*

s i. ———— *Conductor not on platform.*—A tramway conductor, as the car was approaching a "stop if required" station, went on to the top of the car to change the screens which showed the destination of the car, having satisfied himself that there was no one who wished to board the car, & that an elderly woman inside the car, the only passenger, showed no sign of wishing to get off. The passenger, who thought she had given a signal to stop, stepped on to the footboard & was jolted off after the car had passed the station, & was injured:—*Held*: no blame attached to the conductor, & the accident was due to the fault of the passenger.—*GRAY v. GLASGOW CORPN.*, [1926] S. C. 967.—*SCOT.*

584 v. — *Passenger thrown down.*—*Held*: there was negligence on the

part of defts.' servants, & deft. liable in damages.—*GUILDAY v. WINNIPEG ELECTRIC RY. CO.*, [1922] 3 W. W. R. 498; 70 D. L. R. 517.—*CAN.*

t i. *Passenger stepping from moving car—Accident avoidable by exercise of reasonable care by carrier.*—*GRIFFIN v. CAPE BRETON ELECTRIC CO.* (1921), 63 D. L. R. 251; 55 N. S. R. 19.—*CAN.*

t ii. — *In contravention of bye-law.*—*Held*: a contravention of an absolute statutory provision precluded a claim for damages.—*HILL v. GRAND TRUNK RY. CO.* (1922), 52 O. L. R. 508.—*CAN.*

u i. — *What is dangerous condition.*—*ELLIOTT v. TORONTO TRANSPORTATION COMMISSION*, [1927] 1 D. L. R. 259; 32 Can. Ry. Cas. 200; 59 O. L. R. 609.—*CAN.*

## PART V. SECT. 2, SUB-SECT. 6.

586 ii. ————*]*—*Deft. co. gratuitously, & for her own convenience, carried pltf. some four hundred yards past a station, where she was allowed to alight. At this place the ground was not level, & a person living along the line had been permitted for his own convenience to lay down on the right of way a platform, one end of which rested on a plank. Pltf. descended safely to the platform, but in passing from it she fell & was injured, owing, as alleged, to some defect in the condition of the plank supporting it:—Held*: the co. was not liable.—*BURKE v. BRITISH COLUMBIA ELECTRIC RY. CO., LTD.* (1900), 7 B. C. R. 85.—*CAN.*

592 ii. ————*]*—*Where* a passenger, arriving at a station at night, walked along a platform, not intended but frequently used as a means of exit, but which was not in any way guarded, &, after leaving the platform, fell into an excavation in the railway co.'s grounds & was injured:—*Held*: the co. were liable.—*OLDRIGHT v. GRAND TRUNK RY. CO. OF CANADA* (1895), 22 A. R. 286.—*CAN.*

sa. *Waiting room—Passage leading to "Ladies Toilet"—Unlighted & unlocked door opening on to stairs to basement.*—Pltf.'s wife entered a passage leading from a waiting room, above the entrance to which were the words "Ladies Toilet." The passage had three doors leading off it on the left. The first was apparently that of a private office, the second was marked "Ladies Toilet" but was

597. *Add. Annotation*:—*Apprvd. & Apld. Letang v. Ottawa Electric Ry.*, [1926] A. C. 725.
- 598a. — — — — —.]—*Applt.* met with an accident on resps.' property by using some slippery steps giving convenient access to their tramline. She sued resps. for damages. Resps. contended that applt. had been guilty of contributory negligence, & that the maxim "*Volenti non fit injuria*" applied to prevent her from receiving compensation:—*Held*: unless resps., who had invited applt. to use the access & were bound to keep it reasonably safe, established that she understood the extent of the danger which she was incurring & that she resolved to undertake the risk, the defence of "*Volenti non fit injuria*" failed.—*LETANG v. OTTAWA ELECTRIC RY. Co.*, [1926] A. C. 725; 95 L. J. P. C. 153; 135 L. T. 421; 42 T. L. R. 596, P. C.
- 598b. *Whether escalator dangerous.*—*ALEXANDER v. CITY & SOUTH LONDON RY. Co.* (1928), 44 T. L. R. 450, D. C.
603. *Add. Annotation*:—*As to (3) Refd. Montreal City v. Watt & Scott* (1922), 128 L. T. 147.
605. *Add. Annotation*:—*Refd. Nunan v. Southern Ry.*, [1923] 2 K. B. 703.
609. *Add. Annotation*:—*As to (2) Consd. Sharpe v. Southern Ry.*, [1925] 2 K. B. 311.
620. *Add. Annotation*:—*As to (1) Refd. Phillips v. Britannia Hygienic Laundry Co.*, [1923] 1 K. B. 539.
629. *Add. Annotation*:—*Refd. Gayler & Pope v. Davies*, [1924] 2 K. B. 75.
638. *Add. Annotation*:—*Refd. Pratt v. Patrick*, [1924] 1 K. B. 488.
645. *Add. Annotation*:—*Refd. Mersey Docks & Harbour Board v. Procter*, [1923] A. C. 253.
652. *Add. Annotation*:—*Refd. Ruffy-Arnell, etc. Co. v. R.*, [1922] 1 K. B. 599.
- 683a. — *Necessity for submission to Rates Tribunal of schedule for standard season tickets.*—*Re STANDARD CHARGES SCHEDULES*, No. 1323a, *post*.
- 683b. — *Season ticket rates—Continuation of—1921 Act, s. 34.*—*SOUTHEND CORPN. v. LONDON MIDLAND & SCOTTISH RY. Co.* (1927), 19 Ry. & Can. Tr. Cas. 216.
684. *Add. Annotations*:—*Consd. Fagan v. Green & Edwards* (1925), 70 Sol. Jo. 185. *Refd. Nunan v. Southern Ry.*, [1924] 1 K. B. 223.
- 685a. *Railway company—Whether applicable—Action under Fatal Accidents Act, 1846 (c. 93).*—Where a passenger by railway, who has agreed with the railway co. that their liability for personal injury shall not exceed a certain sum, is killed by the negligence of the co.'s servants, the damages recoverable by his dependants in an action under the above Act are not limited to such agreed sum.—*NUNAN v. SOUTHERN RY. Co.*, [1924] 1 K. B. 223; 93 L. J. K. B. 140; 130 L. T. 181; 40 T. L. R. 21; 68 Sol. Jo. 139, C. A.  
*Annotation*:—*Mentd. Venn v. Tedesco*, [1926] 2 K. B. 227.
- 685b. *Injury on journey by special train.*—*Pltf.* was engaged as a workman by contractors to the Ministry of Health for the construction of a road near H., & the Ministry made with deft. railway co. arrangements for a special train to take *pltf.* & other men from C. to H., a distance of twenty-six miles. *Pltf.* received from his employers a voucher which was addressed to the booking clerk & which contained these words: "On surrender of this voucher please supply the bearer with a return workman's ticket to H. by any ordinary workman's train without payment. This voucher is only available by workman's train." The voucher, on presentation at the booking office, was exchanged for a ticket. One side of the ticket had on it (*inter alia*) the words: "See back. Workmen. By special cheap train for the 'working classes.'" On the other side were (*inter alia*) the words: "This ticket is issued subject to the bye-laws, rules & regulations of the Managing Committee," & "This ticket is issued subject to the conditions mentioned in the Managing Committee's Act (62 & 63 Vict. c. clxviii), & its use by the holder is to be taken as evidence of a special contract upon those conditions. The liability of the co. is limited to a sum not exceeding £100." The above-mentioned Act contained provisions as to the running of workmen's trains on the particular railway within twenty miles of London, & limited the co.'s liability to £100, subject to certain conditions. *Pltf.* was injured by a collision between his train & another train. In an action for damages defts. admitted negligence, but contended that the issue of the ticket created a special contract between themselves & *pltf.* whereby their liability was limited to £100. The ct. found

locked, & the third, a few feet beyond, was standing open. There was no artificial light in the passage, & the daylight was waning. *Pltf.*'s wife passed through the open doorway & immediately fell down a flight of stairs into the basement below, & was severely injured:—*Held*: the third doorway was a trap or concealed place of danger, & was a place to which *pltf.*'s wife might reasonably have been expected to go in the belief, reasonably entertained, that she was entitled or invited to do so.—*KNOWLTON v. HYDRO ELECTRIC POWER COMMISSION OF ONTARIO*, [1926] 1 D. L. R. 217; 58 O. L. R. 80.—CAN.

*sd.* — *Doors leading from—of carrier.*—The public cannot assume that access is allowed through all the doors opening into or leading into or leading out of a waiting room. When the doors intended for public use are indicated, failure to put on the other doors notices that ingress through them is forbidden does not amount to negligence; on the contrary, the absence of any notice should put the

public upon inquiry whether it should attempt to open these doors & to proceed further into a place where it has no business. But, even if failure to keep such doors locked may amount to negligence, the carrier will not be liable for an accident to a passenger where the cause of the accident was the passenger's own want of caution in proceeding beyond such a door in the dark & in a strange place.—*CANADIAN NATIONAL RYS. Co. v. LEPAGE*, [1927] 3 D. L. R. 1030; [1927] S. C. R. 575.—CAN.

## PART V. SECT. 2, SUB-SECT. 11.

*p i.* — — — — —.]—The form of contract or shipping order used by a ry. co. in connection with the transportation of live stock provided that an attendant should accompany the shipment, but should not have the right to travel free or at a rate less than the ordinary fare, unless he had signed the special form of contract printed on the back of the shipping bill, which contained limitations as to

claims for personal injuries sustained while travelling. In an action to recover damages for injuries during transportation, due to the negligence of the ry. co.'s servants:—*Held*: the fact that the attendant had not paid any fare was due to the fact that the ry. co.'s agent made no attempt to collect the fare, & the ry. co. was responsible for the omission; the attendant was a full-fare passenger & not a trespasser & was entitled to recover damages.—*STEWART v. GRAND TRUNK PACIFIC RY. Co.*, [1924] 1 D. L. R. 881; 1 W. W. R. 473.—CAN.

## PART V. SECT. 2, SUB-SECT. 12.

*sm.* *Passenger standing on platform of moving car.*—A passenger who leaves his seat in a tramway car & goes on to the platform, while the car is in motion, is not necessarily guilty of contributory negligence should he meet with an accident while on the platform, the question depending in each case upon the particular circumstances.—*BUCHANAN v. GLASGOW CORPN.*, [1921] S. C. 668.—SCOT.



that pltf. must be taken to have been aware of the conditions indorsed on the back of the ticket. On the further question whether the terms of the contract applied to the particular journey:—*Held*: although the ticket & the conditions on it had been drafted as applicable to a journey by a train coming under the co.'s private Act, & contained no reference to such a journey as pltf.'s by a special train to a destination beyond twenty miles from London, yet, in the case of a passenger in the position of pltf., the conditions were a plain intimation that one condition on which the contract was made was that the co.'s liability should be limited to £100, & pltf. could recover no more than that amount.—*HEARN v. SOUTHERN RY. CO.* (1925), 41 T. L. R. 305, C. A.

685c. *Time limit for making claim.*—Pltf. was received by defts. under a contract to be carried in one of their steamships. The contract contained a clause that the shipowners should not be liable for loss, damage or delay to a passenger or his baggage arising from the act of God, or from causes of any kind beyond the carrier's control, even though the loss, damage or delay might have been caused by the neglect or default of the shipowners' servants. A subsequent clause provided that no claim under the contract should be enforceable against the shipowners unless a written notice thereof was delivered to them within three days after the passenger should be landed from the steamer at the termination of her voyage. In the course of the voyage one of pltf.'s hands was injured by reason of the negligence of defts.' servants, but no written notice of any claim was given by pltf. within the time limited by the contract:—*Held*: (1) the clause relieving defts. from liability for the negligence of their servants was valid & enforceable, but applying the *ejusdem generis* rule, the clause did not absolve defts. from liability for pltf.'s injury; (2) as pltf. had failed to give any written notice of his claim within the time prescribed by the contract, he was not entitled to recover.—*JONES v. OCEANIC STEAM NAVIGATION CO.*, [1924] 2 K. B. 730; 93 L. J. K. B. 1053; 132 L. T. 207; 40 T. L. R. 847; 69 Sol. Jo. 106; 16 Asp. M. L. C. 432.

689. *Add. Annotations*:—*Refd.* *Nunan v. Southern Ry.* (1923), 130 L. T. 131; *Hearn v. Southern Ry.* (1925), 41 T. L. R. 305.
695. *Add. Annotations*:—*Refd.* *Nunan v. Southern Ry.* (1923), 130 L. T. 131. *Mentd.* *Anchor Line (Henderson) v. Dundee Harbour Trustees, Ellerman Lines v. Dundee Harbour Trustees, Thomson, Shephard v. Dundee Harbour Trustees* (1922), 38 T. L. R. 299.
696. *Add. Annotation*:—*Refd.* *Walpole v. Canadian Northern Ry.*, [1923] A. C. 113.
- 703a. ———.]—*METROPOLITAN RY. CO. v. GREAT WESTERN RY. CO.* (1886), 3 T. L. R. 113.
704. *Add. Annotations*:—*Refd.* *Paterson Zochonis v. Elder Dempster*, [1923] 1 K. B. 420; *Pratt v. Patrick*, [1924] 1 F. B. 438.
724. *Add. Annotation*:—*As to* (1) *Consd.* *Smith v. Schilling*, [1928] 1 K. B. 429.
725. *Add. Annotation*:—*Refd.* *Baker v. Dalgleish Steam Shipping Co.* (1921), 126 L. T. 482.
764. *Add. Annotation*:—*Refd.* *Poland v. Parr*, [1927] 1 K. B. 236.
765. *Add. Annotation*:—*Refd.* *Poland v. Parr*, [1927] 1 K. B. 236.
775. *Add. Annotation*:—*Refd.* *Percy v. Glasgow Corp.*, [1922] 2 A. C. 299.
777. *Add. Annotation*:—*Refd.* *Percy v. Glasgow Corp.*, [1922] 2 A. C. 299.
- 781a. ———.]—Where a passenger on a tramcar makes a sufficient & proper tender of his fare & the conductor mistakenly refuses to accept it & has him arrested under a bye-law, which authorises the conductor, if a passenger's name or residence is unknown to him, to have the passenger arrested for evading payment, the conductor's employers are liable for the act of the conductor, whether he was or was not aware of the name & residence of the passenger, inasmuch as the conductor's act, although done mistakenly, is an act within the scope of his employment.—*PERCY v. GLASGOW CORPN.*, [1922] 2 A. C. 299; 91 L. J. P. C. 187; 127 L. T. 501; 86 J. P. 201; 38 T. L. R. 722; 66 Sol. Jo. 555; 20 L. C. R. 605.

## Part VI.—Carriage of Passengers' Luggage.

804a. *Luggage put in luggage van—By order of official.*—*EHINGER v. SOUTH-EASTERN & CHATHAM RY. CO. & PULLMAN CAR CO., LTD.*, No. 851a, *post*.

810. *Add. Annotation*:—*Generally, Mentd.* *Compania Martiaru v. Royal Exchange Assce.*, [1923] 1 K. B. 650.

### PART V. SECT. 3, SUB-SECT. 5.

688 v. ———.]—*Held*: in view of the smallness of the type in which the condition was printed & the absence of any device to draw attention to it, defts. had not taken reasonable means to bring it to pursuer's notice.—*WILLIAMSON v. NORTH OF SCOTLAND, ETC. NAVIGATION CO.*, [1916] S. C. 554.

TRUNK PACIFIC COAST S.S. CO. v. SIMPSON (1922), 63 S. C. R. 361; 65 D. L. R. 614; [1922] 2 W. W. R. 320.—CAN.

s i. *S. P. ERICKSON v. CANADIAN PACIFIC RY. CO., WALSTEAD v. CANADIAN PACIFIC RY. CO.* (Sask.), [1928] 1 D. L. R. 29; [1927] 3 W. W. R. 749.—CAN.

### PART V. SECT. 7.

b i. ———.]—*Refusal to obey conductor—Request unreasonable—Carrier liable.*—*RAINES v. BRITISH COLUMBIA ELECTRIC RY. CO.* (1921), 70 D. L. R. 738; 30 B. C. R. 340.—CAN.

g i. ———.]—*Removal exposing passenger to danger—Carrier liable.*—*HOWE v. NIAGARA ST. CATHARINES & TORONTO RY. CO.*, [1925] 2 D. L. R.

115; 30 Can. Ry. Cas. 95; 56 O. L. R. 202; *revg.*, [1924] 4 D. L. R. 339; 55 O. L. R. 387.—CAN.

m i. ———.]—*Removal exposing passenger to danger—Carrier liable.*—*HOWE v. NIAGARA ST. CATHARINES & TORONTO RY. CO.*, [1925] 2 D. L. R. 115; 30 Can. Ry. Cas. 95; 56 O. L. R. 202.—CAN.

### PART VI. SECT. 3, SUB-SECT. 1.

o i. ———.]—*Sent back by returning steamer after arrival at destination—Carrier liable.*—*SMITH v. UNION S.S. CO.* (1922), 68 D. L. R. 488.—CAN.

Paterson, Zochonis, Griffiths Lewis Steam  
Navigation Co. v. Paterson, Zochonis, [1924]  
A. C. 522.

- 823. Add. Annotation :—***As to (3) Folld. Vosper v. G. W. Ry. (1927), 137 L. T. 520.*

827a. Luggage put in compartment by porter—  
Passenger travelling in another compart-  
ment.] —Pltf., who had a third-class  
ticket, got a porter to put his suit-case in a  
first-class compartment & travelled in  
another part of the train, third class, with  
some friends 'whom he found on the train.  
At the end of the journey pltf.'s suit-case  
could not be found. In an action against  
the railway co. for its value :—*Held* : as the  
railway had failed to discharge the *onus*  
of proving that the loss of the hand luggage  
arose by reason of the negligence of the  
passenger, pltf. was entitled to recover.—  
*VOSPER v. GREAT WESTERN RY. CO.*, [1928]  
1 K. B. 340; 97 L. J. K. B. 51; 137 L. T. 520;  
43 T. L. R. 738; 71 Sol. Jo. 605, D. C.

- 830. Add. Annotations :—***As to (1) Refd. Ehinger v. S. E. & C. Ry. & Pullman Car Co. (1922), 38 T. L. R. 678; Vosper v. G. W. Ry. (1927), 137 L. T. 520. As to (2) Refd. Ehinger v. S. E. & C. Ry. & Pullman Car Co. (1922), 38 T. L. R. 678. As to (3) Consd. Ehinger v. S. E. & C. Ry. & Pullman Car Co. (1922), 38 T. L. R. 678.*

- 831. Add. Annotation :—***Generally, Rejd. Vosper v. G. W. Ry.* (1927), 137 L. T. 520.

- 833a. S. P. HARRISON v. GREAT WESTERN RY. CO.**  
(1875), 39 J. P. 312.

851a. -]—Pltf., who was a passenger with a ticket from Paris to London *via* Dover, & thence by the railway of deft. railway co., took an additional ticket from the second defts., the Pullman Car Co., for a Pullman car forming part of the train between Dover & London. The Pullman car ticket stated that the Pullman Car Co. accepted no liability for passengers' luggage, & that co. did all that was reasonably necessary to bring this condition to pltf.'s notice. At Dover pltf. took a seat in the Pullman car, but an official refused to allow her to take her suit-case with her & directed a porter to put it in the luggage vestibule

at the end of the car. There was no evidence in whose employment the official was, or as to the exact relationship between the two deft. cos. On the arrival of the train in London the luggage was unloaded by the Pullman car officials, but pltf.'s suit-case could not be found. In an action against both cos. :—*Held* : as a railway co. contracted as insurers of passengers' luggage except where the loss was caused by the passenger's own default, the railway co. were liable, but as there was no evidence that lack of care, if any, by the Pullman Car Co.'s officials in unloading had contributed to the loss, the Pullman Car Co. were not liable.—*EHINGER v. SOUTH-EASTERN & CHATHAM RY. CO. & PULLMAN CAR CO., LTD.* (1922), 38 T. L. R. 678 ; 66 Sol. Jo. 633.

- 851b.** ———.]—A special contract, entered into between a shipowner & a passenger by sea, contained a provision that the shipowner would not be answerable for loss of baggage "under any circumstances whatsoever":—*Held*: such a stipulation covered the case of wilful default & misfeasance by the shipowner's servants.—**TAUBMAN v. PACIFIC STEAM NAVIGATION CO.** (1872), 26 L. T. 704; 1 Asp. M. L. O. 336.

**Annotations:—***Consd.* *Price v. Union Lighterage Co.* (1904), 73 L. J. K. B. 222; *Travers v. Cooper*, [1915] 1 K. B. 73.  
**Refd.** *The Pearlmoor*, [1904] P. 286.

- 852. Add. Annotation :—***Generally, Refd. Almarle Supply Co. v. Hind, [1928] 1 K. B. 307.*

- 857.** *Add. Annotation:—As to (1) Rejd. Brown v. Harrison, Hourani v. Same (1927), 137 L. T. 549.*

- 858.** *Add. Annotations:—***Consd.** *Werner v. Det Bergenske Dampskibsselschaft* (1926), 134 L. T. 573. **Refd.** *Elder, Dempster v. Paterson, Zochonis, Griffiths Lewis Steam Navigation Co. v. Paterson, Zochonis*, [1924] A. C. 522.

- 863. Add. Annotations:—**Refd. L. & N. W. Ry. v. Neilson, [1922] 2 A. C. 263; Nunan v. Southern Ry., [1923] 2 K. B. 703; Buerger v. Cunard S.S. Co., [1925] 2 K. B. 646; The Refrigerant, [1925] P. 130.

- 866. Add. Annotations:—**Consd. *Ehinger v. S. E. & C. Ry. & Pullman Car Co.* (1922), 38 T. L. R. 678. **Appld.** *Hearn v. Southern Ry.* (1925), 41 T. L. R. 305. **Refd.** *Nunan v. Southern Ry.*, [1923] 2 K. B. 703.

## Part VII.—Carriage of Animals.

885. *Add. Annotation* :—*Reid. G. N. Ry. v. L. E. P. Transport & Depository*, [1923] 2 K. B. 742.

- 890. Add. Annotation :—***Reid. G. N. Ry. v.*

L. E. P. Transport & Depository, [1922]  
2 K. B. 742.

893. *Add. Annotation* :—*Reid. G. N. Ry. v. L. E. P. Transport & Depository*, [1922] 2 K. B. 742.

**PART VI. SECT. 8. SUB-SECT. 4.**

**d. i. — Special contract.]—Held :** it was a valid answer to pltf.'s action that she had assented to be bound by the contract relieving the carrier from liability.—**FENNELL v. MONTREAL S.S. Co. (1876), 6 Nfld. L. R. 124.—NFLD.**

d ii. ——— Construction.]—  
DIXON v. RICHELIEU NAVIGATION CO.  
(1889), 18 S. C. R. 704.—CAN.

\* i. ———.]—*Held*: pltf. was bound by the conditions.—*WOOD v. ALLAN* (1880), 13 N. S. R. (1 R. & G.) 477; *affd.* (1882), 15 N. S. R. (3 R. & G.) 211.—*CAN.*

855 iii. ——— *Inexperienced traveller.*]—*Held*: pltf., a woman of scant education & unaccustomed to travel, was entitled to recover from deft. co. notwithstanding a clause on her ticket limiting defts.' liability, as the clause had been waived, & there was a special contract.—*TOLERTON v. CUNARD S.S. Co.*, [1924] 3 D. L. R. 355; 2 W. W. R. 927; 33 B. C. R. 551.—*CAN.*

**PART VII. SECT. 8.**

w i. — *Animals dying of arsenic*

**poisoning.**—Action against deft. ry. co. dismissed, as there was no evidence connecting the cause of injury with any alleged negligence, & the cause of the damage was purely a matter of speculation.—TURNER v. CANADIAN PACIFIC RY. Co., [1922] 2 W. W. R. 859; 66 D. L. R. 31.—CAN.

b i. — *Unless written notice of claim given at point of delivery.*—  
KNIGHT-WATSON RANCHING Co. v.  
CANADIAN PACIFIC RY. Co., [1921]  
3 W. W. R. 788; 62 D. L. R. 601;  
15 Sask. L. R. 1.—CAN.

## Part VIII.—Carriage of Explosives and Dangerous Goods.

895. *Add. Annotation*:—*Consd. G. N. Ry. v. L. E. P. Transport & Depository*, [1922] 2 K. B. 742. As to (3) *Refd. Transoceanica Soc. Italiana di Navigazione v. Shipton*, [1923] 1 K. B. 31.
896. *Add. Annotations*:—As to (1) *Consd. G. N. Ry. v. L. E. P. Transport & Depository*, [1922] 2 K. B. 742. As to (2) *Folld. G. N. Ry. v. L. E. P. Transport & Depository*, [1922] 2 K. B. 742. As to (3) *Refd. Transoceanica Soc. Italiana di Navigazione v. Shipton*, [1923] 1 K. B. 31.
- 896a. —.]—*GREAT NORTHERN RY. CO. v. L. E. P. TRANSPORT & DEPOSITORY, LTD.*, No. 234a, *ante*.

## Part IX.—Measure of Damages.

905. *Add. Annotation*:—*Refd. Patrick v. Russo-British Grain Export Co.*, [1927] 2 K. B. 535. [1923] 1 K. B. 690. *J. Hall v. Pim* (1926), 32 Com. Cas. 46.
918. *Add. Annotation*:—As to (1) *Refd. Patrick v. Russo-British Grain Export Co.*, [1927] 2 K. B. 535.
930. *Add. Annotation*:—*Refd. Aronson v. Molga Holzindustrie A./G. Leningrad* (1927), 32 Com. Cas. 276.
910. *Add. Annotations*:—*Consd. Patrick v. Russo-British Grain Export Co.*, [1927] 2 K. B. 535. *Apld. Re Hall & Pim's Arbitration* (1928), 139 L. T. 50. *Refd. Pinnock v. Lewis & Peat*,

## Part X.—Statutory Control of Carriers' Business.

- 954a. *Side entrance to—Refusal to re-open.*—In deciding an application for the provision of reasonable facilities under 1854 Act, s. 2, & of reasonable facilities & conveniences under 1921 Act, s. 16 (1), the ct. must be satisfied that in refusing such facilities & conveniences the railway co. are acting without due regard to the proper discharge of their obligations, & the facility or convenience asked for will not be ordered where it is only for the benefit of a special class of persons who form a small proportion of the travelling public. Where it is sought to restore a former convenience & conditions have changed, there is nothing in the fact that it was afforded before, & the question will be decided on its merits.
- Therefore where an application was made for an order for the re-opening of a subsidiary side entrance to the station of the Midland Ry. Co. at N. which had been closed in pursuance of a general policy of "closed" stations adopted by the co., & it was shown that only 16 per cent. of the passengers using the station, who were mainly season & weekly ticket holders, would be likely to use such entrance, & that no general public inconvenience existed, the ct. refused to make any order.—*NOTTINGHAM CORPN. v. MIDLAND RY. CO.* (1922), 128 L. T. 539; 67 Sol. Jo. 404; 21 L. G. R. 71; 17 Ry. & Can. Tr. Cas. 72.
955. *Add. Annotation*:—*Consd. Nottingham Corpn. v. Mid. Ry.* (1922), 128 L. T. 539.
958. *Add. Annotation*:—As to (3) *Consd. Nottingham Corpn. v. Mid. Ry.* (1922), 128 L. T. 539.
- 976a. — *Refusal to accept privately owned wagons.*—Where a railway co. is always ready to provide an adequate supply of wagons for the conveyance of coal from stations on their system, their refusal of an application that they should accept privately owned wagons does not constitute a refusal to afford reasonable facilities for the receiving, forwarding, & delivery of traffic on their railway, or the subjection of appcts., or of the traffic in which they are interested, to undue or unreasonable prejudice or disadvantage.—*CHARRINGTON, GARDNER, LOCKETT & CO., LTD. v. SOUTHERN RY. CO.* (1926), 42 T. L. R. 758; 19 Ry. & Can. Tr. Cas. 1.
980. *Add. Annotation*:—As to (1) *Consd. Charrington, Gardner, Lockett v. Southern Ry.* (1926), 42 T. L. R. 758.
- 1010a. — *To continue former facilities—Pending decision as to rights of parties.*—Upon an application for an interlocutory injunction ordering that certain former facilities for receiving & running through passenger coaches should be continued pending a decision as to the rights of the parties:—*Held*: this not being an application to restrain a threatened act, regard should be made to the balance of convenience, & upon the facts, no interlocutory order should be made.—*GREAT CENTRAL RY. CO. v. LONDON & NORTH WESTERN RY. CO.* (1922), 17 Ry. & Can. Tr. Cas. 89.
- 1015a. *Necessity for submission to Rates Tribunal of schedule for standard workmen's fares.*—*Re STANDARD CHARGES SCHEDULES*, No. 1323a, *post*.

### PART X.

For cases decided by the Board of Railway Commissioners for Canada, see, generally, RAILWAYS, Vol. XXXVIII., pp. 254-256, 375-378.



1025. *Add. Citation*:—*sub nom.* R. v. RAILWAY COMRS., 46 J. P. 35.

1043a. Amount fixed so as to allow rebate to be made.]—Coal was conveyed from two collieries over the lines of three railway cos. at a charge equal to the rate by an alternative route. A through rate was ultimately fixed at a sum of 2*d.* per ton in excess of the original charge, in order to allow one of the cos. to make a rebate of that amount in accordance with its practice with respect to other coal traffic. The new rate having been withdrawn, an application was made for a through rate equal to the original charge:—*Held*: (1) the question of rebate had been rightly excluded in fixing the amount of the through rate; (2) the Railway Comrs. had power to apportion the rate in such a way that part of it would be finally handed over to the trader. —GLENAVON GARW COLLIERIES, LTD. v. RHONDDA & SWANSEA BAY RY. CO., GREAT WESTERN RY. CO. & BARRY RY. CO. (1915), 16 Ry. & Can. Tr. Cas. 65, C. A.

1049a. — — — Applicants not performing functions of ordinary railway company.]—STOCKSBRIDGE RY. CO. v. GREAT CENTRAL RY. CO. (1909), 13 Ry. & Can. Tr. Cas. 335.

1051a. — — — Congested route—Alternative route available.]—*Held*: (1) the proposed route was reasonable, & it was not sufficient to show that the receiving of the traffic in question would render a difficult task more difficult, unless such traffic would amount to an obstruction; (2) it was material to consider whether the proposed route was the only available route or whether there were other routes available; (3) although an arrangement between railway cos. might be shown to be very widely accepted, it was not open to the ct. to reject evidence as to the proper terminal at any port of shipment.—DEARNE VALLEY RY. CO. v. GREAT NORTHERN RY. CO. & GREAT CENTRAL RY. CO., LANCASHIRE & YORKSHIRE RY. CO. v. GREAT NORTHERN RY. CO. & GREAT CENTRAL RY. CO. (1914), 15 Ry. & Can. Tr. Cas. 202.

1058a. — — — Terminal costs.]—DEARNE VALLEY RY. CO. v. GREAT NORTHERN RY. CO. & GREAT CENTRAL RY. CO., LANCASHIRE & YORKSHIRE RY. CO. v. GREAT NORTHERN RY. CO. & GREAT CENTRAL RY. CO., No. 1051a, *ante*.

1060a. — — — Payment of rebate to trader.]—GLENAVON GARW COLLIERIES, LTD. v. RHONDDA & SWANSEA BAY RY. CO., GREAT WESTERN RY. CO. & BARRY RY. CO., No. 1043a, *ante*.

1080. *Add. Annotation*:—*Generally*, *Mentd.* Brocklebank v. R., [1924] 1 K. B. 647.

1096a. — — — Regulation affecting one class of goods only—Lower rate necessary in public interest.]—PORT OF MANCHESTER WAREHOUSES, LTD. v. CHESHIRE LINES COMMITTEE, GREAT CENTRAL RY. CO. & GREAT NORTHERN RY. CO., No. 1219a, *post*.

1098. *Add. Annotation*:—*As to* (1) *Refd.* York Corpn. v. Leetham, [1924] 1 Ch. 557.

1166a. Rebate on sidings rate.]—Upon a complaint of undue preference it was admitted that appcts., whose works at S. were connected by a private siding with defts.' railway, paid

the same rates as if their traffic used that station, while two of their competitors, whose respective works at B., ten miles from S., were also connected by private sidings with defts.' railway, received a rebate of 2½*d.* per ton off the B. station rates on traffic similar to that of appcts. Appcts. called no evidence. The railway co., while submitting that the *onus* of proof had not shifted on them under 1888 Act, s. 27 (1), called evidence & put in tables based on the *Pidcock* principle with the object of showing that the value of the private siding services rendered to appcts. at S. was in excess of the amounts included in their rates for station terminals at that station & also of the value of the respective private siding services rendered to appcts.' competitors at B. after allowing for the rebate:—*Held*: without deciding whether the *onus* had shifted to the railway co., but inclining to the view that it had, the *Pidcock* principle had been properly applied in the dissection of the respective rates, & there was no preference of appcts.' competitors.—PRENTICE BROTHERS, LTD. v. LONDON & NORTH EASTERN RY. CO. (1925), 18 Ry. & Can. Tr. Cas. 177.

1169. *Add. Annotation*:—*As to* (3) *Refd.* Charrington, Gardner, Lockett v. Southern Ry. (1926), 42 T. L. R. 758.

1171. *Add. Annotation*:—*Refd.* Prentice v. L. & N. E. Ry. (1925), 18 Ry. & Can. Tr. Cas. 177.

1175a. — — — Adoption of exceptional rates.]—PORT OF MANCHESTER WAREHOUSES, LTD. v. CHESHIRE LINES COMMITTEE, GREAT CENTRAL RY. CO. & GREAT NORTHERN RY. CO., No. 1377a, *post*.

1184. *Add. Annotation*:—*As to* (1) *Consd.* Port of Manchester Warehouses v. Cheshire Lines Committee, G. C. Ry. & G. N. Ry. (1922), 17 Ry. & Can. Tr. Cas. 54.

1193. *Add. Annotations*:—*As to* (1) *Consd.* Prentice v. L. & N. E. Ry. (1925), 18 Ry. & Can. Tr. Cas. 177. *Refd.* Port of Manchester Warehouses v. Cheshire Lines Committee, G. C. Ry. & G. N. Ry. (1922), 17 Ry. & Can. Tr. Cas. 54.

1219a. Injunction—Rate quoted but not actually made.]—Appcts. were owners of a bonded warehouse situated in Trafford Park, Manchester, in close proximity to, but not on, the premises of the Manchester Ship Canal Co. The latter co. also owned a similar warehouse within their dock area at Manchester. A large consignment of cigarettes was conveyed over the Ship Canal to appcts.' warehouse, & was thence consigned to London over the railways of resp. cos., who charged a rate of 107*s.* per ton in two-ton lots, this being the ordinary Manchester town rate, whereas for similar traffic consigned from the warehouse of the Ship Canal Co. they quoted a rate of 54*s.* 6*d.*, the latter being the Liverpool to London rate, which was governed by competitive shipping rates. Upon a complaint that the Manchester Ship Canal Co. were being unduly preferred the above difference in rates was sought to be justified by the railway cos. on the ground that, the ports of Manchester & Liverpool being in competition, the lower rate was necessary in order to secure for Manchester in the public

interest traffic which otherwise would go to Liverpool, & that the only practical way in which to distinguish between goods consigned from Manchester Town & Manchester Port respectively was to draw a line between goods on the premises of the Ship Canal Co. & those which had passed out of the control of that co.:—*Held*: (1) both rates were properly charged under the circumstances, & the difference between them was justified; (2) where a railway co. quotes a rate constituting an undue preference & asserts a right & intention of charging the same the ct. has jurisdiction to interfere by injunction without waiting till such charge is actually made.—*PORT OF MANCHESTER WAREHOUSES, LTD. v. CHESHIRE LINES COMMITTEE, GREAT CENTRAL RY. CO. & GREAT NORTHERN RY. CO.* (1922), 17 Ry. & Can. Tr. Cas. 54.

1236. *Add. Annotation*:—*Refd.* Charrington, Gardner, Lockett v. Southern Ry. (1926), 42 T. L. R. 758.

1237a. *Continuance of fixed rate—Under subsisting agreement—What amounts to agreement.*—An undertaking given by a railway co. during parliamentary proceedings in connection with an Act not to disturb existing fares for a limited period:—*Held*: not an agreement fixing those rates within 1921 Act, s. 34.—*SOUTHEND CORPN. v. LONDON MIDLAND & SCOTTISH RY. CO.* (1927), 19 Ry. & Can. Tr. Cas. 216.

1237b. — *What is a fixed rate.*—A rate which bears a fixed relation to an ascertainable standard is a fixed rate, though it may vary in actual amount from time to time, & such a rate should be continued after the appointed day, if made under an agreement for valuable consideration, under 1921 Act, s. 34.—*CARDIFF COLLIERIES, LTD. v. GREAT WESTERN RY. CO.* (1927), 19 Ry. & Can. Tr. Cas. 202.

1237c. — *Held*: although a fixed quarterly allowance when distributed over a fluctuating quarterly traffic yielded a varying tonnage charge, nevertheless inasmuch as sums payable under an agreement & ascertainable with reference to a fluctuating standard may be considered as fixed by that agreement, the charges payable by appcts. under the agreement in question were special charges fixed by a subsisting agreement for valuable consideration & should be continued under 1921 Act, s. 34.—*R. & W. PAUL, LTD. v. LONDON & NORTH EASTERN RY. CO.* (1927), 19 Ry. & Can. Tr. Cas. 228.

1237d. — *Under special statutory provision—What amounts to special statutory provision.*—*SOUTHEND CORPN. v. LONDON MIDLAND & SCOTTISH RY. CO.* (1927), 19 Ry. & Can. Tr. Cas. 216.

1243. *Add. Annotation*:—*Refd.* Rownson, Drew & Clydesdale v. G. W., L. M. & S., L. & N. E. & Southern Rys. (1928), 19 Ry. & Can. Tr. Cas. 235.

1245a. *“Rolling stock”—Transit of empty wagons needing repair on change of ownership.*—Under the heading “Rolling Stock” of the “General Railway Classification of Goods, 1921,” if there is a transit because of a change of ownership or because of a change in the sphere of operations, the full rate for

the conveyance of empty wagons is chargeable; if the cause of the transit is repairs only, the half-rate is chargeable; if the repairs are only an accompaniment of the transit due to change of ownership, the full rate is chargeable.—*LONDON, MIDLAND & SCOTTISH RY. CO. v. INCE WAGON & IRONWORKS CO., LTD.* (1924), 131 L. T. 229; 40 T. L. R. 551, C. A.

1245b. *“Pipes, rain water & their connections, cast iron or steel”—Include rain water pipes adapted for other purposes.*—*ROWNSON, DREW & CLYDESDALE v. GREAT WESTERN, LONDON, MIDLAND & SCOTTISH, LONDON & NORTH EASTERN & SOUTHERN RY. COS.* (1928), 19 Ry. & Can. Tr. Cas. 235.

1245c. *“Coal”—Coal, coke & patent fuel.*—*Re NATIONAL GAS COUNCIL OF GREAT BRITAIN & IRELAND’S APPEAL* (1927), 19 Ry. & Can. Tr. Cas. 163, C. A.

1285. *Add. Annotations*:—*As to* (1) *Refd.* G. W. Ry. v. Laing (1922), 39 T. L. R. 93; *Transoceanica Soc. Italiana di Navigazione v. Shipton*, [1923] 1 K. B. 31.

1286. *Add. Annotations*:—*As to* (1) *Refd.* *Transoceanica Soc. Italiana di Navigazione v. Shipton*, [1923] 1 K. B. 31; *Re Standard Charges (Collection & Delivery)* (1925), 19 Ry. & Can. Tr. Cas. 53. *As to* (2) *Consd.* G. W. Ry. v. Laing (1922), 39 T. L. R. 93.

1287. *Add. Annotations*:—*Consd.* G. W. Ry. v. Laing (1922), 39 T. L. R. 93. *Refd.* *Transoceanica Soc. Italiana di Navigazione v. Shipton*, [1923] 1 K. B. 31; *Prager v. Blatspiel, Stamp & Heacock*, [1924] 1 K. B. 566.

1316. *Add. Annotations*:—*Refd.* *Bede Steam Shipping Co. v. Bunge y Born, Limitada S. A.* (1927), 43 T. L. R. 374; *Wales v. Iron Trades Employers’ Assocn.* (1928), 21 B. W. C. C. 316.

1316a. — — — *GREAT CENTRAL RY. CO. v. SWANN* (1913), 48 L. Jo. 47.

1323. *Add. Annotations*:—*Refd.* *Griffiths v. Studebakers*, [1924] 1 K. B. 102; *R. v. Leinster*, [1924] 1 K. B. 311.

#### SECT. 6.—EXCEPTIONAL RATES AND FARES (Vol. VIII., p. 207).

1323a. *Under 1921 Act—Meaning of “standard” & “exceptional.”*—The expression “standard” as applied to charges in Part III. of the above Act is the correlative or complementary term to “exceptional,” & there being therefore no other alternative, every chargeable rate, fare, or charge for conveyance must necessarily be included in one or other of the above categories. Railway cos. are therefore required, under sect. 30 of the above Act, to submit to the Rates Tribunal forms of schedules for standard season tickets & workmen’s fares.—*Re STANDARD CHARGES SCHEDULES* (1923), 17 Ry. & Can. Tr. Cas. 147.

#### SECT. 7.—OWNER’S RISK RATES (Vol. VIII., p. 207).

1323b. *Conveyance of goods by passenger train at owner’s risk—Application for reduction of*

rate—Difference in risk negligible—Whether ground for two scales.]—Appcts. were consignors of gramophone records in the form of flat discs by passenger train. Resps. conveyed these discs at full parcels scale, but under owner's risk conditions. Appcts. claimed that since the discs were conveyed at owner's risk, a reduction should be made from the full parcels scale. It was admitted that when packed by the manufacturers the risk of breakage in transit was negligible. Resps. contended that in the case of goods carried by passenger train the difference between the owner's risk rate & the co.'s risk rate was not intended as a measure of the difference of risk:—*Held*: the difference in the risk to the railway cos. under the two sets of conditions being negligible, on the analogy of 1921 Act, s. 46 (3), there was no ground for directing that there should be two scales, but the discs, when properly packed, should be carried at co.'s risk, & when not properly packed, at owner's risk. "Properly packed" means packed according to reasonable regulations made by the railway cos., the question of reasonableness to be settled by the Tribunal in case of difference.—BRITISH MUSIC INDUSTRIES FEDERATION v. CALEDONIAN RY. CO. (1922), 17 Ry. & Can. Tr. Cas. 121.

1323c. Grounds for ordering.] Revised scales of rates based on the "zone" principle for the carriage of parcels by passenger train at co.'s risk & owner's risk respectively were put into force by resp. cos. in Nov. 1918, & were subsequently twice increased in 1920 by uniform percentage additions in accordance with directions of the Minister of Transport. In May, 1923, new & reduced scales for the above traffic were introduced, whereby the above increases of 1920 were reduced in unequal proportions in order to remove what resp. cos. considered to be anomalies between the co.'s risk & owner's risk scales, with the result that the reductions made in the charges under the owner's risk scale were considerably less than those made in the charges under the co.'s risk scale. Upon an application under 1921 Act, s. 60, to reduce the rates for parcels containing sausages, etc., consigned by passenger train at owner's risk:—*Held*: looking to the circumstances in which the above percentage increases had been recommended & imposed & subsequently continued by 1921 Act, s. 60, the railway cos. were not entrusted with them for any purpose connected with the adjustment of relationships between scales of charge but for the purpose of meeting increased expenses, & in the absence of special circumstances the proper practice was to give equal reduction to all; taking the above owner's risk scale of Nov. 1918, & not that of 1914, as sought by appcts., as a basis of calculation, the owner's risk rates by passenger train on appcts.' above traffic should not exceed those in force in Sept. 1920, as reduced, by 25 per cent.—SAUSAGE MANUFACTURERS' ASSOCN. v. LONDON, MIDLAND & SCOTTISH RY. CO., LONDON & NORTH EASTERN RY. CO., GREAT WESTERN RY. CO., SOUTHERN

RY. CO., & CHESHIRE LINES COMMITTEE (1924), 18 Ry. & Can. Tr. Cas. 59.

1326a. — Charges imposed by Ministry of Transport.]—Appcts. claimed reductions in the charges made by resps. for the detention of ordinary wagons & sheets, which were in the case of wagons 3s. per day for the first two days after the expiration of the free periods allowed for loading & unloading & thereafter 5s. per day, & in the case of sheets 6d. & 1s. for the like periods. These charges had been imposed on & after Jan. 1, 1920, by an order of the Minister of Transport, made in accordance with a recommendation of the Rates Advisory Committee, with the object of diminishing wagon detention & causing traders to exercise more diligence in loading & unloading them. The charges in force in 1913 had been 1s. 6d. per day for wagons & 3d. per day for sheets after the free periods then given. Appcts. also claimed that in reckoning the above periods Saturday should be treated as half a day. Resps. contended that the charges complained of were reasonable, & also that it was not open to the ct. to reverse the policy of the Minister of Transport in making a differentiation between the first two days following the free periods & subsequent days:—*Held*: (1) the ct. had jurisdiction to modify the charges complained of; (2) having regard to the value of wagons & sheets as compared with 1913, the loss of profit to the railway cos. arising from detention, the standing & overall charges & the extra expenses of shunting & occupation of siding involved, the charges of 3s. per day for wagons & 6d. per day for sheets, while on the high side, were not unreasonable, but the additional charges of 2s. & 6d. per day upon wagons & sheets respectively after the expiration of the first two days beyond the free periods were no longer justified, & should be discontinued, & the existing arrangements with regard to Saturdays should not be interfered with.—BRITISH HAY TRADERS' ASSOCN. v. LONDON, MIDLAND & SCOTTISH RY. CO., LONDON & NORTH EASTERN RY. CO., SOUTHERN RY. CO., & GREAT WESTERN RY. CO., BRITISH INDUSTRIES FEDERATION v. SAME (1925), 18 Ry. & Can. Tr. Cas. 169.

1330. Add. Annotation:—As to (3) Consd. G. W. Ry. v. Laing (1922), 28 Com. Cas. 100.

1331a. — Congestion caused by increased traffic—Insufficiency of unloading sidings.]—Pltf. co. had on their railway system at P. a small junction station, where there was a siding with sufficient accommodation for unloading the normal goods traffic consigned to that station. Defts. were contractors who were interested in one of three local building schemes which were started about the same time, involving a large increase in the goods traffic consigned to P. Owing to the congestion brought about in P. station by this increased traffic, & the fact that the unloading siding could only accommodate a limited number of wagons at a time, a number of the

PART X. SECT. 9, SUB-SECT. 1.  
sq. Right of Minister of Transport to fix free time for detention—Under Ministry of Transport Act, 1919 (c. 50), s. 3.]—NORTH BRITISH RY. CO. v. STEEL CO. OF SCOTLAND, LTD., [1922]

S. C. (H. L.) 132; 59 Sc. L. R. 275.—SCOT.  
g i. —.]—R. v. FRANK A. GILLIS CO., LTD., [1923] Exch. C. R. 1; 70 D. L. R. 635.—CAN.  
g ii. — Cars exempted from Rules—

"Cars stored on carrier's or private track"—"Private cars on private track of car owner."—TORONTO HAMILTON & BUFFALO RY. CO. v. STEEL CO. OF CANADA (1923), 55 O. L. R. 63.—CAN.



wagons arriving with goods at P. on defts.' account had to be put into storage sidings, to await their turn to be taken into the proper siding to be unloaded. Great delay in the discharge of wagons was caused thereby, but all the delay occurred at the storage sidings before the wagons were put into the unloading siding. Pltf. co. claimed from defts. exceptional charges for the detention of wagons in the storage sidings, under an implied contract or for accommodation or services provided or rendered by pltf. to defts. within the scope of pltf.' undertaking by the desire of defts.:—*Held*: as, on the facts of the case, the wagons were not put into the storage sidings at the desire of defts. they were not liable to pay the exceptional charges claimed.—*GREAT WESTERN RY. CO. v. LAING (J.) & Co., LTD.* (1922), 39 T. L. R. 93; 28 Com. Cas. 100, C. A.

1337. *Add. Annotation*:—*Generally*, *Refd.* *Prentice v. L. & N. E. Ry.* (1925), 18 Ry. & Can. Tr. Cas. 177.

1337a. —.]—*PRENTICE BROTHERS, LTD. v. LONDON & NORTH EASTERN RY. CO.*, No. 1166a, *ante*.

1337b. — Terminal charges not in fact made.]—Appcts. carried on business as timber merchants at a private siding about half a mile from resps.' station at R. They made no use of the station for their traffic. On an application to reduce the rates on appcts.' traffic on the grounds (1) that they were excessive, inasmuch as they were the same as those charged for similar traffic which made use of the station at R., & (2) that the rates in fact included charges for the use of the station, & resps. were not entitled to make any charge over & above the charge for conveyance:—*Held*: (1) the conveyance of appcts.' traffic started from or ended at a siding in the R. station, & resps. were entitled to charge for any services prior or subsequent to such conveyance, & such services were in fact rendered & the charges were not excessive. (2) The ct. will not infer that station terminals are being paid simply because a siding rate & a station rate are the same in amount. It is only open to the ct. to do so when comparable traffics are passing from the station & the siding under such rates.—*DIXON (T. & M.) LTD. v. LONDON, MIDLAND & SCOTTISH RY. CO.* (1924), 18 Ry. & Can. Tr. Cas. 46.

1342. *Add. Annotation*:—*As to* (1) *Consd.* *G. W. Ry. v. Laing* (1922), 39 T. L. R. 93.

1349. *Add. Annotation*:—*As to* (2) *Refd.* *Dixon v. L. M. & S. Ry.* (1924), 18 Ry. & Can. Tr. Cas. 46.

1349a. — Application for increase—Before "appointed day"—1921 Act, s. 60.]—The Railway Rates Tribunal has jurisdiction under the proviso to the above sect. to entertain, prior to "the appointed day" to be fixed under that Act, an application by a private siding owner for an increase in a rebate allowed him & for a consequent reduction in charge, & that jurisdiction is not qualified or excluded by the provisions of sect. 61 of the above Act, as to charges in connection with private sidings, the expression "charges" in sect. 60

including not only gross charges, but also the net charges payable by a trader after allowing for any rebate to which he may be entitled.—*BRITISH EXTRACTING CO., LTD., BRITISH SOAP CO., LTD., & BRITISH CREAMERIES, LTD. v. LONDON & NORTH EASTERN RY. CO.* (1925), 18 Ry. & Can. Tr. Cas. 102, C. A.

*Annotations*:—*Apld.* *British Hay Traders' Assn. v. L. M. & S. Ry., L. & N. E. Ry., Southern Ry. & G. W. Ry., British Industries Federation v. Same* (1925), 18 Ry. & Can. Tr. Cas. 169. *Refd.* *Paul v. L. & N. E. Ry.* (1927), 19 Ry. & Can. Tr. Cas. 228.

1364. *Add. Annotation*:—*Refd.* *Tate & Lyle v. L. & N. E. Ry. & L. M. & S. Ry.* (1926), 43 T. L. R. 134.

1373. *Add. Annotation*:—*Consd.* *Re Standard Charges (Collection & Delivery)* (1925), 19 Ry. & Can. Tr. Cas. 53.

## SECT. 12.—REDUCTION OF RATES (Vol. VIII., p. 217).

1377a. Who may apply for—Trader "Interested"—Warehouseman & forwarding agent.]—Appcts., who were warehousemen & forwarding agents at Trafford Park, Manchester, & who had unsuccessfully applied to the Railway Comrs. in respect of an alleged undue preference founded on the same facts, applied for a reduction in a rate of 106s. 7d., formerly 107s., charged upon cigarettes consigned in two-ton lots from their Trafford Park warehouse, which was near to, but outside, the Manchester Docks, to King's Cross, London, upon the ground that the corresponding rate from Liverpool was 54s. 6d., provisionally reduced to 50s. The lower rate was also charged on similar traffic consigned from Manchester Docks, while the higher rate was the ordinary Manchester town rate. Appcts. contended that where traffic as to which the conditions were in all respects alike is sent from two places A. & B. in the same district to the same destination, the same railway co. shall not charge a higher sum from A. than from B., unless the distance of the destination in the case of A. is greater than the distance in the case of B., provided that the rate in the case of A. is a productive rate. They admitted that conditions could not be treated as in all respects alike, if in the one case there was competition which did not exist in the other. Resps. objected that appcts. were not interested traders within 1921 Act, s. 60, & that the rate complained of, which was the ordinary Manchester town rate, was reasonable:—*Held*: (1) while something in the nature of a direct interest must be shown, the interest of appcts. in the above charges was sufficiently direct to entitle them to prosecute these proceedings; (2) in deciding what was a reasonable rate to be charged to appcts., regard should be had to the following considerations: (a) that it was not enough for a trader to show that without a reduction in rate he could not carry on a particular branch of his business; (b) that when railway cos. declared that in their own interests they could not grant facilities or reductions in rates, it would not be right for that ct. to compel them to adopt such a course of business unless appcts. showed that

PART X. SECT. 11, SUB-SECT. 3.  
1365 ii. — Long-standing voluntary toll.]—Where an increase in a

long-standing voluntary toll is sought, the onus is on the carrier to establish its reasonableness.—*NATIONAL DAIRY*

*COUNCIL v. GRAND TRUNK & CANADIAN PACIFIC RY. COS. (MILK RATE CASE)* (1919), 26 Can. Ry. Cas. 113.—CAN.

the railway cos. were mistaken; (c) that it was not intended by 1921 Act to establish the principle of equal mileage rates for all places & the consequent adoption of exceptional rates based on competition by water or road as the standard for all rates whether such competition existed in other places or not, & therefore that the existence of a low exceptional rate, not being in fact an undue preference, while a fact to be considered, was not alone a sufficient ground for ordering the reduction of a rate for goods in competition with those having the benefit of the low rate; (3) applying the above principles & taking all the circumstances into account, appcts. should be allowed a rate of 72s. 6d. subject to any general revision of rates.—**PORT OF MANCHESTER WAREHOUSES, LTD. v. CHESHIRE LINES COMMITTEE, GREAT CENTRAL RY. CO., & GREAT NORTHERN RY. CO. (1922), 17 Ry. & Can. Tr. Cas. 95.**

**1377b. Grounds for ordering—Necessity for *prima facie* case.]**—Confectionery in bottles & jars was carried by the railway cos. originally at co.'s risk, & subsequently under certain agreed packing conditions. In 1920 the cos., without making any reduction in rates, refused to carry confectionery packed as above except at owner's risk, owing to the heavy proportion of claims against them for damage. They continued to carry confectionery not contained in bottles & jars at co.'s risk. Upon an application for a reduction in the rates for confectionery when contained in bottles & jars:—*Held*: (1) an appct. for a reduction in rates must make a *prima facie* case for the same; (2) such a case had been made upon the above facts; (3) the cos. were not precluded from making special conditions by reason of the fact that they for some time had carried the above goods without conditions; (4) while certain losses in respect of confectionery not contained in bottles & carried at co.'s risk were borne by the cos., which losses did not arise in the case of confectionery in bottles carried at owner's risk, the saving to the cos., e.g. 4 or 5 per cent., was not sufficient to justify a reduction in rate.—**MANUFACTURING CONFECTIONERS' ALLIANCE, INCORPORATED v. CALEDONIAN RY. CO. (1922), 17 Ry. & Can. Tr. Cas. 135.**

**1377c.** *J.*—**PORT OF MANCHESTER WAREHOUSES, LTD. v. CHESHIRE LINES COMMITTEE, GREAT CENTRAL RY. CO. & GREAT NORTHERN RY. CO., No. 1377a, ante.**

**1377d. — Experimental rate.]**—Upon an application for an experimental reduced rate of 40s. per ton for flax straw in full train loads for a transit of approximately 200 miles, resp. railway cos. offered for a period of five months a rate of 45s., plus siding haulage charge. The ordinary class rate was 88s. 2d., less 12½ per cent. Similar traffic was being carried to the same destination from places forty or fifty miles away at approximately the same rate as that offered:—*Held*: the rate should be 45s. *Qu.*: whether the Tribunal ought to take into account the possibility that an experimental rate will result in bringing a large future traffic.—**MARSH v. GREAT EASTERN & GREAT WESTERN RY. COS. (1922), 17 Ry. & Can. Tr. Cas. 129.**

**1377e. — Removal of flat-rate additions imposed by Minister of Transport.]**—Upon

applications to remove certain flat-rate additions to the rates on appcts.' traffic which had been imposed by the Minister of Transport in exercise of his powers under Ministry of Transport Act, 1919 (c. 50), s. 3 (1) (c):—*Held*: (1) the ct. would not assume that the Minister was wrong in imposing such flat-rate additions; (2) it was not competent to the ct. to remove such flat-rate additions on the ground that the reasons given in support of their imposition by the former Rates Advisory Committee were not applicable to appcts.' traffic; (3) the rates on appcts.' traffic were not excessive, notwithstanding that the percentage increase resulting from such flat-rate additions was greater on traffic carried at low mileage rates than on that carried at higher mileage rates, & that larger reductions in rates had been given to blast furnace than to appcts.', i.e., coal, traffic.

(4) A rate is not necessarily excessive because a railway co. are not handing back on balance to the traders all the savings that they are making in reduced expenses.—**MONMOUTHSHIRE & SOUTH WALES COAL OWNER'S ASSOCN. v. GREAT WESTERN RY. CO., MONMOUTHSHIRE & SOUTH WALES COKE OVENS & BYE-PRODUCTS WORKS ASSOCN. v. SAME, SOUTH WALES PATENT FUEL MANUFACTURERS' ASSOCN. v. SAME (1923), 18 Ry. & Can. Tr. Cas. 1.**

**1377f. Reductions granted to other interests.]**

—Upon an application for the removal of a flat-rate increase of 2d. per ton, being part of a larger increase which originally had been imposed on appcts.' traffic in coal, coke & patent fuel in accordance with a second general revision of rates directed by the Minister of Transport which had since been voluntarily reduced by resps., the following grounds were relied upon by appcts. in support of their case: (1) that a greater proportionate reduction in rates had been given to the traffic of certain admittedly necessitous industries than to their traffic; (2) that their traffic, & in particular their short distance traffic, had increased in density since the above increase in rates, thereby producing an exceptional profit for resps.; & (3) that they apprehended in the future an intensive foreign competition which a reduction in railway rates would assist them to meet:—*Held*: (1) the reductions in rates granted by resps. to the traffic of other industries were justified & did not establish a case of hardship or injustice to appcts.; (2) while it was doubtful as to how far the increase in coal traffic had resulted in increased profit to resp. cos., the period of prosperity in appcts.' trade which was mainly due to the abnormal European political situation was passing away; (3) in an application for a reduction of a rate under 1921 Act, s. 60, the *onus* lay upon an appct. to show the existence of some element of unfairness or of hardship amounting to unfairness, & appcts. had not discharged that *onus* by alleging that a reduction in rates would assist.—**MINING ASSOCN. OF GREAT BRITAIN v. LONDON, MIDLAND & SCOTTISH, LONDON & NORTH EASTERN, GREAT WESTERN, & SOUTHERN RY. COS., & CHESHIRE LINES COMMITTEE, NATIONAL ASSOCN. OF COKE & BYE-PRODUCT PLANT (OWNERS) v. SAME (1924), 18 Ry. & Can. Tr. Cas. 14.**

*Annotation*:—Generally, *Mentd.* **DIXON v. L. M. & S. RY. (1924), 18 Ry. & Can. Tr. Cas. 46.**

- 1377g. Abolition of free storage facilities.]—**Appets., the owners of a warehouse at Trafford Park, Manchester, claimed that a rate of 10s. 11d. per ton for sugar from Liverpool to their private siding at Trafford Park, being the same amount as the corresponding rate from Liverpool to resp. co.'s Oldham Road station at Manchester, should be reduced by an amount equal to the cost incurred by resps. in providing terminal accommodation & services, including twenty-eight days' free warehousing, at their Manchester station. No sugar had been consigned by rail to appets.' warehouse, nor was there any evidence that any trader desired to consign sugar to it. Prior to the war resps. had given fourteen days' free storage at Manchester for sugar in view of similar free accommodation provided by competing water-carriers from Liverpool to Manchester. This facility having been withdrawn by resps., they had lost as a result a large part of their sugar traffic from Liverpool to Manchester, & therefore, as from Nov. 1923, had restored the above free storage for an extended period of twenty-eight days:—*Held*: the ct. had no jurisdiction to abolish the facility of free storage, there was no evidence that the 10s. 11d. rate to Trafford Park was unreasonable or excessive, & there was no presumption that the rate when compared with the corresponding rate to Oldham Road station was unreasonable, because the latter included free storage at that station.—**PORT OF MANCHESTER WAREHOUSES, LTD. v. LONDON, MIDLAND & SCOTTISH RY. CO. (1925), 18 Ry. & Can. Tr. Cas. 81.**
- 1377h. —.]—**Upon an application that the rates on molasses intended to be used for cattle feeding which, with certain exceptions, was in Class 1 of the 1891-2 classification, should be reduced & placed on the same basis as the rates for oilcake & meals, which were

in Class 3 of that classification:—*Held*: there was no evidence that the rates complained of were unjust or unreasonable except by comparing them with the treatment of another article in another class, & the ct. had not power at that stage to alter the classification.—**NATIONAL ASSOCN. OF CORN & AGRICULTURAL MERCHANTS v. LONDON, MIDLAND & SCOTTISH RY. CO., CROSFIELD'S OIL & CAKE CO., LTD. v. LONDON, MIDLAND & SCOTTISH RY. CO. (1925), 18 Ry. & Can. Tr. Cas. 97.**

- 1377i. — Group rates.]—**GOOD (JOHN) & SONS, LTD. v. LONDON & NORTH EASTERN RY. CO. (1927), 19 Ry. & Can. Tr. Cas. 191.
- 1377j. Burden of proof—On applicant.]—**MINING ASSOCN. OF GREAT BRITAIN v. LONDON, MIDLAND & SCOTTISH, LONDON & NORTH EASTERN, GREAT WESTERN, & SOUTHERN RY. COS., & CHESHIRE LINES COMMITTEE, NATIONAL ASSOCN. OF COKE & BYE-PRODUCT PLANT (OWNERS) v. SAME, No. 1377f, *ante*.
- 1377k. — —.]—**EBBW VALE STEEL, IRON & COAL CO., LTD. v. LONDON, MIDLAND & SCOTTISH RY. CO. (1927), 19 Ry. & Can. Tr. Cas. 207.
- 1377l. Power of railway company during transitional period until "appointed day"—To raise reduced rates.]—**Under 1921 Act, s. 60, the rates in existence on Aug. 15, 1921, are maximum rates, & the railway cos. are entitled to reduce them, & to raise them again without applying to the Railway Rates Tribunal, if by so doing they do not exceed the maximum.—**TATE & LYLE, LTD. v. LONDON & NORTH EASTERN RY. CO. & LONDON MIDLAND & SCOTTISH RY. CO. (1926), 43 T. L. R. 134; 71 Sol. Jo. 82, H. L.**
- What rates—Owner's risk rates.]—**See Nos. 1323b, 1323c, *ante*.
- Charges for detention.]—**See No. 1326a, *ante*.

## Part XI.—Remedies of and against Carriers.

- 1390. Add. Annotation:—***Refd.* Lake v. Simmons (1926), 95 L. J. K. B. 586.
- 1397. Add. Annotation:—***Mentd.* National Provincial & Union Bank of England v. Lindsell (1921), 91 L. J. K. B. 196.
- 1398. Add. Annotation:—***As to* (1) *Refd.* Pennington

*v.* Reliance Motor Works, [1923] 1 K. B. 127.

- 1449. Add. Citation:—**91 L. J. K. B. 39.

**Add. Annotations:—***Refd.* Anderson v. Equitable Life Assce. Soc. of the United States (1926), 134 L. T. 557; *Dexters v. Hill Crest Oil Co. (Bradford), [1926] 1 K. B. 348.*

### PART XI. SECT. 1, SUB-SECT. 4.— A. (a).

**st. Payment for services rendered—***Towing damaged motor car.]—*TERRY v. AUTOMOBILE OWNERS ASSOCN., No. 151, *ante*.

### PART XI. SECT. 2, SUB-SECT. 1.

**ex. Consignee—Damage to goods en route—Owner having paid damage to consignee.]—**Where an owner of goods had indorsed a bill of lading to the buyer:—*Held*: he had parted with all his rights to obtain damages from the

carrier. The fact that the owner paid the indorsee the damages suffered by the goods *en route* did not deprive the latter of his right of action against the carrier.—**FORD MOTOR CO. v. UNION S.S. CO., [1925] 1 D. L. R. 265; [1924] 3 W. W. R. 718.—CAN.**



## CHARITIES.

## Part I.—Charitable Purposes.

1. *Add. Annotations:—As to (1) Consd. Jackson's Trustees v. Lord Advocate (1926), 10 Tax Cas. 460. Foll'd. Re Williams, Public Trustee v. Williams, [1927] 2 Ch. 283. Refd. R. v. Income Tax Special Comrs., Ex p. Rank's Trustees (1922), 127 L. T. 651; Jackson v. Voss, [1923] 2 K. B. 357; Brighton College v. Marriott (1924), 69 Sol. Jo. 229; I. R. Comrs. v. Glasgow Musical Festival Asscn. (1926), 11 Tax Cas. 154; Scottish Woollen Technical College, Galashiels v. I. R. Comrs. (1926), 11 Tax Cas. 139; Adamson v. Melbourne & Metropolitan Board of Works (1928), 45 T. L. R. 3. As to (2) Consd. A.-G. v. National Provincial Bank, [1924] A. C. 262; Verge v. Somerville, [1924] A. C. 496; Chesterman v. Federal Taxation Comr. (1925), 42 T. L. R. 121; R. v. Income Tax Special Comrs., Ex p. Headmasters' Conference, Same v. Same, Ex p. Incorporated Asscn. of Preparatory Schools (1925), 41 T. L. R. 651; Jackson's Trustees v. Lord Advocate (1926), 10 Tax Cas. 460; I. R. Comrs. v. Yorkshire Agricultural Soc. (1927), 44 T. L. R. 59. Ap'd. General Medical Council v. I. R. Comrs., English Branch Council of General Medical Council v. Same (1928), 97 L. J. K. B. 578. Refd. Barber v. Chudley (1922), 92 L. J. K. B. 711; R. v. Income Tax Special Comrs., Ex p. Rank's Trustees (1922), 127 L. T. 651; Re Hummeltenberg, Beatty v. London Spiritualistic Alliance, [1923] 1 Ch. 237; Re Ludlow, Bence-Jones v. A.-G. (1923), 93 L. J. Ch. 30; Re Shakespeare Memorial Trust, Lytton v. A.-G., [1923] 2 Ch. 398; Re Gray, Todd v. Taylor, [1925] Ch. 362; I. R. Comrs. v. Falkirk Temperance Café Trust (1926), 11 Tax Cas. 353; I. R. Comrs. v. Glasgow Musical Festival Asscn. (1926), 11 Tax Cas. 154; I. R. Comrs. v. Peeblesshire Nursing Asscn. (1926), 11 Tax Cas. 335; Scottish Woollen Technical College, Galashiels v. I. R. Comrs. (1926), 11 Tax Cas. 139. Generally, Ment'd. Martin v. Lowry, Martin v. I. R. Comrs., [1926] 1 K. B. 550.*
  - 1a. —.]—VERGE v. SOMERVILLE, No. 199b, post.
  2. *Add. Annotation:—Refd. Re Tetley, National Provincial & Union Bank of England v. Tetley, [1923] 1 Ch. 258.*
  - 3a. — *Motive immaterial.*—(1) Motive is immaterial in considering whether a bequest is charitable.  
(2) A gift to provide a stained glass window in a church is a good charitable gift even though the motive may be said to be neither to beautify the church nor benefit the parishioners, but merely to perpetuate the memory of testatrix & her relatives.  
(3) Where a gift is made for a particular charitable purpose which is sufficiently provided for without the gift, the gift must be applied *cy præs.*—*Re KING, KERR v. BRADLEY, [1923] 1 Ch. 243; 92 L. J. Ch. 292; 128 L. T. 790; 67 Sol. Jo. 313.*
- 4a. *Question for court.*—To be valid a charitable bequest must be for the public benefit, & the trust must be capable of being administered & controlled by the ct. The opinion of the donor of a gift or the creator of a trust that the gift or trust is for the public benefit does not make it so, the matter is one to be determined by the ct. on the evidence before it.—*Re HUMMELTENBERG, BEATTY v. LONDON SPIRITUALISTIC ALLIANCE, [1923] 1 Ch. 237; 92 L. J. Ch. 326; 129 L. T. 124; 39 T. L. R. 203; 67 Sol. Jo. 313.*  
*Annotation:—Consd. I. R. Comrs. v. Temperance Council of Christian Churches of England & Wales (1926), 136 L. T. 27.*
- 12a. — — — — — *Beneficiaries formerly helped by testator.*—*Re SHEPHERD, SMITH v. SHEPHERD (1921), 152 L. T. Jo. 18.*
17. *Add. Annotation:—Ment'd. Re Southerden, Adams v. Southerden, [1925] P. 177.*
22. *Add. Annotation:—Foll'd. Re Lucas, Rhys v. A.-G., [1922] 2 Ch. 52.*
23. *Add. Annotation:—Refd. Verge v. Somerville, [1924] A. C. 496.*
- 23a. *Trade union certified to be war charity—Necessity for registration under War Charities Act, 1916 (c. 43).*—The National League of the Blind of Great Britain & Ireland, a registered trade union whose funds were derived from subscriptions of members, & gifts by the public, was certified by the Charity Comrs. as a charity for the blind, but had not been registered as a charity under the above Act, nor under Blind Persons Act, 1920 (c. 49). Applt. having been convicted of having solicited & obtained money from members of the public:—*Held:* the League was a charity as well as a trade union, & required to be registered under both those Acts, & the conviction must be affirmed.—*BARBER v. CHUDLEY (1922), 92 L. J. K. B. 711; 128 L. T. 766; 87 J. P. 69; 21 L. G. R. 114, D. C.*
- 23b. *Oldest respectable inhabitants Valid.*—Testator gave the income to be derived from all his securities to A., for her life, & after her decease to "the oldest respectable inhabitants in G. to the amount of 5s. per week each":—*Held:* the amount of the gift implied poverty, & coupled with the use of the word "oldest," implying age, was sufficient to render the gift a good charitable bequest.—*Re LUCAS, RHYS v. A.-G., [1922] 2 Ch. 52; 91 L. J. Ch. 480; 127 L. T. 272; 66 Sol. Jo. 368.*
27. *Add. Annotation:—Consd. Re Lucas, Rhys v. A.-G., [1922] 2 Ch. 52.*

## PART I. SECT. 1.

1 vi. — *Estate Duty Assessment Act, 1914, s. 8 (5).*—The word "charitable" in the above sect. is to be construed in its legal & not its popular sense.—*CHESTERMAN v. FEDERAL COMR. OF TAXATION, [1926] A. C. 128; 95 L. J.*

P. C. 39; 134 L. T. 360; 42 T. L. R. 121. —AUS.

8 ii. — *Purpose not source.*—In determining whether a gift to an asscn. is a gift for charitable purposes, the ct. may inquire into the objects of the

asscn. & if these are found to be charitable within Stat. Eliz. the ct. may hold the gift to be for charitable purposes.—*PERPETUAL TRUSTEE CO., LTD. v. SHELLEY (1921), 21 S. R. N. S. W. 426; 38 N. S. W. W. N. 132.* —AUS.

27a. ———.]—Testatrix gave the income of certain shares in a public co. for the education of children of employees of the co. & gave the income of further shares in the co. for the benefit of incapacitated employees, the income in each case to be applied by the governors of the co., in their discretion:—*Held*: both gifts were good charitable bequests, the first being for promoting education & the second for the alleviation of poverty.—*Re RAYNER, CLOUTMAN v. REGNART* (1920), 89 L. J. Ch. 369; 122 L. T. 577; 84 J. P. 61.

29. *Add. Annotation*:—*Consd. Re Lucas, Rhys v. A.-G.*, [1922] 2 Ch. 52.

34a. ——— **Distributing coal & making loans to poor & deserving inhabitants.**]—Testator, a native of F., a small village, bequeathed his residuary estate to trustees upon trust to set aside £800 as a "Coal Fund," the income whereof was to be used for the purchase of coal to be distributed among such poor & deserving inhabitants of F. as a committee should think fit, & to hold the rest of his residuary estate as a "Loans Fund" & to apply the capital & income thereof, under the direction of the committee, "in making loans to poor & deserving inhabitants of the parish of F. in manner hereinafter provided." No loan was to exceed £100, repayable within nine years at longest. No interest was to be charged & no borrower to have more than one loan. Only one-sixth part of the fund was to be lent in any one year, & the borrowers were to be inhabitants or residents of F. not above the age of thirty-five years. Testator directed that "all surplus money forming part of or arising from the 'Loans Fund' over & above £500 & not required for loans shall be invested by the trustees under the direction of the committee, but all investments purchased shall be from time to time sold for the purpose of advancing the produce thereof in loans if & when required":—*Held*: (1) the will displayed a general charitable intention & contained an immediate & effective gift of the whole of the residue to charity, displacing the claim of the next of kin; (2) the question of accumulation beyond the period allowed by law did not arise, the possibility of a surplus hereafter not impairing the validity of the immediate gift to charity; (3) the doctrine of *cy-près* could be at once applied, if necessary, to any surplus income after the period allowed by law for accumulation had expired.—*Re MONK, GIFFEN v. WEDD*, [1927] 2 Ch. 197; 96 L. J. Ch. 296; 137 L. T. 4; 43 T. L. R. 256, C. A.

*Annotation*:—*As to* (1) *Refd. I. R. Comrs. v. Roberts Marine Mansions Trustees* (1927), 43 T. L. R. 270.

45. *Add. Annotations*:—*Apld. I. R. Comrs. v. Roberts Marine Mansions Trustees* (1927), 43 T. L. R. 270. *Refd. Re Clarke, Bracey v. Royal National Lifeboat Institution*, [1923] 2 Ch. 407.

46. *Add. Annotations*:—*Consd. Re Clarke, Bracey v. Royal National Lifeboat Institution*, [1923] 2 Ch. 407. *Refd. Re Blackwell, Blackwell v. Blackwell*, [1928] Ch. 614.

47a. **Nursing home—Persons of moderate means—Gift charitable.**]—Testator made the following gift in his will: "I give & bequeath

all the residue & remainder of my estate not otherwise disposed of by this my will to: (a) such institution, society or nursing home, or nursing homes, or similar institutions as assist or provide for persons of moderate means such as clerks, governesses & others who may not be able or eligible to benefit under the National Health Insurance Act, Old Age Pensions, or other Act of a like character to have either surgical operations performed together with medical treatment or medical treatment alone on payment of some moderate contribution; (b) the Royal National Lifeboat Institution; (c) the Lister Institute of Preventive Medicine; (d) & such other funds, charities & institutions as my exors. in their absolute discretion shall think fit; & I direct that such residue shall be divided amongst the legatees named in the paragraphs (a), (b), (c), & (d) lastly hereinbefore contained in such shares & proportions as my trustees shall determine." It was admitted that the objects under (b) & (c) were charitable. On the question whether the residue was validly disposed of by the will or failed in whole or in part for uncertainty:—*Held*: (1) the objects included under paragraph (a) were charitable since the means of the recipients would necessitate their being unable without the bounty of testator to procure the treatment of which they might stand in need; (2) the objects specified under heading (d) being for such indefinite charitable & non-charitable objects as the exors. should think fit were not exclusively charitable, & therefore though a trust for charitable & non-charitable indefinite purposes indiscriminately failed by reason of uncertainty, this trust being of a part of a fund for charitable purposes & another part for non-charitable indefinite purposes the ct. could ascertain what the parts were.—*Re CLARKE, BRACEY v. ROYAL NATIONAL LIFEBOAT INSTITUTION*, [1923] 2 Ch. 407; 92 L. J. Ch. 629; 129 L. T. 310; 39 T. L. R. 433; 67 Sol. Jo. 680.

48. *Add. Annotations*:—*Consd. Chesterman v. Federal Taxation Comr.* (1925), 42 T. L. R. 121. *Apld. Re Williams, Public Trustee v. Williams*, [1927] 2 Ch. 283.

49. *Add. Annotations*:—*Consd. Chesterman v. Federal Taxation Comr.* (1925), 42 T. L. R. 121. *Apld. Re Williams, Public Trustee v. Williams*, [1927] 2 Ch. 283.

57. *Add. Annotation*:—*As to* (2) *Apld. Re Gray, Todd v. Taylor*, [1925] Ch. 362.

66. *Add. Annotation*:—*Refd. Brighton College v. Marriott* (1924), 69 Sol. Jo. 229.

68. *Add. Annotation*:—*Refd. I. R. Comrs. v. Temperance Council of Christian Churches of England & Wales* (1926), 136 L. T. 27.

69. *Add. Annotation*:—*Refd. Re Tetley, National Provincial & Union Bank of England v. Tetley*, [1923] 1 Ch. 258.

73a. ——— **Trust to erect national theatre—& revive English classical drama—Valid.**]—(1) The Shakespeare Memorial Trust was established to erect & endow a Shakespeare Memorial National Theatre, with the object of performing Shakespeare's plays, reviving English

## PART I. SECT. 3, SUB-SECT. 4.

73a. **Political economy—Furtherance of better relations between employers & employees—Valid.**]—*Re COBBETT* (1921), 17 Tas. L. R. 139.—AUS.

classical drama, & stimulating the art of acting:—*Held*: the trust was a good charitable trust, on the ground either that the objects were for the advancement of education or that they came within the class of purposes beneficial to the community other than by way of the relief of poverty or the advancement of education or religion referred to by LORD MACNAGHTEN in *Income Tax Special Purposes Comrs. v. Pemsel*, [1891] A. C. 531.

(2) At the time when a donation of £70,000 was made to the charity, part of which was applied by the charity in the purchase of a site for the theatre, no annual subscription had been received, but within only nine days of that time the first annual subscription was received. On the subsequent sale of the site, the question arose whether, in those circumstances, the consent of the Charity Comrs. was required to the sale by the charity:—*Held*: notwithstanding that in the inception of its formation it was contemplated that the charity should be supported by annual subscriptions as well as by income from endowment, & notwithstanding that there was an interval of nine days only between the donation & the first of the annual subscriptions, the charity was not at the time when the donation was received a mixed charity within 1853 Act, s. 62; & as it was, therefore, not exempted from the jurisdiction of the Charity Comrs., their consent to the sale by the charity was required.—*Re SHAKESPEARE MEMORIAL TRUST, LYTTON (EARL) v. A.-G.*, [1923] 2 Ch. 389; 92 L. J. Ch. 551; 130 L. T. 56; 39 T. L. R. 610, 676; 67 Sol. Jo. 809.

73b. Bequest to provide sweets—For all children within parish—Not confined to those attending school—Not valid.—Testator by his will, after leaving money for prizes for the best-conducted school children in the parish, left money to provide “a pennyworth of sweets each for all boys & girls below the age of fourteen resident within the parish,” & he directed that the income of the residue of his estate should be applied in awarding annual prizes to residents for the best-kept gardens & cottages:—*Held*: since there was no provision as to the gift of sweets being confined to children who had attended school, that gift was not charitable & was void, but the gift to provide prizes for the best-kept gardens & cottages was a good charitable gift as it was one for the benefit of the community.—*Re PLEASANTS, PLEASANTS v. A.-G.* (1923), 39 T. L. R. 675.

Annotation:—*Reid. I. R. Comrs. v. Yorkshire Agricultural Soc.*, [1928] 1 K. B. 611.

75. *Add. Annotations*:—*Apprvd. Chesterman v. Federal Taxation Comr.* (1925), 42 T. L. R. 121. *Appld. Re Williams, Public Trustee v. Williams*, [1927] 2 Ch. 283.

75a. —.—Testator by his will, wherein he described himself as a Clerk in Holy Orders, gave all his property to the Public Trustee upon trust for investment. He then directed that the income should be paid to the Bishops of the dioceses of St. D. & B., the rector of L. & the vicars of two other parishes & their successors, together with a layman appointed by the conference of each of those dioceses, whom he nominated administrative trustees. After stating that his wife left her interest in certain property to him to be used as he

wished, but for preference for Church purposes, testator, in expressed accordance with her wish, by clause 3, devised all he should die possessed of as a fund for assisting the education of candidates for Holy Orders in the Church of England, to be administered by the trustees. Clause 12 contained the following proviso: “If for any sufficient reason, whether disendowment may or may not have taken place, the trustees decide that the interests of the Church could be better served by any changes in the method of administering, or even in the object to which the fund is applied under my will, such change or changes may be made with the several consents expressed by a majority of the Diocesan Conferences of B. & St. D.”:—*Held*: the objects to which the trustees were, by clause 12, empowered to change the application of the fund were not other than charitable objects & were religious objects in the interests of the Church as an organisation existing for the instruction & edification of the public, & the gift in clause 3 was a valid charitable gift.—*Re WILLIAMS, PUBLIC TRUSTEE v. WILLIAMS*, [1927] 2 Ch. 283; 96 L. J. Ch. 449; 137 L. T. 477; 71 Sol. Jo. 605.

78. *Add. Annotations*:—*Reid. Re Clarke, Bracey v. Royal National Lifeboat Institution*, [1923] 2 Ch. 407; *Re King, Kerr v. Bradley*, [1923] 1 Ch. 243.

82. *Add. Annotation*:—*Reid. Re Tetley, National Provincial & Union Bank of England v. Tetley*, [1923] 1 Ch. 258.

89. *Add. Annotation*:—*As to (1) Reid. Re Williams, Public Trustee v. Williams*, [1927] 2 Ch. 283.

90. *Add. Annotation*:—*Generally, Reid. Re Monk, Giffen v. Wedd*, [1927] 2 Ch. 197.

94. *Add. Annotation*:—*Reid. Re Hummeltenberg, Beatty v. London Spiritualistic Alliance* (1923), 92 L. J. Ch. 326.

117. *Add. Annotation*:—*Mentd. Re Manners, Manners v. Manners*, [1923] 1 Ch. 220.

119. *Add. Annotations*:—*Reid. Re Blackwell, Blackwell v. Blackwell*, [1928] Ch. 614. *Mentd. Ward v. Van der Loeff, Burnyeat v. Van der Loeff*, [1924] A. C. 653.

129. *Add. Annotations*:—*Consd. Chesterman v. Federal Taxation Comr.* (1925), 42 T. L. R. 121. *Reid. Re Williams, Public Trustee v. Williams*, [1927] 2 Ch. 283.

137. *Add. Annotation*:—*Mentd. Nicholson v. England*, [1926] 2 K. B. 93.

157. *Add. Annotations*:—*As to (1) Consd. Re Clarke, Bracey v. Royal National Lifeboat Institution*, [1923] 2 Ch. 407; *Re Davis, Thomas v. Davis*, [1923] 1 Ch. 225. *Reid. Re Tetley, National Provincial & Union Bank of England v. Tetley*, [1923] 1 Ch. 258.

195a. Shakespeare Memorial Trust—Erection of theatre—Revival of English classical drama—Valid.—*Re SHAKESPEARE MEMORIAL TRUST, LYTTON (EARL) v. A.-G.*, No. 73a, ante.

196. *Add. Annotation*:—*As to (1) Reid. Re Gray, Todd v. Taylor*, [1925] Ch. 362.

197. *Add. Annotation*:—*As to (1) Folld. Re Gray, Todd v. Taylor*, [1925] Ch. 362.

199a. Promotion of physical efficiency of army—Encouragement of sport—Valid.—By his will testator gave a sum of £3,000 to form the



nucleus of a regimental fund for his regiment "for the promotion of sport, including in that term only shooting, fishing, cricket, football, & polo." He also thereby gave directions as to the management of the fund. Later in the will he directed the payment of a further sum of £2,000, in the events which happened, "to the aforesaid Sporting Fund" to be held upon the same terms as the former legacy:—*Held*: the gifts were gifts for the purpose of promoting the physical efficiency of the army, & were valid charitable gifts.—*Re GRAY, TODD v. TAYLOR*, [1925] Ch. 362; 94 L. J. Ch. 430; 133 L. T. 630; 41 T. L. R. 335; 69 Sol. Jo. 398.

*Annotation*:—*Consd. I. R. Comrs. v. Yorkshire Agricultural Soc.*, [1928] 1 K. B. 611.

**199b. Repatriation of soldiers—After war service—Valid.]—**(1) A valid charitable trust may exist although in its administration the benefit is not confined by the donor to the poor to the exclusion of the rich.

A resident in New South Wales bequeathed his residuary estate "unto the trustees for the time being of the 'Repatriation Fund' or other similar fund for the benefit of the New South Wales returned soldiers." At the date of the will, & of testator's death, there was established under statutes of the Commonwealth of Australia a repatriation fund for Australian soldiers generally, but there was no repatriation fund, or similar fund, for New South Wales soldiers:—*Held*: (2) the gift created a valid charitable trust; (3) the trustees of the Commonwealth statutory repatriation fund were not trustees of the charity, & the settlement of a scheme had been rightly directed.—*VERGE v. SOMERVILLE*, [1924] A. C. 496; 131 L. T. 107; 40 T. L. R. 279; 68 Sol. Jo. 419; *sub nom. VERGE v. SOMERVILLE, A.-G. FOR AUSTRALIA v. SOMERVILLE*, 93 L. J. P. C. 173, P. C.

*Annotation*:—*As to (2) Refd. General Medical Council v. I. R. Comrs., English Branch Council of General Medical Council v. Same* (1928), 97 L. J. K. B. 578.

**204a. — Harmful animals.]—Held**: a gift to prevent cruelty to the lower animals was a good charitable gift, even though it included animals harmful to the human race.—*Re GROVE-GRADY, PLOWDEN v. LAWRENCE* (1928), 44 T. L. R. 760.

**206. Add. Annotations:—As to (1) Dbtd. Re Hummeltenberg, Beatty v. London Spiritualistic Alliance**, [1923] 1 Ch. 237. *Consd. I. R. Comrs. v. Yorkshire Agricultural Soc.* (1927), 44 T. L. R. 59. *As to (2) Refd. I. R. Comrs. v. Temperance Council of Christian Churches of England & Wales* (1926), 136 L. T. 27.

**208. Add. Annotation:—As to (2) Folld. Re Grove-Grady, Plowden v. Lawrence** (1928), 44 T. L. R. 760.

**210. Add. Annotation:—Consd. Re Tetley, National Provincial & Union Bank of England v. Tetley**, [1923] 1 Ch. 258.

**213. Add. Annotation:—Refd. Re Gray, Todd v. Taylor**, [1925] Ch. 362.

**213a. Encouragement of gardening—Charitable.]—Re PLEASANTS, PLEASANTS v. A.-G.**, No. 73b, *ante*.

**215. Add. Annotation:—As to (2) Refd. Verge v. Somerville**, [1924] A. C. 496.

**215a. — Of Jews to Palestine—Gift to Jewish National Fund—Valid.]—**A summons asked whether deft. co., the Jüdischer Nationalfonds, Ltd., or some other & what co. was referred to in the devise & bequest in the codicil to testator's will of the residuary estate to the Jewish National Fund, & whether the same was a valid charitable gift. By a codicil to his will made in 1919 testator who died shortly after declared: "whereas it is my desire that members of my family shall make their home in Palestine working & living on the land, I give, devise, & bequeath all the residue of my estate subject as aforesaid to the Jüdischer Nationalfonds w. ch is one of the instruments of the Zionist Organisation, for the purpose of purchasing land there, & enabling such members of my family as are in a direct line of descent from my father, who may desire, to settle in Palestine subject generally to the regulations & conditions that may be necessary for the common weal":—*Held*: the co. was beneficially entitled to the fund to be applied by them so far as was necessary for the purpose indicated by testator, & as to the balance for the general purposes of the co.—*Re ROSENBLUM, ROSENBLUM v. ROSENBLUM* (1924), 131 L. T. 21; 68 Sol. Jo. 320.

**217. Add. Annotations:—As to (1) Consd. I. R. Comrs. v. Yorkshire Agricultural Soc.** (1927), 44 T. L. R. 59. *Generally, Refd. General Medical Council v. I. R. Comrs., English Branch Council of General Medical Council v. Same* (1928), 139 L. T. 225.

**225. Add. Annotations:—Consd. Re King, Kerr v. Bradley**, [1923] 1 Ch. 243. *Refd. Re Clarke, Bracey v. Royal National Lifeboat Institution*, [1923] 2 Ch. 407.

**231a. —.]—**Testator gave £200 to his trustees, on trust to invest it & to pay the income thereof to a cemetery co. "during such period as they shall continue to maintain & keep" two specified graves "in the cemetery in good order & condition with flowers & plants thereon as same have hitherto been kept by me," & he declared that, if the graves should not be kept in such order & condition, his trustees should pay & apply the income in manner therein mentioned:—*Held*: the gift was a valid gift.—*Re CHARDON, JOHNSTON v. DAVIES*, [1928] Ch. 464; 97 L. J. Ch. 289; 139 L. T. 261.

**238a. — In memory of testatrix—Valid.]—Re KING, KERR v. BRADLEY**, No. 3a, *ante*.

**240. Add. Annotation:—Apld. I. R. Comrs. v. Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. v. Medical Charitable Soc. for West Riding of Yorkshire** (1926), 136 L. T. 60.

**241. Add. Annotations:—Refd. I. R. Comrs. v. Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. v. Medical Charitable Soc. for West Riding of Yorkshire** (1926), 42 T. L. R. 612; *I. R. Comrs. v. Yorkshire Agricultural Soc.* (1927), 44 T. L. R. 59.

#### PART I. SECT. 6, SUB-SECT. 1.

• 1. —.]—Bequests made to bodies incapable of contracting, on the condition precedent that they

should agree with testator's trustees to care for certain burial lots for all time:—*Held*: void.—*Re LAING ESTATE*, [1927] 1 W. W. R. 699; 38 B. C. R. 449.—*CAN.*

#### PART I. SECT. 6, SUB-SECT. 2.

• 1. *Fund of Benevolence of Freemasons—Valid.]—Re VOSZ, PUBLIC TRUSTEE v. STEELE*, [1926] S. A. S. R. 216.—*AUS.*

242. *Add. Annotation*:—*Refd.* I. R. Comrs. v. Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. v. Medical Charitable Soc. for West Riding of Yorkshire (1926), 42 T. L. R. 612; I. R. Comrs. v. Yorkshire Agricultural Soc., [1928] 1 K. B. 611.
245. *Add. Annotation*:—*Refd.* I. R. Comrs. v. Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. v. Medical Charitable Soc. for West Riding of Yorkshire (1926), 42 T. L. R. 612.
247. *Add. Annotation*:—*Refd.* I. R. Comrs. v. Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. v. Medical Charitable Soc. for West Riding of Yorkshire (1926), 42 T. L. R. 612.
249. *Add. Annotations*:—*Apld.* I. R. Comrs. v. Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. v. Medical Charitable Soc. for West Riding of Yorkshire (1926), 136 L. T. 60. *Mentd.* Toates v. Toates, [1926] 2 K. B. 30.
251. *Add. Citation*:—[1912] 1 Ch. 29.  
*Add. Annotations*:—*As to* (2) *Refd.* *Re* Kuypers, Kuypers v. Kuypers, [1925] Ch. 244. *Generally, Refd.* *Re* Bancroft, Bancroft v. Bancroft, [1928] Ch. 577. *Mentd.* *Re* Sikes, Moxon v. Crossley (1926), 43 T. L. R. 57.
255. *Add. Annotation*:—*As to* (2) *Refd.* Verge v. Somerville, [1924] A. C. 496.
259. *Add. Annotation*:—*As to* (1) *Refd.* *Re* Grove-Grady, Plowden v. Lawrence (1928), 44 T. L. R. 760.
265. *Add. Annotation*:—*Refd.* *Chesterman v. Federal Taxation Comr.* (1925), 42 T. L. R. 121.
- 265a. *Gift to Jewish National Fund—To enable testator's relations to settle in Palestine.*—*Re* ROSENBLUM, ROSENBLUM v. ROSENBLUM, No. 215a, *ante*.
266. *Add. Annotation*:—*As to* (1) *Consd.* *Re* Gray, Todd v. Taylor, [1925] Ch. 362.
270. *Add. Annotation*:—*Refd.* *Re* Tetley, National Provincial & Union Bank of England v. Tetley, [1923] 1 Ch. 258.
- 272a. *Gift to Universal Negro Redemption Fund—Valid.*—UNIVERSAL NEGRO IMPROVEMENT ASSOCN. INCORPORATED v. MORTER (1928), 44 T. L. R. 331; 72 Sol. Jo. 154, P. C.

## Part II.—Assurances for Charitable Purposes.

295. *Add. Annotation*:—*Refd.* *Re* Monk, Giffen v. Wedd, [1927] 2 Ch. 197.
316. *Add. Annotation*:—*Refd.* *Re* Berchtold, Berchtold v. Capron, [1923] 1 Ch. 192.
350. *Add. Annotation*:—*Refd.* I. R. Comrs. v. Forth Conservancy Board (1928), 45 T. L. R. 83.
351. *Add. Annotation*:—*Refd.* I. R. Comrs. v. Forth Conservancy Board (1928), 45 T. L. R. 83.
384. *Add. Annotation*:—*Refd.* Cross v. Imperial Continental Gas Asscn., [1923] 2 Ch. 553.
397. *Add. Annotation*:—*Refd.* *Re* Berchtold, Berchtold v. Capron, [1923] 1 Ch. 192.
398. *Add. Annotation*:—*Refd.* *Re* Berchtold, Berchtold v. Capron, [1923] 1 Ch. 192.
421. *Add. Annotation*:—*Mentd.* Harper v. Hedges, [1923] 2 K. B. 314.
429. *Add. Annotation*:—*Refd.* *Re* Porter, Porter v. Porter, [1925] Ch. 746.
466. *Add. Annotation*:—*Refd.* *Re* Monk, Giffen v. Wedd, [1927] 2 Ch. 197.
472. *Add. Annotations*:—*Consd.* *Re* Clarke, Bracey v. Royal National Lifeboat Institution, [1923] 2 Ch. 407. *Refd.* *Re* Davis, Thomas v. Davis, [1923] 1 Ch. 225.
480. *Add. Annotation*:—*Refd.* *Re* Monk, Giffen v. Wedd, [1927] 2 Ch. 197.
498. *Add. Annotation*:—*Mentd.* *Re* Brooks, Public Trustee v. White, [1928] Ch. 214.
551. *Add. Annotation*:—*Mentd.* Nicholson v. England, [1926] 2 K. B. 93.
574. *Add. Annotation*:—*Mentd.* Secretary of State for Home Affairs v. O'Brien, [1923] A. C. 603.
591. *Add. Annotation*:—*Generally, Mentd.* *Re* Berchtold, Berchtold v. Capron, [1923] 1 Ch. 192.
- 629a. — Under Education Act, 1921 (c. 51), s. 117—*Assurance of land for erection of sanatorium—Exempt.*—*Re* HARROW SCHOOL GOVERNORS & MURRAY'S CONTRACT, [1927] 1 Ch. 556; 96 L. J. Ch. 267; 137 L. T. 119; 71 Sol. Jo. 408.
634. *Add. Annotation*:—*Mentd.* *Re* Berchtold, Berchtold v. Capron, [1923] 1 Ch. 192.
638. *Add. Annotation*:—*Mentd.* *Re* Berchtold, Berchtold v. Capron, [1923] 1 Ch. 192.

## Part III.—Charitable Trusts.

653. *Add. Annotations*:—*Consd.* *Re* Clarke, Bracey v. Royal National Lifeboat Institution, [1923] 2 Ch. 407. *Refd.* *Re* Davis, Thomas v. Davis, [1923] 1 Ch. 225.
- 657a. — — —.]—A gift to A. "who will at her death dispose of it in such charitable ways for good to result from my hard work in accumulating the property handed over for her use only & to do as she may wish in her lifetime," gives A. only a life estate, & on her death, whether before or after testator, the fund becomes applicable for charitable purposes & is not distributable as on an intestacy.—*Re* CAMMELL, PUBLIC TRUSTEE v. A.-G. (1925), 69 Sol. Jo. 345.
661. *Add. Annotation*:—*Refd.* *Re* Blackwell, Blackwell v. Blackwell, [1928] Ch. 614.
666. *Add. Annotation*:—*Mentd.* *Re* Davies,

### PART II. SECT. 4, SUB-SECT. 5.

*sd.* *Necessity for registration*—Under 24 Vict. c. 43.]—*Re* STRATFORD BAPTIST CHURCH PROPERTY (1869), 2 Ch. 388.—CAN.

Thomas v. Thomas & Davies (1927), 71 Sol. Jo. 880.

687. *Add. Annotations*:—As to (1) *Consd. Re Clarke, Bracey v. Royal National Lifeboat Institution*, [1923] 2 Ch. 407. *Apld. Re Davis, Thomas v. Davis*, [1923] 1 Ch. 225. *Refd. Re Tetley, National Provincial & Union Bank of England v. Tetley*, [1923] 1 Ch. 258.

691a. ——— Fund deposited in names of bishop & two archdeacons—Income not drawn upon—Date of deposit coinciding with creation of new diocese.]—On June 29, 1888, money was deposited in a bank in the names of the Bishop of Wakefield & two archdeacons. In May, 1888, the Diocese of Wakefield was newly formed, & H. was enthroned on June 25, 1888, as first bishop of that diocese. The income of the fund so deposited was not drawn upon, & the fund with £900 accumulated interest was found intact by the exors. of the archdeacon, who was the survivor of the three persons in whose names the money had been deposited. The fund was not contributed to by those in whose names it was deposited:—*Held*: in such circumstances the exors. of the archdeacon who was the survivor were not beneficially entitled to the fund, but the fund was one subject to charitable trusts.—*PEASE v. How* (1922), 91 L. J. Ch. 334; 126 L. T. 629; 66 Sol. Jo. 250.

702a. “Missionary purposes”—Valid—Court entitled to regard missionary work of legatee.]—Testatrix bequeathed her residuary estate “for missionary purposes” to J.:—*Held*: (1) the ct. could admit evidence that testatrix had often met J. at conferences of Christian workers & discussed religious subjects with him, & that before she made her will she had sent him considerable sums of money to aid him in the work in which he was so engaged, which was that of pastor of a church belonging to a body created solely for evangelistic purposes; (2) having regard to that evidence, the gift was not void for uncertainty but was a good charitable gift.—*Re REES, JONES v. EVANS*, [1920] 2 Ch. 59; 89 L. J. Ch. 382; 123 L. T. 567.

705. *Add. Annotations*:—*Consd. R. v. Income Tax Special Comrs., Ex p. Rank's Trustees* (1922), 127 L. T. 651; *Re Clarke, Bracey v. Royal National Lifeboat Institution*, [1923] 2 Ch. 407. *Refd. Re Davis, Thomas v. Davis*, [1923] 1 Ch. 225; *Re Hummeltenberg, Beatty v. London Spiritualistic Alliance*, [1923] 1 Ch. 237; *Re Tetley, National Provincial & Union Bank of England v. Tetley*, [1923] 1 Ch. 258; *Verge v. Somerville*, [1924] A. C. 496; *General Medical Council v. I. R. Comrs., English Branch Council of General Medical Council v. Same* (1928), 97 L. J. K. B. 578; *I. R. Comrs. v. Yorkshire Agricultural Soc.*, [1928] 1 K. B. 611.

708. *Add. Annotation*:—*Consd. Re Tetley, National Provincial & Union Bank of England v. Tetley*, [1923] 1 Ch. 258.

716. *Add. Annotation*:—*Refd. Re Tetley, National Provincial & Union Bank of England v. Tetley*, [1923] 1 Ch. 258.

718. *Add. Annotation*:—*Consd. Re Williams. Public Trustee v. Williams*, [1927] 2 Ch. 283.

718a. Trustees empowered to change objects if interests of Church better served.]—*Re WILLIAMS, PUBLIC TRUSTEE v. WILLIAMS*, No. 75a, *ante*.

720. *Add. Annotations*:—*Consd. Re Clarke, Bracey v. Royal National Lifeboat Institution*, [1923] 2 Ch. 407. *Refd. Re Chapman, Hales v. A.-G.* (1922), 91 L. J. Ch. 527; *Re Davis, Thomas v. Davis*, [1923] 1 Ch. 225; *Re Tetley, National Provincial & Union Bank of England v. Tetley*, [1923] 1 Ch. 258.

721. *Add. Annotations*:—*Consd. A.-G. v. National Provincial Bank*, [1924] A. C. 262. *Refd. Verge v. Somerville*, [1924] A. C. 496.

723. *Add. Annotation*:—*Consd. Re Tetley, National Provincial & Union Bank of England v. Tetley*, [1923] 1 Ch. 258.

724a. “Charitable or public institutions”—At discretion of trustees—Void.]—By his will dated May 3, 1918, testator, after making certain specific & pecuniary bequests & giving an annuity to his wife, devised & bequeathed all his real & personal estate not thereby otherwise disposed of upon trust for conversion & investment of the net residue as therein mentioned. He directed his trustees “to hold the residuary moneys & investments upon trust, subject to payment of the wife’s annuity, to pay & apply the same for the benefit of one or more charitable or public institutions in Wales as they may deem advisable in their absolute discretion & in such proportions & shares as they may deem fit”:—*Held*: the non-charitable objects of the residuary gift were too vague, & the whole gift failed for uncertainty.—*Re DAVIS, THOMAS v. DAVIS*, [1923] 1 Ch. 225; 92 L. J. Ch. 322; 128 L. T. 735; 39 T. L. R. 201; 67 Sol. Jo. 297.

725. *Add. Annotation*:—*Refd. Re Clarke, Bracey v. Royal National Lifeboat Institution*, [1923] 2 Ch. 407.

731. *Add. Annotations*:—*Consd. Re Tetley, National Provincial & Union Bank of England v. Tetley*, [1923] 1 Ch. 258. *Distd. I. R. Comrs. v. Roberts Marine Mansions Trustees* (1927), 43 T. L. R. 270. *Consd. General Medical Council v. I. R. Comrs., English Branch Council of General Medical Council v. Same* (1928), 97 L. J. K. B. 578. *Refd. Re Clarke, Bracey v. Royal National Lifeboat Institution*, [1923] 2 Ch. 407; *Re Davis, Thomas v. Davis*, [1923] 1 Ch. 225; *A.-G. v. National Provincial Bank*, [1924] A. C.

#### PART III. SECT. 1, SUB-SECT. 1.

*sm. By settlement—Settlor divesting himself of income from shares.*—*TUNLEY v. FEDERAL COMR. OF TAXATION* (1927), 39 C. L. R. 528.—AUS.

#### PART III. SECT. 2, SUB-SECT. 2.—A. (a).

*sp. Gift “for some good public purpose”—“Such as emergency hospital, women’s home or park with urinary”—Valid.*—*COX v. HOGAN & VICTORIA CORPN.* (1925), 35 B. C. R. 286.—CAN. J.S.

#### PART III. SECT. 2, SUB-SECT. 2.—A. (b).

*st. “To be invested in war charities at trustees’ discretion to be selected by trustees”—Valid.*—*Re HAMMOND* (1921), 68 D. L. R. 590; 51 O. L. R. 149.—CAN.

#### PART III. SECT. 2, SUB-SECT. 2.—B.

*ti. “Charitable or other deserving institutions”—As trustees think fit—Void.*—*CAMPBELL’S TRUSTEES v.*

*CAMPBELL*, [1921] S. C. (H. L.) 12; 58 Sc. L. R. 69.—SCOT.

*bi. “Benevolent, charitable & religious institutions”—As trustees think proper—In limited locality—Valid.*—*EDGAR, ETC. v. CASSELLS*, [1922] S. C. 395; 59 Sc. L. R. 304.—SCOT.

*ci. ———.*—By the law of Scotland a trust for “charitable or benevolent” purposes is a trust for “charitable” purposes alone.—*JACKSON’S TRUSTEES v. INLAND REVENUE*, [1926] S. C. 579; 10 Tax Cas. 460.—SCOT.



- 262; *Verge v. Somerville*, [1924] A. C. 496; *I. R. Comrs. v. Yorkshire Agricultural Soc.*, [1928] 1 K. B. 611.
734. *Add. Annotation*:—*Re* *Verge v. Somerville*, [1924] A. C. 496.
735. *Add. Annotation*:—*As to* (1) *Re* *Tetley, National Provincial & Union Bank of England v. Tetley*, [1923] 1 Ch. 258.
- 735a. "Charities & institutions"—"As executors in their absolute discretion think fit"—*Void*.]—*Re* *CLARKE, BRACEY v. ROYAL NATIONAL LIFEBOAT INSTITUTION*, No. 47a, *ante*.
739. *Add. Annotations*:—*Consd.* *Caldwell v. Caldwell* (1921), 91 L. J. P. O. 95; *A.-G. v. National Provincial Bank*, [1924] A. C. 262. *Re* *Davis, Thomas v. Davis*, [1923] 1 Ch. 225.
- 740a. "Charitable purposes" directed by testator or for such objects as executor selects—*Void*.]—*Re* *CHAPMAN, HALES v. A.-G.*, No. 1424a, *post*.
- 740b. "Patriotic purposes or charitable institutions or objects"—*At discretion of trustees—Void*.]—*Testator* by his will directed his trustees to apply one-fifth of his residuary estate "for such patriotic purposes or objects & such charitable institution or institutions or charitable object or objects in the British Empire" as they in their absolute discretion should select:—*Held*: the words of the gift must be read disjunctively, "patriotic purposes" were not necessarily charitable, & the gift was void for uncertainty.—*A.-G. v. NATIONAL PROVINCIAL & UNION BANK OF ENGLAND*, [1924] A. C. 262; 40 T. L. R. 191; 68 Sol. Jo. 235; *sub nom.* *Re TETLEY, A.-G. v. NATIONAL PROVINCIAL & UNION BANK OF ENGLAND*, 93 L. J. Ch. 231; 131 L. T. 34, H. L.; *affg.* *S. C. sub nom. Re TETLEY, NATIONAL PROVINCIAL & UNION BANK OF ENGLAND, LTD. v. TETLEY*, [1923] 1 Ch. 258, C. A.
- Annotations*:—*Re* *Verge v. Somerville*, [1924] A. C. 496; *I. R. Comrs. v. Roberts Marine Mansions Trustees* (1927), 43 T. L. R. 270; *General Medical Council v. I. R. Comrs.*, *English Branch Council of General Medical Council v. Same* (1928), 97 L. J. K. B. 578; *I. R. Comrs. v. Yorkshire Agricultural Soc.*, [1928] 1 K. B. 611.
745. *Add. Citation*:—91 L. J. P. O. 95.
748. *Add. Annotation*:—*As to* (1) *Consd.* *Chesterman v. Federal Taxation Comr.* (1925), 42 T. L. R. 121.
751. *Add. Annotation*:—*Re* *Tetley, National Provincial & Union Bank of England v. Tetley*, [1923] 1 Ch. 258.
- 751a. "Objects of charity or any other public objects"—"In parish of F."—*Valid*.]—*By* her will made in 1889 testatrix bequeathed all her residuary estate to trustees upon trust to apply such parts thereof as were applicable by law for charitable legacies, in such manner as her trustees should, in their absolute discretion, think fit, "for the benefit of the schools, & charitable institutions, & poor, & other objects of charity, or any other public objects in the parish of F.":—*Held*: it was a good charitable gift of the whole residuary estate, & was not to be read disjunctively.—*Re* *BENNETT, GIBSON v. A.-G.*, [1920] 1 Ch. 305; 89 L. J. Ch. 269; 122 L. T. 578; 84 J. P. 78; 64 Sol. Jo. 291.
- Annotation*:—*Re* *Tetley, National Provincial & Union Bank of England v. Tetley*, [1923] 1 Ch. 258.
- 755a. "Hospital or other charitable or benevolent institution"—*Valid*.]—*By* his will, made in , testator gave his residuary estate to trustees upon trust to apply the same & the income thereof in providing or endowing, or assisting in providing or endowing, any hospital wards, beds, or cots, or other like or similar objects, as his trustees should in their absolute discretion think fit, in memory of his late wife, "for, at, or in connection with, any hospital or convalescent home or other charitable or benevolent institution"; & testator expressed the wish, but not so as to impose any legal obligation on his trustees, that such hospital or other charitable or benevolent institution should be in, or connected with, the parish of St. Marylebone, London, or at, or in connection with, the town of Kilmarnock:—*Held*: the word "hospital" where it was first used in the will was used in an adjectival sense, & applied to the following words "wards, beds, or cots"; the primary intention of testator was to provide or endow the same, & the places where they could be provided or endowed must be hospitals or convalescent homes or other charitable institutions, & the words "benevolent institution" must be construed as *ejusdem generis*, with "hospital"; & therefore the bequest constituted a good & valid charitable gift.—*Re* *LUDLOW, BENCE-JONES v. A.-G.* (1923), 93 L. J. Ch. 30, C. A.
762. *Add. Annotation*:—*Mentd.* *Jackson's Trustees v. Lord Advocate* (1926), 10 Tax Cas. 460.
763. *Add. Annotation*:—*Folld.* *Re* *Porter, Porter v. Porter*, [1925] Ch. 746.
765. *Add. Annotation*:—*As to* (2) *Consd.* *Re* *Porter, Porter v. Porter*, [1925] Ch. 746.
769. *Add. Annotation*:—*Consd.* *Re* *Porter, Porter v. Porter*, [1925] Ch. 746.
- 769a. Gift for maintenance & upkeep of masonic temple—*Residue to masonic charities—Whole gift void*.]—*By* a codicil to his will testator directed his exors., on the death of his wife, to pay from his estate to the trustees of a masonic temple, erected by him to the memory of his son, £10,000, to be invested & the interest applied by the trustees, in their full & sole discretion, to the maintenance & upkeep of the masonic temple, & the balance, if any, to be applied in favour of any masonic charities which the trustees might select. The masonic temple was to be used for masonic ceremonies, & smaller rooms for lodge meetings, business & meetings of a social but not political character. Upon a summons to ascertain whether the legacy was valid or not:—*Held*: (1) the decisions in the "tomb cases" were inapplicable; (2) the whole income of the fund being charged with a trust, at the discretion of the trustees, for a primary object which was invalid, the ct. was not entitled to control this discretion, & institute an inquiry at chambers as to the amount of income necessary to be applied for maintenance & upkeep of the temple, so that the gift of the balance would be valid; (3) as the primary gift was not sufficiently defined, the whole legacy was void for uncertainty.—*Re* *PORTER, PORTER v. PORTER*, [1925] Ch. 746; 95 L. J. Ch. 46; 133 L. T. 812.
771. *Add. Annotations*:—*Consd.* *Re* *Clarke, Bracey v. Royal National Lifeboat Institution*, [1923] 2 Ch. 407. *Re* *King, Kerr v. Bradley*, [1928] 1 Ch. 243.

772. *Add. Annotation* :—*Reid. Re Porter, Porter v. Porter*, [1925] Ch. 746.
776. *Add. Annotation* :—*Folld. Re Porter, Porter v. Porter*, [1925] Ch. 746.
786. *Add. Annotations* :—*Consd. Re Clarke, Bracey v. Royal National Lifeboat Institution*, [1923] 2 Ch. 407. *Reid. Re King, Kerr v. Bradley*, [1923] 1 Ch. 243.
794. *Add. Annotations* :—*Apld. Re Clarke, Bracey v. Royal National Lifeboat Institution*, [1923] 2 Ch. 407. *Reid. Re Davis, Thomas v. Davis*, [1923] 1 Ch. 225.
795. *Add. Annotations* :—*Apld. Re Clarke, Bracey v. Royal National Lifeboat Institution*, [1923] 2 Ch. 407. *Reid. Re Davis, Thomas v. Davis*, [1923] 1 Ch. 225.
810. For “appointment” read “apportionment.”  
*B. Names of Charities omitted or left blank* (Vol. VIII., p. 305).  
 For “*See Nos. 1419 et seq., post.*” read “*See, also, Nos. 1419 et seq., post.*” & add as follows :—
832. *Add. Annotation* :—*As to (1) Apld. Re Blackwell, Blackwell v. Blackwell*, [1928] Ch. 614.
- 841a. Gift to “two institutions, one for sailors, the other for soldiers, which I hope to be able to name myself, if not, then by my executors”—*Valid.*—*Testatrix*, who died in 1919, left her foreign property to “two institutions, one for sailors, the other for soldiers, which I hope to be able to name myself, if not, then by my exors.” :—*Held* : the gift ought to be construed, not as a gift to two institutions which might or might not be charitable, but as a gift to two charitable institutions of the kind specified, & therefore was not too vague but was a good charitable gift.—*Re SMITH, BLYTH v. A.-G.* (1920), 36 T. L. R. 416, C. A.
856. *Add. Annotation* :—*Reid. Re Lucas, Rhys v. A.-G.*, [1922] 2 Ch. 52.
865. *Add. Citation* :—3 Leon. 18.
875. *Citation* :—For “2 W. R. 154” read “21 W. R. 154.”
- 891a. — Gift to “Soldiers’ Crippled Homes”—*Three claimants—Legacy divided.*—*Testatrix* by her will bequeathed part of her estate to “Soldiers’ Crippled Homes.” In response to advertisements three institutions put in claims :—*Held* : as there was nothing to show that testatrix knew about these institutions, the fairest course would be to divide the bequest equally between the three.—*Re HUSBAND, NEAVE v. BARNARDO’S HOMES NATIONAL INCORPORATED ASSOCN.* (1923), 58 L. Jo. 600.
908. *Add. Annotation* :—*Generally, Reid. Re Monk, Giffen v. Wedd*, [1927] 2 Ch. 197.
924. *Add. Annotation* :—*Reid. Re Porter, Porter v. Porter*, [1925] Ch. 746.
928. *Add. Annotation* :—*Mentd. Re Brooks, Public Trustee v. White*, [1928] Ch. 214.
932. *Add. Annotation* :—*Reid. Brighton College v. Marriott*, [1926] A. C. 192.
945. *Add. Annotation* :—*Reid. Re Monk, Giffen v. Wedd*, [1927] 2 Ch. 197.
948. *Add. Annotation* :—*Reid. Re Monk, Giffen v. Wedd*, [1927] 2 Ch. 197.
999. *Add. Annotation* :—*Reid. Re Clarke, Bracey v. Royal National Lifeboat Institution*, [1923] 2 Ch. 407.
1014. *Add. Annotation* :—*Mentd. Harper v. Hedges*, [1923] 2 K. B. 314.
1026. *Add. Annotation* :—*Mentd. Re Southerden, Adams v. Southerden*, [1925] P. 177.
1041. *Add. Annotation* :—*Reid. Re Robinson, Wright v. Tugwell*, [1923] 2 Ch. 332.
- 1041a. — Condition subsidiary to main charitable object—Performance of condition likely to defeat main charitable ob’ ct—Condition dispensed with.]—*Testatrix*, who died in 1889, bequeathed £1,500 towards an endowment for a proposed evangelical church at B., provided certain conditions were carried out. An action was commenced for the administration of her estate, & on the further consideration thereof on Nov. 3, 1891, it appeared that amongst other conditions, which mainly related to the conduct of the services, it was made an “abiding condition” that the black gown should be worn in the pulpit, unless there should be an alteration in the law rendering it illegal. It further appeared that in compliance with the conditions a church had been erected at B. & the other conditions laid down by testatrix fulfilled, except the condition as to wearing a black gown, which condition was held by the judge to be a continuing condition, but not an illegal one; & accordingly, the fund was carried over to the credit of the action, the separate account of “the £1,500 endowment fund for the proposed B. church,” with liberty for the incumbent & all persons interested to apply as to the capital or income thereof. This petition was presented by the present incumbent asking that under a scheme or otherwise the fund in ct. might be transferred to the Ecclesiastical Comrs. Evidence was adduced that the use of the black gown in the pulpit was practically unknown in the diocese of the new church, & that its use was calculated to alienate the congregation & to defeat the main objects of testatrix, namely, the teaching & practice of evangelical doctrine & services :—*Held* : the condition requiring the wearing of a black gown in the pulpit was subsidiary to the main charitable object, namely, the endowment of an evangelical church at B., & as the performance thereof had been shown to be impracticable the condition might be dispensed with & the fund be transferred to the Ecclesiastical Comrs. as part of the endowment of the church so erected as aforesaid.—*Re ROBINSON, WRIGHT v. TUGWELL*, [1923] 2 Ch. 332; 92 L. J. Ch. 340; 129 L. T. 527; 39 T. L. R. 509; 67 Sol. Jo. 619.
1061. *Add. Annotation* :—*Consd. Re Quintin Dick, Cloncurry v. Fenton*, [1926] Ch.
1078. *Add. Annotation* :—*Reid. I. R. Comrs. v.*

PART III. SECT. 4, SUB-SECT. 3.—D.

11. — “Industrial School for Blind, B. Place”—“Royal Institution for Blind Incorporated” in B. Place entitled.]—*Re Vosz, PUBLIC TRUSTEE v. STEELE*, [1926] S. A. S. R. 218.—AUS.

p i. — Gift to Society for Prevention of Cruelty to Animals in New Zealand—Several local societies for prevention of cruelty to animals—*Legacy divided.*—*Re BUCKLEY, PUBLIC TRUSTEE v. WELLINGTON SOCIETY FOR PREVENTION OF CRUELTY TO ANIMALS (INC.)*, [1928]

N. Z. L. R. 148.—N.Z.

PART III. SECT. 4, SUB-SECT. 7.

1007 1. Discretion of trustees—Gift to war charities—Not confined to Canada.]—*Re HAMMOND* (1921), 68 D. L. R. 51 O. L. R. 149.—CAN.

- Yorkshire Agricultural Soc., [1928] 1 K. B. 611.
1080. *Add. Annotations*:—*Refd.* I. R. Comrs. v. Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. v. Medical Charitable Soc. for West Riding of Yorkshire (1926), 42 T. L. R. 612; I. R. Comrs. v. Yorkshire Agricultural Soc. (1927), 44 T. L. R. 59.
1081. *Add. Annotation*:—*Refd.* I. R. Comrs. v. Yorkshire Agricultural Soc., [1928] 1 K. B. 611.
1095. *Add. Annotation*:—*Consd.* *Re* Monk, Giffen v. Wedd, [1927] 2 Ch. 197.
1098. *Add. Annotation*:—*Generally*, *Refd.* *Re* Monk, Giffen v. Wedd, [1927] 2 Ch. 197.
- 1098a. ———.]—*Re* MONK, GIFFEN v. WEDD, No. 34a, *ante*.
1099. *Add. Annotation*:—*Consd.* Verge v. Somerville, [1924] A. C. 496.
1109. *Add. Citation*:—127 L. T. 123.
1114. *Add. Annotation*:—*Refd.* *Re* Monk, Giffen v. Wedd, [1927] 2 Ch. 197.
1115. *Add. Annotation*:—*Consd.* *Re* Deloitte, Griffiths v. Deloitte, [1926] Ch. 56.
1116. *Add. Annotation*:—*Consd.* *Re* Deloitte, Griffiths v. Deloitte, [1926] Ch. 56.
1118. *Add. Annotation*:—*Refd.* *Re* Monk, Giffen v. Wedd (1927), 137 L. T. 4.
1129. *Add. Annotation*:—*Mentd.* Consett Industrial & Provident Soc. v. Consett Iron Co., [1922] 2 Ch. 135.
1150. *Add. Annotation*:—*Refd.* *Re* Monk, Giffen v. Wedd, [1927] 2 Ch. 197.
1170. *Add. Annotation*:—*Mentd.* Consett Industrial & Provident Soc. v. Consett Iron Co., [1922] 2 Ch. 135.
- 1186a. ———.]—Testator gave the residue of his estate on trust to pay the income to his wife for life & after her death to pay £3,000 to the Royal National Lifeboat Institution in order to defray the cost of building two lifeboats, & he directed that after payment of certain legacies to hospitals the remainder of the residue should be paid to the aforesaid institution for the purpose of keeping the two lifeboats in repair & of replacing them when necessary, & that if the remainder of the residue should be insufficient for this purpose the institution might apply it to its general purposes. The legacy of £3,000 was inadequate to provide two lifeboats:—*Held*: on the death of the wife the £3,000 legacy failed & fell into residue, & the institution was entitled to take the whole of the residue, after payment of the legacies to hospitals, & to apply it to its general purposes.—*Re* BECK, CROOK v. ROYAL NATIONAL LIFEBOAT INSTITUTION (1926), 42 T. L. R. 245.
1188. *Add. Annotation*:—*Refd.* *Re* Monk, Giffen v. Wedd, [1927] 2 Ch. 197.
1189. *Add. Annotations*:—*Distd.* *Re* Beck, Crook v. Royal National Lifeboat Institution (1926), 42 T. L. R. 244. *Refd.* *Re* Monk, Giffen v. Wedd, [1927] 2 Ch. 197.
1200. *Add. Annotation*:—*Refd.* *Re* Whitrod, Burrows v. Base, [1926] Ch. 118.
1225. *Add. Annotation*:—*Refd.* Harper v. Hedges, [1923] 2 K. B. 314.
1227. *Add. Annotation*:—*Consd.* Verge v. Somerville, [1924] A. C. 496.
1231. *Add. Annotation*:—*Mentd.* Nicholson v. England, [1926] 2 K. B. 93.

## Part IV.—Effectuation of Charitable Trusts by means of Schemes and the Cy-près Doctrine.

- 1252a. No trustees.]—VERGE v. SOMERVILLE, No. 199b, *ante*.
1371. *Add. Annotation*:—*Generally*, *Refd.* *Re* Monk, Giffen v. Wedd, [1927] 2 Ch. 197.
1381. *Add. Annotation*:—*Mentd.* *Re* Taylor, Taylor v. Tweedie, [1923] 1 Ch. 99.
1392. *Add. Annotation*:—*Consd.* *Re* Monk, Giffen v. Wedd, [1927] 2 Ch. 197.
1394. *Add. Annotation*:—*Refd.* *Re* Monk, Giffen v. Wedd, [1927] 2 Ch. 197.
1395. *Add. Annotation*:—*Refd.* *Re* Monk, Giffen v. Wedd, [1927] 2 Ch. 197.
1404. *Add. Annotation*:—*Refd.* *Re* King, Kerr v. Bradley, [1923] 1 Ch. 243.
1412. *Add. Annotation*:—*Refd.* I. R. Comrs. v. Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. v. Medical Charitable Soc. for West Riding of Yorkshire (1926), 42 T. L. R. 612.
1424. *Add. Annotation*:—*Refd.* *Re* Chapman, Hales v. A.-G., [1922] 2 Ch. 479.
- 1424a. ——— Alternative non-charitable gift.]—Testatrix by her will appointed an exor., & after giving various pecuniary legacies,

PART IV. SECT. 1, SUB-SECT. 1.—A. p. l. ——— *Funds insufficient.*]—*Re* MITCHNER, [1922] St. R. Qd. 39.—AUS.

PART IV. SECT. 2, SUB-SECT. 2.—A. 1372 v. ———.]—*Re* McNAB, [1925] 2 D. L. R. 1100; 56 O. L. R. 676; *affg.* 55 O. L. R. 538.—CAN.

1372 vi. ———.]—*Re* DEREMORE ESTATE (Alta.), [1927] 2 D. L. R. 1093; [1927] 2 W. W. R. 113.—CAN.

PART IV. SECT. 2, SUB-SECT. 2.—C. (b).

*ad. Hostel ceasing to exist—Work of hostel undertaken by Government—No general charitable intention.*]—*Re* FITZGIBBON (1922), 69 D. L. R. 524; 51 O. L. R. 500.—CAN.

PART IV. SECT. 2, SUB-SECT. 2.—D.

c. i. ———.]—An association, which had managed an institution for the education & training of destitute boys in an industrial training ship, owing to change of circumstances, whereby it was no longer possible to carry on the institution usefully, was wound up. A petition was presented to the ct. craving approval of a scheme for the funds to be transferred to nine trustees, of whom seven should be nominated by the existing executive committee, & the remaining two by two local shipowners' associations, with power to assume new trustees from time to time, but vacancies among the trustees appointed by the shipowners' associations to be filled by persons nominated by these bodies. The ct. sanctioned the scheme, being satisfied that in the

particular circumstances of the case sufficient provision had been made in the constitution of the trust for the due administration of the funds in the future.—CLYDE INDUSTRIAL TRAINING SHIP ASSOCN., [1925] S. C. 676.—SCOT.

*sk. Persons eligible to act as administrators no longer available.*]—Trustees presented a petition in which they stated that the administration of a fund had become unworkable through lack of effective machinery for carrying it on, as owing to a change in local conditions, persons eligible to act as administrators were no longer available, & craved the ct. to authorise a transfer of the fund to a general trust having similar objects. The ct. authorised the transfer.—ROSYTH CANADIAN FUND TRUSTEES, [1924] S. C. 352.—SCOT.



including two for charitable purposes, & £100 to her exor., she left in blank the name of her residuary legatee. By a codicil testatrix desired that her residue should be "applied for charitable purposes as I may in writing direct, or to be retained by my exor. for such objects & such purposes as he may in his discretion select, & to be at his own disposal." She left no written directions as to the charities to be benefited:—*Held*: (1) no good charitable trust was declared, the exor. having a discretion to devote the residue to objects & purposes other than charitable; (2) the trust for those objects & purposes was too indefinite for the ct. to execute, & there being no direct gift to the exor., the added words "to be at his own disposal" were not sufficient to enable the ct. to hold that the exor. took the residue beneficially, & he held it as trustee for the next of kin.—*Re* CHAPMAN, HALES v. A.-G., [1922] 2 Ch. 479; 91 L. J. Ch. 527; 127 L. T. 616; 66 Sol. Jo. 522, C. A.

*See, also*, No. 841b, *ante*.

1431. *Add. Annotation*:—*As to* (1) *Consd. Re* Cammell, Public Trustee v. A.-G. (1925), 69 Sol. Jo. 345.

1444a. Fund for erection of stained glass window—Surplus applied to additional stained glass windows.]—*Re* KING, KERR v. BRADLEY, No. 3a, *ante*.

1449a. Alternative non-charitable gift.]—*Re* CHAPMAN, HALES v. A.-G., No. 1424a, *ante*.

1453. *Add. Annotation*:—*Re* *Re* Monk, Giffen v. Wedd, [1927] 2 Ch. 197.

1457a. — Particular purpose completed—Resulting trust of surplus.]—By his will, made in 1876, testator gave £5,000 Consols to Cambridge University, to be transferred to the University if accepted "upon trust to be applied for the express purpose of carrying on to completion & publication my Etymological Dictionary of Anglicised Foreign Words & Phrases," should the same be incomplete at the time of his decease, they applying the annual dividends towards the completing & publishing of the dictionary. Testator constituted one of his exors. residuary legatee & died in 1880. The University accepted the bequest on the terms & for the purpose specified, & published the dictionary in 1892. After all payment had been made in connection with the publication there remained over a surplus of £1,151 14s. 10d. Consols & £220 derived from income & sales of the dictionary. Upon a summons by the University asking how this surplus should be applied:—*Held*: in the absence of any general charitable intention to be gathered from the terms of the bequest there was no room for the application of the doctrine of *cy-près*, & there was a resulting trust for testator & those claiming under him of the surplus moneys.—*Re* STANFORD, CAMBRIDGE UNIVERSITY v. A.-G., [1924] 1 Ch. 73; 93 L. J. Ch. 109; 130 L. T. 309; 40 T. L. R. 3; 68 Sol. Jo. 59.

*Annotation*:—*Re* *Re* Monk, Giffen v. Wedd, [1927] 2 Ch. 197.

## Part V.—Trust Property after Trust created.

1480. *Add. Annotation*:—*As to* (2) *Re* *Underwood v. Bank of Liverpool*, *Underwood v. Barclays Bank*, [1924] 1 K. B. 775.

1495. *Add. Annotation*:—*Mentd. Harper v. Hedges*, [1923] 2 K. B. 314.

1508. *Add. Annotation*:—*N.F. Nicholson v. England*, [1926] 2 K. B. 93.

1511. *Add. Annotations*:—*As to* (2) *Consd. Toates v. Toates*, [1926] 2 K. B. 30. *Generally, Re* *I. R. Comrs. v. Soc. for Relief of Widows & Orphans of Medical Men*, *I. R. Comrs. v. Medical Charitable Soc. for West Riding of Yorkshire* (1926), 136 L. T. 60.

1516. *Add. Annotation*:—*Mentd. Harper v. Hedges*, [1923] 2 K. B. 314.

1519. *Add. Annotation*:—*Mentd. Houghton v. Nothard, Lowe & Wills* (1927), 44 T. L. R. 76.

1532a. Settled Land Act, 1925 (c. 18), ss. 29, 1545. *Add. Annotation*:—*As to* (2) *Consd. Re*

94.]—The trust deed of a charity placed the entire management & control of its property, which, whether land or investments, was all revenue, in the hands of a sole trustee, in whom it was vested with full power to sell & give receipts for the purchase-money:—*Held*: (1) the trustee could sell the land under his trust deed & give a receipt for the purchase-money without resorting to his life tenant powers under sect. 29 of the above Act at all; (2) in any case the proceeds of sale would remain revenue & would not become capital money arising under the Act; (3) sect. 94 (1) had no application.—*Re* BOOTH & SOUTHBEND-ON-SEA ESTATES CO.'S CONTRACT, [1927] 1 Ch. 579; 96 L. J. Ch. 272; 43 T. L. R. 334; *sub nom.* BOOTH v. SOUTHBEND-ON-SEA ESTATE CO.'S CONTRACT, 137 L. T. 122.

### PART IV. SECT. 2, SUB-SECT. 2.—E.

§ 1. *Surplus applied to such other purposes as should be deemed proper.*—Where, after satisfying the prescribed objects of a certain charitable trust, there remained a surplus income of the charitable fund which it was found to be impracticable to spend on the objects so prescribed, the ct., at the suit of the Advocate-General of Bengal, at the relation of the Treasurer for Charitable Endowments, & with the consent of the author of the trust, gave leave for the extension of the objects of the trust so as to apply the

surplus to such other purposes as the ct. deemed proper upon the *cy-près* principle.—*ADVOCATE-GENERAL OF BENGAL v. WEBB-JOHNSON* (1924), 1 L. L. R. 52 Calc. 508.—IND.

*sn. Erection of church tower—Surplus applied to building Sunday school.*—*ROWE & BROWN v. PUBLIC TRUSTEE*, [1928] N. Z. L. R. 51.—N.Z.

### PART IV. SECT. 2, SUB-SECT. 3.

*sp. Administration of charity becoming increasingly arduous & discouraging.*—It is not a legitimate

ground for the application of the doctrine of *cy-près* merely that the administration of a charity has become increasingly arduous & discouraging in its results.—*Re* GLASGOW DOMESTIC TRAINING SCHOOL, [1923] S. C. 392.—SCOT.

### PART V. SECT. 1, SUB-SECT. 4.

1502 iii. *Whether charities within Real Property Limitation Act, 1833 (c. 27)—Express trust—Charges.*—*Re* DRAKE'S ESTATE, [1909] 1 I. R. 136, 140.—IR.

Child Villiers' Appln., Villiers v. A.-G., [1922] 1 Ch. 394.

1549. *Add. Annotations*:—As to (1) *Consd. I. R. Comrs. v. Glasgow Musical Festival Asscn.* (1926), 11 Tax Cas 154 As to (2) *Reid. Re Child Villiers' Appln., Villiers v. A.-G.,* [1922] 1 Ch. 394; *Re Booth & Southend-on-Sea Estates Co.'s Contract,* [1927] 1 Ch. 579.

1609a. Not decreed. v. CHAPMAN (1779), 1 Bro. C. C. 61; 28 E. R. 985.

*Annotations*:—*Expld. A.-G. v. St. John's Hospital, Bath* (1865), 1 Ch. App. 92. *Reid. Browne v. Tighe* (1834), 2 Cl. & Fin. 396.

1670. *Add. Annotation*:—*Generally, Reid. Sun Permanent Benefit Bldg. Soc. v. Western Suburban & Harrow Road Permanent Bldg. Soc.* (1921), 91 L. J. Ch. 74.

## Part VII.—Trustees.

1870a. Powers of sale—Settled Land Act, 1925 (c. 18), ss. 29, 94.]—*Re BOOTH & SOUTHEND-ON-SEA ESTATES CO.'S CONTRACT, No. 1532a, ante.*

1934. *Add. Annotation*:—*Mentd. R. v. Income*

*Tax Special Comrs., Ex p. Rank's Trustees* (1922), 127 L. T. 651.

1935. *Add. Annotation*:—*Mentd. R. v. Income Tax Special Comrs., Ex p. Rank's Trustees* (1922), 127 L. T. 651.

## Part IX.—Jurisdiction over Charities.

1998. *Add. Annotation*:—*Reid. Re King, Kerr v. Bradley,* [1923] 1 Ch. 243.

2015. *Add. Annotation*:—*Reid. R. v. All Souls College, Oxford* (1681), Skin. 13.

2041. *Add. Annotation*:—*Mentd. Harper v. Hedges,* [1923] 2 K. B. 314.

2111a. *S. P. Ex p. BULLAR* (1857), 28 L. T. O. S. 269; 21 J. P. Jo. 84.

2113. *Add. Annotation*:—*Mentd. Salter v. Lask* (1923), 130 L. T. 323.

2131. *Add. Annotation*:—*Mentd. R. v. Income Tax Special Comrs., Ex p. Rank's Trustees* (1922), 127 L. T. 651.

2135. *Add. Annotation*:—*Mentd. R. v. Income Tax Special Comrs., Ex p. Rank's Trustees* (1922), 127 L. T. 651.

2137. For the existing paragraph substitute the following paragraph:—

Not exempt—Gift of land to mixed charity at date of determination of question by commissioner—Not mixed charity at time of donation.]—In order that a donation or bequest may come within the provision in 1853 Act, s. 62, exempting from the jurisdiction or control of the Charity Comrs. a donation or bequest made to a "mixed charity"—i.e. a charity maintained partly by voluntary subscriptions & partly by income from endowment—it must be a

donation or bequest to a charity which is already, at the date of gift, a mixed charity. It is not sufficient to bring the donation or bequest within the exemption for the charity to become a mixed charity between the date of gift & the determination by the ct. of the question of exemption.

Land within the registered area was conveyed to a charity which at the time, although possessed of other income-bearing land, was not also maintained by any voluntary subscriptions. After the application for registration & pending the determination of the question of exemption by the ct., voluntary subscriptions were received & the charity became a mixed charity:—*Held*: the land not having been given to a charity which at the date of gift was a mixed charity, was not exempt from the jurisdiction or control of the Charity Comrs., & a restriction must be entered on the register against a disposition of the land without their consent.—*Re CHILD VILLIERS' APPLICATION, VILLIERS v. A.-G.,* [1922] 1 Ch. 394; 91 L. J. Ch. 473; 126 L. T. 555; 38 T. L. R. 291; 66 Sol. Jo. 266, C. A.

*Annotation*:—*Appld. Re Shakespeare Memorial Trust, Lytton v. A.-G.,* [1923] 2 Ch. 398.

2146a. — Land purchased out of donation—Donation before first annual subscription.]—*Re SHAKESPEARE MEMORIAL TRUST, LYTTON (EARL) v. A.-G., No. 73a, ante.*

## Part X.—Practice.

2224. *Add. Annotation*:—*Reid. Key v. Bastin,* [1925] 1 K. B. 650.

2252. *Add. Annotation*:—*Reid. Key v. Bastin,* [1925] 1 K. B. 650.

2283. *Add. Annotation*:—*Reid. Re Monk, Giffen v. Wedd,* [1927] 2 Ch. 197.

2353a. Not petition for payment out of funds in court of money for completion of purchase of land.]—*p. ST. BARTHOLOMEW'S HOSPITAL (GOVERNORS)* (1928), 72 Sol. Jo. 225.

2456. *Add. Annotation*:—*Mentd. Consett Industrial & Provident Soc. v. Consett Iron Co.,* [1922] 2 Ch. 135.

2503. *Add. Annotation*:—*Mentd. R. v. Income Tax Special Comrs., Ex p. Rank's Trustees* (1922), 127 L. T. 651.

2537. *Add. Annotation*:—*Reid. Re Monk, Giffen v. Wedd,* [1927] 2 Ch. 197.

2576. *Add. Annotation*:—*Reid. Re Monk, Giffen v. Wedd,* [1927] 2 Ch. 197.

## CHOSSES IN ACTION.

### Part I.—In General.

1. *Add. Annotation*:—*Mentd. Lamb v. Wright*, [1924] 1 K. B. 857.
- 12a. *Rentcharge—Arrears of.*—*SALWAY v. SALWAY* (1770), 2 Dick. 434; *Amb.* 692; 21 E. R. 338.
13. *Add. Annotations*:—*Distd. Baker v. Archer-Shee*, [1927] A. C. 844; *A.-G. v. Belilios*, [1928] 1 K. B. 798. *Refd. New York Insce. v. Public Trustee*, [1924] 2 Ch. 101; *Brassard v. Smith*, [1925] A. C. 371; *Herbert v. I. R. Comrs.*, *I. R. Comrs. v. Herbert* (1925), 9 Tax Cas. 593.
19. After this case add “*Patent.*”—*See PATENTS.*”
20. *Add. Annotations*:—*Dbtd. Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669. *Refd. New York Life Insce. v. Public Trustee*, [1924] 1 Ch. 15.
21. *Add. Citations*:—*FAVORKE v. STEINKOPFF*, [1922] 1 Ch. 174; *sub nom. Re STEINKOPFF*, *FAVORKE v. STEINKOPFF*, 91 L. J. Ch. 165; 126 L. T. 597.
23. *Add. Annotations*:—*Refd. New York Life Insce. v. Public Trustee* (1924), 93 L. J. Ch. 449; *Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669.
24. *Add. Annotations*:—*Consd. Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669.
- Refd. New York Life Insce. v. Public Trustee* (1924), 93 L. J. Ch. 449.
25. *Add. Annotations*:—*Apld. New York Life Insce. v. Public Trustee*, [1924] 2 Ch. 101; *Richardson v. Richardson*, [1927] P. 228.
27. *Add. Annotations*:—*As to* (1) *Consd. Favorke v. Steinkopff*, [1922] 1 Ch. 174. *As to* (2) *Refd. Favorke v. Steinkopff*, [1922] 1 Ch. 174.
- 27a. *Assignment executed abroad—Of debt payable in England.*—Where an assignment of a debt due from an English debtor & payable on demand in England is made in a foreign country between two citizens of that country domiciled there & subject to its laws but is invalid by the law of that country, it is not to be held valid in this country merely because it is in accordance with the requirements of English law.—*REPUBLICA DE GUATEMALA v. NUNEZ*, [1927] 1 K. B. 669; 96 L. J. K. B. 441; 136 L. T. 743; 43 T. L. R. 187; 71 Sol. Jo. 35, C. A.  
*Annotation*:—*Refd. Richardson v. Richardson*, [1927] P. 228.  
After this case for “*Assignments executed abroad.*”—*See* Nos. 459–462, 504, 505, *post*,” read “*——.*”—*See, also*, Nos. 459–462, 504, 505.”

### Part II.—Assignment in General.

29. *Add. Annotation*:—*Refd. Public Trustee v. Elder*, [1926] Ch. 776.
33. *Add. Annotation*:—*Mentd. Venn v. Tedesco*, [1926] 2 K. B. 227.
40. *Add. Annotation*:—*Refd. National Provincial & Union Bank of England v. Lindsell* (1921), 91 L. J. K. B. 196.

### Part III.—What may be Assigned.

53. *Add. Annotation*:—*Refd. Re Bower-Williams, Ex p. Trustee*, [1927] 1 Ch. 441.
63. *Add. Annotations*:—*As to* (1) *Refd. Cottage Club Estates v. Woodside Estate Co. (Amersham)* (1927), 97 L. J. K. B. 72; *Re Wait*, [1927] 1 Ch. 606; *Earle v. Hemsworth R. D. C.* (1928), 44 T. L. R. 758.
67. *Add. Annotations*:—*Consd. Bank of Liverpool & Martins v. Holland* (1926), 43 T. L. R. 29. *Distd. Earle v. Hemsworth R. D. C.* (1928), 44 T. L. R. 605.
73. *Add. Annotation*:—*As to* (2) *Refd. Earle v. Hemsworth R. D. C.* (1928), 44 T. L. R. 758.
- 77a. ——— *Retention money.*—*Held*: retention money under a building contract, although not becoming payable until a later date than the assignment, constituted a debt or legal thing in action which could be assigned, & could be sued for in an action without joining the assignors as parties.—*G. & T. EARLE, LTD. v. HEMSWORTH RURAL DISTRICT COUNCIL* (1928), 44 T. L. R. 758, C. A.
78. *Add. Annotations*:—*Refd. Performing Right Soc. v. London Theatre of Varieties*, [1924] A. C. 1; *Re Wait*, [1927] 1 Ch. 606.
81. *Add. Annotation*:—*Refd. Earle v. Hemsworth R. D. C.* (1928), 44 T. L. R. 758.

#### PART I. SECT. 1, SUB-SECT. 2.

d. Add “*revid. 17 O. R. 574.*”

e. Add “*revid. in part 4 A. R. 267.*”

#### PART III. SECT. 3.

aa. *To construct tramway across grantor's land—Assignable.*—*MCDONALD v. PEDDLE*, [1923] N. Z. L. R. 987.—N.Z.



82. *Add. Annotation*:—*Refd.* *Gray v. Spyer*, [1922] 2 Ch. 22.
84. *Add. Annotation*:—*Refd.* *Norwich Union Fire Insce. Soc. v. Colonial Mutual Fire Insce.*, [1922] 2 K. B. 461.
86. *Add. Annotation*:—*Refd.* *Rye v. Purcell*, [1926] 1 K. B. 446.
91. *Add. Annotation*:—*Refd.* *Edwards v. Motor Union Insce.*, [1922] 2 K. B. 249.
93. *Add. Annotation*:—*Mentd.* *Marsden v. Heyes, Edward*, [1927] 2 K. B. 1.
94. *Add. Annotation*:—*Consd.* *Re Lloyd's Furniture Palace, Evans v. Lloyd's Furniture Palace*, [1925] Ch. 853.
- 106a. ——— *Grantee bound to attend at specified place to receive payments & give receipts.*—*Held*: assuming such condition to be a valid one, there was nothing to prevent the grantee from assigning the annuity to a third person.—*ARDEN v. GOODACRE* (1852), 11 C. B. 883; 21 L. J. C. P. 129; 18 L. T. O. S. 208; 16 Jur. 529; 138 E. R. 723.
- 110a. ———.]—*Testatrix by her will, dated in 1862, gave a fifth share of her residuary estate to her daughter W. for life, with remainder to her children, but if she should die without issue, which event happened, "her share to go to her next of kin as if she had not been married."* In 1866 J., another daughter of testatrix, married, & by her marriage settlement covenanted that any real or personal property to which she then was entitled for any estate or interest whatsoever in reversion, remainder, or expectancy should be settled upon the trusts of the settlement. W. died in 1912 without issue, & leaving J. her sole next of kin:—*Held*: the interest which J. had at the date of the settlement in the settled share of W. was either a mere *spes successionis*, or must be treated as such, & was not assignable at law.—*Re MUDGE*, [1914] 1 Ch. 115; 83 L. J. Ch. 243; 109 L. T. 781; 58 Sol. Jo. 117, C. A.
- Annotation*:—*Refd.* *Re Lind, Industrials Finance Syndicate v. Lind*, [1915] 2 Ch. 345.
114. *Add. Annotation*:—*As to* (1) *Refd.* *Re Wait*, [1927] 1 Ch. 606.
118. *Add. Annotations*:—*Refd.* *Re Dent, Ex p. Trustee*, [1923] 1 Ch. 113; *Performing Right Soc. v. London Theatre of Varieties*, [1924] A. C. 1.
119. *Add. Annotation*:—*Refd.* *Re Berchtold, Berchtold v. Capron*, [1923] 1 Ch. 192.
124. *Add. Annotations*:—*Consd.* *Smith v. Smith*, [1923] P. 191; *Walls v. Legge*, [1923] 2 K. B. 240.
125. *Add. Annotations*:—*Consd.* *Smith v. Smith*, [1923] P. 191. *Refd.* *Campbell v. Campbell*, [1922] P. 187; *Re Nelson, Norris v. Nelson*, [1928] Ch. 920, n.
153. *Add. Annotation*:—*Refd.* *Capron v. Capron*, [1927] P. 243.
154. *Add. Annotation*:—*Refd.* *Capron v. Capron*, [1927] P. 243.
160. *Add. Annotation*:—*Refd.* *Capron v. Capron*, [1927] P. 243.
186. *Add. Annotation*:—*Mentd.* *Putsman v. Taylor*, [1927] 1 K. B. 637.

## Part IV.—What amounts to an Assignment.

193. *Add. Annotation*:—*As to* (2) *Apld.* *Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669.
195. *Add. Annotations*:—*Refd.* *Cottage Club Estates v. Woodside Estate Co. (Amersham)* (1927), 97 L. J. K. B. 72; *Earle v. Hemsworth R. D. C.* (1928), 44 T. L. R. 605.
200. *Add. Annotation*:—*Consd.* *Bank of Liverpool & Martins v. Holland* (1926), 43 T. L. R. 29.
202. *Add. Annotation*:—*Refd.* *Bank of Liverpool & Martins v. Holland* (1926), 43 T. L. R. 29.
- 204a. *Amount recoverable by assignee limited.*—*Deft. owed £285 to W., who owed money to pltf. bank, & W. assigned to the bank the debt owed to him by deft. The assignment, which was in writing, provided that "the amount recoverable under these presents shall not at any time exceed £150." Due notice of the assignment was given to deft. In an action upon the assignment:—Held*:
- (1) the assignment was not an assignment of part only of the debt, but an absolute assignment of the whole debt with a proviso that if the bank recovered more than £150 they must hold the balance as trustees for the assignor, & it was a good legal assignment; (2) even if it was an assignment of part only of the debt it would still be a good equitable assignment, & pltf. were entitled to recover.—*BANK OF LIVERPOOL & MARTINS, LTD. v. HOLLAND* (1926), 43 T. L. R. 29; 32 Com. Cas. 56.
- Annotation*:—*As to* (1) *Refd.* *Earle v. Hemsworth R. D. C.* (1928), 44 T. L. R. 605.
205. *Add. Annotations*:—*As to* (1) *Refd.* *National Provincial & Union Bank of England v. Lindsell*, [1922] 1 K. B. 21. *As to* (3) *Consd.* *Performing Right Soc. v. London Theatre of Varieties*, [1924] A. C. 1.

### PART III. SECT. 4.

981. *Claim to compensation—Damage to lands—Assignable.*—By erection of a public work, a dam, the Crown expropriated the right to flood the land of V., who subsequently sold the property to H., with the right to recover compensation from the Crown:—*Held*: it was not an assignment of litigious rights, & H. was entitled to recover compensation.—*R. v. HYE* (1921), 69 D. L. R. 173; 21 Exch. C. R. 76.—CAN.

### PART III. SECT. 5.

1001. *Promise to pay over proceeds of litigation—Compromise of suit—Effect*

*of agreement.*—Where there was an assignment of part of the fruits of litigation:—*Held*: even if they were to be regarded as non-existing property at the date of the agreement, the agreement attached upon the money being paid.—*VATSAVAYA VENKATA JAGAPATI v. POOSAPATI VENKATAPATI* (1924), L. R. 52 Ind. App. 1.—IND.

### PART III. SECT. 14.

11. *Non-negotiable promissory notes.*—Promissory notes drawn in such form that they are non-negotiable, can be assigned in the same manner as an ordinary chose in action.—*MERCHANTS BANK OF CANADA v. GREENLEES*, [1923] 2 W. W. R. 931.—CAN.

### PART IV. SECT. 1, SUB-SECT. 2.

1. *General rule.*—An assignment is to be regarded as absolute, although it appears on its face that it is only for the purpose of securing a debt lesser in amount, so long as it does not purport to be by way of charge only.—*Re BLAND & MOHUN* (1913), 25 O. W. R. 419; 30 O. L. R. 100; 5 O. W. N. 522.—CAN.

### PART IV. SECT. 2, SUB-SECT. 1.—A.

205 x. ——— *Building contract apportioning price between builder & third party.*—*GRANT v. TRAVIS*, [1924] 2 D. L. R. 1164; 2 W. W. R. 503.—CAN.

211. *Add. Annotation*:—*As to* (1) *Refd.* *Palmer v. Carey*, [1926] A. C. 703.

214a. —.]—Order to pay money out of a particular fund gives the party a specific lien thereon.—*SMITH v. EVERETT* (1792), 4 Bro. C. C. 64; 29 E. R. 780.

*Annotations*:—*Refd.* *Crowfoot v. Gurney* (1832), 9 Bing. 372; *Best v. Arglos* (1834), 2 Cr. & M. 394.

221a. — *Part of debt.*]—*BANK OF LIVERPOOL & MARTINS, LTD. v. HOLLAND*, No. 204a, *ante*.

236. *Add. Annotation*:—*Apprvd.* *Re Swinburne, Sutton v. Featherley* (1925), 70 Sol. Jo. 64.

237. *Add. Annotations*:—*Mentd.* *The Tervae* (1922), 128 L. T. 176; *Duff Development Co. v. Kelantan Government*, [1923] 1 Ch. 385.

250a. *Directions to pay proceeds of cargo to creditor.*]—An order by A. to B., directing the latter to pay over to C., a creditor of A., the proceeds of a cargo consigned by A. to B., creates no lien in favour of C.—*HOLLAND & HUMBLE'S ASSIGNEES v. —* (1815), 1 Stark. 143; 171 E. R. 427; *sub nom.* *HEYWOOD v. WARING*, 4 Camp. 291; *sub nom.* *Re HOLMES, Ex p. HEYWOOD*, 2 Rose, 355, N. P.

*Annotations*:—*Consd.* *Frith v. Forbes* (1862), 31 L. J. Ch. 793. *Refd.* *Giles v. Grover* (1832), 9 Bing. 128; *Malcolm v. Scott* (1843), 3 Hare, 39.

258. *Add. Annotation*:—*Refd.* *National Provincial & Union Bank of England v. Lindsell* (1921), 91 L. J. K. B. 196.

258a. *Agreement to pay proceeds into lender's bank—Advances for purchase of goods.*]—By a written agreement made in 1917 a trader was to purchase goods from time to

time & resp. was to advance money to pay for them; the trader was to sell the goods & to pay the proceeds to the credit of resp. at his bank; resp., after deducting the amount which he had advanced & one-third of the gross profits, was to pay the remaining two-thirds to the trader. In 1921 the trader became bkpt., & applt. was appointed assignee in the bkpcy. At the time of the bkpcy. a large sum advanced under the agreement had not been repaid, & the trader had in his hands goods purchased under the agreement, & the proceeds of other goods so purchased. Resp. claimed a charge on the above assets in respect of the advances not repaid:—*Held*: as the agreement did not, either contractually or otherwise, create any right of the lender in either the goods or their proceeds, it did not amou. to an equitable assignment so as to entitle resp. to the charge claimed.—*PALMER v. CAREY*, [1926] A. C. 703; 95 L. J. P. C. 146; 135 L. T. 237; [1926] B. & C. R. 51, P. C.

269. *Add. Annotation*:—*Refd.* *Re City Life Assce.* (1925), 42 T. L. R. 45.

274. *Add. Annotation*:—*Refd.* *Re Wait*, [1927] 1 Ch. 606.

274a. *S. P. BRADLEY v. —* (1744), *Ridg. temp.* H. 194; 27 E. R. 801, L. C.

303. *Add. Annotation*:—*As to* (1) *Distd.* *Re Nelson, Norris v. Nelson*, [1928] Ch. 920, n.

307. *Add. Citations*:—[1922] 1 K. B. 21; 91 L. J. K. B. 196; 126 L. T. 319; [1921] B. & C. R. 209.

## Part V.—Notice of Assignment.

*Add. Annotation*:—*Refd.* *Re North Wales Produce & Supply Soc.*, [1922] 2 Ch. 340.

*See, now*, Law of Property Act, 1925 (c. 20), ss. 136, 137.

313. *Add. Annotation*:—*Refd.* *National Provincial*

& Union Bank of England *v. Lindsell* (1921), 91 L. J. K. B. 196.

354. *Add. Annotation*:—*Refd.* *H. v. H.*, [1928] P. 206.

### PART IV. SECT. 2, SUB-SECT. 1.—B. (c).

*sm. Authorising payment of sum in hands of garnishee—Order giving effect to verbal assignment.*]—*CLARKE BROTHERS, LTD. v. GOODIN & PEDERSON*, [1922] 3 W. W. R. 504; 68 D. L. R. 792.—CAN.

223 i. *Assigning money due or to come due—Under contract.*]—It is no objection to an equitable assignment of a claim against a third person that the work upon which the claim is based has yet to be performed.—*Re MATTHEWS SHEET METAL & ROOFING CO., LTD., Ex p. MARTIN* [1924] 1 D. L. R. 761; 55 O. L. R. 262; 4 C. B. R. 471.—CAN.

223 ii. — *Under policy.*]—*Held*: the assignment was not vitiated by the fact that, at the time, the fund on which the assignment was intended to operate had not yet come into existence.—*LIVERPOOL & LONDON & GLOBE INSURANCE CO., LTD. v. HARTLEY & FORD*, [1927] V. L. R. 523; 49 A. L. T. 70; [1927] *Argus*. L. R. 417.—AUS.

### PART IV. SECT. 2, SUB-SECT. 2.—A.

246 iv. — — —.]—*Held*: the order set out in the judgment, in the circumstances, was a good equitable assignment of moneys due from the board of a drainage district to a person

who had a contract with it.—*STIRLING COLLIERIES, LTD. v. JONES*, [1924] 4 D. L. R. 1305; 3 W. W. R. 955.—CAN.

### PART IV. SECT. 2, SUB-SECT. 2.—B.

256 i. *Directions to agent to sell & pay proceeds into bank—Principal paying for goods by cheques drawn against proceeds.*]—*KIDD v. HARDEN, MCCONNELL v. HARDEN*, [1924] 4 D. L. R. 516; 3 W. W. R. 293.—CAN.

### PART IV. SECT. 2, SUB-SECT. 2.—C.

*o. Add "revsd."*, [1921] 1 W. W. R. 839."

### PART IV. SECT. 2, SUB-SECT. 3.

*sn. Lodging notes as collateral security.*]—A document providing that certain notes "are lodged with the bank as a general & continuing collateral security for the due payment of all advances made or to be made to me by the bank":—*Held*: not a proper assignment; there is a distinction between lodging a document as collateral security & an assignment.—*MERCHANTS BANK OF CANADA v. GREENLEES*, [1923] 2 W. V. R. 931.—CAN.

*st. Indorsement of lien note.*]—*Held*: to constitute a good equitable assignment thereof.—*CANADIAN BANK OF COMMERCE v. LA BRASH*, [1918] 1 W. W. R. 6; 39 D. L. R. 398; 10 Sask. L. R. 408.—CAN.

### PART IV. SECT. 3.

280 i. *Necessity for communication to & assent by assignee—To constitute assignment.*]—A letter assigning moneys must be shown to have been communicated to the assignee before it will be held to constitute an equitable assignment.—*STARR CO. OF CANADA, LTD. v. MERRILL*, [1922] 3 W. W. R. 926; 70 D. L. R. 557.—CAN.

### PART IV. SECT. 6.

288 ii. — — —.]—*LOEPPKY v. LANG*, [1925] 2 D. L. R. 610; [1925] 1 W. W. R. 1104; 19 Sask. L. R. 337.—CAN.

*sa. Assignment of lien agreement—Whether consideration amount due under lien.*]—*A. R. WILLIAMS MACHINERY CO., LTD. v. MOORE*, [1926] 4 D. L. R. 568.—CAN.

### PART V. SECT. 1, SUB-SECT. 1.

311 i. *Assignment—As security—Of debts.*]—*OKELL MORRIS & CO. v. DICKSON* (1902), 9 B. C. R. 151.—CAN.

### PART V. SECT. 3, SUB-SECT. 1.

*sb. To guarantor—Notice not given to debtor.*]—*DONALD v. JUKES*, [1921] 2 W. W. R. 208; 56 D. L. R. 692; 60 S. C. R. 652.—CAN.

### PART V. SECT. 3, SUB-SECT. 3.

*sd. Of debtor.*]—Notice to the solr. of debtor that the claim against the latter

358. *Add. Annotation*:—Generally, *Mentd. McCreagh v. Cox & Ford* (1923), 92 L. J. K. B. 855.
417. After this case add "*See, now, Law of Property Act, 1925 (c. 20), s. 137.*"
440. *Add. Annotation*:—*Refd. Knight v. Knight*, [1925] Ch. 835.
460. *Add. Annotation*:—*Refd. Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669.
461. *Add. Annotation*:—*Consd. Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669.
463. *Add. Annotation*:—*Refd. Campbell v. Pollak*, [1927] A. C. 732.

## Part VI.—Effect of Assignment.

475. *Add. Annotations*:—As to (1) *Refd. Re Bernstein, Barnett v. Bernstein* (1924), 69 Sol. Jo. 88. As to (2) *Refd. Weld v. Petre* (1928), 44 T. L. R. 739.
- 483a. ———.]—*G. & T. EARLE, LTD. v. RURAL DISTRICT COUNCIL*, No. 77a, *ante*.
485. *Add. Annotations*:—*Refd. Cheshire County Council v. Hopley* (1923), 130 L. T. 123;
- The Koursk, [1924] P. 140; *Venn v. Tedesco*, [1926] 2 K. B. 227.
504. *Add. Annotation*:—*Refd. Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669.
509. *Add. Annotation*:—*Refd. Performing Right Soc. v. London Theatre of Varieties*, [1922] 2 K. B. 433.
519. *Add. Annotation*:—*Refd. Allen v. Royal Bank of Canada* (1925), 41 T. L. R. 625.

## Part VII.—Assignment subject to Equities.

592. *Add. Annotation*:—As to (2) *Refd. Lawrence v. Hayes*, [1927] 2 K. B. 111.
593. *Add. Annotations*:—*Mentd. Re Webb (Smithfield, London)*, [1922] 2 Ch. 369; *Re Pink, Elvin v. Nightingale* (1926), 70 Sol. Jo. 1090.
601. *Add. Annotation*:—*Refd. Re City Life Assce.* (1925), 42 T. L. R. 45.
604. *Add. Annotation*:—*Refd. Lawrence v. Hayes*, [1927] 2 K. B. 111.
605. *Add. Annotations*:—As to (2) *Refd. Lawrence*

was to be paid to a third party is notice to debtor himself that such claim had been assigned.—*ST. JOHN & QUEBEC RY. CO. v. BANK OF BRITISH NORTH AMERICA & HIBBARD CO.* (1921), 67 D. L. R. 650; 62 S. C. R. 346.—CAN.

### PART V. SECT. 4.

a. *Before action—Judicature Act, 1909, s. 19 (6).*—*WOODSTOCK ELECTRIC RAILWAY, LIGHT & POWER CO. v. DOMINION TANNERIES, LTD.* (1918), 45 N. B. R. 408.—CAN.

### PART V. SECT. 5.

b i. ——— *That alleged assignee had possession of notes.*—Although debtors may have known that notes were in the possession of a bank, the alleged assignee:—*Held*: this was insufficient, being a far different thing from having notice of the assignment, & there was no duty in debtors to inquire of the bank.—*MERCHANTS BANK OF CANADA v. GREENLEES*, [1923] 2 W. W. R. 931.—CAN.

### PART V. SECT. 9, SUB-SECT. 1.—A. (a) i.

o. Add "*Revsd.* 47 S. C. R. 313; 10 D. L. R. 232; 23 W. L. R. 445.

p i. ———.]—The assignee of an equitable interest in personal estate without notice of an existing earlier assignment will gain priority simply by the act of giving notice to the person who has the legal dominion over the fund before notice is given by an assignee earlier in point of time.—*GORDON v. GORDON*, [1924] 2 D. L. R. 74; 1 W. W. R. 903; 18 Sask. L. R. 187.—CAN.

### PART V. SECT. 9, SUB-SECT. 1.—A. (b).

sk. *Assignments of money payable under commission certificates—Certificates not assignable—Order for payment given to first assignee—Certificates handed to second assignee.*—*J. I. CASE THRESHING MACHINE CO. v. GENERAL MOTORS ACCEPTANCE CORPN.*, [1924]

4 D. L. R. 1297; 3 W. W. R. 694.—CAN.

### PART VI. SECT. 2, SUB-SECT. 2.

476 ii. ——— *Money due under agreement for sale—Power to cancel agreement.*—Where a vendor of land under agreement for sale assigns the moneys due under the agreement for sale & notice of the assignment, equitable or legal, is given to debtor, it is not open to the vendor & debtor to cancel the agreement without the concurrence of the assignee.—*UNION BANK OF CANADA v. DUTCHAK*, [1924] 3 D. L. R. 457; 2 W. W. R. 864.—CAN.

### PART VI. SECT. 3, SUB-SECT. 1.—A.

u. Add "*revsd. in part*, 4 A. R. 267."

ei. ——— *Of lien.*—*Pltf.*, assignee of three several claims of workmen who had liens under Woodmen's Lien Act, commenced an action in his own name without serving any notice of the assignment upon debtor:—*Held*: *pltf.* could bring an action in his own name without giving the notice referred to in *Jud. Act, s. 19 (6)*.—*BARNES v. BLACK*, [1925] 3 D. L. R. 65; 58 N. S. R. 69.—CAN.

### PART VI. SECT. 5, SUB-SECT. 2.

550 iii. ———.]—*SHEPHERD v. LIVINGSTON*, [1924] 1 D. L. R. 723; 1 W. W. R. 455.—CAN.

550 iv. ———.]—*MCPHERSON v. LEES (ANDREW), LTD.*, [1926] N. Z. L. R. 523.—N.Z.

sl. *Payment to assignee—Money due under agreement for sale—Covenant by assignor to convey on payment.*—Where a vendor has covenanted in writing with an assignee to convey the land to the purchaser on payment of the full amount of the purchase-money, the purchaser is protected as to title & may safely make his payments to the assignee; & the assignee can sue on the purchaser's covenant to pay con-

tained in the agreement.—*UNION BANK OF CANADA v. DUTCHAK*, [1924] 3 D. L. R. 457; 2 W. W. R. 864.—CAN.

### PART VII. SECT. 1.

565 iii. ———.]—Even assuming a proper assignment, notes lodged with a bank as a general & continuing security for the due payment of all advances made, or to be made, must be taken by the assignee subject to any equities existing between the original parties.—*MERCHANTS BANK OF CANADA v. GREENLEES*, [1923] 2 W. W. R. 931.—CAN.

565 iv. ——— *Effect of express contract.*—Notwithstanding Choses in Action Act, R. S. S., 1920 (c. 202), s. 5, debtor can contract with his creditor, for good consideration, that he will not avail himself of his right to set up against the creditor's assignee any equity existing between the creditor & himself. If the contract which includes the clause not to set up the equities against an assignee was induced by fraud, such clause falls with the contract, except where debtor is estopped as against the assignee from setting up the fraud.—*HAMILTON v. RAILTON*, [1925] 3 D. L. R. 1090; [1925] 3 W. W. R. 136; *revsd.* [1925] 2 W. W. R. 195.—CAN.

q i. ——— *Notice of covenant by assignor—Whether assignee bound.*—*MURPHY v. ONTARIO JOCKEY CLUB, LTD.*, [1926] 1 D. L. R. 414; 58 O. L. R. 97.—CAN.

### PART VII. SECT. 2, SUB-SECT. 1.

tl. ———.]—*ROYAL BANK OF CANADA v. GUSTAFSON*, [1924] 1 W. W. R. 544; 33 B. C. R. 379.—CAN.

### PART VII. SECT. 2, SUB-SECT. 4.

604 ii. Add "*revsd. in part*, 25 A. R. 179."

604 iv. ———.]—*ROYAL BANK OF CANADA v. GUSTAFSON*, [1924] 1 W. W. R. 544; 33 B. C. R. 379.—CAN.



*v. Hayes*, [1927] 2 K. B. 111; *Earle v. Homs-  
worth* R. D. C. (1928), 44 T. L. R. 605.

**607a.** For breach of warranty by assignor—Against claim for instalments due under assigned agreement—Judgment obtained for damages for breach of warranty.]—The owner of a business sold it to deft. on terms of payment by instalments, & then assigned the benefit of the agreement to pltf. Before notice of assignment was given to deft., the latter obtained judgment against the assignor for

damages for breach of warranty on the above sale. In an action by pltf., as assignee, against deft. for payment of instalments due under the assigned agreement, deft. claimed to set off the amount of the judgment. Pltf. contended that deft.'s right to damages in respect of the breach of warranty had merged in the judgment, & that the latter could not be set off against his claim:—*Held*: the set-off was valid.—*LAWRENCE v. HAYES*, [1927] 2 K. B. 111; 96 L. J. K. B. 658; 137 L. T. 149; 91 J. P. 141; 43 T. L. R. 379. D. C.

## Part VIII.—Voluntary Assignments.

**618.** *Add. Annotation*:—*Consd. Macedo v. Stroud*, [1922] 2 A. C. 330.

**624a.** ———.]—*SLOANE v. CADOGAN* (1808), cited in 12 Sim. at p. 291.

*Annotations*:—*Consd.* *Edwards v. Jones* (1836), 1 My. & Cr. 226; *Beatson v. Beatson* (1841), 12 Sim. 281. *Distd.* *Meek v. Kettlewell* (1843), 1 Ph. 342. *Apld.* *Kekewich v. Manning* (1851), 1 De G. M. & G. 176; *Donaldson v. Donaldson* (1854), Kay, 711. *Refd.* *Fenner v. Taylor* (1831), 2 Russ. & M. 190; *M'Fadden v. Jenkyns* (1842), 1 Hare, 458; *Price v. Price* (1851), 21 L. J. Ch. 53; *Bridge*

*v. Bridge* (1852), 16 Beav. 315; *Moyle v. Hughes* (1854), 2 Sm. & G. 18; *Gilbert v. Overton* (1864), 4 New Rep. 420; *Glogg v. Rees* (1871), 7 Ch. App. 71.

**634.** For "*Held*:" (1) as it was the intention of the settlor," etc., read "*Held*:" (1) as it was not the intention of the settlor," etc.

*Add. Annotations*:—*As to* (1) *Refd.* *Royal Exchange Assce. v. Hope*, [1928] Ch. 179. *As to* (3) *Consd. Macedo v. Stroud*, [1922] 2 A. C. 330.

### PART IX.

**q.** ——— *Under Assignment of Book  
Debts Act, 1923 (c. 29).*]—*Re RAPORT*,

*DENISON v. UNION BANK OF CANADA*, [1925] 3 D. L. R. 1058; 57 O. L. R. 374; 5 C. B. R. 811.—CAN.  
*sm. Book account—Under Assign-*

*t of Book Accounts Act, R. S. B. C.*, 1924 (c. 16).]—*VERNON HARDWARE Co. v. REID & REINHARD (B. C.)*, [1927] 2 W. W. R. 117.—CAN.

## CLUBS AND OTHER VOLUNTARY ASSOCIATIONS.

## Part III.—Constitution and Internal Arrangements.

17. *Add. Annotation* :—*Consd. Morgan v. Driscoll* (1922), 38 T. L. R. 251.
20. *Add. Annotation* :—*As to* (1) *Consd. Morgan v. Driscoll* (1922), 38 T. L. R. 251.
- 21a. *Notice of general meeting—Who entitled to.*—Pltfs. were the captain & the secretary of the women's section of a golf club, of which deft. co. were the proprietors. At an extraordinary general meeting of the members a resolution was passed deleting from the rules of the club a provision for the election of a women's committee to manage the affairs of the women's section. No woman member of the club received notice of that meeting, as none of the women members held any shares in the co. In an action for a declaration that the resolution was invalid :—*Held* : under the rules women members were not full members & were not entitled to receive notices of general meetings, & the action failed.—*COLE v. MERTON PARK (WIMBLEDON) GOLF CLUB, LTD.* (1927), 43 T. L. R. 400.
38. *Add. Annotations* :—*Consd. Amalgamated Soc. of Carpenters, Cabinet Makers & Joiners v. Braithwaite, General Union of Operative Carpenters & Joiners v. Ashley*, [1922] 2 A. O. 440. *Folld. Wing v. Burn* (1928), 44 T. L. R. 258. *Refd. A.-G. v. Swan*, [1922] 1 K. B. 682.
39. *Add. Annotation* :—*As to* (1) *Refd. A.-G. v. Swan*, [1922] 1 K. B. 682.
- 39a. ————]—*WING v. BURN* (1928), 44 T. L. R. 258.
- 53a. ———— *Claim by member for proportion of—On winding up of club.*—A limited co. was registered with the object of carrying on a proprietary club, & by the articles H. was appointed governing director for life & the

management of the club was vested in her. In 1915 H. granted a lease of premises to the club which was carried on there. In 1918 a subscription of four guineas a year for country members & five guineas for town members was charged, & as from Jan. 1, 1919, an entrance fee of five guineas was imposed. From 1917 to Mar. 25, 1919, a notice stating that the club would be carried on permanently was exhibited by H. On Mar. 11, 1919, H., without notice to the executive committee, issued a writ for arrears of rent, & on recovering summary judgment closed the club. The co. then passed a resolution for voluntary winding up & a liquidator was appointed. A., who was a member of the club, claimed to prove as creditor for general damages & a proportion of her subscription for 1919, B., another member, claimed general damages, the return of her entrance fee & the proportion of her subscription for the current year :—*Held* : A. & B. were entitled to prove, not only for the proportion of their subscriptions of which they had lost the benefit for the current year, but also in respect of damages for the loss of the amenities of the club, & in the case of B. to a return of the entrance fee ; & the damages should be assessed in the case of A. at £7, which included the proportion of her subscription for 1919, & in the case of B. at £14, which also included the entrance fee & proportion of her subscription.—*Re CURZON SYNDICATE, LTD.* (1920), 149 L. T. Jo. 232.

54. For "Entrance fee payable by instalments" read "Entrance fee—Payable by instalments."
- 54a. ———— *Claim by member for return of—On winding up of club.*—*Re CURZON SYNDICATE, LTD.*, No. 53a, *ante*.

## Part VI.—Debentures.

105. *Add. Citations* :—[1922] 1 Ch. 51 ; 91 L. J. Ch. 93 ; 126 L. T. 225.

## PART II.

9c. *Validity of rules.*—Where the rights or privileges of members of a club are not in any way affected, nor the property of the club in any way injured, the ct. has no jurisdiction to consider the legal validity of the rules of the club, nor to grant an injunction against the commission of acts merely criminal or merely illegal.—*WATT v. MACLAUGHLIN*, [1923] 1 I. R. 112.—IR.

12 ii. ———— *Majority of members acting illegally—Injunction.*—*BRYLINSKI v. INKOL* (1924), 55 O. L. R. 369.—CAN.

## PART III. SECT. 1, SUB-SECT. 2.

1 i. ———— *Necessity for unanimous vote or consent of all members.*—*BRYLINSKI v. INKOL* (1924), 55 O. L. R. 369.—CAN.

1 ii. ————]—A rule prescribed that no future motion to open the

links for play on Sundays should be passed unless by a majority of two-thirds of those present & voting :—*Held* : the repeal of the rule did not itself require a two-thirds majority.—*WATT v. MACLAUGHLIN*, [1923] 1 I. R. 112.—IR.

## PART III. SECT. 2, SUB-SECT. 2.—A.

26 i. *Power to expel for infringing rules.*—Where a club was registered under Cos. Act :—*Held* : the committee were not in law the directors of the co. & had no authority to exercise the powers of directors to exclude pltf. from membership of the club.—*MURPHY v. SYNNOTT*, [1925] N. 14.—IR.

## PART III. SECT. 2, SUB-SECT. 2.—E.

49 ii. ————]—A club incorporated under Incorporated Societies Act, 1908, which acting by its executive

committee wrongfully & in breach of the club's rules excludes a member from the use of the club's premises, commits a breach of contract & the member is entitled to recover damages. The members of the committee, acting within the scope of their authority, are not personally liable in tort for inducing or procuring such breach of contract.—*HENDERSON v. KANE & PIONEER CLUB*, [1924] N. Z. L. R. 1073.—N.Z.

## PART IV. SECT. 1, SUB-SECT. 1.

70 ii. ———— *Money lent to lodge.*—Where a person gives credit to an abstract entity, such as a club or lodge, he can look to those who assumed to act for it & those who authorised or sanctioned that being done, in the absence of anything indicating the contrary.—*FINLAY v. BLACK*, [1921] 2 W. W. R. 907.—CAN.

## Part VII.—Duty Payable by Clubs.

106. *Add. Annotation* :—*As to* (3) *Refd. A.-G. v. Swan*, [1922] 1 K. B. 682.

## Part VIII.—Sale of Intoxicating Liquors in Clubs.

109. *Add. Annotation* :—*Refd. A.-G. v. Swan*, [1922] 1 K. B. 682.

110. *Add. Annotation* :—*Consd. Watson v. Cully*, [1926] 2 K. B. 270.

111a. **Whether in "club"—Temporary premises.]**—The word "club" as used in Licensing Act, 1921 (c. 42), s. 4, means the premises of a registered club, & not the assocn. of persons who are members of the club.

Where, on the occasion of a fête, a registered club engaged a room adjoining the ground on which the fête was to be held, & there supplied intoxicants to members otherwise than in the permitted hours :—*Held* : as the room in question was not habitually used for the purposes of the club, no offence had been committed under the above sect.—*WATSON v. CULLY*, [1926] 2 K. B. 270 ; 95 L. J. K. B. 554 ; 135 L. T. 28 ; 90 J. P. 119 ; 42 T. L. R. 529 ; 24 L. G. R. 357 ; 28 Cox, C. C. 194, D. C.

*Annotation* :—*Refd. Clarke v. Griffiths, Peacock v. Samo*, 95 L. J. K. B. 905.

111b. **Additional unregistered premises.]**—Applts. were respectively the steward & one of the members of a club which occupied, besides its registered premises, additional premises which were at a considerable distance & which were not registered. At these additional premises the steward supplied to the other applt. beer, which the latter paid for & there consumed. An information having been preferred against the steward for supplying the beer, for consumption off the club premises, otherwise than on the premises of the club, & against the other applt. for unlawfully obtaining the liquor, contrary to Licensing (Consolidation) Act, 1910 (c. 24), s. 94 :—*Held* : as the liquor was not supplied in the registered premises of the club it was not supplied "in a club" within the above sect., & the conviction must be quashed.—*CLARKE v. GRIFFITHS, PEACOCK v. GRIFFITHS*, [1927] 1 K. B. 226 ; 95 L. J. K. B. 905 ; 135 L. T. 58 ; 90 J. P. 151 ; 42 T. L. R. 541 ; 24 L. G. R. 466 ; 28 Cox, C. C. 240, D. C.

## Part IX.—Betting and Gaming in Clubs.

136. *Add. Annotations* :—*Refd. Richardson v. Moncrieffe* (1926), 43 T. L. R. 32 ; *R. v. Berg*,

*Britt, Carré & Lummies* (1927), 20 Cr. App. Rep. 38.

## Part X.—Dissolution of Clubs.

148a. **Claims by members of proprietary club—For damages for loss of club amenities—& for proportion of subscriptions—& return of**

**entrance fee.]**—*Re CURZON SYNDICATE, LTD.*, No. 53a, *ante*.

### PART VIII. SECT. 3.

**sd. Right of members to store beer at club.]**—Members of a club on purchasing beer from a Govt. vendor may store it at the club, & the club is entitled to charge a fee for storage & service.—

*R. v. ROCK* (1923), 32 B. C. R. 67.—CAN.

**sd. "Distributing" beer by servant of club—What amounts to.]**—*R. v. ROCK* (1923), 32 B. C. R. 67.—CAN.

### PART IX. SECT. 2.

**137 i. Common gaming house—Who are liable as persons assisting in conducting business—Employees.]**—*R. v. DORGAN, R. v. KESSLER, R. v. COATES* (Sask.) (1927), 47 Can. Crim. Cas. 344.—CAN.



## COMPANIES.

## Part I. Nature, Characteristics, Definitions and Classification.

6. *Add. Annotation*:—As to (1) *Reid. Deuchar v. Gas Light & Coke Co.*, [1924] 2 Ch. 426.
11. *Add. Annotations*:—*Consd. British Thomson-Houston Co. v. Sterling Accessories, Same v. Crowther & Osborn*, [1924] 2 Ch. 33; *Reid. Parker & Cooper v. Reading*, [1926] Ch. 975; *Thomas v. Evans*, *Jones v. South-West Lancashire Coal-Owners' Assocn.* (1926), 42 T. L. R. 401. *Mentd. Howson v. Buxton* (1928), 97 L. J. K. B. 749.
15. *Add. Annotations*:—*Reid. British Thomson-Houston Co. v. Sterling Accessories, Same v. Crowther & Osborn*, [1924] 2 Ch. 33; *Prichard & Constance v. Amata* (1924), 42 R. P. C. 63. *Mentd. Scammell v. Attlee* (1928), 45 T. L. R. 75.
16. *Add. Annotation*:—*Mentd. R. v. Morter* (1927), 20 Cr. App. Rep. 53.

## Part II.—Domicil, Residence and Nationality of Companies.

- 26a. ——— *Business conducted abroad.*—A trading corp'n. was registered in England under Cos. Acts, but the whole administration of the business of the co. was conducted by directors domiciled & resident in Holland. The register of members was kept at the office in England:—*Held*: the domicil of the co. was not in Holland but in England.—*BAELZ v. PUBLIC TRUSTEE*, [1926] Ch. 863; 95 L. J. Ch. 400; 135 L. T. 763; 42 T. L. R. 696; 70 Sol. Jo. 818.
- 26b. ———.]—To constitute residence by a British co. in a foreign State so as to render the co. subject to the jurisdiction of the cts. of that State, the co. must to some extent carry on business in that State at a definite & reasonably permanent place.—*LITTAUER GLOVE CORPN. v. F. W. MILLINGTON* (1920), LTD. (1928), 44 T. L. R. 746.
27. *Add. Annotations*:—*Consd. New York Life Insce. v. Public Trustee*, [1924] 2 Ch. 101.
- Reid. Swedish Central Ry. v. Thompson*, [1924] 2 K. B. 255; *Re Bates, Mountain v. Bates*, [1928] Ch. 682; *Ellerman Lines v. Read*, [1928] 2 K. B. 144.
- 27a. ———.]—A co. was incorporated by special Act of the Legislature of New York, & had its central office & the bulk of its assets in New York. The co. had a branch in London & in most of the capitals of Europe, the branch in Paris being its head office for Europe:—*Held*: a corp'n. might have a dual residence, & there was evidence that pl'tfs. were resident both in New York & in London carrying on business in both places & in both places were subject to the jurisdiction of the cts.—*NEW YORK LIFE INSURANCE CO. v. PUBLIC TRUSTEE*, [1924] 2 Ch. 101; 93 L. J. Ch. 449; 131 L. T. 438; 40 T. L. R. 430; 68 Sol. Jo. 477, C. A.
- Annotations*:—*Reid. Swedish Central Ry. v. Thompson*, [1924] 2 K. B. 255. *Mentd. Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669.

## Part III. Companies under Companies (Consolidation) Act, 1908, and Similar Acts.

38. *Add. Annotation*:—As to (6) *Appld. Re City Equitable Fire Insce.*, [1925] Ch. 407.
44. *Add. Annotations*:—*Mentd. Re City Equitable Fire Insce.* (1924), 40 T. L. R. 853; *Re Etic* [1928] Ch. 861.
67. *Add. Annotations*:—*Reid. Weld v. Petre* (1928),

## PART I. SECT. 1.

2a. *Under statute—Existence apart from members—Conveyance of property by originators to company.*—Defts. contracted with pl'tfs. to sell them all the fruit & vegetables to be grown on their land during a specified time. The contract provided that if any transfer should be made by the grower to any corp'n., it should be deemed to be made subject to the agreement & the transferee should be bound by the terms thereof. Defts., for the admitted purpose of freeing themselves from the contract, incorporated a joint stock co. for the

purpose of holding the land, & transferred the land to it in consideration of the allotment to them of the whole of its capital stock:—*Held*: the co. could not be declared to be a trustee for the growers & bound by the contract.—*ASSOCIATED GROWERS OF B. C., LTD. & KELOWNA GROWERS EXCHANGE v. EDMUNDS & BYZANT ORCHARDS, LTD.*, [1926] 1 D. L. R. 1093; [1926] 1 W. W. R. 535; 36 B. C. R. 413.—CAN.

## PART I. SECT. 2.

2b. *Companies limited by guarantee—*

*Assignment of undertaking by third party—Validity.*—*LLOYD'S BANK v. MORRISON & SON, LTD.*, [1927] S. C. 571.—SCOT.

## PART II.

n i. ——— *In several places.*—A co. is to be treated in matters of trade & commerce as resident not only where its principal place of business is, but wherever it has a place of business.—*EHMKA v. BORDER CITIES IMPROVEMENT CO.* (1922), 52 O. L. R. 193.—CAN.

- 97 L. J. Ch. 399. *Mentd. Anchor Trust Co. v. Bell*, [1926] Ch. 805.
69. *Add. Annotations*:—*Refd. Weld v. Petre* (1928), 97 L. J. Ch. 399. *Mentd. Anchor Trust Co. v. Bell*, [1926] Ch. 805.
75. For the paragraph “(9) (WARRINGTON, L.J. . . . 1908 Act, s. 82,” substitute:—“(9) (LORD SUMNER, LORD DUNEDIN expressing the contrary opinion), an allotment of shares & debentures made before filing a statement in lieu of prospectus as required by 1908 Act, s. 82 (1), is not wholly void.”  
For the paragraph “(10) (LORD STERNDALE, M.R., . . . was written,” substitute:—“(10) Observations of LORD SUMNER as to the practice of the Registrar of Joint Stock Companies, in cases where everything is in order, of antedating the incorporation of a co. to the date of the application for registration.”—*JUBILEE COTTON MILLS, LTD. (OFFICIAL RECEIVER & LIQUIDATOR) v. LEWIS*, [1924] A. C. 958; 93 L. J. Ch. 414; 40 T. L. R. 621; 68 Sol. Jo. 663; [1925] B. & C. R. 16; *sub nom. Re JUBILEE COTTON MILLS, LTD.*, 131 L. T. 579, H. L.
- Annotations*:—*As to* (9) *Consd. Re Burton*, [1927] 2 Ch. 132. *Generally, Mentd. Re City Equitable Fire Insce.* (1925), 133 L. T. 520.
82. *Add. Annotation*:—*As to* (1) *Refd. Jubilee Cotton Mills Official Receiver & Liquidator v. Lewis*, [1924] A. C. 958.
196. *Add. Annotation*:—*Refd. Harrods v. Harrod* (1924), 40 T. L. R. 195.
225. *Add. Annotation*:—*Consd. Harrods v. Harrod* (1924), 40 T. L. R. 195.
228. *Add. Citation*:—*On appeal*, 41 R. P. C. 67, C. A.
- 228a. “*Harrods*” — “*R. Harrod.*”—The ct. granted an interlocutory injunction to restrain deft. co. from carrying on business under any name comprising the well-known name of pltf. co. on the ground that defts.’ use of the name was calculated to lead the public erroneously to believe that defts.’ business had some connection with pltf.’ business.—*HARRODS, LTD. v. HARROD (R.)*, LTD. (1924), 40 T. L. R. 195; 41 R. P. C. 74, C. A.
- Annotation*:—*Expld. Motor Manufacturers’ & Traders’ Soc. v. Motor Manufacturers’, etc., Insce.*, [1925] Ch. 675.
- 228b. “*Society of Motor Manufacturers & Traders*” — “*Motor Manufacturers’ & Traders’ Mutual Insurance Co.*”—A co., carrying on the business of insurance against motor risks, adopted as part of its name the ordinary descriptive words “*Motor Manufacturers & Traders*,” which had already been adopted as part of its name by a society having for its main objects the promotion, encouragement & protection of the motor trade generally. There was no charge of fraud &, in the opinion of the ct., no tangible risk of injury to the society’s business reputation owing to the similarity of the names; the names being sufficiently distinguishable & deft. co.’s business wholly different from that of pltf. society:—*Held*: pltf. society was not entitled to a monopoly of its descriptive words, or to any relief against deft. co.—*MOTOR MANUFACTURERS’ & TRADERS’ SOCIETY v. MOTOR MANUFACTURERS’ & TRADERS’ MUTUAL INSURANCE CO.*, [1925] Ch. 675; 94 L. J. Ch. 410; 133 L. T. 330; 41 T. L. R. 488; 42 R. P. C. 807, C. A.
237. *Add. Annotation*:—*As to* (1) *Consd. Motor Manufacturers’ & Traders’ Soc. v. Motor Manufacturers’ & Traders’ Mutual Insce.*, [1925] Ch. 675.
238. *Add. Annotations*:—*Refd. Harrods v. Harrod* (1924), 40 T. L. R. 195; *Motor Manufacturers’ & Traders’ Soc. v. Motor Manufacturers’ & Traders’ Mutual Insce.* (1925), 94 L. J. Ch. 410.
251. *Add. Annotation*:—*Refd. Employers’ Liability Assce. v. Sedgwick Collins* (1926), 95 L. J. K. B. 1015.
255. *Add. Annotations*:—*As to* (1) *Refd. I. R. Comrs. v. Cornish Mutual Assce.* (1924), 41 T. L. R. 70. *As to* (2) *Refd. South Behar Ry. v. I. R. Comrs.*, [1925] A. C. 476; *Generally, Mentd. Re Debtor* (No. 3 of 1926) (1926), 135 L. T. 689; *Dominion Iron & Steel Co. v. Invernairn*, [1927] W. N. 27.
256. *Add. Annotation*:—*Mentd. Dominion Iron & Steel Co. v. Invernairn*, [1927] W. N. 277.
257. *Add. Annotation*:—*Refd. Greenberg v. Cooperstein*, [1926] Ch. 657.
- 260a. — What amounts to—Not acquisition of shares of company to promote its amalgamation with another company.] — *DOMINION IRON & STEEL CO., LTD. v. INVERNAIRN*, [1927] W. N. 277.
265. *Add. Annotations*:—*Consd. I. R. Comrs. v. Cornish Mutual Assce.* (1924), 41 T. L. R. 70. *Mentd. Brighton College v. Marriott*, [1925] 1 K. B. 312.
266. *Add. Annotations*:—*As to* (1) *Apld. Cornish Mutual Assce. v. I. R. Comrs.*, [1926] A. C. 281. *Refd. Greenberg v. Cooperstein*, [1926] Ch. 657; *Re United General Commercial Insce. Corp.*, [1927] 2 Ch. 51. *As to* (2) *Refd. Thomas v. Evans, Jones v. South-West Lancashire Coal-Owners’ Asscn.* (1926), 135 L. T. 673. *Generally, Mentd. Brighton College v. Marriott*, [1925] 1 K. B. 312.
270. *Add. Annotation*:—*Refd. Greenberg v. Cooperstein*, [1926] Ch. 657.
271. *Add. Annotation*:—*Folld. Greenberg v. Cooperstein*, [1926] Ch. 657.
- 272a. — — —.]—An assocn. with four branches was formed to obtain subscriptions from the members of each branch & to lend to members out of the fund so formed money on interest. Each fund, with its accretions of interest, was divided up periodically among the members ratably at a period of the year which differed in each branch. The assocn. & its branches all consisted of more than twenty members. The assocn. was not registered under any Act. Disputes having arisen, a resolution was passed by the members for the dissolution of the assocn., & an action was brought by three members suing on behalf of all members other than defts. against defts., who were the treasurer & secretary of the assocn., claiming administration of the assets of the assocn., an account of the subscriptions received by defts. from members & of their application thereof, payment of the amount found due & other relief. The action was resisted on the ground that the assocn. was illegal & that no relief could therefore be given:—*Held*: (1) the assocn. was rendered illegal by 1908 Act, s. 1 (2), as being an unregistered assocn. of more than twenty persons carrying on a business having for its object the acquisition of gain; (2) the ct. was not debarred from affording relief to the members asking for

- the return of money paid into the hands of agents for application for an illegal purpose by granting an account.—**GREENBERG v. COOPERSTEIN**, [1926] Ch. 657; 95 L. J. Ch. 466; 135 L. T. 663.
282. *Add. Citation*:—130 L. T. 450.  
*Add. Annotations*:—**Refd. Drabble v. Hycolite Manufacturing Co.** (1928), 44 T. L. R. 264. **Mentd. Imperial Tobacco Co. of India v. Bonnan**, [1924] A. C. 755.
298. *Add. Annotation*:—**Refd. Pickford v. Quirke**, **Pickford v. I. R. Comrs.** (1927), 138 L. T. 500.
304. *Add. Annotation*:—**Mentd. Everett v. Griffiths**, [1924] 1 K. B. 941.
335. *Add. Annotation*:—**Refd. Re Railways Act, 1921, Re Standard Charges Schedule** (1925), 94 L. J. K. B. 364.
341. *Add. Annotations*:—*As to* (1) **Consd. Agricultural Wholesale Soc. v. Biddulph & District Agricultural Soc.**, [1925] Ch. 769. *Generally, Mentd. Lapish v. Braithwaite* (1924), 40 T. L. R. 857.
343. *Add. Annotation*:—*As to* (1) **Refd. Bank of N. T. Butterfield v. Golinsky**, [1926] A. C. 733.
351. *Add. Annotations*:—**Apld. Plantations Trust v. Bilba (Sumatra) Rubber Lands** (1916), 114 L. T. 676. **Mentd. Agricultural Wholesale Soc. v. Biddulph & District Agricultural Soc.**, [1925] Ch. 769.
379. *Add. Annotation*:—**Mentd. Stott v. Shaw & Lee**, [1928] 2 K. B. 26.
398. *Add. Annotation*:—**Consd. Agricultural Wholesale Soc. v. Biddulph & District Agricultural Soc.**, [1925] Ch. 769.
406. *Add. Annotations*:—**Consd. Kreditbank Cassel G. m. b. H. v. Schenkers**, [1927] 1 K. B. 826; **Liggett (Liverpool) v. Barclays Bank** (1927), 137 L. T. 443. **Refd. Underwood v. Bank of Liverpool, Underwood v. Barclays Bank**, [1924] 1 K. B. 775; **Houghton v. Nothard, Lowe & Wills**, [1927] 1 K. B. 246; **Liggett (Liverpool) v. Barclays Bank**, [1928] 1 K. B. 48.
410. *Add. Annotations*:—**Refd. Underwood v. Bank of Liverpool, Underwood v. Barclays Bank**, [1924] 1 K. B. 775; **Houghton v. Nothard, Lowe & Wills**, [1927] 1 K. B. 246; **Liggett (Liverpool) v. Barclays Bank**, [1928] 1 K. B. 48.
415. *Add. Annotation*:—**Consd. Agricultural Wholesale Soc. v. Biddulph & District Agricultural Soc.**, [1925] Ch. 769.
417. *Add. Annotation*:—**Mentd. Re City Equitable Fire Insce.** (1924), 40 T. L. R. 853.
427. *Add. Annotation*:—**Refd. Re City Equitable Fire Insce.** (1924), 40 T. L. R. 853.
430. *Add. Annotation*:—**Mentd. Re City Equitable Fire Insce.** (1924), 40 T. L. R. 853
- 431a. —.]—A collateral obligation imposed by the arts. of assocn. of a co. registered under 1908 Act upon a member of the co., which in certain events involves a liability on the part of that member to take further shares in the co., can be enforced notwithstanding that the liability of the member to contribute in a winding up is limited by the Act under which the co. is registered.  
The limitation of liability in respect of shares held is distinct from an obligation collaterally imposed upon a member in certain events to take up further shares which will themselves, when taken up, be entitled to a similar limitation of liability. There is nothing in such a collateral obligation which is *ultra vires* or repugnant to the system of limited liability.—**AGRICULTURAL WHOLESALE SOCIETY v. BIDDULPH & DISTRICT AGRICULTURAL SOCIETY**, [1925] Ch. 769; 94 L. J. Ch. 397; 133 L. T. 274; 41 T. L. R. 470; 69 Sol. Jo. 557, C. A.; *affd. sub nom. BIDDULPH & DISTRICT AGRICULTURAL SOCIETY v. AGRICULTURAL WHOLESALE SOCIETY, [1927] A. C. 76, H. L.  
*Annotation*:—**Apld. Re Wilts & Somerset Farmers** (1928), 45 T. L. R. 112.*
- 432a. — Unless arising from wilful neglect or default.]—**Re CITY EQUITABLE FIRE INSURANCE Co., LTD.**, No. 3059a, *post*.
- 432b. — —.]—**FENTON TEXTILE ASSOCN., LTD. v. THOMAS & CLARK** (1928), 45 T. L. R. 113.
- 432c. — Unless arising from wilful or wrongful act or default.]—One of the arts. of assocn. of a co. provided that "The directors & other officers shall be indemnified by the co. against all costs, losses, & expenses incurred by them in or about the discharge of their respective duties, except such as may happen from their own respective wilful or wrongful act or default":—**Held**: the above art. did not protect a director from liability for negligence resulting in loss to the co.—**Re CITY OF LONDON INSURANCE Co., LTD.** (1925), 41 T. L. R. 521; 69 Sol. Jo. 591.
433. *Add. Annotation*:—*As to* (1) **Consd. Shuttleworth v. Cox** (Maidenhead) (1926), 43 T. L. R. 83.
437. *Add. Annotation*:—*As to* (1) **Refd. Biddulph & District Agricultural Soc. v. Agricultural Wholesale Soc.** (1926), 95 L. J. Ch. 576.

#### PART III. SECT. 6.

ki. — *That company duly incorporated.*—The fact that a co. incorporated under Cos. Act includes in its name the word "Co-operative," contrary to Co-operative Assocs. Act, 1920 (c. 19), s. 4 (2), does not render it an illegal co., since Cos. Act, s. 28, makes a certificate of incorporation conclusive evidence that the co. was duly incorporated.—**ASSOCIATED GROWERS OF BRITISH COLUMBIA, LTD. v. BRITISH COLUMBIA FRUIT LAND, LTD.**, [1925] 1 D. L. R. 871; [1925] 1 W. W. R. 505; 34 B. C. R. 533.—CAN.

#### PART III. SECT. 7, SUB-SECT. 6.—A. (a).

358 i. *To take up number subscribed for.*—P. agreed to purchase shares in a co. & subscribed to the memorandum of assocn., but later asked the promoter

to cancel his "requirements." P.'s name was never entered in the register of members:—**Held**: P. was liable.—**Re J. H. CHANDLER & Co., LTD.** (1926), 1 L. L. R. 48 All. 580.—IND.

#### PART III. SECT. 7, SUB-SECT. 6.—A. (c).

388 i. *Where shares subscribed for not allotted.*—Persons signing a memorandum of assocn. of a co. to be incorporated are contributories, although no shares are allotted.—**Re T. E. O'REILLY, LTD.**, [1927] 3 D. L. R. 797; 60 O. L. R. 649.—CAN.

395 i. *By transfer.*—An original subscriber of a co. can withdraw his subscription & transfer his share at the first meeting of provisional directors, & where a majority of original incorporators are present & vote at the meeting such withdrawal does not in-

validate anything done at the meeting.—**Re GEORGE W. GRIFFITHS Co.**, [1924] 4 D. L. R. 1031.—CAN.

#### PART III. SECT. 7, SUB-SECT. 6.—B.

400 i. *Misrepresentation by promoter—Not ground for rescission.*—Subscribers to the memorandum of assocn. of a co. cannot repudiate shares for which they have subscribed either on the ground that they were induced to join the co. by fraud or misrepresentation, or on the ground that the truth of the precedent representations made by the promoters of the co. was a condition of the contract: the true remedy of the persons so defrauded is to sue for damages the persons so defrauding them.—**PETROFITE & CHALLENGE HEATERS, LTD. v. BODLEY**, [1924] N. Z. L. R. 102.—N.Z.



439a. "Issued" to the public—What amounts to.—*NASH v. LYNDE* (1928), 45 T. L. R. 42; 72 Sol. Jo. 873, H. L.; *reusg. S. C. sub nom. LYNDE v. NASH*, [1928] 2 K. B. 93, C. A.

476. *Add. Annotation*:—*Consd. Nash v. Lynde* (1928), 45 T. L. R. 42.

525a. —.]—*Held*: pltf. was entitled to the rescission of a contract to take shares, on the ground that the prospectus did not disclose the facts (1) that the land purchased by the co. for its operations had been scheduled to a town-planning resolution, which had been registered as a land charge, & (2) that, unless the consent of the local authority should be obtained before any buildings were erected, the co. would not be entitled to compensation for their possible removal under the town-planning scheme.—*COLES v. WHITE CITY (MANCHESTER) GREYHOUND ASSOCN., LTD.* (1928), 45 T. L. R. 125; 72 Sol. Jo. 860.

560. *Add. Annotation*:—*Mentd. Bisset v. Wilkinson* (1926), 42 T. L. R. 727.

568. *Add. Annotation*:—*Refd. Humphrey & Denman v. Kavanagh* (1925), 41 T. L. R. 378.

570. *Add. Annotation*:—*Mentd. India Rubber Gutta Percha & Telegraph Works v. County Golf Co.* (1925), 42 R. P. C. 225.

635. *Add. Annotation*:—*Mentd. Short v. Poole Corp.* (1925), 42 T. L. R. 107.

642. *Add. Annotations*:—*Mentd. Edwards v. Porter* (1924), 41 T. L. R. 57; *Jarvis v. Surrey County Council*, [1925] 1 K. B. 554.

652. *Add. Annotation*:—*Mentd. Bisset v. Wilkinson* (1926), 42 T. L. R. 727.

660. *Add. Annotations*:—*Mentd. Edwards v. Porter* (1924), 41 T. L. R. 57; *Jarvis v. Surrey County Council*, [1925] 1 K. B. 554.

663. *Add. Annotation*:—*Mentd. Falcon v. Famous Players Film Co.* (1925), 42 T. L. R. 91.

666. *Add. Annotation*:—*Mentd. Re City Equitable Fire Insee.* (1924), 40 T. L. R. 853.

703. *Add. Annotation*:—*Refd. Aylott v. West Ham Corp.*, [1927] 1 Ch. 30.

738. *Add. Annotation*:—*Refd. The Saxicava*, [1924] P. 131.

814. *Add. Annotation*:—*As to (1) Refd. Jacobs v. Batavia & General Plantations Trust*, [1924] 2 Ch. 329.

814a. Profit sharing deposit notes redeemable in four years—Company bound to redeem.]—

Pltf., in reliance upon a prospectus issued in Sept., 1920, by deft. co., hereinafter called "the Trust," applied for & had allotted to him subject to the terms of the prospectus four £100 7½ per cent. profit sharing deposit notes of the Trust. It was stated in the prospectus that the notes would be paid off at 105 per cent. by four annual drawings, & under the heading "Earlier payments," that the Trust retained the right to pay off at 105 per cent. all or any of the outstanding notes at any time on giving three months' previous notice in writing, but that in the event of the sale of the Trusts' R. B. estates, further referred to in that prospectus, which according to the construction placed upon the prospectus by the ct. was not confined to a sale under a certain option of purchase referred to later in the prospectus, but included a sale to anybody whomsoever, the Trust would set aside out of the proceeds of sale a sum sufficient to redeem all the notes then outstanding, & the holders would be given an option of being then paid off in cash at 105 per cent. or of retaining their notes till the date of drawing. Each of the notes, which was in the form of the specimen note referred to in the prospectus, provided that the Trust would, as & when the principal sum of £100 became payable in accordance with the conditions indorsed thereon, pay to pltf. the sum of £105, & was expressed to be subject to & with the benefit of those conditions, which repeated the provisions contained in the prospectus for the redemption of the notes by drawings & the option retained by the Trust to pay off the notes on notice, but did not refer to the promise by the Trust contained in the prospectus as to earlier payments in the event of the sale of the Trust's R. B. estates. The option to purchase referred to in the prospectus having lapsed & the Trust having contracted to sell the R. B. estates without having given notice to pltf. that his option to be paid off or to retain his notes had thereby become exercisable, & the Trust having repudiated their liability to perform their promise contained in the prospectus, pltf. brought an action to have the said liability of the Trust established & for an injunction to restrain them from dealing with the proceeds of sale without in the first place setting aside a sum sufficient to pay off the outstanding notes:—*Held*: pltf. was entitled to the relief claimed on

PART III. SECT. 8, SUB-SECT. 1.

1 i. —.]—An advertisement offering the public shares in a co. for sale is a "prospectus" under sect. 2 (14) of Indian Cos. Act (VII. of 1913).—*PRAMATHA NATH SANYAL v. KALI KUMAR DUTT* (1924), 1 L. R. 52 Calo. 440.—IND.

PART III. SECT. 8, SUB-SECT. 3.—  
D. (b).

1f. *Prospectus must be issued by or on behalf of company.*]—Sect. 84 of 1908 Act is confined to prospectuses issued by or on behalf of the co.—*URQUHART v. STRACEY*, [1928] N. I. 162.—IR.

678 i. *Measure of damages.*]—*URQUHART v. STRACEY*, No. 747 i,

PART III. SECT. 8, SUB-SECT. 3.—  
D. (c).

sm. *Under Criminal Code, s. 414.*]—The above sect. relates to the issuing of a written prospectus, statement or

account by a director with the intention of deceiving shareholders of a co., or of inducing some other person to entrust or advance property to the co.; & where deft. obtained subscriptions for stock of a co., of which he was a promoter, upon false oral statements:—*Held*: a conviction under that sect. was not justified.—*R. v. ANDERSON* (1924), 55 O. L. R. 536.—CAN.

PART III. SECT. 8, SUB-SECT. 3.—  
F. (c).

747 i. *Claim for damages directors & others—Joined with statutory claim for compensation against directors.*]—Pltf. bought debentures in a co. on the faith of statements in a prospectus. Some of defts. were directors in the co., & some were partners in an issuing house called S. & Co. Pltf. claimed against all defts. damages for fraudulent misrepresentations in the prospectus & for

conspiracy to defraud, & against such of defts. as were directors in the co. claimed compensation under 1908 Act, s. 84:—*Held*: (1) pltf. was entitled to have the alternative causes of action for compensation & for misrepresentation & conspiracy submitted to the jury subject to two limitations, (a) that he could not get damages more than once in respect of what was in substance the same cause of action, & (b) that the causes of action could conveniently be tried or disposed of together; (2) if pltf. succeeded on the cause of action under sect. 84, he would be entitled to such compensation as he might prove, in addition to any damages already received in respect of fraudulent misrepresentation.—*URQUHART v. STRACEY*, [1928] N. I. 162.—IR.

PART III. SECT. 10, SUB-SECT. 1.  
sp. *Includes premiums on sale of stock.*]—*TORONTO v. CONSUMERS' GAS Co.*, [1927] 4 D. L. R. 102.—CAN.

either of two grounds, namely, (1) that the entire contract was contained in two written instruments, namely, the deposit notes & the prospectus, the terms of which the ct. could reconcile by construing the promise in the prospectus as if it were inserted in the note as a proviso to come into operation, if & when the R. B. estates were sold, or (2) that the promise was a binding collateral contract, the consideration for which was the contract by pltf. to take up the notes, & that, as the terms of that promise & an *animus contrahendi* on the part of pltf. & the Trust had been clearly proved, the test laid down by LORD MOULTON in *Heilbut, Symons & Co. v. Buckleton* (see No. 1565) was satisfied.—*JACOBS v. BATAVIA & GENERAL PLANTATIONS TRUST*, [1924] 2 Ch. 329; 93 L. J. Ch. 520; 131 L. T. 617; 40 T. L. R. 616; 68 Sol. Jo. 630, C. A.

818. *Add. Annotations*:—*Consd. Re Burton*, [1927] 2 Ch. 132. *Refd. Jubilee Cotton Mills Official Receiver & Liquidator v. Lewis*, [1924] A. C. 958.

820. *Add. Annotations*:—*As to (5) Consd. Atherton v. British Insulated & Helsby Cables*, [1925] 1 K. B. 421. *Generally, Refd. Stapley v. Read* (1924), 131 L. T. 629.

825. *Add. Annotation*:—*Mentd. Eastwood & Holt v. Studer* (1926), 31 Com. Cas. 251.

827. *Add. Annotation*:—*Mentd. Gilbert v. Gilbert & Bougher* (1927), 96 L. J. P. 137.

839a. ——— *Company in voluntary liquidation.*—A reduction, reorganisation & increase of capital with a view to continuing to carry on the business of a co. can be directed by the ct., while the co. is in voluntary liquidation, & all further proceedings in a voluntary winding up stayed.—*Re WALTERS (STEPHEN) & SONS, LTD.* (1926), 70 Sol. Jo. 953.

1015. *Add. Annotation*:—*Refd. Re North Pole Ice Co. & Reduced*, [1924] W. N. 131.

1017. *Add. Annotations*:—*Refd. Re Dampney & Reduced* (1924), 68 Sol. Jo. 718; *Re North Pole Ice Co. & Reduced*, [1924] W. N. 131.

1018. *Add. Annotations*:—*Mentd. Re Dampney & Reduced* (1924), 68 Sol. Jo. 718; *Re North Pole Ice Co. & Reduced*, [1924] W. N. 131.

1019a. *Passing of special resolution—& confirmation by court.*—(1) The proper form of minute in petitions for reduction of capital is not as set out in *Re Salinas of Mexico*, [1919] W. N. 311, but should state that the capital has been reduced "by a special resolution confirmed by an order of the High Ct. of Justice." (2) With regard to the form of notice of registration pursuant to 1908 Act, s. 51 (3), it is a sufficient compliance with the statute to give such notice in the short form approved in *Re Oceana Development Co.* (1912), 56 Sol. Jo. 537, which removed the objection to the length of the

minute.—*Re NORTH POLE ICE CO., REDUCED*, [1924] W. N. 131.

*Annotation*:—*As to (1) Expld. Re Dampney & Reduced* (1924), 68 Sol. Jo. 718.

1019b. ————]—Where a petition for reduction of capital does not involve & is not followed by any sub-division, consolidation or reorganisation of share capital, the old form of minute used in cases of simple reduction is correct, & it is not necessary to state that the capital has been reduced by virtue of a special resolution, & with the sanction of an order of the High Ct. of Justice.—*Re DAMPNEY & CO., LTD. & REDUCED* (1924), 68 Sol. Jo. 718.

1029. *Add. Annotation*:—*Refd. Re Darwen & Pearce, Associated Paper Mills v. Barnes* (1926), 95 L. J. Ch. 487.

1036. *Add. Annotation*:—*Refd. Re North Pole Ice Co. & Reduced*, [1924] W. N. 131.

1036a. ————]—*Re NORTH POLE ICE CO., LTD., & REDUCED*, No. 1019a, *ante*.

1080a. ——— *Company in voluntary liquidation.*—*Re WALTERS (STEPHEN) & SONS, LTD.*, No.

1102. *Add. Annotations*:—*Apld. Parker & Cooper v. Reading & James* (1926), 96 L. J. Ch. 23. *Refd. Kerr v. Marine Products* (1928), 44 T. L. R. 292.

1107. *Add. Annotation*:—*Mentd. Re City Equitable Fire Insce.* (1924), 40 T. L. R. 853.

1108. *Add. Annotation*:—*Apld. Re City Equitable Fire Insce.*, [1925] Ch. 407.

1114. *Add. Annotation*:—*Mentd. Stapley v. Read* (1924), 131 L. T. 629.

1124. *Add. Annotations*:—*Consd. I. R. Comrs. v. Doncaster* (1924), 93 L. J. K. B. 338; *Re Speir, Holt v. Speir*, [1924] 1 Ch. 359; *I. R. Comrs. v. Fisher's Exors.*, [1926] A. C. 395. *Folld. I. R. Comrs. v. Wright* (1926), 95 L. J. K. B. 982; *Re Taylor, Waters v. Taylor*, [1926] Ch. 923. *Distd. Re Bates, Mountain v. Bates*, [1928] Ch. 682; *Parker v. Chapman* (1928), 138 L. T. 729. *Refd. I. R. Comrs. v. Burrell*, [1924] 2 K. B. 52; *Re Railways Act, 1921, Re Standard Charges Schedule* (1925), 94 L. J. K. B. 364.

1134. *Add. Annotation*:—*As to (2) Refd. Lynde v. Nash*, [1928] 2 K. B. 93.

1205. *Add. Annotations*:—*Distd. Pailin v. Northern Employers' Mutual Indemnity Co.*, [1925] 2 K. B. 73. *Consd. Hindmarch v. Carterthorne Colliery Co.* (1928), 21 B. W. C. C. 44. *Refd. Wales v. Iron Trades Employers' Assn.* (1928), 21 B. W. C. C. 316.

1220. *Add. Annotation*:—*Dbtd. Shuttleworth v. Cox (Maldenhead)* (1926), 43 T. L. R. 83.

1226. *Add. Annotations*:—*As to (2) Expld. Agricultural Wholesale Soc. v. Biddulph & District Agricultural Soc.*, [1925] Ch. 769. *Apld. Re Wilts & Somerset Farmers*, [1928] Ch. 809.

1226a. ———] — *AGRICULTURAL WHOLESALE SOCIETY v. BIDDULPH & DISTRICT AGRICULTURAL SOCIETY*, No. 431a; *ante*.

PART III. SECT. 10, SUB-SECT. 3.—  
G. (b).

§ 1. — *Without remit to reporter—Creditors not affected.*—*FOWLERS (ABERDEEN), LTD.*, [1928] S. C. 186.—*SCOT.*

PART III. SECT. 10, SUB-SECT. 3.—  
G. (d) 1.

§ 67 1. *Who are creditors—Persons entitled to unclaimed dividends.*—*ARI-*

*COPPER CO., PETITIONERS*, [1926] S. C. 315.—*SCOT.*

PART III. SECT. 10, SUB-SECT. 3.—  
G. (e).

*st. Function of court—What court must consider.*—*Re MILLS (E. W.), LTD.*, N. Z. L. R. 227.—*N.Z.*

PART III. SECT. 11, SUB-SECT. 3.—  
B.

*sw. To account to company for money*

*received before incorporation of company.*—Where a co. brought an action against an underwriter, & recovered a verdict for £317 10s.:—*Held*: as debt, by his statement of accounts had not admitted that he held any money for the co.'s use, the verdict should be set aside & judgment entered for him.—*HARMONIC RESONATOR, LTD. v. WALTON* (1927), 27 S. R. N. S. W. 81; N. S. W. W. N. 50.—*AUS.*



1230. *Add. Annotations*:—*Reid. Biddulph & District Agricultural Soc. v. Agricultural Wholesale Soc.* (1926), 95 L. J. Ch. 576; *Re Wilts & Somerset Farmers*, [1928] Ch. 809.

1265. *Add. Annotation*:—*Reid. Spencer v. Ashworth Partington* (1925), 94 L. J. K. B. 447.

1268. *Add. Annotation*:—*Reid. Re Anderson-Berry, Harris v. Griffith*, [1928] Ch. 290.

1342. *Add. Annotation*:—*Mentd. Lloyds Banks v. Chartered Bank of India, Australia & China* (1928), 97 L. J. K. B. 609.

*Where further investigation required.*

—On an application under 1908 Act, s. 32, by summons or motion, for the rectification of the register, if there is some question in dispute requiring investigation the practice is for the judge not to make an order for rectification but to make an order dismissing the summons on motion & leaving it open to appct. to bring an action.—*Re GREATER BRITAIN PRODUCTS DEVELOPMENT CORPN., LTD.* (1924), 40 T. L. R. 488, D. C.

1435. *Add. Annotations*:—*Mentd. Baker v. Archer-Shee*, [1927] A. C. 844; *Manton's Trustees v. Steele, Steele v. Manton's Trustees* (1927), 11 Tax Cas. 549.

1446. *Add. Annotation*:—*Mentd. Re Neville, Neville v. First Garden City*, [1925] Ch. 44.

1448a. *Conversion of preference shares into ordinary shares—Whether alteration in status of shareholders.*—Where preference shareholders had the right to give six months' notice converting their shares into ordinary shares, & some of them gave such notice less than six months before the co. went into voluntary liquidation:—*Held*: such notice was valid & effectual to convert their preference shares into ordinary shares, & did not create an alteration of their status after the commencement of the winding up within 1908 Act, s. 205.—*Re BLAINA COLLIERY CO., LTD.* (1926), 70 Sol. Jo. 404.

1461. *Add. Annotation*:—*Consd. Collaroy Co. v. Giffard*, [1928] Ch. 144.

### PART III. SECT. 15, SUB-SECT. 2.

k i. *Power to modify rights by bye-law—Validity of bye-law—Companies Act, R. S. C., 1906 (c. 79).*—*HOLMISTED v. ALBERTA PACIFIC GRAIN CO., LTD.* (Alta.), [1928] 1 D. L. R. 135; [1927] 3 W. W. R. 707.—CAN.

### PART III. SECT. 17, SUB-SECT. 1.—A. (a).

b i. —.—.—*Held*: persons, who, intending to become shareholders in a proposed co., had signed & sealed a subscribers' agreement, were not shareholders.—*Re BLUEBIRD CORPN., LTD.*, [1926] 2 D. L. R. 484; 58 O. L. R. 486.—CAN.

### PART III. SECT. 17, SUB-SECT. 1.—B. (a) i.

a i. —.—.—*Where the evidence was not conclusive:—Held*: in the circumstances A's agreement for employment stood by itself, & his status as a shareholder, which was established by what he had done & omitted to do, was not affected.—*Re BUFF PRESSED BRICK CO.* (1924), 56 O. L. R. 83.—CAN.

c i. —.—.—*Balance to be paid on commencement of undertaking by company.*—A. added on the foot of an application for shares the words: "This subscription is given on the understanding that I am to be called upon for the balance of the money when building operations commence":—*Held*: this stipulation had nothing to do with his becoming a shareholder; & failure of the co. to commence building did not

entitle A. to rescind his contract.—*Re NATIONAL STADIUM, LTD.* (1924), 55 O. L. R. 199.—CAN.

f i. —.—.—*A. relied, as entitling him to rescission, upon the non-fulfilment of a condition that a building should be erected on a certain site:—Held*: his agreement constituted A. a shareholder *in presenti*, & the condition should be treated merely as a collateral obligation on the part of the co.—*Re NATIONAL STADIUM, LTD.* (1924), 55 O. L. R. 199.—CAN.

### PART III. SECT. 17, SUB-SECT. 1.—E. d i.

—*Not after election to retain shares.*—*MCDONALD v. WAIRAKEI, LTD.*, [1924] N. Z. L. R. 201.—N.Z.

### PART III. SECT. 17, SUB-SECT. 1.—G. (a).

1553 vi. —.—.—*MILNE v. DURHAM HOSIERY MILLS, LTD.*, [1925] 3 D. L. R. 725; 57 O. L. R. 228.—CAN.

1553 vii. —.—.—*PATHESCOPE UNION OF SOUTH AFRICA, LTD. v. MALLINICK*, [1927] App. D. 292.—S. AF.

### PART III. SECT. 17, SUB-SECT. 1.—G. (b).

sa. *Representation must have induced contract.*—*MARITIME UNITED FARMERS CO-OPERATIVE, LTD. v. DICKIE*, [1925] 1 D. L. R. 377; 52 N. B. R. 42.—CAN.

### PART III. SECT. 17, SUB-SECT. 1.—G. (c).

1568 ii. —.—.—*Deft., director of a co., without putting his signature*

1472. *Add. Annotation*:—*Reid. Leeds Industrial Co-operative Soc. v. Slack*, [1924] A. C. 851.

1480. *Add. Annotation*:—*Generally, Reid. Humphrey & Denman v. Kavanagh* (1925), 41 T. L. R. 378.

1565. *Add. Annotation*:—*Mentd. Jacobs v. Batavia & General Plantations Trust*, [1924] 2 Ch. 329.

1589a. *Statement by agent*—That application purely formal.]—E., acting as agent of pltf. co., represented to deft. that the co. owned valuable rights over certain mines in China, & deft. agreed to go to China & investigate & make a report upon the properties, & he signed an application form for 2,000 £1 shares upon a representation by E. that the application was purely form l, & deft. paid £250 on allotment upon a representation by E. that the payment was for an option on 250 shares to be bought by deft., if he so desired, on his return from China. The shares were allotted to deft. at a meeting at which E. was in the chair, but no notice of the allotment was sent to deft. Deft. went to China & pltf. co. alleged that he returned to England without obtaining any information. Deft., on the other hand, alleged that E.'s representations were false & that the mining rights were valueless. In an action in which pltf. co. in liquidation claimed (*inter alia*) £1,750 for unpaid calls on the shares, the trial judge held that as deft. intended only to take an option on the shares & had never contracted to take them the action failed:—*Held*: although E. was an agent of pltf. co. to come to an agreement with deft., yet by reason of E.'s fraudulent use of the application form signed by deft. the latter could not be treated as having agreed to take the shares, & the decision of the trial judge must be affirmed.—*HUMPHREY & DENMAN, LTD. (IN LIQUIDATION) v. KAVANAGH* (1925), 41 T. L. R. 378, C. A.

to any written document, made fraudulent misrepresentations as to the financial position of the co., whereby pltf. was induced to apply & pay for shares:—*Held*: Lord Tenterden's Act had no application to the case, & pltf. was entitled to recover from deft. the amount paid for the shares.—*DIAMANTI v. MARTELLI*, [1923] N. Z. L. R. 663.—N.Z.

f. Read now "1588 i."

g. Read now "1588 ii."

1588 iii. —.—.—*PETROTITE & CHALLENGE HEATERS, LTD. v. BODLEY, No. 400 l., ante.*—N.Z.

### PART III. SECT. 17, SUB-SECT. 1.—G. (d).

r i. —.—.—*TRUSTS & GUARANTEE CO. v. SMITH*, [1924] 2 D. L. R. 211; 54 O. L. R. 144; 4 C. B. R. 195.—CAN.

r ii. —.—.—*Re NATIONAL STADIUM, LTD.* (1924), 55 O. L. R. 199.—CAN.

### PART III. SECT. 17, SUB-SECT. 2.—A. 1606 iii.

—*Agreement to subscribe for shares when called upon.*—*BEARDMORE & CO., LTD. v. BARRY*, [1928] S. C. 101.—SCOT.

### PART III. SECT. 17, SUB-SECT. 2.—B. (a).

f i. —.—.—*Where a contract to purchase shares was entered into by one of two partners of a trading firm, without authority express or implied, & owing to a clerical error the firm was not entered on the register of*



members & the name of the other partner alone was entered:—*Held*: the latter was never under any liability to the co. & could not be made a contributory.—*MASECAR v. MCKENZIE & SON*, [1924] 2 D. L. R. 1242; 2 W.W. R. 521.—CAN.

#### PART III. SECT. 17, SUB-SECT. 3.—A.

f i. —.—.]—Allotment is the acceptance by a co. of an offer to take shares.—*IMPERIAL BANK OF CANADA v. DENNIS*, [1926] 3 D. L. R. 168; 59 O. L. R. 20; *varying*, [1925] 3 D. L. R. 488; 57 O. L. R. 203.—CAN.

#### PART III. SECT. 17, SUB-SECT. 3.—C. (a).

1654 i. *Allotment before statement in lieu of prospectus filed.*—*Held*: ineffective to charge persons who had signed a "subscribers' agreement."—*Re BLUEBIRD CORPN., LTD.*, [1926] 2 D. L. R. 484; 58 O. L. R. 486.—CAN.

sd. *Application before compliance with Sale of Shares Act—Allotment after compliance with Act.*—Before a co. had obtained the certificate required by Sale of Shares Act, & before its agent for the sale of shares had been licensed thereunder, an agent thereof obtained an application for shares. The shares were allotted after the certificate & licence were issued, & the shareholder paid several sums on the notes given for the shares & appointed proxies at different times to vote. The shareholder did not know until after a winding-up order had been made that the Act had not been complied with at the time of his application:—*Held*: he was not entitled to have his name removed from the list of contributories.—*Re GREAT NORTH INSURANCE CO., PAINTER'S CASE*, [1925] 2 D. L. R. 778; [1925] 1 W. W. R. 1149; 21 Alta L. R. 326; *reversg.*, [1925] 1 W. W. R. 752.—CAN.

#### PART III. SECT. 17, SUB-SECT. 3.—D. (a).

st. *Allotment on terms other than those in application.*—Where an allotment of shares was made on terms differing substantially from those contained in the application:—*Held*: as the allottee so far from accepting the

allotment virtually repudiated it, he could not be held liable on the ground that the shares were duly allotted to him.—*WHITTLE v. HENLEY*, [1924] App. D. 138.—S. AF.

sg. *Allotment fraud on company—Company not bound to repudiate.*—*Re SUN RAY MANUFACTURING CO., Ex p. BIRKETT & SONS, LTD.*, [1925] 1 D. L. R. 1204; 5 C. B. R. 286; *affg.*, [1924] 2 D. L. R. 1055; 4 C. B. R. 615.—CAN.

#### PART III. SECT. 17, SUB-SECT. 3.—E. (d).

1737 i. *Receipt by allottee immaterial—Posting sufficient.*—*HOWSON v. CROW*, [1925] 1 D. L. R. 495.—CAN.

#### PART III. SECT. 17, SUB-SECT. 3.—G.

g i. —.—.]—*Non-compliance with Sale of Shares Act, R. S. M., 1913 (c. 175.)*—Allotment void, & not merely voidable; & where a purchaser of shares has not done anything from which an agreement to keep & pay for them can be implied, he can, even after a winding-up order, repudiate the purchase & successfully resist being placed on the list of contributories, where he only became aware, after the winding-up order, that the above Act was not complied with.—*Re NORTH WESTERN TRUST CO., Re McASKILL v. NORTH WESTERN TRUST CO.*, [1926] 3 D. L. R. 612; [1926] S. C. R. 412.—CAN.

#### PART III. SECT. 18, SUB-SECT. 3.—C.

f i. —.—.]—An allottee:—*Held*: entitled to rely upon the certificates showing the stock given him to be fully paid up, whether in fact it was actually paid for or not.—*Re SUPPLIES, LTD., CANADIAN CREDIT MEN'S TRUST ASSOCN. v. CALDWELL*, [1926] 1 D. L. R. 824; 58 N. S. R. 399.—CAN.

#### PART III. SECT. 19.

1812 i. *Issue for improper purpose—Increase of voting power—Restraint.*—Where directors, in exercising their powers to issue & allot shares, do so in order to get control of the voting power, the ct. will declare the issue & allotment invalid.—*SMITH & TACHELL v. HANSON TIRE & SUPPLY CO., LTD.*, [1927] 3 D. L. R. 786; [1927] 2

W. W. R. 529; 21 Sask. L. R. 621.—CAN.

#### PART III. SECT. 20, SUB-SECT. 1.—A.

1 i. —.—.]—*Issue for future services to be rendered.*—Defts. procured the incorporation of pltf. co., & made an agreement with the original directors, who were merely the nominees of defts., that, as consideration for services which they promised to perform, defts. should receive practically the whole of the common shares of the capital stock of pltf. co. as fully paid shares:—*Held*: the transaction was *ultra vires* of pltf. co.—*BANKING SERVICE CORPN., LTD. v. TORONTO FINANCE CORPN. LTD.*, [1928] A. C. 333; 97 L. J. P. C. 65; 139 L. T. 149, P. C.—CAN.

1 ii. —.—.]—*AUDITORIUM, LTD. v. LUMSDEN*, [1926] 4 D. L. R. 976; 59 O. L. R. 496.—CAN.

1 iii. —.—.]—*SIGNAL HILL OILS CO., LTD. v. LONDON OIL SECURITIES, LTD. (Alta.)*, [1927] 3 D. L. R. 984; [1927] 2 W. W. R. 392.—CAN.

#### PART III. SECT. 20, SUB-SECT. 1.—B.

sj. *Issue of shares as bonus.*—*Held*: a co. agreeing to issue twenty-one preferred shares & seven common shares both fully paid, on receipt of only the par value of the twenty-one preferred shares, was making an agreement to issue shares at a discount, which was *ultra vires* & could not be enforced.—*AUDITORIUM, LTD. v. LUMSDEN*, [1926] 4 D. L. R. 976; 59 O. L. R. 496.—CAN.

#### PART III. SECT. 20, SUB-SECT. 2.—C. (b) ii.

1856 i. *Issue to director—For services rendered—On resolution of shareholders—Application of surplus assets.*—Where there was a surplus available for distribution by way of dividend among shareholders, & it was open to the shareholders if unanimous to deal with it as they might think fit:—*Held*: no creditor could object, & every shareholder would necessarily be estopped by his own conduct.—*Re DORENWEIDS, LTD.*, [1924] 3 D. L. R. 118; 55 O. L. R. 413.—CAN.

1871. *Add. Annotation*:—**Mentd.** *Stott v. Shaw & Lee*, [1928] 2 K. B. 26.

1923. *Add. Annotations*:—**Refd.** *Excess Insce. v. Mathews* (1925), 31 Com. Cas. 43. **Mentd.** *Sowerby v. Lindsay* (1928), 139 L. T. 545.

1964. *Add. Annotation*:—**Mentd.** *R. v. Lancashire JJ., Ex p. Tyrer*, [1925] 1 K. B. 200.

2026. After this case add the following new sub-section:—

SUB-SECT. 3a.—UNDER COMPANIES (CONSOLIDATION) ACT, 1908, s. 88.

*See case infra.*

2060. *Add. Annotation*:—**Refd.** *Kreditbank Cassel G. m. b. H. v. Schenkers*, [1926] 2 K. B. 450.

2070. *Add. Annotation*:—**Overd.** *Spencer v. Ashworth Partington*, [1925] 1 K. B. 589.

2070a. —.]—Where the owner of shares in a co. sells them there arises out of the contract of sale an implied promise by the purchaser to indemnify his vendor against all calls that may be made upon him in respect of the shares at any future date, whether made while the purchaser remains entitled to the shares or after he has parted with them to a sub-purchaser; & it makes no difference in that respect that the transfer which the vendor delivers to the purchaser in completion of his contract is executed in blank.—**SPENCER v. ASHWORTH PARTINGTON & CO.**, [1925] 1 K. B. 589; 94 L. J. K. B. 447; 132 L. T. 753, C. A.

2072. *Add. Annotation*:—**Refd.** *Spencer v. Ashworth Partington*, [1925] 1 K. B. 589.

2087a. *Sale by transferee to sub-purchaser.*—**SPENCER v. ASHWORTH PARTINGTON & CO.**, No. 2070a, *ante*.

2100. *Add. Annotation*:—*As to* (1) **Consd.** *Re Darwen & Pearce, Associated Paper Mills v. Barnes* (1926), 95 L. J. Ch. 487.

2169. *Add. Annotation*:—**Mentd.** *Re City Equitable Fire Insce.*, [1925] Ch. 407.

2174. *Add. Annotation*:—**Refd.** *Shuttleworth v. Cox (Maidenhead)* (1926), 43 T. L. R. 83.

2178. *Add. Annotation*:—**Mentd.** *Hall v. I. R. Comrs.* (1926), 135 L. T. 759.

2179. *Add. Annotation*:—*As to* (1) **Refd.** *Bank of N. T. Butterfield v. Golinsky*, [1926] A. C. 733.

2217. *Add. Annotation*:—**Consd.** *Spencer v. Ashworth Partington*, [1925] 1 K. B. 589.

2228. *Add. Annotation*:—**Refd.** *Spencer v. Ashworth Partington* (1925), 94 L. J. K. B. 447.

2332. *Add. Annotation*:—**Mentd.** *Lloyds Bank v. Chartered Bank of India, Australia & China* (1928), 97 L. J. K. B. 609.

2334. *Add. Annotation*:—**Mentd.** *Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669.

2343a. —.]—**SPENCER v. ASHWORTH PARTINGTON & CO.**, No. 2070a, *ante*.

2344. *Add. Annotation*:—**Consd.** *Spencer v. Ashworth Partington*, [1925] 1 K. B. 589.

2344a. *As between transferee & other shareholders.*—The holders of shares, bought in open market, although they may have been fraudulently issued by the directors, cannot on that ground claim relief against the other shareholders, whatever may be their rights & remedies against the directors.—**RE MEXICAN & SOUTH AMERICAN CO., GRISWOOD & SMITH'S CASE, DE PASS'S CASE** (1859), 4 De G. & J. 544; 28 L. J. Ch. 769; 33 L. T. O. S. 322; 5 Jur. N. S. 1191; 7 W. R. 681; 45 E. R. 211, L. JJ.

*Annotations*:—**Consd.** *Re Athenreum Life Assce. Soc., Chinnock's Case* (1860), John. 714; *Re Phoenix Life Assce., Ex p. Hatton* (1862), 31 L. J. Ch. 340; *Re Discoverers Finance Corp.*, [1908] 1 Ch. 111. **Refd.** *Re Royal British Bank, Mixer's Case* (1859), 4 De G. & J. 575; *Re Mexican & South American Co., Costello's Case* (1860), 2 De G. F. & J. 302; *Re Esclair Mwyu Mining Co., Alexander's Case* (1861), 3 L. T. 883. *Re Consols Insce. Asscen., Benham's Case* (1865), 11 Jur. N. S. 381; *Re National & Provincial Marine Insce., Ex p. Parker* (1867), 2 Ch. App. 685; *Re Smith, Knight, Weston's Case* (1868), L. R. 6 Eq. 238; *Spackman v. Evans* (1868), 19 L. T. 151; *Re Asiatic Banking Co., Ex p. Collum* (1869), 21 L. T. 350; *Re Bank of Hindustan, China & Japan, Ex p.*

PART III. SECT. 20, SUB-SECT. 3.—  
B. (a).

m i. —.]—Any *bond fide* transaction between a co. & a shareholder which, if the co. brought an action against him for calls, would support a plea of payment, is a "payment in cash."—**MOTOR FUELS CORPN. ETC. (IN LIQUIDATION) v. LINDER BROTHERS** (1927), 48 N. L. R. 279.—S. AF.

PART III. SECT. 20, SUB-SECT. 3a.

sk. *Filing of contract—Time for filing—Extension of time.*—Where the failure to comply with 1908 Act, s. 88, was due to inadvertence & when the irregularity was discovered the contract was reduced to writing but more than three years after the proper date for filing, & the co. presented a petition for extension of time:—**Held**: merely to grant relief from the prescribed penalty would be an insufficient remedy, & the time for filing was extended.—**Re ANDERSON & MUNRO, LTD.**, [1924] S. C. 222.—SCOT.

PART III. SECT. 21 SUB-SECT. 2.

2053 i. *Must state amount of call—& time & place of payment.*—**PIONEER ALKALI WORKS, LTD. v. AMIRUDDIN SHALEBHOY TYEBJI** (1925), 1 L. R. 50 Bom. 461.—IND.

PART III. SECT. 21, SUB-SECT. 3.

1 i. —.]—**EUROPEAN & NORTH AMERICAN RY. CO. v. DUNN** (1876), 16 N. B. R. (3 Pug.) 320.—CAN.

PART III. SECT. 23 SUB-SECT. 1.

g i. —.]—*Agreement binding—Company entitled to refuse to register transfer.*—**ONTARIO JOCKEY CLUB, LTD. v. McBRIDE**, [1927] A. C. 916; 137 L. T. 751, P. C.—CAN.

PART III. SECT. 23, SUB-SECT. 2.—A.

p i. —.]—*To comply with provision to furnish statement of company's "liabilities"—Meaning of "liabilities."*—**BUTLER v. FAIRHALL**, [1927] 4 D. L. R. 976; 61 O. L. R. 305.—CAN.

PART III. SECT. 23, SUB-SECT. 2.—  
C. (a).

o i. —.]—*On failure of transferee to take up shares.*—**Re COMPANIES ACT, Re BRITISH PETROLEUMS, LTD. (B.C.)**, [1925] 1 W. W. R. 236.—CAN.

PART III. SECT. 23, SUB-SECT. 2.—  
C. (d) iii.

st. *Waiver.*—**DOLL v. HOWARD** (1897), 11 Man. L. R. 577.—CAN.

PART III. SECT. 23, SUB-SECT. 2.—  
C. (e) ii.

2260 i. —.]—*Against purchaser.*—**FRANKLIN v. REARDON (N. S.)** (1917), 55 S. C. R. 613; 39 D. L. R. 176.—CAN.

PART III. SECT. 23, SUB-SECT. 2.—  
C. (e) iii.

2269 i. *Measure of damages—Misrepresentation as to liabilities of company.*—**SISSONS v. HASSARD (Alta.)**, [1923] 4 D. L. R. 186; [1923] 3 W. W. R. 105.—CAN.

PART III. SECT. 23, SUB-SECT. 3.—  
D. (b).

2331 ii. —.]—**ABDUL VAHAD, ETC. v. HASANALIJI ATIRHAI, ETC.** (1925), 1 L. R. 50 Bom. 229.—IND.

2331 iii. —.]—**McLEOD v. BRAZILIAN TRACTION LIGHT & POWER CO., LTD.**, [1927] 2 D. L. R. 875; 60 O. L. R. 253.—CAN.

PART III. SECT. 23, SUB-SECT. 4.

2344 i. *Inter se.—Transfer subject to understanding as to assets of company—Transferee bound.*—**Re HOBRECKER'S ESTATE**, [1926] 1 D. L. R. 655; 58 N. S. R. 378.—CAN.

PART III. SECT. 23, SUB-SECT. 5.—  
B. (a).

b i. —.]—A provision in the charter of a co. incorporated under Ontario Cos. Act, that "the shares of the co. shall not be transferred without the consent of the board of directors" is valid.—**Re PHILLIPS & LA PALOMA SWEETS, LTD.** (1921), 66 D. L. R. 577; 51 O. L. R. 125.—CAN.

PART III. SECT. 23, SUB-SECT. 5.—  
B. (b) ii.

2373 ii. —.]—**Re PHILLIPS & LA PALOMA SWEETS, LTD.** (1921), 66 D. L. R. 577; 51 O. L. R. 125.—CAN.

Kintrea (1869), 5 Ch. App. 95; *Re Consols Insee. Assocn., Glanville's Case* (1870), L. R. 10 Eq. 479; *Re Smith, Knight, Battle's Case* (1870), 39 L. J. Ch. 391; *Re European Bank, Masters' Case* (1871), 7 Ch. App. 292; *Re Great Wheal Busy Mining Co., King's Case* (1871), 40 L. J. Ch. 361; *R. v. Lambourn Valley Ry.* (1888), 22 Q. B. D. 463; *Re Discoverers Finance Corpn., Lindlar's Case*, [1910] 1 Ch. 312.

2389. For the paragraph in the original volume substitute the following paragraph:—

— **Board equally divided.**—Under an art. equivalent to Table A, art. 22, the extrix. of a deceased member of a co. had the right to be registered as a member, subject to the directors' absolute discretionary right to decline such registration. At a board meeting of the two directors to consider the extrix.'s application for registration, one director proposed & the other opposed registration. The board being equally divided, & there being no casting vote, the proposal was not carried, & the secretary was instructed to write to the extrix.'s solrs, accordingly & to return all the documents, namely, a transfer by the extrix. to herself, certificates & registration fee:—*Held*: the board's right of declining registration required to be actively exercised by a vote of the board *ad hoc*, & the mere failure to pass the proposed resolution for registration was not a formal active exercise of the right to decline; the extrix.'s absolute right to registration therefore remained intact, & the register must be rectified accordingly. — *Re HACKNEY PAVILION, LTD.*, [1924] 1 Ch. 276; 93 L. J. Ch. 193; 130 L. T. 658.

2463. *Add. Annotations*:—*Reid. I. R. Comrs. v. Allan* (1925), 9 Tax Cas. 234; *Royal Exchange Assce. v. Hope*, [1928] Ch. 179.

2523. *Add. Annotation*:—*Distd. Re Park Ward*, [1926] Ch. 828.

2578. *Add. Annotation*:—*Reid. Shuttleworth v. Cox* (Maidenhead) (1926), 43 T. L. R. 83.

2580. *Add. Annotation*:—*Dbtd. Shuttleworth v. Cox* (Maidenhead) (1926), 43 T. L. R. 83.

2593. *Add. Annotation*:—*Mentd. Public Trustee v. Elder*, [1926] Ch. 776.

2637. *Add. Annotation*:—*Reid. Spencer v. Ashworth Partington*, [1925] 1 K. B. 589.

2646. *Add. Annotation*:—*Reid. Ellis Trustee v. Dixon-Johnson*, [1924] 2 Ch. 451.

2658. *Add. Annotation*:—*Reid. Weld v. Petre* (1928), 97 L. J. Ch. 399.

2661. *Add. Annotation*:—*Mentd. Re Mason* (1928), 97 L. J. Ch. 321.

2662. *Add. Annotation*:—*Generally, Mentd. Spencer v. Ashworth Partington*, [1925] 1 K. B. 589.

2669. *Add. Annotation*:—*Reid. Ellis Trustee v. Dixon-Johnson*, [1924] 2 Ch. 451.

2690. *Add. Annotation*:—*Generally, Mentd. Ellis Trustee v. Dixon-Johnson* (1924), 131 L. T. 652.

2694. *Add. Annotation*:—*Reid. Weld v.* (1928), 97 L. J. Ch. 399.

2703a. — **No lien conferred by articles of association.**—Bye-laws of applt. bank, made under its Act of incorporation, provided: (44.) "the directors may decline to register any transfer of a share made by a shareholder who is indebted to the bank"; (57.) "the directors may deduct from the dividends payable to any shareholder all sums of money due by him to the bank on account of calls or otherwise." In Nov. 1924, the registered holder of two shares assigned them in writing to resp. as security for money due; he executed no transfer but deposited the share certificate with resp. In May 1925, the bank, which had no notice of the assignment, obtained judgment against the shareholder for money due from him, & seized the shares in execution. There was no evidence that the shareholder's liability to the bank existed at the date of the assignment:—*Held*: the bye-laws gave the bank no lien on the shares for the debt to them, & resp. was entitled under the assignment to a charge in priority to the bank's rights under the execution.—*BANK OF N. T. BUTTERFIELD & SON, LTD. v. GOLINSKY*, [1926] A. C. 733; 95 L. J. P. C. 162; 135 L. T. 584, P. C.

2793. *Add. Annotation*:—*Reid. Re Darwen & Pearce, Associated Paper Mills v. Barnes* (1926), 95 L. J. Ch. 487.

2799. *Add. Annotation*:—*Reid. Re Darwen & Pearce, Associated Paper Mills v. Barnes* (1926), 95 L. J. Ch. 487.

2850. *Add Citation*:—13 Mans. 316.

2854. *Add. Annotation*:—*Reid. Neuschild v. British Equatorial Oil Co.*, [1925] Ch. 346.

2856. *Add. Annotation*:—*As to (3) Reid. Kerr v. Marine Products* (1928), 44 T. L. R. 292.

2879a. —.]—(1) A private co. was governed partly by special arts. & partly by Table A. Table A, art. 70, fixed the qualification of a director as "the holding of at least one share." Special art. 20 empowered the directors to appoint any other "qualified person" either to fill a casual vacancy or as an addition to the board. At a full board meeting on Saturday, Nov. 14, transfers of shares to two outsiders were duly passed for registration, after which the transferees were forthwith elected directors. The transfers were registered on the following Monday:—*Held*: though before their appointment the

PART III. SECT. 23, SUB-SECT. 12.—A.

2455 i. *Loss of right to impeach—Transfer acted on by parties & company.*—*Wairakei, Ltd. v. Cleave*, [1925] N. Z. L. R. 624.—N.Z.

PART III. SECT. 23, SUB-SECT. 14.—A.

2521 i. *Contract for sale of shares—Before presentation of petition—Whether void.*—A share being a *ius in personam*, the mere fact that liquidation has intervened cannot, in the absence of a clear agreement to that effect, prevent enforcement of a purchase of shares concluded at a prior date, the purchaser taking the chance of any depreciation in market value meanwhile.—*UNION SHARE AGENCY*

*DATORS v. HATTON*, [1927] App. D. 240.—S. AF.

PART III. SECT. 23, SUB-SECT. 15.—A. (b) i.

sa. *Purchase in name of infant—Whether complete gift of shares to infant.*—A father purchased, with his own funds, shares in a co. in name of his son, then a pupil. The son's name was entered in the co.'s register as proprietor of the shares, & dividend warrants in respect of them were issued in name of the son.—*Held*: the gift of the shares had been completed by the retention of the son's name in the co.'s register after his attainment of minority.—*INLAND REVENUE COMRS. v. WILSON*, [1927] S. C. 733.—SCOT.

PART III. SECT. 24, SUB-SECT. 5.

2645 i. *Whether gift complete.*—Gifts of shares:—*Held*: not complete until at least the transfers were handed to the respective transferees.—*COMMISSIONER OF STAMPS v. TODD*, [1924] N. Z. L. R. 345.—N.Z.

PART III. SECT. 27, SUB-SECT. 5.—A. m i. — *Plea of limitation.*—*HABIB ROUJI v. STANDARD ALUMINIUM & BRASS WORKS, LTD.* (1925), 1 L. R. 49 Bom. 715.—IND.

PART III. SECT. 28, SUB-SECT. 1.—D. c. *Add "varied"*, 38 O. L. R. 414; 33 D. L. R.

PART III. SECT. 28, SUB-SECT. 2.—A. a. *Add "varied"*, 9 A. R.



transferees had acquired an absolute right to registration, they were not "qualified persons" before actual registration, & their appointment as directors was invalid.

(2) A director was due to retire by rotation at the annual general meeting on Wednesday, Nov. 11, & part of the business of which notice was given was the election of a director in his place. The retiring director's re-election was moved at the meeting, but the matter, though discussed, was not finally dealt with, & the meeting was adjourned successively to Thursday, Nov. 12, Saturday, Nov. 14, & Tuesday, Nov. 17. At the last adjournment the original motion for the retiring director's re-election was put & lost, & another shareholder was proposed & elected in his place:—*Held*: as the adjourned meeting was merely a continuation of the original meeting at which the question of the retiring director's re-election or replacement was considered, the proceedings were in order, & Table A, art. 82, had no application. (3) *Semble*: Table A, art. 82, only applies to a case where the retirement of a director by rotation & the necessity for his re-election or replacement is entirely lost sight of at the annual meeting.—SPENCER v. KENNEDY, [1926] Ch. 125; 95 L. J. Ch. 240; 134 L. T. 591.

2889. *Annotations*:—For "Howard v. Sadler, [1895] 1 Q. B. 1" read "Howard v. Sadler, [1893] 1 Q. B. 1."

2895a. *Transfers of shares passed before election—Transfers not registered until after election.*—SPENCER v. KENNEDY, No. 2879a, *ante*.

2922. *Add. Annotation*:—*Re*ld. Biddulph & District Agricultural Soc. v. Agricultural Wholesale Soc. (1926), 95 L. J. Ch. 576.

2944. *Add. Annotations*:—*Re*ld. *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853; *Re* Etic, [1928] Ch. 861.

2965a. *Remuneration not authorised by general meeting.*—Pltf. was a director of deft. co., which had adopted Table A with some modifications, & at a meeting of the board a service agreement was approved, signed, & sealed appointing pltf. "overseas director" at a salary of £1,800 a year. Pltf. proceeded overseas & performed his duties under the agreement till differences arose & he resigned. In an action by pltf. for salary due under the agreement:—*Held*: the agreement was *ultra vires* the board, & since pltf.'s remuneration had never been determined by the co. in general meeting, as required by Table A, art. 69, he could not recover, but must repay to the co. on their counterclaim the money

paid to him under the agreement.—KERR v. MARINE PRODUCTS, LTD. (1928), 44 T. L. R. 292.

3005. *Add. Annotation*:—*Generally*, *Mentd.* Performing Right Soc. v. Mitchell & Booker (Palais De Danse), [1924] 1 K. B. 762.

3014. *Add. Annotation*:—*Distd.* Williams v. Barton, [1927] 2 Ch. 9.

3038. *Add. Annotation*:—*Consd.* British America Nickel Corp. v. O'Brien, [1927] A. C. 869.

3037. *Add. Annotation*:—*Mentd.* Leeds Industrial Co-operative Soc. v. Slack, [1924] A. C. 851.

3044. *Add. Annotations*:—*Mentd.* I. R. Comrs. v. Cornish Mutual Assce. (1924), 41 T. L. R. 70; South Behar Ry. v. I. R. Comrs., [1925] A. C. 476; *Re* Debtor (No. 3 of 1926) (1926), 135 L. T. 689; Dominion Iron & Steel Co. v. Invernairn, [1927] W. N. 277.

3059. *Add. Annotation*:—*Appld.* *Re* City Equitable Fire Insce., [1925] Ch. 407.

3059a. —(1) The manner in which the work of a co. is to be distributed between the board of directors & the staff is a business matter to be decided on business lines. The larger the business carried on by the co. the more numerous & the more important the matters that must of necessity be left to the managers, the accountants, & the rest of the staff.

(2) In ascertaining the duties of a director of a co., it is necessary to consider the nature of the co.'s business & the manner in which the work of the co. is, reasonably in the circumstances & consistently with the arts. of assocn., distributed between the directors & the other officials of the co.

(3) In discharging those duties, a director (a) must act honestly, & (b) must exercise such degree of skill & diligence as would amount to the reasonable care which an ordinary man might be expected to take, in the circumstances, on his own behalf. But, (c) he need not exhibit in the performance of his duties a greater degree of skill than may reasonably be expected from a person of his knowledge & experience; in other words, he is not liable for mere errors of judgment; (d) he is not bound to give continuous attention to the affairs of his co.; his duties are of an intermittent nature to be performed at periodical board meetings, & at meetings of any committee to which he is appointed, & though not bound to attend all such meetings he ought to attend them when reasonably able to do so; & (e) in respect of all duties which, having regard to the exigencies of business & the arts. of

PART III. SECT. 28, SUB-SECT. 2.—B.

sb. *Shares not required to be held in own right—How far beneficial ownership necessary—Effect of bankruptcy.*—An insolvent, who is registered as a member of a co. in respect of shares therein, is the holder of the shares & is the person who must be taken to be referred to in an agreement or an art. which declares the tenure of the managing director to depend on his being the "holder of shares." In this respect there is a distinction between the words "holder" & "holder in his own right."—*Re* CAMBERWELL MOTORS PTY., LTD., [1926] V. L. R. 599; [1926] Argus 421.

PART III. SECT. 28, SUB-SECT. 3.—A.

2958 ii. ——— Director acting as Cos. Act,

R. S. A., 1922 (c. 156), Table A, art. 54, did not deal with the remuneration of a secretary-treasurer, performed by one who was also a director.—ANDERSON v. HERBERT PAINT & VARNISH CO., LTD. (Alta.), [1927] 3 W. W. R. 809.—CAN.

PART III. SECT. 28, SUB-SECT. 3.—B. (a).

a i. *Services requiring expert & technical knowledge.*—Where the services of a director did not fall within the scope of the ordinary unpaid duties of director, but were of a highly technical character, & the proper conduct of the business required expert & technical knowledge which it was not easy to obtain:—*Held*: he was entitled to a reasonable remuneration for such services.—DUROST v. HOME-

MIXED FERTILIZERS, LTD., [1924] 4 D. L. R. 241; 51 N. B. R. 357.—CAN.

PART III. SECT. 28, SUB-SECT. 3.—C.

3019 i. *Add* "varied, [1902] A. C. 83."

PART III. SECT. 28, SUB-SECT. 4.—A.

3028 i. *Right to act as director—Attendance of meetings—Conviction for criminal offence.*—BOAK v. WOODS, [1926] 1 D. L. R. 1186; 36 B. C. R. 456.—CAN.

3029 i. *Right to act as director—Right to injunction.*—An injunction may be granted on the application of a director restraining pltf.'s co-directors from wrongfully excluding him from acting as a director.—SARAT CHANDRA CHAKRAVARTI v. TARAH CHANDRA CHATTERJEE (1924), 1 L. L. R. 51 Cal. 916.—IND.

assocn., may properly be left to some other official, he is, in the absence of grounds for suspicion, justified in trusting that official to perform such duties honestly.

(4) A director who signs a cheque that appears to be drawn for a legitimate purpose is not responsible for seeing that the money is in fact required for that purpose, or that it is subsequently applied for that purpose, assuming, of course, that the cheque comes before him for signature in the regular way, having regard to the usual practice of the co. A director must of necessity trust to the officials of the co. to perform properly & honestly the duties allocated to them.

Before any director signs a cheque, or parts with a cheque signed by him, he should satisfy himself that a resolution has been passed by the board, or committee of the board, as the case may be, authorising the signature of the cheque; & where a cheque has to be signed between meetings, he should obtain the confirmation of the board subsequently to his signature.

The authority given by the board or committee should not be for the signing of numerous cheques to an aggregate amount, but a proper list of the individual cheques, mentioning the payee & the amount of each, should be read out at the board or committee meeting & subsequently transcribed into the minutes of the meeting.

(5) It is the duty of each director to see that the co.'s moneys are from time to time in a proper state of investment, except so far as the arts. of assocn. may justify him in delegating that duty to others.

(6) Before presenting their annual report & balance sheet to their shareholders, & before recommending a dividend, directors should have a complete & detailed list of the co.'s assets & investments prepared for their own use & information, & ought not to be satisfied as to the value of their co.'s assets merely by the assurance of their chairman, however apparently distinguished & honourable, nor with the expression of the belief of their auditors, however competent & trustworthy.

(7) It is not the duty of a director of a big insurance co. to supervise personally the safe custody of the securities of the co. It would be impracticable, on every purchase of securities, for actual delivery thereof to be made to the directors, or, on every sale, for the delivery to the brokers of the securities sold to await a meeting of the board or of a committee of directors. The duty of seeing that the securities are in safe custody must of necessity be left to some official of the co. in daily attendance at the office of the co., such as the manager, accountant, or secretary.

(8) A co.'s stockbrokers, however respectable & responsible they may be, are not proper persons to have the custody of its securities except on such occasions when, for short periods, securities must of necessity be left with them; but immediately such necessity ceases the securities should be lodged in the co.'s strong room or with its bank, or placed in other proper & usual safe keeping.

(9) A director is not responsible for declaring a dividend unwisely. He is liable if he pays it out of capital, but the *onus* of proving that he has done so lies upon the liquidator who alleges it.

Art. 150 of the co.'s arts. of assocn. provided (*inter alia*) that none of the directors, auditors, secretary or other officers for the time being of the co. should be answerable for any loss, misfortune, or damage which might happen in the execution of their respective offices or trusts, or in relation thereto, unless the same should happen by or through their own wilful neglect or default respectively:—*Held*: (10) an act, or an omission to do an act, is wilful where the person who acts, or omits to act, knows what he is doing & intends to do what he is doing, but if that act or omission amounts to a breach of that person's duty, & therefore to negligence, he is not guilty of wilful neglect or default unless he knows that he is committing, & intends to commit, a breach of his duty, or is recklessly careless in the sense of not caring whether his act or omission is or is not a breach of his duty; (11) the immunity afforded by art. 150 was one of the terms upon which the directors held office in the co., & availed them as much on a misfeasance summons by the Official Receiver under 1908 Act, s. 215, as it would have done in an action by the co. against them for negligence; (12) upon the evidence & in accordance with the principles enunciated above, none of the resp. directors, other than the managing director, was liable.

(13) The measure of the auditor's responsibility depends upon the terms of his engagement. There may be a special contract defining the duties & liabilities of the auditors. If there is, then that contract governs the question. The arts. will, however, be looked at if there is no special agreement, because the auditors will presumably have taken their duties upon the terms, among others, set out in the arts. That is not to say that auditors can set aside a statutory obligation. No agreement or art. of assocn. can remove an imperative or statutory duty.

(14) Sect. 113 does not lay down a rigid code. The duty imposed on the auditors by it is not absolute, but depends upon the information given & explanations furnished to them, so that there is abundant scope for discretion. Art. 150 is not in conflict with the sect. The *onus* lies upon the auditors, who would not be excused for total omission to comply with any of the requirements of the sect., or for any consequences of deliberate or reckless indifferent failure to ask for information on matters which call for further explanation.

(15) An auditor is not justified in omitting to make personal inspection of securities that are in the custody of a person or co. with whom it is not proper that they should be left, whenever such personal inspection is practicable.

(16) When an auditor discovers that securities of the co. are not in proper custody, it is his duty to require that the matter be put right at once, or, if his requirement is not complied with, to report the fact to the shareholders, & this whether he can or cannot make a personal inspection.

Auditors should not be content with a certificate that securities are in the possession of a particular co., firm, or person unless the co., etc., is trustworthy, or, as it is sometimes put, respectable, & further is one that in the



ordinary course of business keeps securities for its customers. In all these cases the auditor must use his judgment.

Where the auditors did not personally inspect the securities of the co. in the hands of the stockbrokers of the co. & accepted from time to time the certificate of the brokers that they held large blocks of such securities, & did not either insist upon those securities being put in proper custody or report the matter to the shareholders:—*Held*: (17) they committed a breach of duty, but, inasmuch as throughout the audit the auditors honestly & carefully discharged what they conceived to be the whole of their duty to the co., such negligence was not wilful, & art. 150 applied to exonerate them from liability.

Where the auditors after a full investigation in which they were misled & deceived, & their reports to the board suppressed, by the chairman of the co., (a) described large sums of money left in the hands of the co.'s stockbrokers & lent to the general manager of the co. as "Loans at call or short notice," "Loans" or "Cash at hand & in bank"; (b) failed to discover that the co.'s stockbrokers, in order to reduce their indebtedness to the co. for the purposes of the audit, made purchases, on behalf of the co., immediately before the close of the co.'s financial year, of Treasury Bills which in fact never came into the possession of the co. & were sold immediately the new financial year had opened:—*Held*: (18) they were not guilty of any breach of duty as auditors.

(19) Sect. 215 is a procedure sect. only & creates no new or additional liability.—*Re CITY EQUITABLE FIRE INSURANCE CO., LTD.*, [1925] 1 Ch. 407; 94 L. J. Ch. 445; 133 L. T. 520; 40 T. L. R. 853; [1925] B. & C. R. 109, C. A.

*Annotations*:—As to (10) *Distd. Re City of London Insee.* (1925), 41 T. L. R. 521. *Consd. Re Munton, Munton v. West*, [1927] 1 Ch. 262. *Refd. Re Windsor Steam Coal Co. (1901) Ltd.*, [1928] Ch. 609.

3060a. ———.]—*Re CITY EQUITABLE FIRE INSURANCE CO., LTD.*, No. 3059a, *ante*.

3062. *Add. Annotation*:—*Appld. Re City Equitable Fire Insee.*, [1925] Ch. 407.

#### PART III. SECT. 28, SUB-SECT. 4.—C.

3062 i. *Standard of diligence—Reliance on company's officials—Where no ground for suspicion—Examination of company's books.*—*Re LOGAN (H. J.) CO. (Ont.)*, [1926] 2 D. L. R. 946; 7 C. B. R. 325.—CAN.

e. *Add "varied"*, 38 O. L. R. 414; 33 D. L. R. 487.

#### PART III. SECT. 28, SUB-SECT. 4.—D.

3075 i. *Capacity to contract—General rule.*—A director has a right to contract with the co. subject to certain qualifications involving cases of misrepresentation, bad faith or secret profits, & not where ordinary relation of employer & employee exist. The ordinary objections to such contracts do not apply where all the shareholders were directors, as no question can arise as to directors prejudicing the rights of the shareholders.—*DUROST v. HOME-MIXED FERTILIZERS, LTD.*, [1924] 4 D. L. R. 241; 51 N. B. R. 357.—CAN.

#### PART III. SECT. 28, SUB-SECT. 5.—A.

3115 i. *Exercise of powers—Control by members.*—The directors of a co. constitute its governing & managing body, & except to the extent that their

powers are expressly restricted by statute or the arts. of assocn. or otherwise, they possess authority to exercise all the powers of the co., subject to the control of the shareholders.—*MID-WEST COLLIERIES, LTD. v. McEWEEN*, [1925] 2 D. L. R. 529.—CAN.

#### PART III. SECT. 28, SUB-SECT. 5.—C. (a).

d i. *S. P. Re PACIFIC COAST COAL MINES, LTD. & HODGES (B. C.)*, [1926] 4 D. L. R. 759; [1926] 3 W. W. R. 78.—CAN.

sl. *Contract not authorised by all directors.*—Where L., a director of deft. co., purporting to act on behalf of the co., agreed with pltt. to enter into a lease, & the directors neither authorised L. to enter into the agreement nor expressly ratified his action:—*Held*: the co. was not bound by the agreement.—*LEGG & CO. v. PREMIER TOBACCO CO.*, [1926] App. D. 132.—S. AF.

#### PART III. SECT. 28, SUB-SECT. 5.—C. (d).

3132 i. *Necessary formalities.*—Where the directors of a co. had power to

3063a. ———.]—*Proper & honest performance of duties.*—*Re CITY EQUITABLE FIRE INSURANCE CO., LTD.*, No. 3059a, *ante*.

3063b. ———.]—*Reliance on chairman—Accuracy of balance-sheet.*—*Re CITY EQUITABLE FIRE INSURANCE CO., LTD.*, No. 3059a, *ante*.

3066. *Add. Annotation*:—*Generally, Mentd. Re City Equitable Fire Insee.* (1924), 40 T. L. R. 853.

3068. For "—— Signature of cheques to company's prejudice" read "—— Signature of cheques—To company's prejudice."

3068a. ———.]—*Re CITY EQUITABLE FIRE INSURANCE CO., LTD.*, No. 3059a, *ante*.

3071. *Add. Annotation*:—*Refd. Re City Equitable Fire Insee.*, [1925] Ch. 407.

3105a. *Payment of rates due l. m. company—Right to stand in place of overseers.*—The director of a co. in voluntary liquidation guaranteed & paid to the overseers of the poor the rates due from the co. before the date of the liquidation:—*Held*: (1) he was entitled to stand in the place of the creditor, & to use all remedies, & if need be, the name of the creditor in any action or other proceeding in order to obtain indemnification from the principal debtor for the loss sustained; (2) in so far as the payment by the surety was made in respect of rates that became due & payable within twelve months before the date of the commencement of the liquidation, it would rank in priority of payment to the other debts of the co., by virtue of 1908 Act, s. 209.—*Re LAMPLUGH IRON ORE CO.*, [1927] 1 Ch. 308; 96 L. J. Ch. 177; 130 L. T. 501; [1927] B. & C. R. 61.

3109. *Add. Annotation*:—*Refd. British Insulated & Helsby Cables v. Atherton*, [1926] A. C. 205.

3109a. ———.]—*Re CITY EQUITABLE FIRE INSURANCE CO., LTD.*, No. 3059a, *ante*.

3127a. ———.]—*Delegation of duty.*—*Re CITY EQUITABLE FIRE INSURANCE CO., LTD.*, No. 3059a, *ante*.

3128a. *Safe custody of company's securities—Delegation of duty—Securities with company's stockbrokers.*—*Re CITY EQUITABLE FIRE INSURANCE CO., LTD.*, No. 3059a, *ante*.

borrow & mortgage:—*Held*: the president & managing director were, by virtue of their offices, *prima facie* proper officers to execute mtges., & the mtge., which had the common seal of the co. attached, & was executed by the president & managing director, was properly executed.—*CANADIAN BANK OF COMMERCE v. SMITH* (1911), 17 W. L. R. 135; 3 Alta. L. R. 299.—CAN.

3132 ii. ———.]—Where a mtge by a co. had the seal of the co. affixed in the presence of two directors, one of whom was the secretary, & of M., assistant secretary, there being no appointment proved authorising M. as an assistant secretary, or otherwise, to sign the mtge., or authenticate the affixing of the seal:—*Scmble*: the execution was bad.—*INNES & GRIFFITH v. CAMERON VALLEY LAND CO. (B. C.)*, [1919] 1 W. W. R. 752.—CAN.

3133 i. *Mortgage to directors.*—Set aside at instance of simple contract creditors of the co.—*NORTHERN ELECTRIC & MANUFACTURING CO., LTD. v. CORDOVA MINES, LTD.* (1914), 31 O. L. R. 221; 6 O. W. N. 210.—CAN.

3133 ii. ———.]—*GREENSTREET v. PARIS HYDRAULIC CO.* (1874), 21 Gr. 229.—CAN.



3142. *Add. Annotation*:—*Generally, Mentd. Re City Equitable Fire Insce.*, [1925] Ch. 407.

3157a. — *Presumption of authority.*]—Pltfs. were a firm of fruit brokers. Defts. & the P. Co. were two cos. engaged in the fruit trade. M. was a director of both cos. By art. 28 of the arts. of deft. co. the directors were empowered to "delegate any of the powers for the time being vested in the directors." The arts. also incorporated Table A. M. purported to make on behalf of defts. an agreement with pltfs. that in consideration of pltfs. advancing a sum of money to the P. Co., pltfs. should have the right to sell on commission all the fruit imported both by defts. & the P. Co., & that pltfs. should be entitled to retain the proceeds of sale of defts.' fruit as well as of that of the P. Co. as security for the advance. M. had no authority from defts. to make such a contract. Pltfs. requiring confirmation of the agreement by deft. co., the secretary of defts. wrote a letter purporting to confirm the agreement on behalf of defts., & pltfs., treating that as a sufficient confirmation, made the advance. The secretary had no authority to give such confirmation. Defts. subsequently repudiated the agreement as made without their authority. At the time that they made the advance pltfs. had no knowledge of the terms of defts.' arts. or that they incorporated Table A:—*Held*: whether the agreement was to be treated as having been made by M. as an ordinary "director" of deft. co., or by the secretary as "agent," or by the two combined, pltfs. were not entitled to assume that any authority to make it had been delegated to them by the board, because (1) although a person who contracts with an individual director or servants of a co., knowing that the board of directors has power to delegate its authority to such an individual, may in certain circumstances assume that power of delegation has been exercised & that he may safely deal with the individual in question as representing the co., he cannot rely on the supposed exercise of such power if he did not know of the existence of the power at the time that he made the contract; (2) there was something so unusual in an agreement to apply the money of one co. in payment of the debt of another that pltfs. were put upon inquiry to ascertain whether the person or persons making the contract had any authority in fact to make it; (3) even if pltfs. had known of the existence of the express power of delegation, they would not have been entitled to assume that it had

been exercised in favour of M. or the secretary to any greater extent than was to be inferred from the positions which M. & the secretary respectively occupied or were held out by the co. as occupying.—*HOUGHTON & Co. v. NOTHARD, LOWE & WILLS*, [1928] A. C. 1; 97 L. J. K. B. 76; 138 L. T. 210; 44 T. L. R. 76, H. L.

*Annotations*:—*As to (1) Consd. Kreditbank Cassel G. m. b. H. v. Schenkers*, [1927] 1 K. B. 826. *Reid. Liggett (Liverpool) v. Barclays Bank* (1927), 137 L. T. 443.

3160a. — *]*—A co. is bound in a matter *intra vires* the co. by the unanimous agreement of all its corporators.

If all the individual corporators in fact assent to a transaction that is *intra vires* the co., though *ultra vires* the board, it is not necessary that they should hold a meeting in one room or one place to express that assent simultaneously.—*PARKER & COOPER, LTD. v. READING*, [1926] Ch. 975; 96 L. J. Ch. 23; 136 L. T. 117.

3162. *Add. Annotation*:—*Consd. British America Nickel Corpn. v. O'Brien*, [1927] A. C. 369.

3181. *Add. Annotation*:—*Mentd. Falcon v. Famous Players Film Co.* (1925), 42 T. L. R. 91.

3201. *Add. Annotation*:—*Reid. Re Etic*, [1928] Ch. 861.

3216. *Add. Annotation*:—*Reid. Parker & Cooper v. Reading*, [1926] Ch. 975.

3231. *Add. Annotation*:—*Reid. Kerr v. Marine Products* (1928), 44 T. L. R. 292.

3240. *Add. Annotation*:—*Mentd. Wright v. Morgan*, [1926] A. C. 788.

3250. *Add. Annotation*:—*As to (2) Reid. Kerr v. Marine Products* (1928), 44 T. L. R. 292.

3257. *Add. Annotations*:—*Appld. Parker & Cooper v. Reading & James* (1926), 96 L. J. Ch. 23. *Reid. Kerr v. Marine Products* (1928), 44 T. L. R. 292.

3261. *Add. Annotations*:—*Generally, Reid. Re Etic*, [1928] Ch. 861. *Mentd. Re City Equitable Fire Insce.* (1924), 40 T. L. R. 853.

3280. *Add. Annotation*:—*Mentd. Re City Equitable Fire Insce.* (1924), 40 T. L. R. 853.

3280a. — *Directors relying on chairman's assurance as to value of assets.*]—*Re CITY EQUITABLE FIRE INSURANCE CO., LTD.*, No. 3059a, *ante*.

3282a. *Dividends paid out of capital.*]—*Re CITY EQUITABLE FIRE INSURANCE CO., LTD.*, No. 3059a, *ante*.

3284. *Add. Annotation*:—*As to (3) Appld. Re A Debtor*, [1927] 1 Ch. 410.

3285. *Add. Annotation*:—*As to (2) Reid. Re City Equitable Fire Insce.*, [1925] Ch. 407.

PART III. SECT. 28, SUB-SECT. 5.—  
C. (a).

1. Add "*varied*, 9 A. R. 620."

PART III. SECT. 28, SUB-SECT. 5.—E.

r i. — *Must be with full knowledge of transaction.*]—*HINDUSTAN ASSURANCE & MUTUAL BENEFIT SOCIETY, LTD., LAHORE v. KHALSA BANK, LTD., GUJRANWALA* (1927), 1 L. R. 9 Lah. 360.—IND.

d i. — *]*—*DAVISON v. VICKERY'S MOTORS, LTD.* (1925), 37 C. L. R. 1.—AUS.

PART III. SECT. 28, SUB-SECT. 6.—  
C. (b).

sm. *Commission.*]—*Cos. Act, 1908, s. 57*, does not authorise the directors to make presents of the co.'s capital in the guise of commission. Such presents

are *ultra vires* of the directors, & recoverable by the co.—*WAIKAKEI, LTD. v. CLEAVE*, [1925] N. Z. L. R. 624.—N.Z.

PART III. SECT. 28, SUB-SECT. 6.—  
D. (d) ii.

e i. — *Extent of liability.*]—Deft., a director of pltf. co., in that he had failed in his duty to hand over to the co. certain shares, was ordered to account to the co. for their value as at the date when he received them:—*Held*: such value was not the intrinsic value at the specified date, but the value in money which pltf. co. could reasonably have obtained on the market, & as pltf. co. had discharged the onus of proving that it could have obtained the market price, the value would be fixed at that amount.—*ROBINSON v. RANDFORTH ESTATES*

*GOLD MINING CO., LTD.*, [1924] App. D. 151.—S. AF.

PART III. SECT. 28, SUB-SECT. 6.—  
E. (f).

g i. — *]*—The penalty enacted against directors of a co. who participate in the payment of a dividend where the co. is insolvent; & whereby they are made jointly & severally liable to creditors for debts of the co. then existing, is incurred only when they knew, or were bound to know, the insolvency of the co. at the time the dividend was declared.—*SMITH v. HENDERSON*, [1924] 1 D. L. R. 863; Q. R. 62 S. C. 370.—CAN.

sm. *Dividend disposing of entire assets of company.*]—Judgment given against directors.—*THOMAS v. GALE*, [1927] 1 D. L. R. 593; S. C. R.

3291. *Add. Annotation*.—*Appl. Re City Equitable Fire Insce.*, [1925] Ch. 407.

3327. *Add. Annotation*.—*Distd. British Thomson-Houston Co. v. Sterling Accessories, Same v. Crowther & Osborn*, [1924] 2 Ch. 33.

3327a. ———.]—The directors of a co. cannot be made liable for an infringement of a patent by the co. merely by reason of their position as directors, even in a case where they are the sole directors & shareholders of the infringing co.—*BRITISH THOMSON-HOUSTON CO. v. STERLING ACCESSORIES, LTD., BRITISH THOMSON-HOUSTON CO. v. CROWTHER & OSBORN, LTD.*, [1924] 2 Ch. 33; 93 L. J. Ch. 335; 131 L. T. 535; 40 T. L. R. 544; 68 Sol. Jo. 595; 41 R. P. C. 311.

*Annotation*.—*Appl. Prichard & Constance v. Amata* (1924), 42 R. P. C. 63.

3327b. ———.]—Deft. co., incorporated in 1924 for the purpose of carrying on business as manufacturers of toilet preparations & publishers of medical books & publications relating thereto, on letter paper described themselves as "wholesale manufacturers of Amata Toilet Preparations." Pltf. co., who had for many years distinguished their goods by the word "Amami," & in July, 1909, had registered that word as a trade mark to be applied to perfumery, etc., commenced an action against deft. co. & the two only directors thereof who were signatories of their memorandum of assocn. for an injunction:—*Held*: there was no evidence that deft. co. had been formed by the other two defts. for the purpose of doing a wrongful act & no claim had been established by pltf. against these defts. personally; & the action as against them must be dismissed with costs.—*PRICHARD & CONSTANCE (WHOLESALE), LTD. v. AMATA, LTD.* (1924), 42 R. P. C. 63.

3347. *Add. Annotations*.—*As to* (4) *Appl. Re A Debtor*, [1927] 1 Ch. 410. *Reid. Re Etic*, [1928] Ch. 861.

3377. *Add. Annotation*.—*Generally, Mentd. Weld v. Petre* (1928), 97 L. J. Ch. 399.

3398. *Add. Annotation*.—*As to* (2) *Reid. Houghton v. Nothard, Lowe & Wills*, [1927] 1 K. B. 246.

3405. *Add. Annotations*.—*Reid. Underwood v. Bank of Liverpool, Underwood v. Barclays*

*Bank*, [1924] 1 K. B. 775; *Houghton v. Nothard, Lowe & Wills*, [1927] 1 K. B. 246; *Liggett (Liverpool) v. Barclays Bank*, [1928] 1 K. B. 48.

3419a. ———.]—The directors of a co. personally guaranteed an overdraft granted to the co. by a bank. They subsequently passed a resolution that, subject to the approval of the bank, debentures be issued to the bank as security for the overdraft, & debentures were issued in accordance with the resolution:—*Held*: the directors were "interested" in the arrangement come to with the bank in regard to the issue of the debentures, & the resolution providing for the issue was a nullity.—*VICTORS, LTD. v. LINGARD*, [1927] 1 Ch. 223; 96 L. J. Ch. 132; 136 L. T. 476; 70 Sol. Jo. 1197.

3423. *Add. Annotation*.—*Reid. Parker & Cooper v. Reading*, [1926] Ch. 975.

3434. *Add. Annotation*.—*As to* (5) *Consd. Re City Equitable Fire Insce.* (1924), 40 T. L. R.

3444. *Add. Annotation*.—*As to* (1) *Distd. Re Windsor Steam Coal Co. (1901), Ltd.*, [1928] Ch. 609.

3455a. *Re-election of retiring director—Adjournment of meeting.*—*SPENCER v. KENNEDY*, No. 2879a, *ante*.

3492. *Add. Annotation*.—*Reid. Shuttleworth v. Cox (Maidenhead)* (1926), 43 T. L. R. 83.

3502. *Add. Annotations*.—*Consd. Underwood v. Bank of Liverpool, Underwood v. Barclays Bank*, [1924] 1 K. B. 775; *Houghton v. Nothard, Lowe & Wills*, [1927] 1 K. B. 246. *Reid. Kreditbank Cassel G. m. b. H. v. Schenkers*, [1926] 2 K. B. 450.

3506. *Add. Annotation*.—*Generally, Reid. Kreditbank Cassel G. m. b. H. v. Schenkers*, [1926] 2 K. B. 450.

3506a. ———. *Cheque—Presumption of authority.*—*STEWART (ALEXANDER) & SON, OF DUNDEE, LTD. v. WESTMINSTER BANK, LTD.*, [1926] W. N. 126.

3526. *Add. Annotations*.—*Generally, Reid. I. R. Comrs. v. Fisher's Exors.*, [1926] A. C. 395. *Mentd. British America Nickel Corp. v. O'Brien*, [1927] A. C. 369.

3532. *Add. Annotations*.—*Reid. Thomas v. Todd*,

### PART III. SECT. 28, SUB-SECT. 6.

m. For "26 W. L. R. 626" read "7 Alta. L. R. 245; 28 W. L. R. 250."

b (p. 509) i. ———.]—Pltf. sued directors of a co., alleging that judgments recovered by them were for "wages due for services performed for the co." The evidence showed that pltf. were hired to prospect for oil when so instructed, & they were not to do anything but hold themselves in readiness:—*Held*: the judgments were not for wages due for services performed, as they did no more than wait for the chance of performing them.—*MULLEN v. MILLAR* (1924), 55 O. L. R. 563.—CAN.

### PART III. SECT. 28, SUB-SECT. 8.—B.

sl. ———. *Not during term of appointment.*—*LONDON FINANCE CORPN. v. BANKING SERVICE CORPN. (ONT.)*, [1925] 1 D. L. R. 319.—CAN.

### PART III. SECT. 28, SUB-SECT. 9.—C.

so. *Remuneration voted by directors—Validity—Action by shareholder—Onus of proof.*—When a pltf. complains of

directors voting a salary & travelling expenses to the managing director, he must show that their action was either *ultra vires* or of a fraudulent character, & although it is beyond the powers of directors to vote the salary & travelling expenses, this defect can be remedied at a shareholders' meeting where the managing director is a majority shareholder.—*HOUSTON v. VICTORIA MACHINERY DEPOT, LTD.*, [1924] 2 D. L. R. 657; 33 B. C. R. 425.—CAN.

### PART III. SECT. 28, SUB-SECT. 9.—D.

sp. *Extent of powers.*—Where a general manager is chosen from the directors & is therefore a managing director, there is an implication of further & larger authority than in the case of a general manager who is not a director; but when directors appoint a "managing director," they may be taken to have *ipso facto* delegated to him some of their powers as a board of directors.—*MID-WEST COLLIERIES, LTD. v. McEWEN*, [1925] 2 D. L. R. 529.—CAN.

3501 v. ———.]—Persons dealing with a managing director need

only satisfy themselves that he has the power to do what he does, even though it be for his personal advantage.—*Re J. STANLEY WEDLOCK, LTD., Ex p. ROYAL BANK*, [1924] 4 D. L. R. 1178; 5 O. B. R. 103.—CAN.

### PART III. SECT. 28, SUB-SECT. 10.

r i. ———. *Effect of bye-law.*—The president of a co. has no authority without the authorisation by the board to engage solrs. in the co.'s business, though there be a bye-law giving him a general oversight over the business of the co.—*Re PETRIE MANUFACTURING CO., Ex p. HUGHES*, [1924] 4 D. L. R. 1308; 4 O. B. R. 311.—CAN.

ol. ———. *Cheque—Unsatisfied judgment against company.*—*Held*: the creditor, to whom the cheque was paid, was not prevented from proceeding against the president upon it.—*WRIGHT v. RITCHIE*, [1925] 4 D. L. R. 1050.—CAN.

sb. *Not a trustee—As regards funds & securities in his custody.*—*Ex p. GIROUX*, [1926] 2 D. L. R. 900; 45 Can. Crim. Cas. 315; (1925), Q. R. 40 K. B. 362.—CAN.



[1926] 2 K. B. 511. *Mentd. Livock v. Pearson* (1928), 33 Com. Cas. 188.

3540a. ——— Presumption of authority—Due delegation of authority.]—HOUGHTON & Co. v. NOTHARD, LOWE & WILLS, No. 3157 a, ante.

3555. *Add. Annotation:—Generally, Mentd. Glanvill Enthoven v. I. R. Comrs.* (1924), 131 L. T. 818.

3560. *Add. Annotations:—Consd. Chibbett v. Robinson* (1924), 132 L. T. 26. *Distd. Mudd v. Collins* (1925), 133 L. T. 186; *Reed v. Seymour* (1927), 11 Tax Cas. 625. *Refd. Benyon v. Thorpe* (1928), 97 L. J. K. B. 705. *Mentd. Reed v. Seymour* (1926), 95 L. J. K. B. 796.

3565. *Add. Annotations:—Refd. Swedish Central Ry. v. Thompson*, [1924] 2 K. B. 255; *Russian Commercial & Industrial Bank v. Comptoir d'Escompte de Mulhouse, Banque Internationale De Commerce De Petrograd v. Goukassow* (1924), 40 T. L. R. 837; *Todd v. Egyptian Delta Land & Investment Co.* [1928] 1 K. B. 152. *Mentd. Bohemian Union Bank v. Austrian Property Administrator*, [1927] 2 Ch. 175; *Todd v. Egyptian Delta Land & Investment Co.* (1927), 96 L. J. K. B. 554.

3567a. ——— Presumption of authority—Due delegation of authority.]—HOUGHTON & Co. v. NOTHARD, LOWE & WILLS, No. 3157a, ante.

3568a. ——— Purchase of goods for company's benefit.]—LEVY v. METROPOLITAN CAB CO. (1854), 23 L. T. O. S. 67.

3573. *Add. Annotation:—Refd. Jones v. Oceanic Steam Navigation Co.*, [1924] 2 K. B. 730.

3590. *Add. Annotation:—Refd. Pickford v. Quirke, Pickford v. I. R. Comrs.* (1927), 138 L. T. 500.

3603a. ——— Bills of exchange drawn by branch manager.]—The arts. of assocn. of a co. empowered the directors to determine who should be entitled to sign & make, draw, accept & indorse on the co.'s behalf bills, notes, receipts, acceptances, indorsements, cheques, etc. The co., whose business was that of forwarding agents, had a branch at Manchester under a branch manager, C. This branch manager, without having in

fact received any authority from the co., & acting in fraud of the co., drew seven bills of exchange on behalf of the co. signed "S.C., Manchester manager." The bills were drawn to the order of the co., they were accepted by O. & W. & indorsed on behalf of the co. "S.C., Manchester manager." In an action on the bills by the holders in due course against the co. as drawers:—*Held*: (1) plffs. were not entitled to act on bills drawn by a person in the position of the branch manager; (2) the bills were forgeries under which plffs. could have no title.—*KREDITBANK CASSEL G. m. b. H. v. SCHENKERS*, [1927] 1 K. B. 826; 96 L. J. K. B. 501; 136 L. T. 716; 43 T. L. R. 237; 71 Sol. Jo. 141; 32 Com. Cas. 197, C. A.

*Annotation:—As to (1) Refd. Liggett (Liverpool) v. Barclays Bank*, [1928] 1 K. B. 48.

3613. *Add. Annotation:—Mentd. Agricultural Wholesale Soc. v. Biddulph & District Agricultural Soc.*, [1925] Ch. 769.

3652. *Add. Annotation:—Refd. Re Glyncorrwg Colliery Co., Railway Debenture & General Trust Co. v. The Co.*, [1926] Ch. 951.

3656. *Add. Annotation:—Refd. Re City Equitable Fire Insce.*, [1925] Ch. 407.

3657. *Add. Annotation:—Consd. Re City Equitable Fire Insce.* (1924), 40 T. L. R. 853.

3661. *Add. Annotation:—Consd. Re City Equitable Fire Insce.* (1924), 40 T. L. R. 853.

3661a. ———.]—*Re CITY EQUITABLE FIRE INSURANCE CO., LTD.*, No. 3059a, ante.

3662a. *Inspection of securities—Whether in proper custody.]—Re CITY EQUITABLE FIRE INSURANCE CO., LTD.*, No. 3059a, ante.

3664. *Add. Annotation:—Refd. Re City Equitable Fire Insce.* (1924), 40 T. L. R. 853.

3665. *Add. Annotation:—Apld. Re City Equitable Fire Insce.*, [1925] Ch. 407.

3668. *Add. Annotation:—As to (1) Refd. Re City Equitable Fire Insce.* (1924), 40 T. L. R. 664.

3670a. ———.]—*Re CITY EQUITABLE FIRE INSURANCE CO., LTD.*, No. 3059a, ante.

3693. *Add. Annotation:—As to (2) Consd. Shuttleworth v. Cox* (Maidenhead) (1926), 43 T. L. R. 83.

### PART III. SECT. 29, SUB-SECT. 1.—B.

g i. ——— *By president—Confirmation.*]—Where a servant had been orally hired by the president of a co., & his services had been accepted for three & a half years without the president's authority to hire him being questioned:—*Held*: the co. could not repudiate the agreement, on the mere ground that it was not formally authorised or adopted by bye-law.—*BLOOMFIELD v. MONARCH OVERALL MANUFACTURING CO., LTD.* (No. 2), [1927] 2 W. W. R. 18; [1927] 3 D. L. R. 146; *affd.*, [1927] 3 W. W. R. 502; [1927] 4 D. L. R. 1137.—CAN.

### PART III. SECT. 29, SUB-SECT. 1.—D.

g i. ——— *Contracts for purchase of stock.]—Held*: the co., in order to avoid liability, must show that their officers were, to the knowledge of the brokers, abusing their powers & giving directions they had no power to give.—*TICONDEROGA PULP & PAPER CO. v. COWANE*, [1925] 4 D. L. R. 1.—CAN.

g ii. ——— *Agreement for non-shareholders to gain advantages of share-holders.]—Held*: express authority necessary.—*MCLEOD v. UNITED CANNERS, LTD.* (P.E.I.), [1925] 3 D. L. R. 767.—CAN.

g iii. ——— *Cancellation of sub-*

*scription for stock.]—Held*: express authority necessary.—*Re SUN RAY MANUFACTURING CO., Ex p. ROBSON* (ONT.), [1925] 1 D. L. R. 176; 5 C. B. R. 303; *affg.* 4 C. B. R. 597.—CAN.

### PART III. SECT. 29, SUB-SECT. 2.—C. (b).

g i. ——— *By acts of secretary-treasurer.]—Held*: (1) a secretary-treasurer, as such, has no authority to bind his co.; (2) on the facts, there was nothing to show that the authority of the secretary-treasurer in this case was other or more extensive than that of any other secretary.—*MYERS v. UNION NATURAL GAS CO.* (1922), 53 O. L. R. 88.—CAN.

### PART III. SECT. 29, SUB-SECT. 3.—B.

g k. *Right to remuneration—Absence of bye-law authorising payment—Action not maintainable—Companies Act, R. S. M., 1913 (c. 35), s. 32.]—MENZIES v. TYNDALL QUARRIES CO. (Man.)*, [1926] 4 D. L. R. 350; [1926] 2 W. W. R. 864.—CAN.

### PART III. SECT. 29, SUB-SECT. 3.—C.

g i. ———.]—Where the manager of a co., acting in good faith under the authority which he thought was vested in him & which could have

vested in him under the co.'s arts. of assocn., executes a contract on the co.'s behalf, & the other party accepts him as having authority, the co. is bound by his act.—*ASSOCIATED GROWERS OF BRITISH COLUMBIA, LTD. v. BRITISH COLUMBIA FRUIT LAND, LTD.*, [1925] 1 D. L. R. 871; [1925] 1 W. W. R. 505; 34 B. C. R. 533.—CAN.

3602 i. ——— *By misrepresentation—Question of authority.]—RAVENS PLANTATIONS, LTD. v. ESTATE H. ABRAY* (1927), 48 N. L. R. 174.—S. AF.

### PART III. SECT. 29, SUB-SECT. 3.—D.

g l. *For judgment against company—In action brought on manager's instructions.]—Held*: the manager was not liable.—*PACIFIC COAST COAL MINES, LTD. v. ARBUTHNOT*, [1926] 1 D. L. R. 670; [1926] 1 W. W. R. 478; 36 B. C. R. 321.—CAN.

### PART III. SECT. 30, SUB-SECT. 2.—C. (b) ii.

g p. *Rights of members—Forcing additional shares on dissenting member.]—An art. of assocn. of a co. providing that the directors might require a shareholder to take up additional shares in a certain ratio was altered by a resolution of the majority of the share-*



3698. *Add. Annotation* :—*Expld. & Dlst. Jacobs v. Batavia & General Plantations Trust*, [1924] 2 Ch. 329.
3702. *Add. Annotation* :—*Refd. Shuttleworth v. Cox (Maidenhead)* (1926), 43 T. L. R. 83.
3703. *Add. Annotation* :—*Dbtd. Shuttleworth v. Cox (Maidenhead)* (1926), 43 T. L. R. 83.
3704. *Add. Annotation* :—*As to (2) Refd. Shuttleworth v. Cox (Maidenhead)* (1926), 43 T. L. R. 83.
- 3704a. — *Interference by court.*—The power to alter or add to the arts. under 1908 Act, s. 13 (1), must be exercised, not only in the manner required by law, but also *bond fide* for the benefit of the co. as a whole, & the question whether a given alteration of or addition to the arts. is for the benefit of the co. is a question for the shareholders, acting *bond fide*, & not for the ct., & the ct. will not interfere with the action of the shareholders except on grounds on which it would interfere with a verdict of a jury.—*SHUTTLEWORTH v. COX BROTHERS & CO. (MAIDENHEAD), LTD.*, [1927] 2 K. B. 9; 96 L. J. K. B. 104; 136 L. T. 337; 43 T. L. R. 83, C. A.
3729. Before this case insert “*Compare CORPORATIONS*, Vol. XIII., pp. 339 *et seq.*”
- 3734a. — *Preference shareholders whose dividends “in arrear.”*—*Held*: the words “in arrear,” in the context in which they appeared in a co.’s arts. of assocn., did not cover the non-payment of a non-cumulative preference dividend payable out of the profits of each year, & not paid because there were no profits available for the dividend.—*COULSON v. AUSTIN MOTOR CO., LTD.* (1927), 43 T. L. R. 493.
3736. *Add. Citation* :—13 Mans. 316.
3755. *Add. Annotation* :—*Mentd. Gilbert v. Gilbert & Bougher* (1927), 96 L. J. P. 137.
3770. *Add. Annotation* :—*Refd. Shuttleworth v. Cox (Maidenhead)* (1926), 43 T. L. R. 83.
3771. *Add. Annotation* :—*Refd. Shuttleworth v. Cox (Maidenhead)* (1926), 43 T. L. R. 83.
- 3771a. *Shareholder with no registered address—No address in United Kingdom for service of notices.*—*DICKSON v. HALESOWEN STEEL CO.*, [1928] W. N. 33.
3775. *Add. Annotation* :—*As to (2) Apld. Wall v. Exchange Investment Corp.*, [1926] Ch. 143.
3779. *Add. Annotation* :—*Expld. & Apld. Parker & Cooper v. Reading*, [1926] Ch. 975.
- 3787a. — — — — —.]—*WALL v. EXCHANGE INVESTMENT CORPN.*, No. 3811a, *post*.
3802. *Add. Annotation* :—*Consd. British America Nickel Corp. v. O’Brien*, [1927] A. O. 369.
3811. *Add. Annotation* :—*Apld. Wall v. Exchange Investment Corp.*, [1926] Ch. 143.
- 3811a. — — — — — *Whether decision of chairman final.*—An art. provided that no objection should be made to the validity of any vote except at the meeting at which it was tendered, & that every vote, whether given in person or by proxy, not disallowed at any meeting should be deemed valid for all purposes :—*Held*: the decision of the chairman, who, in the *bond fide* exercise of the power conferred upon him by the art., had refused to disallow a vote by proxy to which objection had been taken at the meeting, was final & would not be reviewed by the ct.—*WALL v. EXCHANGE INVESTMENT CORPN.*, [1926] Ch. 143; 95 L. J. Ch. 132; 134 L. T. 399, C. A.
3826. *Add. Annotation* :—*Consd. Neuschild v. British Equatorial Oil Co.*, [1925] Ch. 346.
- 3841a. — *Revocation of proxy received after commencement of meeting but before poll taken—Vote valid.*—*SPILLER v. MAYO (RHODESIA) DEVELOPMENT CO. (1908), LTD.*, [1926] W. N. 78.
- 3847a. — — — *Vote valid unless disallowed at meeting—Whether decision of chairman final.*—*WALL v. EXCHANGE INVESTMENT CORPN.*, No. 3811a, *ante*.
3874. *Add. Annotation* :—*Refd. Re Darwen & Pearce, Associated Paper Mills v. Barnes* (1926), 95 L. J. Ch. 487.
- 3874a. — — — *Adjournment of second meeting to date more than month from date of first meeting.*—Where a meeting, held for the purpose of confirming as special resolutions resolutions passed as extraordinary resolutions at a meeting held less than a month before, is adjourned, for *bond fide* reasons, to a date more than a month from the date of the meeting at which the resolutions were passed, & the resolutions are confirmed at the adjourned meeting, they are valid within 1908 Act, s. 69 (2).—*NEUSCHILD v. BRITISH EQUATORIAL OIL CO.*, [1925] 1 Ch. 346; 94

holders, applt. (*inter alios*) dissent. The alteration struck out the words “three shares for every 250 lb. of butter fat” supplied by a member & substituted “one share for every 60 lb. of butter fat.” Applt. was called upon to take up additional shares in accordance with the alteration, but refused to do so :—*Held*: the art. was not one that could be amended under Cos. Act, 1908, s. 122, so as to force additional shares on a dissenting member, & applt. was not bound by the alteration objected to.—*MACDONALD v. NORMANBY CO-OPERATIVE DAIRY FACTORY CO., LTD.*, [1923] N. Z. L. R. 122.—N.Z.

3698 i. *Alteration a breach of contract.*—A shareholder in a co. must be taken to know that one of the incidents of membership of a co. is that the co. may, by adopting the proper method, *bond fide* alter its articles in a way which may prejudicially affect his interest, & provided that the alteration in the article is not inconsistent with the objects set out in the memorandum of association, & is *bond fide* made in the interest of the co., the shareholder would be bound by such an alteration.

A co. cannot commit a breach of contract by altering its articles.—*HARI CHANDANA JOGA DEVA v. HINDUSTAN CO-OPERATIVE INSURANCE SOCIETY, LTD.* (1924), 1 L. R. 52 Calc. 239.—IND.

PART III. SECT. 30, SUB-SECT. 3.—  
B. (f).

e f. — — —.]—A shareholder, who is present at a meeting of shareholders, can waive his right to be given notice of the intention to move a special resolution; the giving notice of such intention is only prescribed in order to give shareholders time to consider the matter.—*Re EXCEL FOOTWEAR CO., Ex p. NOVA SCOTIA TRUST CO.*, [1923] 3 D. L. R. 212; 56 N. S. R. 195; 3 C. B. R. 748.—CAN.

PART III. SECT. 30, SUB-SECT. 3.—  
D. (c).

3785 ii. — *To give casting vote—For what purposes to be exercised.*—*Re CITIZEN’S COAL & FORWARDING CO.* (Ont.), [1927] 4 D. L. R. 275.—CAN.

PART III. SECT. 30, SUB-SECT. 3.—  
D. (d) i.

3801 i. — — — *Interested directors & shareholders.*—Directors & other shareholders, implicated in a breach of trust with respect to the co.’s property, are not entitled to use their votes at a general meeting, called for the purpose of deciding whether the co.’s name be retained as pltf. or struck out in an action begun in the name of the co. & in that of a shareholder suing on behalf of himself & all other shareholders with respect to such breach.—*LEAVENS & CANADA NATIONAL FIRE INSURANCE CO. v. GREAT WEST PERMANENT LOAN CO.* (No. 2) (Man.), [1927] 3 W. W. R. 486.—CAN.

PART III. SECT. 30, SUB-SECT. 3.—  
D. (d) iii.

sq. *No amendment of vote—After vote cast.*—*BARBER, ETC. v. NEW ZEALAND SOUNDS HYDRO ELECTRIC CONCESSIONS, LTD.*, [1927] N. Z. L. R. 589.—N.Z.

L. J. Ch. 201; 133 L. T. 227; 41 T. L. R. 414; 69 Sol. Jo. 446.

3878. Before this case insert "*Compare* CORPORATIONS, Vol. XIII., p. 346."

3880. *Add. Annotation*:—As to (1) *Reid. Cox v. National Union of Foundry Workers of Great Britain & Ireland* (1928), 44 T. L. R. 345.

3881a. ———.]—*SPILLER v. MAYO (RHODESIA) DEVELOPMENT CO. (1908), LTD., [1926] W. N. 78.*

3882. *Add. Annotation*:—*Reid. Neuschild v. British Equatorial Oil Co., [1925] Ch. 846.*

3882a. ——— *Re-election of retiring director.*]—*SPENCER v. KENNEDY, No. 2879a, ante.*

3890. *Add. Annotation*:—*Consd. Houghton v. Nothard, Lowe & Wills, [1927] 1 K. B. 246.*

3917. *Add. Annotation*:—As to (2) *Reid. Glanvill, Enthoven v. I. R. Comrs. (1924), 131 L. T. 818.*

3925. *Add. Annotation*:—*Consd. B. v. Cory, [1927] 1 K. B. 810.*

3934a. *Locality of debt created.*]—A British co. held shares in another British co. which had its head office & board of directors in Australia, though it had a London committee for registering transfers of shares & issuing certificates. The co. having declared a dividend:—*Held*: as the co. holding the shares was resident in England & the local habitation of the shares was in England, the debt created by the declaration of a dividend was situate in England.—*PASS v. BRITISH TOBACCO CO. (AUSTRALIA), LTD. (1926), 42 T. L. R. 771; sub nom. LONDON & SOUTH AMERICAN INVESTMENT TRUST, LTD. v. BRITISH TOBACCO CO. (AUSTRALIA), LTD., [1927] 1 Ch. 107; 96 L. J. Ch. 58; 136 L. T. 436; 70 Sol. Jo. 1024.*

3947. *Add. Annotation*:—*Reid. Weld v. Petre (1928), 97 L. J. Ch. 399.*

3948. *Add. Annotation*:—*Reid. Re A Debtor, [1927] 1 Ch. 410.*

3954. *Add. Annotation*:—*Mentd. Re City Equitable Fire Insce. (1924), 40 T. L. R. 664.*

3959a. *Arrears of dividend—Distribution.*]—The memorandum of assocn. of a co. provided for the payment on the ordinary shares of the co. of a cumulative dividend not exceeding 5 per cent. *per annum* & for any balance of profits being applied for the benefit of a garden city or its inhabitants. Art. 129 of the arts. of assocn. provided that, subject to the rights of holders of debentures & preference shares, the net profits of the co., after providing for a reserve fund & for depreciation, "shall be divided by way of dividend among the members in proportion to the amount paid on the ordinary shares

held by them respectively, but so that the dividends upon the ordinary shares for any year shall not exceed the aggregate rate of 5 per cent. *per annum*. The surplus of the net profits of the co. after payment of such dividends & the amount necessary to make up dividends for past years to the rate of 5 per cent. *per annum* shall be applied" for the benefit of the town or its inhabitants as therein mentioned. The co. from time to time over a number of years issued ordinary shares. From 1904 to 1917 no dividend was paid on the ordinary shares, & it was only since 1923 that a full dividend of 5 per cent. had been paid. There were now profits available for payment of arrears of dividend, after payment of the dividend for the current year, but not sufficient to pay the whole of the arrears:—*Held*: the fund available should be distributed ratably among the shareholders according to the respective amounts of the arrears of dividend payable on the shares held by them respectively.—*FIRST GARDEN CITY v. BONHAM-CARTER, [1928] Ch. 53; 97 L. J. Ch. 52; 138 L. T. 222.*

3984. *Add. Annotations*:—*Consd. Re Speir, Holt v. Speir, [1924] 1 Ch. 359; I. R. Comrs. v. Fisher's Exors., [1926] A. C. 395. Folld. I. R. Comrs. v. Wright (1926), 95 L. J. K. B. 982; Re Taylor, Waters v. Taylor, [1926] Ch. 923. Distd. Re Bates, Mountain v. Bates, [1928] Ch. 682; Parker v. Chapman (1928), 138 L. T. 729. Reid. I. R. Comrs. v. Burrell, [1924] 2 K. B. 52; I. R. Comrs. v. Doncaster (1924), 93 L. J. K. B. 338; Re Railways Act, 1921, Re Standard Charges Schedule (1925), 94 L. J. K. B. 364.*

3988a. ———.]—*THORNYCROFT (J. I.) & Co., LTD. v. THORNYCROFT (1927), 44 T. L. R. 9.*

3990. *Add. Annotation*:—*Reid. Pass v. British Tobacco Co. (Australia) (1926), 42 T. L. R. 771.*

3991. *Add. Annotation*:—*Consd. Collaroy Co. v. Giffard, [1928] Ch. 144.*

3992. *Add. Annotation*:—*Consd. Collaroy Co. v. Giffard, [1928] Ch. 144.*

3993. *Add. Annotation*:—*Consd. Collaroy Co. v. Giffard, [1928] Ch. 144.*

3994. *Add. Annotation*:—*Consd. First Garden City v. Bonham-Carter, [1928] Ch. 53.*

4007. *Add. Annotation*:—*Mentd. Re City Equitable Fire Insce., [1925] Ch. 407.*

4019. *Add. Citation*:—93 L. J. Ch. 49.

4020. *Add. Annotations*:—As to (1) *Reid. I. R. Comrs. v. Fisher's Exors., [1926] A. C. 395. As to (2) Reid. British America Nickel Corp'n. v. O'Brien, [1927] A. C. 369.*

### PART III. SECT. 30, SUB-SECT. 3.—G.

3997 i. *When court will interfere—To summon meeting.*]—If on an application to strike out the name of a co. which has been used as pltf. without authority, there is any reasonable doubt as to the wishes of the shareholders, the ct. has power to order the directors to summon forthwith a general meeting of the shareholders to ascertain their wishes.—*LEAVENS v. GREAT WEST PERMANENT LOAN CO., [1927] 2 W. W. R. 606; 36 Man. L. R. 606.—CAN.*

### PART III. SECT. 30, SUB-SECT. 7.—B.

3935 ii. ——— *Resolution sufficient—Bye-law unnecessary.*]—*JAMES v. BEAVER CONSOLIDATED MINES, LTD.,*

[1927] 3 D. L. R. 163; 60 O. L. R. 420.—CAN.

### PART III. SECT. 30, SUB-SECT. 7.—D. (a).

sb. *General rule.*]—A co. cannot realise its entire assets &, having set aside an amount to its nominal capital & discharged its liabilities, divide the surplus as income or profits under the guise of declaring a dividend.—*DAVISON v. KING, [1926] N. I. 1.—IR.*

### PART III. SECT. 30, SUB-SECT. 7.—G. (a).

q1. ——— *Valid.*]—A co. purported to allot unissued shares to a director in consideration of his services to the

co.:—*Held*: there being a surplus available for distribution by way of dividend among the shareholders, it was open to the co. to deal with the surplus as they thought fit, & the shares were validly issued.—*Re DORNWENDS, LTD., [1924] 3 D. L. R. 118; 55 O. L. R. 413.—CAN.*

si. *Allotment of shares held in another company—Validity.*]—*JAMES v. BEAVER CONSOLIDATED MINES, LTD., [1927] 3 D. L. R. 163; 60 O. L. R. 420.—CAN.*

### PART III. SECT. 30, SUB-SECT. 7.—I.

3991 i. *Rights of shareholders of cumulative preference shares—Company in liquidation.*]—*Re NEW ZEALAND HARDWARE CO., LTD., [1926] N. Z. L. R. 76.—N.Z.*



**4023a.** — Writing back to profit account—Profits written off in excess of requirements.]—A co. which applies its profits in writing off a corresponding amount of the value of the goodwill, instead of carrying them to a goodwill depreciation reserve fund, but which has not finally & unreservedly capitalised those profits, may write back to profit account so much of the depreciation written off goodwill as proves to be in excess of proper requirements.—**STAPLEY v. READ BROTHERS, LTD.**, [1924] 2 Ch. 1; 93 L. J. Ch. 513; 131 L. T. 629; 40 T. L. R. 442; 68 Sol. Jo. 519.

**4026.** *Add. Annotations*:—**Reid. Parker & Cooper v. Reading & James** (1926), 96 L. J. Ch. 23; **Kerr v. Marine Products** (1928), 44 T. L. R. 292.

**4028.** *Add. Annotation*:—**Mentd. Messenger v. British Broadcasting Co.**, [1927] 2 K. B. 543.

**4035.** *Add. Annotation*:—**Reid. Deuchar v. Gas Light & Coke Co.**, [1924] 2 Ch. 426.

**4037.** *Add. Annotation*:—**Reid. Deuchar v. Gas Light & Coke Co.**, [1924] 2 Ch. 426.

**4037a.** —.]—**PARKER & COOPER, LTD. v. READING**, No. 3160a, *ante*.

**4050a.** — Under agreement—To repurchase shares—Allotted in consideration of advance to company—Lender requiring repayment of loan.]—Pltf., with the view to assist his son-in-law in obtaining the appointment of business manager of a limited co. of which the two defts. were directors & shareholders, entered into a written agreement with the co. & defts. to advance to the co. a sum of £1,500 by the purchase of 1,500 £1 preference shares of the co., the repayment of that sum being secured by the co.'s undertaking, in the event of pltf. or his son-in-law terminating that agreement, to procure the repurchase of the shares at par & to secure the purchase money therefor by accepting bills drawn by pltf.; & in that arrangement the two defts. joined as sureties guaranteeing the due performance by the co. of its part of the agreement. Pltf., accordingly, advanced £1,500 to the co., & accepted transfers from the co. of the same number of its preference shares. Upon the son-in-law desiring to withdraw from the managership, pltf. in pursuance of a power in that behalf contained therein gave the co. notice to terminate the agreement & required the co. to procure the repurchase of the shares & to accept his bills for £1,500; but the co. refused to comply with those requirements & denied liability under the agreement on the ground that the performance of it would involve a purchase by the co. of its own shares, & would there-

fore be *ultra vires* & illegal. In an action against defts. under their guarantees:—**Held**: the agreement, having been entered into between the parties in good faith & in the honest belief that it was *intra vires* & legal, the defence that the agreement was, upon the grounds above mentioned, *ultra vires* the co. & therefore unenforceable could not be maintained; & pltf. was entitled to judgment for £1,500 with interest.—**GARRARD v. JAMES**, [1925] 1 Ch. 816; 94 L. J. Ch. 234; 133 L. T. 261; 69 Sol. Jo. 622.

**4072a.** — Subscribing towards costs of litigation between members—Company for protection of interests of medical practitioners.]—**BLOXHAM v. MEDICAL DEFENCE UNION, LTD.** (1894), 10 T. L. R. 384; 38 Sol. Jo. 288, C. A.

**4074.** After this case for “—” remuneration of directors.]” read “—Remuneration—Of directors.]”

**4080.** *Add. Annotation*:—**Reid. British Insulated & Helsby Cables v. Atherton**, [1926] A. C. 205.

**4087.** *Add. Annotation*:—**Reid. British America Nickel Corp. v. O'Brien**, [1927] A. C. 369.

**4094.** *Add. Annotations*:—**Consd. Kreditbank Cassel G. m. b. H. v. Schenkers**, [1927] 1 K. B. 826. **Reid. Underwood v. Bank of Liverpool**, **Underwood v. Barclays Bank**, [1924] 1 K. B. 775; **Houghton v. Nothard, Lowe & Wills**, [1927] 1 K. B. 246; **Liggett (Liverpool) v. Barclays Bank**, [1928] 1 K. B. 48.

**4095a.** —.]—Deft. bank negligently & in breach of the instructions given by their customer, pltf. co., paid cheques drawn on the co.'s account signed by one director only:—**Held**: the bank being put on inquiry & being negligent, as the jury found, were not entitled to rely on the rule in *Royal British Bank v. Turquand*, No. 4094, & assume that a signature purporting to be that of a new director was that of a person duly appointed.—**LIGGETT (B.) (LIVERPOOL), LTD. v. BARCLAYS BANK, LTD.**, [1928] 1 K. B. 48; 97 L. J. K. B. 1; 137 L. T. 443; 43 T. L. R. 449.

*Annotation*:—**Reid. Lloyds Bank v. Chartered Bank of India, Australia & China** (1928), 97 L. J. K. B. 609.

**4104a.** — — — Disputes between directors.]—**STANFIELD v. GIBBON**, [1925] W. N. 11.

**4108.** *Add. Annotations*:—**Mentd. Schneiders v. Abrahams**, [1925] 1 K. B. 301; **Clark v. Westaway**, [1927] 2 K. B. 597.

**4117a.** — — —.]—**PARKER & COOPER, LTD. v. READING**, No. 3160a, *ante*.

**4129.** *Add. Annotation*:—**Reid. Leyton U. D. C. v. Wilkinson**, [1927] 1 K. B. 853.

**4142.** *Add. Annotation*:—**Reid. British Thomson-**

**PART III. SECT. 31, SUB-SECT. 2.—B.**  
n1. — — —.]—**Re INRIG SHOE CO.**, [1924] 4 D. L. R. 625; 5 C. B. R. 157.—CAN.

**4051 II.** — — —.]—It is not *ultra vires* a co. to receive a transfer of its shares to itself in compromise of an action. At least the co. is estopped from setting up such a plea after taking the benefit of the compromise.—**Re E. J. LANE, LTD., Exp. MILLIGAN**, [1924] 1 D. L. R. 269; 4 C. B. R. 308.—CAN.

**4051 III.** — — —.]—**KNECHTEL MOTOR CO., LTD. v. WORDEN (Sask.)**, [1923] 2 D. L. R. 839; [1923] 2 W. W. R.

**PART III. SECT. 31, SUB-SECT. 3.—I.**  
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money to secure payment of a debt owing to the assignee by another co., with which the assignor co. had no prior or contemporaneous agreement:—**Held**: the co.'s memorandum of assocn. gave it no such power.—**ABBOTSFORD LUMBER CO. v. STEVENSON**, [1925] 4 D. L. R. 560; [1925] 3 W. W. R. 451.—CAN.

**PART III. SECT. 31, SUB-SECT. 3.—C.**  
**4083 III.** — — —.]—**Re PACIFIC COAST COAL MINES, LTD. & (B. C.)**, [1926] 4 D. L. R. 759; [1926] 3 W. W. R. 378.—CAN.

**PART III. SECT. 31, SUB-SECT. 3.—D.**  
**4094 I.** *Presumption that powers*

*properly exercised*.]—The president & manager of a co., who was personally indebted to a bank, informed it that the co. was indebted to him for salary, & the bank induced him to give it the co.'s note made payable to him & indorsed to the bank. In an action on the note the co. contended that there was no debt due to the manager because no resolution authorising payment of a salary to him had been passed:—**Held**: the passing of such resolution was a matter of internal management, & the bank was not bound to see that it had been passed.—**CANADIAN BANK OF COMMERCE v. PIONEER FARM CO., LTD. & HALL (Sask.)**, [1927] 4 D. L. R. 772; [1927] 3 W. W. R. 312.—CAN.



- Houston Co. v. Sterling Accessories, Same v. Crowther & Osborn, [1924] 2 Ch. 33.
4144. *Add. Annotation*:—*Consd. Havana Cigar & Tobacco Factories v. Oddenino*, [1924] 1 Ch. 179.
4145. *Add. Annotation*:—*Refd. Wiggins v. Lavy* (1928), 44 T. L. R. 721.
4166. *Add. Annotations*:—*Refd. Underwood v. Bank of Liverpool, Underwood v. Barclays Bank*, [1924] 1 K. B. 775; *Houghton v. Nothard, Lowe & Wills*, [1927] 1 K. B. 246; *Liggett (Liverpool) v. Barclays Bank*, [1928] 1 K. B. 48.
4170. *Add. Annotations*:—*Consd. Underwood v. Bank of Liverpool, Underwood v. Barclays Bank*, [1924] 1 K. B. 775; *Houghton v. Nothard, Lowe & Wills*, [1927] 1 K. B. 246. *Refd. Kreditbank Cassel G. m. b. H. v. Schenkers*, [1926] 2 K. B. 450.
- 4170a. ————.]—*HOUGHTON & Co. v. NOTHARD, LOWE & WILLS*, No. 3157a, *ante*.
4191. *Add. Annotation*:—*Mentd. Re City Equitable Fire Insce.*, [1925] Ch. 407.
4232. *Add. Annotation*:—*Refd. Kreditbank Cassel G. m. b. H. v. Schenkers*, [1926] 2 K. B. 450.
4236. *Add. Annotation*:—*Refd. Kreditbank Cassel G. m. b. H. v. Schenkers*, [1926] 2 K. B. 450.
4237. *Add. Annotation*:—*Refd. Kreditbank Cassel G. m. b. H. v. Schenkers*, [1926] 2 K. B. 450.
4239. *Add. Annotations*:—*Consd. Underwood v. Bank of Liverpool, Underwood v. Barclays Bank*, [1924] 1 K. B. 775; *Houghton v. Nothard, Lowe & Wills*, [1927] 1 K. B. 246; *Liggett (Liverpool) v. Barclays Bank*, [1928] 1 K. B. 48.
4240. *Add. Annotation*:—*Mentd. British & North European Bank v. Zalstein*, [1927] 2 K. B. 92.
4258. *Add. Annotation*:—*Mentd. Humphrey & Denman v. Kavanagh* (1925), 41 T. L. R. 378.
4267. *Add. Annotation*:—*Apld. Houghton v. Nothard, Lowe & Wills* (1927), 44 T. L. R. 76.
4283. *Add. Annotation*:—*Refd. Isaacs v. Cook*, [1925] 2 K. B. 391.
- 4321a. *Society not for profit.*]—A provision in a memorandum of assocn. of a society not for profit, registered under 1867 Act, & authorised by the Board of Trade under sect. 23 of that Act to dispense with the word "limited," that in certain events the liability of members shall be unlimited, is not a provision in the memorandum "with respect to the objects of the co." under 1908 Act, s. 9 (1), & the cancellation of such a provision cannot be confirmed by the ct.—*Re SOCIETY FOR PROMOTING EMPLOYMENT OF WOMEN* (1927), 71 Sol. Jo. 583.
4393. *Add. Annotation*:—*As to* (1) *Refd. Re City Equitable Fire Insce.* (1924), 40 T. L. R. 664.

PART III. SECT. 31, SUB-SECT. 4.—D.

4154 i. *Whether valid.*]—*PRICE v. INDIANA-ALBERTA OIL CO.* (Alta.), [1926] 3 D. L. R. 82.—CAN.

PART III. SECT. 31, SUB-SECT. 5.—A. (b) ii.

4176 iv. ————.]—*Re RED DEER MILLING & ELEVATOR CO., STRATFORD MILL BUILDING CO.'S CLAIM* (1907), 7 W. L. R. 284; 1 Alta. L. R. 237.—CAN.

b i. ————.]—*Re RED DEER MILLING & ELEVATOR CO., STRATFORD MILL BUILDING CO.'S CLAIM* (1907), 7 W. L. R. 284; 1 Alta. L. R. 237.—CAN.

c. *Read "4178 i."*

PART III. SECT. 31, SUB-SECT. 5.—B. (a).

s i. ————.]—Before the incorporation of a co. a partner in the name of the partnership entered into an agreement with pltf., under which pltf. undertook the sale of products on a commission basis. The agreement on its face showed that pltf. was to operate on behalf of the co. then in process of incorporation:—*Held*: commissions earned after incorporation of the co. were not recoverable against the partnership; but to recover from the co. pltf. would not be bound to prove an express contract by the co., as the performance & acceptance of his services raised an implied contract to pay.—*POWER v. EDMONTON LUMBER EXCHANGE* (1920), 3 W. W. R. 10; 53 D. L. R. 468.—CAN.

a i. ————.]—*Sale of goods.*]—*Re J. R. MORGAN, LTD., Ex p. J. & G. GARMENT MFG. CO.* (Ont.), [1926] 1 D. L. R. 882; 8 C. B. R. 52.—CAN.

PART III. SECT. 31, SUB-SECT. 5.—B. (b).

4209 vii. ————.]—Prior to the incorporation of pltf. co., a document containing the terms of a proposed contract between it & deft. co. was executed & handed to the organisation committee of pltf. co. as evidence of the fact that

defts. were willing to enter into the contract as soon as pltf. co. should have become incorporated. After pltf. co. had become incorporated & received its certificate entitling it to commence business it duly executed the document, & the contract was thereafter acted on:—*Held*: pltf. co. was entitled to sue for damages for breach of such contract.—*ASSOCIATED GROWERS OF BRITISH COLUMBIA, LTD. v. BRITISH COLUMBIA FRUIT LAND, LTD.*, [1925] 1 D. L. R. 871; [1925] 1 W. W. R. 505; 34 B. C. R. 533.—CAN.

PART III. SECT. 31, SUB-SECT. 6.—A. (c).

k i. ————.]—*Solicitor.*]—*BANK OF BRITISH NORTH AMERICA v. ST. JOHN & QUEBEC RY. CO.* (N. B.) (1920), 52 D. L. R. 557.—CAN.

PART III. SECT. 31, SUB-SECT. 9.—A

p i. ————.]—*Held*: (1) 1908 Act, s. 9, did not limit alteration of the memorandum of assocn. to an alteration of the objects clause, inasmuch as the whole objects of a co. were not necessarily contained in that clause; (2) a proposed alteration being designed for the better attainment of the objects of the co., a petition for confirmation of the alteration should be granted.—*INCORPORATED GLASGOW DENTAL HOSPITAL v. LORD ADVOCATE*, [1927] S. C. 400.—SCOT.

q i. ————.]—*Incorporation abroad.*]—A co., registered under Cos. Acts, presented a petition for an alteration of its memorandum of assocn. by the addition of a power "to procure the co. to be incorporated, registered, or recognised in any foreign country." The ct., while sanctioning the power to procure the registration or recognition of the co. in a foreign country, refused to confirm the power to procure its incorporation there.—*Re TAYSIDE FLOORCLOTH CO., LTD.*, [1923] S. C. 590.—SCOT.

4308 iv. ————.]—A cemetery co. sought additional power to act as "stone & marble cutters, masons, quarriers & sculptors, florists, gardeners,

& undertakers." The ct., in the absence of evidence of any convenience or advantage to the co., restricted the new powers by limiting them to powers to be used in connection with, & as incidental to, the co.'s main business of cemetery owners.—*EDINBURGH SOUTHERN CEMETERY CO., LTD.*, [1923] S. C. 867.—SCOT.

r i. ————.]—A co. sought the addition of a power to sell, let on rent, or lease the undertaking of the co., or any branch or part thereof. The ct. restricted the power to any branch or part of the undertaking . . . being an adjunct to the main undertaking.—*Re TAYSIDE FLOORCLOTH CO., LTD.*, [1923] S. C. 590.—SCOT.

PART III. SECT. 32, SUB-SECT. 1.—C.

q i. ————.]—Deft. co. bought land from pltf., & in payment therefor transferred to pltf. a block of shares in another co., agreeing to re-purchase from pltf. at a fixed price, on or before a fixed day, the shares, or as many of them as should not have been previously sold or transferred by pltf.:—*Held*: the agreement to re-purchase was *ultra vires* deft. co. as Cos. Act, s. 44, expressly prohibits a purchase of shares in another co.—*GRANT v. DOMINION LOOSE LEAF CO.* (1924), 56 O. L. R. 43.—CAN.

PART III. SECT. 32, SUB-SECT. 2.—B. (a).

4401 i. ————.]—*Under power in memorandum—For shares in another company.*]—Such sale does not necessarily involve winding up, & where the directors' authority is derived from a vote of the shareholders, a majority vote is sufficient.—*HEMSTREET v. NORTH WEST BISCUIT CO.*, [1926] 2 D. L. R. 829; [1926] 2 W. W. R. 150; 22 Alta. L. R. 233.—CAN.

g i. ————.]—*Land acquired for carrying on company's underlaking—Companies Act, R. S. O., 1914 (c. 178), s. 24.*]—*Re ALLAN BROWN'S, LTD. & DRYALL*, [1927] 2 D. L. R. 991; 60 O. L. R. 267.—CAN.

4403. *Add. Annotations*:—*Reid. Wilts & Somerset Farmers*, [1928] Ch. 809. *Mentd. Agricultural Wholesale Soc. v. Biddulph & District Agricultural Soc.*, [1925] Ch. 769.

4427. *Add. Annotation*:—*Consd. Agricultural Wholesale Soc. v. Biddulph & District Agricultural Soc.*, [1925] Ch. 769.

4458. *Add. Annotations*:—*Reid. Russian Commercial & Industrial Bank v. Comptoir d'Escompte de Mulhouse, Banque Internationale De Commerce De Petrograd v. Goukassow* (1924), 40 T. L. R. 837; *Swedish Central Ry. v. Thompson*, [1924] 2 K. B. 255; *Todd v. Egyptian Delta Land & Investment Co.*, [1928] 1 K. B. 152. *Mentd. Bohemian Union Bank v. Austrian Property Administrator*, [1927] 2 Ch. 175; *Todd v. Egyptian Delta Land & Investment Co.* (1927), 96 L. J. K. B. 554.

4524. For this number read "4525."

4525. For this number read "4524."

4526. *Add. Annotations*:—*Reid. Reckitt v. Barnett, Pembroke & Slater*, [1928] 2 K. B. 244. *Mentd. Auchteroni v. Midland Bank*, [1928] 2 K. B. 294.

4568. *Add. Annotation*:—*Mentd. Deuchar v. Gas Light & Coke Co.*, [1925] A. C. 691.

4571. *Add. Annotation*:—*Mentd. Re Railways Act, 1921, Re Standard Charges Schedule* (1925), 94 L. J. K. B. 364.

4607. *Add. Annotation*:—*Consd. Garrard v. James*, [1925] Ch. 616.

4623. *Add Annotations*:—*As to (2) Consd. Kreditbank Cassel G. m. b. H. v. Schenkers*, [1927] 1 K. B. 826. *Reid. Underwood v. Bank of Liverpool, Underwood v. Barclays Bank*, [1924] 1 K. B. 775; *Houghton v. Nothard*,

*Lowe & Wills*, [1927] 1 K. B. 246; *Liggett (Liverpool) v. Barclays Bank*, [1928] 1 K. B. 48.

4625. *Add Annotations*:—*As to (1) Consd. Underwood v. Bank of Liverpool, Underwood v. Barclays Bank*, [1924] 1 K. B. 775. *Reid. Houghton v. Nothard, Lowe & Wills*, [1927] 1 K. B. 246; *Liggett (Liverpool) v. Barclays Bank*, [1928] 1 K. B. 48.

4630. *Add. Annotation*:—*As to (2) Reid. Houghton v. Nothard, Lowe & Wills*, [1927] 1 K. B. 246.

4637. *Add. Annotation*:—*Reid. Lemon v. Austin Friars Investment Trust*, [1926] Ch. 1.

4637a. *Whether certificate securing income stock is debenture.*—Defts., a limited co., issued certificates for securing income stock, & a certificate was issued to pl'ts. whereby the co. certified that it was ind. to them in a certain amount. The certificate stated that three-fourths of the net profits of the co. in each year or a sum equal thereto were to be applied in paying off the income stock *pari passu*. Under conditions indorsed on each certificate a register of the certificates was to be kept at the co.'s registered office, wherein would be entered the names & addresses of the registered holders & particulars of the certificates held by them & by clause 9 of the conditions the rights of the holders might be modified with the consent of the holders of three-fourths in value of the certificates. Pl'ts. were refused inspection of the register, & brought an action for an injunction to restrain defts. from interfering with their right, under 1908 Act, s. 102, to inspect the register:—*Held*: the certificates were debentures within the sect., & pl'ts.

PART III. SECT. 32, SUB-SECT. 2.—  
B. (c).

o i. —. —.]—*DADSON v. GREST* (Sask.), [1927] 3 D. L. R. 530.—CAN.

PART III. SECT. 33, SUB-SECT. 3.—A.

e i. —. —.]—Deft. "as the largest shareholder" of a co. claimed damages for false representations made as to the business of the co., which had the effect of depriving the co. of its clients:—*Held*: the cause of action alleged was not defamation but an *injuria* done merely to the co., for which the co., & not an individual shareholder, was entitled to sue.—*GOODALL v. HOOGENDOORN, LTD.*, [1926] App. D. 11.—S. AF.

p i. —. —.]—A shareholder suing on behalf of himself & all other shareholders can maintain an action alleging illegal use of the co.'s money, when it clearly appears that an application to the co. to authorise such an action would be futile.—*HOUSTON v. VICTORIA MACHINERY DEPOT, LTD.*, [1924] 2 D. L. R. 657; 33 B. C. R. 425.—CAN.

q i. —. —.]—*FARRELL v. MAGIC SILVER-BLACK FOX CO.*, [1924] 3 D. L. R. 132.—CAN.

t i. *Using company's name as plaintiff*—*No authority to use name—Doubt as to wishes of shareholders.*—If on an application to strike out the name of a co. which has been used as pl'tf. without authority, there is any reasonable doubt as to the wishes of the shareholders, the name will be allowed to remain until their wishes are ascertained.—*LEAVENS v. GREAT WEST PERMANENT LOAN CO.*, [1927] 2 W. W. R. 606; 36 Man. L. R. 606.—CAN.

PART III. SECT. 33, SUB-SECT. 13.—  
A. (b) ii.

sr. "Credible testimony" in-  
J.S.

*ability to pay—What is.*—In an action for reduction of a lease, brought by a co., defender was assoltized & obtained an award of expenses. Pursuers having reclaimed, defender, founding upon an unfavourable balance-sheet of pursuers which was about a year old, moved that pursuers should be required to find caution for expenses under 1908 Act, s. 278. The ct. refused the motion, as it did not appear by "credible testimony" that pursuers would be unable to pay defender's expenses if he were successful in respect that a later balance-sheet showed that the financial depression from which pursuers had been suffering was passing off, & further, in respect that pursuers had a responsible directorate & a profitable record in the past, & that there was no suggestion that any creditor was pressing them for payment which he was unable to get.—*EDINBURGH ENTERTAINMENTS, LTD. v. STEVENSON*, [1925] S. C. 848.—SCOT.

PART III. SECT. 34, SUB-SECT. 1.—  
A. (a).

4569 ii. —.]—*ZIMMERMAN v. ANDREW MOTHERWELL OF CAN., LTD. (TRUSTEE)* (1925), 3 D. L. R. 953; 3 W. W. R. 42.—CAN.

PART III. SECT. 34, SUB-SECT. 1.—  
A. (b).

sd. *Co-operative livestock company incorporated under Companies Act.*—*Held*: to have power to borrow.—*CANADIAN BANK OF COMMERCE v. JOHNSON* (Alta.), [1926] 4 D. L. R. 1179; [1926] 3 W. W. R. 613.—CAN.

PART III. SECT. 34, SUB-SECT. 1.—B.

sk. *Power to borrow & raise money—Mortgage.*—*Held*: a mtge. over part of a co.'s real estate as security for a loan was justified.—*UNIQUE PRO-*

*PERTIES, LTD. v. ENDEAN*, [1927] N. Z. L. R. 244.—N.Z.

PART III. SECT. 34, SUB-SECT. 2.—A.

sm. *Agreement postponing lien of bondholders to lien of lender—Agreement not signed by all bondholders.*—*Held*: binding on the bondholders.—*GREENE v. RUGGLES* (1891), 31 N. B. R. 679.—CAN.

PART III. SECT. 34, SUB-SECT. 2.—  
C. (a) ii.

m i. —.]—*MERCHANTS BANK OF CANADA v. HANCOCK* (1884), 6 O. R. 285.—CAN.

PART III. SECT. 34, SUB-SECT. 2.—  
C. (b) i.

r i. — *Issue before prospectus filed.*—*MARTIN v. CLARKSON*, [1926] 3 D. L. R. 29; 58 O. L. R. 618; 7 C. B. R. 619.—CAN.

PART III. SECT. 34, SUB-SECT. 2.—  
C. (b) ii.

k i. —. —.]—Persons lending money to a co. have a right to assume that the essentials of internal management have been carried out by the co.—*MARTIN v. CLARKSON*, [1925] 4 D. L. R. 232; 57 O. L. R. 499; 5 C. B. R. 835.—CAN.

PART III. SECT. 34, SUB-SECT. 2.—  
C. (c).

m i. —.]—Where debentures were issued before the co. had filed a prospectus:—*Held*: even if the debentures were not valid in the hands of the debenture-holder, they were valid in the hands of the pledgee to whom they had been assigned.—*MARTIN v. CLARKSON*, [1926] 3 D. L. R. 29; 58 O. L. R. 618; 7 C. B. R. 619.—CAN.



were entitled to the injunction.—*LEMON v. AUSTIN FRIARS INVESTMENT TRUST, LTD.*, [1926] Ch. 1; 95 L. J. Ch. 97; 133 L. T. 790; 41 T. L. R. 629; 69 Sol. Jo. 762, C. A.

4639. *Add. Annotation*:—*Reid*. Fenton Textile Assocn. v. Lodge, [1928] 1 K. B. 1.

4666. *Add. Annotation*:—*Mentd.* Guatemala (Republica de) v. Nunez (1926), 95 L. J. K. B. 955.

4676. *Add. Annotation*:—*Reid*. Fenton Textile Assocn. v. Lodge, [1928] 1 K. B. 1.

4688a. ——— Refusal to give information to debenture-holders—Acquisition of debentures from cestuis que trust at inadequate prices.]—*Re MAGADI SODA CO., LTD.*, No. 7409a, post.

4690. *Add. Annotation*:—*Reid*. *Re* Automatic Bottle Makers, Osborne v. Automatic Bottle Makers, [1926] Ch. 412.

4697. *Add. Annotation*:—*As to* (2) *Reid*. National Provincial Bank of England v. Charnley (1923), 93 L. J. K. B. 241.

4698. *Add. Annotation*:—*Reid*. Earle v. Hemsworth R. D. C. (1928), 44 T. L. R. 605.

4699a. Effect of section—Redemption of debenture—Remedies of liquidator.]—A co., which had become insolvent, issued to a trustee, as security for some of their debts, a debenture which was to rank as a first charge on the co.'s assets & as a floating security only. Subsequently the co. sold the goodwill of its business, & out of the proceeds paid to the trustee the amount required to discharge the debenture. Within three months from the issue of the debenture a different creditor of the co. obtained a winding-up order. The liquidator took out a summons to set aside the charge created by the debenture & to recover the money paid under it:—*Held*: though under 1908 Act, s. 212, the charge was invalid, the amount paid could not be recovered on the summons, but it would be open to the liquidator either to apply to set aside the payment as a fraudulent preference within sect. 210, or to question the validity of the debenture on any other ground.—*Re PARKES GARAGE (SWADLINCOTE), LTD.* (1928), 45 T. L. R. 11, D. C.

4700. *Add. Annotation*:—*Consd.* *Re* Lloyd's Furniture Palace, Evans v. Lloyd's Furniture Palace, [1925] Ch. 853.

4709a. ———.]—*Re* F. & E. STANTON, LTD., [1928] W. N. 208.

4716. *Add. Annotation*:—*Folld.* Heaton & Dugard v. Cutting, [1925] 1 K. B. 655.

4716a. ———.]—Judgment having been recovered in an action against a limited co., which had issued debentures giving a floating charge over its property, execution was issued under a *fi. fa.*, & the sheriff went into possession. In order to avoid a sale the co.'s managing director paid the judgment debt & costs, whereupon the sheriff withdrew. Thereafter, & before the sheriff paid the amount of the debt & costs to the execution

creditors, the debenture-holders in deft. co. appointed a receiver, who claimed to be entitled to the money in the hands of the sheriff:—*Held*: the money was paid to the sheriff as a debt owing by defts. to the execution creditors, who were therefore entitled to retain it as against the receiver.—*HEATON & DUGARD, LTD. v. CUTTING BROTHERS, LTD.*, [1925] 1 K. B. 655; 94 L. J. K. B. 673; 133 L. T. 41; 41 T. L. R. 286, D. C.

4730a. ——— Floating charge over part of assets already charged.]—Where a debenture trust deed, creating a general floating charge over all the undertaking & assets of the co. both present & future, reserves power to the co. in the ordinary course of its business to create specific charges over any of those assets, then although a second general floating charge over all the property comprised in the first charge but ranking *pari passu* with or in priority to that charge, is, under the general law, incompatible with the first charge & ranks subject to it, yet there is no principle of law which forbids the creation of a second floating charge over part only of those assets ranking *pari passu* with, or in priority to, the earlier floating charge, so long as the later floating charge is within the limits of the power reserved.

A debenture trust deed created a general floating charge over all its undertaking & assets both present & future, but reserved to the co. power to create in priority to that charge such mtges. or charges as the co. should think proper "by the deposit of any dock warrants, bills of lading, or other similar commercial documents, or upon any raw materials, or finished or partly finished products & stock for the purpose of raising money in the ordinary course of the business of the co." In pursuance of the power & in the course & for the purposes of its business, the co. raised £12,000 & secured payment thereof by charging all the before-mentioned documents, materials & stock, both present & future, by way of a floating security to rank in priority to the floating charge created by the trust deed:—*Held*: the power reserved to the co., except as to subject-matter & purpose, was unlimited; it enabled the co. to choose the form of a floating charge, if required, & the second charge was valid & entitled to priority over the first charge.—*Re AUTOMATIC BOTTLE MAKERS, OSBORNE v. AUTOMATIC BOTTLE MAKERS*, [1926] Ch. 412; 95 L. J. Ch. 185; 134 L. T. 517; 70 Sol. Jo. 402, C. A.

4740. *Add. Annotation*:—*Mentd.* Earle v. Hemsworth R. D. C. (1928), 44 T. L. R. 605.

4755. *Add. Annotations*:—*As to* (1) *Reid*. Kreditbank Cassel G. m. b. H. v. Schenkers, [1926] 2 K. B. 450. *Generally*, *Reid*. Houghton v. Nothard, Lowe & Wills, [1927] 1 K. B. 246. *Mentd.* Underwood v. Bank of Liverpool, Underwood v. Barclays Bank, [1924] 1 K. B. 775.

PART III. SECT. 34, SUB-SECT. 3.—  
A. (b) i.

p 1. ——— Whether misfeasance claims included.]—Where a debenture purports to create a charge on "the undertaking of the co. & all its property present & future including uncalled capital," misfeasance claims are included in such charge.—*Re BUICK*

SALES, LTD., [1926] N. Z. L. R. 24.  
N.Z.

PART III. SECT. 34, SUB-SECT. 3.—  
C. (a).

1. Mortgage of specific assets.]—A co. deposited & pledged with & to a bank as security for repayment of a loan all the liquid assets, including stock-in-process now or at any time

hereafter to be stored by the co. in its godowns, the keys of which had been delivered to the bank:—*Held*: the charge was not a floating charge, but a mtge. of specific assets, with a licence to the mtgor. to dispose of them in the course of the business subject to prescribed conditions.—*BANK OF BARODA, LTD. v. H. B. SHIVDASANI* (1926), 1 L. R. 50 Bom. 547.—IND.



4758. *Add. Annotation*:—*Mentd. Earle v. Hems-worth R. D. C.* (1928), 44 T. L. R. 605.

4781. *Add. Citations*:—93 L. J. Ch. 27; 130 L. T. 93.

4783a. *Delay in issue to retain credit.*—Where a co. agrees to issue debentures to a creditor as security for past & future loans, but delays issuing them for a considerable time in order to retain its credit with its other creditors, the debentures are not voidable under 18 Eliz. c. 5, when the co. goes into liquidation.—*Re LLOYD'S FURNITURE PALACE, LTD., EVANS v. LLOYD'S FURNITURE PALACE, LTD.*, [1925] Ch. 853; 95 L. J. Ch. 140; 134 L. T. 241; [1926] B. & C. R. 29.

Under "Right to inspect register of debenture holders & have copies."—See 1908 Act, s. 102," add as follows:—

4808. *Add. Annotation*:—*Distd. Re Automatic Bottle Makers, Osborne v. Automatic Bottle Makers*, [1926] Ch. 412.

4809. *Add. Annotation*:—*Consd. Re Automatic Bottle Makers, Osborne v. Automatic Bottle Makers*, [1926] Ch. 412.

4825a. —.]—*LEMON v. AUSTIN FRIARS INVESTMENT TRUST, LTD.*, No. 4637a, *ante*.

4858. *Add. Annotation*:—*Consd. British America Nickel Corp. v. O'Brien*, [1927] A. C. 369.

4858a. —.]—A co. issued mtge. bonds secured by a trust deed, which gave power to a majority of the bondholders, consisting of not less than three-fourths in value, to sanction any modification of the rights of the bondholders. A scheme for reconstruction of the co. provided for the mtge. bonds being exchanged for income bonds subject to an issue of first income bonds; also that a committee, one only of whom was to be appointed by the mtge. bondholders, should have power to modify the scheme without confirmation by the bondholders. The scheme was sanctioned by the majority of the bondholders requisite under the trust deed. The required majority would not have been obtained but for the vote of the holder of a large number of bonds, whose support of the scheme was obtained by the promise of a large block of ordinary stock, an arrangement which was not mentioned in the scheme:—*Held*: the resolution was invalid, both because the bondholder in voting had not treated the interest of the whole class of bondholders as the dominant consideration, & because the scheme, so far as it provided for a committee, was *ultra vires*.—*BRITISH AMERICA NICKEL CORPN. v. O'BRIEN*, [1927] A. C. 369; 96 L. J. P. C. 57; 136 L. T. 615; 43 T. L. R. 195, P. C.

4872a. — *Redemption at figure below par but above market price.*—*MEADE-KING v. USHER'S WILTSHIRE BREWERY, LTD.* (1928), 44 T. L. R. 298.

4883. *Add. Annotation*:—*Reid. Jacobs v. Batavia & General Plantations Trust*, [1924] 2 Ch. 329.

PART III. SECT. 34, SUB-SECT. 3.—I. *st. Grounds for allowing or refusing—Under Sale of Shares Act, 1910 (c. 15).*—*Re SALE OF SHARES ACT, UNITED GRAIN GROWERS, LTD.'S CASE* (Sask.), [1918] 3 W. W. R. 92.—CAN.

PART III. SECT. 34, SUB-SECT. 4.—A. (a).

4920 III. —.]—*Re HOLMES*

(SAMUEL), LTD. (1923), 58 I. L. T. 9.—IR.

PART III. SECT. 34, SUB-SECT. 4.—B. (b).

*sw. Agreement to give security.*—Deft. co., having agreed to purchase from pltf. co. a motor, paid £100 on delivery, & agreed to give security over the motor for the balance, & a bill of

4904a. *After twenty years—Reference to debentures in company's published accounts.*—A co. at various dates between 1890 & 1902 issued debentures payable within two years, but paid no part of the principal or interest. The co.'s published accounts habitually referred to the debenture debt as outstanding, & in 1925 the accounts, which were signed by two directors & the secretary, stated the amount of the arrears of interest:—*Held*: the statement in the accounts was a written acknowledgment within Civil Procedure Act, 1833 (c. 42), s. 5, & an action to recover the principal & interest was not barred by the twenty years limitation fixed by sect. 3 of that Act.—*Re ATLANTIC & PACIFIC FIBRE IMPORTING & MANUFACTURING CO., LTD., BURNHAM (VISCOUNT) v. ATLANTIC & PACIFIC FIBRE IMPORTING & MANUFACTURING CO., LTD.*, [1928] Ch. 836; 97 L. J. Ch. 369; 44 T. L. R. 702; 72 Sol. Jo. 598.

4906. *Add. Annotation*:—*Consd. Jacobs v. Batavia & General Plantations Trust* (1924), 93 L. J. Ch. 520.

4925. *Add. Annotation*:—*Consd. Employers' Liability Assce. v. Sedgwick (Collins)* (1926), 95 L. J. K. B. 1015.

4931. *Add. Annotation*:—*Consd. National Provincial & Union Bank of England v. Charnley*, [1924] 1 K. B. 431

4933. For the paragraph in the original volume substitute the following paragraph:—

— Due registration—Particulars of property charged insufficiently entered.]—A co. with the object of securing payment of its overdraft at pltf. bank "demised" to the bank a certain leasehold factory with all the movable "plant used in or about the premises" for a term of about 996 years. The bank sent the indenture to the registrar of companies for registration under 1098 Act, s. 93. In the particulars required to be filed pursuant to that sect. the instrument was described as a mtge. of the leasehold premises, no mention being made of the chattels. The registrar entered the description of the instrument in the register in similar terms, identifying it by its date, & omitting all mention of any charge on the chattels. Subsequently the sheriff, in execution of a judgment recovered by deft. against the co., seized certain chattels of the co. upon the mortgaged premises, including certain motor vans. The bank claimed the goods in question under their mtge., & obtained from the registrar a certificate "that a mtge. or charge dated"—specifying the date & the parties to the instrument—"was registered pursuant to Cos. Act, s. 93." On an interpleader issue to try the title of the bank as against the execution creditor:—*Held*: as the certificate identified the instrument of charge, & stated that the mtge. or charge thereby created had been duly registered, it must be understood as certifying the due registration of all the charges created by the instrument,

sale was prepared, but was not executed:—*Held*: the agreement to give security had not created an equitable mtge., which, not being within the definition of "mtge." in Cos. Act, 1908, s. 130 (11), was not rendered void by that sect. by reason of non-registration.—*NEW ZEALAND SERPENTINE CO., LTD. v. HOON HAY QUARRIES, LTD.*, [1925] N. Z. L. R. 73.—N.Z.

including that of the chattels, & it was conclusive evidence of the due registration of the chattels none the less because the register in omitting to mention them was not merely defective but misleading.—*NATIONAL PROVINCIAL & UNION BANK OF ENGLAND v. CHARNLEY*, [1924] 1 K. B. 431; 93 L. J. K. B. 241; 130 L. T. 465; 68 Sol. Jo. 480; [1924] B. & C. R. 37.

4941. *Add. Annotation*:—*Generally, Refd. National Provincial & Union Bank of England v. Charnley*, [1924] 1 K. B. 431.

4975. *Add. Annotation*:—*Appld. Thomas v. Todd*, [1926] 2 K. B. 511.

4977. *Add. Annotation*:—*Refd. Fenton Textile Assocn. v. Lodge* (1927), 96 L. J. K. B. 1016.

4979. *Add. Citations*:—93 L. J. Ch. 42; 130 L. T. 178.

4979a. — *Effect of voluntary winding up.*—Where under a debenture deed in the common form made by a limited co. the debentureholder has appointed a receiver to carry on the business of the co., the authority of the receiver so to do is terminated by the voluntary winding up of the co., & on a contract thereafter made by the receiver as such he will be personally liable.—*THOMAS v. TODD*, [1926] 2 K. B. 511; 95 L. J. K. B. 808; 135 L. T. 377; 42 T. L. R. 494.

4982. *Add. Annotation*:—*Consd. Re Glyncorwg Colliery Co., Railway Debenture & General Trust Co. v. The Co.*, [1926] Ch. 951.

4982a. *Debenture containing floating charge & fixed charge—Priority given only in respect of assets subject to floating charge.*—*Re LEWIS MERTHYR CONSOLIDATED COLLIERIES, LTD., LLOYDS BANK v. LEWIS MERTHYR CONSOLIDATED COLLIERIES, LTD.*, [1928] W. N. 241.

5011a. — *Not appointed if hostile to debentureholders.*—*GILES v. NUTTALL, Re HOUSE IMPROVEMENT ASSOCN., LTD.* (1885), 78 L. T. Jo. 352, C. A.

5016. *Add. Annotation*:—*Mentd. Guatemala (Republica de) v. Nunez* (1926), 95 L. J. K. B. 955.

5036a. *Right to sue—On bills of exchange drawn by receiver—For goods supplied by company to acceptor.*—Where bills of exchange, signed by "R., Receiver, F. Ltd.," as drawer, had been accepted in respect of goods supplied by the co. to defts., & pltf. had stated that it must be "clearly understood that I am in no way accepting any liability or

responsibility whatever in respect of the orders themselves":—*Held*: the words "Receiver, F. Ltd.," were words of description only, & the bills did not purport to have been drawn on behalf of the co., & pltf. was entitled to recover against defts. upon the bills.—*KETTLE v. DUNSTER & WAKEFIELD* (1927), 138 L. T. 158; 43 T. L. R. 770.

5067a. — — —.]—Pltf. assocn. brought an action against defts., C. & Co., & L., managing director of the co. Since the matters relevant to the action the debenture-holders of C. & Co. had gone into possession under the powers of their debentures, & had appointed L. as receiver & manager. L. filed an affidavit of discovery disclosing certain documents which he declined to produce, on the ground that though he had them in his possession at the time when he was managing director of the co., he now held them as receiver & manager of the debenture-holders, & an order could not be made against C. & Co., to produce them:—*Held*: there might be documents which were such that C. & Co. itself would have the right to inspect for the purposes of the action, C. & Co. having a right to redeem them, & the right of inspection of C. & Co. could be used by pltf. assocn. as L., though an agent for the debenture-holders, was also for some purposes the agent of C. & Co.—*FENTON TEXTILE ASSOCN., LTD. v. LODGE*, [1928] 1 K. B. 1; 96 L. J. K. B. 1016; 137 L. T. 241, C. A.

5067b. *Right to sue.*—A debenture of a co. empowered the holder to appoint a receiver & manager, & provided: "A receiver & manager so appointed shall be the agent of the co. & shall have power to take possession of & get in the property hereby charged." A receiver & manager having been appointed, brought an action in the name of the co. for the rescission of an agreement by debt. for the purchase of land from the co. & forfeiture of the deposit, & alternatively for specific performance:—*Held*: the debenture empowered the receiver & manager to bring the action without the co.'s consent.—*M. WHEELER & CO., LTD. v. WARREN*, [1928] Ch. 840; 97 L. J. Ch. 486; 139 L. T. 543; 44 T. L. R. 693, C. A.

5069a. — — —.]—*FENTON TEXTILE ASSOCN., LTD. v. LODGE*, No. 5067a, *ante*.

5091. *Add. Annotation*:—*Appld. Thomas v. Todd*, [1926] 2 K. B. 511.

PART III. SECT. 34, SUB-SECT. 6.—  
B. (b) i.

4988 i. *Discretion of court—Interference by appellate court.*—*EASTERN TRUST CO. v. NOVA SCOTIA STEEL & COAL CO., LTD.*, [1927] 1 D. L. R. 421; 59 N. S. R. 123.—CAN.

PART III. SECT. 34, SUB-SECT. 6.—  
B. (b) ii.

sx. *What amounts to default in payment of interest.*—It cannot be said that there has been default until demand has been made for payment at the place, or one of the places, named in the bond for payment of interest.—*TRUSTS & GUARANTEE CO., LTD. v. DRUMHELLER POWER CO.*, [1924] 2 D. L. R. 208; [1924] 1 W. W. R. 1029.—CAN.

PART III. SECT. 34, SUB-SECT. 6.—  
O. (e).

sz. *Duty to preserve & carry on under-*

*taking as going concern.*—*NATIONAL TRUST CO. v. DOMINION IRON & STEEL CO. (N. S.)*, [1927] 3 D. L. R. 1063.—CAN.

PART III. SECT. 34, SUB-SECT. 6.—  
D. (a).

sd. *Jurisdiction of court to order—In winding-up proceedings—On petition for conveyance to mortgagee of company's equity of redemption.*—*Re ESSEX LAND & TIMBER CO., TROUT'S CASE* (1891), 21 O. R. 367.—CAN.

PART III. SECT. 34, SUB-SECT. 6.—  
D. (b).

st. *Jurisdiction of court to order—In winding-up proceedings—On petition for conveyance to mortgagee of company's equity of redemption.*—*Re ESSEX LAND & TIMBER CO., TROUT'S CASE* (1891), 21 O. R. 367.—CAN.

PART III. SECT. 34, SUB-SECT. 6.—  
E. (d).

sk. *Affidavits—Made before institution of proceedings—Inadmissible.*—*TRUSTS & GUARANTEE CO., LTD. v. DRUMHELLER POWER CO.*, [1924] 2 D. L. R. 208; [1924] 1 W. W. R. 1029.—CAN.

5130 i. *Ex parte application.*—A receiver ought not to be appointed *ex p.*, especially for the purpose of taking possession of & managing a going business, except in extraordinary circumstances.—*TRUSTS & GUARANTEE CO., LTD. v. DRUMHELLER POWER CO.*, [1924] 2 D. L. R. 208; [1924] 1 W. W. R. 1029.—CAN.

PART III. SECT. 34, SUB-SECT. 6.—  
E. (f) ii.

5148 i. *Form of judgment.*—*MARTIN v. CLARKSON*, [1925] 4 D. L. R. 232; 57 O. L. R. 499; 5 C. B. R. 835.—CAN.

**5149a. — Application of assets—Deficiency.]—**

In a debenture-holders' action where there is a deficiency, the assets must be applied in the following order: (1) costs of realisation, (2) costs including remuneration of receiver, (3) costs, charges & expenses of debenture trust deed including the trustees' remuneration, (4) pl'tfs.' costs of action, (5) preferential creditors, (6) debenture-holders.—*Re GLYNCORRWG COLLIERY CO., RAILWAY DEBENTURE & GENERAL TRUST CO. v. THE CO.*, [1926] Ch. 951; 96 L. J. Ch. 43; 70 Sol. Jo. 857; *sub nom. Re GLYNCORRWG COLLIERY CO., Re RAILWAY DEBENTURE & GENERAL TRUST CO.*, 136 L. T. 159.

**5170. Add. Annotation:—Refd. *Re Glyncorrgw Colliery Co., Railway Debenture & General Trust Co. v. The Co.*, [1926] Ch. 951.**

**5184a. On authority of receiver—To carry on business of company.]—THOMAS v. TODD**, No. 4979a, *ante*.

**5186a. Debenture given for money bona fide advanced—After knowledge of presentation of petition for winding up.]—**The fact that a person to whom a debenture was granted after a petition to wind up the co. had been launched had knowledge of the launching of such petition does not prevent the ct. from validating the debenture, if it was given for money advanced by the debenture-holder for the purpose of *bona fide* assisting the co. to pay wages, & the costs of appct. to such an application to validate his debenture, notwithstanding 1908 Act, s. 205 (2), & of the liquidator, may be paid out of the assets of the co.—*Re PARK WARD & CO., LTD.*, [1926] Ch. 828; 95 L. J. Ch. 584; 135 L. T. 575; 70 Sol. Jo. 670; [1926] B. & C. R. 94.

**5194. Add. Annotation:—Consd. *Allen v. Royal Bank of Canada* (1925), 41 T. L. R. 625.**

**5314. Add. Annotations:—Dstd. *Re Stanton, Hogg v. Maule* (1927), 44 T. L. R. 118. Refd. *Re Stanton*, [1928] 1 K. B. 464.**

**5316. Add. Annotations:—Consd. *Re Stanton, Hogg v. Maule* (1927), 44 T. L. R. 118; Refd. *Re Stanton*, [1928] 1 K. B. 464. Mentd. *R. v. Central Criminal Court JJ., Ex p. L. C. C.*, [1925] 2 K. B. 43.**

**5316a. — May decide validity of debentures.]—**Less than three months before the commencement of its compulsory winding up in a county ct., a co. having a paid-up capital of less than £10,000 issued debentures to the extent of £4,500 in favour of two persons. The liquidator moved in the county ct. for a declaration that the debentures were invalid

either as a fraudulent preference under 1908 Act, s. 210, or as a floating charge created otherwise than for cash under sect. 212, & that the persons named in the debentures had no rights in respect of the sums expressed to be secured thereby except as unsecured creditors:—*Held*: the county ct. judge had jurisdiction to entertain the liquidator's application, & as he had done so, his discretion could not be interfered with.—*Re F. & E. STANTON, LTD.*, [1928] 1 K. B. 464; 97 L. J. K. B. 131; 138 L. T. 175; 44 T. L. R. 118; [1927] B. & C. R. 187, D. C.

**5337. Add. Annotation:—Refd. *Loch v. Blackwood*, [1924] A. C. 783.**

**5343. Add. Annotation:—Mentd. *Re Quintin Dick, Cloncurry v. Fenton*, [1926] Ch. 992.**

**5346. Add. Annotations:—Mentd. *Bank of Liverpool & Martins v. Holland* (1926), 43 T. L. R. 29; *Earle v. Hemsworth R. D. C.* (1928), 44 T. L. R. 605.**

**5354. Add. Annotation:—Refd. *Loch v. Blackwood*, [1924] A. C. 783.**

**5357. Add. Annotation:—Refd. *Loch v. Blackwood*, [1924] A. C. 783.**

**5357a. —.]—**A co. was registered in Barbados under Cos. Act, 1910, of Barbados, as a public co., in order to carry on testator's business & to divide the profits of it between members of his family entitled under his will to share them; the managing director had a preponderating voting power. Upon a petition for winding up by shareholders who were not directors, it appeared that the directors had omitted to hold general meetings, or to submit accounts, or recommend a dividend, & that they had laid themselves open to the suspicion that their object in so omitting was to keep petitioners in ignorance of the co's. position & affairs & to acquire petitioners' shares at an under-value:—*Held*: the power to wind up the co. under sect. 127 (vi) of that Act [which was identical with 1908 Act, s. 129] was not confined to cases in which there were grounds analogous to those mentioned earlier in the sect.; & in the circumstances of the case, regard being had to the domestic character of the co., petitioners were entitled under that provision to a winding-up order.—*LOCH v. BLACKWOOD (JOHN), LTD.*, [1924] A. C. 783; 93 L. J. P. C. 257; 131 L. T. 719; 40 T. L. R. 732; 68 Sol. Jo. 735; [1924] B. & C. R. 209, P. C.

**5372. Add. Annotation:—Refd. *Loch v. Blackwood*, [1924] A. C. 783.**

**PART III. SECT. 35.**

**sm. Meaning of "being wound up"**  
—*Under Companies Ordinance, 1901* (c. 20), s. 47.]—The words do not refer to a winding up under any particular Act in the sense of a dissolution, but mean a winding up of a co. in the sense of a realisation of the assets, a distribution of the proceeds among creditors & an adjustment of the rights of shareholders among themselves, & therefore a co. may be "being wound up" in this sense under Bkpcy. Act, as well as under either Dominion or provincial Winding-up Acts.—*Re IRMA CO-OPERATIVE CO., LTD., Re LOVE & KNUDSON*, [1926] 1 D. L. R. 27; [1924] 3 W. W. R. 850.—CAN.

**PART III. SECT. 36, SUB-SECT. 1.—A.**  
**t. Add "revsd. 14 S. C. R. 624."**

**PART III. SECT. 36, SUB-SECT. 2.—**  
**C. (a).**

**a i. —.]—**Where the notice provided for by Winding-up Act, R. S. C., 1906 (c. 144), s. 4, has not been served, & a petition for a winding-up order is presented, the question whether the co. is "unable to pay its debts as they become due," within sect. 3 (a), must be determined by the ct. upon the material filed.—*Re MILO WHEAT CO., LTD.*, [1925] 2 D. L. R. 1170; [1925] 1 W. W. R. 1142; 35 Man. L. R. 1; 5 C. B. R. 707.—CAN.

**PART III. SECT. 36, SUB-SECT. 2.—**  
**D. (a).**

**d i. —.]—***Re JAMES LUMBERS CO., LTD.*, [1926] 1 D. L. R. 173; 58 O. L. R. 100.—CAN.

**d ii. —.]—***Re BRITISH*

*EMPIRE STEEL CORPN., LTD. (N.S.)*, [1927] 2 D. L. R. 964.—CAN.

**PART III. SECT. 36, SUB-SECT. 2.—**  
**D. (b) ii.**

**ii. —.]—***Re DOMINION STEEL CORPN. (N. S.)*, [1927] 4 D. L. R. 337.—CAN.

**PART III. SECT. 36, SUB-SECT. 2.—**  
**D. (d).**

**5384 ii. —.]—**Although a co. may be wound up where there is a complete deadlock in its management, where a substantial majority of the shareholders are opposed to the making of the order, where the petition is the outcome of a mere domestic quarrel, & where no substantial advantage will accrue from the granting of the order, an order will not be made.—*Re SHIPWAY IRON BELL & WIRE MANU-*



5388. *Add. Annotation*:—*Consd. Loch v. Blackwood*, [1924] A. C. 783.

5397a. — Omission to hold general meetings or to submit accounts.]—*LOCH v. BLACKWOOD (JOHN), LTD.*, No. 5357a, *ante*.

5474. *Add. Annotation*:—*Mentd. Re City Equitable Fire Insce.* (1924), 40 T. L. R. 853.

5604. *Add. Annotation*:—*Mentd. Hunter v. Städtische Hochseefischerei Gesellschaft*, [1925] 2 K. B. 493.

5648. *Add. Annotation*:—*Reid. Re City Life Assce.*, [1926] Ch. 191.

5841a. *Issue of debenture—For money advanced to company for payment of wages.*]—*Re PARK WARD & CO., LTD.*, No. 5186a, *ante*.

5881. *Add. Annotations*:—*Distd. Re Stanton, Hogg v. Maule* (1927), 44 T. L. R. 118. *Reid. Re Stanton*, [1928] 1 K. B. 464. *Mentd. R. v. Central Criminal Court JJ.*, *Ex p. L. C. C.*, [1925] 2 K. B. 43.

5890. *Add. Annotation*:—*Mentd. More v. Weaver*, [1928] 2 K. B. 520.

5908a. *Application for order under 1908 Act, s. 175 (6), for exculpation—Right of successful applicant to costs.*]—*Re AMUSEMENTS CONSTRUCTION CO., LTD.*, [1927] W. N. 7.

5953. *Add. Annotation*:—*Mentd. Re City Equitable Fire Insce.* (1924), 40 T. L. R. 853.

5972. *Add. Annotation*:—*Reid. Re Windsor Steam Coal Co. (1901), Ltd.*, [1928] Ch. 609.

6056a. — Damages & costs paid by insurance company in respect of judgment obtained against insured company.]—*Appct. obtained judgment against a co. for damages for personal injuries & costs. Afterwards the co. went into liquidation, & the insurance co. with which the co. in liquidation was insured paid the amount of the damages & costs to the liquidator:—Held: appct. was not entitled to have the amount paid to him direct by the liquidator, but it formed part of the assets for distribution among the general creditors, including appct.*—*Re HARRINGTON MOTOR CO., Ex p. CHAPLIN*, [1928] Ch. 105; 97 L. J. Ch. 55; 138 L. T. 185; 44 T. L. R. 58; 72 Sol. Jo. 48; [1927] B. & C. R. 198, C. A.

*Annotation*:—*Appld. Hood's Trustees v. Southern Union General Insce. Co. of Australasia*, [1928] Ch. 793.

6064. *Add. Annotations*:—*Consd. Re Stanton*, [1928] 1 K. B. 464. *Reid. Re Stanton, Hogg v. Maule* (1927), 44 T. L. R. 118.

6137a. — — — — —.]—*Re OXFORD & WORCESTER EXTENSION & CHESTER JUNCTION*

FACTURING CO., LTD., [1926] 2 D. L. R. 887; 58 O. L. R. 585.—CAN.

t i. — Differences between two sole members.]—Where resp. had treated the co. as his own business in such a way as to destroy his fellow-shareholder's confidence in the impartiality of his administration:—*Held: it was just & equitable that the co. should be wound up.*—*THOMSON v. DRYSDALE*, [1925] S. C. 311.—SCOT.

t ii. — Deadlock caused by petitioners.]—*Winding-up order refused.*—*Re JAMES LUMBERS CO., LTD.*, [1926] 1 D. L. R. 173; 58 O. L. R. 100.—CAN.

PART III. SECT. 36, SUB-SECT. 2.—D. (e).

5397a i. — Managing director conducting affairs as though company his private business.]—*BAIRD v. LEES*, [1924] S. C. 83.—SCOT.

PART III. SECT. 36, SUB-SECT. 3.—B. (b) iv.

q i. — — — — —.]—A petition for the winding up of a co., filed by a creditor with the view of enforcing payment of a disputed debt, is an abuse of the process of the ct. & should be dismissed.—*PYDA SATYARAZU v. GUNTUR COTTON & PAPER MILLS CO., LTD.* (1924), 1 L. L. R. 48 Mad. 267.—IND.

5439 ii. — — — — —.]—*SMITHFIELD COLD STORAGE & EXPORT CO. OF SOUTH AFRICA, LTD. v. LEVER* (1924), 45 N. L. R. 73.—S. AF.

PART III. SECT. 36, SUB-SECT. 3.—B. (c) i.

5484 i. *Executor of deceased shareholder.*]—*Held: entitled to present a winding-up petition, although his name had not been entered in the books of the co. as the holder of the shares, & notwithstanding that the co.'s Act of incorporation provided that certain formalities must be observed before the co. was obliged to recognise as a shareholder a person who had become such by transmission by law.*—*Re GREAT WEST PERMANENT LOAN CO. & WINDING-UP ACT (Man.)*, [1927] 2 W. W. R. 15.—CAN.

PART III. SECT. 36, SUB-SECT. 3.—D. (a) i.

1 i. *General rule—Winding up detri-*

*mental to all concerned.*]—*Winding-up order set aside.*—*Re SHIPWAY IRON BELL & WIRE MANUFACTURING CO., LTD.*, [1926] 2 D. L. R. 887; 58 O. L. R. 585.—CAN.

PART III. SECT. 36, SUB-SECT. 3.—D. (a) ii.

q i. — Exceptional circumstances.]—A creditor of a co. presented a petition for the winding up of the co. by the ct. The co. had gone into voluntary liquidation, & the petition was opposed on the ground that the majority of the creditors desired the voluntary winding up to be continued. A statement of the co.'s affairs showed that its liabilities amounted to £335,000, while its assets were estimated at £9,300; that about £116,000, stated to be irrecoverable, had been advanced to directors of the co.; & that the co. had received large advances from associated cos., part of which were completely secured. Creditors to the extent of £300,000, including one whose claim amounted to about two-thirds of the co.'s whole indebtedness, had assented to the voluntary winding up, & petitioner, who was a creditor to the extent of £5,000 only, was the sole creditor who objected to the co. being wound up voluntarily:—*Held: although as a general rule the co. would have regard to the wishes of a majority of creditors, the circumstances were of such a special character that an exception to the general rule should be made, & a winding-up order pronounced.*—*BOUBOULIS v. MANN, MACNEAL & CO., LTD.*, [1926] S. C. 637.—SCOT.

PART III. SECT. 36, SUB-SECT. 3.—E. (h).

sm. *Examination of petitioner—Application by shareholders for second application.*]—*Application refused.*—*Re WINDING-UP ACT, Re GREAT WEST PERMANENT LOAN CO. (Man.)*, [1927] 2 W. W. R. 433.—CAN.

PART III. SECT. 36, SUB-SECT. 4.—B. (g).

m i. — Sale of goods—Monthly deliveries—Company in default of payment for previous deliveries.]—*HAMILTON v. HAMILTON STEEL CO.* (1911), 18 O. W. R. 739; 2 O. W. N. 779; O. L. R. 270.—CAN.

PART III. SECT. 36, SUB-SECT. 8.—B.

sp. *Officer of company—Becomes functus officio on dissolution of company.*]—*KRISHNASWAMI NAIDU v. ANDI CHETTI* (1927), 1 L. L. R. 51 Mad. 681.—IND.

PART III. SECT. 36, SUB-SECT. 8.—C. (b).

k i. — Action by company—To recover purchase price of shares—What defences available—*Fraud.*]—*FARMERS PACK CO., LTD. v. TULLY & TULLY, FARMERS PACK CO., LTD. v. HAYERS (Man.)*, [1927] 2 D. L. R. 749; [1927] 1 W. W. R. 902.—CAN.

PART III. SECT. 36, SUB-SECT. 8.—C. (c).

sb. *Change of solicitor—When permissible—Under order of court.*]—*Re CONTINENTAL FIRE & CASUALTY CO.*, [1924] 3 D. L. R. 9; 2 W. W. R. 440; 34 Man. L. R. 482.—CAN.

PART III. SECT. 36, SUB-SECT. 9.—A.

sc. *Notice of meeting—To shareholders.*]—It is the duty of the trustee to give shareholders of an insolvent co. the same notice of the first meeting of creditors as is sent to those who are ordinarily deemed to be creditors, but the trustee's failure to do so does not invalidate the meeting, unless the irregularity has prejudiced the shareholders.—*Re PATRICIA APPLIANCE SHOPS, LTD.*, [1923] 3 D. L. R. 1160; 52 O. L. R. 215; 2 C. B. R. 466.—CAN.

PART III. SECT. 36, SUB-SECT. 10.—B. (f) iii.

8110 i. *Whether justified—Examination of officer.*]—An officer of a co. summoned for examination must, on the examination, disclose the information he has concerning the trade, dealings, estate or effects of the co. in liquidation, regardless of whether he acquired it in his official capacity or otherwise, subject to his right to object to incriminating questions & those involving professional privilege.—*Re McMILLAN GRAIN CO. & WINDING-UP ACT*, [1927] 3 D. L. R. 229; [1927] 1 W. W. R. 899; 36 Man. L. R. 454.—CAN.

RY. CO., POTTER'S CASE (1849), 1 De G. & Sm. 728; 5 Ry. & Can. Cas. 628; 18 L. J. Ch. 247; 13 L. T. O. S. 320; 13 Jur. 691; 63 E. R. 1270.

*Annotations*:—*Consd. Re South Essex Estuary & Reclamation Co., Ex p. Pain & Layton* (1869), 17 W. R. 275. *Refd. Re Shrewsbury & Leicester Ry., Re Vardy* (1851), 20 L. J. Ch. 325; *Hope v. Liddell* (1855), 20 Beav. 438.

6150. *Add. Annotations*:—*Refd. Re City Equitable Fire Insce.* (1924), 40 T. L. R. 853; *Re Etic*, [1928] Ch. 861.

6150a. —.]—*Re CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, ante.*

6150b. —.]—The liquidators of a co. issued a summons under 1908 Act, s. 215, against the secretary of the co., asking for a declaration that he was indebted to the co. for sums overdrawn with the consent of the managing director:—*Held*: the operation of sect. 215 was not applicable to all cases in which a co. had a right of action against an officer of the co., but was limited to cases where there had been something in the nature of a breach of duty by an officer of the co. as such, which had caused pecuniary loss to the co., & no order would be made on the summons under the summary jurisdiction under sect. 215.—*Re ETIC, LTD.*, [1928] Ch. 861; 97 L. J. Ch. 460.

6154. *Add. Annotations*:—*Distd. Re Stanton, Hogg v. Maule* (1927), 44 T. L. R. 118; *Refd. Re Stanton*, [1928] 1 K. B. 464.

6158. *Add. Annotation*:—*Refd. Weld v. Petre* (1928), 97 L. J. Ch. 399.

6161. *Add. Annotations*:—*As to* (1) *Consd. Re Etic*, [1928] Ch. 861. *As to* (2) *Refd. Re City Equitable Fire Insce.* (1924), 40 T. L. R. 853.

6173. *Add. Annotation*:—*Refd. Re City Equitable Fire Insce.* (1924), 40 T. L. R. 853.

6173a. — Article relieving directors from loss—Unless arising from wilful neglect or default.]—*Re CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, ante.*

6173b. —.]—*Re ETIC, LTD., No. 6150b, ante.*

PART III. SECT. 36, SUB-SECT. 10.—  
C. (d) i.

*ad. Something in nature of misconduct.*—To make a person liable under Cos. Act, 1908, s. 254, he must be shown to have been guilty of some misconduct by which the co. has suffered loss. There must be actual loss or damage measurable in terms of money.—*Re BUICK SALES, LTD.*, [1926] N. Z. L. R. 24.—N.Z.

PART III. SECT. 36, SUB-SECT. 10.—  
C. (d) iii.

*ss. Payments to discharge directors' liability on guarantee.*—When a co. is insolvent to its directors' knowledge, & the directors cease payment of all but small & pressing accounts & pay all the rest of the co.'s takings into the bank to wipe out the co.'s overdraft, not with intention to prefer the bank, but in order to wipe out the directors' liability as sureties under their personal guarantee of the overdraft, such payments do not amount to a misfeasance or breach of trust within Cos. Act, 1908, s. 254.—*Re LINNEY (H.) & Co.*, [1925] N. Z. L. R. 907.—N.Z.

PART III. SECT. 36, SUB-SECT. 10.—  
C. (e).

6201 i. *Position of liquidator on summons—Security for costs—Whether court will order.*—On a summons for

an order requiring the liquidator to give security for costs:—*Held*: although the ct., in the exercise of its general jurisdiction, could order security to be given, nevertheless the established practice in the English cts. should be followed, & the summons must be dismissed.—*Re NEW ZEALAND GUN MACHINE CO., LTD. (IN LIQUIDATION)*, [1927] N. Z. L. R. 100.—N.Z.

PART III. SECT. 36, SUB-SECT. 10.—  
E. (a) iii.

6221 i. *When liable as contributory—General rule.*—A past member of a limited co. may be liable to contribute to its assets in a winding up, notwithstanding the fact that the existing members at the date of the commencement of the liquidation hold fully-paid shares only.—*Re SOUTHERN CROSS MOTOR FUELS, LTD., Ex p. KELLEWAY*, [1926] V. L. R. 527; 48 A. L. T. 100; [1926] Argus L. R. 427.—AUS.

PART III. SECT. 36, SUB-SECT. 10.—  
E. (b).

*si. How enforced—Right of liquidator to bring action.*—Cos. Winding-up Act (Sask.), ss. 15 & 22, which establish a summary statutory procedure, enabling a liquidator to get payment from a contributory under the Act instead of proceeding by action, are only permissive & not obligatory. & the liquidator is not bound to have

6182. *Add. Annotations*:—*As to* (1) *Consd. Re Etic*, [1928] Ch. 861. *As to* (2) *Apld. Re A Debtor*, [1927] 1 Ch. 410.

6183. *Add. Annotation*:—*Apld. Re A Debtor*, [1927] 1 Ch. 410.

6212. *Add. Annotation*:—*Refd. Re City Equitable Fire Insce.* (1924), 40 T. L. R. 853.

6222. *Add. Annotation*:—*Refd. Re Darwen & Pearce, Associated Paper Mills v. Barnes* (1926), 95 L. J. Ch. 487.

6229. *Add. Annotation*:—*Refd. Spencer v. Ashworth Partington*, [1925] 1 K. B. 589.

6241. *Add. Annotation*:—*Mentd Hunter v. Städtische Hochseefischerei Gesellschaft*, [1925] 2 K. B. 493.

6346. *Add. Annotation*:—*As to* (1) *Refd. Swift v. Board of Trade*, [1925] A. J. 520.

6368a. — For salary for dismissal without notice.]—Where a clerk claimed to be paid out of the assets for services rendered, & a year's salary for dismissal without notice, contrary to agreement:—*Held*: he was entitled to the salary as claimed.—*Re MADRID BANK, Ex p. WILLIAMS* (1866), L. R. 2 Eq. 216; 35 L. J. Ch. 474; 14 W. R. 706; *sub nom. Re MADRID BANK, LTD., Ex p. HOLDER, Ex p. WILLIAMS*, 14 L. T. 456.

*Annotations*:—*Refd. Re Madrid Bank, Wilkinson's Case* (1867), 15 W. R. 331; *Re General Exchange Bank, Preston's Claim* (1868), 19 L. T. 138.

6374. *Add. Annotation*:—*Mentd. Britannia Hygienic Laundry Co. v. Thornycroft* (1925), 94 L. J. K. B. 858.

6400. *Add. Annotations*:—*Mentd. Re Clemmons Aluminium* (1924), 94 L. J. K. B. 487; *Costello v. Brown* (1924), 94 L. J. K. B. 220; *Re Snowdown Colliery Co., South-Eastern Coalfield Extension Co. v. Snowdown Colliery Co.* (1925), 94 L. J. Ch. 305.

6406. *Add. Annotation*:—*Mentd. Re City Life Assce.* (1925), 42 T. L. R. 45.

6409. *Add. Annotation*:—*Consd. Re Pitchford*, [1924] 2 Ch. 260.

recourse to that procedure but may proceed by way of action.—*MASECAR v. MCKENZIE & SON*, [1924] 2 D. L. R. 1242; 2 W. W. R. 521.—CAN.

PART III. SECT. 36, SUB-SECT. 10.—  
E. (c).

*i. — — — — —*—There is nothing in Winding-up Act to justify the suggestion that in settling the list of contributories regard is to be had only to those shareholders whose liability is subject to call.—*Re NATIONAL STADIUM, LTD.* (1924), 55 O. L. R. 199.—CAN.

*sg. — Deceased shareholder.*—*Re CANADIAN CORDAGE & MANUFACTURING CO.* (1923), 54 O. L. R. 486.—CAN.

PART III. SECT. 36, SUB-SECT. 10.—  
E. (e) ii.

6296 ii. — — — — —]—A member of a co. in liquidation is liable in respect of unpaid calls, even though, as against the co., the realisation of such calls may have become barred by limitation.—*Re DEHRA DUN-MUSSOORIE ELECTRIC TRAMWAY CO., LTD., Re PANNA LAL* (1927), 1 L. R. 50 All.

6298 i. — Power of liquidator to make immediate call—For whole of unpaid balance on shares.]—*Re IRMA CO-OPERATIVE CO., LTD., Re LOVE & KNUDSON*, [1925] 1 D. L. R. 27; [1924] 3 W. W. R. 850.—CAN.



6427. *Add. Annotation*:—*Refd. Re City Life Assce.* (1925), 42 T. L. R. 45.

6436a. —. —.]—In a common law action by a co. in liquidation against a shareholder for a call made before the liquidation, debt. has no right of set-off in respect of sums alleged to be due to him from the co.—*ALLIANCE FILM CORPN., LTD. v. KNOLES* (1927), 43 T. L. R. 678.

6442. *Add. Annotation*:—*Mentd. Re Pink, Elvin v. Nightingale* (1926), 70 Sol. Jo. 1090.

6442a. —. —.]—Appl., the managing director of a co. which was insolvent, recovered judgment against the co. for repayment of money lent by him to the co. Shortly afterwards, the provisional liquidator of the co., which was subsequently, in Apr. 1925, ordered to be wound up, paid to applt. the amount for which he had recovered judgment, & in Apr. 1926, an order was made in the winding up upon applt. to repay to the liquidator that amount, on the ground that the payment to him by the liquidator was void as a fraudulent preference. In consequence of applt.'s non-compliance with that order, a bkpcy. notice was served upon him, & a receiving order made against him, the registrar refusing to allow applt. to set off against the amount he had been so ordered to repay to the liquidator the sum for which he had recovered judgment against the co.:—*Held*: the indebtedness of applt. having been incurred under an order made after the date of the winding up, there were at that date no mutual debits capable of set-off; the payment by the liquidator being void as a fraudulent preference, applt. had not any valid or effectual right of set-off in respect of the sum he had been ordered to repay to the liquidator, & his only right was to prove in the winding up with the other creditors.—*Re A DEBTOR* (82 of 1926), [1927] 1 Ch. 410; 136 L. T. 349; *sub nom. Re MUMFORD, DEBTOR v. PETITIONING CREDITOR, Ex p. OFFICIAL RECEIVER*, 96 L. J. Ch. 75; [1926] B. & C. R. 165, D. C.

6444. *Add. Annotation*:—*Refd. Re City Life Assce.* (1925), 42 T. L. R. 45.

6445. *Add. Annotation*:—*Apld. Re A Debtor*, [1927] 1 Ch. 410.

PART III. SECT. 36, SUB-SECT. 11.—  
C. (a).

6423 i. —. —.]—Shareholders are not entitled to set off against their liability for immediate payment of the amounts unpaid on their shares any dividends owing to them.—*Re IRMA CO-OPERATIVE CO., LTD., Re LOVE & KNUDSON*, [1925] 1 D. L. R. 27; [1924] 3 W. W. R. 850.—CAN.

o. *Add "revsd.* 16 S. C. R. 456."

PART III. SECT. 36 SUB-SECT. 11.—  
D. (a).

h i. —. *Rent.*]—A landlord of a co. in liquidation has a preferential claim to payment up to three months' rent, where there are goods on the premises to that value at the date of liquidation.—*Re SHRIVES & MCKENZIE PTY., LTD.*, [1926] V. L. R. 563; 48 A. L. T. 99; [1926] Argus L. R. 442.—AUS.

h ii. *S. P. Re CARPENTER HALES & Co., LTD.* (1926), 26 S. R. N. S. W. 420; 43 N. S. W. W. N. 116.—AUS.

PART III. SECT. 36, SUB-SECT. 11.—  
D. (b).

sh. *Price of wheat supplied under*

*State wheat scheme.*]—The Minister charged with the administration of Wheat Marketing Acts sold a quantity of wheat to a co. which before payment went into liquidation:—*Held*: the debt being a Crown debt, the Minister was entitled to priority of payment in the administration of the assets of the co. In the winding up of a co. the Crown is not bound by the provisions of Cos. Act, 1893, & its amendments.—*Re OCKERBY & Co., LTD.* (1922), 25 W. A. L. R. 25.—AUS.

sj. *Debt due to public Board.*]—Meat Industry Act, 1915, No. 69 (N. S. W.), established a Board to administer the Act. The Governor had power to veto certain of its actions. The Board had wide powers, which it exercised at its discretion; any power of interference which a Minister of the Crown possessed was not such as to make the acts of administration his acts. Money received by the Board was not paid into the general funds of the State, but to its own fund:—*Held*: a debt due to the Board was not a debt due to the Crown.—*METROPOLITAN MEAT INDUSTRY BOARD v. SHEEDY*, [1927] A. C. 899; 137 L. T. 782; 43 T. L. R. 701, P. C.—AUS.

6446. *Add. Annotations*:—*As to* (2) *Refd. Re City Life Assce.*, [1926] Ch. 191. *Generally, Mentd. Martin v. Stout*, [1925] A. C. 359; *Tyldesley U. D. C. v. Leigh R. D. C.* (1925), 23 L. G. R. 243.

6447. *Add. Annotations*:—*As to* (2) *Apld. Re City Life Assce.*, [1926] Ch. 191. *Refd. Re National Benefit Assce.*, [1924] 2 Ch. 339.

6455a. —. —. *Joint partnership debt—Creditor member of firm.*]—In the winding up of a co. the liquidator sought to set off against a debt due by the co. to a creditor a debt alleged to be due to the co. by a partnership firm of which the creditor was a member:—*Held*: the alleged debt of the partnership firm being a joint & not a joint & several debt, it could not be set off against the separate debt due by the co. to the partner.—*Re PENNINGTON & OWEN, LTD.*, [1925] Ch. 825; 95 L. J. Ch. 93; 134 L. T. 66; 41 T. L. R. 657; 69 Sol. Jo. 759; [1926] B. & C. R. 39, C. A.

6456. *Add. Annotations*:—*Refd. Re Clemmons Aluminium* (1924), 94 L. J. K. B. 487. *Mentd. Re Snowdown Colliery Co., South-Eastern Coalfield Extension Co. v. Snowdown Colliery Co.* (1925), 94 L. J. Ch. 305.

6460. *Add. Citations*:—130 L. T. 1; [1923] B. & C. R. 114; *affg. S. C. sub nom. Re WEBB (H. J.) & Co. (SMITHFIELD, LONDON), LTD.*, [1922] 2 Ch. 369.

*Add. Annotations*:—*Refd. Re Winget, Burn v. Winget*, [1924] 1 Ch. 550. *Mentd. Gilbert v. Gilbert & Bougher* (1927), 96 L. J. P. 137.

6462. *Add. Annotation*:—*Refd. Re Winget, Burn v. Winget*, [1924] 1 Ch. 550.

6465a. —. —. *Rates paid by director—Preferential rights of director.*]—*Re LAMPLUGH IRON ORE Co., No. 3105a, ante.*

6467. *Add. Annotations*:—*Refd. Re Clemmons Aluminium* (1924), 94 L. J. K. B. 487. *Mentd. Re Snowdown Colliery Co., South-Eastern Coalfield Extension Co. v. Snowdown Colliery Co.* (1925), 94 L. J. Ch. 305.

6565. *Add. Annotations*:—*Refd. Biddulph & District Agricultural Soc. v. Agricultural Wholesale Soc.* (1926), 95 L. J. Ch. 576; *Re Wilts & Somerset Farmers*, [1928] Ch. 809.

PART III. SECT. 36, SUB-SECT. 11.—  
D. (c)

sk. *Municipal taxes & taxes due to Public Utilities Commission—Payable before Crown claims.*]—*Re INTERNATIONAL METAL WORKS, LTD., Ex p. R.*, [1925] 1 D. L. R. 309; 5 C. B. R. 378.—CAN.

PART III. SECT. 36, SUB-SECT. 11.—  
D. (d).

sl. *Effect of Bankruptcy Act, s. 48 (4).*]—The above sect. does not restrict the amount of the debt for which an officer, director or shareholder of a co., which has made an authorised assignment, may in the first instance prove, & postpone the right to prove for the balance until all other creditors have been paid in full, but while allowing him to prove for the full amount of his claim, it merely restricts the amount of payment or satisfaction in the aggregate which he may receive on account of his claim as proven until claims of other creditors have been satisfied.—*Re CALGARY FURNITURE STORE, LTD. & HIGGS*, [1924] 2 D. L. R. 308; [1924] 1 W. W. R. 1137; 4 C. B. R. 538.—CAN.



6567. *Add. Annotation*:—*Consd. Collaroy Co. v. Giffard*, [1928] Ch. 144.

6591. *Add. Annotation*:—*Refd. Re Keystone Knitting Mills Trade Mk.* (1928), 97 L. J. Ch. 316.

6663. *Add. Annotation*:—*Refd. Re South Rhondda Colliery Co.* (1898), Ltd. (1928), 72 Sol. Jo. 453.

6740. *Add. Annotation*:—*Refd. Re Lloyd's Furniture Palace, Evans v. Lloyd's Furniture Palace*, [1925] Ch. 853.

6741. *Add. Annotation*:—*Consd. Re A Debtor*, [1927] 1 Ch. 410.

6745. *Add. Annotation*:—*Refd. Re Cohen, Ex p. Trustee*, [1924] 2 Ch. 515.

6746a. *Payment to principal creditor—To relieve surety.*—Where a payment has been made to a principal creditor with the intent to prefer a guarantor of the debt, Bkpcy. Act, 1914 (c. 59), s. 44, enables the liquidator in a compulsory winding up to recover payment from the person actually preferred.

A private co., of which a father & son were the only directors & shareholders, was ordered to be wound up, & within the preceding three months the son paid a sum of £1,503 odd into the co.'s bank to reduce an overdraft of the co. to secure which his father had given a guarantee. The liquidator claimed repayment of the sum as being a fraudulent preference within 1908 Act, s. 210, & a preliminary objection being

raised that in any event no order for repayment could be made:—*Held*: the motive of the son in making the payment being to keep the business going, there was no fraudulent preference, & the summons must be dismissed.—*Re STANLEY (G.) & Co.*, [1925] Ch. 148; 94 L. J. Ch. 187; 133 L. T. 37; 69 Sol. Jo. 36; [1925] B. & C. R. 1.

6750. *Add. Annotation*:—*Mentd. Guatemala (Republica de) v. Nunez* (1926), 95 L. J. K. B. 955.

6751. *Add. Annotations*:—*Mentd. King v. Sunday Pictorial Newspapers* (1920), (1924), 41 T. L. R. 229; *Knight v. Ponsonby*, [1925] 1 K. B. 545.

6775. *Add. Annotations*:—*Refd. Cornish Mutual Assce. v. I. R. Comrs.*, [1926] A. C. 281; *Greenberg v. Cooperstein*, [1926] 3 Ch. 657; *Thomas v. Evans, Jones v. South-West Lancashire Coal-Owners' Asscn.* (1926), 135 L. T. 673. *Mentd. Brighton College v. Marriott*, [1925] 1 K. B. 312; *Re United General Commercial Insce. Corpn.*, [1927] 2 Ch. 51.

6811. *Add. Annotation*:—*Mentd. Hunter v. Städtische Hochseefischerei Gesellschaft*, [1925] 2 K. B. 493.

6823a. — *Motion to validate debenture.*—*Re PARK WARD & Co., LTD.*, No. 5186a, *ante*.

6857. *Add. Annotation*:—*Refd. Re Windsor Steam Coal Co.* (1901), Ltd., [1928] Ch. 609.

6857a. — *]*—A voluntary liquidator of a co. is not a trustee within Trustee Act, 1925

PART III. SECT. 36, SUB-SECT. 11.—  
E. (a).

sp. *Not bondholders under unregistered trust mortgage.*—*Re BRAVER TRUCK Co.* (Ont.), [1926] 1 D. L. R. 71.—CAN.

sq. *Bondholders — Notwithstanding abandonment of lien against purchaser of assets.*—*Re ST. JOHN RIVER LOG DRIVING Co.* (N. B.), [1927] 3 D. L. R. 800.—CAN.

PART III. SECT. 36, SUB-SECT. 11.—  
E. (b).

6490 i. *Whether proof for total sum due at time of claim—Where securities realised before claim.*—Where a secured creditor realises on his securities himself without sending in a claim to the liquidator or valuing his securities, he is debarred from ranking on the estate for any deficiency, & must be regarded as standing outside the liquidation proceedings.—*McFARLAND v. LONDON & LANCASHIRE GUARANTEE & ACCIDENT Co.* (Can.), [1927] 3 D. L. R. 67.—CAN.

PART III. SECT. 36, SUB-SECT. 12.—  
D. (c).

m i. — *]*—*Re SMEETONS, LTD.* (IN LIQUIDATION), [1928] N. Z. L. R. 190.—N.Z.

PART III. SECT. 36, SUB-SECT. 13.—  
A.

p i. — *Sale by mortgagees in possession.*—A co. being in liquidation, the mtgees. went into possession prior to the issue of the winding-up order. The liquidator sought to restrain the mtgees. from selling without the sanction of the ct., on the ground that such sale would be a "proceeding against the co."—*Held*: the mtgees. were proceeding rightfully.—*Re BRITISH COLUMBIA TIE & TIMBER Co.* (1908), 14 B. C. R. 81; 9 W. L. R. 495.—CAN.

PART III. SECT. 36, SUB-SECT. 13.—  
D. (a).

n. *Add "revsd. 23 A. R. 426."*

PART III. SECT. 36, SUB-SECT. 13.—  
D. (c).

st. *Writ filed after winding-up order.*—*Held*: not to constitute a lien, even for costs, against the property of a co. in liquidation.—*Re LEITCH COLLIERIES, LTD.* (Alta.), [1926] 1 D. L. R. 1183; [1926] 1 W. W. R. 528.—CAN.

PART III. SECT. 36, SUB-SECT. 15.—B.

sf. *General rule.*—In order to establish a fraudulent preference it must be clear that the substantial & dominant view of debtor was to give a preference, & it is not sufficient that the creditor was in fact preferred.—*Re NEW ZEALAND ELECTRICAL APPLIANCE & ENGINEERING Co., LTD.*, [1927] N. Z. L. R. 16.—N.Z.

sk. *Deposit of lease—To prevent creditor cashing post-dated cheque.*—Within the period of three months prior to the bkpcy. of a co. a lease was deposited with a creditor of the co. by way of security & to prevent the creditor from cashing a post-dated cheque which he held from the co.:—*Held*: as the purpose of the payment was to benefit debtor & to save him from creditors' pressure, there was no fraudulent preference.—*Re DROGHEDA & DISTRICT CO-OPERATIVE SOCIETY, LTD.* (1924), 58 I. L. T. 42.—IR.

PART III. SECT. 36, SUB-SECT. 17.

sl. *Order of province.*—To enforce an order of the ct. of another province made under Winding-up Act the registrar should, on production thereof, enter it without direction as an order of the Supreme Ct. of British Columbia & proceed upon it as an ordinary record of that ct.—*Re HOME BANK OF CANADA & WINDING-UP ACT*, [1925] 1 D. L. R. 734; 34 B. C. R. 321.—CAN.

PART III. SECT. 36, SUB-SECT. 18.—C.

t. *Add "revsd. 14 S. O. R. 624."*

PART III. SECT. 36, SUB-SECT. 18.—  
D. (a).

e i. *S. P. Re DOMINION SHIPBUILD-*

ING & REPAIR CO., LTD., [1926] 3 D. L. R. 274; 59 O. L. R. 89.—CAN.

PART III. SECT. 36, SUB-SECT. 20.

m i. — *On powers of liquidator—Power to complete formal act after dissolution of company.*—*KRISHNANWAMI NAIDU v. ANDI CHETTI* (1927), 1 L. R. 51 Mad. 681.—IND.

q i. — *Grounds for granting or refusing.*—*Re ALBERNI PACIFIC LUMBER Co., THOMAS v. LAWSON* (B. C.), [1927] 3 D. L. R. 1126; [1927] 2 W. W. R. 662.—CAN.

PART III. SECT. 37, SUB-SECT. 3.—B.

d i. — *Sufficiency of resolution.*—An extraordinary resolution for the winding up of a co., that it cannot "by reason of the passing & enforcement of Prohibition Act continue its business" is not the equivalent of the extraordinary resolution, authorised by Cos. Act, R. S. B. C., 1911 (c. 39), s. 226 (3), as it stood prior to Nov. 1917, to the effect that the co. cannot by reason of its liabilities continue its business.—*DUNCAN & GRAY, LTD. v. SILVER SPRING BREWERY*, [1925] 4 D. L. R. 724; [1925] 3 W. W. R. 675.—CAN.

d ii. — *Resolution providing for liquidator to act under supervision of directors.*—*Held*: highly objectionable.—*PARASHURAM DATTARAM SHAM-DASANI v. TATA INDUSTRIAL BANK, LTD.* (1928), 55 L. R. Ind. App. 274.—IND.

PART III. SECT. 37, SUB-SECT. 4.—B.

*Payment to person purporting to be liquidator.*—Where, after payment made to one purporting to be a liquidator, debt. discovered that the payee was not legally a liquidator:—*Held*: the doctrine of estoppel was not applicable.—*DUNCAN & GRAY, LTD. v. SILVER SPRING BREWERY*, [1925] 4 D. L. R. 724; [1925] 3 W. W. R. 675.—CAN.

(c. 19), s. 68 (17), & is not entitled to the indemnity given to trustees by sect. 30 (1).—*Re WINDSOR STEAM COAL CO. (1901), LTD.*, [1928] Ch. 609; 97 L. J. Ch. 288; 72 Sol. Jo. 335; [1928] B. & C. R. 36.

6862. *Add. Annotation*:—Mentd. *Re City Equitable Fire Insc.* (1924), 40 T. L. R. 853.

6874. *Add. Annotations*:—Consd. *Chibbett v. Robinson* (1924), 132 L. T. 26; *Mudd v. Collins* (1925), 133 L. T. 186. Dlst. *Reed v. Seymour* (1927), 11 Tax Cas. 625. Refd. *Seymour v. Reed*, [1927] A. C. 554; *Benyon v. Thorpe* (1928), 97 L. J. K. B. 70f.

6904a. — By receiver—Liability of receiver.]—*THOMAS v. TODD*, No. 4979a, ante.

6986. *Add. Citations*:—130 L. T. 1; [1923] B. & C. R. 114; affg. *S. C. sub nom. Re WEBB (H. J.) & Co. (SMITHFIELD, LONDON) LTD.*, [1922] 2 Ch. 369.

*Add. Annotations*:—Refd. *Re Winget, Burn v. Winget*, [1924] 1 Ch. 550. Mentd. *Gilbert v. Gilbert & Bougher* (1927), 96 L. J. P. 137.

6986a. — Deduction of income tax from payment of interest by company on mortgage.]—A co. having mortgaged all its property & assets, subsequently passed a resolution for voluntary winding up. Between the date of the mtge. & the commencement of the winding up the co. made no profits, but paid three several sums by way of interest on the mtge. less income tax. The co. never paid or accounted for such deductions of tax to the Inland Revenue Comrs.:—*Held*: inasmuch as such deductions could not be said to answer the description of a tax "assessed" on the co. within 1908 Act, s. 209 (1), the Crown could not be treated as having any preferential rights over other creditors in respect of it, & there was nothing in the language of the sub-sect. giving any priority to the debt.—*Re LANG PROPELLER, LTD.*, [1927] 1 Ch. 120; 95 L. J. Ch. 516; 136 L. T. 48; 42 T. L. R. 702; 70 Sol. Jo. 836; 11 Tax Cas. 46; [1926] B. & C. R. 127, C. A.

6986b. — Rates—Payment by director—Preferential rights of director.]—*Re LAMPLUGH IRON ORE CO.*, No. 3105a, ante.

6987. *Add. Annotations*:—Mentd. *King v. Sunday Pictorial Newspapers* (1920), (1924), 41 T. L. R. 229; *Knight v. Ponsonby*, [1925] 1 K. B. 545.

6958. *Add. Annotations*:—As to (1) Refd. *I. R. Comrs. v. Burrell*, [1924] 2 K. B. 52. As to (2) Refd. *Naval Colliery Co. v. I. R. Comrs.* (1928), 138 L. T. 593.

6965. *Add. Annotations*:—Consd. *Collaroy Co. v. Giffard*, [1928] Ch. 144. Mentd. *I. R. Comrs. v. Burrell*, [1924] 2 K. B. 52; *Re Railways Act, 1921, Re Standard Charges Schedule* (1925), 94 L. J. K. B. 364.

6974. *Add. Citation*:—[1923] B. & C. R. 139.

6977. *Add. Annotations*:—As to (1) Dlst. *Re*

*Madame Tussaud*, [1927] 1 Ch. 657. Refd. *I. R. Comrs. v. Burrell*, [1924] 2 K. B. 52; *Re Railways Act, 1921, Re Standard Charges Schedule* (1925), 94 L. J. K. B. 364.

6980. *Add. Annotation*:—Refd. *I. R. Comrs. v. Burrell*, [1924] 2 K. B. 52.

6984. *Add. Annotation*:—As to (1) Expld. *Collaroy Co. v. Giffard*, [1928] Ch. 144.

6986. *Add. Annotation*:—As to (1) Consd. *Collaroy Co. v. Giffard*, [1928] Ch. 144.

6988. *Add. Annotation*:—Refd. *Coulson v. Austin Motor Co.* (1927), 43 T. L. R. 493.

6989. *Add. Annotation*:—Consd. *Collaroy Co. v. Giffard*, [1928] Ch. 144.

6989a. — — —.]—A co. issued preference shares, which entitled the holders to a fixed cumulative preference dividend in priority to the ordinary shares, but not conferring any priority as regards capital. By the arts. of assocn. it was provided that subject to the rights of members entitled to shares issued upon special conditions the profits of the co. should be divisible among the members in proportion to the amount paid up on the shares held by them respectively. The co. was wound up voluntarily & the liquidator having paid all dividends & debts, & returned the whole of the paid-up capital to the shareholders, there remained surplus assets:—*Held*: (1) as long as the co. was a going concern the preference shareholders were entitled only to the preferential dividend, but on the voluntary winding up this preference was determined, & thenceforward the preference shares retained no preference or priority over the ordinary shares; (2) according to the constitution of the co. the *prima facie* presumption in favour of equality of distribution amongst all the shareholders ought to obtain, & the surplus assets, including deposit interest, would be distributed amongst all the shareholders *pro rata* in proportion to the amount paid up on their shares.—*Re MADAME TUSSAUD & SONS, LTD.*, [1927] 1 Ch. 657; 96 L. J. Ch. 328; 137 L. T. 516; 43 T. L. R. 289; [1927] B. & C. R. 112.

6989b. — — —.]—By the memorandum & arts. of assocn. of a co. it was provided that the preference shares should "confer the right to a fixed cumulative dividend" at a certain rate, " & shall rank, both as regards dividends & capital, in priority to the ordinary shares." By the arts. it was provided in the same terms as to the dividends, & that the preference shares should "confer the right in a winding up to repayment of capital in priority to the ordinary shares":—*Held*: the full rights of the holders of preference shares, both as to dividends & capital, were delimited by the contract between them & the co., & they were entitled to no further rights; nothing being said in the contract as to surplus assets, in the event of a winding up they were not

PART III. SECT. 37, SUB-SECT. 8.

6986 i. *Preferential debts—Crown debts.*]—A co., which had given a mtge. to the Crown under *Fruit Preserving Industry Act, 1913*, which mtge. was transferred to the State Advances Account, went into voluntary liquidation:—*Held*: the Crown debt had priority.—*TASMAN FRUIT PACKING ASSOCN., LTD. v. R.*, [1927] N. Z. L. R. 518.—N.Z.

PART III. SECT. 37, SUB-SECT. 9.—A. sn. *Restraint of distribution—At instance of lessor—Until covenant to build completely performed—Notwithstanding assignment of lease with consent of lessor.*]—*Re VICTORIA STREET PROPERTIES, LTD. (IN VOLUNTARY LIQUIDATION)*, [1927] N. Z. L. R. 95.—N.Z.

PART III. SECT. 37, SUB-SECT. 9:—B. 6940 i. *Liquidator's remuneration*

& costs—*Realisation of security belonging to debenture-holders.*]—The costs of a liquidator properly incurred by him in realising any property comprised in a security belonging to debenture-holders are payable out of the amount so realised upon such securities, but the remaining costs of the liquidator must be borne by the free assets, if any, of the co.—*Re WILLIS C. RAYMOND, LTD. (IN LIQUIDATION)*, [1928] N. Z. L. R. 115.—N.Z.



entitled to share in any surplus assets.—*COLLARROY CO., LTD. v. GIFFARD*, [1928] Ch. 144; 97 L. J. Ch. 69; 138 L. T. 321; [1927] B. & C. R. 217.

7001. *Add. Annotations*:—*Distd. Re Stanton, Hogg v. Maule* (1927), 44 T. L. R. 118. *Reid. Re Stanton*, [1928] 1 K. B. 464.

7014a. *Validity of winding-up order in question.*—The validity of a winding up cannot be questioned on a motion in the winding up, but must be challenged in independent proceedings.—*Re EMPIRE BUILDERS, LTD., Re TRANSVAAL UNITED TRUST & FINANCE CO., LTD.* (1919), 88 L. J. Ch. 459; 121 L. T. 238; 63 Sol. Jo. 608.

7034. For the paragraph in the original volume substitute the following paragraph:—

— *Judgment after winding up—Right of company to recover money from third party based on company's liability to judgment creditor—No ground for not staying execution.*—The manager of a co. fraudulently & without authority accepted bills of exchange in the co.'s name, & upon those bills the co. was sued to judgment by the holders. After the commencement of the action the co. went into voluntary liquidation. The co. subsequently recovered judgment in an action against a third party for damages for having wrongfully facilitated the commission of the above fraud, & for having thereby rendered the co. liable on the bills. The judgment creditors in the first action then sought to attach under a garnishee order the money so payable to the co. by the third party. On an application by the co. to stay the garnishee proceedings:—*Held*: where a judgment is recovered against a co. which is in voluntary liquidation the invariable practice of the ct. is to stay execution of the judgment unless there are very exceptional reasons for exercising its discretion otherwise, & the fact that the only right of the co. to recover the money claimed from the garnishees was based upon the co.'s liability to the judgment creditors was not such an exceptional circumstance as to take the case out of the general rule.—*ANGLO-BALTIC & MEDITERRANEAN BANK v. BARBER & Co.*, [1924] 2

K. B. 410; 93 L. J. K. B. 1135; 132 L. T. 1; [1924] B. & C. R. 224, C. A.

7043a. — *Preferential debts exceeding assets.*—*Re SOUTH RHONDDA COLLIERY CO.* (1898), LTD., [1928] W. N. 126.

7044a. — *Re NATIONAL STORES, LTD.* (1898), 42 Sol. Jo. 740.

7051. *Add. Annotation*:—*Mentd. Gilbert v. Gilbert & Bougher* (1927), 96 L. J. P. 137.

7074. *Add. Annotations*:—*Consd. Agricultural Wholesale Soc. v. Biddulph & District Agricultural Soc.*, [1925] Ch. 769. *Reid. Re Wilts & Somerset Farmers*, [1928] Ch. 809.

7076. *Add. Annotation*:—*Reid. Wall v. Exchange Investment Corp.*, [1926] Ch. 143.

7083. *Add. Annotation*:—*Consd. Agricultural Wholesale Soc. v. Biddulph & District Agricultural Soc.*, [1925] Ch. 769.

7102. *Add. Citation*:—130 L. T. 256.

7124. *Add. Annotation*:—*Mentd. Eastwood & Holt v. Studer* (1926), 31 Com. Cas. 251.

7146. *Add. Annotation*:—*Mentd. Public Trustee v. Elder*, [1926] Ch. 776.

7161. *Add. Annotation*:—*Reid. Soc. Anon. Pecheries Ostendaises v. Merchants Marine Insce.*, [1928] 1 K. B. 750.

7168. *Add. Annotation*:—*Reid. Morris v. Harris*, [1927] A. C. 252.

7169. *Add. Annotation*:—*Reid. Morris v. Harris*, [1927] A. C. 252.

7174a. — *Mode of application for order.*—(1) Where a co. has been dissolved, & on the subsequent discovery of assets a motion is made under 1908 Act, s. 223 (1), to declare the dissolution void, notice of the motion ought to be given to the Treasury Solr., since on dissolution the undistributed assets pass to the Crown as *bona vacantia*. (2) Under sect. 242, as to removal of defunct cos. from the register, the same practice should be adopted where there are undistributed assets.—*Re HOME & COLONIAL INSURANCE CO., LTD.* (1928), 44 T. L. R. 718.

7177a. — *Effect of.*—An order of the ct., declaring the dissolution of a co. to have been void, does not affect the validity of

PART III. SECT. 37, SUB-SECT. 11.—  
D.

*sp. Power of court to order stay—Under Indian Companies Act, 1913, s. 215.*—*Re SRI YOGASHRAM PHARMACY, LTD. (IN LIQUIDATION), Re MOHAN LAL MEHTA* (1927), 1 L. R. 50 All. 482.—IND.

PART III. SECT. 37, SUB-SECT. 13.—  
E. (b).

*st. Whether member of old company.*—In 1917 a deed to carry into effect a scheme of liquidation was drawn up, but it was never in fact registered nor executed, although its terms were actually carried out, in that the great majority of shareholders in the co. surrendered their shares & received others in exchange. In 1924 certain of these shareholders held a meeting & appointed two of their number as liquidators & attempted to assume the direction of the liquidation:—*Held*: the shareholders, who in 1917 had relinquished their shares, accepting shares in the other cos. in exchange, had ceased to be either shareholders or contributories & had no right to take any part in the management of the co.'s affairs.—*HUNTER v. DAMODAR DAS* (1924), 1 L. R. 46 All. 769.—IND.

PART III. SECT. 37, SUB-SECT. 13.—  
E. (f).

*o. Add "revid. 1 O. L. R. 480."*

PART III. SECT. 37, SUB-SECT. 14.—  
B.

*sw. Avoidance—Jurisdiction to order—For limited purpose only.*—A co. went into voluntary liquidation, & was dissolved. Thereafter intimation was received from the Inland Revenue that a sum was repayable to the co. in respect of excess profits duty, & a petition was presented to the ct. by the co. & the liquidator for an order declaring the dissolution of the co. to have been void, for the purpose of the exercise by the liquidator of authority to receive the payment & to grant receipt therefor:—*Held*: it was incompetent under 1908 Act, s. 223, to declare the dissolution of a co. void for a limited purpose only. The petition was amended by the deletion of all reference to the purpose, & the ct. granted it as amended.—*Re CHAMPDANY JUTE CO., LTD.*, [1924] S. C. 209.—SCOT.

*sz. — Application more than two years after dissolution.*—Eight years after a co. was dissolved by order

of the ct., it was discovered that the liquidator had not dealt with a feu held by the co. The superior & the liquidator presented a petition craving the ct. to declare the dissolution void, & to authorise the liquidator to grant a disposition of the feu *ad perpetuam remanentiam* in favour of the superior. The ct. refused the order craved.—*MACDONALD'S (LORD) CURATOR*, [1924] S. C. 163-4.—SCOT.

*sb. — — —*—A co. was dissolved for the purpose of reconstruction after the liquidator had entered into an agreement for the transfer of the assets, including certain heritable property, to a new co. The new co. entered into possession of the heritable property, but did not obtain a conveyance, & itself subsequently went into liquidation. More than two years after the dissolution of the old co., a petition was presented to the ct. by the liquidators of both cos. praying the ct. to declare the dissolution of the old co. to have been void, & to empower the liquidator of that co. to grant such titles as might be requisite to vest the heritable property in the new co. The ct. refused the order craved.—*FORTH SHIPREPAIRING CO., LTD., PETITIONERS*, [1924] S. C. 489-90.—SCOT.



proceedings taken during the interval between the dissolution & its avoidance.—*MORRIS v. HARRIS*, [1927] A. C. 252; 96 L. J. Ch. 253; 136 L. T. 587; [1927] B. & C. R. 65, H. L.

7269. *Add. Annotation*:—*Reid*. *Houghton v. Nothard, Lowe & Wills* (1927), 44 T. L. R. 76.

7371a. — Scheme involving reduction of capital — Modification of rights of different classes of shareholders.]—*Re ODHAMS PRESS, LTD.*, [1925] W. N. 10.

7382a. — Scheme involving reduction, reorganisation & increase of capital.]—*Re WALTERS (STEPHEN) & SONS, LTD.*, No. 839a, *ante*.

7407a. — Omission to advertise—Sufficient majority present.]—Where there was an inadvertent omission to advertise a scheme of arrangement under 1908 Act, s. 120, but it was satisfactorily proved that thirty out of thirty-one shareholders of the co. had received the notices:—*Held*: the meetings had in substance been held in manner prescribed, & the ct. would not insist on further meetings being convened.—*Re ANGLO-SPANISH TARTAR REFINERIES, LTD.* (1924), 68 Sol. Jo. 738.

7409a. —.]—(1) Proxy papers to be used at

meetings to consider schemes of arrangement should follow the form settled by the judge, which empowers the proxy "to vote for me & in my name [ ] the said scheme either with or without modification as my proxy may approve," & contains opposite the blank a marginal note as follows: "If for, insert 'for,' if against, insert 'against,' & strike out the words after 'scheme' & initial alterations." Proxies not according to this form will be properly rejected.

(2) On a scheme of arrangement being sanctioned, the ct. refused to re-appoint the original trustees for the debenture-holders, it having been proved that they had refused to give information to the debenture-holders as to the trust estate, & had in fact acquired debentures from their *cestuis que trust* at inadequate prices, & not in their own names, but in the names of cos. controlled by them.—*Re MAGADI SODA CO., LTD.* (1925), 94 L. J. Ch. 217; 41 T. L. R. 297; 69 Sol. Jo. 365; [1925] B. & C. R. 70.

7452a. Notice of motion to be given to Treasury Solicitor—Where undistributed assets.]—*Re HOME & COLONIAL INSURANCE CO., LTD.*, No. 7174a, *ante*.

## Part IV.—Banking Companies.

7462a. — — — Defences available—Liability for calls.]—*Assumpsit* on a money demand against a joint stock banking co. Plea, after setting out the deed of settlement, to which pltf. was a party, a set-off for calls due on shares held by pltf. Replication, "not indebted":—*Held*: (1) the replication was bad, the set-off being founded entirely

on the deed; (2) the plea was good.—*MILVAIN v. MATHER* (1850), 5 Exch. 55; 1 L. M. & P. 220; 19 L. J. Ex. 227; 14 L. T. O. S. 446; 155 E. R. 24.

*Annotation*:—*Generally*, *Reid*. *Smith v. Trowsdale* (1854), 18 Jur. 552.

7479. *Add. Annotation*:—*Consd.* *Spencer v. Ashworth Partington* (1925), 94 L. J. K. B. 447.

### PART III. SECT. 37, SUB-SECT. 15.—A. (b) iii.

e i. —.]—*Held*: in the absence of proof that creditors' rights or those of the contributories would be prejudiced by the voluntary winding up, applications for compulsory winding up must be dismissed.—*SANSAR CHAND v. KARAM CHAND* (1925), 1 L. L. R. 6 Lah. 340.—IND

### PART III. SECT. 37, SUB-SECT. 15.—A. (c).

sd. *Handing over of books by voluntary to compulsory liquidator—Lien of voluntary liquidator over books.*]—*Re STOCKBRIDGE & CO., LTD.*, [1923] N. Z. L. R. 221.—N.Z.

### PART III. SECT. 39, SUB-SECT. 1.—B.

f i. — *Preferential treatment of creditor.*]—Where a co. proposed a scheme of arrangement, under which a bank appeared to be secured to the extent of 20s. in the pound:—*Held*: the scheme was not one which, in view of the apparent preferential treatment accorded to the bank, the ct. should sanction.—*LAINIERE DE ROUBAIX v. GLEN GLOVE & HOSIERY CO., LTD.*, [1926] S. C. 91.—SCOT.

### PART III. SECT. 39, SUB-SECT. 1.—D.

7387 ii. —.]—The ct. refused to approve of a scheme of arrangement proposed by the insolvent debtor, an incorporated co., & accepted by a majority of its creditors, whereby the preferred & secured creditors were to be paid by debtor, & the unsecured creditors paid in full by the allotment

& issue to them of fully paid-up preference shares in the debtor co. or in a new co. to be incorporated. The scheme was not one which should be forced upon an unwilling creditor.—*Re LINDNERS, LTD.* (1921), 64 D. L. R. 717; 51 O. L. R. 116; 2 C. B. R. 49.—CAN.

### PART III. SECT. 39, SUB-SECT. 1.—F. (a).

7399 ii. — — —.]—Where a bank, being a secured creditor, improperly voted with the unsecured creditors:—*Held*: in the absence of the bank as a voting creditor, the necessary three-fourths in value would not have been obtained, & the procedure had not complied with 1908 Act, s. 120 (2).—*LAINIERE DE ROUBAIX v. GLEN GLOVE & HOSIERY CO., LTD.*, [1926] S. C. 91.—SCOT.

### PART III. SECT. 39, SUB-SECT. 1.—F. (b).

sf. *Time for lodging.*]—Creditors' proxies need not be lodged at any particular date.

Where proxies lodged by creditors within forty-eight hours of a meeting to approve a scheme of arrangement had been disallowed:—*Held*: the rejection of the proxies was wrong.—*LAINIERE DE ROUBAIX v. GLEN GLOVE & HOSIERY CO., LTD.*, [1926] S. C. 91.—SCOT.

### PART III. SECT. 40, SUB-SECT. 2.—A.

7449 v. — — —.]—A co. formed for the purpose of money-lending, which, having discontinued business,

had been struck off the register, applied for an order to have its name restored thereto, the main ground of its application being that it desired to recover from a bkpt. estate a dividend which had become payable since the date of striking off:—*Held*: the application should be granted.—*CHARLES DALE, LTD.*, [1927] S. C. 130.—SCOT.

oi. — *Dissolution of company on non-compliance with statutory formalities.*]—A co. which failed to comply with Cos. (Reconstitution of Records) Act (N.I.), 1923, & was thereupon dissolved, may be "replaced on" & "restored to" the register in accordance with sect. 5 (4).—*Re CLONARD BRICK & ESTATE CO., LTD.*, [1926] N. 47.—IR.

sl. *Effect of.*]—Where a co. has defaulted in complying with Cos. Act, ss. 80–85, & its letters patent have been revoked & cancelled, & the default can be waived by showing that it was due to inadvertence, accident or neglect, the revocation is not complete but conditional, & on the revival of the charter, the co.'s existence must be considered to have been at no time interrupted.—*BANQUE CANADIENNE NATIONALE v. SAWCHUK*, [1926] 3 D. L. R. 964; [1926] 2 W. W. R. 771; 36 Man. L. R. 1.—CAN.

### PART IV. SECT. 4.

sn. *Position of depositors.*]—If a co. is deprived of the power to receive money on deposit, then in a subsequent bkpcy. liquidation of the co. the depositors claiming for moneys on

## Part V.—Insurance Companies.

**7482. Add. Annotation:—***Reid. Jacobs v. Batavia & General Plantations Trust*, [1924] 2 Ch. 329

**7482a. Power of company to vary rate of interest on loans to policy-holders.]—**In an action by a policy-holder against an insurance co. for a declaration that the co. were not entitled to charge more than 4 per cent. interest on sums advanced on security of their policies, pltf. based his case on an alleged collateral contract or on established practice:—*Held*: there was no collateral contract, & the practice proved was to make loans at the rate of interest fixed by the board, & not to charge one fixed rate for all time.—*THISSELTON v. COMMERCIAL UNION ASSURANCE CO.*, [1926] Ch. 888; 95 L. J. Ch. 447; 136 L. T. 114; 70 Sol. Jo. 892.

**7485a. Companies to which Assurance Companies Act, 1909 (c. 49), applies—Employers' liability insurance company—Carrying on business outside United Kingdom—What is.]—**The above Act applies to employers' liability insurance business carried on in the United Kingdom, though the risks run, & the liability insured against, originated outside the United Kingdom, as sect. 33 (1) (i) of the above Act refers to the place where the business is carried on & not to the place where the risks are run, the act of issuing the policies constituting the carrying on or transacting business.—*Re UNITED GENERAL COMMERCIAL INSURANCE CORPN.*, [1927] 2 Ch. 51; 96 L. J. Ch. 231; 136 L. T. 653; 71 Sol. Jo. 141, C. A.

*Annotation:—Reid. First Russian Insce. v. London & Lancashire Insce.*, [1928] Ch. 922.

**7490a. — Reinsurance of fire risks.]—**The business of reinsuring fire risks is fire insurance business within Assurance Companies Act, 1909 (c. 49), & a foreign co., which carries on the business of reinsurance of fire risks in the United Kingdom, but does not otherwise carry on insurance business in England, is bound to deposit with the Paymaster-General the sum prescribed by s. 2 (1) of the Act.—*FORSIKRINGS AKT. NATIONAL (OF COPENHAGEN) v. A.-G.*, [1925] A. C. 639; 94 L. J. K. B. 712; 133 L. T. 151; 41 T. L. R. 473; 69 Sol. Jo. 543; 30 Com. Cas. 252, H. L.; *affg. S. C. sub nom. A.-G. v. FORSIKRINGS AKT. NATIONAL (OF COPENHAGEN)* (1924), 93 L. J. K. B. 679, C. A.

*Annotations:—Reid. First Russian Insce. v. London &*

*deposit prior to its losing such powers will be paid in full, before depositors claiming for deposits made after it lost such powers. Withdrawals made by one of the second class of depositors will be appropriated by the ct. to his deposits made before the loss of such powers.—Re NIPPON KINYUN SHA, LTD., Ex p. TOTARO FUJINO*, [1923] 1 D. L. R. 1156; 32 B. C. R. 56; [1923] 1 W. W. R. 880; 3 C. B. R. 673.—CAN.

## PART V. SECT. 1.

*st. Grounds for granting or refusing licence—Whether company carrying on business in good faith.]—Re ALL RISK INSURANCE AGENCIES, LTD. (B. C.)*, [1927] 3 D. L. R. 245; [1927] 3 W. W. R. 58.—CAN.

**7483 i. Power of directors to contract—Contract to stand surety for debt due by**

*third party.]—Held*: not within the co.'s arts. of assocn.—*HINDUSTAN ASSURANCE & MUTUAL BENEFIT SOCIETY, LTD., LAHORE v. KHALSA BANK, LTD., GUJRANWALA* (1927), 1 L. R. 9 Lah. 360.—IND.

*ex. Superintendent of insurance—Powers—To alter annual statement of company.]—Re SUN LIFE ASSURANCE CO.*, [1927] 4 D. L. R. 287.—CAN.

## PART V. SECT. 5.

*sa. British company doing business in Irish Free State.]—A British insurance co. doing business in the Irish Free State after Dec. 1922 claimed not to be liable to make any deposits in the Irish Free State in consequence of Constitution & Adaptation of Enactments Act, 1922, art. 73, & External Cos. Adaptation Order, 1923, on the ground that the Act had been complied*

*Lancashire Insce.*, [1928] Ch. 922; *Re National Benefit Assce., Ex p. English Insce.*, [1928] Ch. 74.

**7542a. —.]—Re BRITANNIC ASSURANCE CO., LTD. & ASSURANCE COMPANIES ACT, 1909** (1927), 71 Sol. Jo. 729.

**7549. Add. Annotations:—As to (1) Reid. Cornish Mutual Assce. v. I. R. Comrs.**, [1926] A. C. 281. *Generally, Mentd. Brighton College v. Marriott*, [1925] 1 K. B. 312.

**7593. Add. Annotation:—Reid. Biddulph & District Agricultural Soc. v. Agricultural Wholesale Soc.** (1926), 95 L. J. Ch. 576.

**7609. Add. Annotation:—Consd. Agricultural Wholesale Soc. v. Biddulph & District Agricultural Soc.**, [1925] Ch. 769.

**7612a. —.]—Held**: the liquidator had rightly rejected a proof, in that the contract in respect of which the proof of debt was advanced, was a contract of marine insurance & no stamped policy was issued as required by law, so that the contract was invalid.—*Re NATIONAL BENEFIT ASSURANCE CO., Ex p. ENGLISH INSURANCE CO.*, [1928] Ch. 74; 97 L. J. Ch. 28; 138 L. T. 122; 44 T. L. R. 14; 71 Sol. Jo. 880, C. A.

**7612b. — Effect of compromise under 1908 Act, s. 214, accepted & acted on by parties.]—Re NORSKE LLOYD INSURANCE CO., LTD.**, [1928] W. N. 99.

**7623. Add. Annotation:—As to (1) Reid. Re City Life Assce.** (1925), 42 T. L. R. 45.

**7625. Add. Annotations:—Distd. Re National Benefit Assce.**, [1924] 2 Ch. 339. *N.F. Re City Life Assce.* (1925), 42 T. L. R. 45.

**7626. Add. Annotation:—Reid. Re City Life Assce.** (1925), 42 T. L. R. 45.

**7627. Add. Annotations:—Overd. Re City Life Assce.** (1925), 42 T. L. R. 45. *Reid. Re National Benefit Assce.*, [1924] 2 Ch. 339.

**7627a. —.]—A policy-holder in a life assurance co. borrowed money from the co. on his policy. Before the death of the assured the co. was wound up, & the policy was valued under Assurance Companies Act, 1909 (c. 49). The policy-holder claimed to set off the value of the policy against his debt:—Held: Bkpcy. Act, 1914 (c. 59), s. 31, applied, there having been at the date of the winding up contractual obligations the breach of which might give rise to a claim for damages provable in the winding up, & the policy-holder**

with in 1914, when deposits were made in England:—*Held*: the co. was bound to make such deposits in the Irish Free State.—*WESTERN AUSTRALIAN INSURANCE CO., LTD. v. A.-G. & MINISTER FOR INDUSTRY & COMMERCE*, [1926] 1 L. R. 57; 59 I. L. T. 109.—IR.

**7498 i. Application of deposit on winding up.]—Re NATIONAL BENEFIT ASSURANCE CO., LTD., PACIFIC GREAT EASTERN RY. CO.'S CASE**, [1927] 3 D. L. R. 289; [1927] 2 W. W. R. 348; 36 Man. L. R. 549.—CAN.

## PART V. SECT. 8, SUB-SECT. 4.—A.

*o i. — Dominion Winding-up Act.]—Re CONTINENTAL FIRE & CASUALTY CO.*, [1924] 1 W. W. R. 132.—CAN.

*o ii. —.]—Re CONTINENTAL FIRE & CASUALTY CO.*, [1924] 1 W. W. R. 1080.—CAN.

was entitled to set off the value of his policy against his debt.—*Re NATIONAL BENEFIT ASSURANCE Co., LTD.*, [1924] 2 Ch. 339; 94 L. J. Ch. 33; 132 L. T. 50; 40 T. L. R. 755; 68 Sol. Jo. 753; [1924] B. & C. R. 231.

*Annotation*:—*Apprvd. & Follw. Re City Life Assce. Co.* (1925) 42 T. L. R. 45.

7627b. —.].—In the liquidation of a life insurance co. policy holders who have mortgaged their policies to the co. to secure advances are entitled under Bkpy. Act, 1914 (c. 59), s. 31, as made applicable by

1908 Act, s. 207, to set off the statutory value of their policies in full against the money due on their mtges., if the co. held the mtges. at the date of the commencement of the winding up, but not if, before that date, the co. had equitably assigned the mtges. to trustees to secure a trust fund for the payment of a certain class of the policies.—*Re CITY LIFE ASSURANCE Co., LTD.*, [1926] Ch. 191; 95 L. J. Ch. 65; 134 L. T. 207; 42 T. L. R. 45; 70 Sol. Jo. 108; [1925] B. & C. R. 233, C. A.

## Part VII.—Unregistered Companies.

7650. *Add. Annotation*:—*Reid. Employers' Liability Assce. v. Sedgwick Collins* (1926), 95 L. J. K. B. 1015.

## Part VIII.—Cost-Book Companies and Mining Companies in the Stannaries.

7723a. —.].—*COURTEIS v. JOHNSON* (1853), cited 10 Exch. 242, n.; 156 E. R. 433.

*Annotation*:—*Reid. Watson v. Spratley* (1854), 10 Exch. 222.

7726. *Add. Annotations*:—*Reid. Jebara v. Ottoman Bank*, [1927] 2 K. B. 254. *Mentd.*

*Prager v. Blatspiel Stamp & Heacock*, [1924] 1 K. B. 566.

7737. *Add. Annotation*:—*As to (2) Consd. Spencer v. Ashworth Partington*, [1925] 1 K. B. 589.

## Part IX.—Statutory Companies for Public Purposes.

7862. *Add. Annotation*:—*As to (1) Consd. Witham Outfall Board v. Boston Corpn.* (1926), 136 L. T. 756.

8045. *Add. Annotation*:—*Distd. Aylott v. West Ham Corpn., Sisson v. Same* (1926), 95 L. J. Ch. 533.

8129. *Add. Annotation*:—*Reid. British Insulated & Helsby Cables v. Atherton*, [1926] A. C. 205.

8176. *Add. Annotation*:—*Reid. British Insulated & Helsby Cables v. Atherton*, [1926] A. C. 205.

8225. *Add. Annotation*:—*Consd. Hartland v. Digines* (1924), 41 T. L. R. 131.

8243. *Add. Annotation*:—*Reid. British Insulated & Helsby Cables v. Atherton*, [1926] A. C. 205.

8246. *Add. Annotation*:—*Reid. Morris v. Harris*, [1927] A. C. 252.

8302. *Add. Annotation*:—*Distd. Garrard v. James*, [1925] Ch. 616.

8339. *Add. Annotation*:—*Mentd. Wright v. Morgan*, [1926] A. C. 788.

8349. *Add. Annotation*:—*Generally, Mentd. Putsmann v. Taylor*, [1927] 1 K. B. 637.

8361. *Add. Annotation*:—*Reid. Kreditbank Cassel G. m. b. H. v. Schenkers*, [1926] 2 K. B. 450.

8365. *Add. Annotation*:—*Consd. Garrard v. James*, [1925] Ch. 616.

8366. *Add. Annotation*:—*Reid. Liggett (Liverpool) v. Barclays Bank*, [1928] 1 K. B. 48.

8383. *Add. Annotation*:—*Generally, Mentd. Putsmann v. Taylor*, [1927] 1 K. B. 637.

8389. *Add. Annotation*:—*As to (1) Apld. Garrard v. James*, [1925] Ch. 616.

8412a. —.].—*Re MERSEY RY. Co., GIBBS v. MERSEY RY. Co.* (1895), 11 T. L. R. 390.

8444a. —.].—A receiver & manager was appointed of the undertaking of a tramways co.—*BARTLETT v. WEST METROPOLITAN TRAMWAYS Co.*, [1893] 3 Ch. 437; 63 L. J. Ch. 208; 69 L. T. 560.

*Annotation*:—*Dbtd. Marshall v. South Staffordshire Tram. Co.*, [1895] 2 Ch. 36.

8458. *Add. Annotation*:—*Mentd. Aylott v. West Ham Corpn., Sisson v. West Ham Corpn.* (1926), 90 J. P. 99.

8459. *Add. Annotation*:—*Mentd. Everett v. Griffiths*, [1924] 1 K. B. 941.

### PART VII. SECT. 2, SUB-SECT. 1.

7654 i. *Power of court—Under Companies Acts—Discretionary.*—The general partner in a limited partnership consisting of two members presented a petition for the winding up

of the partnership by the ct. & for the appointment of a liquidator:—*Held*: although it was competent for the ct. to appoint a judicial factor to wind up a limited partnership, the averments of parties showed that questions as

to the liability of the limited partner were likely to arise, & it was more expedient that the partnership should be wound up by the ct.—*MURHEAD v. BORLAND*, [1926] S. C. 474.—SCOT.



## Part XII.—Foreign Companies.

8510. *Add. Annotations*:—*Refd.* Swedish Central Ry. v. Thompson, [1924] 2 K. B. 255; A.-G. v. Belillos, [1928] 1 K. B. 798.

8512. *Add. Annotation*:—*Refd.* Employers' Liability Assce. v. Sedgwick Collins (1926), 95 L. J. K. B. 1015.

8514. *Add. Annotation*:—*Refd.* Gilbert v. Gilbert & Bougher (1927), 96 L. J. P. 137.

8520. *Add. Annotation*:—*Refd.* Midland Bank v. I. R. Comrs., [1927] 2 K. B. 465.

8528. For the portion of the paragraph in the original volume commencing with "*Held*:" substitute the following paragraph:—

*Held*: (1) upon the construction of the decrees of the Soviet Govt., defts. had not proved that pltf. bank was dissolved or that the property in the bonds was no longer in the bank; (2) it was not open to defts. to raise by way of defence to the action the objection that the London branch manager had no authority to bring the action in the name of pltf. bank, but they ought to have moved to strike out the name of the bank as pltf.—*RUSSIAN COMMERCIAL & INDUSTRIAL BANK v. COMPTOIR D'ESCOMPTE DE MULHOUSE*, [1925] A. C. 112; 93 L. J. K. B. 1098; 132 L. T. 99; 40 T. L. R. 837; 68 Sol. Jo. 841, H. L.

*Annotations*:—*As to* (1) *Apld.* Employers' Liability Assce. v. Sedgwick Collins (1926), 95 L. J. K. B. 1015. *As to* (2) *Fold.* Banque Internationale de Commerce de Petrograd v. Goukassow, [1925] A. C. 150. *Consd.* The Jupiter (No. 2), [1925] P. 69; The Jupiter (No. 3) (1927), 137 L. T. 333.

8524. For the paragraph in the original volume substitute the following paragraph:—

— — —.]—A Russian bank having a head office in Petrograd & a branch in Paris had, through its Paris branch, a series of financial transactions with a customer as the result of which the customer was largely indebted to the bank. In 1920 the Paris manager brought an action in the name of the bank against the customer to recover the amount of the debt. Deft. pleaded that by virtue of the nationalisation of the Russian banks under decrees of the Soviet Govt. pltf. bank had ceased to exist, & that no one had authority to sue in the name of the bank:—*Held*: the case was governed by *Russian Commercial & Industrial Bank v. Comptoir d'Escompte de Mulhouse*, No. 8523, *ante*, & the defence failed.—*BANQUE INTERNATIONALE DE COM-*

*MERCE DE PETROGRAD v. GOUKASSOW*, [1925] A. C. 150; 93 L. J. K. B. 1084; 132 L. T. 116; 40 T. L. R. 837; 68 Sol. Jo. 841, H. L.

*Annotation*:—*Refd.* The Jupiter (No. 3) (1927), 137 L. T. 333.

8527a. — — — Whether company in existence.]

—A Russian insurance co., having its principal office in Petrograd & a branch office in London, in accordance with 1908 Act, s. 274, filed with the registrar the name of C. as its authorised representative to accept service of process on its behalf. By a series of decrees passed in 1918 the Soviet Govt. purported to put all insurance co.s in Russia into liquidation & to appropriate their property. In the spring of 1923 C. sent a notice to the registrar that the co. which he represented had ceased to exist, & at his request this notice was placed upon the file. In the summer of the same year resps. brought an action against the co. by specially indorsed writ for payment of a sum of money claimed to be due to them in respect of certain insurance transactions. The writ was served upon C., who protested that he had no power to act for the co., & judgment was signed in default of appearance:—*Held*: (1) at the date of the writ the co. had not ceased to exist by virtue of the decrees of the Soviet Govt.; (2) the service of the writ on C. was valid; (3) the co. by putting on the file the name of a person authorised to accept service of process on its behalf agreed to submit to the jurisdiction of the ct., & it must be assumed that the Russian Govt. would, according to the comity of nations, recognise the judgment as effective.—*EMPLOYERS' LIABILITY ASSURANCE CORPN. v. SEDGWICK COLLINS & Co.*, [1927] A. C. 95; 95 L. J. K. B. 1015; 42 T. L. R. 749; *sub nom.* *SEDGWICK COLLINS & Co., LTD. v. ROSSIA INSURANCE CO. OF PETROGRAD*, 136 L. T. 72, H. L.; *affg.* *S.C. sub nom. SEDGWICK COLLINS & Co. v. ROSSIA INSURANCE CO. OF PETROGRAD*, [1926] 1 K. B. 1, C. A.

*Annotations*:—*As to* (1) *Refd.* First Russian Insce. v. London & Lancashire Insce., [1928] Ch. 922. *As to* (3) *Apld.* Sabatier v. Trading Co., [1927] 1 Ch. 495. *Generally, Refd.* The Jupiter (No. 3) (1927), 137 L. T. 333.

8542. *Add. Annotation*:—*Refd.* Sedgwick Collins v. Rossia Insce. of Petrograd, [1926] 1 K. B. 1.

8543. *Add. Annotation*:—*Refd.* Sedgwick Collins v. Rossia Insce. of Petrograd (1925), 133 L. T. 808.

## PART X. SECT. 6.

*ab. Effect of Act respecting Capacity of Companies*, 1917 (c. 12).—The above Act deals only with the capacity of cos. to exercise their powers, & does not enlarge the powers themselves.—*Re NORTH WESTERN TRUST CO., Ex p. PURE OIL CO., LTD. (MAN.)*, [1926] 1 D. L. R. 689; [1926] 1 W. W. R. 426; 35 Man. L. R. 433.—CAN.

## PART XII. SECT. 4.

t. (top of p. 1200). Read now "w."

w (p. 1200) i. — *Company holding no licence in mortmain.*—An insurance co., incorporated in a foreign State & holding no licence under Ontario Mortmain & Charitable Uses Act, but registered as authorised to do business in Ontario, applied to be registered as the transferee of a charge upon land:—

*Held*: the co. was entitled to be registered without any qualification as to proceedings that might be taken under that Act or any other Act affecting the holding of land by corpns.—*Re NEW YORK LIFE INSURANCE CO.* (1924), 55 O. L. R. 408.—CAN.

q (p. 1200) i. — *Burden of proof of status to carry on business.*—*LA SALLE EXTENSION UNIVERSITY v. FREEMAN (MAN.)*, [1926] 3 W. W. R. 474.—CAN.

c. (p. 1202). Add "*revid.* 56 S. C. R. 539."

## PART XII. SECT. 8, SUB-SECT. 1.

e i. — — —.]—A winding-up order by a Canadian ct. in the matter of a Scotch co. doing business in Canada, & having assets & owing debts in Canada, which order was made on

the petition of a Canadian creditor, with the consent of the liquidator previously appointed by the ct. in Scotland, as ancillary to the winding-up proceedings there:—*Held*: a valid order.—*Re SCOTTISH CANADIAN ASBESTOS CO., ALLEN v. HANSON* (1890), 18 S. C. R. 667.—CAN.

e ii. — — —.]—Where a winding-up order had been made in England against an English co. prior to the making of a Canadian winding-up order:—*Held*: a double liquidation should be avoided, by treating the duties of the Canadian liquidator as ancillary to the English winding-up proceedings.—*Re NATIONAL BENEFIT ASSURANCE CO., LTD., PACIFIC GREAT EASTERN RY. CO.'S CASE*, [1927] 3 D. L. R. 289; [1927] 2 W. W. R. 348; 36 Man. L. R. 549.—CAN.

## Part XIII.—Illegal Companies.

- 8576a.**     <sup>-]</sup>—**HARVEY v. COLLETT** (1846), 15 Sim. 332; 4 Ry. & Can. Cas. 387; 15 L. J. Ch. 376; 10 Jur. 603; 60 E. R. 646.  
*Annotation* :—**Refd.** **Stewart v. Austin** (1866), 36 L. J. Ch. 162.
- 8581a.**     **— Action against treasurer & secretary — Illegality will not prevent account.**—**GREENBERG v. COOPERSTEIN**, No. 272a, *ante*.
- 8582.** *Add. Annotation* :—**Refd.** **Greenberg v. Cooperstein**, [1926] Ch. 657.
- 8583.** *Add. Annotation* :—**Refd.** **Greenberg v. Cooperstein**, [1926] Ch. 657.
- 8587.** *Add. Annotations* :—**Refd.** **Cornish Mutual Assce. v. I. R. Comrs.**, [1926] A. C. 281; **Greenberg v. Cooperstein**, [1926] Ch. 657; **Thomas v. Evans**, **Jones v. South-West Lancashire Coal Owners' Asscn.** (1926), 135 L. T. 673. **Mentd.** **Brighton College v. Marriott**, [1925] 1 K. B. 312; *Re* **United General Commercial Insce. Corpn.**, [1927] 2 Ch. 51.

## Part XIV.—Companies under Private Acts.

- 8595a.**     **Name of member omitted from memorial of names of members—Deed not executed.**—**SCOTT v. BERKELEY** (1847), 3 C. B. 925; 5 Ry. & Can. Cas. 51; 16 L. J. C. P. 107; 8 L. T. O. S. 389; 11 Jur. 242; 136 E. R. 371.  
*Annotations* :—**Refd.** **Portal v. Emmens** (1876), 1 C. P. D. 201; **Kipling v. Todd** (1878), 3 C. P. D. 350; *Re* **South London Fish Market Co.**, **Plimsoll's Case** (1888), 1 Meg. 92.
- 8621a.**     <sup>-]</sup>—**BROWNE v. LONDON NECRO-**  
**POLIS & NATIONAL MAUSOLEUM CO.** (1857), 6 W. R. 188.
- 8631.** *Add. Annotation* :—**Mentd.** **Harnett v. Bond**, [1924] 2 K. B. 517.
- 8633.** *Add. Annotations* :—**Consd.** **Liggett (Liverpool) v. Barclays Bank** (1927), 137 L. T. 443, **Refd.** **Liggett (Liverpool) v. Barclays Bank**, [1928] 1 K. B. 48. **Mentd.** **Deuchar v. Gas Light & Coke Co.**, [1925] A. C. 691.

## COMMONS AND RIGHTS OF COMMON.

NOTE.—As to commons & rights of common after 1925, see Law of Property Act, 1925 (c. 20), ss. 193, 194.

### Part II.—Different Kinds of Rights of Common.

18. *Add. Annotation* :—As to (1) **Reid**. *Stoney v. Eastbourne R. C. & Devonshire* (1926), 95 L. J. Ch. 312.
224. *Add. Annotation* :—Generally, **Mentd.** *Verge v. Somerville*, [1924] A. C. 496.
144. *Add. Annotation* :—**Mentd.** *Back v. Daniels* (1924), 69 Sol. Jo. 160.
226. *Add. Annotation* :—As to (2) **Reid**. *Hodgson v. McCreagh* (1923), 92 L. J. Ch.

### Part V.—Right of Free Warren.

323. *Add. Annotation* :—**Consd.** *Hodgson v. McCreagh* (1923), 93 L. J. Ch. 339.
- 323a. In demesne land—Is warren in gross.] —Deft., lord of the manor of B., claimed sporting rights over pltfs.' freehold farms within the manor, basing his claim on a franchise of free warren appurtenant to the manor granted by the Crown to J., in 1301; alternatively, on a lost grant, presumed from immemorial user :—*Held* : the grant to J. in 1301 was of a franchise in gross, & even if not in gross, it would have passed by J.'s subsequent alienation of the land, or become a franchise in gross by J.'s reserving the franchise upon the occasion of that alienation; there was therefore no title in deft. by the grant of the manor, & there was no evidence supporting his claim by prescription to the presumption of a lost grant.—**HODGSON v. MCCREAGH** (1923), 93 L. J. Ch. 339; 131 L. T. 340; 40 T. L. R. 10; 68 Sol. Jo. 58, C. A.
329. *Add. Annotation* :—**Reid**. *Hodgson v. McCreagh* (1923), 93 L. J. Ch. 339.
339. *Add. Annotation* :—Generally, **Mentd.** *The Fagernes*, [1926] P. 185.
347. *Add. Annotation* :—**Consd.** *Hodgson v. McCreagh* (1923), 93 L. J. Ch. 339.
- 347a. **Alienation reserving franchise of free warren.** —**HODGSON v. MCCREAGH**, No. 323a, *ante*.

### Part VI.—Creation and Proof of Rights of Common.

366. *Add. Annotation* :—Generally, **Mentd.** *Verge v. Somerville*, [1924] A. C. 496.
452. *Add. Annotation* :—**Mentd.** *Hulley v. Silver-springs Bleaching Co.*, [1922] 2 Ch. 268.

### Part VIII.—Acquisition of Commons under Compulsory Powers.

554. *Add. Annotation* :—**Mentd.** *British Thomson-Houston Co. v. British Insulated & Helsby Cables*, [1924] 2 Ch. 160.

### Part IX.—Rights, Remedies and Liabilities of Lord of Manor as Owner of Soil.

640. *Add. Annotation* :—**Mentd.** *Weber v. Birkett*, [1925] 1 K. B. 720.



## Part X.—Rights and Remedies of Commoners.

693. *Add. Annotation* :—*Mentd. Hardie & Lane v. Chiltern* (1927), 96 L. J. K. B. 773.

## Part XIII.—Inclosure of Commons and Common Fields.

886. *Add. Annotation* :—*Refd. Back v. Daniels*, [1925] 1 K. B. 526.
898. *Add. Annotations* :—*As to* (4) *Refd. Consett Industrial & Provident Soc. v. Consett Iron Co.*, [1922] 2 Ch. 135. *As to* (5) *Refd. Consett Industrial & Provident Soc. v. Consett Iron Co.*, [1922] 2 Ch. 135.
899. *Add. Annotation* :—*As to* (1) *Consd. Consett Industrial & Provident Soc. v. Consett Iron Co.*, [1922] 2 Ch. 135.
900. *Add. Annotation* :—*Consd. Consett Industrial & Provident Soc. v. Consett Iron Co.*, [1922] 2 Ch. 135.
901. *Add. Citation* :—[1922] 2 Ch. 187, n.  
*Add. Annotation* :—*Folld. Consett Industrial & Provident Soc. v. Consett Iron Co.*, [1922] 2 Ch. 135.
903. For the paragraph in the original volume substitute the following paragraph :—  

—————.]—By the Lanchester Inclosure Act, 1773, the moors & commons of the manor of Lanchester, Durham, were divided & allotted. The Act provided that the lord of the manor & his assigns should have, hold & enjoy all mines & minerals within & under the allotments, with full & free liberty of searching for, draining, winning & working the mines & minerals by any ways or means then in use or thereafter to be invented as fully & freely as he might or could have had, held, used & enjoyed the same in case that Act had not been made without paying any damages or making any satisfaction for so doing; & also that the annual rental of a certain allotment to the justices should be applied in or towards the compensation of those allottees whose allotments were damaged by the exercise of the lord's mining rights, & that any deficiency should be made up by means of a rate levied upon all the allottees :—*Held* : (1) the case was governed by the decision of the Ct. of Appeal in *Consett Waterworks Co. v. Ritson*, No. 901, *ante*, which was a decision on the identical question arising on the construction of the same Act & in the same circumstances, & although the reasoning upon which that decision was founded had been disapproved of by the House of Lords in *Butterknowle Colliery Co. v. Bishop Auckland Industrial Co.*, No. 905, *post*, the decision itself had not been overruled & was therefore binding upon the ct., & defts. had a right to work the mines so as to let down the surface of the land without paying damages or making any compensation to pl'ts.; (2) (YOUNGER, L.J.) the decision at which the Ct. of Appeal had felt itself compelled to arrive in deference to authority binding upon it might quite well have been reached on the construction of the Act itself apart altogether from the decision by which it was bound.—*CONSETT INDUSTRIAL & PROVIDENT SOCIETY, LTD. v. CONSETT IRON CO.*, [1922] 2 Ch. 135; 91 L. J. Ch. 630; 127 L. T. 383; 38 T. L. R. 584; 66 Sol. Jo. 452, O. A.
905. *Add. Annotation* :—*Consd. Consett Industrial & Provident Soc. v. Consett Iron Co.*, [1922] 2 Ch. 135.
906. *Add. Annotation* :—*Consd. Consett Industrial & Provident Soc. v. Consett Iron Co.*, [1922] 2 Ch. 135.
909. *Add. Annotations* :—*As to* (2) *Consd. Consett Industrial & Provident Soc. v. Consett Iron Co.*, [1922] 2 Ch. 135. *As to* (3) *Consd. Consett Industrial & Provident Soc. v. Consett Iron Co.*, [1922] 2 Ch. 135.
911. *Add. Annotation* :—*As to* (2) *Consd. Consett Industrial & Provident Soc. v. Consett Iron Co.*, [1922] 2 Ch. 135.
913. *Add. Annotation* :—*Refd. Taylor v. British Legal Life Assce.*, [1925] Ch. 395.
- 989a. *As to fences—Power to direct maintenance.*—Notwithstanding the omission from Inclosure Act, 1836 (c. 115), of an express power for the comrs. to direct the repair & maintenance of fences, the erection of which by the respective allottees of land that Act empowers them to direct, such a power is nevertheless conferred upon them by the Act by implication.—*GARNETT v. PRATT*, [1926] Ch. 897; 95 L. J. Ch. 453; 135 L. T. 471; 70 Sol. Jo. 736.
953. *Add. Annotation* :—*Mentd. R. v. Electricity Comrs., Ex p. London Electricity Joint Committee*, [1924] 1 K. B. 171.
985. *Add. Annotations* :—*Generally, Mentd. R. v. Nat Bell Liquors*, [1922] 2 A. C. 128; *R. v. Lincolnshire JJ., Ex p. Brett*, [1926] 2 K. B. 192; *Palmer v. Crone*, [1927] 1 K. B. 804.
1009. *Add. Annotation* :—*Mentd. Leyton U. D. C. v. Wilkinson*, [1927] 1 K. B. 853.
1013. *Add. Annotation* :—*Generally, Mentd. White v. Williams*, [1922] 1 K. B. 727.
1016. *Add. Annotation* :—*Mentd. Hulley v. Silver-springs Bleaching Co.*, [1922] 2 Ch. 268.
1023. *Add. Annotation* :—*As to* (1) *Refd. Consett Industrial & Provident Soc. v. Consett Iron Co.*, [1922] 2 Ch. 135.

## Part XIV. Regulation of Commons.

1089. After this case add "—— Injunction to restrain promotion—Scheme inconsistent with

prior conveyance.]—See INJUNCTION, Vol. XXVIII., pp. 469, 470, No. 789."

# COMPULSORY PURCHASE OF LAND AND COMPENSATION.

## Part I.—Compulsory Powers over Land.

4. *Add. Annotations* :—As to (2) *Dlst. Birkdale District Electric Supply Co. v. Southport Corpn.*, [1926] A. C. 355. *Refd. York Corpn. v. Leetham*, [1924] 1 Ch. 557.
19. *Add. Annotation* :—*Refd. R. v. Electricity Comrs., Ex p. London Electricity Joint Committee Co.*, [1924] 1 K. B. 171.

## Part II.—Conditions attached to the Powers.

28. *Add. Annotation* :—As to (2) *Consd. Rockingham Sisters of Charity v. R.*, [1922] 2 A. C. 315.
56. *Add. Annotation* :—*Refd. S. E. Ry. v. Cooper*, [1924] 1 Ch. 211.
- 62a. —.]—The Board of the Railway Comrs. for Canada made an order directing a railway co. to construct a subway so that, owing to the increased traffic the existing roadway should be lowered & pass under the railway instead of crossing it on the level, & ordering that detailed plans be filed for the approval of the chief engineer of the Board :—*Held* : (1) the subway was not part of the undertaking of the railway, so as to enable the co. to take possession of land under Expropriation Act, R. S. C., 1906 (c. 143), for the purpose of the railway proper, & the lowered road still remained part of the road belonging to the municipality; (2) detailed plans must be detailed plans of what was actually lodged as the general plan, & it was not within the liberty of the co. to enlarge the scope of the original plan & provide for a new access to the subway & the taking of land. Detailed plans were only to show the precise way in which the construction was to be made.—*BOLAND v. CANADIAN NATIONAL RY. CO.*, [1927] A. C. 198; 95 L. J. P. C. 209; 136 L. T. 197, P. C.
91. *Add. Annotations* :—*Refd. Conron v. L. C. C.*, [1922] 2 Ch. 283; *Roberts v. Hopwood*, [1925] A. C. 578. *Mentd. Short v. Poole Corpn.* (1925), 42 T. L. R. 107.
98. *Add. Annotation* :—*Refd. Conron v. L. C. C.*, [1922] 2 Ch. 283.
- 99a. — *Subway.* — *BOLAND v. CANADIAN NATIONAL RY. CO.*, No. 62a, *ante*.
109. *Add. Annotation* :—As to (1) *Refd. Conron v. L. C. C.*, [1922] 2 Ch. 283.
110. *Add. Annotation* :—*Refd. Conron v. L. C. C.*, [1922] 2 Ch. 283.
111. *Add. Annotation* :—As to (1) *Refd. Conron v. L. C. C.*, [1922] 2 Ch. 283.
113. *Add. Annotation* :—*Mentd. Roberts v. Hopwood*, [1925] A. C. 578.
114. *Add. Annotation* :—*Refd. Conron v. L. C. C.*, [1922] 2 Ch. 283.
116. *Add. Annotation* :—*Refd. Sydney Municipal Council v. Campbell*, [1925] A. C. 338.
- 116a. **Land not bonâ fide intended to be taken for purpose.**—Appls. had statutory power to acquire compulsorily land required for the purpose of making or extending streets, also land required for "carrying out improvements in or remodelling any portion of the city." In connection with the extension of a street, they resolved to acquire resps.' land for the latter purpose. They had previously been restrained from acquiring the land for the extension, on the ground that it was not really required for that purpose, but that its purchase was desired because of its probable increase in value. No plan for improving or remodelling the area was considered or proposed, & evidence as to proceedings in the council showed that applts. were endeavouring to give a new form to the transaction previously decided upon, rather than considering whether resps.' land was required for improving or remodelling :—*Held* : the evidence sustained the lower ct.'s conclusion of fact that applts. were exercising their powers for a purpose differing from those specified by the statute, & they had rightly been restrained from acquiring resps.' land.—*SYDNEY MUNICIPAL COUNCIL v. CAMPBELL*, [1925] A. C. 338; 133 L. T. 63; *sub nom. SYDNEY MUNICIPAL COUNCIL v. CAMPBELL, SAME v. HUGHES MOTOR SERVICE, LTD.*, 94 L. J. P. C. 65, P. C.
120. *Add. Annotation* :—*Mentd. Busby v. Avgherino*, [1928] A. C. 290.

### PART II. SECT. 2, SUB-SECT. 1.

sa. *Land in use "otherwise for more convenient occupation" of building*—*Municipal Act*, s. 325.]—*SURREY DISTRICT CORPN. v. CAINE* (1920), 67 D. L. R. 794; 28 B. C. R. 321.—CAN.

m i. — *Public Works Act*, R. S. B. C., 1911 (c. 189)—*Validity of contract by Minister of Public Works.*—A contract made by the Minister for the purchase of land for a public pur-

pose does not bind the Crown unless the acquisition of the land has been authorised by an Order in Council, or a resolution in Council amounting to an order, even if the contract is sealed with the seal of the Department.—*MACKEY v. A.-G. FOR BRITISH COLUMBIA*, [1922] 1 A. C. 457.—CAN.

m ii. — *Expropriation Act*, 1906 (c. 143)—*Discretion of Minister.*—As to the propriety & necessity of expropriation the Minister is the sole judge

& the ct. has no jurisdiction to interfere with his discretion.—*R. v. IMPERIAL BANK OF CANADA*, [1923] 3 D. L. R. 345.—CAN.

### PART II. SECT. 3, SUB-SECT. 3.— B. (a).

sb. *Land taken for building Toronto Viaduct—What Act applicable.*—*CANADIAN NATIONAL RY. CO. v. TORONTO IRON WORKS*, [1926] Exch. C. R. 133.—CAN.

126. *Add. Annotation*:—*Reid. Conron v. L. C. C.*, [1922] 2 Ch. 283.
139. *Add. Annotations*:—*As to (1) Dists. S. E. Ry. v. Cooper*, [1924] 1 Ch. 211. *Consd. Birkdale District Electric Supply Co. v. Southport Corp.*, [1926] A. C. 355. *Reid. York Corp.*, [1924] 1 Ch. 557.
140. *Add. Annotation*:—*Generally, Mentd. Long v. Gowlett*, [1923] 2 Ch. 177.
142. *Add. Annotations*:—*Consd. Birkdale District Electric Supply Co. v. Southport Corp.*, [1926] A. C. 355. *Reid. S. E. Ry. v. Cooper*, [1924] 1 Ch. 211.
143. *Add. Annotations*:—*Consd. S. E. Ry. v. Cooper*, [1924] 1 Ch. 211. *Reid. York Corp. v. Leetham*, [1924] 1 Ch. 557; *Birkdale District Electric Supply Co. v. Southport Corp.*, [1926] A. C. 355.
145. *Add. Annotation*:—*Reid. Birkdale District Electric Supply Co. v. Southport Corp.*, [1926] A. C. 355.
146. *Add. Annotation*:—*As to (4) Reid. S. E. Ry. v. Cooper*, [1924] 1 Ch. 211.

## Part III.—Principles of the Law of Compensation.

155. *Add. Annotations*:—*Mentd. Jackson v. Simons*, [1923] 1 Ch. 373; *Chaplin v. Smith*, [1926] 1 K. B. 198.
160. *Add. Citation*:—*sub nom. R. v. MIDLAND, ETC. Ry. Co., Ex. p. BROWN*, 8 B. & S. 456. *Add. Annotation*:—*Reid. S. E. Ry. v. Cooper*, [1924] 1 Ch. 211.
169. *Add. Annotations*:—*As to (2) Reid. Swift v. Board of Trade*, [1925] A. C. 520; *Swift v. Board of Trade*, [1926] 2 K. B. 131.
171. *Add. Annotation*:—*Reid. Swift v. Board of Trade*, [1926] 2 K. B. 131.

### PART III. SECT. 1, SUB-SECT. 2.—A.

149 ii. — *Subsequent conveyance unregistered.*—If a municipal corp. takes expropriation proceedings for a highway under Municipal Act, s. 362, & compensation is awarded to the registered owner, the municipal corp. cannot refuse payment to the registered owner on the ground that after filing his claim he executed a conveyance which remains unregistered.—*NORTH COWICHAN CORPN. v. GORE-LANGTON*, [1921] 2 W. W. R. 484.—CAN.

149 iii. — *Unless right to compensation reserved by vendor.*—*Re COVILLE* (1907), 5 W. L. R. 140; 16 Man. L. R. 426.—CAN.

o i. — *After expropriation.*—The Crown expropriated the right to flood property which belonged to V., who subsequently sold to H. together with V.'s right to recover the compensation from the Crown for all damages caused by flooding & expropriation:—*Held*: H. was entitled to recover compensation for damages to his land by flooding, & by the expropriation of the easement to flood.—*R. v. HYE* (1921), 21 Exch. C. R. 76.—CAN.

### PART III. SECT. 1, SUB-SECT. 3.—A.

156 ii. — *Re SCOTT & OSKAWA TOWN* (1922), 52 O. L. R. 504.—CAN.

156 iii. — *The right to receive compensation for land taken depends upon the statute or order which authorises the taking, & upon the terms of such statute or order will depend the basis upon which the compensation is to be assessed.*—*Re POWELL & TORONTO CORPN.*, [1925] 2 D. L. R. 796; 56 O. L. R. 541.—CAN.

f (p. 124) i. — *Where a county corp. expropriated certain toll roads:—Held*: the value to the owner & not to the taker was the basis upon which the compensation should be awarded, & while the roads had become a burden instead of a benefit to their owners, they were entitled to be paid for the physical assets they possessed—road material in place, bridges, culverts, ditches & parts of roads owned in fee.—*Re OTTAWA & GLOUCESTER ROAD CO. & COUNTY OF CARLETON* (1921), 69 D. L. R. 486; 51 O. L. R. 467.—CAN.

f (p. 124) ii. — *Re NEW BRUNSWICK POWER COMMISSION & INGLEWOOD PULP & PAPER CO. (N. B.)*, [1927] 3 D. L. R. 967.—CAN.

l (p. 124) i. — *Conflicting evidence.*

—*R. v. ARCHER*, [1925] 3 D. L. R. 355; [1925] S. C. R. 684.—CAN.

l (p. 124) ii. — *Where the evidence of expert witnesses as to value is conflicting, neither the arbitrators nor the ct. should endeavour to arrive at the true result by "averaging of witnesses," or "splitting the difference."*—*Re LENNOX & TORONTO BOARD OF EDUCATION* (1926), 58 O. L. R. 427.—CAN.

l (p. 124) iii. — *While the "averaging of witnesses" or "splitting the difference" is an improper way of reaching an award, some discretion & freedom may nevertheless be allowed the arbitrators; they are bound to exercise their judicial functions in dealing with the evidence.*—*WINNIPEG v. CROSS*, [1927] 3 D. L. R. 1072; [1927] 2 W. W. R. 644; 37 Man. L. R. 40.—CAN.

q i. — *REDDIAR & SAN CHIEN v. SECRETARY OF STATE FOR INDIA IN COUNCIL & COLLECTOR OF RANGOON* (1927), 1 L. R. 5 Ran. 799.—IND.

k (p. 125) i. — *Where by reason of expropriation by the Crown the owners of the property taken suffer materially & are put to great trouble in moving, & the site so taken was most advantageous & it took several years of negotiating before they were able to find a new & suitable place for their operation, the ct. should add ten per cent. to the fair market value of the property taken, for contingent losses & inconveniences, in fixing the compensation.*—*R. v. ROYAL NOVA SCOTIA YACHT SQUADRON* (1921), 21 Exch. C. R. 160.—CAN.

k (p. 125) ii. — *Re TORRANCE & PROVINCE OF ONTARIO, Re NOBLE & PROVINCE OF ONTARIO, Re PARKDALE BOULEVARD, LTD. & PROVINCE OF ONTARIO*, [1923] 3 D. L. R. 1136; 52 O. L. R. 325.—CAN.

k (p. 125) iii. — *There is no foundation for the view that the "allowance for disturbance" usually added in awards to the value found is arbitrarily fixed at ten per cent.; an award of six per cent. may be ample.*—*Re LENNOX & TORONTO BOARD OF EDUCATION* (1926), 58 O. L. R. 427.—CAN.

—*An "allowance for disturbance," & the amount thereof, seem to be in the discretion of the arbitrators.*—*WINNIPEG v. CROSS*, [1927] 3 D. L. R. 1072;

[1927] 2 W. W. R. 644; 37 Man. L. R. 40.—CAN.

k (p. 125) v. — *Re v. MCPHERSON* (1914), 15 Exch. C. R. 215; 20 D. L. R. 988.—CAN.

p (p. 125) i. — *Not value according to quantity survey.*—*R. v. IMPERIAL BANK OF CANADA*, [1923] 3 D. L. R. 345.—CAN.

sc. — *Value of assets necessary to operation of undertaking.*—*TORONTO (CITY) CORPN. v. TORONTO RAILWAY CORPN.*, [1925] A. C. 177; 94 L. J. P. C. 25; 132 L. T. 401.—CAN.

sd. — *Where land of college taken for street—Under disputed agreement.*—*ST. MICHAELS COLLEGE v. TORONTO CITY CORPN.*, [1926] 2 D. L. R. 244; [1926] S. C. R. 318; *varying*, 27 O. W. N. 474; *varying*, 26 O. W. N. 413.—CAN.

### PART III. SECT. 1, SUB-SECT. 3.—B.

u i. — *R. v. KELLY* (1921), 63 D. L. R. 402; 21 Exch. C. R. 205.—CAN.

u ii. — *An owner of property is not entitled to claim some prospective value of the property remote in its character & only realisable upon the expenditure of enormous sums of money.*—*R. v. COLEMAN*, [1926] Exch. C. R. 121.—CAN.

### PART III. SECT. 1, SUB-SECT. 3.—C.

o i. — *R. v. LYNCH'S, LTD. & COZZOLINO* (1920), 20 Exch. C. R. 158.—CAN.

o ii. — *Re NEW BRUNSWICK POWER COMMISSION & INGLEWOOD PULP & PAPER CO. (N. B.)*, [1927] 3 D. L. R. 967.—CAN.

169 i. For "169 i." read "170 i."

### PART III. SECT. 1, SUB-SECT. 3.—D.

p i. — *Re LETROS & TORONTO CORPN.* (1924), 56 O. L. R. 175.—CAN.

ri. — *Flooding of neighbourhood.*—*The Crown expropriated the right to flood a part of L.'s property, on the erection of a dam, a public work. L. claimed, besides compensation for easement taken on his property, that he should be compensated for damages to his trade, resulting from the decrease of population, due to the flooding of neighbouring farms:—Held*: no claim could arise in respect of an inconvenience common to the public generally.—*R. v. LAFOND* (1921), 69 D. L. R. 127; 21 Exch. C. R. 55.—CAN.



186. *Add. Annotation*:—*Reid. Glenboig Union Fireclay Co. v. I. R. Comrs.* (1922), 12 Tax Cas. 427.
187. *Add. Annotation*:—*As to* (1) *Appld. Swift v. Board of Trade*, [1926] 2 K. B. 131.
197. *Add. Annotations*:—*As to* (2) *Reid. S. E. Ry. v. Cooper*, [1924] 1 Ch. 211. *Generally, Mentd. Birkdale District Electric Supply Co. v. Southport Corpn.*, [1926] A. O. 355.
208. *Add. Annotation*:—*Generally, Mentd. Slack v. Leeds Industrial Co-op. Soc.*, [1923] 1 Ch. 431.
213. *Add. Annotation*:—*Consd. Rockingham Sisters of Charity v. R.*, [1922] 2 A. C. 315.
215. *Add. Annotations*:—*As to* (1) *Appld. Rockingham Sisters of Charity v. R.*, [1922] 2 A. C. 315. *Generally, Mentd. A.-G. for Manitoba v. Kelly*, [1922] 1 A. C. 268; *Larrinaga v. Soc. Franco-Americaine des Phosphates de Medulla* (1922), 92 L. J. K. B. 45.
216. *Add. Annotation*:—*Folld. Rockingham Sisters of Charity v. R.*, [1922] 2 A. C. 315.
- 216a. ————.]—*Appls. owned land immediately on the west side of a public road & a railway, & had thereon a school; on the east side they owned two small promontories of land on the margin of a public harbour. They had made on the promontories a bathing house & wharf, both of which they used in connection with the school, but no legal right of way across the railway was proved.*

176 iii. ————.]—*Cost of removal.*—While allowance ought not to be made for loss of business or estimated profits, yet where a lessee of a store has suffered a diminution of good-will, he is entitled to compensation although it is in the nature of a business loss. In addition, allowance must be made for the reasonable cost of moving, seeking a new location, loss of time, storage of furniture, depreciation in fixtures & dislocation of business occasioned by such removal.—*R. v. GOLDSTEIN*, [1924] Exch. C. R. 55.—CAN.

PART III. SECT. 1, SUB-SECT. 3.—E.

179 i. ————.]—*Cost of acquiring new site.*—In the course of arbn. proceedings to determine compensation for the portion of a lot taken & injury to the remainder, the corpn. offered to transfer part of an adjoining lot, which it did not own & had as yet taken no steps to expropriate:—*Held*: the offer should be taken into account & dealt with by the arbitrator in his award.—*Re GARLAND & TORONTO* (1924), 55 O. L. R. 646.—CAN.

PART III. SECT. 1, SUB-SECT. 3.—I.

187 vi. ————.]—*Subsequent improvements by owner.*—Where an owner remains on the property after expropriation, & makes repairs to the buildings, & puts up temporary structures, he must assume the responsibility of such a course & its consequences, & nothing will be allowed him therefor.—*R. v. LYNCH'S, LTD. & COZZOLINO* (1920), 20 Exch. C. R. 158.—CAN.

187 vii. ————.]—*R. v. MOREAU* (1921), 21 Exch. C. R. 82.—CAN.

PART III. SECT. 2.

191 i. *What constitutes severance.*—*Part of land taken—Premises not contiguous—No legal right over intervening land.*—Where by a previous expropriation property was severed by the right of way of a railway co. crossing it, & the use of a culvert under the tracks as a passage was only by sufferance & without legal right or title:—*Held*: if expropriation takes land on

each side of the right of way & thus closes access to the culvert it is not a severance of the property which would entitle to compensation.—*R. v. LOONAN* (1920), 20 Exch. C. R. 131.—CAN.

PART III. SECT. 3, SUB-SECT. 1.

se. *General rule.*—The right to receive compensation for land injuriously affected depends upon the statute or order which authorises the injurious affection, & upon the terms of such statute or order will depend the basis upon which the compensation is to be assessed.—*Re POWELL & TORONTO CORPN.*, [1925] 2 D. L. R. 796; 56 O. L. R. 541.—CAN.

ni. *Claim must be made within prescribed time.*—Under Edmonton Charter a claim for compensation, because claimant's land will be injuriously affected by the closing of a street, is absolutely extinguished unless filed within the time fixed by the council in the notice which sect. 506 requires it to publish.—*Re EDMONTON CHARTER, MICHAEL HRUSHEVSKY UKRAINIAN INSTITUTE v. EDMONTON CORPN.*, [1925] 1 W. W. R. 780.—CAN.

si. *Railway Act, 1919—Spur track constructed along streets—Measure of compensation to adjacent landowners.*—*BRITISH COLUMBIA PERMANENT LOAN CO. v. CANADIAN NORTHERN RY. (No. 3)*, [1923] 2 D. L. R. 802; [1923] 1 W. W. R. 1072; 30 Can. Ry. Cas. 71; 16 Sask. L. R. 298.—CAN.

sk. *Road laid through land—Expense of keeping up fences.*—*R. v. KENT J.J.* (1854), 8 N. B. R. (3 All.) 118.—CAN.

PART III. SECT. 3, SUB-SECT. 3.

sm. *Land adjoining water-lot—Water-lot taken—Loss of riparian rights.*—*Re SNOW & TORONTO*, [1924] 4 D. L. R. 1023; 56 O. L. R. 100.—CAN.

sp. *Land divided into lots—Some lots sold—Five lots taken for sewage plant.*—*Held*: the owner of the unsold plots was entitled, over & above the actual value of the lots expropriated, to compensation for consequent de-

The Crown took the two promontories for a public purpose, & upon an area wholly to the east of the railway, & including the two small promontories, made a large railway shunting yard. A claim by applts. to compensation for the damage to their property on the west of the railway by reason of the construction of the shunting yard having been rejected:—*Held*: the possession & control of the two promontories gave an enhanced value to applts.' land on the west side of the railway, & in respect of depreciation in value of those lands due to the anticipated legal use of works which might be constructed upon the two promontories, applts. were owners whose lands had been injuriously affected, & accordingly they were entitled to compensation; further, the ct. assessing the compensation should have regard to the anticipated use of the promontories as part of a shunting yard, not to the actual use at the time of the assessment.—*ROCKINGHAM SISTERS OF CHARITY v. R.*, [1922] 2 A. C. 315; 91 L. J. P. C. 198; 127 L. T. 608; 38 T. L. R. 782, P. C.

223. *Add. Annotation*:—*Reid. Rockingham Sisters of Charity v. R.*, [1922] 2 A. C. 315.

245. *Add. Annotation*:—*Reid. Howard Flanders v. Maldon Corpn.* (1926), 135 L. T. 6.

265. *Add. Annotation*:—*As to* (1) *Reid. Rockingham Sisters of Charity v. R.*, [1922] 2 A. C. 315.

preciation in the value of the adjacent lands.—*MONTREAL (CITY) v. MCANULTY REALTY CO.*, [1923] 2 D. L. R. 409; [1923] S. C. R. 273.—CAN.

sa. *Land taken for lowering road—Obstruction of access by road to other land.*—*Held*: claimant entitled to compensation.—*M. E. MOOLLA v. COLLECTOR OF RANGOON* (1926), 1 L. R. 4 Ran. 350.—IND.

PART III. SECT. 3, SUB-SECT. 4.—A. (a).

227 iv. ————.]—The Crown not having expropriated any part of suppliant's property or any easement to flood the same:—*Held*: the case did not come within Exch. Ct. Act, s. 20, & the ct. had no jurisdiction to entertain the claim under Expropriation Act or any other provision of law.—*YATES v. R.* (1920), 20 Exch. C. R. 175.—CAN.

227 v. ————.]—*ALEXANDER BROWN MILLING CO. v. CANADIAN PACIFIC RY. CO.*, [1923] 4 D. L. R. 1136; 29 Can. Ry. Cas. 345; 52 O. L. R. 528.—CAN.

PART III. SECT. 3, SUB-SECT. 4.—B. (a).

ii. ————.]—*Re OGILVIE FLOUR MILLS CO., LTD. & WINNIPEG CITY*, [1927] 2 D. L. R. 606; [1927] 1 W. W. R. 833; 33 Can. Ry. Cas. 92; 36 Man. L. R. 412.—CAN.

PART III. SECT. 3, SUB-SECT. 4.—B. (c) ii.

266 vi. ————.]—Where direct access to land on which a business is conducted is not cut off by the closing of a street, the fact that such closing will oblige persons going to & from such place of business & neighbouring properties to use a slightly less convenient route does not give the owner of such land a right to compensation.—*Re EDMONTON CHARTER, FREEMAN CO., LTD. v. EDMONTON CORPN.*, [1925] 1 W. W. R. 778.—CAN.

**274a.** By construction of bridge.] Resps., a county council, were empowered by a private Act to build a bridge across a navigable river giving access to a wharf, which was resorted to by sea-going vessels & was also used for the storage of goods. The bridge, when built, constituted an obstruction to the navigation & interfered with access to the wharf, so that goods destined for the wharf had to be transhipped from sea-going vessels into barges below the bridge, & the owners of the wharf had to acquire a new wharf below the bridge. The owners of the old wharf, i.e., the freeholders, & a mtgee., & the occupiers, who were tenants at will, claimed compensation under the following heads: depreciation of freehold value of the old wharf; cost of the new wharf; damage through loss of traffic; damage through extra cost of handling

traffic at the new wharf; damage to river sailing-barge traffic; damage through total stoppage of dumb craft with goods for overseas; damage through loss of storage rents:—*Held*: claimants were entitled to compensation only under the first head, & were not entitled to compensation under the other heads.—*HEWETT v. ESSEX COUNTY COUNCIL* (1928), 138 L. T. 742; 44 T. L. R. 373; 72 Sol. Jo. 241.

**288a.** — Wharf.]—*HEWETT v. ESSEX COUNTY COUNCIL*, No. 274a, ante.

**289a.** —.]—*HEWETT v. ESSEX COUNTY COUNCIL*, No. 274a, ante.

**323a.** —.]—*ROCKINGHAM SISTERS OF CHARITY v. R.*, No. 216a, ante.

**324.** *Add. Annotation*:—*Generally, Mentd. Rockingham Sisters of Charity v. R.*, [1922] 2 A. C. 315.

## Part IV.—Compensation for Mines and Minerals.

**328.** To the existing paragraph add as follows:—  
(3) Limestone is a mineral within the above sects.

**336a.** Within Act.]—*MIDLAND RY. CO. & KETTERING, THRAPSTON & HUNTINGDON RY. CO. v. ROBINSON*, No. 328, ante.

**337.** *Add. Annotation*:—*Mentd. South Staffordshire Mines Drainage Comrs. v. Elwell* (1927), 91 J. P. 113.

**343.** *Add. Annotation*:—*Mentd. Craddock v. Hunt*, [1923] 2 Ch. 136.

**355.** *Add. Annotation*:—*Consd. Consett Industrial & Provident Soc. v. Consett Iron Co.*, [1922] 2 Ch. 135.

**367.** *Add. Annotations*:—*Refd. Swift v. Board of Trade*, [1925] A. C. 520. *Mentd. Swift v. Board of Trade* (1924), 93 L. J. K. B. 529.

**374.** *Add. Annotation*:—*Consd. Glenboig Union Fireclay Co. v. I. R. Comrs.* (1922), 12 Tax Cas. 427.

**378.** To the existing paragraph add as follows:—  
(3) The word "lands" in sect. 6 of the above Act includes mines.

*Add. Annotation*:—*Generally, Consd. Graigola Merthyr Co. v. Swansea Corpn.* (1927), 71 Sol. Jo. 681.

**412.** *Add. Annotations*:—*Refd. Swift v. Board of Trade*, [1925] A. C. 520. *Mentd. Swift v. Board of Trade* (1924), 93 L. J. K. B. 529.

## Part V.—Procedure to acquire Land by Agreement.

**418.** *Add. Annotation*:—*Generally, Mentd. Re Allott, Hanmer v. Allott*, [1924] 2 Ch. 498.

## Part VI. Procedure to acquire Land otherwise than by Agreement.

**478.** *Add. Annotation*:—*Refd. Brakspear v. Barton*, [1924] 2 K. B. 88.

**479.** *Add. Annotation*:—*Mentd. Mackenzie-Kennedy v. Air Council*, [1927] 2 K. B. 517.

**526.** *Add. Annotation*:—*As to (1) Refd. Cardiff Corpn. v. Cook*, [1923] 2 Ch. 115.

**531.** *Add. Annotation*:—*Refd. Cardiff Corpn. v. Cook*, [1923] 2 Ch. 115.

**PART III. SECT. 3, SUB-SECT. 4.—**  
B. (c) iii.

— Depreciation in value of land.]—*NELSON v. PACIFIC GREAT EASTERN RY. CO., OBLATE ORDER OF MARY IMMACULATE v. PACIFIC GREAT EASTERN RY. CO., LEFEAUX & CARLISLE v. PACIFIC GREAT EASTERN RY. CO.* (1919), 67 D. L. R. 792; 27 B. C. R. 420.—CAN.

**PART III. SECT. 3, SUB-SECT. 4.—**  
C. (a).

292 v. —.]—The general depre-

ciation of property resulting from being in the vicinage of a public work does not give rise to a claim by any particular owner.—*R. v. LAFOND* (1921), 21 Exch. C. R. 55.—CAN.

**PART III. SECT. 3, SUB-SECT. 5.**

so. Payment of mortgage on part of land.]—The Crown expropriated five lots of land belonging to applt. A mtge. in favour of M. upon four of the lots had been discharged by the Crown by payment to M. of \$22,000:—*Held*: the above payment, although satisfy-

ing any claim in respect of the four lots covered by the mtge., could not be applied towards compensation for the fifth lot.—*STUART v. R.*, [1926] 2 D. L. R. 260; [1926] S. C. R. 284; [1926] Exch. C. R. 101, n.—CAN.

**PART VI. SECT. 1, SUB-SECT. 2.—D.**

490 l. Effect of—No right of action at common law—Damages for rendering land useless & unsaleable not recoverable.]—*ALEXANDER BROWN MILLING CO. v. CANADIAN PACIFIC RY. CO.* (1923) 4 D. L. R. 1136; 29 Can. Ry. Cas. 345; 52 O. L. R. 528.—CAN.

**533a.** ——— **Rights of assignee.**—A landowner has a right to deal with his property after a notice to treat, although the right must be exercised subject to the rights acquired by the undertakers by virtue of the notice & so as not to increase their obligations, & he is also entitled before acceptance to withdraw & amend his claim. But where a landowner, possessed of a leasehold interest, who has claimed £550 for compensation for disturbance & valued his leasehold interest at nil, subsequently, but before his claim is accepted, assigns his leasehold interest, his assignee stands in the same position as the landowner & can withdraw or amend the claim, either expressly or by sending in a claim in respect of the leasehold interest wholly inconsistent with the original claim, & the undertakers are not then at liberty to disregard the assignee & continue to treat &

contract with the original landowner.—**CARDIFF CORPN. v. COOK**, [1923] 2 Ch. 115; 92 L. J. Ch. 177; 128 L. T. 530; 87 J. P. 90; 67 Sol. Jo. 315; 21 L. G. R. 279.

**534.** *Add. Annotation*:—**Reid. Matthey v. Curling**, [1922] 2 A. C. 180.

**558a.** *Misdescription as to nature of property—Abatement of purchase-money—Not ordered.*—**Re STEPNEY BOROUGH COUNCIL & SMART'S CONTRACT** (1902), 47 Sol. Jo. 159.

**562.** *Add. Annotation*:—**As to (1) Reid. Greswolde-Williams v. Newcastle-upon-Tyne Corpn.** (1927), 91 J. P. Jo. 968.

**592.** *Add. Annotation*:—**Mentd. Early v. Drummond** (1923), 39 T. L. R. 171.

**595a.** *Building consisting of several blocks of offices—Constitutes one "bul" "ing."*—**GRESWOLDE-WILLIAMS v. NEWCASTLE-UPON CORPN.** (1927), 92 J. P. 13; 26 L. G. R. 26.

## Part VII.—Assessment of Purchase Price and Compensation.

**650.** *Add. Citations*:—[1922] 1 A. C. 27; 91 L. J. K. B. 202; 126 L. T. 258; 86 J. P. 25.

*Add. Annotations*:—**Distd. Thurrock, Grays & Tilbury Joint Sewerage Board v. Thames Land Co.** (1925), 23 L. G. R. 648. **Mentd. Thornely v. Leconfield**, [1925] 1 K. B. 236.

**650a.** ——— **Acquisition of land & appointment of arbitrator under Public Health Act, 1875 (c. 55).**—A land co. was the owner in fee simple of certain land through which a sewerage board, under Public Health Act, 1875 (c. 55), after duly serving on the co. notice of intention to do so, carried a sewer & a rising main. Subsequently an agreement in writing was entered into between the parties regarding what had been done. Differences having arisen regarding the compensation to be paid by the board to the co., recourse was had to arbn. The arbitrator was appointed under Public Health Act, 1875, & before entering on the arbn. made the statutory declaration under that Act. Having considered the disputes he made an alternative award in the form of a special case for the opinion of the ct. If the ct. was of opinion that compensation was to be assessed solely under Public Health Act, 1875, he awarded the co. £5,090; if the arbitration was under Acquisition of Land (Assessment of Compensation) Act, 1919 (c. 57), & the basis on which compensation

was to be awarded was to be governed by the principles in s. 2 of that Act, he awarded the co. £2,148.—**Held**: as the land had been acquired under powers conferred by Public Health Act, 1875, before the agreement between the parties was entered into, it had been acquired compulsorily, & as there was nothing in the agreement which affected the primary basis of the value of the land nor any other matter, including the appointment of the arbitrator expressly under Public Health Act, 1875, which was inconsistent with the rules laid down by s. 2 of the Act of 1919, that Act applied to the arbn., & the co. should be awarded £2,148.—**THURROCK, GRAYS & TILBURY JOINT SEWERAGE BOARD v. THAMES LAND CO., LTD.** (1925), 90 J. P. 1; 23 L. G. R. 648.

**671.** *Add. Annotation*:—**Mentd. Swift v. Board of Trade** (1924), 93 L. J. K. B. 529.

**672.** *Add. Annotation*:—**Generally, Mentd. Prosperity v. Lloyds Bank** (1923), 39 T. L. R. 372.

**702a.** *Arbitrator incapable of continuing—Power to replace.*—Where an arbitrator, appointed by the Reference Committee under Acquisition of Land (Assessment of Compensation) Act, 1919 (c. 57), s. 1, becomes incapable of continuing a particular arbn., the authority of the Reference Committee includes the power to replace him by some one else.—

### PART VI. SECT. 4, SUB-SECT. 1.— B. (a).

**566 ii.** *Includes all that is necessary for enjoyment of house.*—The word "house" in Lands Act, 1847, s. 92, is not limited to the four walls of the building, but includes all that is necessary to the convenient occupation of the house.

**Promoters of an undertaking**:—**Held**: not entitled to take a strip of land immediately in front of a house between it & the wall & containing a tank & fruit trees, when the owner was willing & able to convey the whole of the house.—**DRAFER v. SOUTH AUSTRALIAN RAILWAYS COMR.** (1901), 3 S. A. L. R. 150.—**AUS.**

### PART VII. SECT. 1.

**sk. Public Works Act, s. 22** —

*Acquisition of toll road under Provincial Highways Act, 1917.*—**Re COBBOURG & GRAFTON TOLL ROAD CO.** (1921), 64 D. L. R. 241; 50 O. L. R. 125.—**CAN.**

### PART VII. SECT. 2, SUB-SECT. 1.

**sl. Jurisdiction of Exchequer Court.**—Property & civil rights being matters within the exclusive powers of the Provincial Legislature, the Exch. Ct. of Canada in ascertaining the estate or interest of persons claiming compensation for property expropriated by the Dominion Crown will have regard to the laws affecting such estate & interest in the province where the property is situated.—**R. v. HUDSON'S BAY CO.** (1921), 20 Exch. C. R. 413.—**CAN.**

### PART VII. SECT. 5, SUB-SECT. 1.

of

*local authority—Submission before bye-law passed ultra vires.*—**KOEHNSTEDT v. RURAL MUNICIPALITY OF EYE HILL**, No. 382, [1923] 2 W. W. R. 669.—**CAN.**

### PART VII. SECT. 5, SUB-SECT. 2.

**sm. Under Dominion Railway** ———, 1919.]—Where a judge of the Supreme Ct. of Ontario has made an order for possession, under the above Act, with a term that the ry. co. shall pay money into ct. as security, any judge of the Supreme Ct. has jurisdiction to appoint an arbitrator; & under sect. 220 the judge of the county ct. of the county wherein the expropriated lands lie is the proper person to appoint.—**Re LITTLE & CAMPBELLFORD LAKE ONTARIO & WESTERN RY. CO.** (1924), 55 O. L. R. 581.—**CAN.**



GROSS, SHERWOOD & HEALD, LTD. v. ESSEX 766.  
COUNTY COUNCIL, [1927] 1 Ch. 205;  
L. J. Ch. 21; 136 L. T. 371; 91 J. P. 17;  
43 T. L. R. 5; 70 Sol. Jo. 1196; 25 L. G. R.  
135.

715. *Add. Annotation:—Generally, Mentd. Samuel v. Dumas, [1924] A. C. 431.*

727a. *Hearing — Entry in Crown Paper.] — An award made by an official arbitrator under Acquisition of Land (Assessment of Compensation) Act, 1919 (c. 57), in the form of a special case, is rightly entered in the Crown Paper.—HEWITT v. ESSEX COUNTY COUNCIL (1927), 97 L. J. K. B. 249; 99 J. P. 36; 44 T. L. R. 111; 72 Sol. Jo. 50; 26 L. G. R. 48 D. C.*

729. *Add. Annotations:—Mentd. S. E. Ry. v. Cooper, [1924] 1 Ch. 211; Birkdale District Electric Supply Co. v. Southport Corp., [1926] A. C. 355.*

761a. — Award embodying decision of court on special case.]—An official arbitrator stated a case under Acquisition of Land (Assessment of Compensation) Act, 1919 (c. 57), & the Div. Ct. decided adversely to the contention of claimants for compensation. The arbitrator then made his award, embodying therein the decision of the Div. Ct. Claimants applied to another Div. Ct. to set the award aside, on the ground that the award was on the face of it erroneous in law, but the ct. dismissed the application. Claimants appealed:—*Held: no appeal could be entertained.—NORTHWOOD v. LONDON COUNTY COUNCIL (No. 2) (1927), 96 L. J. K. B. 520; 137 L. T. 49; 91 J. P. 93; 43 T. L. R. 347; 25 L. G. R. 254, C. A.*

762. *Add. Annotation:—As to (2) Apprvd. & Apld. Matthey v. Curling, [1922] 2 A. C. 180.*

Board of Trade

Irvine v.  
L. R. 731.

768. *Add. Annotation:—Mentd. Salisbury & Ford-  
ingbridge Drainage District Board v. South  
Tanning Co. (1920), Ltd., [1927] 2 K.*

773a. *Award of lump sum*

was the owner of certain land with regard the acquisition of which an arbn. was 1 under Acquisition of Land (Assessment Compensation) Act, 1919 (c. 57). He claimed £17,362, &, before the hearing of the arbn., the President of the Air Council made an unconditional offer of £10,000. The sum awarded to claimant by the official arbitrator in respect of his interest in the land & the consequential damage thereto was £11,415. In dealing with the costs the arbitrator directed the Council "to pay £100 towards the costs of claimant." Claimant applied to the ct. by motion for the award to be remitted to the arbitrator on the ground that he had, in making the above order as to costs, not properly exercised the discretion conferred upon him by sect. 5 (4) of the above Act:—*Held: in awarding the lump sum of £100, the arbitrator had in terms awarded to claimant part of his costs of the arbn. within sect. 5, & as it seemed reasonably clear from the Act that, when a sum was awarded by the arbitrator in excess of the amount offered by the authority but less than the sum which claimant had offered to accept, the arbitrator had an absolute discretion as to the costs, the motion to review the award failed.—BRADSHAW v. AIR COUNCIL, [1926] Ch. 329; 95 L. J. Ch. 499; 135 L. T. 538; 42 T. L. R. 197; 70 Sol. Jo. 367; 24 L. G. R. 351.*

894. *Add. Annotation:—Mentd. R. v. Electricity Comrs., Ex p. London Electricity Joint Committee Co., [1924] 1 K. B. 171.*

## Part VIII.—Entry on Lands by Promoters.

1005. *Add. Annotation:—Generally, Mentd. Kennard v. Cory, [1922] 1 Ch. 265.*

### PART VII. SECT. 5, SUB-SECT. 8.

736 i. — *Claim in respect of several interests—Award not apportioning sums between several interests—Insufficient.] —STEWART MUNICIPAL DISTRICT v. BLIESNER, [1924] 2 W. W. R. 1217.—CAN.*

s i. — *Arbitrator not entitled to allow interest.]—Re LETROS & TORONTO CORPN. (1924), 56 O. L. R. 175.—CAN.*

### PART VII. SECT. 5, SUB-SECT. 10.

m (p. 196) i. — *Under Dominion Railway Act, 1906 (c. 37).]—Re KITSILANO INDIAN RESERVE, VANCOUVER HARBOUR COMRS. v. R., [1918] 3 W. W. R. 411.—CAN.*

m (p. 196) ii. — *Under Dominion Railway Act, 1919 (c. 68).]—Re ARBITRATION UNDER THE RAILWAY ACT, BRITISH COLUMBIA PERMANENT LOAN CO. v. CANADIAN NORTHERN RY. CO. (No. 1), [1922] 2 W. W. R. 577; 65 D. L. R. 735; 15 Sask. L. R. 431.—CAN.*

m (p. 196) iii. — *—.]—CEDAR RAPIDS MANUFACTURING & POWER CO. v. LACOSTE, [1927] 2 D. L. R. 83.—CAN.*

r (p. 196) i. — *Award determined on wrong principle.]—Where damages were recoverable by reason of lowering of the sidewalk in front of a building, consisting in the decreased value of the property, but were assessed at the cost of lowering the store floor:—*Held: the award must be set aside as**

determined upon a wrong principle.—RADISSON TOWN v. AMSON, [1919] 3 W. W. R. 580.—CAN.

x i. — *—.]—WINTER v. TORONTO (CITY) (1922), 70 D. L. R. 468.—CAN.*

y i. — *Lump sum awarded—Award good on its face.]—NORTH COWICHAN CORPN. v. GORE-LANGTON, [1921] 2 W. W. R. 484.—CAN.*

o (p. 197) i. — *—.]—NASH & WILLIAMS v. EDMONTON, DUNVEGAN & BRITISH COLUMBIA RY CO., [1917] 3 W. W. R. 553, 36 D. L. R. 601.—CAN.*

o (p. 197) ii. — *—.]—An appellate ct. should not interfere to vary an award unless it is satisfied that the award does not truly represent the honest opinion of the arbitrators as to damages, or that the basis of valuation was erroneous.—*Re SCOTT & OSHAWA TOWN, [1922] 52 O. L. R. 504.—CAN.**

o (p. 197) iii. — *—.]—WINNIPEG v. CROSS, [1927] 3 D. L. R. 1072; [1927] 2 W. W. R. 644; 37 Man. L. R. 40.—CAN.*

o (p. 197) iv. — *—.]—Re SULLIVAN & TOWNSHIP OF BERTIE, [1927] 2 D. L. R. 74; 60 O. L. R. 107.—CAN.*

o (p. 197) i. — *—.]—Re ARBITRATION ACT, *Re WOODS, [1923] 2 D. L. R. 1000; 32 B. C. R. 211; [1923] 1 W. W. R. 1344.—CAN.**

m (p. 197) i. — *—.]—Re DIXON & TORONTO CORPN. (1924), 56 O. L. R. 167.—CAN.*

o (p. 197) i. — *—.]—Where a large number of witnesses give evidence to the same effect on a question of value the award of an arbitrator based thereon will not be set aside.—CANADIAN NORTHERN RY. CO. v. KETCHESON (1918), 21 Can. Ry. Cas. 104; 32 D. L. R. 629.—CAN.*

q (p. 197) i. — *—.]—Question only one of quantum.]—*Re LETROS & TORONTO CORPN. (1924), 56 O. L. R. 175.—CAN.**

### PART VIII. SECT. 1, SUB-SECT. 1.

sn. *Payment or tender of compensation not necessary.]—CANADIAN PACIFIC RY. CO. v. PAUL (1921), 27 Can. Ry. Cas. 417.—CAN.*

### PART VIII. SECT. 1, SUB-SECT. 2.— A.

s i. — *Or expropriation proceedings completed.]—GODDARD v. HAINBRIDGE LUMBER CO. (1920), 29 B. C. R. 186.—CAN.*

### PART VIII. SECT. 2, SUB-SECT. 1.

so. *Application for warrant of possession — Jurisdiction of Exchequer Court to hear.]—*Re EXCHEQUER COURT JURISDICTION, [1925] 4 D. L. R. 673.—CAN.**

sp. — *—.]—CANADIAN NATIONAL RY. CO. v. BOLAND, [1925] 4 D. L. R. 703; [1925] Exch. O. R. 173.—CAN.*

## Part IX.—Assessment of Compensation after Entry Injurious Affection.

1097. *Add. Annotation* :—As to (1) *Reid. Cardiff Corpn. v. Cook*, [1923] 2 Ch. 115.

## Part X. Conveyance of Land and Payment of Purchase-Money.

1125. *Add. Annotations* :—As to (1) *Reid. Swift v. Board of Trade* (1924), 93 L. J. K. B. 529; *Swift v. Board of Trade*, [1925] A. C. 520.

1126. *Add. Annotation* :—*Mentd. Swift v. Board of Trade* (1924), 93 L. J. K. B. 529.

1158. *Add. Annotation* :—*Consd. Berners v. Fleming*, [1925] Ch. 264.

1205a. —.]—Upon the expropriation of land under statutory power, whether for the purpose of private gain or of good to the public at large, the owner is entitled to interest on

the principal sum awarded from the date when possession was taken, unless the Act clearly shows a contrary intention.—*INGLEWOOD PULP & PAPER CO. v. NEW BRUNSWICK ELECTRIC POWER COMMISSION*, [1928] A. C. 492; 97 L. J. P. C. 118; 139 L. T. 593, P. C.

1238. *Add. Annotation* :—*Mentd. Swift v. Board of Trade* (1924), 93 L. J. K. B. 529.

1239. *Add. Annotation* :—*Mentd. Swift v. Board of Trade* (1924), 93 L. J. K. B. 529.

—.]—*Re BROMLEY GUARDIANS* (1845), 4 L. T. O. S. 430.

## Part XI.—Application of Money Deposited in Bank.

1382. *Add. Annotation* :—*Appld. Ex p. Burdett Coutts*, [1927] 2 Ch. 98.

1384. *Add. Annotation* :—*Consd. Ex p. Burdett Coutts*, [1927] 2 Ch. 98.

1384a. — Title not proved to be defective—

*Payment out ordered.*]—*Ex p. BURDETT COURTS*, [1927] 2 Ch. 98; 96 L. J. Ch. 453; 137 L. T. 404; 71 Sol. Jo. 389.

1500. *Add. Annotation* :—*Consd. Re Williams' Settlement, Williams Wynn v. Williams*, [1922] 2 Ch. 750.

## Part XII. Costs when Money Deposited Liability of Promoters.

1597. *Add. Annotations* :—As to (2) *Reid. Campbell v. Pollak*, [1927] A. C. 732. *Generally, Mentd. Re Letters Patent No. 139207, Re Carbonit Akt.* [1924] 2 Ch. 53; *Re Wartling Tithe Redemption*, [1924] 2 Ch. 123.

1604. *Add. Annotation* :—*Reid. Re Letters Patent No. 139207, Re Carbonit Akt.*, [1924] 2 Ch. 53.

1614a. —.]—*Re LONDON BRIDGE ACTS, Ex p. TATHAM* (1838), 3 Y. & C. Ex. 67; 7 L. J. Ex. Eq. 64; 2 Jur. 440; 160 E. R. 617.

1985. *Add. Annotations* :—*Reid. Re Booth & Southend-on-Sea Estates Co.'s Contract*, [1927] 1 Ch. 579. *Mentd. Re Child Villiers' Appln., Villiers v. A.-G.*, [1922] 1 Ch. 394.

1997a. *Transfer of fund from charity trustees to official trustees of charitable funds—Costs to be borne equally by promoters.*]—*Ex p. SUNBURY-ON-THAMES URBAN DISTRICT COUNCIL, Ex p. STAINES RESERVOIRS JOINT COMMITTEE* (1922), 86 J. P. Jo. 153.

PART X. SECT. 1, SUB-SECT. 2.—  
B. (a) i.

y i. —.]—*R. v. MCKENZIE* (1890), 2 Exch. C. R. 198.—CAN.

PART X. SECT. 1, SUB-SECT. 4.  
p i. — from filing of caveat—

*Owner remaining in possession.*]—*Re ARBITRATION ACT, Re ROSKO & WINNIPEG SCHOOL DISTRICT No. 1*, [1924] 4 D. L. R. 1017; 3 W. W. R. 614.—CAN.

z i. — *Sydney Corporation (Amendment) Act* (No. 7 of 1924), s. 17.—*SYDNEY MUNICIPAL COUNCIL v. TROY*,

[1927] A. C. 706; 96 L. J. P. C. 121; 137 L. T. 707, P. C.—AUS.

PART XII SECT. 8, SUB-SECT. 5.—A.  
FORD & CANADIAN PACIFIC RY. CO. (1926), 32 Can. Ry. Cas. 319.—CAN.

## Part XIII.—Purchase of Particular Interests in Land.

2004. *Add. Annotation* :—Generally, *Mentd. Lapsch v. Braithwaite* (1924), 93 L. J. K. B. 1128.
- 2017a. Agreement with mortgagor—Binding on mortgagee entering into possession.]—*MOLD v. WHEATCROFT* (1859), 27 Beav. 510; 29 L. J. Ch. 11; 1 L. T. 226; 6 Jur. N. S. 2; 54 E. R. 202.
- 2035a. Lease granted after conveyance to promoters—Reference to ascertain validity of agreement for lease.]—*NORFOLK RY. CO. v. BAYES* (1849), 14 L. T. O. S. 170; 13 Jur. 435.
2037. *Add. Annotation* :—*Refd. Cardiff Corpn. v. Cook* (1922), 92 L. J. Ch. 177.
2038. *Add. Annotation* :—*Apld. Cardiff Corpn. v. Cook*, [1923] 2 Ch. 115.
2058. *Add. Annotation* :—*Mentd. Bean v. Flaxton R. D. Co.* (1928), 139 L. T. 320.
2059. *Add. Citation* :—66 L. J. Q. B. 30.
2067. *Add. Annotation* :—*Consd. Matthey v. Curling*, [1922] 2 A. O. 180.
2068. *Add. Annotation* :—*Refd. Matthey v. Curling*, [1922] 2 A. O. 180.
2075. *Add. Annotation* :—*Refd. Cardiff Corpn. v. Cook* (1922), 92 L. J. Ch. 177.

## Part XIV.—Superfluous Lands.

2125. *Add. Annotation* :—Generally, *Mentd. Richmond v. Savill*, [1926] 2 K. B. 530.
2136. *Add. Annotation* :—*Refd. Conron v. L. C. Co.*, [1922] 2 Ch. 283.
2141. *Add. Annotations* :—*Mentd. Kelly v. Barrett*, [1924] 2 Ch. 379; *Lord Strathcona S.S. Co. v. Dominion Coal Co.* (1925), 42 T. L. R. 86.
2145. *Add. Annotation* :—*Refd. Graigola Merthyr Co. v. Swansea Corpn.*, [1928] Ch. 235.
2150. *Add. Annotation* :—Generally, *Mentd. Conron v. L. C. Co.*, [1922] 2 Ch. 283.

## Part XV. Compensation for Land taken or used for Special Purposes.

- 2203a. —.]—*THURROCK, GRAYS & TILBURY JOINT SEWERAGE BOARD v. THAMES LAND CO., LTD.*, No. 650a, *ante*.
2214. *Add. Annotation* :—*Mentd. Cardiff Corpn. v. Cook* (1922), 92 L. J. Ch. 177.
2218. *Add. Annotation* :—*Refd. Cardiff Corpn. v. Cook* (1922), 92 L. J. Ch. 177.
- 2222a. ——— Loss of trade & licence & value of trade fixtures not considered.]—*NORTHWOOD v. LONDON COUNTY COUNCIL*, [1926] 2 K. B. 411; 95 L. J. K. B. 862; 135 L. T. 159; 90 J. P. 128; 42 T. L. R. 508; 24 L. G. R. 415, D. C.; *on appeal* (1927), 96 L. J. K. B. 520, C. A.
- 2225a. Under Housing, Town Planning, etc., Act, 1919 (c. 35)—Acquisition of land—Extent of powers.]—Under the above Act, depts. made an order, subsequently confirmed by the Minister of Health, for the compulsory acquisition for the purposes of a scheme under sect. 1 of the Act, of three thousand acres for the erection of working-class houses for the accommodation of one hundred & twenty thousand persons. They also proposed to acquire compulsorily a beerhouse within the area with the objects, (a) of controlling or regulating the traffic in intoxicating liquor on the site, that control to be based on management by some co. or assocn. whose servants were not to have a pecuniary interest in the sale of alcohol, & (b) of providing for the general entertainment & refreshment of the population:—*Held*: the Act contemplated extensive schemes for the provision of working-class houses by local authorities, involving in many cases the acquisition of considerable areas of land & extending even to the creation of a new town; sect. 12 (1), treated the land within the selected area as a whole, & as something in the nature of a building estate, & as incidental to the complete control of the development of the building scheme, empowered the local authority to acquire any houses or other buildings, whether the same were or were not required for use as, or as a site for, workmen's dwellings, or for roads or other purposes mentioned in the earlier Housing Acts; & that power was not limited to houses which

### PART XIII. SECT. 3.

2022 i. *Interest—Rate of—Application to reduce*—R. S. O., 1897 (c. 110), ss. 15, 16.]—*Re KINGSTON LIGHT, HEAT & POWER CO. & KINGSTON CORPN.* (1904), 24 C. L. T. 358; 8 O. L. R. 258; 8 O. W. R. 769.—CAN.

### PART XIII. SECT. 5, SUB-SECT. 1.

2044 i. — Under invalid lease.]—Land expropriated by the Dominion Crown was leased for a period of five years under an instrument not registered as required:—*Held*: the unregistered lease did not vest any estate or interest in the lessee & he was not entitled to compensation in respect of the expropriation.—*R. v. HUDSON'S*

*BAY CO.* (1921), 65 D. L. R. 569; 20 Exch. C. R. 413.—CAN.

### PART XIII. SECT. 6, SUB-SECT. 1.

11. — Entitled to offer—As well as owner.]—*R. v. MUGRAVE*, [1924] Exch. C. R. 218.—CAN.



it was proposed to adapt for working-class accommodation under the power to alter contained in the later part of the sub-sect.; upon the above construction of the Act, subject to confirmation by the Minister of Health, defts. had power under sect. 12 (1) of the Act to acquire compulsorily the beer-house in question for the attainment of the objects above-mentioned.

*Semble*: both under sect. 12 (2) of the Act, & under Housing of the Working Classes Act, 1903 (c. 39), s. 11, defts. had a similar power for effecting the like objects.—*CONRON v. LONDON COUNTY COUNCIL*, [1922] 2 Ch. 283; 91 L. J. Ch. 386; 126 L. T. 791; 87 J. P. 109; 38 T. L. R. 380; 20 L. G. R. 131; *sub nom.* *CONSON v. LONDON COUNTY COUNCIL*, 66 Sol. Jo. 350.

2249. *Add. Annotations*:—*Mentd.* *The Wilhelmina*, [1923] P. 112; *Cayzer, Irvine v. Board of Trade*, [1927] 1 K. B. 269.

2252. *Add. Annotation*:—*As to* (3) *Refd.* *Conron v. L. C. C.*, [1922] 2 Ch. 283.

2256. *Add. Annotation*:—*Mentd.* *Conron v. L. C. C.*, [1922] 2 Ch. 283.

2271. *Add. Annotation*:—*Mentd.* *Conron v. L. C. C.*, [1922] 2 Ch. 283.

2274. *Add. Annotation*:—*Mentd.* *Conron v. L. C. C.*, [1922] 2 Ch. 283.

2278. *Add. Annotation*:—*Mentd.* *Conron v. L. C. C.*, [1922] 2 Ch. 283.

2286a. *Compensation for damage to land by severance not included.*—*COURTAULDS, LTD. v. CITY OF LONDON CORPN.*, [1926] 2 K. B. 506; 95 L. J. K. B. 972; 136 L. T. 275; 90 J. P. 164; 42 T. L. R. 781; 70 Sol. Jo. 1024; 24 L. G. R. 538, D. C.

2295. *Add. Annotation*:—*Mentd.* *Conron v. L. C. C.*, [1922] 2 Ch. 283.

## CONFLICT OF LAWS.

## Part I.—Principles of Jurisdiction.

1. *Add. Annotation* :—*Reid. Whitney v. I. R. Comrs.* (1925), 42 T. L. R. 58.
6. *Add. Annotations* :—*Folld. Re Visser, Holland v. Drukker*, [1928] Ch. 877. *Mentd. Tallack v. Tallack & Broekema*, [1927] P. 211.
- 6a. —.]—The English cts. will not entertain an action for the enforcement of the revenue law of a foreign State.—*Re VISSER, QUEEN OF HOLLAND v. DRUKKER*, [1928] 1 Ch. 877; 97 L. J. Ch. 488; 139 L. T. 658; 44 T. L. R. 692; 72 Sol. Jo. 518.
11. *Add. Annotation* :—*Reid. Kramer v. A.-G.*, [1923] A. C. 528.
12. *Add. Annotation* :—*As to (1) Apprvd. Kramer v. A.-G.* (1922), 92 L. J. Ch. 1.  
After this case add "Who are foreign nationals within Treaties of Peace & consequent Orders generally, see pp. 75–77, ante."
13. *Add. Citation* :—2 T. L. R. 116, D. C.
17. *Add. Annotations* :—*As to (1) Reid. The Jupiter* (1924), 93 L. J. P. 156; *Russian Commercial & Industrial Bank v. Comptoir D'Escompte De Mulhouse* (1924), 93 L. J. K. B. 1098. *As to (2) Folld. White, Child & Beney v. Simmons; White, Child & Beney v. Eagle Star & British Dominions Insce.* (1922), 127 L. T. 571. *Reid. Fenton Textile Asscn. v. Krassin* (1921), 38 T. L. R. 259; *Banque Internationale De Commerce De Petrograd v. Goukassow* (1924), 40 T. L. R. 837. *As to (3) Consd. The Jupiter (No. 3)* (1927), 137 L. T. 333. *Generally, Reid. Musmann v. Engelke* (1927), 43 T. L. R. 685. *Mentd. Duff Development Co. v. Kelantan Government*, [1924] A. C. 797.
- 17a. — — — — —.] — Pltfs. were an English limited co. of engineers & merchants. Part of its business was transacted in Russia, & for the purpose of that business pltfs., through

their London bankers, deposited moneys & Russian Treasury Bonds with the Petrograd branch of the Banque de Commerce de l'Azoff-Don. Having done so, pltfs. took out two policies of insurance to insure themselves against loss or damage to the insured property "directly caused by fire, rioters, civil commotions, war, civil war, revolutions, rebellions, military or usurped power. . . ." No claim was to attach under the policy (*inter alia*) "for confiscation or destruction by the Govt. of the country in which the property is situated." In Dec. 1917, during the currency of the policy, the Banque de Commerce was occupied by soldiers & sailors of the Red Guard, & by the Bolsheviks, purporting to act under the authority of an executive committee of the Commissaries of the People. They demanded & obtained control & possession of the bank & everything contained in it, including the insured property. Two actions were brought claiming for losses under the policies, & the question arose with regard to the recognition of the Soviet Govt. as a sovereign power:—*Held*: on the information then available, the act of the military in seizing the insured property was an act of confiscation by the Govt. of Russia which was in existence at the material time, & had since been recognised by His Majesty's Govt. as the *de facto* Govt. of Russia, & was not an act of a usurped authority; therefore the claim failed by reason of the clause which provided that no claim was to attach under the policy ". . . for confiscation or destruction by the Govt. of the country in which the property is situated."—*WHITE, CHILD & BENEY, LTD. v. SIMMONS, WHITE, CHILD & BENEY, LTD. v. EAGLE STAR & BRITISH DOMINIONS INSURANCE CO.* (1922), 127 L. T. 571; 38 T. L. R. 616, C. A.

## Part II.—Domicil.

19. *Add. Annotations* :—*As to (2) Reid. Fleming v. Horniman* (1928), 138 L. T. 669. *As to (3) Reid. Re Annesley, Davidson v. Annesley*, [1926] Ch. 692. *Generally, Reid. A.-G. for Alberta v. Cook*, [1926] A. C. 444. *Mentd. Eustace v. Eustace*, [1924] P. 45.
36. *Add. Annotations* :—*Generally, Reid. A.-G. for Alberta v. Cook*, [1926] A. C. 444. *Mentd. Eustace v. Eustace*, [1924] P. 45.
37. *Add. Annotation* :—*Reid. Fleming v. Horniman* (1928), 138 L. T. 669.
38. *Add. Annotation* :—*Reid. Rudd v. Rudd*, [1924] P. 72.
44. *Add. Annotation* :—*Reid. A.-G. v. Belilios*, [1928] 1 K. B. 798.
- 48a. —.]—Where a man leaves the country of his domicil of choice with the fixed & settled intention to give up residence there, & thereupon reverts to his domicil of origin, if he afterwards changes his mind, & forms the intention of returning to that country, as permanently residing there, he re-acquires

## PART II. SECT. 1.

*sq. Person settled in province.*—For purposes of divorce the domicil of a person settled in one of the provinces of Canada is that particular province though the Dominion Parliament has legislative power to dissolve the marriage.—*A.-G. FOR ALBERTA v. COOK*,

[1926] A. C. 444; 95 L. J. P. C. 102; 134 L. T. 717; 42 T. L. R. 317.—CAN.

## PART II. SECT. 2, SUB-SECT. 1.

40 iii. — — — — —.]—Where a person whose domicil of origin was outside of the United States & who has acquired a domicil of choice in one of the states

thereof, resides temporarily in another country with the intention of returning to some place in the United States, though not necessarily to the state in which he formerly lived, he does not revert to his domicil of origin, even with respect to divorce.—*NELSON v. NELSON*, [1925] 3 D. L. R. 22; [1925] 2 W. W. R. 1.—CAN.

a domicile of choice there, only when with that intention he again resides there. The domicile of choice must be re-acquired by fulfilment of the same conditions as when it was formerly acquired.—FLEMING v. HORNIMAN (1928), 138 L. T. 669; 44 T. L. R. 315.

50. *Add. Annotation*:—As to (6) *Refd. Re Annesley, Davidson v. Annesley*, [1926] Ch. 692.

51. *Add. Annotation*:—As to (2) *Refd. Rudd v. Rudd*, [1924] P. 72.

— After revival of domicile on abandonment of domicile of choice. ]—FLEMING v. HORNIMAN, No. 48a, ante.

— ]—RUDD v. RUDD, No. 903a, post.

59. *Add. Annotation*:—As to (2) *Refd. Re Annesley, Davidson v. Annesley*, [1926] Ch. 692.

66. *Add. Annotation*:—*Folld. Re Cunningham, Healing v. Webb*, [1924] 1 Ch. 68.

67. *Add. Annotation*:—*Refd. Fleming v. Horniman* (1928), 138 L. T. 669.

68. *Add. Annotation*:—As to (1) *Refd. Rudd v. Rudd*, [1924] P. 72.

69. *Add. Annotations*:—As to (1) *Refd. Re Annesley, Davidson v. Annesley*, [1926] Ch. 692. *Generally, Mentd. Perlak Petroleum Maatschappij v. Deen*, [1924] 1 K. B. 111; *Buerger v. New York Life Assce.* (1927), 96 L. J. K. B. 930.

104. *Add. Annotations*:—As to (1) *Expld. Graham v. Graham*, [1923] P. 31. *Refd. Eustace v. Eustace*, [1924] P. 45.

115. *Add. Annotations*:—*Refd. Rudd v. Rudd*, [1924] P. 72; *Bartlett v. Bartlett*, [1925] A. C. 377; *Re Annesley, Davidson v. Annesley*, [1926] Ch. 692.

128. *Add. Citation*:—4 Notes of Cases, 698, n.

142. *Add. Annotations*:—As to (2) *Refd. A.-G. for Alberta v. Cook*, [1926] A. C. 444; *H. v. H.*, [1928] P. 206.

145. *Add. Annotation*:—*Consd. Re Annesley, Davidson v. Annesley*, [1926] Ch. 692.

192. *Add. Annotation*:—*Refd. Fleming v. Horniman* (1928), 138 L. T. 669.

214. *Add. Annotations*:—*Apld. Salvesen (or von Lorang) v. Austrian Property Administrator*, [1927] A. C. 641. *Refd. Mitford v. Mitford & Von Kuhlmann*, [1923] P. 130.

218. *Add. Annotations*:—As to (1) *Consd. H. v. H.*, [1928] P. 206. *Refd. A.-G. for Alberta v. Cook*, [1926] A. C. 444; *Salvesen (or von Lorang) v. Austrian Property Administrator*, [1927] A. C. 641. *Generally, Refd. Dewe v. Dewe, Snowden v. Snowden*, [1928] P. 113.

220. *Add. Annotations*:—As to (3) *Consd. A.-G. for Alberta v. Cook*, [1926] A. C. 444. *Generally, Refd. Salvesen (or von Lorang) v. Austrian Property Administrator*, [1927] A. C. 641; *H. v. H.*, [1928] P. 206.

221. *Add. Annotations*:—As to (2) *Consd. A.-G. for Alberta v. Cook*, [1926] A. C. 444; *Salvesen (or von Lorang) v. Austrian Property Administrator*, [1927] A. C. 641.

223. *Add. Annotation*:—*Refd. A.-G. for Alberta v. Cook*, [1926] A. C. 444.

225. *Add. Annotation*:—*Expld. A.-G. for Alberta v. Cook*, [1926] A. C. 444.

228. *Add. Annotations*:—*Consd. A.-G. for Alberta v. Cook*, [1926] A. C. 444; *Salvesen (or von Lorang) v. Austrian Property Administrator*, [1927] A. C. 641. *Refd. Mitford v. Mitford & Von Kuhlmann*, [1923] P. 130; *Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669; *H. v. H.*, [1928] P. 206.

248. *Add. Annotation*:—*Consd. Re Annesley, Davidson v. Annesley*, [1926] Ch. 692.

249. *Add. Annotation*:—*Dbtd. Re Annesley, Davidson v. Annesley*, [1926] Ch. 692.

249a. — — —.]—The question whether a person is or is not domiciled in a foreign country is to be determined in accordance with the requirements of English law as to domicile, irrespective of the question whether the person in question has or has not acquired a domicile in the foreign country in the eyes of the law of that country.

Where an Englishwoman had never taken the steps prescribed by French Civil Code, art. 13:—*Held*: (1) she had nevertheless on the evidence acquired a French domicile of choice, & the ct. would apply the law of France in administering her estate; (2) on the evidence as to the French law, the French cts. in administering the movable property of deceased would apply French municipal law, & the testamentary disposing power of

PART II. SECT. 3, SUB-SECT. 1.—A.

51 ii. — — —.]—A domicile of origin differs from a domicile of choice mainly in this, that its character is more enduring, its hold stronger & less easily shaken off. Such a domicile continues unless it is shown with perfect clearness & satisfaction that there was a fixed & settled purpose to acquire a new domicile. This *onus* is a heavy one, & is upon those who assert a change of domicile.—*Re MURRAY'S ESTATE*, [1921] 3 W. W. R. 874; 31 Man. L. R. 362.—CAN.

51 iii. — — —.]—A domicile of origin is not easily shaken off. Mere absence from home, roving & wandering, however long pursued, are not in themselves sufficient to effect a change; to do so there must be a fixed & settled purpose to abandon the domicile of origin & to settle in the country of choice.—*BARRY v. JAMES* (1921), *Times*, Apr. 29; [1921] 3 W. W. R. 182.—S. AF.

PART II. SECT. 3, SUB-SECT. 1.—B.

60 iii. — — —.]—*GROTHKOP v. GROTHKOP*, [1922] N. Z. L. R. 1.—N.Z.

PART II. SECT. 3, SUB-SECT. 2.—A.

67 ii. — — —.]—*CROSBY v. THOMSON (N. B.)*, [1926] 4 D. L. R. 56.—CAN.

PART II. SECT. 3, SUB-SECT. 2.—B. (j).

146 i. *House or apartments rented in another country—Family estate kept up.*—*Deft.*, whose domicile of origin was Scottish & who held a Scottish title & owned large landed estates in Scotland, left Scotland in 1895 for Canada, & carried on business there until 1917. Thereafter he took a flat in New York, where he resided for a part of each year, in order to supervise his financial interests, which were in America, & to avoid British income tax. He retained his Scottish estates, & resided on them during some part of each year. In correspondence with his wife, who lived in London, he referred to the family residence on his Scottish estates as "home," & in an affidavit signed by him in 1920 he described himself as a domiciled Scotsman:—*Held*: *deft.* had failed to prove an intention to abandon his Scottish domicile & to acquire a domicile

of choice in America.—*ROSS v. ROSS*, [1926] S. C. 1038.—SCOT.

*sr. Residence in country of origin retained—Residence in another country—Connections with country of origin continued.*—*Re MURRAY'S ESTATE*, [1921] 3 W. W. R. 874; 31 Man. L. R. 362.—CAN.

*st.* — — —.]—*DONALD v. DONALD*, [1922] N. Z. L. R. 237.—N.Z.

PART II. SECT. 3, SUB-SECT. 2.—G.

*sw. Income tax paid in country of choice—Claims for income tax in country of origin successfully resisted.*—*Held*: facts of great importance in determining question of domicile.—*BARRY v. JAMES* (1921), *Times*, Apr. 29; [1921] 3 W. W. R. 182.—S. AF.

PART II. SECT. 3, SUB-SECT. 4.

230 x. — — —.]—*BOYLE v. BOYLE*, [1925] 1 W. W. R. 829.—CAN.

230 xi. — — —.]—*JONES v. JONES* (1923), 1 L. R. 1 Ran. 705.—IND.



deceased was governed by that law.—*Re* ANNESLEY, DAVIDSON *v.* ANNESLEY, [1926] Ch. 692; 95 L. J. Ch. 404; 135 L. T. 508; 42 T. L. R. 584.

ANNESLEY, DAVIDSON  
*v.* ANNESLEY, No. 249a, *ante*.  
265. *Add. Annotation*:—*Reid. Kramer v. A.-G.*, [1923] A. C. 528.

## Part III.—Nature of Property.

290. *Add. Annotation*:—*Reid. Re Berchtold, Berchtold v. Capron*, [1923] 1 Ch. 192.
297. *Add. Annotations*:—*Reid. Re Berchtold, Berchtold v. Capron*, [1923] 1 Ch. 192. *Mentd. Re Rush, Warre v. Rush*, [1923] 1 Ch. 56.
300. *Add. Annotation*:—*Reid. Re Berchtold, Berchtold v. Capron*, [1923] 1 Ch. 192.
302. For the paragraph in the original volume substitute the following paragraph:—  
— Interest in proceeds of sale of English freeholds—By English law.]—When a person domiciled in a foreign country dies intestate leaving an interest in the proceeds of sale of English freeholds which are subject to a trust for sale but not yet sold, such an interest is an immovable, & the succession thereto is governed by the *lex situs*.—*Re BERCHTOLD, BERCHTOLD v. CAPRON*, [1923] 1 Ch. 192; 92 L. J. Ch. 185; 128 L. T. 591; 67 Sol. Jo. 212.
303. For the paragraph in the original volume substitute the paragraph numbered 302 in the original volume.
308. *Add. Annotation*:—*Reid. Re Berchtold, Berchtold v. Capron*, [1923] 1 Ch. 192.
309. *Add. Annotation*:—*Consd. Re Berchtold, Berchtold v. Capron*, [1923] 1 Ch. 192.
311. *Add. Annotation*:—*Generally, Mentd. Re Berchtold, Berchtold v. Capron*, [1923] 1 Ch. 192.

## Part IV.—Immovables.

322. *Add. Annotation*:—*Mentd. Tallack v. Tallack & Broekema*, [1927] P. 211.
349. *Add. Annotation*:—*Reid. Hunter v. Städtische Hochseefischerei Gesellschaft*, [1925] 2 K. B. 493.
352. *Add. Citation*:—*sub nom. ANON.*, 1 Salk. 404.
363. *Add. Annotation*:—*Mentd. Re Boundary between Canada & Newfoundland in Labrador Peninsula* (1927), 137 L. T. 187.
368. For “(2) an order giving leave to serve a writ in an action for rescission” read “(2) an order giving leave to serve out of the jurisdiction a writ in an action for rescission.”
- Add. Citation*:—127 L. T. 209.
373. *Add. Annotation*:—*Reid. Tallack v. Tallack & Broekema*, [1927] P. 211.
374. After this case for “Foreign judgments generally.”—*See Part XIV., post*,” read “Foreign judgments generally, *see pp. 444 et seq., post*.”
380. *Add. Annotations*:—*As to* (1) *Consd. New York Life Insce. v. Public Trustee*, [1924] 1 Ch. 15; *Guatemala (Republica de) v. Nunez*, [1927] 1 K. B. 669.
400. *Add. Annotation*:—*Mentd. Re Jordison, Raine v. Jordison*, [1922] 1 Ch. 440.

## Part V.—Movables.

417. *Add. Annotation*:—*Consd. Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669.
- 417a. ———.]—The Q. Co. was a co. incorporated & carrying on business in Queensland. In Sept. 1886, the Q. Co. issued & deposited with the U. Bank, as security for moneys due & to become due, two debentures, the one for £10,000, & the

### PART III. SECT. 2.

p i. ———.]—Although land for purposes of succession may be regarded as personal property, it is not a movable.—*ALEXANDER v. A.-G.*, [1927] 1 D. L. R. 602; [1927] 1 W. W. R. 143; 38 B. C. R. 28.—CAN.

*Interest in land agreed to be on the death intestate of an owner of land situate in Saskatchewan his title is subject to the interest of a purchaser under an outstanding agreement for sale, the interest of deceased in the land is immovable property, & devolves according to the law of Saskatchewan & is to be administered by the representative of the estate in that province, even though deceased died domiciled elsewhere.*—

*Re BURKE ESTATE* (Sask.), [1927] 3 W. W. R. 718.—CAN.

### PART IV. SECT. 1, SUB-SECT. 1.

314 iv. ———.]—*Re HICKSON*, [1927] 4 D. L. R. 607; 61 O. L. R. 180.—CAN.

334 i. *Trespass to land—Land situate abroad—Injury by fire spreading into foreign State.*—*BOSLUND v. ABBOTSFORD LUMBER MINING & DEVELOPMENT CO.*, [1925] 1 D. L. R. 978; [1925] 1 W. W. R. 476; 34 B. C. R. 485.—CAN.

### PART IV. SECT. 2, SUB-SECT. 2.

349 i. ———.]—*Scottish heritage.*—*Testator, domiciled in England, left a will made in England & in English form disposing of his whole estate, which*

consisted of the most part of real & personal property in England, but also included Scottish heritage:—*Held*: the Scottish etc. had exclusive jurisdiction in an action dealing with competing claims to the Scottish heritage.—*FOSTER v. FOSTER'S TRUSTEES*, [1923] S. C. 212.—SCOT.

### PART V. SECT. 3, SUB-SECT. 1.

409 i. *Mobilia sequuntur personam.*—*A.*, whose domicile was in Ontario, died in Michigan. Certain securities were, at the time of his death, in a bank in Michigan:—*Held*: the securities, although physically situated in Michigan, had an artificial or legal status in Ontario.—*A.-G. FOR ONTARIO v. BARY*, [1926] 3 D. L. R. 928; 59 O. L. R. 181.—CAN.

for \$50,000; both debentures assigned the uncalled capital of the co., & were, as the ct. held, valid according to the law of Queensland. In Dec. 1886 the Q. Co. made a call of \$50 a share payable in four instalments, in Feb., Apr., June, & Aug. 1887. The co. had many shareholders domiciled in Scotland & some in England. On Oct. 20, 1887, an order was made for winding up the co. in Queensland, & on June 14, 1888, a similar order was made in England. On Feb. 24, 1887, the A. Co., a co. domiciled in Scotland, commenced proceedings in Scotland to recover from the Q. Co. large sums entrusted to them for investment. Immediately after the institution of the action the call moneys due under the call made by the Q. Co. as above, from shareholders resident in Scotland, were arrested by the Scotch process called arrestment on the dependence of the action. Proceedings in this action were restrained by the High Ct. in England on Feb. 24, 1888, on the motion of the English liquidator of the Q. Co., but the order was expressly made without prejudice to the security, if any, upon the amounts payable by the Scotch shareholders in the Q. Co. which the A. Co. had acquired by their proceedings, & the amounts received from the Scotch shareholders were directed to be carried by the liquidator to a separate account. On Sept. 6, 1889, an order was made in the Queensland winding up allowing the claim of the A. Co. for £12,662 4s. 5d. The U. Bank, whose claim against the Q. Co. had been allowed for £74,000, but who had valued their security at £31,000, took out a summons claiming that the liquidator should pay over to the bank all the moneys in his hands representing proceeds of the said call. The A. Co. claimed to be paid in priority out of the money received from Scotch shareholders. The evidence stated that, according to the law of Scotland, the arrestment had the effect of attaching the fund in favour of the creditor obtaining it, & upon the decree being pronounced in the suit the security would become

complete, & that such an arrestment operated as an assignment of the fund duly intimated; that an admission of the sum due in the winding up of a co. was for this purpose equivalent to a decree; & that, according to the law of Scotland, in order to create a competent security over incorporeal personal property, the assignment thereof must be duly intimated to the debtor:—*Held*: without deciding the point whether the maxim "*Mobilia sequuntur personam*" made the assignment of the calls by the Q. Co. domiciled in Queensland valid in Scotland, the case was governed by the principle that, if a transfer of personal property is carried out validly according to the law of the country where the property is situated, it cannot be made invalid by anything in the law of the assignor's domicile; & as the evidence proved that the arrestment operated as an assignment by the Q. Co., completed by intimation according to the law of Scotland, that assignment could not be made invalid by the prior assignment, which could only have effect by the law of Queensland.—*Re QUEENSLAND MERCANTILE & AGENCY CO., Ex p. AUSTRALIAN INVESTMENT CO., Ex p. UNION BANK OF AUSTRALIA*, [1892] 1 Ch. 219; 61 L. J. Ch. 145; 66 L. T. 433; 8 T. L. R. 177, C. A.

*Annotations*:—*Consd. Guatemala (Republica de) v. Nunez* (1926), 95 L. J. K. B. 955. *Reid. Kelly v. Selwyn*, [1905] 2 Ch. 117.

418. *Add. Annotations*:—*Consd. Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669. *Reid. Albemarle Supply Co. v. Hind* (1927), 43 T. L. R. 652. *Mentd. Re Allester*, [1922] 2 Ch. 211; *Pennington v. Reliance Motor Works*, [1923] 1 K. B. 127.

421. *Add. Annotation*:—*Reid. Sedgwick Collins v. Russia Insce. of Petrograd* (1925), 138 L. T. 808.

423. *Add. Annotations*:—*Appld. Guatemala (Republica de) v. Nunez* (1926), 95 L. J. K. B. 955. *Reid. New York Life Insce. v. Public Trustee*, [1924] 1 Ch. 15.

424. *Add. Annotation*:—*Distd. Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669.

## Part VI.—Succession.

439. *Add. Annotation*:—*Reid. Re Berchtold, Berchtold v. Capron*, [1923] 1 Ch. 192.

439a. — Interest in proceeds of sale of English freeholds.]—*Re BERCHTOLD, BERCHTOLD v. CAPRON*, No. 302, *ante*.

440a. — Will of Egyptian realty made by British subject domiciled in Egypt—Ottoman Order in Council, 1910, art. 90.]—A Moslem British subject domiciled in Egypt died in 1918 possessed of property which was all in Egypt. He was survived by his mother, who accord-

ing to the Moslem law of inheritance was entitled to a one-sixth share of his estate. Deceased executed a will in the English form leaving all his property to his widow & children:—*Held*: having regard to the proviso to the above art. testator had no testamentary power over the share of his estate to which his mother was entitled by Moslem law.—*BARTLETT v. BARTLETT*, [1925] A. C. 377; 94 L. J. P. C. 100; 133 L. T. 23, P. C.

448. *Add. Annotation*:—*As to* (1) *Reid. Re Berchtold, Berchtold v. Capron*, [1923] 1 Ch. 192.

### PART VI. SECT. 2, SUB-SECT. 1.—A.

453 ix. —.]—Testator who had formerly resided in N.Z. went to Victoria, where according to an affidavit filed by his exor. he acquired & at his death retained a domicile. The bulk of his property was invested in bonds & in mtges. of land in N.Z.:—*Held*: the mtges. were movable property, & the intestate succession to them was governed by the law of deceased's domicile.—*Re CUNNINGHAM'S TRUSTEES v. CUNNINGHAM*, [1924] S. C. 581.—SCOT.

[1923] N. Z. L. R. 468.—N.Z.

453 x. —.]—War Stock & National War Bonds are immovable property in England, & were domiciled in Scotland:—*Held*: the effect of the destinations fell to be ascertained according to Scots law, & not according to English law.—*CUNNINGHAM'S TRUSTEES v. CUNNINGHAM*, [1924] S. C. 581.—SCOT.

453 xi. —.]—A domiciled Scots-

man died leaving a will in Scottish form, by which he conveyed his estate to Scottish trustees, & directed them to set aside a certain sum for the use of a life tenant, & on her death to pay a legacy out of it to a named legatee. He further directed that, in the event of the legatee predeceasing the period of division without leaving issue, the legacy should be paid to the legatee's "nearest heirs." The legatee predeceased the life tenant without leaving

460. *Add. Annotation*:—Generally, Mentd. Ord v. Ord, [1923] 2 K. B. 432.

511. For the paragraph in the original volume substitute the following paragraph:—

— Share in proceeds of sale of freeholds—  
Held on trust for sale but not converted.]—

An interest in the proceedings of sale of real estate settled upon a trust for sale, which has not been executed, is personal estate within Wills Act, 1861 (c. 114), s. 1.—*Re LYNE'S SETTLEMENT TRUSTS, Re GIBBS, LYNE v. GIBBS*, [1919] 1 Ch. 80; 88 L. J. Ch. 1; 120 L. T. 81; 35 T. L. R. 44; 63 Sol. Jo. 53, C. A.

*Annotation*:—*Reid. Re Berchtold, Berchtold v. Capron*, [1923] 1 Ch. 192.

521. *Add. Annotation*:—*Folld. Re Cunningham, Healing v. Webb*, [1924] 1 Ch. 68.

526a. ———.]—By his will made in English form in England testator, who described himself as a British subject residing in France, bequeathed to his sole exor., who was English, all his estate upon trust for conversion, & after payment of certain legacies to domestic servants, to divide all the residue of his estate equally between ten named legatees; & if any of such legatees died in his lifetime the legacy was to belong to the issue of such person. Testator died in France, & his will was proved in England. Two of the residuary legatees died in his lifetime, but neither left any issue. There was no realty & the property comprising the residue was in England. The residuary legatees were all English. On a summons the domicile of testator at his death was held to be French. By French law there was no lapse of the shares of those legatees who had died, & the survivors were entitled:—*Held*: the domicile being French & there being no sufficient indication in the will, either express or implied, that testator desired that it should be construed by English law, the *prima facie* general rule applied, & the will must be construed by French law.—*Re CUNNINGTON, HEALING v. WEBB*, [1924] 1 Ch. 68; 93 L. J. Ch. 95; 130 L. T. 308; 68 Sol. Jo. 118.

528. *Add. Annotation*:—*As to (1) Reid. Re Manners, Manners v. Manners*, [1923] 1 Ch. 220.

536. *Add. Annotation*:—*Consd. Favorke v. Steinkopff*, [1922] 1 Ch. 174.

548a. ———.]—Funds in ct. standing to the credit of an infant, having a foreign domicile, ordered to be paid out to her on her attaining the age of eighteen, being her full age according to the law of her domicile.—*Re SCHNAPPER*, [1928] 1 Ch. 420; 97 L. J. Ch. 237; 139 L. T. 42; 72 Sol. Jo. 137.

563a. ———.]—Administration, with a copy of the will annexed, of a party domiciled in Scotland, granted, in conformity with the

grant of the ct. of competent jurisdiction in Scotland, though great doubt entertained as to the correctness of the grant in Scotland.—*In the Goods of HENDERSON* (1850), 2 Rob. Eccl. 144; 7 Notes of Cases, 378; 163 E. R. 1271.

574. *Add. Annotation*:—*Reid. Re McLaughlin*, [1922] P. 235.

580a. ——— Foreign grant of will & unattested codicil—*Followed*.]—*In the Goods of Foy* (1839), 2 Curt. 328; 163 E. R. 428.

587a. ——— Will made after death according to directions of deceased—Valid under Spanish law—*Grant made*.]—*In the Goods of OSBORNE* (1855), Dea. & Sw. 4; 26 L. T. O. S. 128; 1 Jur. N. S. 1220; 4 W. R. 164.

587b. *S. P. In the Goods of GUTIERREZ* (1869), 38 L. J. P. & M. 48; 17 W. R. 742; *sub nom. In the Goods of GUTIERREZ*, 20 L. T. 758; 33 J. P. 535.

590. *Add. Annotation*:—*Consd. In the Goods of Grewe* (1922), 127 L. T. 371.

594. *Add. Annotation*:—*Reid. Re Annesley, Davidson v. Annesley*, [1926] Ch. 692.

594a. ———.]—A British born subject, domiciled in Malta, having made his will in England, according to English law, & not according to the law of Malta applicable to wills made in that island, the ct. refused to pronounce against the validity of the will, there being no evidence to show that the cts. at Malta would consider it invalid, but rather the contrary.—*FRERE v. FRERE* (1847), 5 Notes of Cases, 593.

615. *Add. Annotation*:—*As to (2) Folld. Re Cunningham, Healing v. Webb* (1923), 68 Sol. Jo. 118.

621a. ———.]—Testator gave a share of his residuary estate to trustees upon trust for sale & to stand possessed of the proceeds to pay the income to M. for life & then for such persons as she should by will appoint, & in default of appointment for her children at twenty-one in equal shares. M. married a German in 1880 & died in 1922, leaving two daughters who attained twenty-one. By her will, made in German form, she appointed the elder her heiress, the younger to receive only her legal portion:—*Held*: the will was an effectual exercise of the power.—*Re STRONG, STRONG v. MEISSNER* (1925), 95 L. J. Ch. 22; 69 Sol. Jo. 693.

626a. Over stock representing proceeds of sale of real estate in England—& liable to be laid out in purchase of land.]—An Englishwoman, domiciled in France, having a general power of appointment over a sum of stock, representing a share of proceeds of real estate in England sold under the judgment in a partition action, such proceeds being liable to be laid out in the purchase of land under Settled Estates Act, 1877 (c. 18), s. 34, by her will

issue. Both at the date of testator's death & his own death he was a domiciled Englishman. On the death of the liferentrix:—*Held*: in the absence of any indication of a contrary intention on the part of testator, the legatee's heirs fell to be ascertained by the law of his domicile, i.e., the law of England.—*SMITH'S TRUSTEES v. MACPHERSON*, [1926] S. C. 983.—SCOT.

shares in Canadian company—Issue as to ownership of shares—By what court determined.]—*Re FENWICK* (1915), 35 O. L. R. 29; 9 O. W. N. 227.—CAN.

PART VI. SECT. 2, SUB-SECT. 3.—  
D. (a).

521 iv. ———.]—*Re ROPER* (Deceased), [1927] N. Z. L. R. 731.—N.Z.

PART VI. SECT. 2, SUB-SECT. 3.—  
D. (b).

sm. "Heirs"—*In Canadian will*—

Whether adopted children included.]—Where in a will of testator domiciled in British Columbia a gift of personalty is made to a person "or his heirs" & such person dies domiciled in a foreign country before the death of testator, the word "heirs" includes an adopted child, where under the law of that country the effect of adoption is to confer on an adopted child all the rights & status of a child born in lawful wedlock.—*PURCELL v. HENDRICKS & MARKS*, (B.C.), [1925] 3 D. L. R. 854; [1925] 2 W. W. R. 689.—CAN.

PART VI. SECT. 2, SUB-SECT. 2.  
s d. Intestate domiciled abroad leaving



in the French language gave "all her properties & chattels (*tous les biens et droits mobiliers*)" to T. absolutely:—*Held*: the will must be construed as disposing of everything in the form of personal estate over which testatrix had a general power of disposition, & the fund being personal

estate in form, it passed by the will.—*Re HARMAN, LLOYD v. TARDY*, [1894] 3 Ch. 607; 63 L. J. Ch. 822; 71 L. T. 401; 8 R. 549.

*Annotation*:—*Reid. Re Scholefield, Scholefield v. St. John, Re Young, Smith v. St. John*, [1905] 2 Ch. 408.

638. *Add. Citation*:—127 L. T. 117.

## Part VII.—Contracts.

639. To the cross-reference before this case add "No. 1981a."

639a. —.]—Pltf. was received by defts., a British co., under a contract made in Detroit, to be carried in one of their steamships from New York to Southampton. The contract contained a clause that the shipowners should not be liable for loss, damage or delay to a passenger or his baggage arising from the act of God, or from causes of any kind beyond the carrier's control, even though the loss, damage or delay might have been caused by the neglect or default of the shipowners' servants. It was further provided that all questions arising under the clause should be decided according to English law. A subsequent clause provided that no claim under the contract should be enforceable against the shipowners unless a written notice thereof was delivered to them within three days after the passenger should be landed from the steamer at the termination of her voyage. In the course of the voyage one of pltf.'s hands was injured by reason of the negligence of defts.' servants, but no written notice of any claim was given by pltf. within the time limited by the contract:—*Held*: the language of the contract showed that it was the intention of the parties that it should be wholly governed by English law; the clause relieving defts. from liability for the negligence of their servants, though void by the law in force in Detroit, was valid & enforceable, by English law, but, applying the *ejusdem generis* rule, the clause did not absolve defts. from liability for pltf.'s injury.—*JONES v. OCEANIC STEAM NAVIGATION CO., LTD.*, [1924] 2 K. B. 730; 93 L. J. K. B. 1053; 132 L. T. 207; 40 T. L. R. 847; 69 Sol. Jo. 106; 16 Asp. M. L. C. 432.

640. *Add. Annotation*:—*Appld. Pass v. British Tobacco Co. (Australia)* (1926), 42 T. L. R. 771.

641. *Add. Annotations*:—*As to* (2) *Reid. N. V. Kwik Hoo Tong Handel Maatschappij v. Finlay*, [1927] A. C. 601. *Generally, Mentd. Matthey v. Curling*, [1922] 2 A. C. 180.

643. *Add. Annotations*:—*Reid. Jones v. Oceanic Steam Navigation Co.*, [1924] 2 K. B. 730; *N. V. Kwik Hoo Tong Handel Maatschappij v. Finlay*, [1927] A. C. 604. *Mentd. Sanderson v. Armour* (1922), 91 L. J. P. C. 167.

644. *Add. Annotation*:—*As to* (2) *Reid. Cayzer*,

*Irvine v. Board of Trade* (1926), 95 L. J. K. B. 1054.

645a. —.]—The master of a North German ship, lying at Constantinople, entered into a charterparty with North German subjects, there resident, to carry a cargo to a port in the United Kingdom or on the continent, to be delivered to English consignees. The charterparty & the bill of lading given under it were in the English language, & it was stipulated that the ship should call at one of three ports of the United Kingdom for orders. The ship duly called at F., & was ordered to proceed to an English port to discharge:—*Held*: as the intention of the parties as to what law should govern was to be gathered from the circumstances of the case, & as the giving of the orders fixed the seat of the contract in England, the law of England applied.—*THE WILHELM SCHMIDT* (1871), 25 L. T. 34; 1 Asp. M. L. C. 82.

*Annotations*:—*Reid. The San Roman* (1872), L. R. 3 A. & E. 583; *The Dannebrog* (1874), 31 L. T. 759.

646. *Add. Annotations*:—*Appld. Jones v. Oceanic Steam Navigation Co.*, [1924] 2 K. B. 730. *Reid. N. V. Kwik Hoo Tong Handel Maatschappij v. Finlay*, [1927] A. C. 604.

(c) *Application of Lex loci solutionis* (Vol. XI., p. 392).

650a. *Contract by State—Loan*.]—When the Govt. of a State contracts a loan in another country, the contract is governed by the law of the State whose Govt. contracts the loan, & not by the law of the country in which the contract is made.—*SMITH v. WEGUELIN* (1869), L. R. 8 Eq. 198; 38 L. J. Ch. 465; 20 L. T. 724; 17 W. R. 904.

*Annotation*:—*Reid. Goodwin v. Roberts* (1876), 1 App. Cas. 476.

Before 659 add as follows:—

658a. *General rule*.]—Where a contract made in one country is to be performed in another, the law governing the contract is the law of the country where the performance is to take place.

A contract for the sale of goods, made in Malta, was to be performed by the delivery of the goods on board a ship at Gibraltar selected by the purchaser:—*Held*: as from the moment of such delivery, the vendor had no further control over the goods, & had parted with their possession of & property in them, & the purchaser had, after their

### PART VI. SECT. 3.

635 iv. —.]—*Re BURKE ESTATE* (Sask.), p. 366, *ante*.—CAN.

### PART VII. SECT. 2, SUB-SECT. 1.—B. (b).

652 vi. — *Assessment of damages*.] J.S.

—Damages recoverable in an action for breach of contract made abroad will be determined by the proper law of the contract, that is to say, the law which the parties intended should govern their rights & liabilities.—*HORST v. LIVESLEY*, [1924] 2 D. L. R. 1002; [1924]

2 W. W. R. 443; 34 B. C. R. 19; *affd.*, [1925] 1 D. L. R. 159.—CAN.

652 vii. —.]—*LUCAS & Co. v. MONCTON SUPPLY Co.*, [1924] 4 D. L. R. 376.—CAN.

arrival in Malta, dealt with them in a manner inconsistent with the ownership of the vendor, he had no right to reject the goods & rescind the contract, which was governed by the law of Gibraltar.—*BENAIM & Co. v. DEBONO*, [1924] A. C. 514; 93 L. J. P. C. 133; 131 L. T. 1, P. C.

664. *Add. Annotation*:—*Refd.* *Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669.

668. *Add. Annotations*:—*Refd.* *Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669; *Re Visser, Holland v. Drukker*, [1928] Ch. 877.

669. *Add. Annotation*:—*Refd.* *Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669.

670. *Add. Annotations*:—*Consd.* *Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669. *Refd.* *Re Visser, Holland v. Drukker*, [1928] Ch. 877.

672. *Add. Annotation*:—*Refd.* *Farr, Smith v. Messers*, [1928] 1 K. B. 397.

676. *Add. Annotation*:—*Refd.* *Russian Commercial & Industrial Bank v. Comptoir D'Escompte de Mulhouse*, [1923] 2 K. B. 630.

683. *Add. Annotation*:—*Refd.* *The Colorado*, [1923] P. 102.

688. *Add. Annotations*:—*Refd.* *Benaim v. Debono*, [1924] A. C. 514. *Mentd.* *Matthey v. Ourling*, [1922] 2 A. C. 180.

699. *Add. Annotations*:—*Consd.* *Cantiere Navale Triestina v. Russian Soviet Naphtha Export Agency*, [1925] 2 K. B. 172. *Apld.* *Kursell v. Timber Operators & Contractors* (1926), 95 L. J. K. B. 569.

703a. ——— Policy effected in England by foreigner—With foreign company through English office.—Pltf. co. was incorporated by special Act of the Legislature of New York, & had its central office & the bulk of its assets in New York. The co. had a branch in London & in most of the capitals of Europe, the branch in Paris being its head office for Europe. The general manager of the London branch had no general authority to issue policies in this country. Certain life policies signed by the president & secretary of the co. & countersigned by the general manager for Europe, were issued in London to German nationals before the outbreak of the war. The policies were not under seal. The policy moneys were expressed to be payable in London, but all premiums were payable either at the central office in New York or at the office where the insurance was payable, & proofs of death were to be furnished at the New York office. An indorsement on the policy provided that it should be construed according to English law:—*Held*:

it was permissible & necessary to look at the terms of the contracts & to determine from them at what place the debts would be recoverable; applying that test in the present case, the debts were recoverable in London where they were expressed to be payable.—*NEW YORK LIFE INSURANCE Co. v. PUBLIC TRUSTEE*, [1924] 2 Ch. 101; 93 L. J. Ch. 449; 131 L. T. 438; 40 T. L. R. 430; 68 Sol. Jo. 477, C. A.

*Annotations*:—*Refd.* *Swedish Central Ry. v. Thompson*, [1924] 2 K. B. 255; *Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669.

705. *Add. Annotation*:—*As to* (1) *Refd.* *The Colorado*, [1923] P. 102.

709. *Add. Annotation*:—*Refd.* *Behnke v. Bede Shipping Co.*, [1927] 1 K. B. 649.

711. *Add. Annotation*:—*As to* (1) *Refd.* *The Colorado*, [1923] P. 102.

716. *Citations*:—For "5 De G. M. & G. 604" read "1 De G. M. & G. 604."

*Add. Annotations*:—*Mentd.* *Lord Strathcona S.S. Co. v. Dominion Coal Co.* (1925), 42 T. L. R. 86; *Rely-A-Bell Burglar & Fire Alarm Co. v. Eisler*, [1926] Ch. 609; *Re Wait*, [1927] 1 Ch. 606.

719. *Add. Annotation*:—*Refd.* *The Colorado*, [1923] P. 102.

740. *Add. Annotation*:—*As to* (2) *Refd.* *Employers' Liability Assce. v. Sedgwick Collins* (1926), 95 L. J. K. B. 1015.

748. *Add. Annotations*:—*As to* (1) *Refd.* *Jebara v. Ottoman Bank*, [1927] 2 K. B. 254. *Generally*, *Mentd.* *Larrinaga v. Soc. Franco Americaine Des Phosphates de Medulla* (1923), 92 L. J. K. B. 455.

750. *Add. Annotation*:—*Apld.* *Soc. Anon. des Grands Etablissements de Touquet Paris-Plage v. Baumgart* (1927), 96 L. J. K. B. 789.

752. *Add. Annotation*:—*Apld.* *Soc. Anon. des Grands Etablissements de Touquet Paris-Plage v. Baumgart* (1927), 96 L. J. K. B. 789.

752a. ———.—Where money is lent in a foreign country for the purposes of gaming & gaming in that country is not illegal, & cheques payable in England are given for the money lent, pltf. can ignore the security & sue as for money lent to debt.—*SOCIÉTÉ ANONYME DES GRANDS ETABLISSEMENTS DE TOUQUET PARIS-PLAGE v. BAUMGART* (1927), 96 L. J. K. B. 789; 136 L. T. 799; 43 T. L. R. 278.

757. *Add. Annotation*:—*As to* (1) *Apld.* *Swiss Bank Corp. v. Boehmische Industrial Bank*, [1923] 1 K. B. 673.

PART VII. SECT. 2, SUB-SECT. 1.— 300; 43 D. L. R. 716.—CAN.  
B. (c).

m. Read now "658a i."

PART VII. SECT. 2, SUB-SECT. 4.—  
B. (c).

701 i. *Marine policy*—Governed by *lex loci contractus*.—*PATTERSON v. CONTINENTAL INSURANCE Co.* (1859), 18 U. C. R. 9.—CAN.

703 ii. ———.—*Re HEWITT & HEWITT* (Ont.) (1918), 14 U. W. N.

PART VII. SECT. 2, SUB-SECT. 8.

756 i. *By act of parties*—*Payment*—*In what currency*.—*EHMKA v. BORDER CITIES IMPROVEMENT Co.* (1922), 52 O. L. R. 193.—CAN.

756 ii. ———.—*MYERS v. UNION NATURAL GAS Co.* (1922), 53 O. L. R. 88.—CAN.

756 iii.

—Where a

payment originating in one country is to be made in another country, & the currency denomination specified is the same in both countries, the rule is that the payment must be made in the currency of the country where the money is payable, unless by express terms or necessary implication payment in some other currency is required.—*SIMMS v. CHERNENKOFF*, [1922] 1 W. W. R. 967; 62 D. L. R. 703; 15 Sask. L. R. 186.—CAN.

## Part VIII.—Torts.

777. *Add. Annotation*:—*Reid. Isaacs v. Cook*, [1925] 2 K. B. 391.
781. *Add. Annotation*:—*Mentd. Tallack v. Tallack & Broekema*, [1927] P. 211.
788. *Add. Annotations*:—*Generally, Mentd. McMillan v. Canadian Northern Ry.*, [1923] A. C. 120; *Walpole v. Canadian Northern Ry.*, [1923] A. C. 118.
788. *Add. Citation*:—*sub nom. BADTOLPH v. BAMFIELD*, *Oas. temp. Finch*, 186.
789. *Add. Annotation*:—*Reid. The Fagernes*, [1927] P. 311.
796. *Add. Annotation*:—*As to (2) Reid. Commercial & Estates Co. of Egypt v. Board of Trade*, [1925] 1 K. B. 271.

## Part IX.—Marriage.

802. *Add. Annotations*:—*Reid. R. v. Moscovitch* (1927), 44 T. L. R. 4. *Mentd. R. v. Moscovitch* (1927), 138 L. T. 183.
806. *Add. Annotation*:—*As to (3) Reid. Mitford v. Mitford*, [1923] P. 130.
821. *Add. Annotation*:—*Mentd. Re Wombwell's Settlt., Clerke v. Menzies*, [1922] 2 Ch. 298.
827. *Add. Annotation*:—*As to (2) Reid. Mitford v. Mitford*, [1923] P. 130.
829. *Add. Annotations*:—*Reid. Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669; *Sloggett v. Sloggett*, [1928] P. 148.
836. *Add. Annotations*:—*Folld M. v. Mitford*, [1923] P. 130. *Consd. Salvesen (or von Lorang) v. Austrian Property Administrator*, [1927] A. C. 641.
840. *Add. Annotation*:—*As to (2) Reid. Buerger v. New York Life Assce.* (1927), 96 L. J. K. B. 930.
853. *Add. Annotations*:—*Reid. Buerger v. New York Life Assce.* (1927), 96 L. J. K. B. 930. *Mentd. Perlak Petroleum Maatschappij v. Deen*, [1924] 1 K. B. 111; *R. v. Moscovitch* (1927), 138 L. T. 183.

## Part X.—Divorce and other Matrimonial Causes.

- 873a. —.]—The jurisdiction in divorce is limited to England & Wales & depends upon domicile there, & it does not necessarily confer any authority over the property of a person domiciled in a foreign country.—*TALLACK v. TALLACK & BROEKEMA*, [1927] P. 211; 96 L. J. P. 117; 137 L. T. 487; 43 T. L. R. 467; 71 Sol. Jo. 521.
- Under Judicature (Consolidation) Act, 1925 (c. 49), s. 191.]—*See HUSBAND & WIFE*, No. 5542a, *post*.
878. *Add. Annotation*:—*Mentd. Rudd v. Rudd*, [1924] P. 72.
884. *Add. Annotation*:—*Reid. A.-G. for Alberta v. Cook*, [1926] A. C. 444.

### PART VIII. SECT. 1.

775 xii. —.]—Appellant, resident in Ontario, in the course of his employment was injured in that province owing to the negligence of a fellow servant. He sued for damages in Saskatchewan, in which province common employment was not a defence, although a defence to an action in Ontario:—*Held*: the action could not be maintained.—*McMILLAN v. CANADIAN NORTHERN RY. CO.*, [1923] A. C. 120; 92 L. J. P. C. 44; 128 L. T. 293; 39 T. L. R. 14.—CAN.

775 xiii. —.]—An application under K. B. Act, 1920 (Sask.), for leave to bring an action for damages for personal injuries incurred in the province of Alberta in the course of pltf.'s employment was refused, on the ground that the acts complained of were not "unjustifiable" according to Alberta law, & an essential condition to found the action was not fulfilled.—*WARD v. BRITISH AMERICAN OIL CO., LTD.*, [1923] 1 W. W. R. 1240; 16 Sask. L. R. 526.—CAN.

### PART VIII. SECT. 2, SUB-SECT. 1.

780 i. *Trespass to person—Damages—Granting of compensation entrusted to special tribunal in country where tort committed.*—Since in B. C. the board appointed under Workmen's Compensation Act has exclusive jurisdiction in matters of compensation in lieu of all rights of action of a workman or his dependents against his employer for any accident arising out of & in the course of his employment, no action can lie in Saskatchewan on behalf of a

widow & child of a workman for his death while domiciled in B. C.—*WALPOLE v. CANADIAN NORTHERN RY. CO.*, [1923] A. C. 113; 92 L. J. P. C. 39; 128 L. T. 289; 39 T. L. R. 16.—CAN.

b. For "*Trespass—Negligence—Common employment—Lex loci actus*" read "*Negligence—Common employment—Lex loci actus*."

i. After this case add "*See, also, No. 775 xii., ante.*"

### PART IX. SECT. 1, SUB-SECT. 1.

811 i. —.]—*Marriage solemnised according to law of state.*—If a person domiciled in a country whose laws permit polygamous marriages is, in accordance with its laws, married there to two wives, citizens of that country, & dies while still domiciled there though temporarily residing in B. C., the status of the wives will be recognised by the cts. of B. C. for the purpose of fixing the succession duty payable on movable property in B. C. going under deceased's will to each of the wives.—*YEW v. A.-G. FOR BRITISH COLUMBIA*, [1924] 1 D. L. R. 1166; 1 W. W. R. 753; 33 B. C. R. 109; *revisg.* S. C. *sub nom. Re LEE CHEONG*, [1923] 1 W. W. R. 867.—CAN.

### PART IX. SECT. 1, SUB-SECT. 2.—C.

827 ii. —.]—In 1911 H., domiciled in the Transvaal, married his deceased wife's sister, W., who was domiciled in Natal. By the common law prevailing in T. at the time, marriage between a man & his deceased wife's sister was prohibited. In N. such a marriage was permitted by statute:—*Held*: the marriage was valid inas-

much as the domicile of W. was in N. & the marriage was celebrated in N., & the N. cts. would not regard the validity of the marriage as affected by an incapacity imposed by the law of the husband's domicile not recognised by the law of N.—*FRIEDMAN v. FRIEDMAN'S EXECUTORS* (1922), 43 N. L. R. 259.—S. AF.

### PART X. SECT. 1, SUB-SECT. 2.—A. (a).

878 i. —.]—Petition by the wife for dissolution of marriage. The husband was a subject of the U.S.A. & domiciled in that country; the marriage was celebrated & both parties resided in India until Jan. 1923, when the husband left for America where he remained. Adultery & cruelty were committed within the jurisdiction of the ct. sufficient to entitle petitioner to a decree nisi:—*Held*: the ct. had jurisdiction to pass the decree.—*MILLER v. MILLER* (1924), 1 L. R. 52 Calc. 566.—IND.

879 iv. —.]—Domicil of the married pair at the time when the question of divorce arises is the test of jurisdiction to dissolve their marriage, & the ct. of the *bona fide* existing domicile has jurisdiction over persons originally domiciled in another country to undo a marriage solemnised in that other country; & such a divorce will be recognised by the cts. of Ontario, even if granted for a cause which would not be sufficient to obtain a divorce in Ontario.—*CROMARTY v. CROMARTY* (1917), 38 O. L. R. 481; 33 D. L. R. 151.—CAN.



885. *Add. Annotations*:—*Consd. A.-G. for Alberta v. Cook*, [1926] A. C. 444; *Salvesen (or von Lorang) v. Austrian Property Administrator*, [1927] A. C. 641. *Refd. Graham v. Graham* (1923), 128 L. T. 639; *Eustace v. Eustace* [1924] P. 45; *Rudd v. Rudd*, [1924] P. 72; *Sasson v. Sasson*, [1924] A. C. 1007.

891. *Add. Annotation*:—*Mentd. Bosworthick v. Bosworthick*, [1927] P. 64.

894. *Add. Annotations*:—*Consd. Graham v. Graham*, [1923] P. 31; *Salvesen (or von Lorang) v. Austrian Property Administrator*, [1927] A. C. 641. *Refd. Mitford v. Mitford*, [1923] P. 130.

894a. ———.]—(1) The competent jurisdiction to dissolve a marriage is that of the husband's domicile & deft. must be domiciled in that jurisdiction at the commencement of proceedings. Independent authority to dissolve the marriage cannot exist in two sovereign States simultaneously.

(2) A husband by deserting his wife in one domicile does not become estopped from alleging another domicile after acquiring it, & the wife so deserted is not thereby entitled to determine the forum of her proceedings for dissolution. A decree of judicial separation by reason of a matrimonial offence of the husband does not as from its date fix matrimonial domicile or render it incapable of alteration without the consent of the wife.—*H. v. H.*, [1928] P. 206; 97 L. J. P. 116; 139 L. T. 412; 44 T. L. R. 711; 72 Sol. Jo. 598.

895. *Add. Annotations*:—*As to* (1) *Refd. Graham v. Graham*, [1923] P. 31; *Eustace v. Eustace*, [1924] P. 45. *Generally, Mentd. A.-G. for Alberta v. Cook* (1926), 134 L. T. 717.

899a. ———.]—A decree for judicial separation made under Matrimonial Causes Act, 1857 (c. 75), s. 16, does not enable the wife to acquire a domicile different from that of her husband, & thus entitle her to sue for a divorce in a ct. other than that of the husband's domicile. The effect of sects. 25 & 26 of the above Act upon the legal relationship of the spouses after a decree for judicial separation is confined within the precise terms of those sects.—*A.-G. FOR ALBERTA v. COOK*, [1926] A. C. 444; 95 L. J. P. C. 102; 134 L. T. 717; 42 T. L. R. 317, P. C.

*Annotations*:—*Consd. Salvesen (or von Lorang) v. Austrian Property Administrator*, [1927] A. C. 641. *Refd. H. v. H.*, [1928] P. 206.

899b. ———.]—*Subsequent change of domicile by husband.*—*H. v. H.*, No. 894a, *ante*.

903a. ———.]—(1) The burden of

890 iv. ———.]—An action by a husband, who had been married in Ontario, in a foreign State for a divorce resulted in favour of the wife, & judgment dissolving the marriage was granted to her, & by it she was awarded alimony. Subsequently the wife sought by action to recover the amount of alimony, & the husband contended that as he had never acquired the necessary domicile to give the foreign ct. jurisdiction to grant the divorce the judgment was invalid:—*Held*: as he had invoked & submitted to the jurisdiction of the foreign ct., he had precluded himself from setting up want of jurisdiction.—*SWAIZIE v. (1899)*, 51 O. R. 324.—CAN.

PART X. SECT. 1, SUB-SECT. 2.—  
A. (b).

i. ——— *Must be within territorial*

*limits of province.*—The domicile necessary to confer jurisdiction to dissolve a marriage must be within the territorial limits of the province whose cts. are appealed to.—*MARRIAGGI v. MARRIAGGI*, [1923] 3 W. W. R. 849; 4 D. L. R. 463.—CAN.

899 iii. ———.]—Where a wife has obtained a decree of judicial separation, she is entitled to acquire a domicile independently of her husband.—*HASTINGS v. HASTINGS*, [1922] N. Z. L. R. 273.—N.Z.

903 iv. ———.]—The law of domicile governing divorce is that the domicile of the husband is the domicile of the wife; but circumstances may arise, as a result of that rule, which will justify the intervention of the cts. so as to give a deserted wife relief from her marriage tie.—*PAYN v. PAYN*,

proving a change of the domicile of origin is strongly on those alleging it.

(2) In this case resp. had not been proved to have acquired at the material time an American domicile, so the American ct., which had granted him a decree of divorce, had no jurisdiction.

(3) Even if the American ct. had jurisdiction petitioner would have not have been bound by proceedings, of which she had no notice or knowledge.

(4) *Semble*: even if resp. has now acquired an American domicile, petitioner can still as a deserted wife obtain relief from the English cts.—*RUDD v. RUDD*, [1924] P. 72; 93 L. J. P. 45; 130 L. T. 575; 40 T. L. R. 197.

903b. ———.]—*Subsequent change of domicile by husband.*—*H. v. H.*, No. 894a, *ante*.

905. *Add. Annotation*:—*Consd. A.-G. for Alberta v. Cook*, [1926] A. C. 444.

906. *Add. Annotation*:—*Consd. A.-G. for Alberta v. Cook*, [1926] A. C. 444.

916. *Add. Annotation*:—*Refd. Graham v. Graham*, [1923] P. 31.

917. *Add. Annotations*:—*Consd. A.-G. for Alberta v. Cook*, [1926] A. C. 444; *H. v. H.*, [1928] P. 206. *Refd. Graham v. Graham*, [1923] P. 31; *Raeburn v. Raeburn* (1928), 138 L. T. 672.

918. *Add. Annotations*:—*Distd. Eustace v. Eustace*, [1924] P. 45. *Refd. Graham v. Graham*, [1923] P. 31; *Mitford v. Mitford*, [1923] P. 130.

918a. ———.]—It is established by the cases of *Armylage v. Armylage*, No. 917, *ante*, & *Anghinelli v. Anghinelli*, No. 918, *ante*, that, according to the practice of the ecclesiastical cts., a suit for judicial separation, which is now substituted for the divorce *a mensâ et thoro*, can be entertained in a case where both parties are resident but not domiciled within the jurisdiction. But the ct. has no jurisdiction to maintain a suit against a resp. who at the time of his citation or of the institution of the suit is resident out of the jurisdiction. Statute of Citations, 1531 (c. 9), s. 2, which forbade the ecclesiastical cts. to cite any person out of the diocese where he was inhabiting or dwelling, must be taken to have limited the jurisdiction & not only the power of service of the ecclesiastical cts.; & Matrimonial Causes Act, 1857 (c. 85), which permits service within or without His Majesty's Dominions, cannot extend the jurisdiction.—*GRAHAM v. GRAHAM*,

[1924] 3 D. L. R. 1006; 3 W. W. R. 111.—CAN.

*st. In Ireland—Power to elect to be domiciled either in Northern Ireland or in Irish Free State.*—*EGAN v. EGAN*, [1928] N. I. 159.—IR.

#### PART X. SECT. 1, SUB-SECT. 3.

—Where a wife brings an action of separation & aliment against her husband on the ground of a matrimonial offence committed by the husband while domiciled in Scotland, the ct. in Scotland has jurisdiction to entertain the action, although prior to the bringing of the action the husband has taken up his permanent residence & acquired a domicile in a foreign country.—*RAMSAY v. RAMSAY*, [1925] S. C. 216.—SCOT.

[1923] P. 31 ; 92 L. J. P. 26 ; 128 L. T. 639 ; 39 T. L. R. 139 ; 67 Sol. Jo. 316.

—*Distd.* Eustace v. Eustace, [1924] P. 45. *Refd.* Raeburn v. Raeburn (1928), 138 L. T. 672. *Mentd.* Smith v. Smith, [1923] P. 128.

918b. ———.]—Where the parties are not domiciled in England, in a suit for judicial separation the question must be, in order to give jurisdiction in such a suit, whether, at the time when the petition indorsed with the citation was issued out for service, resp. was resident within the jurisdiction.—*RAEBURN v. RAEBURN* (1928), 138 L. T. 672 ; 44 T. L. R. 384.

918c. ——— Respondent domiciled in England.]—There is jurisdiction in the Probate, Divorce & Admty. Div. to decree judicial separation at the suit of the wife where the husband is domiciled in England, although at the date of the institution of the suit he is not resident in this country.—*EUSTACE v. EUSTACE*, [1924] P. 45 ; 93 L. J. P. 28 ; 130 L. T. 79 ; 39 T. L. R. 687 ; 67 Sol. Jo. 807, C. A.

924. *Add. Annotations* :—As to (1) *Refd.* Salvesen (or von Lorang) v. Austrian Property Administrator, [1927] A. C. 641. As to (2) *Consd.* Salvesen (or von Lorang) v. Austrian Property Administrator, [1927] A. C. 641.

926. *Add. Annotations* :—*N.F.* Graham v. Graham, [1923] P. 31. *Refd.* Mitford v. Mitford, [1923] P. 130.

926a. Parties domiciled in country where decree sought—Validity of marriage in dispute.]—(1) Where the validity of a marriage is in dispute the ct. of the domicil of the parties has jurisdiction, whether it is an exclusive jurisdiction or not, to pronounce a decree of nullity of marriage.

(2) A decree of nullity of marriage pronounced by a ct. of competent jurisdiction, whatever be the ground of the decree, is a judgment determining status & is equivalent to a judgment *in rem*.

(3) Where the parties are domiciled in a foreign country a decree of nullity of marriage pronounced by a competent ct. of that country will, in the absence of fraud or collusion, be recognised as binding & conclusive by the cts. of England & Scotland, unless it offends against British notions of substantial justice.—*SALVESEN (OR VON LORANG) v. AUSTRIAN PROPERTY ADMINIS-*

*TRATOR*, [1927] A. C. 641 ; 96 L. J. P. C. 105 ; 137 L. T. 571 ; 43 T. L. R. 609, H. L.

*Annotation* :—As to (3) *Refd.* H. v. H. (No. 2) (1928), 97 L. J. P. 116.

928. *Add. Annotation* :—*Refd.* Salvesen (or von Lorang) v. Austrian Property Administrator, [1927] A. C. 641.

929. *Add. Annotation* :—*Refd.* Salvesen (or von Lorang) v. Austrian Property Administrator, [1927] A. C. 641.

930. *Add. Annotation* :—*Refd.* Rudd v. Rudd, [1924] P. 72.

932. *Add. Annotation* :—*Generally*, *Refd.* Salvesen (or von Lorang) v. Austrian Property Administrator, [1927] A. C. 641.

935. *Add. Annotations* :—As to (1) *Folld.* Mitford v. Mitford (1923), 92 L. J. P. 90. As to (3) *Refd.* Eustace v. Eustace, [1924] P. 45.

935a. ———.]—*RUDD v. RUDD*, No. 903a, *ante*.

944. *Add. Annotations* :—*Expld.* Salvesen (or von Lorang) v. Austrian Property Administrator, [1927] A. C. 641. *Refd.* Mitford v. Mitford, [1923] P. 130.

944a. ———.]—The husband, of British nationality & domicil, married a woman of German nationality & domicil in Berlin in accordance with German law on Jan. 5, 1914. On Oct. 23, 1914, a German ct. annulled the marriage under a provision of the German Civil Code, & this decree of nullity was upheld on appeal. On Mar. 4, 1920, the woman, resp. in the present suit, contracted in Germany a second marriage, in respect of which the first husband, the present petitioner, claimed relief :—*Held* : the German decision was a conclusive adjudication between the parties, & no marriage was at the commencement of the suit or now subsisting.—*MITFORD v. MITFORD & VON KUHLMANN*, [1923] P. 130 ; 92 L. J. P. 90 ; 129 L. T. 153 ; 39 T. L. R. 350.

944b. ———.]—*SALVESEN (OR VON LORANG) AUSTRIAN PROPERTY ADMINISTRATOR*, No. 926a, *ante*.

947. *Add. Citation* :—*sub nom.* *SUGDEN v. LOLLEY*, 2 Cl. & Fin. 567, n.

*Add. Annotation* :—*Consd.* Salvesen (or von Lorang) v. Austrian Property Administrator, [1927] A. C. 641.

#### PART X. SECT. 1, SUB-SECT. 4.

11. ———.]—On petition by a wife for restitution of conjugal rights :—*Held* : resp. had an Irish domicil, & the ct. had jurisdiction to give relief, it being immaterial whether resp. was or was not an American citizen.—*BELL v. BELL*, [1922] 2 I. R. 152.—*IR.*

#### PART X. SECT. 1, SUB-SECT. 5.

o i. ——— Respondent residing in country where decree sought—Petitioner not residing in country where decree sought.]—While residence only is sufficient to found jurisdiction in nullity actions, as distinguished from divorce actions, such residence must be *bona fide*. Where a petition setting up grounds for a declaration of nullity was erroneously dismissed, the ct. declined to reinstate the petition, as petitioner was merely a casual visitor, although his wife was a resident, in British Columbia.—*PURDY v. PURDY*, [1919] 2 W. W. R. 551.—*CAN.*

#### PART X. SECT. 2, SUB-SECT. 1.—A.

q i. ———.]—*POTRATZ v. POTRATZ*

(Sask.), [1926] 1 D. L. R. 147.—*CAN.*

q ii. ———.]—A divorce obtained by a wife in a foreign State, when her husband was domiciled in Saskatchewan, not recognised as valid.—*BURNFIEL v. BURNFIEL*, [1926] 2 D. L. R. 129 ; [1926] 1 W. W. R. 657 ; 20 Sask. L. R. 407.—*CAN.*

q iii. ———.]—*SHEASER v. SHEASER*, [1926] 3 D. L. R. 196 ; [1926] 2 W. W. R. 389 ; 22 Alta. L. R. 261 ; *varying*, [1926] 2 D. L. R. 906 ; [1926] 2 W. W. R. 129.—*CAN.*

q iv. ———.]—*BROWN v. MCINNESS*, [1927] 2 D. L. R. 655 ; [1927] 1 W. W. R. 597 ; 38 B. C. R. 324.—*CAN.*

927 v. ———.]—As the domicil of a wife is the husband's domicil & foreign proceedings cannot affect the legal status of a marriage in Canada, where the grounds supporting a foreign decree would not support a decree under Canadian law :—*Held* : a wife's divorce & re-marriage in Minnesota constituted legal adultery, & furnished ground for the husband's

claim for dissolution of the Canadian marriage.—*CAMPBELL v. CAMPBELL*, [1921] 2 W. W. R. 849.—*CAN.*

927 vi. ———.]—Where a husband had left Manitoba for the purpose of obtaining a divorce which he could not have obtained there, & had obtained a divorce abroad & married again :—*Held* : the wife's prayer for divorce should be granted.—*YATES v. YATES*, [1924] 4 D. L. R. 835 ; 3 W. W. R. 578.—*CAN.*

936 ii. ———.]—*CROMARTY v. CROMARTY*, No. 879 iv., *ante*.—*CAN.*

#### PART X. SECT. 2, SUB-SECT. 2.

947 iii. ———.]—*CROMARTY v. CROMARTY*, No. 879 iv., *ante*.—*CAN.*

#### PART X. SECT. 2, SUB-SECT. 3.

aa. *Presumption in favour of validity of proceedings*.]—*FIELDS v. FIELDS*, [1925] 2 D. L. R. 256 ; 58 N. S. R. 65.—*CAN.*

952. *Add. Annotations*:—*Consd. Jacobson v. Frachon* (1927), 44 T. L. R. 103; *Salvesen (or von Lorang) v. Austrian Property Ad-*

*ministrator*, [1927] A. C. 641. *Refd. Mitford v. Mitford*, [1923] P. 130; *Rudd v. Rudd*, [1924] P. 72.

## Part XII.—Assignment of Property on Marriage.

966. *Add. Annotation*:—*Refd. Rudd v.* [1924] P. 72.

*Refd. Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669.

969. *Add. Annotation*:—*As to* (2) *Refd. Banque Internationale de Commerce de Petrograd v. Goukassow*, [1923] 2 K. B. 682. *Generally*,

1000. *Add. Annotation*:—*Consd. A.-G. v. Belilios*, [1928] 1 K. B. 798.

1010. *Add. Annotation*:—*Mentd. Webster v. Webster & Williamson*, [1926] P. 198.

## Part XIV.—Foreign Judgments.

1033. For "No. 383, *ante*," read "No. 454, *ante*."

1033a. *Due constitution of court—Necessity for strict proof.*—*R. v. BEECH, POLLITT & STRUDWICK* (1928), 20 Cr. App. Rep. 175, C. C. A.

1041. *Add. Annotation*:—*Generally, Refd. Employers' Liability Assce. Corpn. v. Sedgwick, Collins*, [1927] A. C. 95.

1044a. *Judgment of horning.*—(1) An action lies in the English cts. on a Scotch judgment of horning against a Scotchman born. (2) Where a Scotch decree adjudges interest to be paid, but does not fix the time from which it is to run, it is payable from the day of citation.—*DOUGLAS v. FORREST* (1828), 4 Bing. 686; 1 Moo. & P. 663; 6 L. J. O. S. C. P. 157; 130 E. R. 933.

*Annotations*:—*As to* (1) *Refd. Don v. Lippmann* (1837), 5 Cl. & Fin. 1; *Cowan v. Bruidwood* (1840), 9 Dowl. 26; *Schibshy v. Westenholz* (1870), L. R. 6 Q. B. 155; *Rousillon v. Rousillon* (1880), 14 Ch. 1. 351; *Emanuel v. Symon*, [1908] 1 K. B. 302; *David Gibson v. Gibson*, [1913] 3 K. B. 379. *Generally, Mentd. Rhodes v. Smethurst* (1840), 6

M. & W. 351; *Towne v. Mead* (1855), 16 C. B. 123; *Mohamidu Mohideen Hadjar v. Pitchay*, [1894] A. C. 437; *Musurus Bey v. Gadban*, [1894] 2 Q. B. 352.

1045. *Add. Annotation*:—*Mentd. The Sylvan Arrow* (1922), 128 L. T. 448.

1052. *Add. Annotation*:—*Refd. Employers' Liability Assce. v. Sedgwick Collins* (1926), 95 L. J. K. B. 1015.

1054. *Add. Annotation*:—*Apld. Rudd v. Rudd*, [1924] P. 72.

1069. *Add. Annotation*:—*Refd. The Joannis Vatis* (No. 2), [1922] P. 213.

1073. *Add. Annotation*:—*As to* (1) *Apld. Employers' Liability Assce. v. Sedgwick Collins* (1926), 95 L. J. K. B. 1015.

1080. *Add. Citation*:—[1921] B. & C. R. 195.

1090a. —.—.]—*RUDD v. RUDD*, No. 903a, *ante*.

1098a. *General rule.*—A plea of judgment recovered in a foreign ct. of competent jurisdiction must show that the judgment so

952 ii. —.—.]—*OWEN v. ROBINSON* (OTHERWISE OWEN), [1925] N. Z. L. R. 591.—N.Z.

### PART X. SECT. 2, SUB-SECT. 4.

954 iv. —.—.]—By decree of the Michigan ct. the mother of infants was granted a divorce from the father & awarded the custody of the infants, until they reached a certain age or until the further order of the ct. The infants were in the custody of the father in Ontario:—*Held*: the decree was not conclusive upon an application to an Ontario ct. for an order for custody, more especially as the judgment of the Michigan ct. was not final.—*Re GAY*, [1926] 3 D. L. R. 349; 59 O. L. R. 40.—CAN.

954 v. —.—.]—Where children were residing with their father in a province where he was engaged in business, & their welfare would be best served by leaving them in his custody:—*Held*: his application to be appointed their guardian should be granted, notwithstanding the fact that their mother, in securing a divorce in an undefended action in a foreign ct., had also obtained as incidental thereto an order giving her their custody.—*Re SNYDER, SNYDER v. SNYDER*, [1927] 3 D. L. R. 151; [1927] 2 W. W. R. 240; 38 B. C. R. 336.—CAN.

954 vi. —.—.]—*On orders for alimony.* A judgment of a foreign ct. awarding alimony to a husband is enforceable

in Ontario, although the Ontario ct. does not know or recognise any right to alimony in a husband against his wife.—*BURCHELL v. BURCHELL*, [1926] 2 D. L. R. 595; 58 O. L. R. 515.—CAN.

### PART XIII. SECT. 2.

r 1. —.—.]—The only ct. with jurisdiction over the custody of an infant is the ct. of the domicile of the infant.—*CODY v. CODY*, [1927] 3 D. L. R. 349; [1927] 1 W. W. R. 603; 21 Sask. L. R. 391.—CAN.

*Compare* No. 1117 l.

### PART XIV. SECT. 1.

a 1. —.—.]—*Order conferring rights on committee of lunatic.*—The rights conferred upon the committee of a lunatic by a ct. of the lunatic's domicile, with reference to personalty, are entitled, to world-wide recognition.—*Re HICKSON*, [1927] 4 D. L. R. 607; 61 O. L. R. 180.—CAN.

### PART XIV. SECT. 2, SUB-SECT. 2.—A.

1034 iii. —.—.]—Where a suit is brought on a foreign judgment, it is not open to deft. to plead that the ct. which passed the judgment had no jurisdiction to do so, when he himself had submitted to the jurisdiction & had not challenged it.—*GANGA PRASAD v. GANESHI LAL* (1923), 1 L. R. 46 All. 119.—IND.

### PART XIV. SECT. 2, SUB-SECT. 2.—C.

1054 xiv. —.—.]—A judgment

on an award obtained in England by default cannot be sued on in India, since it is not a judgment "on the merits" within Code of Civil Procedure (Act V. of 1908), s. 13.—*OPPENHEIM & Co. v. MAHOMED HANEEF*, [1922] 1 A. C. 482; 91 L. J. P. C. 205; 127 L. T. 196; 49 L. R. Ind. App. 174.—IND.

### PART XIV. SECT. 2, SUB-SECT. 2.—F.

e 1. —.—.]—*Execution of power of attorney—Authorising agent to appear as plaintiff or defendant—Failure of agent to appear.*—*JANOO HASSAN SAIT v. MAHAMAD OHUTHU* (1924), 1 L. R. 47 Mad. 877.—IND.

### PART XIV. SECT. 2, SUB-SECT. 3.

o. Read now "1098a i."

p. Read now "1098a ii."

1098a iii. —.—.]—*Presumption of finality.*—The finality & conclusiveness of a foreign judgment will be presumed in favour of a pltf. relying on it, unless it is put in issue by deft.'s pleadings, but a Ct. of Appeal in ordering a new trial can allow such amendments to be made as will enable deft. to raise the issue.—*SMITH v. SMITH*, [1923] 2 D. L. R. 896; 2 W. W. R. 389.—CAN.

q. Read now "1098a iv."

r. Read now "1098a v."

1098a vi. —.—.]—*AINSLIE v. AINSLIE* (1927), 39 C. L. R. 381; 27 S. R. N. S. W. 524; [1927] Argus L. R. 301.



recovered is final & conclusive between the parties according to the law of the place where such judgment is pronounced.—*FRAYES v. WORMS* (1861), 10 O. B. N. S. 149; 142 E. R. 407.

*Annotation*:—*Mentd.* *Re* Henderson, *Nouvion v. Freeman* (1887), 35 Ch. D. 704.

1108. *Add. Annotation*:—*Apld.* *Beatty v. Beatty*, [1924] 1 K. B. 807.

1112. *Add. Annotation*:—*Consd.* *Beatty v. Beatty*, [1924] 1 K. B. 807.

1113. *Add. Annotation*:—*Consd.* *Beatty v. Beatty*, [1924] 1 K. B. 807.

1113a. Judgment for payment of sum of money—Amount not subject to variation—*Alimony*.]—By the law of the State of New York, where a judgment has been pronounced by the proper ct. of that State for the payment of alimony, & instalments under that judgment are due & in arrear, it is not competent for that ct. to vary its judgment in respect of the instalments so accrued due:—*Held*: such a judgment is in that respect a final judgment & an action may be brought to enforce payment of those arrears in this country.—*BEATTY v. BEATTY*, [1924] 1 K. B. 807; 93 L. J. K. B. 750; 131 L. T. 226, C. A.

1114. *Add. Annotation*:—*Refd.* *Beatty v. Beatty*, [1924] 1 K. B. 807.

1132. *Add. Annotations*:—*Apld.* *Ellerman Lines v. Read* (1927), 44 T. L. R. 7. *Refd.* *Jacobson v. Frachon* (1927), 44 T. L. R. 103.

1135a. —.]—Pltfs.' steamer stranded in the Black Sea, & L. agreed to try to save her on the terms that security for payment of his remuneration should be arranged in London, & that he would not arrest the ship unless there was an attempt to remove her before the security had been given. Security was given in London in accordance with the salvage contract, & the ship was refloated & taken to Constantinople for temporary repairs. Before she was ready to leave, L. brought an action against the master in the Turkish ct. on the ground that the ship was about to be removed without security having been given. By order of the Turkish ct. the ship was arrested, & as the master had no evidence of what had been done in London & L. took an oath that security had not been given, the Turkish ct. awarded L. £23,890. L. then disposed of the ship, & pltfs. brought an action (1) for damages for breach of contract, (2) for a declaration that

the Turkish judgment was invalid, & (3) for an injunction to prevent the judgment from being enforced:—*Held*: (1) the Turkish judgment was invalid; (2) an injunction restraining the enforcement of the judgment abroad should be granted.—*ELLERMAN LINES, LTD. v. READ*, [1928] 2 K. B. 144; 97 L. J. K. B. 366; 138 L. T. 625; 44 T. L. R. 285; 17 Asp. M. L. C. 421; 33 Com. Cas. 219, C. A.; *reversg.* (1927), 44 T. L. R. 7.

*Add. Annotation*:—*Generally*, *Refd.* *Macaulay v. Guaranty Trust Co. of New York* (1927), 44 T. L. R. 99.

1144. *Add. Annotation*:—*Mentd.* *Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669.

1147. *Add. Annotation*:—*Refd.* *Jacobson v. Frachon* (1927), 44 T. L. R. 1.

1147a. —.]—In an action by buyers against foreign sellers for breach of contract alleging failure to deliver goods in the quantity & of the quality agreed to be sold, the defence was set up that the matter had been litigated in the French ct., which had given judgment for defts., & that the judgment was a bar to the action. Pltfs. replied that the judgment was obtained by proceedings contrary to natural justice. The action in France was brought by the sellers against the buyers for cancellation of the contract, & for damages, & the ct. made an order appointing an expert to go to London to examine the goods, compare them with the samples delivered, hear & take down in writing all evidence, & make a full report in writing to the French ct. It was proved in the English action that the expert appointed made a hurried & incomplete examination of the goods, refused to look at certain documents or to hear the evidence of pltfs. & their witnesses, & ultimately made a biased & erroneous report to the ct.:—*Held*: there being evidence that according to French law the ct. was not bound by the expert's report but could reject it, & that pltfs.' case had been properly argued before the French ct., & their evidence heard, there was no defect in the proceedings, & there being no fraud proved, the judgment in the French action was valid & could not be impeached, & was a complete defence to the English action.—*JACOBSON v. FRACHON* (1927), 138 L. T. 386; 44 T. L. R. 103; 72 Sol. Jo. 121, C. A.

1151. *Add. Annotation*:—*Consd.* *Salvesen (or von Lorang) v. Austrian Property Administrator*, [1927] A. C. 641.

1113 II. —.]—Where there did not appear to be any difference proved between the effect in the foreign State & in Ontario of such a judgment:—*Held*: a decree for alimony not being an absolute judgment, pltf. was not entitled to recover upon the foreign judgment in respect of arrears of alimony.—*MAGUIRE v. MAGUIRE* (1921), 64 D. L. R. 180; 50 O. L. R. 100.—CAN.

1113 III. —.]—*PERRY v. PERRY*, [1924] 4 D. L. R. 1177; 54 O. L. R. 613; *reversg.*, [1924] 1 D. L. R. 665; 53 O. L. R. 502.—CAN.

#### PART XIV. SECT. 2, SUB-SECT. 5.

1117 I. *Orders in respect of foreign infants—Custody*.]—The ct. will give effect to the judgment of the ct. of a foreign State awarding the custody of an infant to one of the parents.

[1921] 2 W. W. R. 171  
W. W. R.

.]—*See, also*, Nos. 954 i-954 v. *ante*.

1117 II. —.]—*Appointment of guardian*.]—Where a child, whose parents had died, was removed from the province of its domicile of origin, its maternal grandfather, resident in that province, obtained from the cts. of that province letters of guardianship of the child & thereafter applied to the cts. of the province to which the child had been removed for a writ of *habeas corpus*. The application was granted on the ground that, other things being equal, the cts. of one province will recognise the proceedings of the cts. of another province in such a case.—*Re BERGMAN & WALDRON, Re INFANTS ACT*, [1923] 4 D. L. R. 56; 3 W. W. R.

#### PART XIV. SECT. 2, SUB-SECT. 7.

1127 I. —.]—*DELAPORTE v. DELAPORTE*, [1927] 4 D. L. R. 933; 61 O. L. R. 302.—CAN.

#### PART XIV. SECT. 2, SUB-SECT. 8.

1140 I. *What amounts to repugnancy to "natural justice"*.—*Not merely following lex fori—Lex fori different from law in force in British India*.]—*GANGA PRASAD v. GANESHI LAL* (1923), 1 L. R. 46 All. 119.—IND.

#### PART XIV. SECT. 3, SUB-SECT. 1.—A.

1155 III. —.]—In an action in Manitoba upon a foreign judgment the fact that defences have been raised & tried in the foreign ct. does not prevent their being raised & tried again, but there is a discretion in the ct. to allow the defences or to strike them out on the ground of embarrassment or delay: the fact that the case has been tried out in a foreign ct., that an unsuccessful appeal has been taken, or that a consent judgment has been entered will have a very strong bearing, but in each case the discretion must be exercised upon the merits of that case alone.—*CALLAGHAN v. NICHOLLS*,

## Cases 1170—1277a. ENGLISH AND EMPIRE DIGEST SUPPLEMENT.

1170. *Add. Annotation:—Refd. Employers' Liability Assce. v. Sedgwick Collins* (1926), 95 L. J. K. B. 1015.

1195. *Add. Annotations:—As to* (2) *Refd. The Goulondris*, [1927] P. 182. *As to* (3) *Refd. Ingenohl v. Wing On* (Shanghai) (1927), 44 R. P. C. 343; *Salvesen (or von Lorang) v. Austrian Property Administrator*, [1927] A. C. 641.

1205a. — Inquiry abroad into loss of ship—*Report not confirmed by governor of colony.*—*Held: the inquiry was not conclusive.*—*Re QUEEN OF THE THAMES* (1872), 36 J. P. 72.

1214. After this case add “*See, also, ESTOPPEL*, Vol. XXI., pp. 154–156, Nos. 165–190.”

1237. *Add. Annotation:—Mentd. Ord v. Ord*, [1923] 2 K. B. 432.

1241. After the last cross-reference following this case add “— Maintenance order made in Dominion—Under Maintenance Orders (Facilities for Enforcement) Act, 1920 (c. 33).”—*See HUSBAND & WIFE*, No. 6233a.”

1241a. — Judgment severable.] — *RAULIN v. FISCHER*, No. 1120, *ante*.

1243a. — Since constitution of Irish Free State.]

—Judgments Extension Act, 1868 (c. 54), ceased to operate in Southern Ireland on Dec. 5, 1922.—*WAKELY v. TRIUMPH CYCLE Co.*, [1924] 1 K. B. 214; 93 L. J. K. B. 331; 130 L. T. 269; 40 T. L. R. 15; 68 Sol. Jo. 117, C. A.

*Annotation:—Folld. Banfield v. Chester* (1925), 94 L. J. K. B. 805.

1243b. — — —.]—Judgments Extension Act, 1868 (c. 54), has, since Dec. 5, 1922, ceased to apply to the Irish Free State. A certificate of an English judgment can, therefore, no longer be issued under Judgments Extension Act, 1868, s. 1, for registration in the Irish Free State cts.

*Semble: such certificate will be registered in the Irish Free State cts., but the application to the English ct. should be for a certificate of the judgment simpliciter under R. S. C., Ord. 61, r. 7, & not supported by an affidavit having reference to Judgments Extension Act, 1868.*—*BANFIELD v. CHESTER* (1925), 94 L. J. K. B. 805; 133 L. T. 623; 41 T. L. R. 563; 69 Sol. Jo. 692, C. A.

1262a. Date from which interest runs—No date fixed in judgment.]—*DOUGLAS v. FORREST*, No. 1044a, *ante*.

## Part XVI.—Practice and Procedure.

1272a. Not payment under garnishee order in England.]—*SWISS BANK CORPN. v. BOEHMISCHE INDUSTRIAL BANK*, No. 1307a, *post*.

1277. *Add. Annotation.*]—*Mentd. The Wilhelmina*, [1923] P. 112.

[1921] 3 W. W. R. 476; 31 Man. L. R. 331.—CAN.

*v. — — — — —.*]—The ct. will not entertain defences in an action on a foreign judgment that should have been raised in the foreign ct. or which might properly have been made the subject of appeal in the foreign jurisdiction.—*HUTTON v. DENT* (1922), 70 D. L. R. 582.—CAN.

### PART XIV. SECT. 3, SUB-SECT. 2.—A.

1189 i. *What is foreign judgment in rem—Adjudication on distribution of personal estate.*]—Where a ct. of the country of domicile adjudicates upon the distribution of personal property that adjudication is binding upon all the world & is not subject to review in the cts. of another country.

It is for the ct. of the domicile to determine whether its own proceedings are *in rem* or merely *in personam*, & when that ct. determines that its proceedings are *in rem* all foreign cts. must so treat the proceedings, although they would not be so recognised by the law of the country where the judgment is set up.—*JONES v. SMITH*, [1925] 2 D. L. R. 790; 56 O. L. R. 550.—CAN.

### PART XIV. SECT. 4, SUB-SECT. 1.

1215 iv. — — —.]—*Re HAMAR, Ex p. MCGUINITY & Co.* (1921), 63 D. L. R. 241; 2 C. B. R. 137.—CAN.

1215 v. — — —.]—*MARSHALL v. HOUGHTON*, [1923] 2 W. W. R. 553; 33 Man. L. R. 166.—CAN.

### PART XIV. SECT. 5.

1233 iii. — — —.]—While her husband, who had deserted her, was domiciled in Alberta, pltf. obtained against him in Colorado, where they

had formerly lived, a judgment in the nature of a decree of judicial separation & alimony. She sued in Alberta on that judgment, but abandoned that claim & asked for relief under an alternative claim for alimony:—*Held: she was not estopped by the foreign judgment, & alimony granted.*—*DETRO v. DETRO*, [1922] 3 W. W. R. 690; 70 D. L. R. 61.—CAN.

### PART XIV. SECT. 6.

1241a i. *Effect of judgment to be considered by enforcing court—Judgment severable.*]—The judgment of a foreign ct. comprising two parts, one of which may be enforced in Canadian cts., but the other not, is deemed to be severable, & one part will be enforced though the other rejected.

It is the duty of the ct. to decide for itself the substance of the right sought to be enforced, irrespective of the opinion which may have been expressed by the foreign ct.—*BURCHILL v. BURCHILL*, [1926] 2 D. L. R. 595; 58 O. L. R. 515.—CAN.

### PART XIV. SECT. 7, SUB-SECT. 1.—A.

1243a i. *To what judgments Act applicable—Since constitution of Irish Free State.*]—The certificate of an English judgment may be registered under Judgments Extension Act, 1868 (c. 54), in the Irish Free State.—*GIEVES v. O'CONOR*, [1924] 2 I. R. 182.—IR.

### PART XIV. SECT. 7, SUB-SECT. 2.

sb. *By registration of English High Court judgment—No submission to jurisdiction.*]—In a suit for divorce in the Divorce Div. of the High Ct. of Justice in England, an appearance was entered by London agents, on behalf of a co-respondent residing in New

1277a. —.]—(1) Questions of procedure are to be determined by the *lex fori*, not by the *lex loci contractus*.

(2) *Semble: set-off is matter of procedure, & as such, determinable by the lex fori.*—

Zealand, in error & without any instructions to that effect. On an application to have the judgment for costs of the High Ct. registered in the Supreme Ct. so that it might be enforced in New Zealand:—*Held: (1) co-respondent did not voluntarily appear or otherwise submit or agree to submit to the jurisdiction of that ct.; (2) even if such entry of appearance did amount to submitting to the High Ct.'s jurisdiction, it would not be just & convenient for the judgment to be enforced in New Zealand.*—*REDHEAD v. REDHEAD & CROTHERS*, [1926] N. Z. L. R. 131.—N.Z.

### PART XIV. SECT. 8.

1254 i. *Authentication by seal of court—Or signature of judge.*]—To satisfy Evidence Act, N. B., c. 127, s. 58, if the document sought to be proved be a foreign judgment, the authenticated copy must either be sealed with the seal of the ct. in which the original is filed, or, in the event of such ct. having no seal, be signed by the judge, or one of the judges of such ct. with a statement from him in writing that the ct. has no seal.—*HARRIS v. GARSON* (1921), 67 D. L. R. 682; 49 N. B. R. 91.—CAN.

### PART XVI. SECT. 1.

1266 i. *What are matters of procedure—Disability to sue—Statutes of limitation.*]—The question whether the enforcement of a right of action is barred by a statute of limitations, as distinguished from the question whether the right has been absolutely extinguished, is one of procedure only, & is governed wholly by the *lex fori*.—*COLONIAL INVESTMENT & LOAN Co. v. MARTIN* (Man.), [1927] 3 D. L. R. 360; [1927] 2 W. W. R. 94.—CAN.



MACFARLANE v. NORRIS (1862), 2 B. & S. 783; 31 L. J. Q. B. 245; 6 L. T. 492; 9 Jur. N. S. 74; 121 E. R. 1263.

Annotation:—As to (2) *Reid*. Maspons y Hermano v. Mildred (1882), 9 Q. B. D. 530.

1285a. Foreign receivers or assignees in bankruptcy.]—Foreign receivers or assignees in bkpcy., who have, according to the law of the country in which they have been appointed, a right to sue in their own names for a chose in action due to a person in respect of whose property they have been appointed, have a similar right of action in England.—MACAULAY v. GUARANTY TRUST CO. OF NEW YORK (1927), 44 T. L. R. 99.

1289. Add. Annotation:—*Reid*. Republica de Guatemala v. Nunez, [1927] 1 K. B. 669.

1290. Add. Annotation:—*Reid*. Republica de Guatemala v. Nunez, [1927] 1 K. B. 669.

1292a. ———.]—WRIGHT v. SIMPSON (1802), 6 Ves. 714; 31 E. R. 1272, L. C.

Annotations:—*Consd.* Newton v. Chorlton (1853), 2 Drew. 333. *Reid*. The Vreede (1811), 1 Dods. 1; Pennell v. Roy (1853), 3 De G. M. & G. 126; Jackson v. Digby (1854), 2 W. R. 540; Strong v. Foster (1855), 4 W. R. 151; Madden v. M'Mullen (1860), 4 L. T. 180; Bailey v. Edwards (1864), 4 B. & S. 761; Belfast Banking Co. v. Stanley (1867), 15 W. R. 989; Liverpool Marine Credit Co. v. Hunter (1867), L. R. 4 Eq. 62; Barber v. Mackrell (1892), 68 L. T. 29.

1306a. Governed by *lex fori*.]—MACFARLANE v. NORRIS, No. 1277a, *ante*.

1307. Add. Annotations:—*Distd.* Swiss Bank Corpn. v. Boehmische Industrial Bank, [1923] 1 K. B. 673. *Consd.* Sedgwick Collins v. Russia Insce. of Petrograd (1925), 133 L. T. 808; Richardson v. Richardson, [1927] P. 228.

1307a. Garnishee proceedings—Payment of debt situate in England—Recognised by international law.]—Judgment having been recovered against a foreign corp., who submitted to the jurisdiction, a garnishee summons was issued to attach a debt due from a London bank to the foreign corp.:—*Held*: the judgment creditors were entitled to have an order *nisi* made absolute, inasmuch as payment under a garnishee order operated as a discharge of the amount paid & was recognised by international law as having that effect, & consequently there was no real risk of the garnishees being obliged to pay the debt over again to the foreign corp., & there was, therefore, nothing inequitable in making the order absolute.

The debt in this case is situate in England, & is discharged in whole or in part by payment under a garnishee order in England, which is not mere procedure & is recognised in international law (BANKES, L.J.).—SWISS BANK CORPN. v. BOEHMISCHE INDUSTRIAL BANK, [1923] 1 K. B. 673; 92 L. J. K. B. 600; 128 L. T. 809; 39 T. L. R. 179; 67 Sol. Jo. 423, O. A.

Annotations:—*Apld.* Employers' Liability Assce. v. Sedgwick Collins (1926), 95 L. J. K. B. 1015. *Consd.* Richardson v. Richardson, [1927] P. 228.

1307b. ———.]—Defts., a co. incorporated in Russia, had a branch office in London, & had registered O. as their agent to accept service of any judicial process that might be issued against them. In 1918 defts.' business & its assets were by revolutionary legislation transferred to the Soviet Govt. In 1923 an action was brought in England to recover a debt alleged to be due from defts. to plffs., the writ being served on O., & in

default of appearance judgment was signed against defts. Plffs. having obtained a garnishee order *nisi* to attach a debt due to defts. from third parties in England:—*Held*: as the debt owing from the garnishees to defts. was governed by English law, payment by the garnishees of the amount of the judgment debt would be a discharge *pro tanto* of the debt due from them to defts., & it must be assumed that the Soviet Govt. would follow the ordinary rules of international comity & admit the validity of that payment, & the garnishee order ought to be made absolute.—SEDGWICK COLLINS & CO. v. RUSSIA INSURANCE CO. OF PETROGRAD, [1926] 1 K. B. 1; 95 L. J. K. B. 7; 133 L. T. 808; 41 T. L. R. 663, C. A.; *affd. sub nom.* EMPLOYERS' LIABILITY ASSURANCE CORPN. v. SEDGWICK COLLINS & CO., [1927] A. C. 95, H. L.

Annotations:—*Reid*. Sabatier v. Trading Co., [1927] 1 Ch. 495; First Russian Insce. v. London & Lancashire Insce., [1928] Ch. 922. *Mentd.* The Jupiter (No. 3) (1927), 137 L. T. 333.

1308. Add. Annotation:—As to (2) *Reid*. The Stream Fisher, [1927] P. 73.

1309a. ——— Rights of mortgagee of ship under French hypothèque—Claim for necessities.]—According to French law, the mtgee. of a ship under a French *hypothèque*, although he has not the same right of property as that given by Merchant Shipping Act, 1894 (c.60), in respect of an English mtge., has a right to arrest the ship in the hands of a subsequent owner. His claim, however, is postponed to that of a necessities man.

On a motion to determine priorities between English claimants, in respect of necessary repairs effected upon a French ship & claimants under a French *hypothèque* upon the ship:—*Held*: as the rights under the *hypothèque* must be determined according to French law, which gave greater rights than those given by English law to a necessities man who had merely the right to sue *in rem*, the claim of the necessities men, according to the *lex fori* by which the question of priorities must be determined, was postponed to the claim of the mtgees.—THE COLORADO, [1923] P. 102; 92 L. J. P. 100; 128 L. T. 759; 16 Asp. M. L. C. 145, C. A.

Annotation:—*Reid*. Republica de Guatemala v. Nunez, [1927] 1 K. B. 669.

1328. Add. Annotation:—*Consd.* The Golaa, [1926] P. 103.

1331. Add. Annotation:—*Reid*. Ellerman Lines v. Read, [1928] 2 K. B. 144.

1332. Add. Annotation:—*Apld.* Ellerman Lines v. Read, [1928] 2 K. B. 144.

1332a. ———.]—ELLERMAN LINES, LTD. v. READ, No. 1135a, *ante*.

1337. Add. Annotation:—*Mentd.* Salvesen (or von Lorang) v. Austrian Property Administrator, [1927] A. C. 641.

1340. Add. Annotations:—*Consd.* Ellerman Lines v. Read, [1928] 2 K. B. 144. *Mentd.* New York Life Insce. v. Public Trustee, [1924] 2 Ch. 101; Swedish Central Ry. v. Thompson, [1924] 2 K. B. 255.

1345. Add. Annotation:—*Apld.* Ellerman Lines v. Read, [1928] 2 K. B. 144.

1348a. ——— Scottish action for rectification of settlement.]—WILSON v. WILSON (1895), Times, Feb. 14 & Mar. 5.



Cases 1352—1387. ENGLISH AND EMPIRE DIGEST SUPPLEMENT.

1352. *Add. Annotation* :—*Mentd.* *Eustace v. Eustace*, [1924] P. 45.
1370. *Add. Annotation* :—*Mentd.* *Re A Debtor*, [1922] 2 K. B. 109.
1376. *Add. Annotations* :—*Mentd.* *The Tervaete*, [1922] P. 259; *The Russland*, [1924] P. 55; *The Goulandris*, [1927] P. 182; *The Stream Fisher*, [1927] P. 73.
- 1378a. ———.]—In respect of a collision in the Red Sea the owners of the *J.* issued a writ in the Egyptian cts. against the owners of the *M.* & obtained bail. Shortly afterwards the owners of the *M.* instituted a cross-action against the owners of the *J.*, also in Egypt. In Oct. 1927, the owners of the *M.* issued a writ *in personam* in England against the owners of the *J.*, who entered appearance under protest & set down a motion to set aside the writ. In Dec. the owners of the *M.* discontinued their cross-action in Egypt :—*Held* : if the cross-action had still been pending the owners of the *M.* might have been put to their election, but as they had already elected there was no justification for staying the action in England, merely because they were defts. to an action in another country in respect of the same subject-matter.—*THE JANERA*, [1928] P. 55; 97 L. J. P. 58; 138 L. T. 557; 44 T. L. R. 193; 17 Asp. M. L. C. 416.
- 1379a. ———.]—In 1924 pltfs. instituted an action *in rem* in the United States in respect of damage done by defts.' ship to some pipe lines belonging to pltfs. in the bed of the river at Tampico, & the ship was arrested & released on bail being given by defts. Before the action in America had been brought to trial pltfs. issued a fresh writ *in rem* in England, & on Feb. 27, 1926, re-arrested the ship in the Thames. On Mar. 4 defts. served notice of motion to set aside the writ & all subsequent proceedings in the English action. The American action was discontinued on Mar. 8 :—*Held* : having obtained bail & so released the ship from any further claim in respect of the particular damage alleged, pltfs.' subsequent discontinuance of the action in America after the re-arrest in England did not cure their breach of good faith in instituting proceedings in England & causing the ship to be arrested again, & the writ & all subsequent proceedings must be set aside.—*THE GOLAA*, [1926] P. 103; 95 L. J. P. 60; 135 L. T. 208; 42 T. L. R. 414; 70 Sol. Jo. 776; 17 Asp. M. L. C. 35.
1380. *Add. Annotations* :—*Distd.* *The Juno* (1922), 128 L. T. 671. *Apld.* *The Golaa*, [1926] P. 103. *Refd.* *The Goulandris*, [1927] P. 182.
1381. *Add. Annotation* :—*Consd.* *The Juno* (1922), 128 L. T. 671.
1383. *Add. Annotations* :—*Folld.* *The Juno* (1922), 128 L. T. 671. *Refd.* *The Golaa*, [1926] P. 103.
- 1383a. ———.]—On June 13, 1922, a British steamer & a Finnish steamer were in collision in the river Maas, Holland. After the collision the Finnish owners threatened arrest in a Dutch port. The owners of the British steamer who were anxious that the litigation should take place in England, reluctantly instructed their agents in Holland to provide bail, & although no proceedings were begun, documents in identical terms in the nature of bank guarantees to provide bail if proceedings were commenced within three months were exchanged on July 29 between the owners. On Sept. 6 the Finnish vessel came within the jurisdiction of the English cts., & an action was commenced, & the ship arrested & bail given under protest at the suit of the owners of the British ship. At that time no proceedings had been begun in Holland, but on Sept. 14 an action was commenced in Holland by the Finnish owners. The Finnish owners moved that the writ & all proceedings in the action by the British owners should be stayed, on the ground that their action was oppressive because it required the Finnish owners to give bail in two cts., & was inequitable as a breach of faith of the agreement in Holland :—*Held* : no legal proceedings having been commenced when the writ was issued in England, & there being no arrest & no bail given prior to the writ now sought to be set aside, there was nothing to debar the British owners from carrying on proceedings in England.—*THE JUNO* (1922), 128 L. T. 671; 16 Asp. M. L. C. 118.
1387. *Add. Annotation* :—*Refd.* *Bristol Corpn. v. Virgin*, [1928] 2 K. B. 622.

PART XVI. SECT. 6, SUB-SECT. 2.

s. Add "varied on appeal, 4 A. R. 267."

# CONSTITUTIONAL LAW.

## Part II.—The Title to the Crown.

2. *Add. Annotation* :—Generally, Mentd. The Tervaete (1922), 128 L. T. 176.

## Part III.—Relations between the Crown and the Subject.

17. *Add. Annotation* :—Reid. *Falcon v. Famous Players Film Co.*, [1926] 2 K. B. 474.

## Part IV.—The Royal Family.

25. *Add. Annotation* :—Reid. *Re Mason* (1928), 97 L. J. Ch. 321.

41. *Add. Annotations* :—Mentd. *Perlak Petroleum*

*Maatschappij v. Deen*, [1924] 1 K. B. 111; *Buerger v. New York Life Assce.* (1927), 96 L. J. K. B. 930; *R. v. Moscovitch* (1927), 138 L. T. 183.

## Part V.—The Royal Prerogative.

53. *Add. Annotation* :—As to (2) *Consd. Nadan v. R.*, [1926] A. C. 482.

54. *Add. Annotation* :—Reid. *Nadan v. R.*, [1926] A. C. 482.

58a. Crown cannot seize subject's property without compensation—What amounts to seizure.]—Assuming that the Crown has no right at common law to take a subject's property for reasons of State without paying compensation, that rule can only apply, if it does apply, to a case where property is actually taken possession of or used by the Govt., or where,

by the order of a competent authority, it is placed at the disposal of the Govt., & a mere negative prohibition, though it involves interference with an owner's enjoyment of property, does not, merely because it is obeyed, carry with it at common law any right to compensation.—FRANCE FENWICK & CO. *v. R.*, [1927] 1 K. B. 458; 96 L. J. K. B. 144; 136 L. T. 358; 43 T. L. R. 18; 32 Com. Cas. 116.

*Annotation* :—Reid. *Ensign Shipping Co. v. I. R. Comrs.* (1927), 139 L. T. 111.

## Part VI.—The Crown in relation to the Executive.

100. After the cross-reference following this case add as follows :—

Extension of British jurisdiction in British protectorate.]—See DEPENDENCIES, No. 10a.

### PART VI. SECT. 2, SUB-SECT. 1.

76 i. *Public officers & servants generally—Suspension of—Holding of inquiry—Court cannot interfere.*—SCHIERHOUT *v. UNION GOVERNMENT (MINISTER OF JUSTICE)*, [1926] App. D. 295.—S. AF.

81 ii. — — — — —.] — Ptl., manager of a railway under a contract made with the Govt. to be paid a stated salary & six months' salary if at any time he should be dismissed without notice.—Held: (1) he was entitled to recover his six months' wages; (2) the Crown was not liable for interest.—NOBLE *v. NEWFOUNDLAND GOVERNMENT* (1902), 8 Nfld. L. R. 571, 601.—NFLD.

81. — — — — — *Ordinance made under Northern Territory Acts.*—Ptl. was a classified officer in the public service of Queensland in 1917. He was then

appointed to the Commonwealth office of Director of Lands in the Northern Territory, & he continued to hold the position until 1921, when the Governor-General in Council dispensed with his services.—Held: the Crown had power to dispense, at will, with the services of ptl., who was appointed under Ordinance No. 6 of 1913, made under the above Acts, & not under Commonwealth Public Service Act.—TROWER *v. THE COMMONWEALTH* (1924), 34 C. L. R. 587.—AUS.

### PART VI. SECT. 3.

100 i. *Order in Council—Under War Measures Act, 1914, s. 6—Validity.*—PUGSLEY *v. GARSON*, p. 383, post.—CAN.

100 ii. — — — — — *Under Dominion Lands Act, R. S. C., 1886 (c. 54)—Validity.*—STANLEY *v. NEW McDOUGALL-SEGUR OIL Co.*, [1927] 2 W. W. R. 379; [1927] 3 W. W. R. 464.—CAN.

100 iii. — — — — — *Whether contract constituted.*—Held: Orders in Council issued pursuant to 46 Vict. c. 17, ss. 49 & 50, authorising the Minister of the Interior to grant licenses to cut timber, did not constitute contracts between the Crown & proposed licensees, such Orders in Council being revocable by the Crown until acted upon by the granting of licenses under them.—BULMER *v. R.* (1894), 23 S. C. R. 488.—CAN.

100 iv. — — — — —.] — STEWART *v. JONES* (1900), 19 P. R. 227.—CAN.

100 v. — — — — — *Based on mistake of fact—Whether binding on Crown.*—The Crown is not bound by an Order in Council passed inadvertently & on mistake of fact.—QUEBEC, MONTREAL & SOUTHERN RY. Co. *v. R.* (1914), 15 Exch. C. R. 297.—CAN.

— — — — — *Sufficient memorandum in writing of agreement.*—LAMARRE & Co. *v. R.*, p. 393, post.—CAN.

—Effect of recitals in.]—See ESTOPPEL, Vol. XXI., p. 331, No. 1247.

107. *Add. Annotation*:—*Refd.* Eshugbayi Eleko v. Nigeria Government, [1928] A. C. 459.

110. *Add. Annotation*:—*Refd.* Ruffy-Arnell, etc. Co. v. R., [1922] 1 K. B. 599.

122. Before this case add “*See, also*, CROWN PRACTICE, Vol. XVI., pp. 481–491.”

*Add. Annotation*:—*Mentd.* R. v. Comptroller-General of Patents, *Ex p.* Muntz (1922), 38 T. L. R. 652.

136a. *Statement of fact*—*Whether binding on court.*—Where a collision took place in the Bristol Channel, some 10½ or 12½ miles from the English coast & 9½ or 7½ miles from the Welsh coast, & the judge decided that the waters where the collision occurred were within the *fauces terræ* & within the bodies of the counties of Devonshire & Glamorgan-shire, & on appeal, the ct. was informed by the A.-G. that he was instructed by the Secretary of State for Home Affairs that the spot where the collision was alleged to have occurred was not within the limits to which the territorial sovereignty of His Majesty extended:—*Held*: (1) (ATKIN & LAWRENCE, L.JJ.) the statement of the A.-G. was

binding on the ct.; (2) (BANKES, L.J.) the ct. was not necessarily bound to accept the information as conclusive, but having regard to the absence of authority & to the general trend of modern jurists to limit the width of the *fauces terræ* within which there was territorial sovereignty, the ct. should be guided by the information so given.—THE FAGERNES, [1927] P. 311; 96 L. J. P. 183; 138 L. T. 30; 43 T. L. R. 746; 17 Asp. M. L. C. 326; *sub nom.* THE FAGERNES, CORNISH COAST (OWNERS) v. SOCIETA NAZIONALE DI NAVIGAZIONE, 71 Sol. Jo. 634, C. A.

—ENGEI v. MUSMANN, No.

418a, *post*.

152. *Citations*:—For “[1920] 1 Ch. 107” read “[1921] 1 Ch. 107.”

*Add. Annotation*:—*Mentd.* Netherlands-American Steam Navigation Co. v. Procurator-General (1925), 42 T. L. R. 81.

157a. *Air Council*—*Whether corporation.*—

*Semble*: the Air Council is not a corpn.—MACKENZIE-KENNEDY v. AIR COUNCIL, [1927] 2 K. B. 517; 96 L. J. K. B. 1145; 138 L. T. 8; 43 T. L. R. 733; 71 Sol. Jo. 633, C. A.

## Part IX.—The Crown in relation to the Law.

175a. —ROOKEWOOD’S CASE (1696), Holt, K. B. 683; 90 E. R. 1277; *sub nom.* R. v. ROOKWOOD, 13 St. Tr. 139, 186.

*Annotations*:—*Refd.* R. v. Kinloch (1746), 18 State Tr. 395; Heward v. Shipley (1803), 4 East, 180; R. v. Duffy (1849), 7 State Tr. N. S. 795; Mulcahy v. R. (1867), 15 W. R. 446. *Mentd.* R. v. Loyer (1722), 8 Mod. Rep. 82; R. v. Heane (1864), 4 B. & S. 947.

214a. —.]—R. v. CROSBY (*alias* PHILIPS) (1695), 1 Ld. Raym. 39; 5 Mod. Rep. 15; 12 Mod. Rep. 72; 2 Salk. 689; 12 State, Tr. 1291; Holt, K. B. 753; Skin. 578; 91 E. R. 923.

*Annotations*:—*Refd.* R. v. Davis & Carter (1695), 5 Mod. Rep. 74; The Ville de Varsovie (1817), 2 Dods. 174; Hinks’ Case (1845), 1 Den. 84; *Re* Barber (1850), 15 L. T. O. S. 500.

233. *Add. Annotations*:—*Refd.* Nichol v. Fearby, Nichol v. Robinson, [1923] 1 K. B. 480; A.-G. v. Still (1927), 44 T. L. R. 102.

### PART VI. SECT. 9, SUB-SECT. 1.—A.

sa. *Department of Attorney-General—Manitoba Temperance Act, s. 68.*—The Department of the A.-G. referred to in the above sect. is to be distinguished from the A.-G.—R. (THOMPSON) v. HAMMATT (Man.), [1926] 3 W. W. R. 350.—CAN.

### PART IX. SECT. 5, SUB-SECT. 5.

sd. *In proceedings concerning questions of legislative jurisdiction.*—Where, in proceedings between private suitors, the validity of an Act of a provincial legislature is questioned, the A.-G. of the province will be heard on the question of provincial legislative jurisdiction.—CITIZENS INS. CO. v. JOHNSTON, Cass. Dig. 2nd. ed. 678.—CAN.

### PART IX. SECT. 6, SUB-SECT. 1.

h (p. 523) i. — *For tort.*—An action sounding in tort does not lie against the Crown.—CREELMAN & VERGE v. R. (1920), 62 D. L. R. 390; 20 Exch. C. R. 198.—CAN.

h (p. 523) ii. S. P. YATES v. R. (1920), 20 Exch. C. R. 175.—CAN.

h (p. 523) iii. S. P. MANSEAU v. R., [1923] 1 D. L. R. 25; [1923] Exch. C. R. 21.—CAN.

h (p. 523) iv. —.]—An action in tort does not lie against the Crown, except under special statutory authority.—THERIAULT v. R. (Que.) (1917), 16 Exch. C. R. 253; 39 D. L. R. 705.—CAN.

h (p. 523) v. —.]—In an action against the Govt. of Ceylon to recover for damage caused to a steamship by grounding in Colombo harbour in a berth to which she had been taken by a Govt. pilot:—*Held*: it was not necessary to decide whether in Ceylon the Crown could be made liable in tort under Roman Dutch law, but having regard to the considered decision of the Supreme Ct. of Ceylon in *Colombo Electric Tramway Co. v. A.-G.*, & inasmuch as the question in Ceylon was whether any particular part of Roman Dutch law had been recognised there, very clear arguments would be required to induce the Judicial Committee to reverse that decision.—BRITISH PETROLEUM CO., LTD. v. A.-G. FOR CEYLON, [1926] A. C. 147; 95 L. J. P. C. 86; 134 L. T. 305; T. L. R. 166.—CEYLON.

h (p. 523) vi. — *For fraud.*—It is not competent to prove that the Crown has been guilty of fraud; nor can the Crown be held liable for the fraud of

its officers.—*Re* FROST BROTHERS, [1925] 2 D. L. R. 339; [1925] 2 W. W. R. 459.—CAN.

291 xiv. —.]—An action of damages does not lie against the Crown in respect of a wrongful act committed by one of its servants.—MACGREGOR v. LORD ADVOCATE, [1921] S. C. 847.—SCOT.

j (p. 524) i. —.]—WELDEN v. SMITH, [1924] A. C. 484.—AUS.

y (p. 524). Add “*reversd.*, 30 S. C. R. 42.”

z (p. 525) i. —.]—LECLERC v. R. (1920), 62 D. L. R. 324; 20 Exch. C. R. 236.—CAN.

ii. —.]—*Held*: the Crown was liable in damages under Public Utilities Act, s. 31, for an accident caused by a fallen telephone wire lying on the public highway, being part of a system of wires erected & maintained by the provincial Department of Railways & Telephones.—ZORNES v. R., HAMILTON v. R., [1922] 2 W. W. R. 1179; 67 D. L. R. 733.—CAN.

ii i. — *For excess of salaries fixed & approved by Governor-General in Council.*—BURROUGHS v. R. (1891), 20 S. C. R. 420.—CAN.



292. *Add. Annotations*:—As to (1) *Reid. Wigg v. A.-G. for Irish Free State*, [1927] A. C. 674. As to (2) *Reid. A.-G. for Ontario v. McLean Gold Mines Co.* (1926), 95 L. J. P. C. 217. *Generally, Reid. Jaeger v. Jaeger Co.* (1927), 44 R. P. C. 437.

305. *Add. Citation*:—48 L. J. Q. B. 455.

317. *Add. Annotation*:—*Reid. A.-G. for Ontario v. McLean Gold Mines Co.* (1926), 95 L. J. P. C. 217.

329. *Add. Annotation*:—*Mentd. Commercial & Estates Co. of Egypt v. Board of Trade*, [1925] 1 K. B. 271.

339a. —.]—In proceedings by information on the revenue side of the K. B. Div. claiming payment of income tax, the taxpayer cannot set off a debt due to him from the Crown.—*A.-G. v. GUY MOTORS, LTD.*, [1928] 2 K. B. 78; 97 L. J. K. B. 421; 139 L. T. 311.

344. *Add. Annotations*:—*Consd. Re Letters Patent No. 139,207, Re Carbonit Akt.*, [1924] 2 Ch. 53. *Reid. Swift v. Board of Trade*, [1926] 2 K. B. 131.

345. *Add. Annotation*:—*Reid. Re Letters Patent No. 139,207, Re Carbonit Akt.*, [1924] 2 Ch. 53.

346. *Add. Annotation*:—*Consd. Re Letters Patent No. 139,207, Re Carbonit Akt.*, [1924] 2 Ch. 53.

347. *Add. Annotation*:—*Mentd. Umra v. R.* (1924), 41 T. L. R. 86.

348a — In proceedings under Patents & Designs Acts.]—Appcts. applied by originating summons under Patents & Designs Act, 1907 (c. 29), s. 29, as amended by Patents & Designs Act, 1919 (c. 80), s. 8, for an inquiry as to the remuneration proper to be paid to them for the user by a Govt. department of the patented invention of which they were the registered owners. In the course of the proceedings, preliminary to hearing of the motion, orders were made in which the litigation was treated, with the acquiescence of both litigants, as subject to the ordinary rule as to costs, & on two occasions orders were made requiring appcts. to give security for costs. After the hearing had proceeded for some time appcts. withdrew their claim in view of a prior trial of the invention found

to have been made on behalf of the Govt. which, by virtue of the proviso to Patents & Designs Act, 1919, s. 8, entitled the Govt. to make use of it thereafter without payment. On the question how the costs ought to be borne:—*Held*: (1) under that part of Patents & Designs Act, 1919, which authorised proceedings against a Govt. department, there was no express mention of costs, & the authority to deal with them was derived from the general jurisdiction of the ct., & the ct. had, therefore, no authority to depart from the common law rule that the Crown neither paid nor received costs, unless the special circumstances of the particular case justified it in so doing; (2) having regard to the orders that had been made before the hearing of the motion, & particularly to the two orders for security for costs, the ct. would infer an agreement between the parties that each of them should be treated as ordinary litigants as regarded liability for costs.—*Re LETTERS PATENT No. 139,207, Re CARBONIT AKT.*, [1924] 2 Ch. 53; 93 L. J. Ch. 309; 131 L. T. 89; 40 T. L. R. 421; 68 Sol. Jo. 476; 41 R. P. C. 203, C. A.

*Annotation*:—As to (1) *Consd. Swift v. Board of Trade*, [1926] 2 K. B. 131.

— — —.]—*See, generally, PATENTS.*

348b. — — — As to validity of patent—Action against Air Council.]—*Held*: there was no reason for departing from the ordinary rule that the Crown neither paid nor received costs.—*ROWLAND v. AIR COUNCIL*, [1923] W. N. 72.

363. *Add. Annotations*:—*Mentd. A.-G. v. Swan*, [1922] 1 K. B. 682 *Gibson v. Reach* (1923), 40 T. L. R. 73.

367. *Add. Annotation*:—*Apld. Pathe of France v. Harris, Same v. Mansbridge* (1926), 42 T. L. R. 760.

368. *Add. Annotation*:—*Reid. Re Letters Patent No. 139,207, Re Carbonit Akt.*, [1924] 2 Ch. 53.

373. *Add. Annotation*:—As to (1) *Apld. Sterling Trust v. I. R. Comrs., I. R. Comrs. v. Sterling Trust* (1925), 12 Tax Cas. 868.

373a. — Arbitration to assess compensation for requisitioned goods.]—In assessing the com-

PART IX. SECT. 6, SUB-SECT. 2.

304 ii. —.]—*R. v. PERREAULT* (1922), 66 D. L. R. 671; 21 Exch. C. R. 355.—CAN.

PART IX. SECT. 6, SUB-SECT. 6.

337 vi. —.]—Estoppel cannot be invoked against the Crown.—*R. v. TESSIER* (1921), 21 Exch. C. R. 150.—CAN.

339 iii. —.]—A subject has no right to set off in an action brought by the Crown.—*R. (MINISTER OF AGRICULTURE FOR SASKATCHEWAN) v. BOURKE*, [1925] 3 D. L. R. 537; [1925] 2 W. W. R. 397; 19 Sask. L. R. 483.—CAN.

339 iv. —.]—A right of set-off does not exist against the Crown.—*R. v. BRITISH AMERICAN BANK NOTE Co.* (1901), 7 Exch. C. R. 119.—CAN.

o i. —.]—A counterclaim cannot be pleaded against the Crown as of right.—*A.-G. FOR ONTARIO v. RUSSELL* (1921), 64 D. L. R. 59; 49 O. L. R. 103.—CAN.

o ii. —.]—A subject has no right to counterclaim in an action brought by the Crown.—*R. (MINISTER OF AGRICULTURE FOR SASKATCHEWAN) v. BOURKE*, [1925] 3 D. L. R. 537;

[1925] 2 W. W. R. 397; 19 Sask. L. R. 483.—CAN.

sm. *Whether action brought in right name.*]—In an action concerning transactions under Soldiers Settlement Act, debts, contended that the action should have been brought in the name of the Soldiers Settlement Board & not in that of the Crown:—*Held*: action properly instituted in that of the Crown.—*R. v. SAYWARD TRADING & RANCHING Co., LTD.*, [1924] Exch. C. R. 15.—CAN.

PART IX. SECT. 6, SUB-SECT. 7.—A.

sp. *Crown Costs Act, R. S. B. C.*, 1911 (c. 61)—*Effect of.*]—*Held*: not to apply to the Crown in right of Dominion, the statute not making it clear in express terms or by necessary intendment that the reference is to the Crown other than in right of the province only.—*MONTREAL TRUST Co. v. R.* [1924] 1 D. L. R. 1030; 1 W. W. R. 657; 33 B. C. R. 280.—CAN.

PART IX. SECT. 6, SUB-SECT. 7.—C.

t i. — *On appeal.*]—Under Crown Costs Act, R. S. B. C., c. 61, costs of an appeal cannot be given against the Crown, though costs in the lower ct. may by direction of the ct.—*R. v.*

CASKIE (1922), 70 D. L. R. 215; 38 Can. Crim. Cas. 198.—CAN.

t ii. — — — *Under Fire Marshal Act, 1921 (c. 15).*]—A local assistant to the fire marshal in carrying out the duties imposed on him by the above Act is an "officer, servant or agent of & acting for the Crown" within Crown Costs Act, R. S. B. C., 1911 (c. 61), & costs of an appeal to the county ct. may be given against a local assistant to the fire marshal.—*WATSON v. HOWARD*, [1924] 4 D. L. R. 564; [1924] 3 W. W. R. 401; 34 B. C. R. 449.—CAN.

t iii. — — — *Under Summary Convictions Act, R. S. B. C.*, 1924 (c. 245).]—Crown Costs Act, R. S. B. C., 1924 (c. 62), is a bar to the awarding of costs against the Crown on an appeal under Summary Convictions Act, R. S. B. C., 1924, from a conviction for an offence against Govt. Liquor Act, R. S. B. C., 1924 (c. 146).—*R. v. McLANE, R. v. Noon*, [1927] 1 W. W. R. 701; 47 Can. Crim. Cas. 208; 38 B. C. R. 306.—CAN.

t iv. — *In proceedings by creditor—Crown administrator of intestate's estate.*]—*Held*: neither the Crown nor the A.-G. liable for costs.—*CARVER v. A.-G. OF PRINCE EDWARD ISLAND*, [1926] 4 D. L. R. 1106.—CAN.

pensation to be paid for bacon requisitioned by the Food Controller under Defence of the Realms Regulations:—*Held*: the arbitrator had no power to order the Crown to pay the costs of the reference & award.—*SWIFT & Co. v. BOARD OF TRADE*, [1926] 2 K. B. 131; 95 L. J. K. B. 834; 135 L. T. 391; 42 T. L. R. 461, C. A.

*Annotation*:—*Reid. Inglewood Pulp & Paper Co. v. New Brunswick Electric Power Commission*, [1928] A. C. 492.

376. *Add. Annotation*:—*Reid. Re Letters Patent No. 139,207, Re Carbonit Akt.*, [1924] 2 Ch. 53.

382. *Add. Annotation*:—*Reid. R. v. Provisional Government (General of the Forces)* (1922), 67 Sol. Jo. 125.

384a. ———.]—*WOLFE TONE'S CASE* (1798), 27 State Tr. 613.

*Annotation*:—*Mentd. Mgomini Mzinelwa & Wanda v. A.-G. for Natal* (1906), 22 T. L. R. 413.

## Part XII.—The Crown in Foreign Relations.

387. *Add. Annotations*:—As to (1) *Folld. White, Child & Beney v. Simmons, White, Child & Beney v. Eagle, Star & British Dominions Insce.* (1922), 127 L. T. 571. *Reid. Duff Development Co. v. Kelantan Government*, [1924] A. C. 797; *Russian Commercial & Industrial Bank v. Comptoir D'Escompte de Mulhouse* (1924), 93 L. J. K. B. 1098. As to (2) *Apld. The Jupiter* (1924), 93 L. J. P. 156. *Generally, Reid. Musmann v. Engelke* (1927), 43 T. L. R. 685. *Mentd. The Jupiter* (No. 3) (1927), 137 L. T. 333.

387a. ——— *Decrees of Russian Soviet Government—Effect of.*—*PALEY (PRINCESS OLGA) v. WEISZ* (1928), 45 T. L. R. 102; 72 Sol. Jo. 848.

—————.]—*See, also, COMPANIES*, Nos. 8523, 8524, 8527a, *ante*.

On liability of Russian reinsurance company under reinsurance treaties.]—*See INSURANCE*, No. 712a, *post*.

387b. *Declaration by representative of foreign Sovereign as to ownership of property—How far conclusive.*—A declaration by the representative of a foreign Sovereign as to ownership of personal property in this country is not conclusive in an action between private persons, when no question of the immunity of the sovereign State from the jurisdiction of the ct. is concerned.—*THE JUPITER* (No. 3), [1927] P. 250; 97 L. J. P. 33; 137 L. T. 333; 43 T. L. R. 741; 17 Asp. M. L. C. 250, C. A.

*Annotation*:—*Reid. First Russian Insce. v. London & Lancashire Insce.*, [1928] Ch. 922.

388. *Citations*:—For “Coop. Pr. Cas. 501; 9 L. J. O. S. Ch. 215; 47 E. R. 619, L. C.,” read “Coop. Pr. Cas. 501; 47 E. R. 619; *sub nom. THOMPSON v. BARCLAY*, 9 L. J. O. S. Ch. 215, L. C.; *previous proceedings* (1828), 6 L. J. O. S. Ch. 93.”

391. *Add. Annotations*:—*Reid. The Tervaete*, [1922] P. 259; *Engelke v. Musmann*, [1928] A. C. 433.

392. *Add. Annotation*:—As to (2) *Reid. The Tervaete*, [1922] P. 259.

394. *Add. Annotations*:—*Consd. Duff Development Co. v. Kelantan Government*, [1924] A. C. 797. *Reid. The Tervaete*, [1922] P. 259; *Re Bjornstad & Ouse Shipping Co.*, [1924] 2 K. B. 673; *Compania Mercantile Argentina v. United States Shipping Board* (1924), 93 L. J. K. B. 816; *The Jupiter* (1924), 93 L. J. P. 156; *The Jupiter* (No. 3) (1927), 137 L. T. 333; *Engelke v. Musmann*, [1928] A. C. 433. *Mentd. The Mogileff*, [1922] P. 122; *The Sylvan Arrow*, [1928] P. 220.

396. *Add. Annotation*:—*Reid. Musmann v. Engelke* (1927), 96 L. J. K. B. 824.

401. *Add. Annotation*:—*Apld. The Tervaete*, [1922] P. 259.

408. *Add. Annotation*:—*Reid. Fenton Textile Assocn. v. Krassin* (1921), 38 T. L. R. 259.

409. *Add. Annotation*:—*Consd. Musmann v. Engelke* (1927), 96 L. J. K. B. 824.

411. *Add. Annotation*:—*Consd. Engelke v. Musmann*, [1928] A. C. 433.

412a. *Chief of mail department—Within privilege.*—*Held*: the rule as to immunity from civil proceedings, on the ground of diplomatic privilege, extended to a domiciled subject of the United States who was the chief of the mail department of the United States Embassy in London.—*ASSURANTIE COMPAGNIE EXCELSIOR v. SMITH* (1923), 40 T. L. R. 105, C. A.

413. *Transfer paragraphs (2) to (5) to No. 421, post.*

*Annotations*:—For the existing annotations read “*Reid. Re Republic of Bolivia Exploration Syndicate*, [1914] 1 Ch. 139.”

418a. *Evidence—Settlement by Attorney-General on instructions of Foreign Office.*—A statement made to the ct. by the A.-G., on the instructions of the Foreign Office, as to the status of a person claiming immunity from judicial process on the ground of diplomatic privilege, whether as ambassador or as a member of the ambassador's staff, is conclusive.

*Deft. in an action in the K. B. Div. for arrears of rent took out a summons to set aside the writ, on the ground that he was a member of the staff of the German Embassy, & filed two affidavits in support of his application. Pltf. applied for leave to cross-examine deft. upon his affidavits. The judge ordered deft. to attend for cross-examination. On appeal the A.-G. attended at the request of the Foreign Office, & on the invitation of the ct. informed them that deft. had been appointed a member of the staff of the German Ambassador under the style of consular secretary, & had been received in that capacity by the British Govt.:—Held*: (1) the statement of the A.-G. was binding on the ct., & deft. was entitled to diplomatic privilege; (2) (LORD DUNEDIN) apart from that statement, the order for the cross-examination of deft. would have been justified.—*ENGELKE v. MUSMANN*, [1928] A. C. 433; 97 L. J. K. B. 789; 139 L. T. 586; 44 T. L. R. 731, H. L.; *revers. S. C.*

- sub nom.* MUSMANN v. ENGELKE, [1928] 1 K. B. 90, O. A.
421. After the catchwords insert paragraphs (2) to (5) from No. 413, *ante*, substituting the numbers “(1), (2), (3), (4),” for “(2), (3),
- Citations*:—For “No. 413, *ante*,” read “(1832), 1 Cr. & M. 117; 1 Dowl. 588; 3 Tyr. 184; 2 L. J. Ex. 13; 149 E. R. 338.”
- Annotations*:—*As to* (1) *Consd.* Parkinson v. Potter (1885), 16 Q. B. D. 152. *As to* (3) *Consd.* Parkinson v. Potter (1885), 16 Q. B. D. 152. *Refd.* Engelke v. Musmann, [1928] A. C. 433.
- 421a. — *Liability to be cross-examined to ascertain status.*—ENGELKE v. MUSMANN, No. 418a, *ante*.
422. *Add. Annotation*:—*Refd.* Engelke v. Musmann, [1928] A. C. 433.
425. *Add. Annotation*:—*Refd.* Engelke v. Musmann, [1928] A. C. 433.
427. For “No. 413, *ante*,” read “No. 421, *ante*.”
429. *Add. Annotation*:—*Refd.* Engelke v. Musmann, [1928] A. C. 433.
430. *Add. Annotation*:—*Refd.* Musmann v. Engelke (1927), 96 L. J. K. B. 824.
431. *Add. Annotation*:—*Refd.* Engelke v. Musmann, [1928] A. C. 433.
432. *Add. Annotation*:—*Refd.* Musmann v. Engelke, [1928] 1 K. B. 90.
435. *Add. Annotation*:—*As to* (2) *Refd.* Musmann v. Engelke (1927), 96 L. J. K. B. 824.
436. For “No. 413, *ante*,” read “No. 421, *ante*.”
445. For “No. 413, *ante*,” read “No. 421, *ante*.”
447. *Add. Annotation*:—*Refd.* Musmann v. Engelke (1927), 96 L. J. K. B. 824.
- 447a. —.]—ENGELKE v. MUSMANN, No. 418a, *ante*.
465. *Add. Annotations*:—*Refd.* Engelke v. Musmann, [1928] A. C. 433. *Mentd.* *uff Development Co. v. Kelantan Government*, [1923] 1 Ch. 385.
474. *Add. Annotation*:—*Mentd.* Kramer v. A.-G., [1923] A. C. 528.

## Part XIII.—The Crown in relation to War and Peace.

477. *Add. Annotation*:—*Generally*, *Refd.* Netherlands-American Steam Navigation Co. v. Procurator-General (1925), 42 T. L. R. 81.
483. *Add. Annotation*:—*Generally*, *Mentd.* Ruffy-Arnell, etc. Co. v. R., [1922] 1 K. B. 599.
- 487a. — — —.]—By a policy of insurance effected on Nov. 2, 1918, during the European War, deft. agreed to pay to pltf. a certain sum “in the event of peace between Great Britain & Germany not being concluded on or before June 30, 1919.” On June 28, 1919, these Powers signed a treaty of peace, but they did not exchange & deposit ratifications of the treaty until Jan. 1920. In an action brought by pltf. against deft. upon the policy in Aug. 1919:—*Held*: peace had not been concluded between these Powers on or before June 30, 1919, within the policy, & pltf. was therefore entitled to succeed in the action.—KOTZIAS v. TYSER, [1920] 2 K. B. 69; 89 L. J. K. B. 529; 122 L. T. 795; 36 T. L. R. 194; 15 Asp. M. L. C. 16.
- Annotation*:—*Folld.* Lloyd v. Bowring (1920), 36 T. L. R. 397.
- 487b. — — —.]—For the purpose of a contract to pay a sum of money “if peace is not declared” by a certain date between two nations at war, peace is not declared until the ratification of the treaty of peace—LLOYD v. BOWRING (1920), 36 T. L. R. 397.
- 487c. — *Whether subject’s debt discharged.*—TRONER v. HASSOLD (1670), 1 Cas. in Ch. 173; 22 E. R. 748.
- 487d. S. P. WEYMBERG v. TOUCH (1669), 1 Cas. in Ch. 123; 22 E. R. 724.
496. *Add. Annotation*:—*Refd.* Cayzer, Irvine v. Board of Trade (1926), 95 L. J. K. B. 1054.
498. *Add. Annotation*:—*Refd.* Commercial & Estates Co. of Egypt v. Board of Trade, [1925] 1 K. B. 271.
499. *Add. Annotations*:—*As to* (1) *Refd.* Federated Coal & Shipping Co. v. R., [1922] 2 K. B. 42. *As to* (4) *Refd.* A. & B. Taxis v. Secretary of State for Air, [1922] 2 K. B. 328; Matthey v. Curling, [1922] 2 A. C. 180; *Re* Colnbrook Chemical & Explosives Co., A.-G. v. The Co., [1923] 2 Ch. 289; Commercial & Estates Co. of Egypt v. Board of Trade, [1925] 1 K. B. 271; Rowland & Mackenzie-Kennedy v. Air Council (1927), 96 L. J. Ch. 470. *Generally*, *Refd.* Netherlands-American Steam Navigation Co. v. Procurator-General (1925), 42 T. L. R. 81; France Fenwick v. R., [1927] 1 K. B. 458. *Mentd.* *Re* Webb (Smithfield, London), [1922] 2 Ch. 369; Fort Frances Pulp & Power Co. v. Manitoba Free Press Co., [1923] A. C. 695; Bristol Channel Steamers v. R. (1924), 131 L. T. 608; Moffat Hydropathic Co. v. Secretary of State for War (1924), 40 T. L. R. 543.
- 499a. — *Under Indemnity Act, 1920 (c. 48)*—“Direct loss or damage”—What is.]—Claimants carried on business as motor garage proprietors in Dublin, where they owned & occupied extensive premises peculiarly well

### PART XIII. SECT. 2.

487 i. *Treaty of peace—Ratification by sovereign authority necessary.*—*Re* 90TH BATTALION, WINNIPEG RIFLES, [1923] 1 W. W. R. 37.—CAN.

487 ii. — *Between Great Britain & enemy countries—Date of signing—Effect on option to purchase.*—PARRY v. DUNOAN (1921), 65 D. L. R. 761; [1921] 2 W. W. R. 879.—CAN.

### PART XIII. SECT. 3, SUB-SECT. 1.

*al. Order in Council under War Measures Act, 1914, s. 6—Validity.*—

*Held*: the omission of an averment that the Governor in Council deemed an Order advisable for the welfare of Canada by reason of the existence of real or apprehended war, did not render the Order in Council invalid.—PUGSLEY v. GARSON (1922), 50 N. B. R. 414.—CAN.

### PART XIII. SECT. 3, SUB-SECT. 3.—A.

499 i. *Whether owner entitled to compensation—Possession taken for purposes of defence.*—R. v. BROWN (1920), 56 D. L. R. 312; 20 Exch. C. R. 30.—CAN.

499 ii. —.]—*Held*: a portion of a building occupied by the Govt. as a recruiting station was not a “public work” within Exch. Ct. Act, s. 20 (c).—WOLFE Co. v. R., POWERS v. R. (1921), 63 D. L. R. 647; 63 S. C. R. 141.—CAN.

499a i. — *Under Indemnity Act, 1920 (c. 48)—Basis of assessment.*—A distillery requisitioned during the war, owing to a fire while it was in the Govt.’s possession, could not be used for distilling for nearly three years after Jan. 19, 1919, at which date the prohibition against distilling was



suited to their purposes. These premises were taken by the Govt. under powers conferred by statute for the defence of the realm. Claimants, having tried & failed to acquire premises temporarily, took the only reasonable course; they bought other premises, fitted them for use as a garage, & transferred to them all the appliances of their business which they thus continued to carry on as well as they could. When the Govt. retired from possession of the original premises claimants sold the substituted premises. They alleged that the difference between the amount they had expended in acquiring the substituted premises & fitting them for use as a garage on the one hand, & the sum they received on the sale of the substituted premises on the other hand amounted to £3,429. They claimed this sum as an item of "direct loss or damage incurred or sustained by reason of interference with" their "property or business" within sect. 2 (1) (b) of the above Act:—*Held*: "direct loss or damage" may include consequential damage, & the item claimed could not be entirely excluded as indirect loss, but the amount to which claimants might be entitled in respect thereof must be assessed by the War Compensation Ct.—*A. & B. TAXIS, LTD. v. SECRETARY OF STATE FOR AIR*, [1922] 2 K. B. 328; 91 L. J. K. B. 779; 127 L. T. 478; 38 T. L. R. 671; 66 Sol. Jo. 633, O. A.

499b. ——— Duty of tribunal assessing compensation.]—Observations on the question of the extent of the duty of the War Compensation Ct., in deciding a claim for compensation under the above Act, to differentiate between their findings on issues of fact & their findings on issues of law, in view of there being, under sect. 2 (1) of the Act, no right of appeal except on a point of law.—*MOFFAT HYDROPATHIC CO., LTD. v. SECRETARY OF STATE FOR WAR* (1924), 40 T. L. R. 543; 68 Sol. Jo. 535, H. L.

505a. ——— Certificate that taking necessary. Mode of granting.]—(1) Where land is being acquired compulsorily for military purposes under the above Act, the certificate that the taking of the land is necessary or expedient is duly granted, although the person whose land is being acquired has not been heard; for the granting of such a certificate is not a judicial, but a merely administrative act.

(2) It is not a condition precedent to the summoning of a jury under sect. 19 of the above Act to assess the compensation payable to the owner of the land, that the Secretary of State for War shall have been put into possession of the land under the sect.; but

even if it was, that condition precedent would have no application to the assessment of compensation in such a case under Acquisition of Land (Assessment of Compensation) Act, 1919 (c. 57).—*HUTTON v. A.-G.*, [1927] 1 Ch. 427; 96 L. J. Ch. 285; 137 L. T. 20; 43 T. L. R. 166; 71 Sol. Jo. 159.

505b. ——— Conditions precedent to assessment of compensation—Whether Crown in possession.]—*HUTTON v. A.-G.*, No. 505a, *ante*.

512. *Add. Annotations*:—As to (2) *Reid. Federated Coal & Shipping Co. v. R.*, [1922] 2 K. B. 42; *Rowland v. Air Council* (1923), 39 T. L. R. 228. *Generally, Reid. France Fenwick v. R.*, [1927] 1 K. B. 458.

515a. ——— Closing of public footpath over land acquired.]—The ct. refused an application by the Air Ministry under sect. 6 (3) of the above Act, for leave to close permanently a public footpath over land which they had purchased under sect. 3 of the Act for an air depot.—*SECRETARY OF STATE FOR WAR v. MIDDLESEX COUNTY COUNCIL* (1923), 39 T. L. R. 357; 21 L. G. R. 291.

521. *Add. Annotation*:—*Generally, Reid. France Fenwick v. R.*, [1927] 1 K. B. 458.

526. *Add. Citation*:—15 Asp. M. L. C. 205.

*Add. Annotation*:—As to (3) *Distd. A.-G. v. Royal Mail Steam Packet Co.*, [1922] 2 A. C. 279.

526a. Power to impose payment for licence to sell ship to foreigner—Recovery of money paid—Indemnity Act, 1920 (c. 48), s. 1 (1).]—The Shipping Controller, purporting to act in pursuance of his powers under Defence of the Realm Regulations, imposed upon suppliants as a condition of granting them a licence to sell a steamship to a foreigner the payment to him by suppliants of £30,800. By their petition of right suppliants alleged that the Shipping Controller had no lawful authority to impose a condition or to exact the payment, which suppliants had paid under protest, & that the Shipping Controller thereby became liable to repay the money to suppliants as money had & received to their use. The petition of right was not brought within one year from the termination of the war or within one year from the exaction of the money. The Crown demurred to the petition, on the ground that the case if founded on the alleged tort of the Shipping Controller was barred by the above sub-sect., & if based on an alleged breach of contract, the proceedings not having been brought within the prescribed time failed under proviso (b) of that sub-sect. A further ground of demurrer was that a petition of

withdrawn. The proprietors having claimed compensation for loss of profits during the three years:—*Held*: the loss of profits was due, not to the war, but to the requisition & the fire, & the basis upon which compensation fell to be assessed was the prices obtainable for whisky during the three years, taken in conjunction with the other circumstances actually existing during that period.—*MACKENZIE BROTHERS v. THE ADMIRALTY*, [1925] S. C. (H. L.) 32.—SCOT.

#### PART XIII. SECT. 3, SUB-SECT. 7.

*sm. Requisition under Order in Council—Powers of Dominion Government.*]—In virtue of Order in Council dated Nov. 24, 1916, passed under

War Measures Act, 1914:—*Held*: the Dominion Govt. was empowered to requisition ships in its own name & as principal & not as agent for the British Govt., & the Minister of Marine & Fisheries, acting thereunder, had no power to vary same by adding to or derogating therefrom.—*Re GASTON, WILLIAMS & WIGMORE & GASTON, WILLIAMS & WIGMORE STEAMSHIP CORPN. v. R.* (1922), 66 D. L. R. 242; 21 Exch. C. R. 370.—CAN.

525 i. *Compensation for requisitioned ship—To what amount claimant entitled—Comparison with rate in United States better guide than English rate.*]—*Re GASTON, WILLIAMS & WIGMORE & GASTON, WILLIAMS & WIGMORE STEAMSHIP CORPN. v. R.* (1922), 66 D. L. R. 242; 21 Exch. C. R. 370.—CAN.

525 ii. ———.]—*LEMAY v. R.* (1922), 68 D. L. R. 489; 21 Exch. C. R. 364.—CAN.

525 iii. ——— *Who entitled—Charterer or owner.*]—Whereas the right of action against the Crown is at common law in the owner & not in the charterer:—*Held*: the true intent, meaning & spirit of War Measures Act, 1914, s. 7, is to maintain & preserve to the subject any rights possessed by him at common law, & which he previously had notwithstanding that Act; & that sect. does not confer upon him any new rights to compensation in addition to those which he otherwise enjoyed.—*WARNER QUINLAN ASPHALT CO. v. R.*, [1923] Exch. C. R. 195.—CAN.

right would not lie against the Crown for tort, for the King could do no wrong. Suppliants contended that they were entitled to waive the tort & to sue for money had & received by the Shipping Controller & now in the hands of the Crown, & that their claim so grounded was not a proceeding for or in respect or on account of any act of the Shipping Controller, & therefore was not within the terms of the Act:—*Held*: the allegation that suppliants' money had been extorted from them by the wrongful act of the Shipping Controller was an essential part of suppliants' case, from which the claim for money had & received arose; & as such act was one to which the above sub-sect. applied, the petition of right was barred by that sub-sect.—*BRISTOL CHANNEL STEAMERS, LTD. v. R.* (1924), 131 L. T. 608; 40 T. L. R. 550; 68 Sol. Jo. 771.

**526b.** ———.]—The Shipping Controller, purporting to act under the authority of Defence of the Realm Regulations, required as a condition of a licence to suppliants to sell one of their ships to a foreign firm that they should pay a percentage of the purchase money to the Ministry of Shipping, & suppliants paid the percentage. On a petition of right to recover back the money so paid:—*Held*: (1) the imposition of the condition was illegal, & the payment was not a voluntary payment; (2) the petition of right was barred by the above sub-sect.; it was not open to suppliants, by waiving the tort of the illegal exaction & suing for money had & received, to bring the case within par. (b) of the proviso to the sub-sect., for the case fell within the exception to the proviso as being one in which a claim for compensation could have been brought under sect. 2 (1) (b); (3) (*BANKES & SARGANT, L.JJ.*) suppliants failed to bring the case within the proviso upon the further ground that the contracts referred to in paragraph (b) are limited to express contracts, & do not include the fictitious contract to repay money improperly extorted, the implication of which arises upon a waiver of the tort.—*BROCKLEBANK, LTD. v. R.*, [1925] 1 K. B. 52; 94 L. J. K. B. 26; 132 L. T. 166; 40 T. L. R. 869; 69 Sol. Jo. 105; 16 Asp. M. L. C. 415, C. A.; *reversg.*, [1924] 1 K. B. 647.

*Annotations*:—As to (2) *Folld. Marshal Shipping Co. v. R.* (1925), 41 T. L. R. 285. *Generally, Refd. Bristol Channel Steamers v. R.* (1924), 131 L. T. 608; *Hardie & Lane v. Chilton* (1927), 96 L. J. K. B. 1040.

**526c.** ———.]—Suppliants were required in 1919 by the Shipping Controller to pay £20,000 to the Exchequer as a condition of his giving them permission to sell a steamship to a foreigner, & they made the payment accordingly. On a petition of right to recover back the amount from the Crown on the ground that the demand was unlawful:—*Held*: as the demand was made in the *bona fide* belief that the Shipping Controller was entitled to make it & as he was purporting to act in the execution of his duty the Crown was protected by the above sub-sect. — *MARSHAL SHIPPING CO. (IN LIQUIDATION) v. R.* (1925), 41 T. L. R. 285.

**526d.** ———.]—Transfer of liabilities incurred by Shipping Controller to Board of Trade—Whether action maintainable against Board of Trade.]—(1) Pltfs. in 1922 brought an

action against the Board of Trade for money had & received. The money which it was sought to recover was alleged to have been wrongfully extorted from pltfs. in 1919 by the Shipping Controller under colour of his office, & it was alleged that, on pltfs. electing to waive the tort, he would have been personally liable to refund the money as having been received to their use. By Ministry of Shipping (Cessation) Order, 1921, it was provided that the office of Shipping Controller should cease to exist, & that "All . . . liabilities . . . incurred by the Shipping Controller . . . shall be transferred to the Board of Trade." The "Board of Trade" is the name given by statute to an unincorporated committee of the Privy Council. On an application to *wike out* the writ on the ground that the Board of Trade, as a department of the Crown, could not be sued:—*Held*: the intention of the Order was to transfer to the Board of Trade as a Govt. department the personal liabilities, if any such there were, of the Shipping Controller for any wrongful acts committed by him in his office, & the Board was liable to be sued in respect of those acts notwithstanding that it was an unincorporated body.

(2) Although the Board of Trade may in the above-mentioned circumstances be sued as a Govt. department, service of the writ must, unless the solr. to the Board accepts service on their behalf, be effected upon the individual constituent members of the Board personally.

(3) Where an official of a Govt. department wrongfully extorts a sum of money from a subject for the use of the Crown & the injured party waives the tort:—*Qu.*: whether he can sue the official personally as for money had & received, or whether his only remedy is not by petition of right against the Crown.—*MARSHAL SHIPPING CO. v. BOARD OF TRADE*, [1923] 2 K. B. 343; 92 L. J. K. B. 901; 129 L. T. 644; 39 T. L. R. 415; 67 Sol. Jo. 639; 16 Asp. M. L. C. 210, C. A.

*Annotations*:—As to (1) *Refd. G. S. & W. Ry. of Ireland v. R.*, [1924] 2 K. B. 450. As to (3) *Refd. Brocklebank v. R.*, [1924] 1 K. B. 647. *Generally, Refd. Bristol Channel Steamers v. R.* (1924), 131 L. T. 608.

Actions against Departments of State generally, *see* AGENCY, Vol. I., pp. 654, 655; PUBLIC AUTHORITIES.

**530.** *Add. Annotations*:—As to (1) *Refd. Commercial & Estates Co. of Egypt v. Board of Trade*, [1925] 1 K. B. 271. *Generally, Refd. Newcastle Breweries v. I. R. Comrs.* (1927), 137 L. T. 426.

**531.** *Add. Annotations*:—As to (5) *Refd. Swift v. Board of Trade* (1924), 93 L. J. K. B. 529. *Generally, Refd. Commercial & Estates Co. of Egypt v. Board of Trade*, [1925] 1 K. B. 271. *Mentd. Fort Frances Pulp & Power Co. v. Manitoba Free Press Co.*, [1923] A. C. 695.

**534.** *Add. Annotation*:—*Consd. Commercial & Estates Co. of Egypt v. Board of Trade*, [1925] 1 K. B. 271.

**534a.** ———.]—A British ship lying in a neutral port & laden with a cargo of timber belonging to neutrals of another country was requisitioned during the war by the British Govt. & brought home with her cargo to England without the consent & against the protest of the cargo owners. The timber was then requisitioned by the Controller of Timber Supplies on behalf of the

Board of Trade avowedly under Defence of the Realm Regulations, 2B & 2JJ. The owners of the cargo made a claim in the War Compensation Ct. for compensation & contended that it should be assessed under Indemnity Act, 1920 (c. 48), s. 2 (2) (iii.) (a), on the ground that in the circumstances they would but for the Act have had a legal right to compensation:—*Held*: (1) the regulations did not apply to a seizure of goods of a neutral brought into England against his will; (2) the requisition of the timber was justifiable as an exercise of the royal prerogative right of angary & was, therefore, made "in exercise of" a "prerogative right to His Majesty" within s. 2 (1) (b) of the Act, & inasmuch as that right involved the obligation to pay full compensation to the owner of the property seized, claimants "would have had apart from" the Act a

valid claim for compensation by petition of right, & the Crown admitting that such a claim constituted "a legal right to compensation," compensation was to be assessed according to the principle laid down in s. 2 (2) (iii.) (a) of the Act.—*COMMERCIAL & ESTATES CO. OF EGYPT v. BOARD OF TRADE*, [1925] 1 K. B. 271; 94 L. J. K. B. 50; 132 L. T. 516, C. A.

*Annotation*:—*As to* (2) *Consd. Netherlands-American Steam Navigation Co. v. Procurator-General* (1925), 42 T. L. R. 81.

535a. Right to compensation—Under Indemnity Act, 1920 (c. 48)—Exercise of right of angary.]—*COMMERCIAL & ESTATES CO. OF EGYPT v. BOARD OF TRADE*, No. 534a, *ante*.

539. *Add. Annotations*:—*As to* (1) *Refd. R. v. Cannon Row Police Station Inspector, Ex p. Brady* (1921), 91 L. J. K. B. 98. *Generally*, *Refd. Secretary of State for Home Affairs v. O'Brien*, [1923] A. C. 603.

## Part XIV.—The Crown as the Fountain of Honour.

563. *Add. Annotation*:—*Consd. Rhondda's Claim*, [1922] 2 A. C. 339.

## Part XIX.—Royal Grants.

634. *Add. Annotation*:—*Mentd. Re Holliday*, [1922] 2 Ch. 698.

653. *Add. Annotation*:—*Mentd. The Fagernes*, [1926] P. 185.

655. *Add. Annotation*:—*Generally, Mentd. Harper v. Hedges*, [1923] 2 K. B. 314.

661. *Add. Annotation*:—*Refd. Layzell v. Thompson* (1927), 137 L. T. 106.

680. *Add. Annotation*:—*Mentd. Rhondda's Claim*, [1922] 2 A. C. 339.

690. *Add. Annotation*:—*Mentd. Harper v. Hedges*, [1923] 2 K. B. 314.

706. *Add. Annotation*:—*Refd. Hodgson v. McCreagh* (1923), 93 L. J. Ch. 339.

728a. Grant of land reserving strip of coast land—Effect of confirming grant.]—*A.-G. FOR NEW SOUTH WALES v. DICKSON*, [1904] A. C. 273; 73 L. J. P. C. 48; 90 L. T. 213, P. C.

754. *Add. Annotation*:—*Generally, Refd. Layzell v. Thompson* (1927), 137 L. T. 106.

786. *Add. Annotation*:—*Refd. Layzell v. Thompson* (1927), 137 L. T. 106.

829. *Add. Annotations*:—*Mentd. The Koursk*, [1924] P. 140; *Performing Right Soc. v. Mitchell & Booker (Palais de Danse)*, [1924] 1 K. B. 762; *Falcon v. Famous Players Film Co.* (1925), 42 T. L. R. 91.

## Part XXI.—Hereditary and Private Revenues of the Crown.

857. *Add. Annotations*:—*As to* (4) *Refd. Re Letters Patent No. 139,207, Re Carbonit Akt.*, [1924] 2 Ch. 53. *As to* (5) *Refd. Re Letters*

*Patent No. 139,207, Re Carbonit Akt.*, [1924] 2 Ch. 53. *Generally, Mentd. Campbell v. Polak*, [1927] A. C. 732.

### PART XIX. SECT. 2, SUB-SECT. 3.—A.

602 ii. —.]—Where a Crown grant of land has been issued by error, but without false misrepresentation on the grantee's part, & whereby he obtains more than that to which he was entitled, the ct. need not set aside the whole grant, but may declare it void only in so far it purported to convey such portion improvidently granted, & will order the grant to be delivered up to be rectified.—*R. v. SEAMAN*, [1927] Exch. C. R. 201.—CAN.

q. *Add "revsd. on other grounds, 9 Gr. 224."*

### PART XIX. SECT. 2, SUB-SECT. 3.—C.

h *Add "revsd. on other grounds, 19 A. R. 329."*

### PART XIX. SECT. 3, SUB-SECT. 2.

656 i. *Add "revsd. on other grounds, 19 A. R. 329."*

662 ii. *Add "revsd. on other grounds, 19 A. R. 329."*

### PART XIX. SECT. 3, SUB-SECT. 3.—A.

i. —.]—A Crown grant of land, as to part of the land granted, used the

words "grant, convey & assure," & as to other land granted, "grant, release & quit claim":—*Held*: both conveyed the fee simple, & the grantee could convey the fee simple subject to conditions & reservations in the grant.—*NORTHERN TRUST CO. v. TUBNER*, [1923] 2 D. L. R. 1176.—CAN.

### PART XIX. SECT. 3, SUB-SECT. 3.—E.

i. —. —.]—The reservation in a Crown grant of the mines & minerals "with full power to work the same & for this purpose to enter upon & use or occupy the lands or so much thereof & to such an extent as may be necessary for the effectual working of the said minerals":—*Held*: this confers greater powers than is implied in a bare reservation in an agreement for the sale of the land so granted of "all mines & minerals."—*FULLER v. GARNEAU* (1920), 61 S. C. R. 450; 58 D. L. R. 642.—CAN.

i. ii. —. —. —. *Includes petroleum & natural gas.*—*CREIGHTON v. UNITED OILS, LTD.*, [1927] 2 W. W. R. 458; *affd.*, [1927] 3 W. W. R. 463.—CAN.

i. iii. *S. P. STARLEY v. NEW McDOUGALL-SEGUR OIL CO.* (No. 2),

[1927] 2 W. W. R. 466; *affd.*, [1927] 3 W. W. R. 464.—CAN.

i. iv. —. —. —. *Effect of Act to amend Public Lands Act, 1908 (c. 16).*—*Re COX*, [1927] 4 D. L. R. 556; 61 O. L. R. 182.—CAN.

### PART XIX. SECT. 5, SUB-SECT. 1.

i. i. —. —. —. *Derogation of rights under earlier grant.*—*KEEWATIN POWER CO., LTD. v. KEEWATIN FLOUR MILLS, LTD.*, *KEEWATIN POWER CO., LTD. v. LAKE OF THE WOODS MILLING CO. (Ont.)*, [1928] 1 D. L. R. 32.—CAN.

### PART XX. SECT. 6.

*sp. Sale of land under Soldiers Settlement Act, 1919—Failure of soldier to perform agreement—Crown not entitled to warrant of possession.*—*A.-G. FOR CANADA v. PUGH*, [1924] Exch. C. R. 62.—CAN.

### PART XXI. SECT. 1, SUB-SECT. 2.

858 iii. —. —. —.]—The right to precious metals in the land now held by the Hudson's Bay Co. belongs not to the co., but to the Crown.—*HUDSON'S BAY CO. v. A.-G. FOR CANADA* (1928), 45 T. L. R. 47, P. C.—CAN.



# CONTRACT.

## Part I.—Definitions and Classification.

3. *Add. Annotation* :—*Reid. Rose & Frank Co. v. Crompton*, [1923] 2 K. B. 261.
4. For the existing paragraph substitute the following paragraph :—

**Legal effect expressly excluded.]**

By successive arrangements made before 1913 between an American firm & an English co. the American firm were constituted sole agents for the sale in the United States & Canada of tissues for carbonising paper supplied by the English co. The greater part of these tissues was manufactured for this English co. by another English co. By an arrangement made between the American firm & both English cos. in 1913 the English cos. expressed their willingness that the existing arrangements with the American firm, which were then for one year only, should be continued on the same lines for three years & so on for further periods of three years, subject to six months' notice. This document, after setting out the understanding between the parties, including several modifications of the previous arrangements, proceeded as follows : " This arrangement is not entered into, nor is this memorandum written, as a formal or legal agreement, & shall not be subject to legal jurisdiction in the law cts. either of the United States or England, but it is only a definite expression & record of the purpose & inten-

tion of the three parties concerned, to which they each honourably pledge themselves, with the fullest confidence—based on past business with each other—that it will be carried through by each of the three parties with mutual loyalty & friendly co-operation. This is hereinafter referred to as the ' honourable pledge ' clause." Disputes having arisen between the parties, the English cos. determined this arrangement without notice. Before the relations between the parties were broken off the American firm had given & the first-mentioned English co. had accepted certain orders for goods. In an action by the American firm for breach of contract & for non-delivery of goods :—*Held* : (1) the arrangement of 1913 was not a legally binding contract ; (2) at the date of the arrangement of 1913 all previous agreements were determined by mutual consent ; (3) the orders given & accepted constituted enforceable contracts of sale.—*ROSE & FRANK Co. v. CROMPTON (J. R.) & BROTHERS, LTD.*, [1925] A. C. 445 ; 94 L. J. K. B. 120 ; 132 L. T. 641 ; 30 Com. Cas. 163, H. L.

5. *Add. Annotations* :—*Reid. Re Wait*, [1927] 1 Ch. 606. *Mentd. Performing Right Soc. v. London Theatre of Varieties*, [1924] A. C. 1.
- 5a. ———.]—*SNOW v. FIREBRASS* (1700), Holt, K. B. 609 ; 2 Salk. 557 ; 1 Ld. Raym. 611 ; 12 Mod. Rep. 434 ; 90 E. R. 1237.

## Part II.—Parties to Contract.

17. *Add. Annotation* :—*Reid. Johnson v. Stephens & Carter & Golding*, [1923] 2 K. B. 857.
48. *Add. Annotations* :—*As to* (1) *Reid. Clarkson v. Davies*, [1923] A. C. 100 ; *Duffner v. Bowyer* (1924), 40 T. L. R. 700 ; *Re Pennington & Owen*, [1925] Ch. 825. *As to* (2) *Reid. Firm of R. M. K. R. M. v. Firm of M. R. M. V. L.*, [1926] A. C. 761. *Generally, Mentd. The Koursk*, [1924] P. 140 ; *Re Pennington & Owen* (1925), 95 L. J. Ch. 93 ; *Bennett v. Whitehead*, [1926] 2 K. B. 380 ; *Pirie v. Johnson* (1926), 70 Sol. Jo. 1023 ; *Hardie & Lane v. Chiltern* (1927), 96 L. J. K. B. 773.
52. *Add. Annotation* :—*Reid. Albemarle Supply Co. v. Hind*, [1928] 1 K. B. 307.
103. *Add. Annotation* :—*Dlstd. Way v. Bishop*, [1928] Ch. 647.
129. After this case add " *See, also, No. 36, ante.*"
150. *Add. Annotation* :—*Consd. Johnson v. Stephens & Carter & Golding*, [1923] 2 K. B. 857.
160. *Add. Annotation* :—*Mentd. Hardie & Lane v. Chiltern* (1927), 96 L. J. K. B. 773.
163. After this case add **Effect of judgment against one.]**—*See ESTOPPEL*, Vol. XXI., pp. 218–221."
- 163a. **Action brought against all—Successful defence by one—Unsuccessful defences by others.]**—In an action for breach of contract brought against A., B. & C. as joint contractors, A. set up the defence that pltf. had not performed his part of the contract. B. & C. set up other defences which failed. The judge decided that A. having established an effective defence, the action failed as against him, but succeeded against B. & C. :—*Held* : B. & C. though they had not pleaded it, were entitled to the benefit of a defence set up by A. which went to the whole cause of action, & the action failed altogether.

Where the ct. has before it a fact common to the whole contract & not involving

### PART II. SECT. 2, SUB-SECT. 2.—E.

130 iii. ——— *Disclaimer by one.*]—If a contract purports to be made with two covenanters jointly, the disclaimer of one of them, to which the covenantor is not also a party, does not convert it

into a contract with the other & entitle him to sue alone, even though the joint covenantor who has disclaimed is an infant.—*BENNETT v. GREENSILL*, [1927] N. Z. L. R. 167.—N.Z.

### PART II. SECT. 2, SUB-SECT. 2.—F.

151 iii. ———.]—In an action

to rescind a contract deft. applied to add W. as co-deft. :—*Held* : deft. had no right to force W. upon pltf. as deft., in the character of a joint contractor.—*TORONTO & HAMILTON NAVIGATION Co. v. SILCOX* (1888), 12 P. R. 622.—CAN.

statutory illegality, it is bound to take notice of that fact as applicable to every joint debtor whether he has pleaded it or not. There can only be one judgment against joint contractors, except upon a matter peculiar to one of the contractors.—*PIRIE v. RICHARDSON*, [1927] 1 K. B. 448; 96 L. J. K. B. 42; 136 L. T. 104; 70 Sol. Jo. 1023, C. A.

165. *Add. Annotation*:—*Consd. United Dairies v. Public Trustee*, [1923] 1 K. B. 469.

192. *Add. Annotation*:—*Refd. Hardie & Lane v. Chiltern* (1927), 96 L. J. K. B. 773.

197. *Add. Annotation*:—*Refd. Key v. Bastin*, [1925] 1 K. B. 650.

209. *Add. Annotation*:—*Consd. York Glass Co. v. Jubb* (1925), 42 T. L. R. 1.

255. *Add. Annotation*:—*Refd. Royal Exchange Assce. v. Hope*, [1928] Ch. 179.

272. *Add. Annotation*:—*Refd. Edwards v. Porter, McNeill v. Hawes*, [1923] 2 K. B. 538.

273. *Add. Annotation*:—*Mentd. Cockburn v. Smith*, [1924] 2 K. B. 119.

## Part III.—Formation of Contract.

278. *Add. Annotation*:—*Mentd. Jones (Holloway) v. Woodhouse*, [1923] 2 K. B. 117.

297a. *Offer & acceptance—Though in pursuance of unenforceable agreement.*—*ROSE & FRANK Co. v. CROMPTON (J. R.) & BROTHERS, LTD.*, No. 4, *ante*.

298. After this case add “*Course of conduct.*”—*See pp. 52, 67, 114, 115, Nos. 289, 389, 747-751; ESTOPPEL, Vol. XXI., pp. 290, 291, No. 1034.*”

### PART II. SECT. 6, SUB-SECT. 2.

238 xvi. ———.]—An agreement between a dealer in automobiles & the maker thereof, providing that it should be construed as an agreement between the dealer signing it & all other dealers “who have signed a similar agreement”:—*Held*: to bring about a contractual relationship between such dealers involving an obligation for breach of which an action would lie by one dealer against another who signed such agreement.—*MCCANNELL v. MABEE McLAREN MOTORS, LTD.*, [1926] 1 D. L. R. 282; [1926] 1 W. W. R. 353; 36 B. C. R. 369.—CAN.

### PART III. SECT. 1.

si. *Contract subject to approval—Effect of approval.*—*Held*: the effect of a clause in a contract, which made the agreement subject to the approval of the Governor-General in Council, was to suspend the contract pending the giving of such approval, & upon such approval being given the contract took effect & became enforceable.—*BANKS PENINSULA ELECTRIC-POWER BOARD v. AKAROA BOROUGH COUNCIL*, [1923] N. Z. L. R. 880.—N.Z.

sk. ———. *Sufficiency of approval.*—A contract contained a provision that it should be deemed executed & become binding only when approved by the proper officers of the vendor co. Beneath the signatures of the contracting parties a form of approval was signed by certain persons as managers. There was evidence that they occupied these positions, but no evidence that they were the proper officers of the vendors for approval of the contract:—*Held*: approval could be shown by the subsequent conduct of the vendors.—*GENERAL SUPPLY CO. OF CANADA v. O'NEILL MORKIN MACHINERY CO.*, [1924] 2 D. L. R. 183; 1 W. W. R. 1047.—CAN.

sl. *Contract for carriage of goods—Letter expressing wish for insurance of goods.*—*Held*: the contract was complete when the agent received the goods & gave a receipt, which contained the terms of the contract, & the letter was only a request to insure, & formed no part of the contract.—*MCGOLDRICK v. EASTERN EXPRESS CO.* (1872), 14 N. B. R. (1 Pug.) 138.—CAN.

### PART III. SECT. 2, SUB-SECT. 1.—A. (a).

si. ———.]—*ACME GRAIN CO., LTD. v. WENAU*, [1917] 3 W. W. R. 157; 36 D. L. R. 347; 10 Sask. L. R. 305.—CAN.

sm. *Construction—Ambiguous offer.*—Where a written offer is ambiguous, it may be construed according to the contemporaneous interpretation put upon it by the maker & receiver.—*MANNING v. CARRIQUE* (1915), 9 O. W. N. 61; 34 O. L. R. 453.—CAN.

### PART III. SECT. 2, SUB-SECT. 1.—C. (a).

328 i. *What amounts to—Counter offer.*—Specific counter offer or rejection puts an end to an offer.—*SHAW v. JONES*, [1924] N. Z. L. R. 1133.—N.Z.

328 ii. ———.]—*Deft.*, through his agent, sent *pltf.* an offer to sell him land for \$1,800 on terms. *Pltf.* wired the agent: “Send lowest cash price. Will give \$1,600 cash. Wire.” The agent replied by wire: “Cannot reduce price.” *Pltf.* then wrote accepting the offer:—*Held*: the telegram reading “Cannot reduce price” was a renewal of the original offer, not merely a rejection of *pltf.*'s counter offer, & *pltf.*'s acceptance of it completed a contract of sale.—*LIVINGSTONE v. EVANS*, [1925] 4 D. L. R. 769; [1925] 3 W. W. R. 453.—CAN.

### PART III. SECT. 2, SUB-SECT. 1.—C. (c) i.

337 viii. ———.]—Where a document was no more than an offer & was withdrawn before acceptance:—*Held*: there was no contract.—*GOODISON THRESHER CO. v. DOYLE* (1925), 57 O. L. R. 300.—CAN.

### PART III. SECT. 2, SUB-SECT. 2.—A.

366 vi. ———. *Intention to discuss terms with third party.*—Where parties have discussed terms, but one before finally accepting them intends to discuss the matter with others:—*Held*: there cannot be said to be a binding contract.—*CARBON COAL & CLAY CO. v. NANOOSE-WELLINGTON COLLIERIES*, [1923] 1 D. L. R. 1160.—CAN.

310. *Add. Annotations*:—*Refd. Ellesmere v. Wallace* (1928), 44 T. L. R. 798; *Kennedy v. Thomassen* (1928), 45 T. L. R. 122; *Weddle, Beck v. Hackett* (1928), 45 T. L. R. 67.

339a. ———.]—*HORSEFALL v. GARNETT* (1858), 6 W. R. 387.

345. *Add. Annotation*:—*Mentd. Catton v. Ashwell & Nesbit* (1927), 44 T. L. R. 130.

366 vii. ———.]—*PATERSON (A. & G.), LTD. v. HIGHLAND RY. CO.*, [1927] S. C. (H. L.) 32.—SCOT.

366 viii. ———.]—*BIGELOW v. CRAIGELLACHIE-GLENLIVET DISTILLERY CO.* (1905), 26 C. L. T. 186; 37 S. C. R. 55.—CAN.

366 ix. ———.]—*WILSON & CO., LTD. v. FARQUHARSON* (1906), 3 E. L. R. 146.—CAN.

370 xiii. ———. *Acceptance stating understanding of offer made.*—The Halifax Graving Dock & plant were wrecked by explosion in 1917, & in Jan. 1918, the Canadian Govt. passed an Order in Council providing that the work of repair should be entrusted to applts. on the condition (*inter alia*) that the latter should contribute the amount of insurance it carried & the Govt. pay the balance. A letter was sent to the co. enclosing a copy of the Order & stating “an agreement is being prepared & will be submitted shortly for signature,” but no agreement was ever executed. Two days later the co. wrote to the Minister of Public Works that the terms of the Order were satisfactory & adding, “but in order that all will be quite clear our understanding is that we are to assign our insurances & policies to the Govt., & that the temporary buildings now being constructed are to be replaced by permanent buildings of the same kind as the original”:—*Held*: the letter of the co. to the Minister did not contain an unqualified acceptance of the terms set out in the Order in Council.—*HALIFAX GRAVING CO. v. R.* (1921), 62 S. C. R. 338.—CAN.

370 xiv. ———.]—*CANADA PERMANENT MORTGAGE CORPN. v. BARNARD* (Sask.), [1926] 1 D. L. R. 153.—CAN.

sp. *Time for—Time limited by contract.*—Where applt. had not notified his acceptance within the fixed time, & in the absence of proof that resp. had waived his right to demand definite written notice as stipulated:—*Held*: there was no valid acceptance.—*LAWS v. RUTHERFORD*, [1924] App. D. 261.—S. AF.

st. ———. *Within reasonable time.*—*SHATFORD v. B. C. WINE GROWERS, LTD.*, [1927] 2 D. L. R. 759; 38 B. C. R. 419.—CAN.

396. *Add. Annotations*:—*Reid. Jones (Holloway) v. Woodhouse*, [1923] 2 K. B. 117. *Mentd. Bradford v. Price* (1923), 92 L. J. K. B. 871.

416. To the existing paragraph, after the word "accepting," add "'subject to the terms of a contract being arranged.'"

418a. — "Orders to be acknowledged by return."—*Defts.* departmental manager orally agreed on their behalf to buy certain goods from *pltf.* & signed an order form on which was printed the clause, "orders to be acknowledged by return," but this term had not been orally agreed & no acknowledgment was sent to *defts.* In an action for breach of the contract *defts.* pleaded that there was merely an offer & no contract, as the only document contained a clause which had not been agreed:—*Held*: (1) the words on the order form, "orders to be acknowledged by return," were not intended to be words of contract; (2) the words "by return" related only to the time within which, & not to the method by which, acknowledgment was to be made, & therefore there was a concluded contract, & *pltf.* was entitled to recover.—*WILLIS v. BAGGS & SALT* (1925), 41 T. L. R. 453; 69 Sol. Jo. 543.

429a. — What amounts to—Offer of house & "furniture"—Acceptance of house & "furniture & fittings as it stands."—*Pltf.* having an option from *deft.* to purchase a freehold house "with furniture for £4,000," wrote accepting *deft.*'s offer to sell the house "with the furniture & fittings as it stands":—*Held*: there was a concluded contract between *pltf.* & *deft.*—*GOFFIN v. HOULDER* (1920), 90 L. J. Ch. 488; 124 L. T. 145.

437. *Add. Annotation*:—*Folld. Willis v. Baggs & Salt* (1925), 41 T. L. R. 453.

448a. — — — — — *WILLIS v. BAGGS & SALT*, No. 418a, *ante*.

465. *Add. Annotations*:—*Consd. Schiller v. Petersen*, [1924] 1 Ch. 394; *Phipps (Northampton*

& Towcaster Breweries) *v. Rogers*, [1925] 1 K. B. 14.

466. *Add. Annotation*:—*Reid. Brakspear v. Barton*, [1924] 2 K. B. 88.

467a. Offer & acceptance by telegram.]—Where an offer is made & accepted by telegram, the contract is complete, & the party accepting cannot repudiate the contract on the ground that his telegram had a meaning which would not be apparent to the other contracting party.—*ROTH (L.) & Co., LTD. v. TAYSEN, TOWNSEND & Co. & GRANT & GRAHAME* (1896), 12 T. L. R. 211; 1 Com. Cas. 306, C. A.

*Annotations*:—*Reid. Nickoll & Knight v. Ashton, Edridge*, [1900] 2 Q. B. 298; *Tredegar Iron & Coal Co. v. Hawthorn* (1902), 18 T. L. R. 716.

467b. Acceptance by telegram—Effect of word "writing" in telegram.]—*L. VARTH v. FORDER* (1903), 48 Sol. Jo. 52.

478. *Add. Annotation*:—*Consd. Rawlinson v. Ames*, [1925] Ch. 96.

480. *Add. Annotation*:—*Reid. Edwards v. Porter*, [1925] A. C. 1.

487. For "Question of law—Not question of fact" in the catchwords read "Whether question of law or fact."

487a. — — — — —.]—Where a contract is made, not in express terms, but is to be collected from a variety of letters between the parties, it is for the jury, & not for the ct., to determine, with reference to the situation & intention of the parties, whether a contract has actually been completed.—*RICHARDS v. HAYWARD* (1841), 2 Man. & G. 574; 2 Scott, N. R. 670; *Drinkwater*, 136; 10 L. J. C. P. 108; 133 E. R. 875.

487b. — — — — —.]—*CADDICK v. TERRY* (1864), 5 New Rep. 137.

488. *Add. Annotation*:—*Mentd. Slack v. Leeds Industrial Co-op. Soc.*, [1923] 1 Ch. 431.

489. After the cross-references following this case insert "Construction of contracts by correspondence."—*See DEEDS*, Vol. XVII., p. 245, Nos. 588–592."

PART III. SECT. 2, SUB-SECT. 2.—  
B. (a).

380i. *Necessity*.]—*BARRETT v. RAPELJE* (1835), 4 O. S. 175.—CAN.

PART III. SECT. 2, SUB-SECT. 2.—  
B. (b) ii.

sz. *Delivery of goods—Before time laid down in order*.]—*Applt.* sent an order on June 7 to *resp.* to send him on hire a binder, to be delivered on or about Oct. 1. The order contained a term that it was not to be binding on *resp.* until received & ratified in writing or by actual delivery of the goods to *applt.*, & that the order might be cancelled by *applt.* giving notice to *resp.* by registered letter at least thirty days prior to date for delivery, with a proviso that if prior to that date or six months thereafter *applt.* ordered a binder from any other person, *resp.* might by registered notice revive the order, & deliver the binder within thirty days. An agent of *resp.* was told by *applt.* that he wished to cancel the order, as he was buying a harvester, & the agent notified *resp.*, but no notice was given by *applt.* to *resp.* On Sept. 2, *resp.* forwarded by rail a binder to *applt.*, & wrote him stating that the binder had been forwarded per rail. The machine arrived, & *applt.* refused to take delivery, but admitted he had received the letter:—*Held*: the letter did not amount to a ratification of the order,

& a delivery on Sept. 2 did not necessarily imply a delivery pursuant or referable to the stipulation in the contract for delivery on or about Oct. 1, & there was no acceptance of the order.—*BLACKETT v. CLUTTERBUCK BROTHERS (ADELAIDE), LTD.*, [1923] S. A. S. R. 301.—AUS.

PART III. SECT. 2, SUB-SECT. 2.—D.

425 viii. — — — — —.]—*Deft.*, through his agent, offered *pltf.* 300 tons of hay at \$22 per ton. *Pltf.* accepted, & the agent wired his principal asking that shipment be rushed. *Deft.* replied that he could not confirm the order for immediate delivery, but would book for delivery the last of the month:—*Held*: a contract valid in law was then completed, & *deft.* could not subsequently vary it by demanding a deposit of \$2 per ton as a condition of shipping.—*BALLAM v. HATFIELD* (1922), 55 N. S. R. 508.—CAN.

PART III. SECT. 2, SUB-SECT. 3.—  
B. (b).

451 iii. — — — — — *Offer not made by post—Acceptance binding only at time of receipt*.]—*CHARLEBOIS v. BARIL*, [1927] 3 D. L. R. 762.—CAN.

sa. *At place of posting—Contract under Farm Implement Act, R. S. S.*, 1920 (c. 128).]—*ELLARD v. WATERLOO MANUFACTURING CO.*, [1926] 3 D. L. R.

207; [1926] 2 W. W. R. 294; 20 Sask. L. R. 601.—CAN.

PART III. SECT. 2, SUB-SECT. 4.

471 xii. — — — — —.]—*BRUCE v. TOLTON* (1879), 4 A. R. 144.—CAN.

479 v. — — — — — *Acceptance by telegram—Fresh term inserted in letter of confirmation*.]—*ST. DENIS v. WESTERN PRODUCTS, LTD.*, [1923] 3 W. W. R. 858.—CAN.

489 iii. — — — — — *Effect of correspondence coupled with conduct—Substantial part of goods delivered*.]—*Held*: a contract was established whereby *pltf.* became bound to deliver the remainder of the goods.—*HAMILTON GEAR & MACHINE CO. v. LEWIS BROTHERS*, [1924] 3 D. L. R. 367; 54 O. L. R. 585.—CAN.

PART III. SECT. 2, SUB-SECT. 5.

490 x. — — — — —.]—Where a proposal to manufacture certain steel rails was accepted in writing by the party to whom it was sent, such acceptance stating that it would be followed by a formal contract, & where it appeared that the formal contract was intended solely to embody the agreement already arrived at:—*Held*: in such a case, looking to the intentions of the parties, the contractual relations between them should be regarded as based upon the terms so agreed upon.—*DOMINION IRON & STEEL CO. v. R.* (1920), 67 D. L. R. 609; 20 Exch. C. R. 245.—CAN.



492. *Add. Annotation*:—*Folld. Chillingworth v. Esche*, [1924] 1 Ch. 97.

496. *Add. Annotation*:—*Refd. Chillingworth v. Esche* (1923), 129 L. T. 808.

501a. ——— “Subject to terms of contract being arranged.”—*HONEYMAN v. MARRYATT*, No. 416, *ante*.

504a. ——— Lease “to be drawn by counsel.”—*STURGIION v. PAINTER* (1608), Noy, 128; 74 E. R. 1092.

*Annotation*:—*Refd. Goodtitle d. Estwick v. Way* (1787), 1 Term Rep. 735.

511. *Add. Annotations*:—*Refd. Chillingworth v. Esche*, [1924] 1 Ch. 97; *Keppel v. Wheeler*, [1927] 1 K. B. 577.

513a. ——— “The usual public-house contract to be entered into.”—*LUCAS v. HALL*, [1899] W. N. 92.

514. *Add. Annotation*:—*Refd. Chillingworth v. Esche* (1923), 129 L. T. 808.

531. *Add. Annotation*:—*Refd. Chillingworth v. Esche*, [1923] 1 Ch. 576.

534. *Add. Annotation*:—*Refd. Chillingworth v. Esche* (1923), 129 L. T. 808.

540. *Add. Annotations*:—*Apld. Chillingworth v. Esche*, [1924] 1 Ch. 97; *Lockett v. Norman-Wright* (1924), 69 Sol. Jo. 125. *Refd. Neville Reid v. I. R. Comrs.* (1922), 12 Tax Cas. 545.

540a. ———.]—An agreement subject to contract is merely in the stage of negotiation (*SARGANT, L.J.*).—*KEPPEL v. WHEELER*, [1927] 1 K. B. 577; 96 L. J. K. B. 433; 136 L. T. 203, C. A.

545. *Add. Annotations*:—*Consd. Chillingworth v. Esche*, [1924] 1 Ch. 97. *Apld. Lockett v. Norman-Wright* (1924), 69 Sol. Jo. 125. *Refd. Neville Reid v. I. R. Comrs.* (1922), 12 Tax Cas. 545.

546a. ——— “Subject to suitable agreements being arranged between your solicitor & mine.”—The words “subject to suitable agreements being arranged between your solr. & mine” are indistinguishable in their effect from such words as “subject to formal contract,” “subject to contract,” or “subject to proper

contract to be prepared by the vendor’s solr.,” & do not import a binding agreement between the parties.—*LOCKETT v. NORMAN-WRIGHT*, [1925] Ch. 56; 94 L. J. Ch. 123; 132 L. T. 532; 69 Sol. Jo. 125.

. ——— “Subject to a proper contract to be prepared by the vendor’s solicitors.”—By a document of July 10, 1922, the purchasers agreed to purchase certain freehold land & a nursery from the vendor “subject to a proper contract to be prepared by the vendor’s solrs.” & acknowledged having paid £240 “as deposit & in part payment of the said purchase-money.” Completion was fixed for Nov. 2. The purchasers signed the document & the vendor added & signed a receipt for the deposit confirming the sale. A proper contract was subsequently prepared by the vendor’s solrs., approved by the purchasers’ solr., executed by the vendor, & tendered to the purchasers for execution. The purchasers, however, refused to sign it, declined to proceed with the transaction, & claimed the return of the deposit:—*Held*: the document of July 10, 1922, was only conditional, & did not constitute a firm contract, & the purchasers were in the circumstances entitled to recover the deposit.—*CHILLINGWORTH v. ESCHÉ*, [1924] 1 Ch. 97; 93 L. J. Ch. 129; 129 L. T. 808; 40 T. L. R. 23; 68 Sol. Jo. 80, C. A.

*Annotations*:—*Apld. Lockett v. Norman-Wright*, [1925] Ch. 56. *Refd. Keppel v. Wheeler*, [1927] 1 K. B. 577.

546c. ——— “Formal contract to be signed in due course.”—*RONALD FRANKAU PRODUCTIONS, LTD. v. BELL* (1927), 164 L. T. Jo. 504.

555. *Add. Annotation*:—*Refd. Chillingworth v. Esche* (1923), 129 L. T. 808.

559. *Add. Annotation*:—*Refd. Berners v. Fleming*, [1925] Ch. 264.

567. *Add. Annotation*:—*Distd. Hardie & Lane v. Chilton*, [1928] 2 K. B. 306.

568. *Add. Annotation*:—*Consd. Hardie & Lane v. Chilton*, [1928] 2 K. B. 306.

576. *Add. Annotation*:—*Refd. Brocklebank v. R.*, [1924] 1 K. B. 647.

490 xi. ———.]—*HARICHAND MAN-CHARAM v. GOVIND LUXMAN GOKHALE* (1922), L. R. 50 Ind. App. 25.—IND.

fi. ———.]—An option for sale read as follows: “The owners agree to give H. the option to purchase the lands herein leased at any time within the period of lease for \$25 per acre, \$2,000 cash & the balance at six per cent. interest & half crop payments, by agreement to be drawn up”:—*Held*: the words “by agreement to be drawn up” had the same effect as the words “subject to an agreement to be drawn up,” & since the agreement was to be on the crop-payment plan, the ct. could not supply the details necessary to complete it, & the option did not of itself constitute an enforceable contract.—*BOCALTER v. HAZLE*, [1925] 4 D. L. R. 948; [1925] 3 W. W. R. 577; *reversg.* 19 Sask. L. R. 417; [1925] 2 W. W. R. 436.—CAN.

543 i. ——— *Solicitor to approve form of contract*.]—An option agreement provided that in the event of the purchaser deciding to accept the option by entering into an agreement to purchase the land, “such agreement to purchase shall be on a form approved by the vendor’s solr.”:—*Held*: the execution of a further contract was not necessary to the existence of an enforceable contract to purchase.—*VITALY v. BRYAN* (Alta.), [1927] 1 D. L. R. 244; 3 W. W. R. 785.—CAN.

### PART III. SECT. 3, SUB-SECT. 1.

555 xiv. ———.]—*COLE v. SUMNER* (1900), 30 S. C. R. 379.—CAN.

555 xv. ———.]—*GRAHAM v. GRAHAM* (Man.) (1914), 27 W. L. R. 263; 16 D. L. R. 485.—CAN.

o i. ——— *Burden of proof*.]—It is never necessary to prove in the first instance that either party to a contract understood the legal effect of a term thereof; if a party seeks to escape the liability imposed by a term of the contract, he must adduce evidence to establish grounds of excuse.—*THORESON v. BLAIRMORE SCHOOL DISTRICT BOARD OF TRUSTEES*, [1927] 1 D. L. R. 1178; [1927] 1 W. W. R. 449; 22 Alta. L. R. 415.—CAN.

p i. ——— *Failure to read over whole contract*.]—Where a purchaser of a large farm implement does not read English, Farm Implement Act, R. S. S., 1920 (c. 128), s. 18, is not complied with unless the whole contract is read over & explained to him in his own language, even though he understands some English & after the whole contract has been read to him in English, those portions of it which he says he does not understand in English are read over & explained to him in his language, & he says he understands it all.—*ADVANCE RUMELY THRESHER CO. v. YORGA*, [1926] 3 D. L. R. 517; [1926] S. C. R. 397.—CAN.

p ii. ——— *Burden of proof*.]—Where a contract was drawn up by a magistrate, who was employed for that purpose, & after being reduced to writing, it was read over to deft., who signed by his mark:—*Held*: the burden was upon deft. of establishing that the document was not his agreement.—*KEDDY v. DAUREY* (1913), 47 N. S. R. 229; 12 D. L. R. 621; 13 E. L. R. 163.—CAN.

p iii. ———.]—*MILLAR v. ELLARD*, [1927] 2 D. L. R. 102.—CAN.

p iv. ——— *Party intoxicated*.]—*SCHOFIELD v. TUMMONDS* (1858), 6 Gr. 568.—CAN.

564 i. ——— *Contract of sale silent as to time & mode of payment*.]—Defts. having ratified by telegram a contract made by their agents, afterwards attempted to repudiate it on the ground of an alleged variation in the terms of the bought note as to the time of delivery. Defts. letter of repudiation to their agents attempted to impose terms as to the time for payment as a condition of accepting the alleged variation:—*Held*: the contract was complete notwithstanding that the particular mode or time of payment was not stated.—*CAMPBELL v. MAHLER* (1919), 43 O. L. R. 395; 14 O. W. N. 348; *affd.*, 16 O. W. N. 339.—CAN.

581. *Add. Annotation*:—*Dlst.* Hardie & Lane v. Chilton, [1928] 2 K. B. 306.
587. *Add. Annotation*:—*Refd.* Jones v. Waring & Gillow, [1925] 2 K. B. 612.
588. *Add. Annotation*:—*Refd.* Hardie & Lane v. Chilton, [1928] 2 K. B. 306.
590. *Add. Annotation*:—*Mentd.* Republica de Guatemala v. Nunez, [1927] 1 K. B. 669.
611. *Add. Annotation*:—*Refd.* Shears v. Jones (1922), 128 L. T. 218.
613. *Add. Annotation*:—*As to* (3) *Apld.* Inche Noriah Binte Mohamed Tahir v. Shaik Allie Bin Omar Bin Abdullah Bahashuan (1928), 45 T. L. R. 1.
614. After this case add “*See, also, FRAUDULENT & VOIDABLE CONVEYANCES, No. 834a.*”
630. *Add. Annotation*:—*Consd.* Inche Noriah Binte Mohamed Tahir v. Shaik Allie Bin Omar Bin Abdullah Bahashuan (1928), 45 T. L. R. 1.
636. *Add. Annotation*:—*Consd.* Inche Noriah Binte Mohamed Tahir v. Shaik Allie Bin Omar Bin Abdullah Bahashuan (1928), 45 T. L. R. 1.
650. *Add. Annotation*:—*Refd.* Inche Noriah Binte Mohamed Tahir v. Shaik Allie Bin Omar Bin Abdullah Bahashuan (1928), 45 T. L. R. 1.
698. After this case add “*See, also, FRAUDULENT & VOIDABLE CONVEYANCES, No. 834a.*”
717. *Add. Annotation*:—*Consd.* Inche Noriah Binte Mohamed Tahir v. Shaik Allie Bin Omar Bin Abdullah Bahashuan (1928), 45 T. L. R. 1.
739. *Add. Annotation*:—*Consd.* Pontypridd Grdns. v. Drew (1926), 90 J. P. 169.
741. *Add. Annotation*:—*Refd.* Albemarle Supply Co. v. Hind, [1928] 1 K. B. 307.
- 743a. ——— *Outdoor relief afforded to pauper.*—Guardians who supply goods to a pauper by way of ordinary poor relief have no right to recover from the pauper the reasonable value of the goods so supplied.—PONTYPRIDD UNION v. DREW, [1927] 1 K. B. 214; 95 L. J. K. B. 1030; 136 L. T. 83; 90 J. P. 169; 42 T. L. R. 677; 70 Sol. Jo. 795; 24 L. G. R. 405, C. A.  
*See, further, POOR LAW.*
747. *Add. Annotation*:—*Refd.* Brar dt v. Liverpool, Brazil & River Plate Steam Navigation Co., [1924] 1 K. B. 575.
748. *Add. Annotations*:—*Refd.* Rederiaht. Transatlantic v. Compagnie Française des Phosphates de l’Océanie (1926), 136 L. T. 619. *Mentd.* Layton v. General Steam Navigation Co. (1923), 130, L. T. 662; Paterson Zochonis v. Elder Dempster, [1923] 1 K. B. 420; Lake v. Simmons (1926), 95 L. J. K. B. 586.
763. *Add. Annotation*:—*Generally, Refd.* Meyrick v. Dyson (1925), 41 T. L. R. 368.
766. *Add. Annotation*:—*Refd.* Importers Co. v. Westminster Bank, [1927] 1 K. B. 869.

PART III. SECT. 3, SUB-SECT. 2.—C. (a).

599 i. *Contract voidable.*—An agreement in writing by a wife to the provisions of her husband’s will in lieu of the statutory provisions:—*Held*: to have been obtained by duress & not a bar to her application for relief under Devolution of Estates Act, 1920, s. 24.—*Re BURSAR’S ESTATE*, [1924] 3 W. W. R. 807.—CAN.

599 ii. ———.—*BURRIS v. RHIND* (1899), 29 S. C. R. 498.—CAN.

PART III. SECT. 3, SUB-SECT. 3.—A. (a).

611 vi a. ———.—*RAGHUNATH PRASAD v. SARJU PRASAD* (1923), L. R. 51 Ind. App. 101.—IND.

PART III. SECT. 3, SUB-SECT. 3.—B.

696 i. *Onus on party alleging—Unless transaction prima facie unconscionable.*—*RAGHUNATH PRASAD v. SARJU PRASAD* (1923), L. R. 51 Ind. App. 101.—IND.

PART III. SECT. 3, SUB-SECT. 3.—C. (a).

722 i. *Transaction voidable.*—*COLP v. HUNTER* (1911), 1 W. W. R. 314.—CAN.

722 ii. ———.—*ERWIN v. SNELGROVE* (Ont.), [1927] 4 D. L. R. 1028.—CAN.

PART III. SECT. 4, SUB-SECT. 1.

744 i. ——— *From circumstances.*—*RICE v. BURCKHARDT* (1925), 36 B. C. R. 161.—CAN.

747 ii. ———.—*Held*: an agreement by a co. to repurchase shares was established, as the conduct of the co. was quite inconsistent with any other reason than that it intended & agreed to repurchase the shares.—*CLARKE v. LANGS & RODDIS, LTD.* (1926), 37 B. C. R. 77.—CAN.

PART III. SECT. 4, SUB-SECT. 2.—C.

u i. ——— *Contract to dig well.*—When a party contracts to bore a well, with a proviso that he is to be paid a proportion of the price if it is a dry hole, there is an implied promise to go the distance his machinery will bore, & if because of a rock he does not go that distance it is not a “dry hole,” & he is not entitled to payment.—*WINKLER & MARTIN v. HUTTON*, [1920] 2 W. W. R. 982; 13 Sask. L. R. 335.—CAN.

u ii. ———.—Where a hole is caving in & rendering it dangerous for him to work, & a well-digger abandons the work without having obtained water & without having gone to the full depth of his machine, he is not entitled to payment for the work already performed. A well-digger knows, & must be held to have assumed, these risks when he has not in his contract protected himself against such contingencies.—*SAVIDAN v. LAPLANTE*, [1924] 3 D. L. R. 1089; 2 W. W. R. 1222.—CAN.

u iii. ——— *Contract for removal of night soil—Special provisions as to cleansing.*—*Held*: the contract was

one entire contract & every provision in it for strict cleanliness & disinfection was of the very essence & nature of the contract.—*HUNTER v. WEST MAITLAND MUNICIPAL COUNCIL* (1923), 23 S. R. N. S. W. 420.—AUS.

PART III. SECT. 4, SUB-SECT. 2.—D.

o i. ———.—*ANDERSON v. MCINTYRE*, [1925] 3 D. L. R. 948.—CAN.

o ii. ——— *Agreement to live on & work farm in consideration of father promising to devise farm.*—*Held*: the father having prevented the son from performing the work contracted for & discharged him from service, the son was entitled to recover on a quantum meruit for the work done by him & money & materials furnished.—*RENTON v. RENTON* (1925), 52 N. B. R. 356.—CAN.

*Compare p. 395, case f i, post.*

PART III. SECT. 5, SUB-SECT. 2.

h i. ——— *Agreement to accept land in satisfaction of debt.*—*Held*: binding, though not in writing.—*FLEMING v. DUNCAN* (1870), 17 Gr. 76.—CAN.

h ii. ——— *Agreement to share commission.*—*Held*: Alberta Statutes, 1906 (c. 27), not applicable.—*HEATON v. FLATER* (1914), 27 W. L. R. 98; 16 D. L. R. 78; 8 Alta. L. R. 21.—CAN.

h iii. *S. P. KARRAR v. SCHUBERT* (1914), 29 W. L. R. 540; 7 W. W. R. 189; 8 Alta. L. R. 21; 19 D. L. R. 804.—CAN.

## Part IV.—The Statute of Frauds.

769. *Add. Annotation*:—*Refd.* Franco-British Ship Store Co. v. Compagnie des Chargeurs Francaise (1926), 42 T. L. R. 735.

772. *Add. Annotation*:—*Refd.* Monnickendam v. Leanse (1923), 39 T. L. R. 445.

775. *Add. Annotations*:—*Refd.* Newman v. Slade, [1926] 2 K. B. 328. *Mentd.* Brakspear v. Barton, [1924] 2 K. B. 88.

793. *Add. Annotation*:—*Expld.* Scott v. Pattison, [1923] 2 K. B. 723.

803. *Add. Annotation*:—*Mentd.* Hall v. I. R. Comrs. (1926), 135 L. T. 759.

810. *Add. Annotations*:—*As to* (3) *Consd.* *Re* A Bankruptcy Notice, [1924] 2 Ch. 76 *Refd.* Rawlinson v. Ames (1924), 69 Sol. Jo. 142.

819. *Add. Annotation*:—*As to* (1) *Refd.* Agricultural Wholesale Soc. v. Biddulph & District Agricultural Soc., [1925] Ch. 769.

840. *Add. Annotations*:—*Consd.* Jacobs v. Batavia & General Plantations Trust, [1924] 1 Ch. 287. *Refd.* Michael v. Phillips (1923), 130 L. T. 142.

841. *Add. Annotations*:—*Consd.* Jacobs v. Batavia & General Plantations Trust, [1924] 1 Ch. 287. *Refd.* Michael v. Phillips (1923), 130 L. T. 142.

844. *Add. Annotation*:—*Refd.* Michael v. Phillips (1923), 130 L. T. 142.

845. *Annotations*:—For "*Refd.* Heilbut, Symons v. Buckleton, [1913] A. C. 30," read "*Dbtd.* Heilbut, Symons v. Buckleton, [1913] A. C. 30."

*Add. Annotation*:—*Refd.* Collins v. Hopkins [1923] 2 K. B. 617.

845a. — Parol warranty to let for certain purposes.]—Pltf., in an action for damages for breach of warranty in connection with the letting to him of certain premises, alleged that as a basis of negotiations which culminated in an agreement in writing whereby defts. agreed to let & pltf. agreed to take the premises in question, defts. verbally warranted to let the premises for dancing purposes. Defts. had no power to let the premises for such purposes without the con-

sent of the superior landlord, & such consent was never in fact obtained. Pltf. took possession under the agreement & expended considerable sums in alterations, & now claimed to recover the amount of such expenses less the sums received by him during his possession of the premises. There was no fraudulent misrepresentation:—*Held*: pltf. had failed to establish the alleged parol agreement, & even if the evidence had established that before the contract was entered into pltf. had asked whether the premises could be let for dancing & had been answered in the affirmative, it would only have been evidence as to the subject-matter of the contract & could not control, vary, or add to the terms of the written contract.—CRAWFORD v. WHITE CITY RINK (NEWCASTLE-ON-TYNE), LTD. (1913), 29 T. L. R. 318; 57 Sol. Jo. 357; 77 J. P. Jo. 111.

*Implied warranties.*]—*See, generally,* LANDLORD & TENANT, Vol. XXXI., pp. 176-181.

859. *Add. Annotation*:—*Apld.* Farr, Smith v. Messers (1927), 44 T. L. R. 48.

859a. — What amounts to—Reconstitution of action.]—Defts. on Jan. 9, 1924, agreed to sell a quantity of wood to a partnership firm. The firm, being in financial difficulties, formed a limited co., & duly notified defts. On July 9 it was orally agreed that the new co. should give defts. a cheque & three bills in respect of the indebtedness of the old firm, & that defts. should supply to the new co. the goods sold under the contract of Jan. 9, & accept the new co. as buyers of the goods. The new co. subsequently gave to defts. the cheque & three bills, but defts. did not deliver the goods under the contract of Jan. 9 to the new co. The two partners in the old firm then brought an action against defts. for breach of the contract of Jan. 9. To that action defts. put in a defence signed by counsel in which they pleaded, in par. 3, that it had been agreed by the contract of July 9 that the new co. should give defts. on the following Monday a cheque &

## PART IV. SECT. 1, SUB-SECT. 5.—A.

770 i. *Partnership agreement.*]—A contract for a partnership to last longer than a year is within Stat. Frauds.—HOFFMAN v. COHEN (Man.) (1914), 27 W. L. R. 127.—CAN.

*sp. Agreement to be performed before fixed date—Fixed date more than one year from agreement—Effect of renewals.*]—In 1921 deft. promised to marry pltf. at a date not later than May, 1923. The promise was renewed from time to time up to May, 1922:—*Held*: the contract was one to be performed within a year, & a memorandum in writing to satisfy Stat. Frauds was unnecessary.—CYR v. DUFAULT (1923), 55 O. L. R. 90.—CAN.

## PART IV. SECT. 1, SUB-SECT. 5.—B. (a).

*st. Agreement for partnership—For indefinite period.*]—A written contract, which provides for the continuance of a partnership from its date until dissolved by mutual consent, unless previously determined by a

specified notice, is not an agreement that is not to be performed within the space of one year from the making within Instruments Act, 1915, s. 228.—GIBB v. SELL, [1922] V. L. R. 561; 28 Argus L. R. 305; 44 A. L. T. 1.—AUS.

## PART IV. SECT. 1, SUB-SECT. 5.—C.

806 ii. *S. P. DICKSON v. JACQUES* (1871), 31 U. C. R. 141.—CAN.

812 i. — *To commence on following day.*]—A contract to serve for one year, the service to commence on the day next after that on which the contract is made, is not a contract not to be performed within a year within Stat. Frauds, s. 4.—BELLER v. KLOTZ (Sask.), [1917] 1 W. W. R. 585.—CAN.

820 ii. — *—*]—A contract for service, under which deft. is to receive "\$700 a year, to be increased per year until it reaches \$1,000," is a contract not to be performed within a year within Stat. Frauds.—FAIRGRIEVE v. O'MULLIN (1896), 40 N. S. R. 215.—CAN.

823 ii.

*Share-milking agree-*

*ment—Commencement & termination not stated.*]—*Held*: the contract was one for services not to be performed within one year from the making thereof, & therefore came within the statute.—HALL v. GOLDSTONE, [1923] N. Z. L. R. 916.—N.Z.

## PART IV. SECT. 1, SUB-SECT. 7.

838 i. *Promise to pay debt of another—Subsequent credit given to guarantor as principal debtor—Not entire.*]—*Held*: as to goods supplied before the alleged promise, the promise was one to answer for the debt of another & under Stat. Frauds was unenforceable because of the absence of a memorandum in writing to support it; but as to goods supplied subsequently, although the account was continued in the buyer's name, it was established that the surety became the principal debtor & the goods were supplied on his account, & no memorandum in writing was required to enforce the claim.—BATEMAN & MATTHEWS v. SPENCER, [1923] 4 D. L. R. 170; 16 Sask. L. R. 474; [1923] 1 W. W. R. 1281.—CAN.



three drafts, & that debts. would supply to the new co. instead of to the old firm the goods sold under the contract of Jan. 9, & accept that co. as buyers of the goods. The pleadings were then amended & the action was reconstituted, the partners in the old firm being struck out & the new co. substituted as pltfs., & the cause of action was stated to be a breach of the agreement of July 9. Defts. then amended their defence & relied upon Sale of Goods Act, 1893 (c. 71), s. 4, as a defence to that amended action :—*Held* : (1) par. 3 of the original unamended defence which was signed by counsel constituted a sufficient note or memorandum in writing of the contract signed by an agent of the party to be charged to satisfy the above sect., inasmuch as (2) the new departure with regard to the parties & the cause of action when the action was reconstituted must be treated as the commencement of the action within the rule in *Lucas v. Dixon*, No. 859, *ante*.—*FARR, SMITH & Co. v. MESSERS, LTD.*, [1928] 1 K. B. 397; 97 L. J. K. B. 126; 138 L. T. 154; 44 T. L. R. 48; 72 Sol. Jo. 14; 33 Com. Cas. 101.

- 862.** *Add. Annotation* :—**Refd.** *Re A Bankruptcy Notice*, [1924] 2 Ch. 76.
- 888.** *Add. Annotation* :—**As to** (2) **Refd.** *Chillingworth v. Esche* (1923), 129 L. T. 808.
- 892.** *Add. Annotation* :—**Distd.** *McDonald v. Nash*, [1924] A. C. 625.
- 893.** *Add. Annotation* :—**Refd.** *McDonald v. Nash*, [1924] A. C. 625.
- 900.** *Add. Annotation* :—**Consd.** *Farr, Smith v. Messers* (1927), 44 T. L. R. 48.
- 900a.** ——.]—**FARR, SMITH & CO. v. MESSERS, LTD.**, No. 859a, *ante*.
- 900b.** **Contract rectified by court**—**On ground of mistake.**]—Where owing to a mistake common to both parties to a contract in writing it does not express the true bargain between the parties, the ct. in England has jurisdiction, since Jud. Act, 1873 (c. 66), to rectify the contract & to order specific performance

**PART IV. SECT. 2, SUB-SECT. 3.—A.**

**900a i. Contract rectified by court.]**  
—As against a defence of Stat. Frauds,  
the ct. has no power to reform a  
writing & then decree specific per-  
formance of it as reformed.—**SWEITZER**  
**v. GRANGER (1923), 54 O. L. R. 70.—**  
**CAN.**

**22. Order in Council.]—Held:** an Order in Council ought to be regarded as a sufficient expression in writing of an agreement to pay on the part of the Crown.—**LAMARRE & Co. v. R., [1923] Exch. C. R. 174.—CAN.**

**PART IV. SECT. 2, SUB-SECT. 3.—B.**

sb. Contract not absolutely recognised—Alleged variation of terms.]—Def't.'s agents in A., on Oct. 14, 1914, telegraphed to def't. in business in O., that they had sold to pl'tfs. a carload of apples for shipment on opening of navigation. On Oct. 16, def't. answered accepting. On that day the agents sent def't. a bought note, stating the terms of contract as in the telegram, with additions. On Oct. 20, def't. wrote to the agents: "I will return contract, as I find you have worded contract 'opening of navigation 1915.' I will not accept contract on these terms unless they will pay for the goods when packed":—*Held*: if the terms of the contract had not sufficiently appeared by the telegrams

& the bought note, the letter of Oct. 20 would have supplied a sufficient memorandum to satisfy Stat. Frauds, although it contained a repudiation of the contract.—**CAMPBELL v. MAHLER** (1919), 43 O. L. R. 395; 14 O. W. N. 348; *affd.*, 15 O. W. N. 339.—**CAN.**

**PART IV. SECT. 2, SUB-SECT. 3.—**  
**C. (a).**

923 i. *Letter referring to previous correspondence—Contract constructively assented to therein.*—Vendor's solr. wrote to purchaser's solr. : " B. informs me that he has agreed with R. for the sale to him of his holding in fee-simple for £10,000. Under these circumstances we think it would be possible to reasonably limit the title." The next day purchaser's solr., in acknowledging the letter, stated: " The simple agreement arrived at herein appears in the first part of your letter, & I suggest that we can dispense with any further agreement ":—*Held*: the latter letter constituted a note or memorandum sufficient to satisfy Stat. Frauds, although the writer had no intention to sign one.—CLONCURRY (LORD) v. LAFFAN, [1924] 1 I. R. 78.—IR.

**PART IV. SECT. 2, SUB-SECT. 3.—**  
**C (b).**

ii. — From purchaser to partner—  
Stating terms of purchase.]—In an

of it as rectified, although apart from the rectified contract there is no memorandum to satisfy Stat. Frauds.—U.S.A. v. MOTOR TRUCKS, LTD., [1924] A. C. 196; 93 L. J. P. C. 46; 130 L. T. 129; 39 T. L. R. 723, P. C.

914. *Add. Annotation* :—**Consd.** *Cohen v. Roche* (1926), 95 L. J. K. B. 945.
- 923a. **Agreement to remain in force so long as another agreement continued.**—Defts. agreed in writing to purchase from pl'tfs. all the stores that they required in the United Kingdom for their vessels, pl'tfs.' profits on the net price invoiced by the manufacturers to pl'tfs. to be discussed every six months, & the agreement was to remain in force as long as another agreement between a third co. & defts. continued. This other agreement had been previously made on the same day, but it was not signed till the following day, & it was to remain in force for ten years unless certain payments were sooner made. After observing the agreement with pl'tfs. for five months defts. repudiated it :—**Held** : the two agreements were sufficiently connected to enable the second to be read with the first, & Stat. Frauds did not prevent pl'tfs. from contending that the first agreement was to last for ten years.—**FRANCO-BRITISH SHIP STORE CO., LTD. v. COMPAGNIE DES CHARGEURS FRANCAISE** (1926), 42 T. L. R. 735.
924. *Add. Annotation* :—**Refd.** *Franco-British Ship Store Co. v. Compagnie des Chargeurs Francaise* (1926), 42 T. L. R. 735.
930. *Add. Annotation* :—**Refd.** *Cohen v. Roche* (1926), 95 L. J. K. B. 945.
933. *Add. Annotation* :—**Refd.** *Cohen v. Roche* (1926), 95 L. J. K. B. 945.
980. *Add. Annotation* :—**Consd.** *Cohen v. Roche* (1926), 95 L. J. K. B. 945.
983. *Add. Annotation* :—**As to (2) Refd.** *Chillingworth v. Esche* (1923), 129 L. T. 808.
995. *Add. Annotation* :—**Ap'd.** *Re Howden & Hyslop's Contract*, [1928] Ch. 479.

action against D., claiming damages for breach of contract to purchase bonds, a telegram from D. to his partner was produced saying, "I absolutely bought them yesterday after our phone conversation, they agreeing to our terms":—*Held*: parol evidence was properly received to show that terms had been stated by D., over his signature, that they were the only terms & were those referred to in the telegram, & the two constituted a sufficient memorandum within Stat. Frauds.—*DORAN v. MCKINNON* (1916), 53 S. C. R. 609.—CAN.

**PART IV. SECT. 2, SUB-SECT. 4.—**  
**A. (a).**

**971 i. General rule.**—A writing is not sufficient to make a contract of purchase of land comply with Stat. Frauds unless the parties to the contract are specified in the writing, either nominally or by description or reference, & in such a manner that there can be no fair or reasonable dispute as to their identity. A letter signed by a purchaser, addressed to persons who are the vendor's agents, but not mentioning the vendor, & there being nothing creating a contract binding upon the agents personally, is not sufficient to make a contract enforceable against purchaser under Stat. Frauds.—**MAHLER v. BARKER**, [1924] 3 D. L. R. 292; 2 W. W. R. 796; 34 B. C. R. 136.—**CAN.**

999. *Add. Annotations*:—As to (2) *Apld. Chillingworth v. Esche*, [1923] 1 Ch. 576. *Fold. Monnickendam v. Leanse* (1923), 39 T. L. R. 445. *Generally, Refd. Bernard v. Williams* (1928), 139 L. T. 22.
1002. *Add. Annotation*:—*Refd. Chillingworth v. Esche* (1923), 129 L. T. 808.
1017. *Add. Annotation*:—*Refd. Dominion Press v. Customs & Excise Minister*, [1928] A. C. 340.
- 1022a. —.]—On Nov. 21, 1918, pltf. paid deft. £10 & received the following receipt: "Received of Mr. A. £10 on account of house being sold for £500 from Mr. N. Possession to be taken in six weeks after date." Pltf. proved that on Nov. 21, 1918, before signing the receipt deft. verbally agreed to sell him his house & residence, N. Lodge, for £500 with possession in six weeks, & that the £10 was paid as a deposit on account of the purchase-money:—*Held*: the receipt was a sufficient memorandum of the verbal contract.—*AUERBACH v. NELSON*, [1919] 2 Ch. 383; 88 L. J. Ch. 493; 122 L. T. 90; 35 T. L. R. 655; 63 Sol. Jo. 683.
- 1027a. —.]—*HOWARD v. OKEOVER* (1778), 3 Swan. 482; 36 E. R. 933.
1031. *Add. Annotation*:—*Refd. Koskas v. Standard Marine Insce.* (1927), 137 L. T. 165.
1032. *Add. Citations*:—92 L. J. Ch. 598; 129 L. T. 659; 39 T. L. R. 576; 67 Sol. Jo. 638, C. A.
1059. *Add. Annotation*:—*Refd. Chillingworth v. Esche* (1923), 92 L. J. Ch. 461.
1063. *Add. Annotation*:—*Refd. Rye v. Purcell*, [1926] 1 K. B. 446.
1068. *Add. Annotation*:—*Refd. Rawlinson v. Ames* (1924), 69 Sol. Jo. 142.
1074. *Add. Annotation*:—*Refd. Cohen v. Roche* (1926), 95 L. J. K. B. 945.
1077. *Add. Annotations*:—*Refd. Cohen v. Roche* (1926), 95 L. J. K. B. 945; *Behnke v. Bede Shipping Co.*, [1927] 1 K. B. 649.
1078. *Add. Annotation*:—As to (1) *Refd. Koenigsblatt v. Sweet*, [1923] 2 Ch. 314.
1087. *Add. Annotations*:—*Refd. Cohen v. Roche* (1926), 95 L. J. K. B. 945; *Behnke v. Bede Shipping Co.*, [1927] 1 K. B. 649.
1089. *Add. Annotation*:—*Refd. Cohen v. Roche* (1926), 95 L. J. K. B. 945.
1092. *Add. Annotation*:—*Refd. Cohen v. Roche* (1926), 95 L. J. K. B. 945.
1104. *Add. Annotation*:—*Refd. Chaney v. Maclow* (1928), 97 L. J. Ch. 349.
1107. After this case add "See, also, No. 1123a, *post*."
1109. *Add. Annotation*:—*Refd. Koenigsblatt v. Sweet*, [1923] 2 Ch. 314.
1119. *Add. Annotations*:—*Refd. Chillingworth v. Esche*, [1923] 1 Ch. 576; *Monnickendam v. Leanse* (1923), 39 T. L. R. 445.
1121. *Add. Annotation*:—*Refd. Cohen v. Roche* (1926), 95 L. J. K. B. 945.
- 1123a. — Purporting to enclose engrossment—Coupled with engrossment.]—Circumstances (see LANDLORD & TENANT, No. 396a, *post*) in which:—*Held*: there was a sufficient memorandum of an oral contract.—*HORNER v. WALKER*, [1923] 2 Ch. 218; 92 L. J. Ch. 573; 129 L. T. 782.
1125. *Add. Annotation*:—*Consd. Cohen v. Roche* (1926), 95 L. J. K. B. 945.
1170. *Add. Annotation*:—*Apld. Koenigsblatt v. Sweet*, [1923] 2 Ch. 314.
1172. *Add. Annotation*:—*Refd. Farr, Smith v. Messers*, [1928] 1 K. B. 397.
1174. *Add. Annotation*:—*Mentd. Jacobs v. Batavia & General Plantations Trust*, [1924] 1 Ch. 287.
1176. *Add. Annotations*:—As to (1) *Consd. Re A Bankruptcy Notice*, [1924] 2 Ch. 76. As to (2) *Refd. Rawlinson v. Ames* (1924), 69 Sol. Jo. 142. *Generally, Refd. Houghton v. Northard, Lowe & Wills* (1927), 44 T. L. R. 76.
- 1178a. — — —.]—In cases under Stat. Frauds the general principle has been, not that the legislature has avoided contracts which are not made in accordance with the forms prescribed in the Act, but merely that those contracts shall only be proved in that particular way. In every single case under Stat. Frauds, except in the case of contracts relating to an interest in land, it has been held authoritatively that part performance of a contract which is within the terms of the Act is not sufficient to preclude the party who has made the part performance, or who has received a part performance, from taking advantage of the Act (*ATKIN, L.J.*).—*Re A BANKRUPTCY NOTICE*, [1924] 2 Ch. 76; 93 L. J. Ch. 497; 131 L. T. 307; 68 Sol. Jo. 458; [1924] B. & C. R. 188, C. A.
- Annotation*:—*Refd. Huddersfield Fine Worsteds v. Todd* (1925), 134 L. T. 82.
- 1184a. *S. P. CROYSTON v. BANES* (1702), Prec. Ch. 208; 24 E. R. 102.
- Annotation*:—*Consd. Rondeau v. Wyatt* (1792), 2 Hy. Bl. 63.
1185. *Add. Citations*:—*sub nom. CHILD v. COMBER*, 3 Swan. 423, n.

## PART IV. SECT. 2, SUB-SECT. 4.—B. (b).

1027 ii. — *Admission of existence of contract*.]—Vendor's solr. wrote to purchaser's solr.: "B. informs me that he has agreed with R. for the sale to him of his holding in fee-simple for £10,000. Under these circumstances we think it would be possible to reasonably limit the title." The next day purchaser's solr. in acknowledging the letter, stated: "The simple agreement arrived at herein appears in the first part of your letter, & I suggest that we can dispense with any further agreement":—*Held*: this letter constituted a note or memorandum signed by purchaser's agent sufficient to satisfy Stat. Frauds, although he had not been specifically authorised to sign such a memorandum, & in writing the letter had no intention to sign one.

—*CLONCURRY (LORD) v. LAFFAN*, [1924] 1 L. R. 78.—IR.

## PART IV. SECT. 2, SUB-SECT. 4.—B. (d).

q. Read now "1034 i."

1034 ii. — *Share-milking agreement*.]—*Held*: an incomplete memorandum of the terms of the contract, & the result was the same as if there were no memorandum at all.—*HALL v. GOLDSTONE*, [1923] N. Z. L. R. 916.—N.Z.

1035 ii. — *Share-milking agreement*.]—*HALL v. GOLDSTONE*, No. 1034 ii., *ante*.—N.Z.

## PART IV. SECT. 2, SUB-SECT. 5.—A.

1062 i. — *Parol acceptance of written offer*.]—Subsequent oral recognition of a memorandum previously

signed, as containing all the terms of the contract, is a sufficient compliance with Stat. Frauds.—*FRIEDMAN v. MAYER* (1913), 25 W. L. R. 551; 5 W. W. R. 168; 14 D. L. R. 154; 7 Alta. L. R. 60.—CAN.

so. *Sale & resale*.—*No signature by sub-purchaser*.]—*Held*: where Stat. Frauds applied liability could only be established by an acknowledgment in writing.—*WORDINGTON v. BUSH*, [1923] 3 D. L. R. 884; 32 B. C. R. 434.—CAN.

## PART IV. SECT. 2, SUB-SECT. 6.—A.

1144 ii. — —.]—Parol evidence received to show that terms had been stated by a purchaser over his signature & were those referred to in a telegram from him to his partner.—*DORAN v. MCKINNON* (1916), 53 S. C. R. CAN.

1186a. —HOSIER v. READ (1724), 9 Mod. Rep. 86; 88 E. R. 332.

1218a. — Refusal to pay for instalments until whole work published.]—A purchaser contracted to purchase a series of engravings from plts., the publishers, by signing a circular to the following effect: 'Please enter my name as a subscriber for 'The Cries of London,' to be sent to me as published, the price of each of the thirteen plates, £10 10s.' After plts. had delivered the first four plates of the series, they called on deft. to pay for them, but he refused to do so till the entire set was published & delivered:—*Held*: the words "to be sent to me as published" made it clear that the contract was an instalment contract, & not an indivisible contract for the entire set, & the fact that the price of each plate was stated to be ten guineas, while there was no mention of the price of the whole set, showed that each instalment was to be paid for separately.—

HOWELL v. EVANS (1926), 134 L. T. 570; 42 T. L. R. 310, D. C.

1214. *Add. Citations*:—[1923] 2 K. B. 723; 92 L. J. K. B. 886; 129 L. T. 830.

1217a. —.]—ANON (*circa* 1678), 1 Eq. Cas. Abr. 20, pl. 5, L. C.

1234a. —.]—Stat. Frauds not pleadable where the agreement is executed in part.—AYLESFORD'S (EARL) CASE (1727), 2 Stra. 783; 93 E. R. 845.

*Annotation*:—*Consd.* Whitechurch v. Bevis (1789), 2 Bro. C. C. 559.

1235. *Add. Annotation*:—*Consd.* Rawlinson v. Ames, [1925] Ch. 96.

1245. *Add. Annotation*:—*Refd.* Rye v. Purcell, [1926] 1 K. B. 446.

1247. *Add. Annotation*:—*Refd.* Rawlinson v. Ames (1924), 69 Sol. Jo. 142.

1248a. —.]—*Re* A BANKRUPTCY NOTICE, No. 1178a, *ante*.

1269. *Add. Annotation*:—*Refd.* Hoystead v. Taxation Comr., [1926] A. C. 155.

## Part V.—Consideration.

1274. *Add. Annotation*:—*Refd.* Jones v. Waring & Gillow, [1926] A. C. 670.

1285a. — Promise to pay debt for which promisor not liable—Agreement void.]—BREALEY v. ANDREW (1837), 7 Ad. & El. 108; 2 Nev. & P. K. B. 114; Will. Woll. & Dav. 481; 6 L. J. K. B. 199; 1 Jur. 526; 112 E. R. 411.

1285b. Promise to employ person—No obligation on promisee to act.]—*Held*: there was no consideration for the agreement.—PAYNE v. NEW SOUTH WALES COAL & INTER-COLONIAL STEAM NAVIGATION CO. (1854), 10 Exch. 283; 24 L. J. Ex. 117; 156 E. R. 450.

*Annotation*:—*Refd.* Kelner v. Baxter (1866), L. R. 2 C. P. 174.

### PART IV. SECT. 3, SUB-SECT. 3.—A.

1195 ii. —.]—A common law action for a balance of the purchase money of land sold under a verbal agreement cannot be maintained, although the deed has been delivered.—MCMILLAN v. WILLIAMS (1894), 9 Man. L. R. 627.—CAN.

### PART IV. SECT. 3, SUB-SECT. 3.—B. (a).

1200 ii. —.]—An item in an account stated, being a sum charged for the price of a lot of land, does not make it incumbent on plft. to prove the agreement respecting such land to have been made in writing.—DALTON v. BORTS (1826), Tay. 281.—CAN.

### PART IV. SECT. 3, SUB-SECT. 3.—B. (d).

11. — Agreement to work in consideration of employer promising to devise realty—Liability for services rendered.]—*Held*: the employee was entitled to compensation on a quantum meruit for work performed & services rendered for deceased employer.—*Re* MESTON, MESTON v. GRAY (SASK.), [1925] 4 D. L. R. 887; [1925] 3 W. W. R. 656.—CAN.

*Compare* p. 391, case c ii, *ante*.

### PART IV. SECT. 3, SUB-SECT. 4.—A.

1217 i. *General rule*.]—Stat. Frauds & Mineral Act, B. C., s. 19, will not be allowed to be made instruments of fraud.—ROBERTS v. ROBERTS, [1923] 2 W. W. R. 137.—CAN.

### PART IV. SECT. 3, SUB-SECT. 4.—B. (a).

1237 viii. —.]—The act of part performance relied on must be unequivocally referable to the agree-

ment alleged.—TILLEY v. CLEARY & HENDERSON (1887), 7 Nfld. L. R. 209.—NFLD.

1237 ix. —.]—In order to enforce specific performance of an oral contract, whereby deceased promised to devise land to another in consideration of the latter working for deceased until the latter's death, the acts relied on as part performance excluding Stat. Frauds must be unequivocally referable to the contract asserted.

The fact that a son left his employment & lived & worked on his father's farm for ten years without drawing wages:—*Held*: not to point unmistakably to a contract by the father to leave his property to the son, & the alleged contract, not being evidenced by writing, was not enforceable.—*Re* MESTON, MESTON v. GRAY (SASK.), [1925] 4 D. L. R. 887; [1925] 3 W. W. R. 656.—CAN.

1237 x. —.]—A mother undertook verbally to make a will leaving to her son W. two farms in D., & thereby induced W. to convey his farm in B. to A. & to pay A. £200. She afterwards made a will which gave effect to this verbal undertaking, but subsequently revoked it, leaving W. merely a life interest in the two farms:—*Held*: there was a sufficient act of part performance by W. to take the case out of the operation of Stat. Frauds.—LOWRY v. REID, [1927] N. 142.—IR.

### PART IV. SECT. 4.

1258 i. *Since Judicature Acts—Necessity for pleading statute*.]—In an action claiming damages for conversion of goods, if it appears that the title to the goods is based on a contract, deft. may urge that such contract is void

under Stat. Frauds, though no such defence is pleaded. It is only where the action is between the parties to the contract, which one of them seeks to enforce against the other, that deft. must plead Stat. Frauds if he wishes to avail himself of it.—KENT v. ELLIS (1900), 31 S. C. R. 110; 32 N. S. R. 549.—CAN.

1258 ii. —.]—The defence of Stat. Frauds cannot be raised, unless it has been pleaded.—DOMINION MEAT CO. v. JAMESON (1917), 12 Alta. L. R. 353.—CAN.

### PART V. SECT. 1.

1274 iv. —.]—A good cause of action can be founded on a promise made seriously & deliberately & with the intention that a lawful obligation should be established.—CONRADIE v. ROUSSOUW, [1919] App. D. 279.—S. AF.

### PART V. SECT. 3, SUB-SECT. 2.—A.

sd. *Promise to allow offer of option to promisor*.]—A promise to allow a third party to offer the promisor an option on shares does not constitute a valuable consideration.—GIBSON v. McVEIGH (No. 1), [1922] 1 W. W. R. 151.—CAN.

### PART V. SECT. 3, SUB-SECT. 2.—B. (a).

sd. *Abandonment of claim*.]—Where any question arising between the parties on a previous verbal agreement had been compromised, & the compromise embodied in a written agreement: *Held*: sufficient consideration for the compromise was an abandonment of a claim by each party.—BILODEAU v. McLEAN, [1924] 3 D. L. R. 410; 2 W. W. R. 631; 34 Man. L. R. 239.—CAN.



1299. *Add. Annotation* :—*Reid. McDonald v. Nash*, [1924] A. C. 625.

1350. *Add. Annotations* :—*Reid. Ellesmere v. Wallace* (1928), 44 T. L. R. 798; *Kennedy v. Thomassen* (1928), 45 T. L. R. 122; *Weddle, Beck v. Hackett* (1928), 45 T. L. R. 67.

1352. *Add. Annotation* :—*Reid. Crediton Gas Co. v. Crediton U. C.*, [1928] Ch. 447.

1383. *Add. Annotation* :—*Reid. Cohen v. Sellar*, [1926] 1 K. B. 536.

1388. *Add. Annotation* :—*Mentd. Sweet v. Williams* (1922), 128 L. T. 379.

1421a. — By agent of joint owner of chattel to co-owner—Part of proceeds of sale of chattel.]—*Held* : sufficient consideration for a promise to deliver to the agent a bill of exchange or the equivalent amount in cash.—*SURTEES v. LISTER* (1861), 7 H. & N. 1; 30 L. J. Ex. 369; 158 E. R. 367.

*Annotation* :—*Mentd. Miles v. New Zealand Alford Estate Co.* (1886), 32 Ch. D. 266.

1432a. *Agreement to grant annuity.*—A mutual agreement by several to grant an annuity to a third party may be a consideration sufficient to support the grant.—*BENTLEY v. MACKAY* (1862), 31 Beav. 143; 31 L. J. Ch. 697; 6 L. T. 632; 8 Jur. N. S. 857; 10 W. R. 593; 54 E. R. 1092; *affd.*, 4 De G. F. & J. 279, L. J.J.

1459a. —.]—S., a customer of bkpt., a stock-broker, became indebted to him in respect of Stock Exchange transactions in a sum for which bkpt., on Dec. 18, 1923, recovered judgment. Later, S. became similarly indebted to bkpt. in a further sum. On Jan. 15, 1924, bkpt. assigned both debts to W. to secure £500, & covenanted with him that, in the event of his refraining from giving notice of the assignment to S., he, bkpt., would, on payment of the debts or any part thereof, hand the cheque or other form of payment to W. In Mar. 1924, J., who acted as solr. for both bkpt. & W. in the matter of the assignment, on the instructions of both & without disclosing same, made an agreement with S. for the liquidation of the two debts, whereby S. undertook to pay the aggregate amount thereof by monthly instalments, the first instalments being allocated to the payment of the later of the two debts & the subsequent ones to the payment of the judgment debt; & S. further agreed to deliver promissory notes payable to bkpt. or order to cover the instalments allocated to the later debt. J. received the notes from S. &

as agent of W., collected the amounts as they fell due on the notes & paid part thereof to W. & retained the balance. After payment J. returned the notes to S. to be cancelled :—*Held* : the forbearance of W. on the strength of the deposit of the notes to sue & his acceptance of the instalments constituted sufficient consideration for the deposit of the notes.—*Re WETHERED, Ex p. SALAMAN*, [1926] Ch. 167; 70 Sol. Jo. 324; *sub nom. Re WETHERED, Ex p. SALAMAN'S TRUSTEE, TRUSTEE v. BANCE*, 95 L. J. Ch. 127; 134 L. T. 264; [1925] B. & C. R. 265.

1460. *Add. Annotation* :—*Consd. Burrell v. Leven* (1926), 42 T. L. R. 407.

1462. *Add. Annotation* :—*Reid. Hyde v. Tyler* (1926), 42 T. L. R. 442.

1475. *Add. Annotation* :—*Consd. Allen v. Royal Bank of Canada* (1925), 41 T. L. R. 625.

1525. *Add. Annotation* :—*Reid. Burrell v. Leven* (1926), 42 T. L. R. 407.

1527. *Add. Annotations* :—*Reid. Burrell v. Leven* (1926), 42 T. L. R. 407; *Richardson v. Moncrieffe* (1926), 43 T. L. R. 32; *Mentd. Greenhalgh v. Union Bank of Manchester*, [1924] 2 K. B. 153.

1542. *Add. Annotation* :—*Reid. Burrell v. Leven* (1926), 42 T. L. R. 407.

1550. *Add. Annotation* :—*Reid. Hardie & Lane v. Chilton*, [1928] 2 K. B. 306.

1565. *Add. Annotation* :—*Mentd. Re A Bankruptcy Notice*, [1924] 2 Ch. 76.

1578. *Add. Annotation* :—*Consd. Hyde v. Tyler* (1926), 42 T. L. R. 442.

1590. *Add. Annotation* :—*Reid. Hall v. I. R. Comrs.* (1926), 135 L. T. 759.

1594. *Add. Annotation* :—*Mentd. Lewis v. McKay, Algate v. Vugler, Clark v. Potter* (1924), 93 L. J. K. B. 840.

1630. *Add. Annotation* :—*Consd. Rose & Frank Co. v. Crompton*, [1923] 2 K. B. 261.

1641. *Add. Annotation* :—*Consd. Brandt v. Liverpool, Brazil & River Plate Steam Navigation Co.*, [1924] 1 K. B. 575.

1659. For “ (1549) ” read “ (1850). ”

1662. *Add. Annotations* :—*Reid. The Lord Strathcona*, [1925] P. 143. *Mentd. Palmolive Co. (of England) v. Freedman* (1927), 44 T. L. R. 86.

1701. *Add. Annotation* :—*Reid. Re Wethered, Ex p. Salaman*, [1926] Ch. 167.

1702. *Add. Annotation* :—*Mentd. Re Lloyd's Furniture Palace, Evans v. Lloyd's Furniture Palace*, [1925] Ch. 853.

PART V. SECT. 3, SUB-SECT. 3.—A. 1445 iii. —.]—*MOBERLY v. BAINES & SHORTIS* (1857), 15 U. C. R. 25.—CAN.

PART V. SECT. 3, SUB-SECT. 3.—B. (a).

1453 iii. —.]—Where a creditor grants an extension of time for payment of a past due debt & at the same time obtains from debtor security for the debt, the proper inference to be drawn, in the absence of evidence to the contrary, is that the extension was granted as a result of the creditor's obtaining the security.—*O'BRIEN v. STEBBINS & MULLEN*, [1927] 3 D. L. R. 274; [1927] 2 W. W. R. 176; 21 Sask. L. R. 478.—CAN.

PART V. SECT. 4.

a i. —.]—Inadequate con-

sideration alone is not sufficient to justify setting aside a settlement, the inadequacy not being so gross as to prove fraud or imposition.—*GISSING v. EATON (T.) CO.* (1911), 20 O. W. R. 324; 3 O. W. N. 219; 25 O. L. R. 50.—CAN.

1653 i. *Whether consideration adequate.*—*GREENHAM v. WATT* (1866), 25 U. C. R. 365.—CAN.

PART V. SECT. 5.

sk. *Third party to be allowed to offer option.*—M. gave G. an option on shares owned by M. in a co.; the consideration expressed in the option was G.'s agreement “ to make a similar proposition ” to another shareholder :—*Held* : the alleged consideration was in effect a mere promise by G. to let such other shareholder give him an option similar to that given by M., & such

promise did not constitute a valuable consideration.—*GIBSON v. McVEIGH* (No. 1), [1922] 1 W. W. R. 151.—CAN.

PART V. SECT. 6, SUB-SECT. 2.—A.

1689 i. *Promise to perform existing agreement.*—Pltf. agreed to build a house for deft. for \$6,464. When the house was nearly finished a fire took place in it, doing considerable damage. Deft. had insured the building & received \$2,150 from the insurers. Pltfs. effected no insurance. After the fire, deft. asked pltfs. to go on with & complete the work, & gave them to understand that she would pay over the \$2,150 to them :—*Held* : pltfs. were bound to complete the work, & the promise, if there was one, to pay for the work which it was their duty to do, was not binding for want of consideration.—*SMITH v. DAWSON* (1923), 53 O. L. R. 615.—CAN.

- 1740a. —.]—Promise by a father to his son-in-law after the marriage raises a consideration.—**MARSH v. KAVENFORD** (1587), Cro. Eliz. 59; 78 E. R. 319; *sub nom.* **MARSH & RAINSFORD'S CASE**, 2 Leon. 111.
- Annotations*:—**Consd.** **Townsend v. Hunt** (1635), Cro. Car. 408. **Refd.** **Riggs v. Bullingham** (1599), Cro. Eliz. 715; **A.-G. v. Royal College of Physicians** (1861), 30 L. J. Ch. 757.
1741. *Add. Annotation*:—**Mentd.** **Venn v. Tedesco**, [1926] 2 K. B. 227.
- 1817 *Add. Annotation*:—**Refd.** **Hyman v. Hyman**, **Hughes v. Hughes** (1928), 139 L. T. 416.
- 1822a. —.]—**R. v. LOPEN (INHABITANTS)** (1788), 2 Term Rep. 577; 100 E. R. 310.
- 1828a. —.]—**GARBREY v. BROWN** (1588), Gouldsb. 94; 75 E. R. 1018; *sub nom.* **BROWNE v. GARBOROUGH**, Cro. Eliz. 63.
1837. *Add. Annotation*:—**Refd.** **Cohen v. Sellar**, [1926] 1 K. B. 536.
1838. *Add. Annotation*:—**Refd.** **Cohen v. Sellar**, [1926] 1 K. B. 536.
1839. *Add. Annotations*:—**Mentd.** **The Empress** (1922), 92 L. J. P. 42; **Ellis' Trustee v. Dixon-Johnson**, [1924] 2 Ch. 451; **Pratt v. Patrick**, [1924] 1 K. B. 488.
1871. *Add. Annotations*:—**Refd.** **Kreditbank Cassel G. m. b. H. v. Schenkers**, [1926] 2 K. B. 450; **Houghton v. Nothard, Lowe & Wills**, [1927] 1 K. B. 246. **Mentd.** **Underwood v. Bank of Liverpool & Martins**, **Underwood v. Barclays Bank**, [1924] 1 K. B. 775.
1876. *Add. Annotation*:—**Refd.** **Home & Colonial Insee. v. London Guarantee & Accident Co.** (1928), 45 T. L. R. 134.
1877. *Add. Annotation*:—**Consd.** **Rowland v. Divall**, [1923] 2 K. B. 500.
1878. *Add. Annotation*:—**Consd.** **Rowland v. Divall**, [1923] 2 K. B. 500.
- 1887a. *Add. Citations*:—[1923] 2 Ch. 452; 92 L. J. K. B. 944; 129 L. T. 624; 67 Sol. Jo. 656.
1888. *Add. Annotation*:—**Refd.** **Re Jason** (1928), 97 L. J. Ch. 321.
1905. *Add. Annotations*:—**Consd.** **Chillingworth v. Esche**, [1923] 1 Ch. 576. **Refd.** **Monnicken-dam v. Leanse** (1923), 39 T. L. R. 445; **Bernard v. Williams** (1928), 139 L. T. 22.
- 1914a. **S. P. ANON** (1538), Bro. N. C. 16; 73 E. R. 853.

## Part VI.—Void and Illegal Contracts.

1938. *Add. Annotations*:—**Generally**, **Refd.** **Sorrell v. Smith**, [1925] A. C. 700. **Mentd.** **Brimelow v. Casson**, [1924] 1 Ch. 302; **Reynolds v. Shipping Federation**, [1924] 1 Ch. 28; **Thompson v. British Medical Assocn. (New South Wales Branch)**, [1924] A. C. 764; **British Oxygen Co. v. Liquid Air**, [1925] Ch. 385.
1961. *Add. Annotation*:—**Refd.** **Cohen v. Roche** (1926), 95 L. J. K. B. 945.
1967. *Add. Annotation*:—**Refd.** **Dominion Press v. Customs & Excise Minister**, [1928] A. C. 340.
1971. *Add. Annotation*:—**Refd.** **James v. British General Insce.**, [1927] 2 K. B. 311.
1973. *Add. Annotations*:—**As to** (1) **Appld.** **Palmolive Co. (of England) v. Freedman** (1927), 44 T. L. R. 86. **As to** (3) **Refd.** **English Hop Growers v. Dering**, [1928] 2 K. B. 174.
1981. *Add. Annotations*:—**As to** (1) **Consd.** **James v. British General Insce.**, [1927] 2 K. B. 311. **Generally**, **Mentd.** **Re Engelbach's Estate**, **Tibbetts v. Engelbach**, [1924] 2 Ch. 348; **Royal Exchange Assee. v. Hope**, [1928] Ch. 179.
1984. *Add. Annotations*:—**Refd.** **Burrell v. Leven** (1926), 42 T. L. R. 407; **Richardson v. Moncrieffe** (1926), 43 T. L. R. 32. **Mentd.** **Greenhalgh v. Union Bank of Manchester**, [1924] 2 K. B. 153.
1986. *Add. Annotation*:—**Refd.** **Employers' Liability Assee. v. Sedgwick Collins** (1926), 95 L. J. K. B. 1015.
1992. *Add. Annotation*:—**As to** (3) **Refd.** **English Hop Growers v. Dering**, [1928] 2 K. B. 174.
- 2011a. — **Knighthood**.]—If a contract which is illegal as being contrary to public policy has

### PART V. SECT. 12, SUB-SECT. 1.

1867i. *Non-performance of condition*.]—A condition in a special timber licence under Land Act (B. C.), 1908, that no Chinese or Japanese should be employed in connection therewith is a part of the consideration, & the observance thereof is a condition precedent to the renewal of the licence.—**A.-G. FOR BRITISH COLUMBIA v. BROOKS, BIDLAKE & Co.**, [1922] 3 W. W. R. 9; 63 S. C. R. 466.—CAN.

sl. *Correspondence course in law—Not a qualification for practice*.]—A. signed a contract to receive a correspondence course in law. In Canada this is not sufficient to qualify a person to practice in the law. In an action for the fees agreed to be paid:—**Held**: this insufficiency did not amount to a failure of consideration.—**RULE v. BRADNER**, [1923] 4 D. L. R. 81.—CAN.

sm. *Alteration to building—Removed under bye-law*.]—An alteration made to a building proved to be in violation of a bye-law & had to be removed. The owners set up a defence to an action for payment for such alteration

that there had been a failure of consideration:—**Held**: the owner was bound to pay.—**ORPHEUM THEATRICAL Co. v. VULCAN ENGINEERING CONSTRUCTION Co.**, [1923] 3 D. L. R. 52.—CAN.

### PART V. SECT. 12, SUB-SECT. 2.

sp. *Option-contract—Non-completion*.]—**GOULDING v. RABINOVITCH**, [1927] 3 D. L. R. 820; 60 O. L. R. 607.—CAN.

### PART V. SECT. 12, SUB-SECT. 3.—A.

1888 ii. —.]—**BUTTERFIELD v. CORMACK & MACKIE** (1913), 25 W. L. R. 457; 13 D. L. R. 817; 7 Alta. L. R. 26.—CAN.

### PART VI. SECT. 2.

o'1. **S. P. KANWAR BHAN-SUKHA NAND v. GANPAT RAI-RAM JIWAN** (1926), 1 L. R. 7 Lah. 442.—IND.

### PART VI. SECT. 3.

FOR **BRITISH COLUMBIA v. BROOKS, BIDLAKE & Co.**, [1922] 3 W. W. R. 9; 63 S. C. R. 466; 60 D. L. R. 475.—CAN.

### PART VI. SECT. 4, SUB-SECT. 1.—A.

st. *Manufacture of goods with false description*.]—Pltf. co.'s salesman purported to enter into contracts for the sale to deft. of quantities of "All British" motor tyres & tubes. The goods would be manufactured in Melbourne, but each contract stipulated that the words "English Manufacture" should be branded upon them, & deft. intended to sell the goods, relying upon the brand to imply that they had been manufactured in England:—**Held**: at common law the proposed brand would be a fraud on the public, & the maxim *ex turpi causa non oritur actio* applied.—**BARNET GLASS RUBBER Co., LTD. v. McDONALD**, [1922] N. Z. L. R. 767; Gaz. L. R. 213.—N.Z.

### PART VI. SECT. 4, SUB-SECT. 2.—A.

1977 iv. —.]—A contract will not be declared unenforceable as being against public policy, unless it belongs to a class of contracts that the law recognises as being within that category. The ct. cannot invent a new head of public policy.—**WADGERY v. FALL (Sask.)**, [1926] 4 D. L. R. 333; [1926] 2 W. W. R. 657.—CAN.

any element of turpitude in it the parties to the contract are *in pari delicto*, & if one of the parties to the contract has been defrauded, no action for damages can be maintained by the party defrauded, even though the contract is not of a criminal nature.

The secretary of a charity fraudulently represented to P. that he or the charity was in a position to undertake that P. would receive a knighthood if P. made a large donation to the funds of the charity, & undertook that the title would be conferred if the donation was made. P., relying upon those representations & in the belief that the secretary was authorised by the charity to give the undertaking, made a large donation to the funds of the charity. As P. did not receive the knighthood he brought an action against the charity & its secretary to recover back the money he had paid as money had & received or as damages for deceit or breach of contract:—*Held*: a contract for the purchase of a title, however the money is to be expended, is an improper & illegal contract, as being against public policy, & as P. knew that he was entering into an improper & illegal contract he could not recover back the money he had paid from the charity as money had & received, nor recover damages from the charity or its secretary, nor claim to repudiate the contract as being still executory & recover back the money paid.—*PARKINSON v. COLLEGE OF AMBULANCE, LTD. & HARRISON*, [1925] 2 K. B. 1; 93 L. J. K. B. 1066; 133 L. T. 135; 40 T. L. R. 886; 69 Sol. Jo. 107.

(h) *Agreements Relating to Bankruptcy* (Vol. XII., p. 248).

To the existing cross-references add as follows:—

**Agreement for withdrawal of petition.]—**  
*See* BANKRUPTCY, No. 1366a, *ante*.

**Agreement for improper distribution of estate.]—***See* BANKRUPTCY, No. 4366a, *ante*.

**Agreements not to oppose discharge.]—**  
*See* BANKRUPTCY, Vol. IV., pp. 546, 547.

**Agreements for payment of debts barred by discharge.]—***See* BANKRUPTCY, Vol. IV., pp. 589–592.

**PART VI. SECT. 4, SUB-SECT. 2.—**  
B. (f) iii.

*sz. Assignment of money due under mail-contract.]—*A mail-contract prohibited the assignment of moneys due thereunder without the consent of the Postmaster-General:—*Held*: such an assignment was not void as contrary to public policy, on the analogy of assignments of salaries of public servants.—*HODDER & TOLLEY, LTD. v. CORNES*, [1923] N. Z. L. R. 876.—N.Z.

**PART VI. SECT. 4, SUB-SECT. 2.—**  
B. (t).

2086 iii. —.]—Deft. employed pltf., a land agent & member of municipal council, to sell his land to the Closer Settlement Board under Discharged Soldiers Settlement Acts. Pltf. submitted the land to the Board, but before the sale he had resigned his position on the council. Under the above Acts pltf., as a member of the council, could be called upon to advise the Board in connection with purchase of land within the municipality. In an action by pltf. to recover from deft. commission on the sale:—*Held*: the private interest of pltf. under his agreement with deft. had a tendency to interfere with the

proper discharge by pltf. of his public duty, & the agreement was illegal & void as being against public policy.—*WOOD v. LITTLE*, [1922] V. L. R. 11; 29 C. L. R. 564; 27 Argus L. R. 400.—AUS.

2086 iv. —.]—*Held*: a contract by which pltf. was to use his supposed influence with members of the Govt. for obtaining contracts in return for a commission was contrary to public policy & void.—*CARR-HARRIS v. CANADIAN GENERAL ELECTRIC CO.* (1920), 48 O. L. R. 231; 55 D. L. R. 506; 19 O. W. N. 591.—CAN.

2086 v. —.]—Where a contract to pay a commission on the sale of property to a provincial Govt. is entered into on the understanding that the agent is a person having influence with the employees of the Govt. & that he will exercise such influence to bring about the sale:—*Held*: the contract is illegal.—*MACMILLAN v. MOONEY*, [1924] 4 D. L. R. 762; 3 W. W. R. 458.—CAN.

*sz. Agreement between soldier & vendor of land to Soldier Settlement Board for payment to vendor by soldier of additional sum.]—Held*: not unenforceable as being against public policy.—*WADGERY v. FALL* (Sask.),

**Agreements for procuring assent of creditors to composition deeds.]—***See* BANKRUPTCY, Vol. V., pp. 1120, 1139–1145.

2028. *Add. Annotation*:—*Reid. Re Lanyon, Lanyon v. Lanyon*, [1927] 2 Ch. 264.

2084a. — Marine insurance—Not expressed in sea policy.]—No contract for sea insurance is valid unless it is expressed in a sea policy. The contract in this case was a contract for sea insurance &, not being expressed in a policy, was unenforceable.

The expression of an agreement for sea insurance otherwise than in a policy is a thing forbidden in the public interest (LORD SUMNER).—*NAGOREMULL v. TRITON INSURANCE CO., LTD.* (1924), 41 T. L. R. 168, P. C.

2089. *Add. Citation*:—15 Asp. M. L. C. 566.

*Add. Annotations*:—*Distd. Pinnock v. Lewis & Peat*, [1923] 1 K. B. 690. *Mentd. The Christel Vinnen*, [1924] P. 61; *Reed v. Page, Son & East*, [1927] 1 K. B. 743.

2089a. **Agreement for recovery of betting debt.]—**Pltf. carried on business as the “Turf Register,” which in a prospectus issued by him was called a “society”; but he was the sole proprietor of the business, though he described himself in the prospectus as secretary. In consideration of a subscription, & of a commission on the amounts recovered, he undertook to collect for the subscribers betting debts which, under the provisions of the Gaming Acts, were not recoverable. It was agreed between him & deft., in the terms of the prospectus, that in consideration of pltf. putting up all the necessary disbursements for the institution & conduct of legal or other proceedings, the net profits accruing directly or indirectly was to be equally divided between claimant & the society. Pltf. brought an action to recover the amount of debts alleged to have been wrongfully collected by deft. in breach of the agreement:—*Held*: the agreement was illegal & void, being contrary to public policy, & pltf. could not recover.—*FORD v. RADFORD* (1920), 36 T. L. R. 658; 64 Sol. Jo. 571.

2102a. —.]—*GUIBORN v. FELLOWS* (1717), 2

[1926] 4 D. L. R. 333; [1926] 2 W. W. R. 657.—CAN.

**PART VI. SECT. 4, SUB-SECT. 4.—**  
B. (a).

2091 viii. —.]—*HENRY v. DICKIE* (1896), 27 O. R. 416.—CAN.

**PART VI. SECT. 4, SUB-SECT. 4.—**  
B. (b).

2096 i. —.]—A contract is not vitiated because it was induced by a threat of criminal proceedings, for which there was sufficient ground, provided there is no agreement to stifle the prosecution.—*Bow v. PFEIFFER & GILBERT*, [1924] 3 D. L. R. 854; 2 W. W. R. 1149.—CAN.

2098 iv. —.]—D. was in the employ of pltf. & was charged with criminal breach of trust in respect of a cheque for Rs.30,000 which he cashed for pltf. D. paid pltf. Rs.15,000, & D. & his brother R. executed a mtge. in favour of pltf. with a view to withdrawal of the prosecution. Pltf. put in a petition stating the facts, & the prosecution was dropped:—*Held*: the agreement was not against public policy.—*DWIJENDRA NATH MULLICK v. GOPIRAM GOBINDARAM* (1925), 1 L. R. 53 Calo. 51.—IND.



- Eq. Cas. Abr. 160; 5 Vin. Abr. 408, pl. 20; 22 E. R. 136, L. C.
2112. *Add. Annotation*:—*Consd. Parkinson v. College of Ambulance & Harrison* (1924), 40 T. L. R. 886.
2118. *Add. Annotation*:—*Consd. Hardie & Lane v. Chilton*, [1928] 2 K. B. 306.
2153. *Add. Annotation*:—*Apld. Mansfield v. Robinson*, [1928] 2 K. B. 353.
- 2190a. ——— *Inference of new promise after divorce.*—Pltf., who at the time was a married woman, accepted deft.'s proposal of marriage, provided that she obtained a divorce. Pltf. did obtain a divorce, & deft. then gave her an engagement ring & the date of the wedding was arranged. Ultimately deft. married another woman. In an action for breach of promise of marriage deft. pleaded that the contract was void in law as being contrary to public policy:—*Held*: although the original promise was void yet a new promise, after pltf. had become a free woman, could be inferred from the giving of the ring & the arrangement of the date of the wedding, & pltf. was entitled to recover.—*SKIPPER v. KELLY* (1926), 42 T. L. R. 258, P. C.
2214. *Add. Annotation*:—*Refd. Anderson v. Daniel* (1924), 130 L. T. 418.
2215. *Add. Annotation*:—*Apld. Anderson v. Daniel*, [1924] 1 K. B. 138.
- SUB-SECT. 2.—PARTICULAR CONTRACTS RENDERED VOID OR ILLEGAL BY STATUTE (Vol. XII., p. 272).
- Add the following cross-reference:—  
**Sale by other than imperial weights & measures.**—*See WEIGHTS & MEASURES.*
2224. *Add. Annotation*:—*Mentd. Liggett (Liverpool) v. Barclays Bank* (1927), 137 L. T. 443.
2226. *Add Citation*:—*See*, [1906] 1 Ch. 747, n.  
*Add. Annotations*:—*Apld. Anderson v. Daniel*, [1924] 1 K. B. 138. *Mentd. Re A Debtor* (No. 229 of 1927), [1927] 2 Ch. 367.
2227. *Add. Annotation*:—*Refd. Anderson v. Daniel*, [1924] 1 K. B. 138.
- PART VI. SECT. 4, SUB-SECT. 5.—G.
- 2190 i. *Promisee married—Promise to marry conditioned on divorce.*—Where a promise of marriage was made after the hearing of a petition for divorce, but before the passage of the bill of divorce:—*Held*: any promise of marriage to be performed contingently upon a divorce being obtained was against public policy, & no action could be maintained thereon.—*CAULFIELD v. ARNOLD* (No. 1), [1925] 1 D. L. R. 295; [1925] 1 W. W. R. 664 34 B. C. R. 404.—CAN.
- PART VI. SECT. 4, SUB-SECT. 5.—H.
- sd. Agreement for support of adulterine bastard.*—*Held*: a contract by a third party to pay the mother for the support of a child alleged by her to be the result of adultery with him while she was living with her husband is against public policy, void & unenforceable.—*KIJKO v. BACZYSKI* (1922), 51 O. L. R. 225.—CAN.
- PART VI. SECT. 5, SUB-SECT. 1.
- 2200 iii. ———.]—If a person contracting to operate a boiler & engine has not a certificate or permit under *Boilers Act, R. S. A., 1922* (c. 191), authorising him to operate that particular kind of boiler & engine, the contract is prohibited by the Act, & is unenforceable, & such person is not entitled to recover on a *quantum meruit*.—*MILNE v. PETERSON*, [1925] 1 D. L. R. 271; [1924] 3 W. W. R. 957.—CAN.
- 2218 i. *Action arising out of illegal contract—Recovery of money paid.*—Money paid under an illegal contract cannot be recovered back.—*MERKEL v. MCKENDRY*, [1926] 2 D. L. R. 995; [1926] 2 W. W. R. 7; 35 Man. L. R. 506.—CAN.
- PART VI. SECT. 7, SUB-SECT. 1.
- c. Revsd. sub nom. DOMINION FIRE INSURANCE CO. v. NAKATA*, 52 S. C. R. 294; 26 D. L. R. 722.
- PART VI. SECT. 7, SUB-SECT. 2.
- 2253 i. *Goods supplied for illegal purpose—To knowledge of vendor—Sale of intoxicating liquor for use in place where Temperance Act in force.*—Price not recoverable.—*FURLONG v. RUSSELL* (1885), 24 N. B. R. 478.—CAN.
- 2253 ii. ———.]—*SMITH v. BENTON* (1890), 20 O. R. 344.—CAN.
- PART VI. SECT. 9, SUB-SECT. 1.—B.
- 2288 ii. ———.]—*TURNER & JONES v. CURRAN* (1891), 2 B. C. R. 61.—CAN.
- sm. Imposing terms on defendant—At what stage of proceedings.*—While equitable terms may be imposed on deft. seeking relief from a contract on the ground of illegality, they can be given only when asked for on the dismissal of the action to enforce the contract; they cannot be enforced as a cause of action, or allowed when first asked for on appeal from such dismissal.—*DEMCHENKO v. FRICKE*, [1926] 2 D. L. R. 1093; [1926] 2 W. W. R. 221; 20 Sask. L. R. 492.—CAN.
- PART VI. SECT. 9, SUB-SECT. 1.—C. (b).
- 2318 iii. ———.]—*Held*: while money paid for an illegal purpose might have been recovered before the effecting of the illegal purpose, it cannot be recovered after.—*LAWSON v. FARLEY*, [1924] 1 D. L. R. 279; 1 W. W. R. 243; 18 Sask. L. R. 48.—CAN.
- 2318 iv. ———.]—*Held*: where an executory contract is made for illegal sale of goods & the contract has not been carried out but remains totally unperformed, it is open to a party to repudiate the illegal contract & on avoidance to recover any moneys deposited.—*HIRJEE DEVRAJ & Co. v. MAUNG LYUN SHEIN* (1924), 1 L. R. 2 Ran. 414.—IND.
- sd. Pleading.*—Where a suit, brought on a contract for illegal sale of goods, was framed for enforcement of the contract & not for damages for breach:—*Held*: a decree for repayment of the money paid could not be passed, unless the plaint was amended.—*HIRJEE DEVRAJ & Co. v. MAUNG LYUN SHEIN* (1924), 1 L. R. 2 Ran. 414.—IND.
2228. *Add. Annotation*:—*Apld. Anderson v. Daniel* (1923), 93 L. J. K. B. 97.
2229. *Add. Annotation*:—*Consd. Anderson v. Daniel*, [1924] 1 K. B. 138.
2231. *Add. Annotation*:—*Refd. Anderson v. Daniel*, [1924] 1 K. B. 138.
2232. *Add. Annotation*:—*Consd. Anderson v. Daniel*, [1924] 1 K. B. 138.
2236. *Add. Annotation*:—*Refd. Anderson v. Daniel* (1924), 130 L. T. 418.
2241. *Add. Annotation*:—*Consd. Garrard v. James*, [1925] Ch. 616.
- 2248a. ———.]—Pltf. cannot recover for goods sold which he knows are to be applied to an illegal purpose, though he be not active himself in their being so applied, & be no sharer in the advantage to be derived therefrom.—*HUTTON v. WEY* (1827), 5 L. J. O. S. K. B. 220.
2285. *Add. Annotation*:—*Folld. Parkinson v. College of Ambulance & Harrison* (1924), 40 T. L. R. 886.
- 2292a. ———.]—*NAGOREMULL v. TRITON INSURANCE CO., LTD.*, No. 2084a, ante.
- 2310a. ———.]—Where goods become forfeited in consequence of any fraud or neglect in respect of the revenue laws, the loss, as between the buyer & seller, must fall upon him whose fraud or neglect occasioned the forfeiture; but if the seller be a party to the intended fraud or neglect, or connive at it, he shall not recover, although the act of fraud or the neglect was committed by, or was chargeable upon, the buyers.—*STUDDY v. SANDERS* (1826), 5 B. & C. 628; 8 Dow. & Ry. K. B. 403; 4 L. J. O. S. K. B. 290; 168 E. R. 234.
- Annotation*:—*Refd. Johnson v. Kirkaldy* (1810), 4 Jur. 988.
2317. *Add. Annotations*:—*As to* (2) *Refd. Cantiare San Rocco S. A. v. Clyde Shipbuilding & Engineering Co.*, [1924] A. C. 226; *Bowling v. Cox*, [1926] A. C. 751; *Anchor Donaldson v. Crossland* (1928), 45 T. L. R. 97. *Generally*, *Mentd. Boston Corpn. v. Fenwick* (1923), 129 L. T. 766; *Holt v. Markham*, [1923] 1 K. B. 504.

2325. *Add. Annotation*:—*Refd.* Parkinson v. College of Ambulance & Harrison (1924), 40 T. L. R. 886.
- 2329a. — Contract contrary to public policy.]—PARKINSON v. COLLEGE OF AMBULANCE, LTD. & HARRISON, No. 2011a, ante.
2333. *Add. Annotation*:—*Refd.* Anderson v. Daniel (1923), 93 L. J. K. B. 97.
2337. For the cross-reference following this case, "Whether parties in *pari delicto*."]—*See* Nos. 2356, 2363, *post*," read "Whether parties in *pari delicto*, *see* Nos. 2353–2363, *post*."
2339. *Add. Annotation*:—*Distd.* Hill v. Fox (1858), 31 L. T. O. S. 118.
- 2350a. — Subscription to charity—On promise of knighthood—Promise by secretary.]—PARKINSON v. COLLEGE OF AMBULANCE, LTD. & HARRISON, No. 2011a, ante.
2351. *Add. Annotation*:—*Refd.* Parkinson v. College of Ambulance & Harrison, [1925] 2 K. B. 1.
2358. *Add. Annotation*:—*Consd.* Parkinson v. College of Ambulance & Harrison (1924), 40 T. L. R. 886.
2360. The cross-reference following this case should follow No. 2359.
2372. *Add. Annotation*:—*Refd.* Parkinson v. College of Ambulance & Harrison (1924), 40 T. L. R. 886.
2375. *Add. Annotations*:—*As to* (1) *Refd.* Thompson v. British Medical Assocn. (New South Wales Branch), [1924] A. C. 764. *Generally*, *Refd.* Palmolive Co. (of England) v. Freedman (1927), 44 T. L. R. 86.
2391. *Add. Annotation*:—*Refd.* Putzman v. Taylor, [1927] 1 K. B. 637.
- 2391a. —.]—A promise may be enforceable, notwithstanding that the promisor has in the same document made promises, supported by the same consideration, which are void, provided that the severed parts are independent & that not the kind but only the extent of the promisor's obligations will be changed by the partial enforcement.—PUTSMAN v. TAYLOR, [1927] 1 K. B. 637; 96 L. J. K. B. 315; 136 L. T. 285; 43 T. L. R. 153, D. O.; *affd.*, [1927] 1 K. B. 741, C. A.
2407. *Add. Annotation*:—*Refd.* *Re* A Debtor (No. 229 of 1927), [1927] 2 Ch. 367.
2412. *Add. Annotation*:—*Distd.* Milsted v. Hamp & Ross & Glendinning (1927), 71 Sol. Jo. 845.
2426. *Add. Annotation*:—*Mentd.* Calthorpe v. McOscar, [1923] 2 K. B. 573.
- 2435a. —.]—In order to deprive *pltf.* of his right to relief in equity on the ground of illegality in the transaction in respect of which such relief is sought, there must be such a degree of illegality as is free from all doubt.—BARTON v. MUIR (1874), L. R. 6 P. C. 134; 44 L. J. P. O. 19; 31 L. T. 593; 23 W. R. 427, P. C.
- Annotations*:—*Distd.* Tooth v. Power, [1891] A. C. 284. *Refd.* *Re* Article X of Articles of Agreement for a Treaty between Great Britain & Ireland (1928), 45 T. L. R. 57.
2443. *Add. Annotation*:—*Distd.* Hardie & Lane v. Chilton, [1928] 2 K. B. 306.
2454. *Add. Annotation*:—*Refd.* Greenberg v. Cooperstein, [1926] Ch. 657.
2456. *Add. Annotation*:—*Refd.* Cantiere Navale Triestina v. Russian Soviet Naphtha Export Agency, [1925] 2 K. B. 172.
2496. *Add. Annotations*:—*Refd.* Crown Milling Co. v. R., [1927] A. C. 394; English Hop Growers v. Dering, [1928] 2 K. B. 174; Palmolive Co. (of England) v. Freedman, [1928] Ch. 264.
2501. *Add. Annotation*:—*Mentd.* Pirie v. Richardson (1926), 70 Sol. Jo. 1023.

## Part VII.—Performance and Excuses for Non-Performance.

2505a. — "Unforeseen contingencies excepted"  
—Goods obtainable from source not contemplated by sellers.]—A contract provided for the delivery of goods "unforeseen contingencies excepted." No particular source from which they were to come was stipulated. Unforeseen political complications prevented the supply of the goods from the source con-

templated by the sellers, but it was not shown that the goods could not have been procured from other sources:—*Held*: the above clause did not protect the sellers from liability to deliver the goods.—WILLS (GEORGE) & SONS, LTD. v. CUNNINGHAM (R. S.) SON & CO., [1924] 2 K. B. 220; 93 L. J. K. B. 1008; 131 L. T. 400; 40 T. L. R. 108.

### PART VI. SECT. 9, SUB-SECT. 1.—C. (c) i.

2326 iv. —.]—*Pltf.*, an insurance agent, induced *deft.* to apply for insurance on the promise that he would share his commission with *deft.*:—*Held*: the promise to share commission was prohibited by Insurance Act, 1917 (Can.), & the transaction was illegal.—BERNSTEIN v. ERICKSON, [1921] 1 W. W. R. 834; 56 D. L. R. 616.—CAN.

2326 v. —.]—*Held*: while money paid for an illegal purpose might have been recovered before the effecting of the illegal purpose, it cannot be recovered after.—LAWSON v. FARLEY, [1924] 1 D. L. R. 279; 1 W. W. R. 243; 18 Sask. L. R. 48.—CAN.

### PART VI. SECT. 9, SUB-SECT. 1.—D.

2373 i. *Damages for breach*.]—*Pltf.* agreed to sell certain leasehold premises

to *deft.*, a person of enemy origin within War Legislation & Statute Law Amendment Act, 1918, s. 6, of which *fact* *pltf.* was ignorant:—*Held*: *pltf.* might either (1) sue on the contract & claim damages for *deft.*'s breach of contract in which case *deft.* would be estopped from alleging that the contract was illegal & void, or (2) sue for restitution of compensation in respect of acts of part performance by him while ignorant of the illegal nature of the contract, & before its repudiation by *deft.*—BRANIGAN v. SABA, [1923] N. Z. L. R. 97.—N.Z.

### PART VI. SECT. 9, SUB-SECT. 3.

2384 ii. —.]—*Pltf.* in ignorance that *deft.* was of enemy origin sold to him certain premises, the price to be paid by instalments. *Deft.* was given possession, but before all instalments were paid he repudiated the agreement. An action by *pltf.* for unpaid

purchase-money having failed on the ground that the contract was illegal:—*Held*: *pltf.* might either (1) sue *deft.* on the contract & claim damages for the breach, in which case *deft.* would be estopped from alleging that the contract was illegal, or (2) sue for restitution of compensation in respect of acts of part performance by him while ignorant of the illegality, & before repudiation of the contract.—BRANIGAN v. SABA, [1923] N. Z. L. R. 97.—N.Z.

### PART VI. SECT. 9, SUB-SECT. 4.—A.

2388 vii. —.]—FLANNAGHAN v. HEALY (1900), 4 Terr. L. R. 391.—CAN.

### PART VII. SECT. 1.

c. *Revsd.*, 51 D. L. R. 509.

11. — *Breach of collateral contract*—*Strict proof necessary*.]—BOURDON v. SELWYN, [1926] 3 D. L. R. 561.—CAN.

2512. *Add. Annotation*:—**Mentd.** Captain J. A. Cates Tug & Wharfage Co. v. Franklin Insce., [1927] A. C. 698.
2523. *Add. Annotation*:—**Mentd.** Larrinaga v. Soc. Franco Americaine Des Phosphates De Medulla (1923), 92 L. J. K. B. 455.
2544. *Add. Annotations*:—**Refd.** Cantieri Navale Triestina v. Russian Soviet Naphtha Export Agency, [1925] 2 K. B. 172; Hogarth v. Cory (1926), 95 L. J. P. C. 204; United States Shipping Board v. Strick, [1926] A. C. 545; Vergottis v. Cory (1926), 95 L. J. K. B. 1002.
2545. *Add. Annotations*:—**Refd.** Rederi Akt. Acolus v. Hillas (1925), 42 T. L. R. 69; United States Shipping Board v. Strick, [1926] A. C. 545.
2547. *Add. Annotations*:—**Consd.** Verelst's Administratrix v. Motor Union Insce., [1925] 2 K. B. 137. **Mentd.** Transoceanica Soc. Italiana Di Navigazione v. Shipton, [1923] 1 K. B. 31; R. v. Roberts, *Ex p.* Scurr, [1924] 2 K. B. 695.
2553. *Add. Annotations*:—**Consd.** Verelst's Administratrix v. Motor Union Insce., [1925] 2 K. B. 137. **Refd.** Hall v. Pim (1927), 137 L. T. 585.
2560. *Add. Annotation*:—**Consd.** Bernard v. Williams (1928), 139 L. T. 22.
2564. *Add. Annotation*:—**Consd.** Bernard v. Williams (1928), 139 L. T. 22.
2567. *Add. Annotation*:—**As to (2)** **Refd.** Bernard v. Williams (1928), 139 L. T. 22.
2576. *Add. Annotation*:—**Mentd.** Ballantine v. Cramp & Bosman (1923), 129 L. T. 502.
2579. *Add. Annotation*:—**Refd.** Bernard Williams (1928), 139 L. T. 22.
2585. *Add. Annotation*:—**Refd.** Bernard v. Williams (1928), 139 L. T. 22.
2590. *Add. Annotation*:—**Refd.** Akt. Reidar v. Arcos, [1927] 1 K. B. 352.
2607. *Add. Annotation*:—**Consd.** *Re* Wait, [1927] 1 Ch. 606.
2621. *Add. Annotation*:—**Consd.** Bernard v. Williams (1928), 139 L. T. 22.
- 2621a. ——— **From indefinite to definite date.**—*Held*: in the circumstances, time was of the essence of the contract.—**BERNARD v. WILLIAMS** (1928), 139 L. T. 22; 44 T. L. R. 437, D. C.
2624. *Add. Annotation*:—**Consd.** Martin v. Stout, [1925] A. C. 359.
2652. *Add. Citation*:—*sub nom.* MUFFATT v. PARSONS, 1 Marsh, 55.
- 2693a. ———.]—**KRAUS v. ARNOLD** (1822), 7 Moore C. P. 59.
- Annotation*:—**Mentd.** *Re* Farley, *Ex p.* Danks (1852), 1 W. R. 57.
2734. *Add. Annotation*:—**Mentd.** Hong Kong & Shanghai Bank v. Lo Lee Shi, [1928] A. C. 181.
2737. *Add. Annotation*:—**Refd.** Bradford v. Price (1923), 92 L. J. K. B. 371.
2738. *Add. Annotation*:—**Refd.** Cohen v. Roche (1926), 95 L. J. K. B. 945.
2825. *Add. Annotation*:—**Refd.** British & Beningtons v. North Western Cachar Tea Co., [1923] A. C. 48.
2828. *Add. Annotation*:—**Refd.** British & Beningtons v. North Western Cachar Tea Co., [1923] A. C. 48.
- 2829a. **Subsequent agreement unenforceable at law.**—**ROSE & FRANK CO. v. CROMPTON (J. R.) & BROTHERS, LTD.**, No. 4, *ante*.
2830. *Add. Annotation*:—**Apprvd.** Martin v. Stout, [1925] A. C. 359.
2831. *Add. Annotations*:—**Refd.** The British Trade, [1924] P. 104; Berners v. Fleming, [1925] Ch. 264.
2832. *Add. Annotation*:—**Mentd.** Ellis' Trustee v. Dixon-Johnson, [1924] 2 Ch. 451.
- 2832a. ———.]—Under agreements made in 1923 & 1925, pltf's. were granted the right to occupy sufficient land of defts. for the purpose of constructing & working a railway until the termination of the exhibition to be held on the grounds of defts. at W. during 1924 & 1925, whereupon pltf's. were to be at liberty to sell all their property & other assets at W. to a purchaser to whom defts. agreed to grant an option to occupy the land for the further period of one year thereafter & a further option to continue such occupation from year to year for a total period not exceeding six years from the closing of the exhibition. Pltf's. constructed a railway on the ground of defts., & worked it until the closing of the exhibition on Oct. 31, 1925. On Dec. 30 defts. purported to terminate their agreements with pltf's. on the ground that same had lapsed owing to pltf's. delay

## PART VII. SECT. 2, SUB-SECT. 1.

2506 iv. ———.]—Where W. agreed to pay H. £10 as damages for assault & give an admission in writing that the assault was unjustified:—*Held*: a tender of £10 under protest coupled with a statement that the assault was justified was not a compliance with the agreement.—**WARREN v. HESLOP** (1925), 46 N. L. R. 89.—S. AF.

## PART VII. SECT. 3, SUB-SECT. 1.—A.

2532 vi. ———.]—Where on the sale of a piano to be manufactured for the buyer there was a failure to deliver in four months, no time being specified for delivery:—*Held*: this was not a lapse of a reasonable time.—**FOSTER v. HEINTZMAN & Co.**, [1923] 4 D. L. R. 106.—CAN.

2532 vii. ———.]—**WEBBER v. COPEMAN** (Sask.) (1912), 21 W. L. R. 961.—CAN.

## PART VII. SECT. 3, SUB-SECT. 2.—C. (b).

*st. Extension of contract.*—**JONES v. CUSHING** (1909), 74 E. L. R. 190.—CAN.

J.S.

*sw. Sale of shares.*—**ROUNTREE v. WOOD** (1920), 56 D. L. R. 395.—CAN.

## PART VII. SECT. 3, SUB-SECT. 2.—D. (b).

2607 ii. ———.]—Pltf. contracted to sell to deft. certain Oregon timbers to be procured from America:—*Held*: the contract being a mercantile one, & therefore *prima facie* one in which time was of the essence of the contract, & there being nothing in the contract or the surrounding circumstances to show that the parties had a different intention, time was of the essence of the contract.—**JACKSON & Co., LTD. v. CO-OPERATIVE FREEZING CO. OF SOUTH CANTERBURY, LTD.**, [1922] N. Z. L. R. 2; Gaz. L. R. 176.—N.Z.

## PART VII. SECT. 3, SUB-SECT. 2.—G.

2620 iii. ———.]—Where the evidence showed no binding agreement to enlarge the time for delivery, but defts. merely permitted pltf's. for their own convenience to postpone the time for delivery:—*Held*: defts. were entitled

at any time before delivery to require pltf's. to perform the contract according to its original terms.—**JACKSON & Co., LTD. v. CO-OPERATIVE FREEZING CO. OF SOUTH CANTERBURY, LTD.**, [1922] N. Z. L. R. 2; Gaz. L. R. 176.—N.Z.

## PART VII. SECT. 5, SUB-SECT. 7.

2778 i. *General rule.*—A valid tender on a contract of debt is as much a performance & discharge of debtor's duty as an actual payment.—**DASHARATHI GHOSE v. KHONDKAR ABDUL HANNAN** (1927), 1 L. R. 55 Calc.—IND.

## PART VII. SECT. 6, SUB-SECT. 2.

2809 v. ———.]—**PENMAN MANUFACTURING CO. v. BROADHEAD** (1892), 21 S. C. R. 713.—CAN.

q i. ———.]—*Held*: the agreements relied on to establish a new contract were only in the nature of security.—**MCCUTCHEON BRICK CO. v. GARDINER** (Man.) (1912), 21 W. L. R. 72; 4 D. L. R. 487.—CAN.



in exercising the option of calling for a renewal of the licence to occupy defts.' land in favour of a purchaser of the railway undertaking:—*Held*: by purporting to terminate the agreements defts. had committed an anticipatory breach thereof, & plffs. were entitled to damages.—*NEVER-STOP RY. (WEMBLEY) v. BRITISH EMPIRE EXHIBITION (1924) INCORPORATED*, [1926] Ch. 877; 95 L. J. Ch. 411; 135 L. T. 405; 70 Sol. Jo. 735.

2835. *Add. Annotations*:—*Consd. Martin v. Stout*, [1925] A. C. 359. *Refd. Tyldesley U. D. C. v. Leigh R. D. C. (1925)*, 23 L. G. R. 243. *Mentd. Re City Life Assce.*, [1926] Ch. 191.

2835a. —.]—A party to a contract who desires to avail himself of an act of repudiation by the other party must evidence his election to do so with every reasonable dispatch.—*BERNERS v. FLEMING*, [1925] 1 Ch. 264; 94 L. J. Ch. 273; 132 L. T. 822, C. A.

*Annotation*:—*Refd. Never-Stop Ry. (Wembley) v. British Empire Exhibition (1924) Incorporated*, [1926] Ch. 877.

2841. *Add. Annotations*:—*Refd. Berners v. Fleming*, [1925] Ch. 264; *Martin v. Stout*, [1925] A. C. 359; *Never-Stop Ry. (Wembley) v. British Empire Exhibition (1924) Incorporated*, [1926] Ch. 877. *Mentd. Ellis' Trustee v. Dixon-Johnson*, [1924] 1 Ch. 342.

2846. *Add. Annotation*:—*Refd. Akt. Reidar v. Arcos*, [1927] 1 K. B. 352.

PART VII. SECT. 6, SUB-SECT. 3.—  
A. (a) i.

2833 viii. —.]—Although repudiation by a party to a contract of sale entitles *de facto* the other party to recover damages thus incurred, the vendor has the right to insist on preserving the integrity of the contract & to tender the goods for delivery according to the terms of the sale, in which case his claim for damages will be more easily & readily assessed upon refusal to accept by the buyer.—*BRILLIANT SILK MANUFACTURING CO. v. KAUFMAN*, [1925] 2 D. L. R. 91; [1925] S. C. R. 249.—CAN.

2833 ix. —.]—Where a co. renounced a contract before breach & the other party made a new arrangement with the co. with the object of minimising his damages:—*Held*: he had adopted the renunciation & was entitled to damages.—*GARRISON v. THOMSEN & CLARKE TIMBER CO.*, [1926] 2 D. L. R. 803; [1926] 2 W. W. R. 81; 37 B. C. R. 224.—CAN.

2838 x. —.]—*Y. P. BARLEY PRODUCERS, LTD. v. E. C. ROBERTSON PTY., LTD.*, [1927] V. L. R. 194; 48 A. L. T. 151; [1927] *Argus*, L. R. 116.—AUS.

2838 i a. —.]—Where the conduct of one of the parties to a contract has been such as would lead a reasonable person to the conclusion that he does not intend to fulfil his part of the obligation, the other party to the contract, whatever in fact may have been the actual intention of the former, may treat such conduct as an intimation that the contract has been repudiated.—*FARSHIND, ETC. v. BECHELY-CRUNDALL*, [1922] S. C. (H. L.) 173.—SCOT.

2838 v. —.]—On the facts:—*Held*: deft. did not refuse to carry out the real contract & what he did in the circumstances did not amount to a repudiation of the real contract so as to entitle pltf. to terminate it.—*FREEDMAN v. FRENCH* (1921), 50 O. L. R. 432.—CAN.

2838 vi. —.]—If a party declares his intention not to be further bound by a contract, this is an anticipatory breach upon acceptance by the other

party. It does not matter that the party so declaring is misinstructed at the time as to the facts upon which he bases such declaration.—*CLAUSEN v. CANADA TIMBER & LANDS, LTD.*, [1923] 4 D. L. R. 751.—CAN.

2838 vii. —.]—Where a buyer knowing that the seller could not deliver, failed to pay the deposit agreed upon:—*Held*: not a breach of contract nor repudiation.—*TOWNSEND v. MOON MOTOR CO.*, [1924] 1 D. L. R. 511.—CAN.

2838 viii. — *Partial non-performance—Agreement substantially performed.*—By a tripartite agreement between the two applts., A. & B., & resp., it was agreed that A. should grant a sub-lease of one theatre to resp., that B. should grant a lease of another theatre to resp., & that resp. should grant a sub-lease of a third theatre, including all offices, to B. The parties entered into possession, except that B. was excluded from a room which applts. alleged to be an office which B. was entitled to under the agreement:—*Held*: the possession of the office was not essential to the use of the premises as a theatre, & a refusal to give it did not entitle applts. to rescind.—*FULLER'S THEATRES, LTD. v. MUSGROVE* (1923), 31 C. L. R. 524.—AUS.

2838 ix. —.]—*ALBERT MINING CO. v. SPURR* (1883), 22 N. B. R. 346.—CAN.

2838 x. —.]—*ROBINSON v. PETERS* (Sask.), [1927] 3 D. L. R. 131.—CAN.

PART VII. SECT. 6, SUB-SECT. 3.—  
A. (a) ii.

sa. *Contract by correspondence—Refusal to sign formal contract.*—Certain correspondence & memoranda were relied on by plffs. to prove an agreement by defts. Subsequently a formal contract was sent to defts., which they refused to sign, objecting to its terms:—*Held*: assuming that the previous documents were sufficient to establish a contract, the terms of the proposed formal contract modified materially to defts.' prejudice the previous undertaking as to time of shipment, & defts. had rejected it &

2847. *Add. Annotation*:—*Refd. Akt. Reidar v. Arcos* (1926), 42 T. L. R. 737.

2888. *Add. Annotations*:—*Refd. Livock v. Pearson* (1928), 33 Com. Cas. 188. *Mentd. Thomas v. Todd*, [1926] 2 K. B. 511.

2896. *Add. Annotation*:—*Consd. Meyrick v. Dyson* (1925), 41 T. L. R. 368.

2899a. *Effect of part-performance—Major part of consideration received.*—Pltf., a mental specialist, & the proprietor of a nursing home, sued deft. for medical attendance & board & lodgings of deft.'s son, a patient certified to be insane; & deft. counter-claimed for negligence & unskilful treatment. The jury found for pltf. on the claim; & on the counterclaim they awarded deft. 20s., finding that pltf. was guilty of negligence or breach of duty in not entering in a book the occasions when the patient was confined to a bedroom with the door locked, such entries being required by rr. 13 & 16 of the rules made by the Comrs. in Lunacy under Lunacy Act, 1890 (c. 5), s. 338:—*Held*: as deft. had received a substantial part of the consideration, pltf.'s breach of duty did not go to the root of the contract so as to be a defence to pltf.'s entire claim, & judgment must be entered in accordance with the verdict.—*MEYRICK v. DYSON* (1925), 41 T. L. R. 368; *subsequent proceedings*, 41 T. L. R. 575, C. A.

clearly intimated their intention to consider the contractual relations at an end, which they were entitled to do.—*FUJITA & Co., LTD. v. NORTHERN FRUIT CO., LTD.*, [1923] 1 D. L. R. 402; 16 Sask. L. R. 414; [1923] 1 W. W. R. 59.—CAN.

PART VII. SECT. 6, SUB-SECT. 3.—  
A. (a) iii.

2851 ii. —.]—Pltf. contracted with deft. for advertising & agreed to pay a weekly rent in advance, if the rent fell into arrears, the agreement to be cancelled. In an action for breach of agreement, deft. pleaded that the contract had been avoided by pltf.'s default in payment of rent:—*Held*: pltf.'s default did not *ipso facto* avoid the contract, & in the absence of an allegation that pltf. had elected to treat the contract as void, the plea was bad.—*MANNINGTON v. CLIFFORD* (1921), 17 Tas. L. R. 13.—AUS.

PART VII. SECT. 6, SUB-SECT. 3.—  
A. (c).

sb. *Provision in contract for liquidated damages.*—A clause in an agreement provided that a certain sum of money to be paid by resp. should be treated as the amount of compensation in case of his failure to carry out the contract:—*Held*: not to authorise resp. to determine the agreement by a notice to determine & an offer to pay that sum.—*FULLER'S THEATRES, LTD. v. MUSGROVE* (1923), 31 C. L. R. 524.—AUS.

PART VII. SECT. 6, SUB-SECT. 3.—C.

2900 v. —.]—Where applt. had an election to rescind:—*Held*: he had by his conduct in going on with the agreement & taking advantage under it, irrevocably exercised his election to affirm the agreement.—*FULLER'S THEATRES, LTD. v. MUSGROVE* (1923), 31 C. L. R. 524.—AUS.

2900 vi. —.]—Defts. ordered certain goods manufactured by plffs. With some trifling exceptions all the goods were in accordance with the requirements of the contract & reasonably fit for the purpose for which they were supplied. Some of the goods

2938. For "Validity of rescission of parol." read "Validity of rescission by parol."

2938a. *S. P. INGE v. LIPPINGWELL* (1772), 2 Dick, 469; 21 E. R. 352.

2938b. *S. P. Ex p. ILCHESTER (EARL)* (1803), 7 Ves. 348; 32 E. R. 142.

*Annotations*:—*Refd.* *Andrew v. Andrew* (1855), 3 Sm. & G. 130; *Dickenson v. Stidolph* (1861), 11 C. B. N. S. 341; *Louis v. Louis* (1864), 3 New Rep. 369; *In the Estate of Tollemache*, [1917] P. 246; *Ward v. Van Der Loeff*, *Burnyeat v. Van Der Loeff*, [1924] A. C. 653. *Mentd.* *Johnston v. Johnston* (1817), 1 Phillim. 447; *Elbeck v. Wood* (1820), 1 Russ. 564; *In the Goods of Middleton* (1864), 3 Sw. & Tr. 583; *Ibbott v. Bell* (1865), 34 Beav. 395; *Dancer v. Crabb* (1873), L. R. 3 P. & D. 98; *In the Goods of McCabe* (1873), L. R. 3 P. & D. 94; *Alexander v. Kirkpatrick* (1874), L. R. 2 Sc. & Div. 397.

2941. *Add. Annotation*:—*Refd.* *British & Beningtons v. North Western Cachar Tea Co.*, [1923] A. C. 48.

2945. *Add. Annotations*:—*Apld.* *British & Beningtons v. North Western Cachar Tea Co.*, [1923] A. C. 48; *Rose & Frank Co. v. Crompton*, [1925] A. C. 445. *Refd.* *Royal Exchange Assce. v. Hope*, [1928] Ch. 179.

2958a. *Add. Citation*:—28 Com. Cas. 265.

*Add. Annotations*:—*As to* (1) *Consd.* *Rose & Frank Co. v. Crompton*, [1925] A. C. 445. *Refd.* *Royal Exchange Assce. v. Hope*, [1928] Ch. 179.

2963. *Add. Annotation*:—*Refd.* *British & Beningtons v. North Western Cachar Tea Co.*, [1923] A. C. 48.

2964. *Add. Annotation*:—*Refd.* *British & Beningtons v. North Western Cachar Tea Co.*, [1923] A. C. 48.

2965. *Add. Annotation*:—*Refd.* *Rose & Frank Co. v. Crompton*, [1923] 2 K. B. 261.

2967. *Add. Annotation*:—*Refd.* *British & Beningtons v. North Western Cachar Tea Co.*, [1923] A. C. 48.

2970. *Add. Citation*:—28 Com. Cas. 244.

were returned & an adjustment made concerning them:—*Held*: debts. had waived any right they might have had to repudiate the contract because of the delivery of defective goods.—*HAMILTON GEAR & MACHINE CO. v. LEWIS BROTHERS*, [1924] 3 D. L. R. 367.—CAN.

#### PART VII. SECT. 6, SUB-SECT. 3.—D.

*so. Contract absolutely terminated.*—Where there was a distinct & unequivocal refusal by pltf. to perform their contract:—*Held*: so long as debts. were continuing to urge or demand compliance with the contract, it could not be said to have been terminated, but where finding that pltf.' attitude was unalterable, debts. decided to acquiesce in it, & communicated such acquiescence to pltf., the contract between the parties was put an end to.—*JHANDOO MALJAGAN NATH v. PUHL CHAND-FATEN CHAND* (1924), I. L. R. 5 Lah. 497.—IND.

*sd.*—*Collateral contract not terminated.*—*MURRAY v. DELTA COPPER CO., LTD.*, [1925] 4 D. L. R. 1061.—CAN.

#### PART VII. SECT. 6, SUB-SECT. 4.

*so. Agreement under seal.*—Long delay in bringing action cannot defeat the enforcement of an agreement under seal where the twelve years specified by Stat. Limitations have not expired.—*McCORMACK v. ROBINSON*, [1924] 3 D. L. R. 876; 2 W. W. R. 1110.—CAN.

#### PART VII. SECT. 6, SUB-SECT. 6.—B. (a).

2938 iii. *S. P. STANLAKE v. RING-*

*HAND (Sask.)*, [1922] 3 W. W. R. 758; 70 D. L. R. 546.—CAN.

#### PART VII. SECT. 6, SUB-SECT. 6.—B. (b) ii.

*o i.*—A contract required to be in writing cannot be varied by a new oral agreement, even if the variation relates to a part of the contract which, if it stood by itself, would not be required to be in writing.—*NUGENT v. DAVIES*, [1923] 1 D. L. R. 1040; 53 O. L. R. 458.—CAN.

#### PART VII. SECT. 6, SUB-SECT. 6.—B. (b) iii.

2962 i. *Extension of time*—*For delivery of goods.*—*Held*: since the contract of sale was one which was required by Stat. Frauds to be in writing, a verbal postponement of the date of delivery was not a variation of the contract.—*DOWLING v. RAE, H. G. HAMILTON PTY., LTD. v. RAE, KELLY v. RAE* (1927), 39 C. L. R. 363; [1927] V. L. R. 294; [1927] Argus, L. R. 149.—AUS.

*o i.*—*For cutting & removal of timber.*—*LAWRENCE v. ERRINGTON* (1874), 21 Gr. 261.—CAN.

#### PART VII. SECT. 6, SUB-SECT. 6.—C. (a).

*si. What amounts to.*—Where a clause in an agreement provided that a certain sum of money should be treated as the amount of compensation if the contract was not carried out:—*Held*: the giving of such an offer & notice to determine the agreement did not constitute a rescission by mutual consent.—*FULLER'S THEATRES, LTD. v. MUSGROVE* (1923), 31 C. L. R. 524.—AUS.

2975. *Add. Annotations*:—*Refd.* *Jacobs v. Batavia & General Plantations Trust*, [1924] 1 Ch. 287; *Berners v. Fleming*, [1925] Ch. 264.

3033. *Add. Annotation*:—*Refd.* *Koenigsblatt v. Sweet*, [1923] 2 Ch. 314.

3038. *Add. Annotation*:—*Refd.* *Hong Kong & Shanghai Bank v. Lo Lee Shi*, [1928] A. C. 181.

3040. *Add. Annotation*:—*Refd.* *Re Whitrod, Burrows v. Bax* (1925), 70 Sol. Jo. 209.

3052. *Add. Annotation*:—*Mentd.* *Cory v. Davies*, [1923] 2 Ch. 95.

3069. *Add. Annotation*:—*Consd.* *Hong Kong & Shanghai Bank v. Lo Lee Shi*, [1928] A. C. 181.

3077. *Add. Annotation*:—*Folld.* *Kennedy v. Thomassen* (1928), 45 T. L. R. 22.

3081a. —.—An annuitant residing abroad, entitled under a settlement & a will to two annuities of £200 each, was asked by the trustees of the will to accept a lump sum in redemption thereof, & after refusing the first offer, agreed through her solrs. to accept £6,000, & executed a release which had been sent to her abroad by her solrs., & she returned it to them stipulating that they were not to part with it until the money was paid. She died a few days later, & no notification of her acceptance was sent to the trustees until after her death, & the money was paid by the trustees to her solrs., & was received by them, in ignorance of her death. On a claim by the trustees against the annuitant's exor. to recover the £6,000, as money paid under a mistake of fact:—*Held*: there was no concluded contract, but even if there was a contract it was avoided by a total failure of consideration before completion, & the trustees were entitled to succeed.—*KENNEDY v. THOMASSEN* (1928), 45 T. L. R. 122.

#### PART VII. SECT. 6, SUB-SECT. 7.

*sg. On good shipped under contract.*—*BELGIAN INDUSTRIAL CO., LTD. v. CANADA CEMENT CO., LTD.*, [1926] 1 D. L. R. 496; [1926] S. C. R. 244.—CAN.

#### PART VII. SECT. 7.

*sj. Distinguished from rescission.*—There is a difference between cancellation & rescission. The logical consequences of true rescission are the returning by each party of the benefits he has received, or *restitutio in integrum*. Cancellation means determination of the contract without restitution.—*PRIMEAU & IMPERIAL LUMBER YARDS, LTD. v. MEAGHER*, [1923] 4 D. L. R. 1096; 3 W. W. R. 1308.—CAN.

#### PART VII. SECT. 8, SUB-SECT. 3.

*sk. Substitution of party.*—To effect a sale an agent decided to buy the article himself & then sell to the buyer. To do this he altered a contract by substituting his own name for that of his principal:—*Held*: the contract was avoided by this alteration.—*ROYAL BANK OF CANADA v. FRANK*, [1923] 4 D. L. R. 1213.—CAN.

*sl. Addition of provision for payment of compound interest.*—*Held*: an alteration in a material respect.—*PARBATI CHARANMUKHERJEE v. AMARENDRA NATH BHATTACHAKJEE* (1925), I. L. R. 53 Calo. 418.—IND.

#### PART VII. SECT. 8, SUB-SECT. 8.—A.

3045 i. *General rule.*—*THORNE v. WILLIAMS* (1887), 13 O. R. 577.—CAN.



3088. *Add. Annotation*:—*Refd.* G. W. Ry. v. S.S. Mostyn, [1928] A. C. 57.

3090. *Add. Annotations*:—*Refd.* Ilford U. D. C. v. Beal & Judd, [1925] 1 K. B. 671. *Mentd.* Edwards v. Birmingham Navigations Co. of Proprietors, [1924] 1 K. B. 341; Noble v. Harrison, [1926] 2 K. B. 332; G. W. Ry. v. S.S. Mostyn, [1928] A. C. 57; St. Anne's Well Brewery Co. v. Roberts (1928), 92 J. P. 95.

3090a. For the existing paragraph substitute the following paragraph:—

— **Absolute contract.**—By a contract dated Aug. 16, 1922, the sellers sold to the purchasers about one thousand boxes of Smyrna sultanas at 60s. a cwt. c.i.f. London, to be shipped from Smyrna by steamer to London during Sept. 1922. Smyrna at the date of the contract was in the occupation of the Greeks. On Sept. 9, 1922, it was taken by Turkish forces & shipment became impossible, with the result that the sellers did not ship any of the goods. The buyers claimed damages, & the dispute went before arbitrators, who stated a case for the opinion of the Ct. under Arbn. Act, 1889 (c. 49), s. 7. The sellers said that they were excused from performance on the grounds (1) that the contract became illegal when the port of shipment came under Turkish control, as a state of war at that time existed between England & Turkey; & (2) that a state of circumstances had arisen which made the contract impossible of performance & that differed totally from the conditions with reference to which the contract was made:—*Held*: mere impossibility of performance did not discharge a party where performance was not naturally impossible, unless such a state of affairs had arisen as displaced the fundamental basis of the contract; in the absence of any strike, war or *force majeure* clause, the buyers were entitled to damages for failure of the sellers to deliver.—*SARGANT (W. J.) & SONS v. PATERSON (ERIC) & CO.* (1923), 129 L. T. 471; 39 T. L. R. 378.

3093. *Add. Annotations*:—*Consd.* First Russian Insee. v. London & Lancashire Insee., [1928] Ch. 922; *The Penelope*, [1928] P. 180. *Refd.* Larrinaga v. Soc. Franco Americaine Des Phosphates De Medulla (1923), 92 L. J. K. B. 455; Kursell v. Timber Operators & Contractors (1926), 95 L. J. K. B. 569; *Re Wait*, [1926] Ch. 962.

3094. *Add. Annotation*:—*Refd.* N. V. Kwik Hoo Tong Handel Maatschappij v. Finlay, [1927] A. C. 604.

3094a. ———.]—*SARGANT (W. J.) & SONS v. PATERSON (ERIC) & CO.*, No. 3090a, *ante*.

3095. *Add. Annotations*:—*Refd.* Cantiere Navale Triestina v. Handelsvertretung der Russe Soz. Fod. Naphtha Export (1925), 94 L. J. K. B. 579; Hirji Mulji v. Cheong Yue S.S. Co., [1926] A. C. 497.

3101a. **All available shipping requisitioned.**—In an action brought in Singapore in Aug. 1917, defts. counterclaimed damages for failure by plff. to deliver sugar sold by him to be shipped & delivered at Bombay. The shipment of the sugar had been prevented by the

requisitioning of ships by the British Govt.:—*Held*: Civil Law Ordinance No. III (Str. Sett. No. VIII. of 1909), s. 5 (1), which provides that in all questions which arise for decision in the Colony "with respect to mercantile law generally, the law to be administered shall be the same as would be administered in England in the like case, at the corresponding period, unless in any case other provision is, or shall be made, by statute," made Defence of the Realm Amendment Act No. 2, 1915 (c. 37), & Courts (Emergency Powers) Act, 1917 (c. 26), applicable to the case, & the latter Act gave a good defence to the counterclaim whether the requisitioning was under Defence of the Realm Act, 1914 (c. 29), or under the prerogative power.—*SENG DJIT HIN v. NAGURDAS PURSHOTUMDAS & CO.*, [1923] A. C. 444; 92 L. J. P. C. 141; 128 L. T. 780; *sub nom.* HIN v. PURSHOTUMDAS & CO., 39 T. L. R. 226, P. C.

3106. *Add. Annotation*:—*Mentd.* Harper v. Hedges, [1923] 2 K. B. 314.

3115. *Add. Annotation*:—*Consd.* Browning v. Crumlin Valley Collieries, [1926] 1 K. B. 522.

3121. *Add. Annotation*:—*Refd.* The Penelope, [1928] P. 180.

3123. *Add. Annotation* -*Refd.* The Penelope, [1928] P. 180.

3124. *Add. Annotation* -*Refd.* The Penelope, [1928] P. 180.

3137. *Add. Annotation*:—*As to* (2) *Consd.* Haskell v. Marlow, [1928] 2 K. B. 45.

3149. *Add. Annotation*:—*Expld.* *Re Wait*, [1927] 1 Ch. 606.

3157. *Add. Annotation*:—*Mentd.* Sweet v. Williams (1922), 128 L. T. 379.

3162. *Add. Annotation*:—*As to* (3) *Appld.* Sargant v. Paterson (1923), 129 L. T. 471.

3166. *Add. Annotations*:—*Consd.* First Russian Insee. v. London & Lancashire Insee., [1928] Ch. 922. *Refd.* Browning v. Crumlin Valley Collieries, [1926] 1 K. B. 522; Hirji Mulji v. Cheong Yue S.S. Co., [1926] A. C. 497; *The Penelope*, [1928] P. 180.

3168. *Add. Annotations*:—*Consd.* First Russian Insee. v. London & Lancashire Insee., [1928] Ch. 922. *Refd.* Larrinaga v. Soc. Franco Americaine Des Phosphates De Medulla (1923), 92 L. J. K. B. 455; Cohen v. Sellar, [1926] 1 K. B. 536; *The Penelope*, [1928] P. 180.

3170. *Add. Annotations*:—*As to* (2) *Refd.* The Lord Strathcona, [1925] P. 143; *The Penelope*, [1928] P. 180.

3171. *Add. Annotation*:—*Refd.* The Penelope, [1928] P. 180.

3172a. ———.]—(1) By a charterparty made in Nov. 1916, resps. agreed to place their steamship at the disposal of applts. on Mar. 1, 1917, & applts. agreed to employ her on specified terms for ten months from the date when she was delivered to them. The ship was requisitioned by the Govt. before Mar. 1, 1917, & was not released until Feb. 1919. Applts. then refused to take delivery of her:—*Held*: there had been in 1917 a frustration of the charterparty which

PART VII. SECT. 9, SUB-SECT. 2.—I.

sm. *Contract to instal furnace & maintain specified temperature of heat—Change of furnacc.*—*MILLS v. GLACE BAY HOUSING COMMISSION*, [1926] 1 D. L. R. 608; 58 N. S. R. 317.—CAN.



forthwith brought to an end the whole contract.

(2) The legal effect of the frustration of a contract does not depend upon the intention of the parties, or their opinions or even knowledge, as to the event which has brought about the frustration, but upon its occurrence in such circumstances as to show it to be inconsistent with the further prosecution of the adventure.—HIRJI MULJI v. CHEONG YUE S.S. Co., [1926] A. C. 497 ; 95 L. J. P. C. 121 ; 134 L. T. 737 ; 42 T. L. R. 359 ; 17 Asp. M. L. C. 8 ; 31 Com. Cas. 199, P. C.

*Annotation:—Generally, Reif. De la Garde v. Worsnop (1927), 96 L. J. Ch. 446.*

**3175. Add. Annotation:—***Reid. Hirji Mulji v. Cheong Yue S. S. Co., [1926] A. C. 497.*

**3177. Add. Annotation :—**Reid. Paterson Zochonis  
v. Elder Dempster, [1923] 1 K. B. 420.

**3178a.** —.]—In a charterparty there was a marginal memorandum that in the event of “war, blockade, or prohibition of export preventing loading, this charter to be cancelled”:—*Held*: the charterparty was put an end to *ipso facto* by the happening of any or either of the contingencies mentioned in the memorandum to the charterparty.—**ADAMSON v. NEWCASTLE STEAMSHIP FREIGHT INSURANCE ASSOCH.** (1879), 4 Q. B. D. 462; 48 L. J. Q. B. 670; 41 L. T. 160; 27 W. R. 818; 4 Asp. M. L. C. 150, D. C.

**Annotations:—** *Consd. Mercantile S.S. Co. v. Tyser* (1881), 7 Q. B. D. 73; *Moel Tryvan Ship Co. v. Weir Andrew*, [1910] 2 K. B. 844. **Appld.** *Capel v. Soulidi* (1916), 114 L. T. 921. **Refd.** *Re Jamieson & Newcastle Steamship Freight Insee. Assocn.* (1895), 11 T. L. R. 196.

**3178b.** —.—.]—THE PENELOPE, [1928] P. 180 ;  
97 L. J. P. 127 ; 139 L. T. 355 ; 44 T. L. R.  
597 ; 72 Sol. Jo. 557.

**3179. Add. Annotation :—**Refd. Cantiere Navale Triestina v. Russian Soviet Naphtha Export Agency, [1925] 2 K. B. 172.

**3181. Add. Annotation :—**Consd. Cantiere Navale Triestina v. Russian Soviet Naphtha Export Agency, [1925] 2 K. B. 172.

**3182. Add. Annotation:—**Dlst'd. Cantiere Navale  
Triestina v. Russian Soviet Naphtha Export  
Agency, [1925] 2 K. B. 172.

**3183. Add. Annotation :—**Dlstd. Cantiere Navale  
Triestina v. Russian Soviet Naphtha Export  
Agency, [1925] 2 K. B. 172.

3183a. ——— Ship ordered to leave port—  
Subsequent permission to return & load.]—  
A charterparty of an Italian ship provided  
that 216 running hours, Sundays & holi-  
days excepted, weather permitting, should  
be allowed the charterers for loading & dis-  
charging, & that the lay days should com-  
mence from the time the steamer was ready  
to receive or discharge her cargo, the captain  
giving six hours' notice to the charterers'  
agents, berth or no berth. The exceptions  
clause excepted "restraint of princes, rulers  
& people." The ship arrived at Batoum,  
& notice of readiness to load was given,  
& the lay days began to run. Owing, how-  
ever, to a dispute between the Russian &  
Italian Govts. the ship was ordered by  
the port authorities to leave Batoum & also

Russian waters, & accordingly the ship went to Constantinople. Subsequently permission was obtained to load the ship at Batoum, & she returned after being absent from the port a little over a fortnight. The owners subsequently claimed demurrage from the charterers, on the basis that the lay days continued to run during the period the ship was absent from Batoum:—*Held*: interference by the Russian Govt. did not amount to such an illegality as to excuse the performance of the contract.—*CANTIERE NAVALE TRIESTINA v. HANDELSVERTRETUNG DER RUSS. SOZ. FÖD. SOVIET REPUBLIK NAPHTHA EXPORT*, [1925] 2 K. B. 172; 94 L. J. K. B. 579; 133 L. T. 162; 41 T. L. R. 355; 69 Sol. Jo. 443; 16 Asp. M. L. C. 501; 30 Com. Cas. 172, C. A.

**Annotation:—***Reid. Re Ropner Shipping Co. & Cleaves Western Valleys Anthracite Collieries, [1927] 1 K. B. 879.*

**3184. Add. Annotation:—**Refd. Akt. Reidar v. Arcos (1926), 42 T. L. R. 737.

**3185. Add. Annotations:—***Refd. Sargant v. Paterson* (1923), 129 L. T. 471; *Akt. Reidar v. Arcos* (1926), 42 T. L. R. 737; *Jebara v. Ottoman Bank*, [1927] 2 K. B. 254.

**3188. Add. Annotations:—**Consd. Snia Soc. di Navigazione Industria e Commercio *v.* Suzuki (1924), 29 Com. Cas. 284; Cantiere Navale Triestina *v.* Handelsvertretung der Russ. Soz. Fod. Naphtha Export (1925), 94 L. J. K. B. 579.

**3189. Add. Citations:**—92 L. J. K. B. 455; 129 L. T. 65; 16 Asp. M. L. C. 133; 29 Com. Cas. 1.

**Add. Annotation:—***Refd. Hirji Mulji v. Cheong Yue S.S. Co.*, [1926] A. C. 497.

**3194. *Add. Annotations*:—**Consd. *Larrinaga v. Soc. Franco Americaine Des Phosphates De Medulla* (1923), 92 L. J. K. B. 455; *First Russian Insee. v. London & Lancashire Insee.*, [1928] Ch. 922. **Refd.** *Willis v. Willis* (1927), 96 L. J. P. 177; *Hyman v. Hyman, Hughes v. Hughes* (1928), 139 L. T. 416; *The Penelope*, [1928] P. 180.

**3198. Add. Annotations :—As to (1) *Appl. Snia Soc. di Navigazione Industria e Commercio v. Suzuki* (1924), 29 Com. Cas. 284. *Consd.* First Russian Insce. *v.* London & Lancashire Insce., [1928] Ch. 922; *The Penelope*, [1928] P. 180. *As to* (2) *Appl. Hirji Mulji v. Cheong Yue S.S. Co.*, [1926] A. C. 497. *Generally, Refd.* *Cohen v. Sellar*, [1926] 1 K. B. 536; *Hyman v. Hyman*, *Hughes v. Hughes* (1928), 139 L. T. 416.**

**3199. Add. Annotation :—***As to (1) Reid. Cantiaro San Rocco S. A. v. Clyde Shipbuilding & Engineering Co., [1924] A. C. 226.*

3199a. — — .]—HIRJI MULJI v. CHEONG YUE  
S.S. Co., No. 3172a, ante.

**3201. Add. Annotation :—***Refd. Benaim v. Debono*,  
[1924] A. C. 514.

**3202. Add. Annotation :—**As to (2) **Consd. Cantiere Navale Triestina v. Handelsvertretung der Russ. Soz. Fod. Naphtha Export** (1925), 94 L. J. K. B. 579.

**PART VII. SECT. 9, SUB-SECT. 3.—B.**

**3194 1. Time charter—Ship re-**  
**quisitioned by Government.]—Held: a**

condition was not to be implied in the contract that an interruption should excuse the party from the further performance of it, unless substantially

the whole contract became impossible of performance.—DOMINION COAL Co. v. LORD STRATHCONA S.S. Co., [1924] 2 D. L. R. 66; 57 N. S. R. 113.—CAN.

3206. *Add. Annotation*:—*Refd.* Cayzer, *Irvine v. Board of Trade* (1926), 95 L. J. K. B. 1054.

3211. *Add. Annotations*:—*As to* (1) *Refd.* Larrinaga *v. Soc. Franco Americaine Des Phosphates De Medulla* (1923), 92 L. J. K. B. 455; *Jebara v. Ottoman Bank*, [1927] 2 K. B. 254.

3218. *Add. Annotations*:—*As to* (2) *Refd.* Livock *v. Pearson* (1928), 33 Com. Cas. 188. *Generally*, *Mentd.* Tournier *v. National Provincial & Union Bank of England*, [1924] 1 K. B. 461.

3221. *Add. Annotation*:—*Refd.* Compagnie Continentale d'Importation *v. Handelsvertretung der Union der Russian Soviet Republic in Deutschland* (1928), 138 L. T. 663.

3225a. *Confiscation by foreign Government.*]—By a contract the vendors agreed to sell & the purchasers to purchase the timber then standing uncut in a forest in the Republic of Latvia, the purchasers to have fifteen years in which to cut & remove it, such time to be extended if the purchasers were prevented by an act of the Govt., or otherwise by *force majeure*, or by war, from cutting or disposing of the timber. The purchasers took possession of the forest, but shortly afterwards an agrarian law was passed in Latvia under which the forest & all the timber therein became the property of the Latvian State, the agreement became annulled, & all the rights of vendors & purchasers in the forest & the timber became entirely confiscated:—*Held*: the performance of the contract was entirely frustrated by the act of the Latvian State, & the parties were released from it.—*KURSELL v. TIMBER OPERATORS & CONTRACTORS*, [1927] 1 K. B. 298; 95 L. J. K. B. 569; 135 L. T. 223; 42 T. L. R. 435, C. A.

3226. *Add. Annotation*:—*Refd.* Kursell *v. Timber Operators & Contractors* (1926), 95 L. J. K. B. 569.

3233. *Add. Annotations*:—*As to* (2) *Consd.* Cantiere Navale Triestina *v. Handelsvertretung der Russe Soz. Fod. Naphtha Export* (1925), 94 L. J. K. B. 579. *Refd.* Larrinaga *v. Soc. Franco Americaine Des Phosphates De Medulla* (1923), 92 L. J. K. B. 455; *Kursell v. Timber Operators & Contractors* (1926),

95 L. J. K. B. 569; *Hyman v. Hyman*, *Hughes v. Hughes* (1928), 139 L. T. 416; *The Penelope*, [1928] P. 180.

3238. *Add. Annotation*:—*Refd.* Browning *v. Crumlin Valley Collieries*, [1926] 1 K. B. 522.

3239. *Add. Annotation*:—*Refd.* Browning *v. Crumlin Valley Collieries*, [1926] 1 K. B. 522.

3240. *Add. Annotation*:—*Refd.* Browning *v. Crumlin Valley Collieries*, [1926] 1 K. B. 522.

3243. *Add. Annotation*:—*Refd.* Browning *v. Crumlin Valley Collieries*, [1926] 1 K. B. 522.

3262. *Add. Annotation*:—*Mentd.* Glenboig Union Fireclay Co. *v. I. R. Comrs.* (1922), 12 Tax Cas. 427.

3280. *Add. Annotation*:—*Mentd.* Campbell *v. Pollak*, [1927] A. O. 732.

3282. *Add. Annotations*:—*Consd.* Cantiere San Rocco S. A. *v. Clyde Shipbuilding & Engineering Co.*, [1924] A. O. 226. *Refd.* Cohen *v. Sellar*, [1926] 1 K. B. 536; *Anchor Donaldson v. Crossland* (1928), 45 T. L. R. 97.

3303. *Add. Annotation*:—*Consd.* Tredegar *v. Harwood* (1928), 97 L. J. Ch. 392.

3306. *Add. Annotation*:—*Refd.* Tredegar *v. Harwood* (1927), 44 T. L. R. 17.

3327. *Add. Annotations*:—*As to* (5) *Apld.* Meyrick *v. Dyson* (1925), 41 T. L. R. 368. *Generally*, *Refd.* British American Continental Bank *v. British Bank for Foreign Trade*, [1926] 1 K. B. 328.

3328. *Add. Annotations*:—*Apld.* Baldry *v. Marshall*, [1925] 1 K. B. 260; *Barker v. Agius* (1927), 43 T. L. R. 751. *Mentd.* Szymonowski *v. Beck*, [1923] 1 K. B. 457; *Lancaster v. Turner*, [1924] 2 K. B. 222; *Barker v. Agius* (1927), 33 Com. Cas. 120.

After this case add "See, also, COMPANIES, No. 814a."

3330. To the cross-references following this case add "As regards bills of exchange."]—See *BILLS OF EXCHANGE*, Vol. VI., pp. 79-93."

3379a. — Provided "undertaking" carried out.] —*BRUFF v. CONYBEARE* (1868), 17 L. T. 664, Ex. Ch.; *reversg.* (1862), 13 C. B. N. S. 263.

*Annotation*:—*Consd.* London Corpn. *v. Sandon*, *London Corpn. v. Met. Ry.*, *Met. Ry. v. London Corpn.* (1872), 26 L. T. 86.

# PART VII. SECT. 9, SUB-SECT. 3.—C.

3204 *v. Reversd.*, [1924] A. C. 226; 93 L. J. P. C. 86; 130 L. T. 610.

3217 i. — *Difficulties in way of shipment.*]—By a contract, made in 1916, defts. sold certain goods, shipment to be from a continental port in six approximately equal monthly parcels:—*Held*: the long delay in shipment caused by war did not frustrate the commercial object of the contract & so put an end to it.—*RINGSTAD v. GOLLIN & CO. PROPRIETARY, LTD.* (1925), 35 C. L. R. 303; 31 Argus L. R. 221.—*AUS.*

k i. —.]—A contract being for export only:—*Held*: its object was frustrated.—*MAYER & LAGE INC. v. ATLANTIC SUGAR REFINERIES, LTD.*, [1926] 2 D. L. R. 783; 58 O. L. R. 531.—*CAN.*

# PART VII. SECT. 9, SUB-SECT. 3.—D.

sp. *Strike of workmen—Lease of salt works.*]—*Held*: the contract to pay rent had not become impossible of performance.—*HARI LAXMAN JOSHI v. SECRETARY OF STATE FOR INDIA* (1927), 1 L. R. 52 Bom. 142.—*IND.*

# PART VII. SECT. 9, SUB-SECT. 5.

1 l. — *Lease of hotel.*]—The lessees

of an hotel property, upon prohibition coming into force in Alberta, sued for a declaration that the lease of the premises & an agreement to purchase the chattels in the hotel were terminated through failure to obtain a licence:—*Held*: the abolition of the bar was a risk that must be undertaken by the lessee, it being a case not of total destruction of the subject-matter, but a case of sterility.—*CHERRIER & ORTON v. MCCREIGHT & PENNINGTON*, [1917] 2 W. W. R. 8; 11 Alta. L. R. 270; 33 D. L. R. 689.—*CAN.*

# PART VII. SECT. 9, SUB-SECT. 6.

3278 i. *Reversd.*, [1924] A. C. 226; 93 L. J. P. C. 86; 130 L. T. 610.

# PART VII. SECT. 11, SUB-SECT. 1.—A.

3305 i. *Performance by one to satisfaction of other party—Whether party bound to decide reasonably or entitled to decide arbitrarily—Bona fide decision.*] —*Pltf.* agreed to place soda around defts.' power house to their satisfaction. Defts., not being satisfied with the soda or the work, cancelled the contract. In an action for damages for breach of contract, the jury found that defts. had acted honestly but unreasonably:—*Held*: the judgment of

defts. honestly arrived at was final, & *pltf.* was not entitled to recover.—*TRUMAN v. FORD MOTOR CO. OF CANADA, LTD.*, [1926] 1 D. L. R. 960; 58 O. L. R. 317.—*CAN.*

st. *Receipt of money—Duty to collect.*]—A contract provided for a percentage of the moneys received by one party to be paid to the other:—*Held*: liability could not be evaded by failure to collect the moneys; but where there was good reason to suppose that litigation for the purpose of collection would be useless, there was no duty to litigate.—*NORTHERN PIPE LINE CO. v. CANADIAN GAS CO.*, [1924] 4 D. L. R. 1111.—*CAN.*

# PART VII. SECT. 11, SUB-SECT. 1.—B. (a).

a i. — *Agreement to sell dealer's business subject to granting of licence by licensing officer.*]—*RAJAH v. SULIMAN* (1927), 48 N. L. R. 309.—*S. AF.*

# PART VII. SECT. 11, SUB-SECT. 1.—D.

c i. —.]—*HALIFAX & CAPE BRETON COAL & RY. CO. v. GREGORY*, *Cass. Dig.* 2nd ed. 727.—*CAN.*

Western Cachar Tea Co., [1923]

), 48.

3487. *Add.*

*Refd.*

3490. *Add. Annotation* :—*Refd.* British & Beningtons v. North Western Cachar Tea Co., [1923] A. C. 48.

3494. *Add. Annotations* :—*Refd.* United States Shipping Board v. Durrell, [1923] 2 K. B. 739; Anglo-Newfoundland Development Co. v. Pacific Steam Navigation Co., [1924] A. C. 406; Cohen v. Sellar, [1926] 1 K. B. 536.

3495. *Add. Annotation* :—*Refd.* United States Shipping Board v. Durrell, [1923] 2 K. B. 739.

3500. *Add. Annotation* :—*Refd.* British & Beningtons v. North Western Cachar Tea Co., [1923] A. C. 48.

3508. *Add. Annotation* :—*Distd.* Chillingworth v. Esche, [1923] 1 Ch. 576.

3509. *Add. Annotation* :—*Refd.* Samuel v. Dumas, [1924] A. C. 431.

3513. *Add. Annotations* :—*Consd.* Acties Nord-Ostero Rederiet v. Casper, Edgar (1923), 28 Com. Cas. 222. *Refd.* British & Beningtons v. North Western Cachar Tea Co., [1923] A. C. 48.

3514. *Add. Annotation* :—*Refd.* Admiralty Comrs. v. Chekiang (Owners), [1926] A. C. 637.

3519. *Add. Annotations* :—*Refd.* Lawrence v. Hayes, [1927] 2 K. B. 111; Earle v. Hems-worth R. D. C. (1928), 44 T. L. I 305.

3520. *Add. Citation* :—*Revsd. sub nom.* NICHOLS v. NORTH METROPOLITAN RAILWAY & CANAL Co. (1894), 71 L. T. 836, C. A.

## Part VIII.—Defences to Actions for Breach of Contract.

3561. *Add. Annotations* :—*Consd.* Rose & Frank Co. v. Crompton, [1925] A. C. 445. *Refd.* British & Beningtons v. North Western Cachar Tea Co., [1923] A. C. 48. *Mentd.* Royal Exchange Assce. v. Hope, [1928] Ch. 179.

3569. *Add. Annotation* :—*Refd.* Allen v. Royal Bank of Canada (1925), 41 T. L. R. 625.

3614. *Add. Annotation* :—*Refd.* Jenkins v. Jenkins, [1928] 2 K. B. 501.

3622. *Add. Annotation* :—*Consd.* Allen v. Royal Bank of Canada (1925), 41 T. L. R. 625.

3641. *Add. Annotations* :—*Consd.* Jones v. Waring & Gillow, [1925] 2 K. B. 612. *Refd.* Barclay v. Malcolm (1925), 133 L. T. 512.

3646. *Add. Annotations* :—*As to* (1) *Refd.* Re British American Continental Bank, Lissner & Rosenkranz's Claim, [1923] 1 Ch. 276; Re Chesterman's Trusts, Mott v. Browning, [1923] 2 Ch. 466; Peyrae v. Wilkinson, [1924] 2 K. B. 166.

3654. *Add. Annotation* :—*Consd.* Sowerby v. Lindsay (1928), 44 T. L. R. 501.

3673. *Add. Annotation* :—*Refd.* H. v. H., [1928] P. 206.

### PART VII. SECT. 11, SUB-SECT. 1.— D. (q).

*sa. Timber licence—Condition against employment of Chinese or Japanese.*—A condition in a special timber licence under Land Act (B. C.), 1908, that no Chinese or Japanese should be employed in connection therewith is one of the essential terms of the licence.—A.-G. FOR BRITISH COLUMBIA v. BROOKS, BIDLAK & Co., [1922] 3 W. W. R. 9; 63 S. C. R. 466.—CAN.

*sd. Contract for sale of currency—Payment condition precedent to delivery.*—WALSH v. BROWN (1868), 18 C. P. 60.—CAN.

*sf. Selling agency agreement.*—AUCHTERLONIE v. ARMS (1875), 25 C. P. 403.—CAN.

*sk. Agreement to sell land for church—If congregation brought together.*—*Held*: although at first conditional, the contract, by reason of a congregation having assembled, became absolute.—A.-G. v. CHRISTIE (1867), 13 Gr. 495.—CAN.

### PART VII. SECT. 11, SUB-SECT. 1.— E.

3422 i. *General rule.*—Where a document is sufficiently clear & certain, & payment depends on some simple condition or event, it is sufficient for pltf. to allege that the condition has been complied with or the event has happened. The onus then lies on deft. to show that what was intended by the document sued on to be a condition precedent to entitle pltf. to succeed has not been complied with.—UNION SHARE AGENCY & INVESTMENT, LTD.

(LIQUIDATORS) v. SPAIN (1927), 48 N. L. R. 348.—S. AF.

### PART VII. SECT. 11, SUB-SECT. 3.— A. (b).

*p i. —.*—The consideration for a quit-claim deed was the maintenance of the grantor & pltf. during their lives. After the death of the grantor, deft. married, & pltf. left & lived elsewhere:—*Held*: as it was clearly meant that pltf. would live in deft.'s house & be maintained there by him, & as she had no valid excuse for leaving him, deft. was not obliged to provide for her support elsewhere.—COMEAN v. LEBLANC, [1923] 2 D. L. R. 1076; 56 N. S. R. 201.—CAN.

### PART VII. SECT. 11, SUB-SECT. 3.— A. (c).

3509 i. *What amounts to waiver.*—BOWES v. CHALEYER, [1923] V. L. R. 295; 32 C. L. R. 159.—AUS.

### PART VII. SECT. 11, SUB-SECT. 3.— C.

3521 i. *Right of defaulting party to sue other party—Recovery of deposit.*—Defts. contracted to supply pltf. with a quantity of lumber to be loaded on cars in July, 1920. Defts. hauled the lumber to the railway siding ready for shipment, but pltf. failed to provide cars, as it was his duty to do, upon which the lumber could be loaded:—*Held*: an action by pltf. to recover a deposit paid on the contract must be dismissed.—GLENNE v. RUSHTON (1922), 55 N. S. R. 530.—CAN.

### PART VIII. SECT. 2, SUB-SECT. 2.—A.

3542 i. *General rule.*—WHITEFORD v. (1868), 28 U. C. R. 349.—CAN.

3547 ii. —.—Prior to foreclosure proceedings on a mtge. given by deft., pltf.'s solr. wrote deft.'s solr. that the registered owner was willing to give a quit-claim deed to pltf. to clear up the title & avoid litigation if deft. would give a quit-claim deed to pltf. This was agreed to, but subsequently deft.'s solr. received a letter from pltf.'s solr. purporting to withdraw from all negotiations to accept a quit-claim deed:—*Held*: there was an accord but no satisfaction.—CAIRNS v. BROWN, [1924] 4 D. L. R. 590; 3 W. W. R. 409.—CAN.

### PART VIII. SECT. 2, SUB-SECT. 3.—D.

*sl. Discharge of mortgage on execution of agreement between mortgagor & mortgagee.*—WEST v. ACCIDENTAL FIRE INSURANCE Co., [1927] 3 D. L. R. 260.—CAN.

### PART VIII. SECT. 3, SUB-SECT. 4.

3655 viii. —.—If there is no special covenant for payment of a debt elsewhere, the presumption of law is that the borrower ought to seek out the lender for payment.—GOKUL DAS v. NATHU (1925), 1 L. R. 48 All. 310.—IND.

3656 i. —.—Unless creditor abroad.—The duty which English law imposes upon a debtor to find his creditor & pay him is imposed upon him only if the creditor is within the realm. If in India a debtor is subject to the same duty, it is similarly limited.—BANSILAL ABIRCHAND v. GHULAN MAHBUB KHAN (1925), 53 L. R. Ind. App. 58.—IND.

*p i. —.*—PLATT v. McFAUL (1854), 4 C. P. 293.—CAN.



3751. *Add. Annotation*:—*Refd.* Albemarle Supply Co. v. Hind, [1928] 1 K. B. 307.
3752. *Add. Annotation*:—*Refd.* British & North European Bank v. Zalstein, [1927] 2 K. B. 92.
3763. *Add. Annotation*:—*Consd.* Allen v. Royal Bank of Canada (1925), 41 T. L. R. 625.
3781. *Add. Annotation*:—*Consd.* Allen v. Royal Bank of Canada (1925), 41 T. L. R. 625.
3784. *Add. Annotation*:—*Refd.* Allen v. Royal Bank of Canada (1925), 41 T. L. R. 625.
- 3784a. —. —.]—HALL v. PADLEY (1923), 156 L. T. Jo. 83.
- 3784b. —. —.]—Pltf. granted a bill of sale over certain furniture to a moneylender, & as she was unable to pay him the first instalment when it became due, debts. agreed to advance to her £1,000 on another bill of sale for the purpose of paying him off & of having her furniture released from the first bill of sale. Pltf. accordingly received a cheque for £1,000 from debts. & after receiving it she executed the second bill of sale, which stated that the consideration for it was £1,000 paid to pltf. In an action by pltf. to restrain debts. from disposing of the furniture comprised in the second bill of sale, pltf. relied on Bills of Sale (1878) Amendment Act, 1882 (c. 43), s. 8, & she contended that the real consideration was the payment off of the moneylender & the release of her furniture from the first bill of sale:—*Held*: the consideration for the second bill of sale was the loan of £1,000, & as a cheque was a good payment until dishonoured there was no need to state in the second bill of sale that the payment was by cheque, & therefore, as the consideration was correctly stated in the second bill of sale, the action failed.—D'USEZ v.

TRAFFICS & DISCOVERIES, LTD. (1924), 40 T. L. R. 441.

- 3784c. —. —.]—If a bill of exchange or note be taken on account of a debt & nothing be said at the time, the legal effect of the transaction is that the original debt remains, but the remedy for it is suspended till the maturity of the instrument in the hands of the creditor. If the bill or note is given not by the debtor but by a stranger, the action for the original debt is equally suspended.—ALLEN v. ROYAL BANK OF CANADA (1925), 95 L. J. P. C. 17; 134 L. T. 194; 41 T. L. R. 625, P. C.
3806. *Add. Annotation*:—*Refd.* Allen v. Royal Bank of Canada (1925), 41 T. L. R. 625.
3813. *Add. Annotation*:—*Refd.* Jones v. Waring & Gillow, [1926] A. C. 670.
3817. *Add. Annotation*:—*Consd.* Allen v. Royal Bank of Canada (1925), 41 T. L. R. 625.
3818. *Add. Annotation*:—*Consd.* Allen v. Royal Bank of Canada (1925), 41 T. L. R. 625.
3833. *Add. Annotation*:—*Consd.* Allen v. Royal Bank of Canada (1925), 41 T. L. R. 625.
3874. *Add. Annotation*:—*Refd.* Abram S.S. Co. v. Westville Shipping Co., [1923] A. C. 773.
3880. *Add. Annotation*:—*Refd.* Albemarle Supply Co. v. Hind, [1928] 1 K. B. 307.
3905. *Add. Annotations*:—*Apld.* Albemarle Supply Co. v. Hind (1927), 43 T. L. R. 652. *Refd.* Albemarle Supply Co. v. Hind, [1928] 1 K. B. 307.
3909. *Add. Annotation*:—*Refd.* Albemarle Supply Co. v. Hind, [1928] 1 K. B. 307.
3930. *Add. Annotation*:—*Refd.* Albemarle Supply Co. v. Hind, [1928] 1 K. B. 307.
3961. *Add. Annotation*:—*Refd.* Albemarle Supply Co. v. Hind, [1928] 1 K. B. 307.

PART VIII. SECT. 3, SUB-SECT. 5.—F.

*sp. Manager of debtor agent of creditor—Fraudulent entry of payment.*—McMORRIS v. EMPRESS THEATRE Co., LTD., [1923] 2 D. L. R. 555; 16 Sask. L. R. 504; [1923] 1 W. W. R. 1144.—CAN.

PART VIII. SECT. 3, SUB-SECT 5.

G. (b) i.  
3766 iv. —. —.]—BABINEAU v. BOURQUE, [1925] 1 D. L. R. 852.—CAN.

PART VIII. SECT. 3, SUB-SECT. 5.—G. (b) ii.

3799 i. *Acceptance in satisfaction question of fact.*—The keeping & using of a cheque handed to a creditor on debtor's condition that it is to be taken in satisfaction of a claim for a larger amount, & with words on the cheque so intimating, is not conclusive in law of an accord & satisfaction; whether it was accepted in satisfaction of the claim is a question of fact.—PETERSON v. FLACK, [1923] 3 D. L. R. 132; 16 Sask. L. R. 493; [1923] 1 W. W. R. 1289.—CAN.

PART VIII. SECT. 3, SUB-SECT. 7.—A.

3871 i. *By debtor—How far creditor bound by debtor's appropriation.*—A creditor cannot appropriate in opposition to his debtor's expressed intention.—DASHARATHI GHOSE v. KHONDKAR ABDUL HANNAN (1927), 1 L. L. R. 55 Calc. 624.—IND.

3876 i. —. —.]—A debt owing from a creditor to his debtor cannot be considered as a payment by debtor until he consents to the creditor retaining it & applying it on his indebtedness.—MATTHEWSON v. THOMPSON, [1925] 2 D. L. R. 1211; [1925] 2

W. W. R. 161; 19 Sask. L. R. 420.—CAN.

3876 ii. —. —.]—A person who pays money has a right to apply that payment to any of the debts which he owes.—ALBERT v. STOREY, [1925] 4 D. L. R. 374.—CAN.

3884 iii. —. —.]—Where a debtor, who owes more than one debt to the same creditor, makes a payment without appropriating it towards the discharge of any particular debt, the right of the creditor to appropriate the amount paid towards any of the debts due to him continues up to the time when he applies the payment towards the discharge of a particular debt.—MANISTY v. JAMESON (1925), 1 L. R. 5 Pat. 326.—IND.

3884 iv. —. —.]—Where a debtor owes several debts to one person & makes a payment to him, but has not taken advantage of the privilege conferred upon him by Indian Contract Act, s. 59, the creditor is at liberty to apply the payment in liquidation of any lawful debt actually due & payable to him from debtor.—RELU MAL v. AHMAD (1925), 1 L. R. 7 Lah. 17.—IND.

3884 v. —. —.]—FRASER v. LOOIE (1863), 10 Gr. 207.—CAN.

3884 vi. —. —.]—DASHARATHI GHOSE v. KHONDKAR ABDUL HANNAN (1927), 1 L. R. 55 Calc. 624.—IND.

PART VIII. SECT. 3, SUB-SECT. 7.—C.

3913 i. —. —.]—*Mortgage debt—Or simple contract debt.*—A mtgee., in receipt of the rents & profits of the mortgaged premises, sold goods to the mtgor., & the latter assented to the receipts being applied first in payment of the account for goods sold:—*Held*:

an incumbrancer, whose rights accrued after the settlement, was not entitled to take the position that the rents & profits necessarily & irrevocably reduced the mtgc. as they were received.—MITCHELL v. SAYLOR (1901), 21 C. L. T. 224; 1 O. L. R. 458.—CAN.

3913 ii. —. —.]—*Re* BROWN (A BANKRUPT) (1851), 2 Gr. 111.—CAN.

ni. —. —.]—*Running account.*—PETRIE (L.), LTD. v. FRIZZLE, [1925] 4 D. L. R. 845; *on appeal*, [1926] 2 D. L. R. 419; [1926] 1 W. W. R. 905.—CAN.

3934 i. —. —.]—*Earlier debt.*—Under an agreement whereby debts. undertook to pay through a co-operative assocn. for goods supplied up to a certain amount by pltf. to the assocn.:—*Held*: money paid to pltf. by the assocn. after the execution of the agreement could not be appropriated to a debt owing to pltf. under a former agreement of the same kind.—CONVILLE CO., LTD. v. GODDARD, [1926] 1 W. W. R. 602; 22 Alta. L. R. 41.—CAN.

3934 ii. —. —.]—*Arrears of salary—Unless appropriation by debtor to current salary.*—*Re* LOGAN (H. J.) Co. (Ont.), [1926] 2 D. L. R. 946; 7 C. B. R. 325.—CAN.

q i. —. —.]—MCGREGOR v. GAULIN (1848), 4 U. C. R. 378.—CAN.

t i. —. —.]—ROSS v. PERRAULT (1867), 13 Gr. 206.—CAN.

PART VIII. SECT. 3, SUB-SECT. 7.—E. (a).

3961 i. *Statement of rule.*—SCOTT & PEDEN v. ELLIOTT, [1926] 2 D. L. R. 504; [1926] 2 W. W. R. 154; 37 B. C. R. 143.—CAN.

3961 ii. —. —.]—The rule in *Clayton's*

3977. *Add. Annotation*:—**Refd.** Albemarle Supply Co. v. Hind, [1928] 1 K. B. 307.
3990. *Add. Annotation*:—**Refd.** Albemarle Supply Co. v. Hind, [1928] 1 K. B. 307.
4000. *Add. Annotation*:—**Refd.** *Re* Wait, [1927] 1 Ch. 606.
4009. *Add. Annotation*:—**Refd.** Houghton v. Not-hard, Lowe & Wills (1927), 44 T. L. R. 76.
4010. *Add. Annotations*:—**Refd.** Lloyds Bank v. Chartered Bank of India, Australia & China (1928), 97 L. J. K. B. 609. **Mentd.** Liggett (Liverpool) v. Barclays Bank (1927), 137 L. T. 443.
4017. *Add. Annotation*:—**Refd.** Smith v. Wood (1928), 139 L. T. 250.
4050. *Add. Annotations*:—**Mentd.** S.S. Australia v. S.S. Nautilus, [1927] A. C. 145; S.S. Hontestroom v. S.S. Sagaporack, S.S. Hontestroom v. S.S. Durham Castle, [1927] A. C. 37.
- 4059a. —. ]—**FEENEY v. FIRBECK MAIN COL-LIERIES, LTD.**, [1926] 2 K. B. 218; 95 L. J. K. B. 689; 134 L. T. 745; 19 B. W. C. C. 33, C. A.
4073. *Add. Annotation*:—**Mentd.** Conquer v. Boot, [1928] 2 K. B. 336.
4077. *Add. Annotation*:—**Refd.** Saunders v. Young's Brewery (1925), 42 T. L. R. 136.
4117. *Add. Annotations*:—**Mentd.** Jones (Hollo-way) v. Woodhouse, [1923] 2 K. B. 117; Prager v. Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566; Tarn v. Scanlan, Neilsen, Andersen v. Collins, Muller (London) v. Lethem, Muller v. I. R. Comrs. (1927), 44 T. L. R. 53.
4130. *Add. Annotation*:—**Refd.** Richmond v. Savill, [1926] 2 K. B. 530.
4132. *Add. Annotation*:—**Mentd.** *Re* Harrington Motor Co., *Ex p.* Chaplin, [1928] Ch. 105.
4133. *Add. Annotation*:—**As to** (2) **Consd.** Smith v. Wood (1928), 139 L. T. 250.
4193. *Add. Annotation*:—**Refd.** Al<sup>tho</sup>. Ocean v. Harding, [1928] 2 K. B. 371.
4203. *Add. Annotation*:—**Folld.** Jenkins v. Jenkins, [1928] 2 K. B. 501.
4285. *Add. Annotation*:—**Refd.** Lawrence v. Hayes, [1927] 2 K. B. 111.
4286. *Add. Annotations*:—**Mentd.** New York Life Insce. v. Public Trustee (1924), 93 L. J. Ch. 449; Republica de Guatemala v. Nunez, [1927] 1 K. B. 669.

## Part IX.—Constructive Contracts.

4325. *Add. Annotation*:—**Mentd.** Adams v. Morgan [1923] 2 K. B. 234.
4335. *Add. Annotation*:—**Mentd.** Adams v. Morgan [1923] 2 K. B. 234.
- 4340a. **Double payment by bank to client's order.** ]  
—Pltfs., a London bank, on telegraphic in-  
structions from a bank in Warsaw, which was  
acting for a Polish co., paid to debts. £2,000  
on account of a sum of over £4,000 owed by  
the Polish co. to debts. The Warsaw bank  
then wrote a letter of confirmation, but plts.  
mistook the letter for a direction to pay debts.  
a further sum of £2,000 & did so. Afterwards  
the Polish co., believing the sum paid off to  
be £2,000, told the Warsaw bank to arrange  
for the payment of another £1,000, but the  
instructions accordingly sent by the Warsaw  
bank to plts. were lost in transmission &  
were never received. On discovering the  
facts plts. were willing to credit debts. with  
the above-mentioned £1,000 & brought an  
action to recover £1,000, the balance of the  
£2,000, as money paid under a mistake of

fact:—*Held*: (1) there was no such mistake  
of fact as entitled plts. to maintain that the  
amount claimed was money paid to their  
use, & the action failed; (2) plts. had been  
negligent as between themselves & debts.—  
**BARCLAY & CO., LTD. v. MALCOLM & CO.**  
(1925), 133 L. T. 512; 41 T. L. R. 518;  
69 Sol. Jo. 675.

- 4358a. **Payment of rates on tithe rentcharge by  
occupier—Demand after Tithe Act, 1891 (c. 8).** ]  
—At the date of the passing of the above Act  
rates upon a tithe rentcharge were due & in  
arrears, owing to the omission of the over-  
seers to demand payment thereof from the  
occupiers of the land out of which the tithe  
rentcharge issued. The tithe rentcharge for  
the period in respect of which the rates in  
arrear were due had been paid to the tithe-  
owner in full. After the passing of the Act,  
the overseers, purporting to act under Tithe  
Act of 1837 (c. 69), s. 8, demanded payment  
of the arrears of rates from the occupiers  
of the land, who paid them, & were allowed

*Case is at best merely a presumption.*—  
**CANADIAN BANK OF COMMERCE v. SMITH** (1911), 17 W. L. R. 135; 3  
Alta. L. R. 209.—**CAN.**

3962 v. —. —. ]—**CANADIAN  
BANK OF COMMERCE v. SMITH** (1911),  
17 W. L. R. 135; 3 Alta. L. R. 299.—  
**CAN.**

3962 vi. —. —. ]—**LAKE v.  
CROSRIE** (1911), 9 Nfld. L. R. 490.—  
**NFLD.**

### PART VIII. SECT. 3, SUB-SECT. 9.— A. (a).

4028 iv. —. —. ]—**ONTARIO EQUIT-  
ABLE LAW & ACCIDENT INSURANCE  
CO. v. BAKER**, [1926] 2 D. L. R. 289;  
[1926] S. C. R. 297.—**CAN.**

### PART VIII. SECT. 4, SUB-SECT. 5.—A.

4134 ii. —. —. ]—**MOODIE v. MAC-  
KENZIE**, [1925] 1 D. L. R. 801.—**CAN.**

### PART VIII. SECT. 4, SUB-SECT. 7.— A. (a).

4200 iii. —. —. ]—Where several  
debtors are bound jointly, a release  
given to one discharges the others,  
unless the creditor, when granting the  
release, reserves his right against  
them; this rule applies as much to  
a judgment debt as to any other  
obligation.—**CASTLE v. BILSKY** (1921),  
50 O. L. R. 536.—**CAN.**

### PART VIII. SECT. 4, SUB-SECT. 9.

sq. *On security for debt.* ]—The re-  
lease of a debt operates as a release of  
any security held in respect of it.—  
**A. G. v. SMITH & FRANCE**, [1925]  
N. Z. L. R. 217.—**N.Z.**

### PART IX. SECT. 1, SUB-SECT. 1.—A.

4325 i. *General rule.* ]—**WILSON v.  
MASON, LAMB v. WILSON** (1876), 38  
U. C. R. 14.—**CAN.**

### PART IX. SECT. 1, SUB-SECT. 1.—C.

st. *Payment to enable fulfilment of  
contract.* ]—Where a timber contract  
contained the terms that Govt. &  
all other dues should be paid by the  
contractor, & debt. co. reserved the  
right to retain Govt. dues from the  
contractor until clearance had been  
furnished:—*Held*: money paid by  
debt. co. to furnish the clearance was  
paid on behalf of the contractor to fulfil  
his contract & was chargeable against  
him.—**KEANE v. CANADIAN PACIFIC  
RY. CO.** (1924), 34 B. C. R. 127.—**CAN.**

### PART IX. SECT. 1, SUB-SECT. 1.— D. (a).

4341 iii. —. —. ]—A volunteer cannot  
recover over the debt of another paid  
without request of such other & without  
any legal obligation on his part.—  
**MARTELL v. WHITTEM** (1867), 5 Nfld.  
L. R. 200.—**NFLD.**

the amount thereof by their landlord, the owner of the land, out of the half-year's rent next becoming due. Subsequently thereto a half-year's tithe rentcharge became payable by the landowner. The landowner claimed to deduct therefrom the amount which he had allowed to the occupiers out of their rent in respect of the arrears of rates paid by them:—*Held*: having regard to the Act of 1891, s. 6, the payment of the arrears of rates by the occupiers was a voluntary payment, & they were not entitled to deduct the amount so paid from their rent; consequently the landowner was not entitled to deduct the amount which he had allowed to the occupiers from the tithe rentcharge due by him.—*Re* TITHE ACT, 1891, *ROBERTS v. POTTS, JONES v. COOKE*, [1894] 1 Q. B. 213; 58 J. P. 383; 42 W. R. 294; 9 R. 230; *sub nom.* *JONES v. POTTS, JONES v. COOKE*, 63 L. J. Q. B. 381; 69 L. T. 849; 10 T. L. R. 111, C. A.

*Annotation*:—*Distd.* *Lewis v. Hughes*, [1916] 1 K. B. 831.

4359. For “—— Payment to clear off maritime lien—No request from mortgagees” read “Payment to clear off maritime lien—No request from mortgagees.”

*Add. Annotations*:—*Refd.* *The St. George*, [1926] P. 217; *The Goulandris*, [1927] P. 182; *The Stream Fisher*, [1927] P. 73.

4360. For “—— Premiums on husband's life policy paid by wife—First life interest under settlement of policies taken by wife” read “Premiums on husband's life-policies paid by wife—First life interest under settlement of policies taken by wife.”

4372. *Add. Annotation*:—*Refd.* *Christoforides v. Terry*, [1924] A. C. 566.

4377a. Double payment by bank.]—*BARCLAY & Co., LTD. v. MALCOLM & Co.*, No. 4340a, *ante*.

4379. *Add. Annotation*:—*Refd.* *Akt. Dampskibs Steinstad v. Pearson* (1927), 137 L. T. 533.

4382. *Add. Annotation*:—*Consd.* *Spencer v. Ashworth Partington*, [1925] 1 K. B. 589.

4385. *Add. Annotation*:—*Refd.* *Liggett (Liverpool) v. Barclays Bank* (1927), 137 L. T. 443.

4390. *Add. Annotation*:—*Consd.* *Smith, Hogg v. Bamberger* (1928), 97 L. J. K. B. 458.

4410. *Add. Annotation*:—*As to* (2) *Refd.* *Akt. Dampskibs Steinstad v. Pearson* (1927), 137 L. T. 533.

4418. *Add. Annotation*:—*Dbtd.* *Lowther v. Clifford* (1926), 95 L. J. K. B. 576.

4429. *Add. Annotation*:—*As to* (1) *Refd.* *Akt. Dampskibs Steinstad v. Pearson* (1927), 137 L. T. 533.

4435. *Add. Annotations*:—*Consd.* *The Chekiang*, [1925] P. 80. *Apprvd.* *Admiralty Comrs. v. Chekiang (Owners)*, [1926] A. C. 637.

4437. *Add. Annotation*:—*Overd.* *Spencer v. Ashworth Partington*, [1925] 1 K. B. 589.

4438. After this case add “*See, further, COMPANIES, Vol. IX., pp. 328–331.*”

4478. *Add. Annotation*:—*Refd.* *Re Mason* (1928), 97 L. J. Ch. 321.

PART IX. SECT. 3, SUB-SECT. 1.  
m 1. —.]—*BARNHART v. ROBERTSON* (1842), 6 O. S. 542.—CAN.

PART IX. SECT. 3, SUB-SECT. 3.—D.  
xx. *General rule.*]—*Deft.* having sold a cargo & remitted the proceeds to

C. & S., an action was brought by plffs. on the common counts as for money received to their use:—*Held*: after the sale *deft.* held the proceeds for the benefit of plffs., & in remitting them to C. & S. did so in his own wrong, & the verdict for *deft.* should be set aside.—*MORTON v.*

4487. *Add. Annotations*:—*Refd.* *Holt v. Markham*, [1923] 1 K. B. 504; *Cantiare San Rocco S. A. v. Clyde Shipbuilding & Engineering Co.*, [1924] A. C. 226; *Bowling v. Cox*, [1926] A. C. 751; *Anchor Donaldson v. Crossland* (1928), 45 T. L. R. 97. *Mentd.* *Boston Corpn. v. Fenwick* (1923), 129 L. T. 766.

4523. *Add. Annotation*:—*Distd.* *Jones v. Waring & Gillow*, [1926] A. C. 670.

4534. *Add. Annotations*:—*Apld.* *Holt v. Markham*, [1923] 1 K. B. 504. *Refd.* *Jones v. Waring & Gillow*, [1926] A. C. 670; *British & North European Bank v. Zalstein*, [1927] 2 K. B. 92.

4534a. —.]—By certain military regulations officers in the Royal Air Force were on demobilisation entitled to a gratuity varying in amount according to circumstances. If their names were on a certain list, called the Emergency List, they were only entitled to a gratuity at a lower rate than if they were not on that list. *Deft.* was a demobilised officer of the Royal Air Force. *Plffs.*, who acted as Govt.'s agents for the payment (*inter alia*) of gratuities to demobilised officers of that force, in ignorance of the fact that *deft.* was on the Emergency List, but also in forgetfulness of the regulation which provided that the gratuities of officers on the Emergency List should be paid at the lower rate, & not appreciating the materiality of an officer being on that list, paid *deft.* his gratuity at the higher rate to which he would have been entitled if he had not been on that list. More than a year afterwards, & before notice of the mistake, *deft.* spent the money. In an action to recover back the excess payment as money paid under a mistake of fact:—*Held*: *plffs.* could not recover on the grounds that *plffs.*' mistake was not a mistake of fact causing the payment; & that as *deft.* had been led by *plffs.*' conduct to believe that he might treat the money as his own, & in that belief had altered his position by spending it, *plffs.* were estopped from alleging that it was paid under a mistake.—*HOLT v. MARKHAM*, [1923] 1 K. B. 504; 92 L. J. K. B. 406; 128 L. T. 719; 67 Sol. Jo. 314, C. A.

*Annotations*:—*Consd.* *Jones v. Waring & Gillow*, [1926] A. C. 670. *Refd.* *British & North European Bank v. Zalstein*, [1927] 2 K. B. 92; *Reckitt v. Barnett, Pembroke & Slater* (1927), 44 T. L. R. 43; *Home & Colonial Insce. v. London Guarantee & Accident Co.* (1928), 45 T. L. R. 134. *Mentd.* *Ord. v. Ord*, [1923] 2 K. B. 432.

4542. *Add. Annotations*:—*Generally, Refd.* *Holt v. Markham*, [1923] 1 K. B. 504; *British American Continental Bank v. British Bank for Foreign Trade*, [1926] 1 K. B. 328; *Jones v. Waring & Gillow*, [1926] A. C. 670.

4563. *Add. Annotation*:—*Consd.* *Jones v. Warin & Gillow*, [1925] 2 K. B. 612.

4569a. Damages recovered by holder of bill of exchange against sheriff—Bill held in trust for plaintiff.]—Where the holder of a bill of exchange, who held it in trust for *pltf.*, sued the drawer, &, pending that suit, became *bkpt.*, & his assignees afterwards brought an

(1874), 10 N. S. R. (1 R. & C.) 71.—CAN.

sy. Money paid to revenue officer Representing value of seizure & fine—Action by informer for share.]—*WRIGHT v. CURLESS* (1888), 21 N. S. R. 232.—CAN.



action against the drawer in bkpt.'s name, in which action, the sheriff having been guilty of an escape on mesne process, the assignees recovered against the sheriff in an action for the escape, damages to the amount of the bill:—*Held*: pltf. might maintain money had & received against the assignees for the damages so recovered, allowing to them the costs & expenses.—*RANDOLL v. BELL* (1813), 1 M. & S. 714; 105 E. R. 266.

*Annotation*:—*Distd. Neale v. Reid* (1823), 1 B. & C. 657.

**4578. Add. Annotation**:—*Refd. Tournier v. National Provincial & Union Bank of England*, [1924] 1 K. B. 461.

**4583. Add. Annotations**:—*Refd. Underwood v. Bank of Liverpool & Martins, Same v. Barclays Bank*, [1924] 1 K. B. 775; *Liggett (Liverpool) v. Barclays Bank* (1927), 137 L. T. 443; *Lloyds Bank v. Chartered Bank of India, Australia & China* (1928), 97 L. J. K. B. 609.

**4587. Add. Annotation**:—*Refd. Brocklebank v. R.*, [1925] 1 K. B. 52.

**4590a. To bank named by principal—Money returned by bank to agent.**—Pltfs. in London sold to a New York co. a quantity of Belgian francs to be delivered to defts. as the purchasers' agents in Brussels on Dec. 31, at a price to be paid in dollars on the same day in New York, & the purchasers instructed defts. to pay the francs when received to the C. Bank. On Dec. 30 bkpcy. proceedings were commenced against the purchasers in New York & a receiver was appointed, & on the same day the purchasers cabled to pltfs. not to pay the francs to defts., as they, the purchasers, were unable to complete their contract. Before that cable arrived pltfs. had already paid the francs to defts., & defts. had paid them to the C. Bank. Pltfs. then requested the C. Bank to return them, & the C. Bank returned them to defts., with an explanation that they did so for the purpose of cancelling defts.' payment to them. In these circumstances defts. claimed that, the money having been returned to them, they were entitled to hold it on behalf of their principals, & refused to pay it over to pltfs., who brought an action to recover the francs as being money had & received by defts. to their use:—*Held*: (1) as at the time pltfs. paid the francs to defts. the purchasers had already repudiated their contract, although pltfs. did not know that fact & consequently had not accepted the repudiation, pltfs. were under no legal obligation to pay, & having paid under a mistaken belief of legal liability, they would have been entitled to recover the money back if they had dis-

covered their mistake before defts. had paid it to the C. Bank; (2) the effect of the money being returned by the C. Bank was to restore pltfs. to the same position as that which they occupied before defts. paid it away, & that position was unaffected by the fact that before redemand of the money by pltfs. the trustee in bkpcy. of the purchasers had directed defts. not to part with it, & defts. in compliance with that direction had credited the purchasers with it in their books; (3) defts. were bound to repay it to pltfs.—*BRITISH AMERICAN CONTINENTAL BANK v. BRITISH BANK FOR FOREIGN TRADE*, [1926] 1 K. B. 328; 95 L. J. K. B. 326; 134 L. T. 472; 42 T. L. R. 202, C. A.

**4591. Add. Annotation**:—*Refd. R. A Debtor*, [1928] Ch. 199.

**4597. Add. Annotations**:—*Refd. Abram S.S. Co. v. Westville Shipping Co.*, [1923] A. C. 773; *Rowland v. Dival*, [1923] 2 K. B. 500.

**4598. Add. Annotation**:—*Refd. Abram S.S. Co. v. Westville Shipping Co.*, [1923] A. C. 773.

**4623. Add. Annotation**:—*Distd. Hardie & Lane v. Chilton*, [1928] 2 K. B. 306.

**4635. Add. Annotation**:—*Consd. Brocklebank v. R.*, [1924] 1 K. B. 647.

**4640. Add. Annotations**:—*Consd. Brocklebank v. R.*, [1925] 1 K. B. 52. *Refd. Glamorgan County Council v. Glasbrook*, [1924] 1 K. B. 879.

**4644. Add. Annotations**:—*Appld. Marshal Shipping Co. v. Board of Trade*, [1923] 2 K. B. 343. *Consd. Brocklebank v. R.*, [1925] 1 K. B. 52. *Refd. Glamorgan County Council v. Glasbrook*, [1924] 1 K. B. 879.

**4649. After this case add "Payment as condition of licence to sell ship to foreigner."**—*See CONSTITUTIONAL LAW*, pp. 280, 281, *ante*, Nos. 526a–526d, *ante*.

**4650. Add. Annotation**:—*Refd. Catton v. Ashwell & Nesbit*, [1928] Ch. 484.

**4651. Add. Annotation**:—*Mentd. Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669.

**4676a. —.**—Pltf. cannot abandon his claim in tort & still pursue his claim for money had & received which depends upon the alleged tort.—*HARDIE & LANE, LTD. v. CHILTERN*, [1928] 1 K. B. 663; 96 L. J. K. B. 1040; 138 L. T. 14; 43 T. L. R. 709; 71 Sol. Jo. 664, C. A.

**4678. Add. Annotation**:—*Mentd. Ord v. Ord*, [1923] 2 K. B. 432.

**4683. Add. Annotation**:—*Mentd. Re Letters Patent No. 139, 207, Re Carbonit Akt.*, [1924] 2 Ch. 53.

**4700. Add. Annotation**:—*Refd. Woollatt v. Stanley* (1928), 138 L. T. 620.

#### PART IX. SECT. 3, SUB-SECT. 3.—H.

**4596 i. General rule.**—*Re CAIRNS & McNAIRN*, [1927] 2 D. L. R. 444; 60 O. L. R. 194.—CAN.

#### PART IX. SECT. 3, SUB-SECT. 4.—B. (a).

**sa. Money paid under decree—Decree unreversed.**—Money recovered under a decree cannot be recovered back in a fresh suit while the decree remains in force; but if the decree has been reversed or superseded the money paid is recoverable.—*NAGANNA v. VENKATAPPAYYA* (1923), 1 L. R. 46 Mad. 895.—IND.

**sd. Money paid to obtain possess of goods.**—*WILSON v. MASON, LAMB v. WILSON* (1876), 38 U. C. R. 14.—CAN.

#### PART IX. SECT. 3, SUB-SECT. 4.—B. (b).

**m i. —.**—*RICHARDS v. TAYLOR* (1896), 28 N. S. R. (16 R. & G.) 311.—CAN.

#### PART IX. SECT. 3, SUB-SECT. 4.—B. (c).

**4616 ii. —.**—Pltf.'s action against deft. was dismissed with costs. Pltf. appealed. After service of notice of appeal deft. threatened to distrain for

the costs, & pltf.'s solr. paid the amount to deft.'s solr. The appeal was allowed & deft. ordered to pay the costs of the action & of the appeal. Neither deft. nor his solr. would refund the amount paid for the costs:—*Held*: the money could be recovered from deft. as money received to pltf.'s use.—*BURKE v. BEATTY & WHITE*, [1928] 1 R. 91.—IR.

#### PART IX. SECT. 3, SUB-SECT. 4.—B. (h).

**4654 i. Cause of action known to defendant.**—*RANK OF MONTREAL v. WEISDEPP*, [1917] 2 W. W. R. 615; 24 B. C. R. 73, 81; 34 D. L. R. 26.—CAN.

4711. *Add. Annotation*:—**Mentd.** *Ord. v. Ord*, [1923] 2 K. B. 432.
4716. *Add. Annotation*:—**Refd.** *London & Montrose Shipbuilding & Repairing Co. v. Barclays Bank* (1925), 31 Com. Cas. 67.
4742. *Add. Annotation*:—**Consd.** *Jones v. Waring & Gillow*, [1925] 2 K. B. 612.
4751. *Add. Annotations*:—**Consd.** *Jones v. Waring & Gillow*, [1925] 2 K. B. 612; *Re Mason* (1928), 97 L. J. Ch. 321.
- 4770a. ———.]—**PRESTON v. STRUTTON** (1792), 1 Anst. 50; 145 E. R. 797.
- Annotation*:—**Consd.** *Rawson v. Samuel* (1841), Cr. & Ph. 161.
4824. *Add. Annotation*:—**Refd.** *British & North European Bank v. Zalzein*, [1927] 2 K. B. 92.
4868. *Add. Annotations*:—**As to** (1) **Refd.** *Thompson v. British Medical Assocn. (New South Wales Branch)*, [1924] A. C. 764. *Generally*, **Refd.** *Palmolive Co. (of England) v. Freedman* (1927), 44 T. L. R. 86.

## Part X.—Personal Contracts.

4907. *Add. Annotation*:—**Refd.** *Public Trustee v. Elder*, [1926] Ch. 776.
- 4908a. ———.]—The element of personal confidence which renders a contract unassignable is not confined to cases where the purchaser relies on the personal skill of the vendor or manufacturer, or where the manufacturer relies on the personal idiosyncrasies of the buyer with regard to his requirements or with regard to his performance to the covenants other than his obligation to pay. Where the ability of the buyer to pay is the subject-matter of personal confidence, the contract is just as much taken out of assignability as where the manufacturing skill of the seller is the subject-matter of the buyer's personal confidence.
- Defts. entered into a contract with H. to supply him with 10,000 tons of coal, the delivery of which was to be extended over two years. H. had been carrying on the business of a coal merchant for some years, the business consisting of carting coals from defts.' depots round the streets of a certain district & there selling it to the working classes by weight in relatively small quantities, it being a regular practice to give short credit. H. assigned the contract to pltf., who up to the time of the assignment had no experience of the coal trade:—**Held**: there was that degree of difference between H.'s & pltf.'s knowledge of the business, which, having regard to the nature of the business, constituted an element of personal confidence in the matter personal to H. which made the contract unassignable.—**COOPER v. MICKLEFIELD COAL & LIME CO., LTD., COOPER v. RAYNER** (1912), 107 L. T. 457; 56 Sol. Jo. 706.
4913. *Add. Annotation*:—**Refd.** *Messenger v. British Broadcasting Co.*, [1928] 97 L. J. K. B. 251.
4915. *Add. Annotation*:—**Refd.** *Messenger v. British Broadcasting Co.*, [1927] 2 K. B. 543.
4916. *Add. Annotation*:—**Refd.** *Messenger v. British Broadcasting Co.*, [1927] 2 K. B. 543.
- 4922a. *Agreement as to right to perform play.*—By an agreement pltf. grant to E. "the sole & exclusive right of representing or performing" in certain areas a play, of the music of which pltf. was the composer:—**Held**: the agreement was not limited to performance at a theatre & was not a mere licence, but was an assignment to E. of rights which either he or his exors. could assign.—**MESSAGER v. BRITISH BROADCASTING CO., LTD.** (1928), 45 T. L. R. 50, H. L.
- 4931a. ———.]—**COOPER v. MICKLEFIELD COAL & LIME CO., LTD., COOPER v. RAYNER**, No. 4908a, *ante*.
- 4936a. *S. P. JACKSON v. BRIDGE* (1702), 12 Mod. Rep. 650; 88 E. R. 1580.
- Annotations*:—**Refd.** *Tasker v. Shepherd* (1861), 6 H. & N. 575; *Farrow v. Wilson* (1869), L. R. 4 C. P. 744; *Hinkins v. Alder* (1906), 50 Sol. Jo. 258.

### PART IX. SECT. 3, SUB-SECT. 4.—C. (i).

*sf. Proceeds of sale of crop—Agreement for delivery of part of crops.*—**DUCAT v. SWEENEY** (1839), 2 Ont. Dig. 4259.—CAN.

### PART IX. SECT. 3, SUB-SECT. 4.—E.

*sk. Purpose illegal—Purpose partly fulfilled.*—If A. gives to another as his agent a cheque to make a purchase forbidden by law, & the agent makes the purchase & indorses the cheque to the vendor, A. cannot recover from the agent an alleged balance unaccounted for of the amount of the cheque as money paid to the agent for A.'s use. While the money might have been recovered before the effecting of the illegal purpose, it cannot be recovered

after.—**LAWSON v. FARLEY**, [1924] 1 D. L. R. 279; 1 W. W. R. 243; 18 Sask. L. R. 48.—CAN.

### PART IX. SECT. 4, SUB-SECT. 5.—B. (a).

*sm. Casual observation to third party—Insufficient.*—**CURTIS v. FLINDALL** (1847), 3 U. C. R. 323.—CAN.

### PART X. SECT. 1.

*sb. Advertising agreement.*—An agreement whereby defts. granted to J. S., carrying on business as J. S. Co., the exclusive rights of screen advertising, J. S. Co. to attend to all matters connected with the obtaining of advertising contracts, which it took in its own name:—**Held**: not

assignable.—**SWINSON (JOHN) CO., LTD. v. CRYSTAL PALACE, LTD.**, [1922] N. Z. L. R. 250; Gaz. L. R. 69.—N.Z.

*sc. Agreement for easement—Construction & use of tramway.*—Deft. & another in 1916 granted to S. a right to lay down a tramway through deft.'s land for the purposes of removing S.'s timber. In 1919 S. assigned his rights under the agreement to pltf. The assignment was known to deft., who raised no objection. Deft. in 1922 put gates across the tramway, removed part of the tramline, & destroyed part of a trestle bridge:—**Held**: the grant or contract was not a personal one, & pltf. had an equitable interest by assignment from S. in the easement.—**MACDONALD v. PEDDLE**, [1923] N. Z. L. R. 987.—N.Z.

## Part XII.—Assignment of Contracts.

- 4956. Add. Annotations:—***Re*fd. *Anderson v. Equitable Life Assce. Soc. of the United States* (1926), 134 L. T. 557; *Bennett v. Whitehead*, [1926] 2 K. B. 380.
- 4957. Add. Annotation:—***Re*fd. *Public Trustee v. Elder*, [1926] Ch. 776.
- 4963. Add. Annotation:—***Consd.* *Greer v. Downs Supply Co.*, [1927] 2 K. B. 28.
- 4985. Add. Citations:—**33 L. T. 760; *sub nom. Re EUROPEAN ASSURANCE SOCIETY ARBITRATION ACTS, 1872, 1873 & 1875, Re ANGLO-AUSTRALIAN & UNIVERSAL FAMILY LIFE ASSURANCE CO., HARMAN'S CASE, PRATT'S CASE*, 45 L. J. Ch. 332.
- 4993. Add. Annotation:—***Mentd.* *Rackham v. Tabrum* (1923), 129 L. T. 24.

## Part XIII.—Interpretation of Contracts.

- 5031. Add. Annotations:—***Refd.* *Larrinaga v. Soc. Franco Americaine Des Phosphates De Medulla* (1923), 92 L. J. K. B. 455; *Cohen v. Sellar*, [1926] 1 K. B. 536; *First Russian Insce. v. London & Lancashire Insce.*, [1928] Ch. 922; *The Penelope*, [1928] P. 130.
- 5032. Add. Annotations:—***Refd.* *Tournier v. National Provincial & Union Bank of England*, [1924] 1 K. B. 461; *Livock v. Pearson* (1928), 33 Com. Cas. 188.
- 5033. Add. Annotations:—***Refd.* *Sack v. Jones*, [1925] Ch. 235; *O'Cedar v. Slough Trading Co.*, [1927] 2 K. B. 123.
- 5040. Add. Annotation:—***Mentd.* *Macmillan v. Cooper* (1923), 93 L. J. P. C. 113.
- 5041a. —.]**—Defts., manufacturers, sold goods to pltfs., retailers, upon condition that pltfs. should not resell the goods to the public at less than a specified price. After business had been carried on upon this condition for three years defts., without giving pltfs. notice of their intention to change their method of business, began to sell goods direct to the public without the intervention of middlemen, at a price very much lower than that which pltfs. were obliged to charge under their contract with defts., & as a result pltfs. were left with goods which they had bought from defts. & had in stock, & could not dispose of the goods except at a loss. They claimed damages on the ground that a term must be implied in the contract that defts.
- would not themselves sell the goods to the public at a price below that which pltfs. were bound by the contract to charge, or at least that before beginning to sell goods to the public they would give pltfs. sufficient notice to enable them to dispose of their stock of goods at a profit:—*Held*: no such term as pltfs. required could be implied in the contract.—*LIVOCK v. PEARSON BROTHERS* (1928), 33 Com. Cas. 188.
- 5042. Add. Annotations:—***As to* (1) *Apld.* *Livock v. Pearson* (1928), 33 Com. Cas. 188. *Refd.* *Cockburn v. Smith* (1923), 40 T. L. R. 113; *Kelantan Government v. Duff Development Co.*, [1923] A. C. 395; *Larrinaga v. Soc. Franco Americaine Des Phosphates De Medulla* (1923), 92 L. J. K. B. 455; *Transoceanica Soc. Italiana Di Navigazione v. Shipton*, [1923] 1 K. B. 31; *United States Shipping Board v. Durrell*, [1923] 2 K. B. 739; *Tournier v. National Provincial & Union Bank of England*, [1924] 1 K. B. 461.
- 5045. Add. Annotations:—***Consd.* *United States Shipping Board v. Durrell*, [1923] 2 K. B. 739. *Refd.* *Anglo-Newfoundland Development Co. v. Pacific Steam Navigation Co.*, [1924] A. C. 406; *Cohen v. Sellar*, [1926] 1 K. B. 536.
- 5048. Add. Annotations:—***Consd.* *Cockburn v. Smith* (1923), 40 T. L. R. 113; *Kelantan Government v. Duff Development Co.*, [1923] A. C. 395; *Forbes, Abbott & Lennard v. G. W. Ry.* (1927), 138 L. T. 286. *Apld.*

**PART XII. SECT. 2, SUB-SECT. 1.**  
**4957** 1. *When implied.*—MORRISON  
 v. GALE (1872), 1 N. B. R. (Pug.) 203.—  
**CAN.**

**PART XII. SECT. 2, SUB-SECT. 2.—**  
**A. (a).**

4958 iii. ———.]—A business was transferred to a new co. Pltf. brought an action for an unpaid balance against the old firm. Evidence showed that pltf. had disclosed no intention to accept the new co. as the debtor:—*Held*: the old firm were liable.—**SIMPSON & ORS v. COUSINS, [1923]**  
1 D. L. R. 106.—CAN.

4958 iv. ———.]—SWINSON  
(JOHN) Co., LTD. v. CRYSTAL PALACE,  
LTD., [1922] N. Z. L. R. 250; Gaz.  
L. R. 69.—N.Z.

4958 v. ———.]—McCULLY v.  
MARITIME UNITED FARMERS' CO-OPERA-  
TIVE, CARTER v. MARITIME UNITED  
FARMERS' CO-OPERATIVE (N. B.), [1926]  
4 D. L. R. 727.—CAN.

**PART XII. SECT. 2, SUB-SECT. 2.—**  
**A. (b) i.**

4967 i. Clear proof of intention re-

*quired—Onus on party alleging novation.*—**CRAYTHORNE v. JENKINS**, [1926] N. Z. L. R. 858.—N.Z.

**PART XII. SECT. 2, SUB-SECT. 2.—B.**  
 4999 iv. ———.] — McCANNELL v.  
 TYREMAN, [1925] 1 D. L. R. 911.—  
 CAN.

**sd. What constitutes — Bill of exchange of new firm taken in payment—Bill dishonoured.]—**Pltf. co., a creditor of a firm, had no notice of the dissolution of the partnership between the partners, C. & S., until Feb. 7, when H., pltf.'s manager, was told of it. H. took an acceptance of S. for the amount due to pltf. down to Feb. 1, dating it as of Feb. 7, receipted the bill & continued to supply goods to S. down to Mar. 4 when the business was closed. On Mar. 10 the draft taken by H. was dishonoured, & on Mar. 31, the whole dealing was closed by H. taking a demand note from S. for the whole amount then due to pltf. co.:—*Held*: C. was not released from his liability to pltf. until after notice of dissolution given by S. on Feb. 7. There was no novation & pltf. were entitled to recover from the members of the firm

their account down to the date of notice.—**HANTSPOBT FRUIT CO., LTD. v. COLDWELL**, [1923] 4 D. L. R. 65; 56 N. S. R. 222.—**CAN.**

**PART XIII. SECT. 2, SUB-SECT. 1.—**  
**B.**

**5034 ii.** —.]--In construing a contract, a term or condition not expressly stated may, in certain circumstances, be implied by the ct., if it is clear, from the nature of the transaction, that the contracting parties must have intended such a term or condition to be a part of the agreement between them. The implication is founded upon the presumed intention of the parties & upon reason.—**PIONEER BANK v. CANADIAN BANK OF COMMERCE (1915), 9 O. W. N. 95 ; 34 O. L. R. 531.—CAN**

**PART XIII. SECT. 2. SUB-SECT. 1.—C.**

5048.ii. —.]—While the ct. must not by implication actually make a contract for the parties, yet it may hold that on a reasonable consideration of the terms of the contract there is necessarily implied an obligation for the purpose of giving efficacy to the transaction & preventing such a



**Silverman v. Imperial London Hotels** (1927), 137 L. T. 57; **Wallems Rederij A./S. v. Muller, Batavia**, [1927] 2 K. B. 99; **G. W. Ry. v. Durnford** (1928), 139 L. T. 145; **Livock v. Pearson** (1928), 33 Com. Cas. 188. **Refd.** **Larrinaga v. Soc. Franco Americaine Des Phosphates De Medulla** (1923), 92 L. J. K. B. 455; **United States Shipping Board v. Durrell**, [1923] 2 K. B. 739; **British Petroleum Co. v. A.-G. for Ceylon**, [1926] A. C. 147; **Browning v. Crumlin Valley Collieries**, [1926] 1 K. B. 522; **United States Shipping Board v. Strick**, [1926] A. C. 545; **Marbe v. George Edwardes (Daly's Theatre)** (1927), 43 T. L. R. 460. **Mentd.** **The Empress**, [1923] P. 96; **Great Lakes S.S. Co. v. Maple Leaf Milling Co.** (1924), 41 T. L. R. 21; **The Grit**, [1924] P. 246.

**5052. Add. Annotations :—***Refd.* *Livock v. Pearson* (1928), 33 Com. Cas. 188. *Mentd.* *Thomas v. Todd*, [1926] 2 K. B. 511.

**5054. Add. Citation :—15 Asp. M. L. C. 544.**

**5056. Add. Annotations :—***Refd.* *Willis v. Willis* (1927), 96 L. J. P. 177; *First Russian Insce. v. London & Lancashire Insce.*, [1928] Ch. 922; *Hyman v. Hyman*, *Hughes v. Hughes* (1928), 139 L. T. 416; *The Penelope*, [1928] P. 180.

**5059. Add. Annotation:—Apld. Kelantan Govern-  
ment v. Duff Development Co., [1923]  
A. C. 395.**

**5060. Add. Annotation :—**Consd. A.-G. v. G. S. & W. Ry. of Ireland, [1925] A. C. 754.

5066a. Term customary during war.]—The ct. found that since the outbreak of war in 1914 it had been a universal custom in the dried fruit trade to insert in all contracts for the sale of sultanas a clause as follows: "Should shipment be prevented by *force majeure* such as prohibition of export, blockade, war, or any consequence of warlike operations, this contract or the then unfulfilled part thereof to be cancelled without claim." The ct., therefore, rectified certain bought & sold notes by the addition of this clause on the ground that the parties must be taken to have contracted on this basis.—*CARAMAN ROWLEY & MAY v. APERGHIS* (1923), 40 T. L. R. 124.

**5072. Add. Annotation:—**Mentd. Captain J. A. Cates Tug & Wharfage Co. v. Franklin Insce., [1927] A. C. 698.

**5073. Add. Annotation:—***Refd.* Einar Bugge v. Bowater (1925), 31 Com. Cas. 1.

**5085. Add. Annotations:—***Refd. Boorne v. Wicker*, [1927] 1 Ch. 667; *Farey v. Cooper*, [1927] 2

**K. B. 384; Livock v. Pearson (1928), 33 Com. Cas. 188.**

**5086. Add. Annotations:—***Apld. Boorne v. Wicker*, [1927] 1 Ch. 667. *Refd. Farey v. Cooper*, [1927] 2 K. B. 384; *Livock v. Pearson* (1928), 33 Com. Cas. 188.

5087. *Add. Annotation*:—**Reid. Martin v. Stout,**  
[1925] A. C. 359.

**5088. Add. Annotation :—***As to (2) Reff. Franco-British Ship Store Co. v. Compagnie des Chargeurs Francaise (1926), 42 T. L. R. 735.*

**5102. Add. Annotations:—**Consd. First Russian Insce. v. London & Lancashire Insce., [1928] Ch. 922; The Penelope, [1928] P. 180. Refd. Larrinaga v. Soc. Franco Americaine Des Phosphates Des Medulla (1923), 92 L. J. K. B. 455; Kursell v. Timber Operators & Contractors (1926), 95 L. J. K. B. 569; *Re Wait*, [1926] Ch. 962.

5103. *Add. Annotation* :—*Reid. Larrinaga v. Soc. Franco Americaine Des Phosphates Des Medulla* (1928), 92 L. J. K. B. 455.

5104. *Add. Annotation* :—**Expld. Re Wait**, [1927]  
1 Ch. 606.

5107. *Add. Annotation*:—**Refd.** The Penelope,  
[1928] P. 180.

**5113. Add. Annotation :—**Consd. *Marbé v. George Edwardes* (Daly's Theatre) (1927), 96 L. J. K. B. 980.

**5117. Add. Annotation :—***Refd. Sweet v. Williams*  
(1922), 128 L. T. 379.

**5120. Add. Annotation :—**Consd. *Marbé v. George Edwardes* (Daly's Theatre) (1927), 96 L. J. K. B. 980.

**5121. Add. Annotation :—**Consd. Marbé v. George Edwardes (Daly's Theatre) (1927), 96 L. J. K. B. 980.

**5126. Add. Annotation :—***Refd. Sweet v. Williams*  
(1922), 128 L. T. 379.

**5132. Add. Annotation:—***Consd. Browning v. Crumlin Valley Collieries*, [1926] 1 K. B. 522.

**5152. Add. Annotation :—***Reid. Crediton Gas Co. v. Crediton U. C.*, [1928] Ch. 447.

**5187. Add. Annotation:—***Consd. Cohen v. Sellar*,  
[1926] 1 K. B. 536.

After this case add "*Sec, further, GIFTS, Vol. XXV., p. 525.*"

**5168. Add. Annotation:—***Apld. London & South American Investment Trust v. British Tobacco Co. (Australia)*, [1927] 1 Ch. 107,

failure of consideration as cannot have been within the contemplation of either side.—CONNORS v. McGREGOR, [1924] 2 D. L. R. 86; 2 W. W. R. 294; 20 Alta. L. R. 289.—CAN.

5048 iii. —.]—A term or condition may be implied by the ct., if it is clear, on a reasonable & business like consideration of all the terms of the contract, that the parties must have intended such a term or condition.—**WELLS v. BLAIN**, [1927] 1 D. L. R. 687; [1927] 1 W. W. R. 223; 21 Sask. L. R. 194.—CAN.

**5048 iv.** — *Whether period of agency included.*—A contract of agency contained no express stipulation as to the term of the agency:—*Held*: it was not necessary, in order to give business efficiency to the contract or to carry into effect the intention of the parties, to imply a term that the

contract could be terminated only on reasonable notice, & such a term could not therefore be implied.—**POLLARD v. GIBSON, [1924] 4 D. L. R. 354; 55 O. L. R. 424.—CAN.**

**PART XIII. SECT. 2, SUB-SECT. 1.—**  
**G. (e).**

sk. Agreement to buy goods—Obligation to supply.]—Implied.—CANADA CYCLE & MOTOR CO., LTD. v. MEHR (1919), 45 O. L. R. 576; 48 D. L. R. 579; 16 O. W. N. 253.—CAN.

al. S. P. BERLINER GRAMAPHONE CO.,  
LTD. v. N. H. PHINNEY & CO., LTD.  
(1921), 54 N. S. R. 295; 57 D. L. R.  
596.—CAN.

**PART XIII. SECT. 2, SUB-SECT. 1.—**  
**H. (a) III.**

sn. Commission payable out of purchase-money.] — Pltf., an agent, made a special contract with deft.

whereby he was to obtain a portion of the purchase price:—*Held*: in the absence of express provision, there was no obligation on deft. to keep the contract of sale alive in order that pltf. might obtain his commission, & upon the cancellation of the contract of sale pltf.'s right was determined.—*GOWAN v. BOWERN*, [1924] App. D. 550.—S. AF.

st. Agreement to sell & share in proceeds of sale of goods—Obligation to supply.]—LOCK v. PURDON (1850), 7 N. B. R. (2 All.) 33.—CAN.

**PART XIII. SECT. 2, SUB-SECT. 1.—**  
**N.**

*sw. Agreement to furnish planters for fishery with supplies—Obligation to turn in produce to supplier.*—Imputed.—JOHNSON v. FINLAY (1882), 6 Nfld. I. R. 363.—NFLD.

SUB-SECT. 3.—IMPLIED WARRANTIES (Vol. XII., p. 628).

Add the following case :—

**5168a. Of fitness—Turkish baths.]**—Defts. were the owners of Turkish baths, & customers who came late at night were permitted to use the beds in the cubicles till early the next morning. Pltf. & his brother slept one night at the baths, & when they woke up they found that they had been bitten badly by insects, proved afterwards to be bugs :—  
*Held* : there had been a breach of an implied

warranty that the beds or couches supplied for the use of customers should be reasonably fit for the purpose, & defts. owed a duty to pltf. to take reasonable care that no bugs or other dangerous insects should infest their premises.—**SILVERMAN v. IMPERIAL LONDON HOTELS, LTD.** (1927), 137 L. T. 57; 43 T. L. R. 260.

For the cross-reference "**Of fitness—Sale of animals.]**—*See, generally, ANIMALS, Vol. I., pp. 260 et seq.*" read "**Sale of animals.]**—*See, generally, ANIMALS, Vol. I., pp. 260 et seq.*"

## COPYHOLDS.

NOTE.—As to copyhold tenure & manorial incidents after 1925, see Law of Property Act, 1922 (c. 16), ss. 128–145, scheds. 12–15; Law of Property (Amendment) Act, 1924 (c. 5), sched. 2.

### Part I.—The Manor.

41. *Add. Annotation* :—As to (1) *Refd.* Hodgson v. McCreagh (1923), 93 L. J. Ch. 339. 128. *Add. Annotation* :—As to (1) *Refd.* Jay v. Jay, [1924] 1 K. B. 826.
122. *Add. Citation* :—92 L. J. Ch. 55.

### Part II.—Franchises and other Rights appendant to Manors.

213. *Add. Annotation* :—Generally, *Mentd.* Harper v. Hedges, [1923] 2 K. B. 314.

### Part IV.—Manorial Courts.

325. *Add. Annotation* :—As to (1) *Appl.* *Re* Holli-day, [1922] 2 Ch. 698. 332. *Add. Annotation* :—*Mentd.* Leyton U. C. v. Wilkinson, [1927] 1 K. B. 853.

### Part V.—The Court Rolls and other Manorial Documents.

393. *Add. Annotation* :—*Consd.* Beaumont v. Jeffery (1924), 40 T. L. R. 796.
- 394a. — *Purchaser for value.*—Pltf., as lord of the manor of Great Tey, which he acquired by purchase in 1923, brought the present action of detinue to recover possession of certain ancient ct. rolls of that manor, which were of mere historical interest & which before his purchase pltf. had seen advertised for sale by deft., who, having purchased them in 1902, from one P., a waste paper dealer, had commenced advertising them for sale ten years before the commencement of the present action :—*Held* : in the absence of evidence to the contrary, it must be presumed that P. acquired the rolls lawfully in the ordinary course of his business from either the lord or the steward of the manor, & as the position of pltf.'s predecessor in title as trustee of the rolls, while they remained in his possession, did not make it illegal for him to part with them to a stranger, who came under the same obligation as the lord to produce them, pltf. was not entitled to recover the rolls.—*BEAUMONT v. JEFFERY*, [1925] Ch. 1; 93 L. J. Ch. 532; 132 L. T. 246; 40 T. L. R. 796; 68 Sol. Jo. 867.
461. *Add. Annotation* :—*Refd.* Love v. Bentley (1707), 11 Mod. Rep. 134.
482. *Add. Annotation* :—*Reid.* Beaumont v. Jeffery (1924), 40 T. L. R. 796.

### Part VI.—Officers of the Manor.

491. *Add. Citations* :—2 Show. 21; Freem. K. B. 473.

### Part VII.—Manorial Tenures.

610. *Add. Annotations* :—*Mentd.* Nicolle v. Voisin (1922), 91 L. J. P. C. 129; British-American Tobacco Co. v. Jones (1925), 134 L. T. 405.



## Part IX.—Particular Estates in Land of Copyhold and Customary Tenure.

*Add. Annotation:—Mentd. Re Estate, Tibbetts v. Engelbach, 348.*

v.

## Part XI.—Relationship of Lord and Tenant as affecting Services, Dues, etc.

1164. *Add. Annotation:—Refd. Bradford v. Price (1923), 92 L. J. K. B. 871.*
1176. *Add. Annotation:—Consd. Cheshire County Council v. Hopley (1923), 130 L. T. 123.*
1192. *Citations:—For “12 E. R. 1126” read “125 E. R. 1126.”*
1241. *Add. Annotation:—Refd. United Dairies v. Public Trustee, [1923] 1 K. B. 469.*
1273. *Add. Annotation:—Mentd. Harper v. Hedges, [1923] 2 K. B. 314.*
1274. *Add. Annotation:—Refd. Purnell v. Roche, [1927] 2 Ch. 142.*

## Part XII.—Descent of Copyholds.

1384. *Add. Annotation:—Mentd. Elliott v. Boynton, [1924] 1 Ch. 236.*

## Part XIV.—Mortgage of Copyholds.

1461a. —. ]—FRASER v. THOMAS (1852), 3 Seton's Judgments & Orders, 7th ed. 2171.  
*Annotation:—Fold. Ashton v. Corrigan (1871), L. R. 13 Eq. 76.*

## Part XV.—Devise of Copyholds.

1498. *Add. Annotation:—Mentd. Oakley v. Wilson, [1927] 2 K. B. 279.*
1506. *Add. Annotation:—Refd. Re Brooke, Brooke v. Dickson, [1923] 2 Ch. 265.*
1508. *Add. Annotation:—Refd. Re Brooke, Brooke v. Dickson (1923), 92 L. J. Ch. 504.*
- 1538a. — Remainder to his heir-at-law—Rule in Shelley's Case applies.]—By his will testator, among other devises of freeholds & copyholds, devised his two copyhold houses, gardens, & premises situate in the parish of B., & also a piece of copyhold land adjoining, to his nephew G. for life without impeachment of waste, & after his death he

devised the same premises to the “heir-at-law” of the said G. There was no special custom of descent in the manor of B. affecting these copyholds:—*Held*: the use of the expression “heir-at-law” did not exclude the operation of the rule in *Shelley's Case*, which accordingly applied, & G. was entitled in customary fee simple for an estate to him & his heirs according to the custom of the manor.—*Re HACK, BEADMAN v. BEADMAN*, [1925] Ch. 633; 94 L. J. Ch. 343; 133 L. T. 134; 69 Sol. Jo. 662.

*See, now, Law of Property Act, 1922 (c. 16), ss. 128–145, Schedules 12–15; Law of Property Act, 1925 (c. 20), s. 131.*

## Part XVIII.—Mode of Transmission of Copyholds inter vivos.

1566. *Add. Annotation:—Mentd. Lapiush v. Braithwaite (1924), 93 L. J. K. B. 1123.*
1772. *Add. Annotation:—Mentd. Fanshawe v. Fanshawe, [1927] P. 238.*

## Part XIX.—Determination and Suspension of Tenant's Estate.

1970. *Add. Annotation* :—*Mentd. Re Twopeny's*      1978. *Add. Annotation* :—*Refd. Re Price*, [1928]  
Settlmt., *Monro v. Twopeny*, [1924] 1 Ch. 522.      Ch. 579.

## Part XX.—Enfranchisement.

1998. *Add. Annotation* :—*Refd. Re Price*, [1928]  
Ch. 579.

2032. After this case add as follows :—

SECT. 3a.—**UNDER LAW OF PROPERTY ACTS.**

2032a. Estate tail in undivided share—Interest in  
personalty.]—Where before 1926 an undivided  
share in copyhold land was the subject of an  
estate tail, the enfranchisement of such

copyhold land after 1925 can result in turning  
the estate tail into an absolute interest ; &  
where, by reason of the statutory trusts  
under Law of Property Act, 1925 (c. 20),  
such land becomes personalty, the absolute  
interest into which the estate tail is turned  
is an interest in personalty.—*Re PRICE*,  
[1928] Ch. 579 ; 97 L. J. Ch. 423 ; 139 L. T.  
339.

# COPYRIGHT AND LITERARY PROPERTY.

## Part I.—Nature of Copyright.

4. *Add. Annotation*:—*Refd.* Performing Right Soc. v. London Theatre of Varieties, [1924] A. C. 1.

16. *Add. Annotation*:—*Refd.* Performing Right Soc. v. Mitchell & Booker, [1924] 1 K. B. 762.

16a. **Dramatic work**—No “first publication” within 1911 Act, s. 1 (3)—Owner entitled to substituted copyright under 1911 Act, sched. 1.]—Under Dramatic Copyright Act, 1833 (c. 15), a foreign author dwelling outside British territory was entitled to secure dramatic copyright within the British Empire of the first performance of his play given in this country. By an agreement in writing dated June 30, 1898, G., the author & sole proprietor of the right to perform a certain play, granted to pltf. the sole & exclusive right to perform, or have performed, the play in Great Britain & Ireland. On Sept. 22, 1898, G.’s agent wrote to pltf. stating that the play had been first performed in Great Britain on a certain date & at a certain place:—*Held*: a copy of the letter of Sept. 22, 1898, the original having been lost, was admissible as evidence in a copyright action between pltf. & third parties who claimed a right to produce cinematograph films of the play under an agreement for value with G., dated Sept. 6, 1919, to prove that the first performance of the play took place in this country as stated in the letter since, (1) being written by G.’s agent, it constituted an admission by G., a person who, although not named on the record, had a substantial interest in the result, & (2) it constituted an admission by defts.’ predecessors in title.

(3) An entry in the register of first performances of dramatic productions at Stationers’ Hall is admissible in evidence as a public register. If such an entry is incorrect, the party producing a certified copy of it may be precluded from relying on it as *prima facie* proof of a right to produce or reproduce the play to which it relates, but it can be regarded by the ct. as corroboration of other evidence of title.

(4) 1911 Act, s. 1 (1) (a) & s. 1 (3), which provide that copyright shall subsist in every dramatic work if it has been first published in His Majesty’s dominions, but that the performance in public shall not be deemed to be publication, prescribe conditions for the future, but do not inflict them on past events so as to destroy existing right.

(5) Where the owner of dramatic copyright possessed [by assignment] the sole right to perform, or permit the performance of, a certain play before 1911 Act came into operation he acquired, by sect. 2 (1) (b), coupled with sects. 24 & 35 of the Act, & sched. 1 to the Act, the right to the cinematograph & film rights of that play also.

An American corpn. made a film & sent a negative & two positives of it to an English co., who made further copies of the film & handed them to another English co., who let them to a British exhibitor. The American corpn. & the two British cos. were inter-working organisations linked together by complex agreements, & they all three shared in part of the receipts from the exhibition of the film by the exhibitor. The exhibitor in exhibiting the film, infringed pltf.’s copyright:—*Held*: (6) the American corpn. & the two British cos. had actively directed, counselled or aided the infringement by the exhibitor, & had infringed pltf.’s rights within 1911 Act, s. 2 (1), the operative effect of which sub-sect. is extended & not limited by sect. 2 (2) & (3).

(7) Where an infringement of copyright is proved under 1911 Act, s. 2 (1), the question of knowledge of infringement by the infringer does not arise except possibly with reference to the exemption from penalties for infringement provided by sect. 8 of the Act.—*FALCON v. FAMOUS PLAYERS FILM CO., LTD.*, [1926] K. B. 393; 95 L. J. K. B. 148; 134 L. T. 246; 42 T. L. R. 91; *affd.*, [1926] 2 K. B. 474; 96 L. J. K. B. 88; 135 L. T. 650; 42 T. L. R. 666; 70 Sol. Jo. 756, C. A.

*Annotations*:—*As to* (6) *Refd.* English Hop Growers v. Dering, [1928] 2 K. B. 174. *Generally, Refd.* Messenger v. British Broadcasting Co., [1927] 2 K. B. 543.

## Part II.—Subject-Matter.

18. *Add. Annotation*:—*Refd.* Macmillan v. Cooper (1923), 93 L. J. P. C. 113.

22. *Add. Annotation*:—*As to* (1) *Folld.* Macmillan v. Cooper (1923), 93 L. J. P. C. 113.

23. *Add. Annotation*:—*Refd.* Campbell v. Pollak, [1927] A. C. 732.

41. *Add. Annotation*:—*As to* (3) *Refd.* Falcon v. Famous Players Film Co. (1925), 42 T. L. R. 91.

42. *Add. Annotations*:—*As to* (1) *Consd.* Macmillan v. Cooper (1923), 93 L. J. P. C. 113. *Folld.* Masson Seeley v. Embosotype Manufacturing

### PART I. SECT. 1.

in Commonwealth Copyright Act, 1912, s. 13 (1), includes the right to perform.—*POLLOCK v. WILLIAMSON (J. C.), LTD.*, [1923] V. L. R. 225; 29

*Argus* L. R. 133; 44 A. L. T. 161.—*AUS.*

### PART II. SECT. 3, SUB-SECT. 1.

*o i.* — *Form of contract for sale of land.*—*Held*: such a document was capable of copyright, but if copies were

sold, there might be an implied authority to reproduce them where necessary in connection with the transaction for which they were purchased.—*REAL ESTATE INSTITUTE OF N.S.W. v. WOOD* (1923), 23 S. R. N. S. W. 349; 40 N. S. W. W. N. 60.—*AUS.*



Co. (1924), 41 R. P. C. 160. **Consd.** British Oxygen Co. v. Liquid Air, [1925] Ch. 383. *As to (5) Consd.* Performing Right Soc. v. London Theatre of Varieties, [1924] A. C. 1. *Generally, Refd.* British Broadcasting Co. v. Wireless League Gazette Publishing Co., [1926] Ch. 433.

43a. — **Letter written by manufacturer to trade customer.**—(1) A letter written by manufacturers to a trade customer, offering their goods at a low price if the customer agrees to take such goods exclusively from them, is an "original literary work" within 1911 Act, s. 1 (1), & the writers are entitled to copyright therein. Such a letter is not contrary to public policy as being in restraint of trade.

(2) The publication of the letter by rival manufacturers, together with a covering letter of criticism, is not "fair dealing" within sect. 2 (1) (i) of the Act.—**BRITISH OXYGEN CO. v. LIQUID AIR, LTD.**, [1925] Ch. 383; 95 L. J. Ch. 81; 133 L. T. 282.

43b. — **Single sentence.**—Pltf. had, since 1925, dealt with the treatment of the human face, & had advertised extensively in connection with that treatment. He claimed to have the copyright in a slogan in connection with those advertisements. The phrase was, "Beauty is a social necessity, not a luxury." Sometimes there were variations in the words used. Sometimes the words "youthfulness," or "good looks," or "youthful appearance" were substituted for "beauty." In May 1926 deft. inserted an advertisement containing the phrase "A youthful appearance is a social necessity." Some years before 1925 an advertiser had used a similar phrase, "Beauty is a modern necessity":—**Held**: (1) the only originality, if any, in pltf.'s phrase consisted in the substitution of the word "social" for the word "modern," & pltf.'s phrase was not an original composition; (2) although copyright might subsist in an advertisement, to quote a piece of a sentence from a literary work was too small a matter to afford ground for an action for infringement of copyright; (3) the doctrine *de minimis non lex curat* applied, & the matter in which copyright was claimed was too small for the ct. to attach any importance to it.—**SINANIDE v. LA MAISON KOSMEO** (1928), 139 L. T. 365; 44 T. L. R. 574, C. A.

51. **Add. Annotation**:—**Consd.** Macmillan v. Cooper (1923), 93 L. J. P. C. 113.

55. **Add. Annotation**:—*As to (5) Refd.* British Oxygen Co. v. Liquid Air, [1925] Ch. 383.

60. **Add. Annotation**:—**Consd.** British Oxygen Co. v. Liquid Air, [1925] Ch. 383.

65. **Add. Annotation**:—**Refd.** British Broadcasting Co. v. Wireless League Gazette Publishing Co., [1926] Ch. 433.

73. **Add. Annotation**:—**Refd.** British Broadcasting Co. v. Wireless League Gazette Publishing Co., [1926] Ch. 433.

74. **Add. Annotation**:—*As to (1) Consd.* British Broadcasting Co. v. Wireless League Gazette Publishing Co., [1926] Ch. 433.

76. **Add. Annotation**:—**Consd.** Sinanide v. La Maison Kosmeo (1928), 139 L. T. 365.

77a. — — **For type—Protected.**—Pltf. co.,

which carried on the business of supplying cutter-crush machines & type & other materials used therewith, issued a catalogue consisting for the most part of a number of words which illustrated the products of the several sizes & shapes of type supplied by the co. & customers ordered a particular class of type by referring to such words. Nearly all the words were selected by the managing director of the co. In 1922 defts., who were carrying on a similar business, circulated price lists which were practically copies of the price lists of pltf. co., the words used in pltf. co.'s catalogue & price lists to indicate the style of type being copied in defts.' price lists without alteration. Pltf. co. commenced proceedings for an injunction to restrain infringement of copyright in their catalogue & passing off of goods which were not their goods as being their goods. On the question of copyright defts. contended (*inter alia*) that pltf.'s catalogue was a design or collection of designs capable of registration under Patents & Designs Acts, 1907 (c. 29), & 1919 (c. 80), & not the subject of protection under 1911 Act:—**Held**: on the question of copyright the contentions put forward by defts. failed, & an injunction restraining infringement of the copyright of pltf. in their catalogue was granted.—**MASSON SEELEY & CO., LTD. v. EMBOSOTYPE MANUFACTURING CO.** (1924), 41 R. P. C. 160.

80. **Add. Annotation**:—*Generally, Mentd.* Macmillan v. Cooper (1923), 93 L. J. P. C. 113.

85a. **Programmes.**—Pltf. were a limited co. formed to acquire the Postmaster-General's licence for the establishment & working of broadcasting stations, & to carry on any other business ancillary, incidental, or conducive thereto. Under the terms of their licence & a supplementary agreement pltf. were required to transmit efficiently every day a programme of broadcast matter to the reasonable satisfaction of the Postmaster-General. They were not allowed to alter their memorandum as to objects without his written consent. He might revoke their licence if they failed to transmit satisfactory programmes, & within one month from their ceasing to hold the licence they were bound to pass a special resolution for voluntary winding up. Their profits from all sources beyond a 7½ per cent. cumulative dividend on their paid-up capital belonged to the Postmaster-General. Nine months after the licence, with the approval of the Postmaster-General pltf. began publishing the *Radio Times* every Friday, including therein the advance daily programmes for the ensuing week Sunday to Saturday. These programmes gave the day & hour of each performance, the artist's name, appropriate headings for items or groups of items, & translations of unfamiliar foreign titles of songs or music. The preparation, arrangement, & editing of the actual programmes involved considerable time, skill, labour & expense, although the preliminary work of fixing the days & hours, engaging the artists, & choosing the items had all been done some time beforehand. Defts. having selected & copied numerous items from a set of advance programmes so published, pltf. sued for in-

PART II. SECT. 3, SUB-SECT. 3.

sk. **Plan—Of harbour.**—LYSHAR v. GISBORNE HARBOUR BOARD, [1924] N. Z. L. R. 13.—N.Z.

fringement of copyright :—*Held*.: (1) whether there was or was not copyright in an individual programme, there was undoubtedly copyright in the compilation of the seven advance programmes; (2) although the programmes were subject to the approval or veto of the Postmaster-General, who had power to revoke the licence if they included improper matter, they were not a work "prepared or published by or under" his "direction or control" within 1911 Act, s. 18, & so long as pltfs. were allowed to trade & publish them, the copyright belonged to pltfs. & not to the Crown. (3) *Semble*.: there may be copyright in an individual programme.—*BRITISH BROADCASTING CO. v. WIRELESS LEAGUE GAZETTE PUBLISHING CO.*, [1926] Ch. 433; 95 L. J. Ch. 272; 135 L. T. 93; 42 T. L. R. 370.

88. *Add. Annotations*.:—*As to* (2) *Refd.* *Bowling v. Camp* (1922), 128 L. T. 342. *Generally*, *Mentd.* *Ingle v. Farrand*, [1927] A. C. 417; *Gardner v. Cone*, [1928] Ch. 955.
- 91a. *Slogan or catch-phrase*.]—*SINANIDE v. LA MAISON KOSMEO*, No. 43b, *ante*.
- 92a. *Abridgment—May be new work*.]—While there may be copyright in an abridgment of a larger work, in a case in which accurate knowledge, sound judgment, & literary skill in presenting in a condensed form the material of the original author are displayed, there can be no copyright in a book consisting merely of extracts taken verbatim from a work in which there is no copyright, & strung together by connecting sentences, so as to make the extracts read as a consecutive narrative. There may, however, be copyright in notes appended to such a book, although there is no copyright in the text.—*MACMILLAN & CO. v. COOPER* (1923), L. R. 51 Ind. App. 109; 93 L. J. P. C. 113; 130

L. T. 675; 40 T. L. R. 186; 68 Sol. Jo. 235, P. C.

*Annotation*.:—*Refd.* *Masson Sealey v. Embosotype Manufacturing Co.* (1924), 41 R. P. C. 160.

After this case for "*Abridgment—May be new work*."—*See* Nos. 422, 426, *post*," read "———."—*See, also*, Nos. 422, 426."

95. *Add. Annotation*.:—*Mentd.* *Anglo-Newfoundland Development Co. v. Pacific Steam Navigation Co.*, [1924] A. C. 406.
97. *Add. Annotation*.:—*Refd.* *Falcon v. Famous Players Film Co.* (1925), 42 T. L. R. 91.
- 118a. *Adaptation of old play—Original musical composition*.]—1911 Act has extended the protection of copyright, & there is musical copyright in an arrangement of previous music which amounts to a new work.
- Pltf. composed music for an opera which was an adaptation of an old play. Defts. prepared an orchestral score from the same source, records of which they offered to the trade. Pltf. complained that defts. were passing off these records as records of pltf.'s music :—*Held*.: defts. had borrowed from pltf.'s work in a way which was more than mere coincidence, & had infringed pltf.'s copyright.—*AUSTIN v. COLUMBIA GRAPHOPHONE CO.* (1923), 67 Sol. Jo. 790.
119. *Add. Annotation*.:—*Refd.* *Austin v. Columbia Graphophone Co.* (1923), 67 Sol. Jo. 790.
120. *Add. Annotation*.:—*Consd.* *Falcon v. Famous Players Film Co.*, [1926] 2 K. B. 474.
125. *Add. Annotation*.:—*Refd.* *Rex Co. & Rex Research Corp. v. Muirhead & Comptroller General of Patents* (1926), 44 R. P. C. 38.
133. *Add. Annotation*.:—*Appld.* *Sinanide v. La Maison Kosmeo*, (1928) 139 L. T. 365.
137. *Add. Annotation*.:—*As to* (2) *Folld.* *Ridgway Co. v. Hutchinson* (1923), 40 R. P. C. 335.

## Part III.—Publication.

151. *Add. Annotation*.:—*Refd.* *Falcon v. Famous Players Film Co.* (1925), 42 T. L. R. 91.
164. *Add. Annotation*.:—*As to* (1) *Consd.* *Falcon v. Famous Players Film Co.*, [1926] 2 K. B. 474.
165. *Add. Annotation*.:—*Folld.* *Falcon v. Famous Players Film Co.*, [1926] 2 K. B. 474.
- 180a. *What documentary evidence admissible—Letters—From author's agent to assignee of performing rights*.]—*FALCON v. FAMOUS PLAYERS FILM CO., LTD.*, No. 16a, *ante*.
- 180b. — *Entry in register at Stationers' Hall—Entry incorrect*.]—*FALCON v. FAMOUS PLAYERS FILM CO., LTD.*, No. 16a, *ante*.

## Part IV.—Ownership.

190. *Add. Annotation*.:—*Refd.* *Austin v. Columbia Graphophone Co.* (1923), 67 Sol. Jo. 790.
194. *Add. Annotations*.:—*Consd.* *Macmillan v. Cooper* (1923), 93 L. J. P. C. 113; *Refd.* *British Broadcasting Co. v. Wireless League Gazette Publishing Co.*, [1926] Ch. 433.
196. *Add. Annotation*.:—*Appld.* *Black v. Stacey* (1928), 44 T. L. R. 347.
- 196a. — *By compiler of book of reference—From information received from biographees*.]—Where the compiler of a biographical book of reference receives from the biographees information to be used as material from which the book may be compiled, the persons supplying the information are not, for the purposes of 1911 Act, the authors of the paragraphs containing the information.—*A. & C. BLACK, LTD. v. CLAUDE STACEY, LTD.* (1928), 44 T. L. R. 347.
- 197a. *Automatic writing by medium*.]—A woman journalist, engaged as a medium in psychical research, claimed copyright in a production written by her in automatic writing & alleged to be communicated by a spiritual agent. Deft. was present at some of the séances & alleged that the communication was addressed

to him. He claimed that the copyright was in him, or that it was a joint copyright, or that there was no copyright in any one:—*Held*: pltf. was the sole owner of the copyright.—*CUMMINS v. BOND*, [1927] 1 Ch. 167; 76 L. J. Ch. 81; 136 L. T. 368; 70 Sol. Jo. 1003.

- 226. Add. Annotation :—Generally, Reisd. Drabble v. Hycolite Manufacturing Co. (1928) 44 T. L. R. 264.**

- 229a. Sketches for advertisement show cards— Ordered by & made for advertiser for valuable consideration—Design not registered under Patents & Designs Act, 1907 (c. 29).]—Pltfs. claimed to be the assignees from the author of two sketches for cut-out advertisement show cards representing a pierrot & pierrette respectively with large faces & diminutive bodies. These sketches were shown by the author to defts. with defts.' name upon them with the view of being used by them for advertisement purposes. At the suggestion of defts. the colour of the costumes of the figures was changed from mauve to green & yellow; the colour of the lettering of defts.' name was also changed from red to green & yellow. Defts. ordered a number of the sketches so altered at a price which gave the author a very considerable profit. Subsequently defts. obtained a number of the sketches from sources other than pltfs.' Neither pltfs. nor the author had registered

the sketches as designs under the above Act. In an action by pl'tfs. for infringement of copyright :—*Held* : (1) under 1911 Act, s. 5 (1) (a), defts. were the first owners of the copyright in the original sketches, as the sketches were ordered by, & were made for, them for valuable consideration & were "engravings" within that sub-sect. ; (2) the sketches were designs which were capable of being registered under Patents & Designs Act, 1907, & as they were used or intended to be used as models or patterns to be multiplied by an industrial process, 1911 Act, by reason of sect. 22, did not apply to them, & as the sketches had not been registered as designs under the Act of 1907 pl'tfs. could not succeed.—**CON PLANCK, LTD. v. KOLYNOS INCORPORATED**, [1925] 2 K. B. 804 ; 94 L. J. K. B. 923 ; 133 L. T. 798.

- 229b. Advertisement**—Prepared by advertisement agent.]—Where an advertisement agent prepares an advertisement on instructions & information given to him by the advertiser, the ct. will, in the absence of evidence to the contrary, draw the inference that it was the intention of both parties that the copyright in the advertisement should belong to the advertiser.—**HAROLD DRABBLE, LTD. v. HYCOLITE MANUFACTURING Co.** (1928), 44 T. L. R. 264 ; 72 Sol. Jo. 102.
- 235. Add. Annotation :—****Refd. Messenger v. British Broadcasting Co.,** [1927] 2 K. B. 543.

## Part V.—Assignment, Licence and Royalties.

247. *Add. Annotation* :—**Refd.** *Falcon v. Famous Players Film Co.* (1925), 42 T. L. R. 91.
251. *Add. Annotation* :—**Refd.** *Messenger v. British Broadcasting Co.* (1928), 97 L. J. K. B. 251.
254. *Add. Annotation* :—**Refd.** *Messenger v. British Broadcasting Co.* (1928), 97 L. J. K. B. 251.
256. *Add. Annotation* :—**As to** (1) **Consd.** *Performing Right Soc. v. London Theatre of Varieties*, [1924] A. C. 1.
268. *Add. Annotation* :—**Refd.** *Messenger v. British Broadcasting Co.* (1928), 97 L. J. K. B. 251.
278. *Add. Annotation* :—**Refd.** *The Lord Strathcona*, [1925] P. 143.
289. *Add. Annotation* :—**Refd.** *Messenger v. British Broadcasting Co.*, [1927] 2 K. B. 543.
294. *Add. Annotation* :—**Refd.** *Messenger v. British Broadcasting Co.*, [1927] 2 K. B. 543.
302. *Add. Annotations* :—**Consd.** *Messenger v. British Broadcasting Co.* (1928), 97 L. J. K. B. 251. **Refd.** *Messenger v. British Broadcasting Co.*, [1927] 2 K. B. 543.
305. *Add. Annotation* :—**Consd.** *Messenger v. British Broadcasting Co.* (1928), 97 L. J. K. B. 251.
308. *Add. Annotation* :—**Refd.** *Falcon v. Famous Players Film Co.* (1925), 42 T. L. R. 91.
- 308a. ———— ———— ————.]—Pltf. was the sole authoress of & owner of the copyright in a novel called "The Scarlet Pimpernel." In 1903 in collaboration with her husband, she composed a dramatic version of the novel. By an agreement dated June 10, 1903, pltf. & her husband, as authors, granted to defts. T., as theatrical managers, the right of production of the play during a then forth-

coming tour, & at a first-class West End London theatre, for two years; & the agreement further provided that if the production took place within that period then "the entire rights for the United Kingdom, the United States of America, & the Dominion of Canada in the play became theirs inalienable, & they shall present it when & where they will within the countries aforesaid," paying to the authors 5 per cent. on the gross weekly takings. Defts. fulfilled the specified condition. In an action by pltf. claiming a declaration that she had the sole right to perform the work by means of cinematograph films:—*Held*: the entire performing rights in the play became vested in defts. by virtue of the agreement, & when 1911 Act came into operation the right so vested included the right to the cinematograph reproduction of the play; & therefore pltf.'s action failed.—*BARSTOW v. TERRY*, [1924] 2 Ch. 316; 93 L. J. Ch. 607; 132 L. T. 53.

**Annotations:—***Folld. Falcon v. Famous Players Film Co.* (1925), 42 T. L. R. 91. *Reid. Messenger v. British Broadcasting Co.*, [1927] 2 K. B. 543.

- 308b.** ——— ——— ——— ——— ]—**FALCON v. FAMOUS PLAYERS FILM Co., LTD., No. 16a, ante.**
- 325. Add. Annotations:**—*Generally, Referred.* Falcon v. Famous Players Film Co., [1926] 2 K. B. 474. *Mentioned.* Evans v. Hulton (1924), 131 L. T. 534.

- 325a. Reproduction of two works in one volume.]—**  
Where a person reproduces in one volume, under the conditions set out in the proviso to 1911 Act, s. 3, two copyright works by the same author, the provision as to the



payment of a royalty "of 10 per cent. on the price at which he publishes the work" is satisfied by the payment of a royalty of 10 per cent. on the price at which he publishes the volume, inasmuch as the word "work"

1889 (c. 63), s. 1 (1) (b).—OSBOURNE v. DENT (J. M.) & SONS, LTD., [1925] Ch. 369; 94 L. J. Ch. 308; 133 L. T. 362; 41 T. L. R. 419; 69 Sol. Jo. 590.

## Part VI.—University Copyright.

327. *Add. Annotation* :—Mentd. Performing Right Soc. v. London Theatre of Varieties, [1924] A. C. 1.

## Part VII.—Crown Copyright.

332a. Programmes prepared by British Broadcasting Company—Whether "published by or under direction or control" of Crown.]—

BRITISH BROADCASTING CO. v. WIRELESS LEAGUE GAZETTE PUBLISHING CO., No. 85a, ante.

## Part IX.—Letters.

355. *Add. Annotation* :—Consd. British Oxygen Co. v. Liquid Air, [1925] Ch. 383.

360. *Add. Annotation* :—Consd. British Oxygen Co. v. Liquid Air, [1925] Ch. 383.

364. *Add. Annotation* :—Consd. British Oxygen Co. v. Liquid Air, [1925] Ch. 383.

366. *Add. Annotation* :—Consd. British Oxygen Co. v. Liquid Air, [1925] Ch. 383.

373. *Add. Annotation* :—Mentd. British Oxygen Co. v. Liquid Air, [1925] Ch. 383.

## Part XII.—Registration.

To the cross-references in this Part add as follows :—

Effect of—Admissibility of entry in register—

To prove first performance of dramatic work in England.]—See No. 16a, ante.

## Part XIII.—Infringement.

394a. Knowledge of infringement—Whether material.]—FALCON v. FAMOUS PLAYERS FILM CO., LTD., No. 16a, ante.

After this case for "As to knowledge as a defence."—See No. 47, ante; Nos. 506, 539, 540, 541, 557, post," read "—"]—See, also, No. 47, ante; Nos. 506, 539–541, 557, post."

394b. Authorising publication of unpublished work—Sale of rights in manuscript.]—To sell the rights in relation to an MS. to another with the view of its production, it being, in fact, produced as a result of such a sale, is "to authorise" the printing & publication within 1911 Act, s. 1 (2), & it is not necessary that there shall be an actual sanction of the acts being done by the servant or agent of the person affecting to give the authority on his behalf.—EVANS v. HULTON (E.) & CO., LTD. (1924), 131 L. T. 534; 40 T. L. R. 489; 68 Sol. Jo. 616.

*Annotation* :—Apprvd. Falcon v. Famous Players Film Co., [1926] 2 K. B. 474.

See, also, Nos. 489a, 489b, 510, post.

398a. — By manufacturer—Of letter written by

rival manufacturer—Covering letter of criticism.]—BRITISH OXYGEN CO. v. LIQUID AIR, LTD., No. 43a, ante.

408a. —.]—SINANIDE v. LA MAISON KOSMEO, No. 43b, ante.

414. *Add. Annotation* :—Refd. Performing Right Soc. v. London Theatre of Varieties, [1924] A. C. 1.

420a. Book of selected essays—Second book of selected essays including essays in first book.]—Pltfs. were the publishers of, & owners of the copyright in, a book entitled "Hazlitt's Selected Essays," edited by G. S., which included thirteen essays & notes on the essays. Defts. published & sold a book entitled "Hazlitt's Selected Essays, Edition Hollingworth" containing twenty of such essays, including the thirteen selected by G. S.:—Held: there was no infringement of copyright.—CAMBRIDGE UNIVERSITY PRESS v. UNIVERSITY TUTORIAL PRESS (1928), 45 R. P. C. 335.

426a. —.]—MACMILLAN & CO. v. COOPER, No. 92a, ante.

441. *Add. Annotation*:—**Refd.** British Broadcasting Co. v. Wireless League Gazette Publishing Co., [1926] Ch. 433.

442. *Add. Annotation*:—**Refd.** Macmillan v. Cooper (1923), 93 L. J. P. C. 113.

451. *Add. Annotation*:—**Refd.** Messenger v. British Broadcasting Co., [1927] 2 K. B. 543.

467. *Add. Annotations*:—**Mentd.** Harrison v. Wythemoor Colliery Co., [1922] 2 K. B. 674; Nichol v. Fearby, Nichol v. Robinson, [1923] 1 K. B. 480; Laphish v. Braithwaite (1924), 93 L. J. K. B. 1123.

483. *Add. Annotation*:—**Refd.** Harms (Incorporated) v. Embassy Club (1926), 43 T. L. R. 21.

483a. — In public—What amounts to.]—The question whether the performance of a musical work was a performance in public, so as to constitute an infringement of copyright, is a question of fact, & in determining that question, the *quantum* of damage likely to accrue & the number & class of persons having a right to be present at the performance are factors to be noted.—**HARMS INCORPORATED & CHAPPELL & CO. v. MARTANS CLUB**, [1927] 1 Ch. 526; *sub nom.* **HARMS INCORPORATED v. EMBASSY CLUB, LTD.**, 96 L. J. Ch. 84; 136 L. T. 302; 43 T. L. R. 21; 70 Sol. Jo. 1219, C. A.

*Annotation*:—**Refd.** Messenger v. British Broadcasting Co., [1927] 2 K. B. 543.

483b. — — — — **Broadcasting.**]—To broadcast an opera by wireless telephony is to "perform" it "in public" within 1911 Act, s. 1 (2).—**MESSAGER v. BRITISH BROADCASTING CO.**, [1927] 2 K. B. 543; 97 L. J. K. B. 65; 137 L. T. 810; 43 T. L. R. 818; *reversd.* without touching this point, [1928], 1 K. B. 660 C. A.; 45 T. L. R. 50, H. L.

484. *Add. Annotation*:—**Refd.** Austin v. Columbia Graphophone Co. (1923), 67 Sol. Jo. 790.

488a. —.]—**AUSTIN v. COLUMBIA GRAPHOPHONE CO.**, No. 118a, *ante*.

489a. **By authorising performance—Director of theatrical syndicate with power to prevent performance.**]—Pltfs. were the proprietors of the right of performing in public certain musical pieces, & deft. syndicate were producers of plays at a theatre, & the second deft. was their managing director, & had power to prevent the orchestra from playing any particular piece of music. The orchestra, which was paid by the syndicate, played the pieces in question. In an action for infringement:—**Held**: since on the facts the second deft. had not authorised or permitted the performance within 1911 Act, s. 1 (2), pltfs. were not entitled under sect. 2 (1) of the Act to an injunction or damages against him.—**PERFORMING RIGHT SOCIETY v. CYRIL THEATRICAL SYNDICATE**, [1924] 1 K. B. 1; 92 L. J. K. B. 811; 129 L. T. 653; 39 T. L. R. 460; 68 Sol. Jo. 83, C. A.

*Annotations*:—**Consd.** Evans v. Hulton (1924), 131 L. T. 534. **Refd.** Performing Right Soc. v. Mitchell & Booker, [1924] 1 K. B. 762; Falcon v. Famous Players Film Co. (1925), 42 T. L. R. 91.

489b. — **Effect of 1911 Act, s. 1 (2).**]—The word "authorise" in the above sub-sect. is

superfluous, & there is nothing in the sub-sect. which cuts down the liability under sect. 2 (1) of the Act, in respect of an infringement of copyright.

Defts., who were the occupiers of a dancing hall, engaged on the terms of a written agreement a band to provide music therein. The agreement provided that the band should not, in the music played, infringe any copyright, & should be liable for damages & costs caused by any infringement. There was also a notice posted in the hall that "only such music as may be played without fee or licence is allowed to be played in this hall." On one occasion the band played certain music, the copyright of which belonged to pltfs., without pltfs.' licence; but defts. did not know, & had no reasonable ground for suspecting, that this infringement would take place. In an action by pltfs. for damages & an injunction:—**Held**: on its true construction, the agreement between defts. & the band constituted the latter the servant of defts., & not independent contractors; the band on the occasion in question were acting in the course of their employment; defts. were liable under 1911 Act, s. 2, for the infringement of copyright; & pltfs. were entitled to damages & an injunction.—**PERFORMING RIGHT SOCIETY, LTD. v. MITCHELL & BOOKER (PALAIS DE DANSE), LTD.**, [1924] 1 K. B. 762; 93 L. J. K. B. 306; 131 L. T. 243; 40 T. L. R. 308; 68 Sol. Jo. 539.

*Annotations*:—**Consd.** Evans v. Hulton (1924), 131 L. T. 534. **Refd.** Falcon v. Famous Players Film Co. (1925), 42 T. L. R. 91.

*See, also*, Nos. 394a, 510, 510a.

502. *Add. Annotation*:—**Refd.** Harms (Incorporated) v. Embassy Club (1926), 43 T. L. R. 21.

507. *Add. Annotations*:—**Consd.** Harms (Incorporated) v. Embassy Club (1926), 43 T. L. R. 21. **Refd.** Messenger v. British Broadcasting Co., [1927] 2 K. B. 543.

509. *Add. Annotation*:—**Consd.** Falcon v. Famous Players Film Co., [1926] 2 K. B. 474.

510. *Add. Annotations*:—**Consd.** Performing Right Soc. v. Mitchell & Booker, [1924] 1 K. B. 762; Falcon v. Famous Players Film Co. (1925), 42 T. L. R. 91.

510a. —.]—**FALCON v. FAMOUS PLAYERS FILM CO., LTD.**, No. 16a, *ante*.

*See, also*, Nos. 394a, 489a, 489b, *ante*.

513a. — — — —.]—Pltfs. were the publishers of a magazine, published in America at frequent intervals, called "Adventure." Defts. proposed to publish a monthly magazine called "Hutchinson's Adventure Story Magazine." In an action by pltfs. to restrain such publication:—**Held**: where any one adopted a descriptive word, as pltfs. had done, they must not object if other persons made use of it, as descriptive of similar articles; pltfs. had no monopoly of the word "Adventure," & on the evidence no real confusion existed between pltfs.' & defts.' musical works, of the copyright in which pltf. was the owner:—**Held**: defts. had infringed pltf.'s copyright.—**CHAPPELL & CO., LTD. v. ASSOCIATED RADIO CO. OF AUSTRALIA, LTD.**, [1925] V. L. R. 350; 47 A. L. J. 12; 31 Argus L. R. 297.—**AUS.**

PART XIII. SECT. 1, SUB-SECT. 4.

488 i. *By sale of records.*]—Gramophone records which infringe copyright are "infringing copies" of a work within Imperial Copyright Act, 1911, s. 35.—**ALBERT v. HOFFNUNG & CO.**,

LTD. (1921), 22 S. R. N. S. W. 75; 39 N. S. W. W. N. 5.—**AUS.**

si. *By broadcasting.*]—Defts., who carried on, for reward, the business of broadcasters, included in their programmes, caused to be sung by vocalists in their studio & broadcast, certain

musical works, of the copyright in which pltf. was the owner:—**Held**: defts. had infringed pltf.'s copyright.—**CHAPPELL & CO., LTD. v. ASSOCIATED RADIO CO. OF AUSTRALIA, LTD.**, [1925] V. L. R. 350; 47 A. L. J. 12; 31 Argus L. R. 297.—**AUS.**

- periodicals.—RIDGWAY Co. v. HUTCHINSON (1923), 40 R. P. C. 335.
525. *Add. Annotation* :—**Consd.** Performing Right Soc. v. London Theatre of Varieties, [1924] A. C. 1.
531. *Add. Annotations* :—*As to* (1) **Consd.** Falcon v. Famous Players Film Co. (1925), 42 T. L. R. 91. **Refd.** Performing Right Soc. v. Mitchell & Booker, [1924] 1 K. B. 762.
536. *Add. Annotation* :—**Refd.** Osbourne v. Dent, [1925] Ch. 369.
- 547a. *When liable as joint tortfeasors.*—**LAMB v. EVANS**, [1895] W. N. 156.
548. *Add. Annotations* :—*As to* (2) **Refd.** Haynes v. Aldridge Colliery Co. (1923), 130 L. T. 282; Hughes v. Satchell (1925), 134 L. T. 93.
553. *Add. Annotation* :—**Consd.** Performing Right Soc. v. Caryl Theatrical Syndicate, [1924] 1 K. B. 1.
555. *Add. Annotation* :—**Consd.** Performing Right Soc. v. Caryl Theatrical Syndicate, [1924] 1 K. B. 1.

## Part XIV.—Remedies.

601. *Add. Annotation* :—**Consd.** Macmillan v. Cooper (1923), 23 L. J. P. C. 113.
- 635a. ———.]—**MACMILLAN & Co. v. COOPER**, No. 92a, *ante*.
638. *Add. Annotation* :—**Consd.** Performing Right Soc. v. London Theatre of Varieties, [1924] A. C. 1.
642. *Add. Annotation* :—**Consd.** Performing Right Soc. v. London Theatre of Varieties, [1924] A. C. 1.
644. *Add. Citations* :—*Affd.*, [1924] A. C. 1; 93 L. J. K. B. 33; 130 L. T. 450; 40 T. L. R. 52; 68 Sol. Jo. 99, H. L.  
*Add. Annotations* :—**Refd.** Imperial Tobacco Co. of India v. Bonnan, [1924] A. C. 755; Drabble v. Hycolite Manufacturing Co. (1928), 44 T. L. R. 264.
653. *Add. Annotation* :—**Mentd.** Jarvis v. Surrey County Council, [1925] 1 K. B. 554.
- 657a. ———.]—**ASTRA-NATIONAL PRODUCTIONS, LTD. v. NEO-ART PRODUCTIONS, LTD.**, [1928] W. N. 218.
693. *Add. Annotation* :—*As to* (1) **Consd.** Preston v. Raphael Tuck, [1926] Ch. 667.
- 694a. ——— **Sale must be of work represented to be unaltered.**—Pltf., the author of two original

drawings, sold the copyright to defts. Defts. afterwards published & sold two drawings, which were made by alterations of pltf.'s original drawings, but which had titles different from the titles of pltf.'s drawings. Defts. did not in any way expressly represent that the drawings made by such alterations were pltf.'s. Pltf. brought against defts. a passing-off action in which she alleged that her work had a distinctive character & could be recognised without bearing her name, & she claimed an injunction & penalties under sect. 7 of the above Act :—**Held** : to satisfy the sect. there must be a selling or publishing in conditions under which, to the knowledge of the seller or publisher, there was made either expressly or by necessary implication a representation that the author was the author of the work in the form in which it was sold or published, & since, although there was in many of pltf.'s productions a measure of distinctiveness, the mere seeing of defts.' productions did not necessarily suggest the inference that they were the unaltered work of pltf., the action failed.—**PRESTON v. RAPHAEL TUCK & SONS**, [1926] Ch. 667; 95 L. J. Ch. 382; 135 L. T. 93; 42 T. L. R. 440.

### PART XIII. SECT. 2.

531 ii. ——— *Of performing*  
An assocn. was the registered owner of the performing rights of two pieces of music, & pltf. in a suit to restrain deft. from permitting the use of his hall for infringing copyrights. Another pltf. was the assignor of those rights, but there was no evidence that he was the legal owner of the remaining part of the copyright :—**Held** : the assocn., as the legal owner of the performing rights, could maintain the suit.—**AUSTRALIAN PERFORMING RIGHT**

**ASSOCN. & J. LEIST, INCORPORATED v. TURNER & SON** (1927), 27 S. R. N. S. W. 344; 44 N. S. W. W. N. 76.—**AUS.**

### PART XIV. SECT. 2, SUB-SECT. 1.

570 ii. ———.]—A person, whose copyright in a book has been infringed, is entitled to demand delivery of all the copies of the offending work in the possession of the person who has infringed the copyright, & payment of the full price received by such person for all copies of the work which have been sold.—**BRABY v. DONALDSON**,

[1926] App. D. 337.—**S. AF.**

### PART XIV. SECT. 3.

**sm. Under Copyright Act, R. S. C., 1906 (c. 70).**—Pltf. seeking to recover penalties under sect. 39 of the above Act cannot succeed if the ct. is satisfied that, in committing the act or the acts charged as an infringement of copyright, deft. did not act "with intent to evade the law."—**NATIONAL BREWERIES v. PARADIS**, [1925] 3 D. L. R. 875; [1925] S. C. R. 666; *affg.*, [1924] 1 D. L. R. 1082; 30 R. L. N. S. 429.—**CAN.**



## CORONERS.

## Part IV.—Remuneration and Compensation payable to Coroners.

45. *Add. Annotation* :—Generally, *Mentd.* *Everett v. Griffiths*, [1924] 1 K. B. 941.

## Part VII.—Inquests.

147. *Add. Annotation* :—As to (2) *Refd.* *R. v. Haslewood, Ex p. Margerison*, [1926] 2 K. B. 468.

158a. —.]—The failure by a coroner at an inquest to view the body makes the inquest a nullity, & is not merely an irregularity giving the ct. a discretion as to whether it will order another inquest, &, since on such failure there has been no inquest, the ct. will quash the proceedings before the coroner & order an inquest to be held.—*R. v. HASLEWOOD, Ex p. MARGERISON*, [1926] 2 K. B. 468; 95 L. J. K. B. 975; 136 L. T. 276; 90 J. P. 158; 42 T. L. R. 746; 70 Sol. Jo. 906; 24 L. G. R. 505, D. C.

237. *Add. Annotation* :—Generally, *Refd.* *R. v. Haslewood, Ex p. Margerison*, [1926] 2 K. B. 468.

308a. *Coroner present during jury's deliberations.*]

—At the conclusion of the evidence in an inquest the jury retired, & after some time sent for the coroner, who went into the jury room & remained with the jury in private for a quarter of an hour :—*Held* : in going into the jury room during the deliberations of the jury, the coroner was guilty of misconduct, & the inquisition must be quashed & a fresh inquest held before the coroner for an adjoining district.—*R. v. WOOD, Ex p. ANDERSON*, [1928] 1 K. B. 302; 97 L. J. K. B. 113; 138 L. T. 224; 91 J. P. 185; 44 T. L. R. 23; 25 L. G. R. 501; 28 Cox, C. C. 440, D. C.

408. *Add. Annotation* :—*Consd.* *Re Stollery, Weir v. Treasury Solicitor*, [1926] Ch. 284.

409. *Add. Annotation* :—*Mentd.* *Baker v. Dalgleish Steam Shipping Co.*, [1922] 1 K. B. 361.

## PART V. SECT. 1, SUB-SECT. 3.—A.

52 iv. ——— *Writ of fieri facias.*]  
—If the sheriff of a jurisdiction is a deft., a writ of *fi. fa.* against his goods may be directed to & executed by the coroner. The right to adopt this practice is not affected by *Sheriffs Act*, ss. 8, 9, or by the fact that there is a deputy sheriff appointed by the Crown.—*WILLIAMS v. RICHARDS*, [1923]

1 W. W. R. 1021; 32 B. C. R. 58.—CAN.

## PART VII. SECT. 4, SUB-SECT. 6.

sa. *Refusal of witness to testify*—*Power of coroner to imprison for contempt.*—A coroner has power to imprison for contempt witnesses who refuse to testify when present at an inquisition held by him, even though they were not duly summoned or in any

way ordered to appear, but were brought *volens volens* before him by the police when in their custody after being arrested without warrant.—*R. v. LITTLE, R. v. MILLER (Man.)*, [1926] 2 W. W. R. 762; 46 Can. Crim. Cas. 136.—CAN.

## PART VII. SECT. 5, SUB-SECT. 5.—

A. (b) v.

n. Read now "308a i."

# CORPORATIONS.

## Part I.—Nature and Attributes.

17. *Add. Annotation* :—*Generally*, *Mentd.* Capel St. Mary, Suffolk *v.* Packard, [1928] P. 69.
41. *Add. Annotations* :—*Refd.* Mackenzie-Kennedy *v.* Air Council, [1927] 2 K. B. 517; Metropolitan Meat Industry Board *v.* Sheedy, [1927] A. O. 899.
79. *Add. Annotations* :—*Refd.* Everett *v.* Griffiths, [1924] 1 K. B. 941; Aylott *v.* West Ham Corpn., *Sisson v.* West Ham Corpn. (1926), 90 J. P. 99.
176. *Add. Annotations* :—*Distd.* Houghton *v.* Not-hard, Lowe & Wills, [1927] 1 K. B. 246. *Refd.* Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775; Liggett (Liverpool) *v.* Barclays Bank (1927), 137 L. T. 443.
179. *Add. Annotation* :—*Consd.* Lloyds Bank *v.* Chartered Bank of India, Australia & China (1928), 97 L. J. K. B. 609.
181. *Add. Annotation* :—*Apld.* Kiednbank Cassel G. M. B. H. *v.* Schenkers, [1927] 1 K. B. 826.

## Part II.—Creation of Corporations.

264. *Add. Annotation* :—*Mentd.* Dewhurst *v.* Salford Grdns., [1925] Ch 655.
265. *Add. Annotation* :—*Refd.* Mackenzie-Kennedy *v.* Air Council, [1927] 2 K. B. 517.
315. *Add. Annotations* :—*Mentd.* The Carlgarth, The Otarama, [1927] P. 93; Lagan Navigation Co. *v.* Lambeg Bleaching, Dyeing & Finishing Co., [1927] A. O. 226.

## Part III.—The Members.

326. *Add. Annotation* :—*Mentd.* Everett *v.* Griffiths (No. 3), [1923] 1 K. B. 138.
340. *Add. Annotations* :—*Folld.* Dodd *v.* Amalgamated Marine Workers' Union (No. 2) (1923), 93 L. J. Ch. 100. *Consd.* Dodd *v.* Amalgamated Marine Workers' Union (1923), 129 L. T. 401.
- 340a. ———.]—Trade Union Act, 1871 (c. 31), s. 14, & sched. 1 (6), gives every member of a trade union a right to inspect the books of the union, "under proper conditions." That right entitles a member to inspect them by a skilled accountant, but the accountant should not be objectionable to the union on personal grounds, & should undertake not to disclose the information obtained by him except to his client. The fact that the trade union officials believe that the member desiring to inspect the books by an accountant is acting *malâ fide*, & for purposes hostile to the union, does not give them an implied discretion to refuse the inspection. The *onus* of establishing that the right of inspection should not be exercised lies on the trade union.—DODD *v.* AMALGAMATED MARINE WORKERS' UNION. [1924] 1 Ch. 116: 93 L. J. Ch. 100; 129 L. T. 819; 40 T. L. R. 44; 68 Sol. Jo. 117, C. A.
- Trade unions generally, see TRADE & TRADE UNIONS.
- 345a. ———.]—DODD *v.* AMALGAMATED MARINE WORKERS' UNION, No. 340a, *ante*.

## Part IV.—Officers.

421. *Add. Annotation* :—*Refd.* Everett *v.* Griffiths, [1924] 1 K. B. 941.
474. *Add. Annotation* :—*Refd.* Cayzer, Irvine *v.* Board of Trade, [1927] 1 K. B. 269.
512. *Add. Annotation* :—*Refd.* Short *v.* Poole Corpn. (1925), 42 T. L. R. 107.

PART I. SECT. 2, SUB-SECT. 2.  
sa. *Miner's union*.]—CENTRE STAR MINING CO., LTD. *v.* ROSSLAND MINERS' UNION (1902), 9 B. O. R. 190.—CAN.

PART I. SECT. 2, SUB-SECT. 3.  
sd. *Sheriff—Of Bombay*.]—*Held*: not

a corpn. sole.—BOMBAY (SHERIFF) *v.* HUKMOJI MOTAJI & Co. (1926), 1 L. R. 51 Bom. 749.—IND.

PART I. SECT. 4, SUB-SECT. 5.—C.  
sd. *Conviction*.]—A corpn. can be

convicted of an offence only under the exact name which it legally possesses.—R. *v.* PELISSIERS, LTD., [1926] 1 D. L. R. 574; [1926] 1 W. W. R. 189; 45 Can. Crim. Cas. 161; 35 Man. L. R. 404.—CAN.

## Part V.—Election to Corporate Office.

583. For "How tested—Not by mandamus directed against person elected.]" read "How tested

—Not by quo warranto directed against person elected.]"

## Part VI.—Regulations and Bye-laws.

631. *Add. Annotations*:—*Consd.* A.-G. v. Denby, [1925] Ch. 596; *Roberts v. Hopwood*, [1925] A. C. 578. *Appld.* *Everton v. Walker* (1927), 137 L. T. 594. *Refd.* *Owner v. King* (1922), 128 L. T. 307; *Mills v. L. C. C.* (1924), 41 T. L. R. 122; *R. v. Roberts, Ex p. Scurr*, [1924] 2 K. B. 695; *Short v. Poole Corpn.* (1925), 42 T. L. R. 107. *Mentd.* *United Bill Posting Co. v. Somerset County Council* (1926), 95 L. J. K. B. 899.

652. *Add. Annotation*:—*Refd.* *Everton v. Walker* (1927), 137 L. T. 594.

700a. ————.]—*WOOLLEY v. IDLE* (1766), 4 Burr. 1951; 98 E. R. 16.

*Annotations*:—*Appld.* *York Corpn. v. Welbank* (1821), 4 B. & Ald. 438. *Refd.* *Graves v. Colby* (1838), 9 Ad. & El. 356.

736a. ————.]—*CLARK'S CASE*, No. 751, *post*.

770a. *Presumption of—From non-observance.*—*A.-G. v. MIDDLETON* (1751), 2 Ves. Sen. 327; 28 E. R. 210, L. C.

*Annotations*:—*Refd.* *A.-G. v. Foundling Hospital* (1793), 4 Bro. C. C. 165; *A.-G. v. Smythies* (1836), 2 My. & Cr. 135.

## Part VII.—Meetings.

794. *Add. Annotation*:—*Refd.* *Neuschild v. British Equitorial Oil Co.*, [1925] Ch. 346.

820. *Add. Annotation*:—*Mentd.* *Leyton U. D. C. v. Wilkinson* (1926), 43 T. L. R. 35.

## Part V Corporation Books and Documents.

865. *Add. Citations*:—*sub nom.* *R. v. SANKEY*, 5 Ad. & El. 423; 6 Nev. & M. K. B. 839; 5 L. J. K. B. 255; 111 E. R. 1226.

*Annotation*:—*Distd.* *Newington L. B. v. Eldridge* (1879), 12 Ch. D. 349.

866. *Add. Citations*:—*sub nom.* *R. v. RYE (MAYOR)*, 2 Keny. 485; 96 E. R. 1253.

## Part IX.—Powers and Liabilities Generally.

880. *Add. Annotations*:—*Appld.* *The Devon* (1923), 130 L. T. 448. *Consd.* *Dec Conservancy Board v. McConnell*, [1928] 2 K. B. 159. *Refd.* *Sutcliffe v. Clients Investment Co.*, [1924] 2 K. B. 746; *British Petroleum Co. v. A.-G. for Ceylon*, [1926] A. C. 147; *Silverman v. Imperial London Hotels* (1927), 137 L. T. 57.

891. *Add. Annotation*:—*Mentd.* *R. v. Cory*, [1927] 1 K. B. 810.

902. *Add. Annotation*:—*As to* (2) *Refd.* *Suttle v. Cresswell* (1925), 42 T. L. R. 75.

903a. *Settled Land Act, 1925* (c. 18), ss. 19 (1), 20 (1).]—The above sub-sects. are applicable to a corpn., because the words "person of full age" are used throughout the new legislation in contrast with the word "infant," & merely mean "not being an infant," so that they are appropriate to a corpn.—*Re CARNARVON'S (EARL) CHESTERFIELD SETTLED ESTATES, Re CARNARVON'S (EARL) HIGHCLERE SETTLED ESTATES*, [1927] 1 Ch. 138; 96 L. J. Ch. 49; 136 L. T. 241; 70 Sol. Jo. 977.

*Annotations*:—*Refd.* *Re Alington & L. C. C.'s Contract*, [1927]

PART VI. SECT. 3, SUB-SECT. 4.  
713 i. *Whether bye-law void in toto.*]—A municipal bye-law may be good in part & bad in part.—*BROWN TRANSFER CO. v. TOWNSHEND* (Sask.), [1927] 1 W. W. R. 916.—CAN.

PART VI. SECT. 6, SUB-SECT. 1.  
sk. *Who may sue.*]—Where the law resulting from the exercise of a statutory power to make a bye-law operates for the general advantage of the public at large, none but the A.-G. may sue in respect of its breach.—*A.-G. & LUMLEY v. T. S. GILL & SON*

Pty., LTD., [1927] V. L. R. 22; [1927] Argus L. R. 223.—AUS.

PART VII. SECT. 3, SUB-SECT. 1.—D.  
836 i. *Must be exercised in accordance with constitution.*]—*KAUK v. BORASKI* (Sask.), [1926] 3 D. L. R. 916.—CAN.

PART VIII. SECT. 3.  
878 i. *It's strangers—Ratepayer—In Ontario.*]—*JOURNAL PRINTING Co. v. McVIETTY* (1915), 33 O. L. R. 166; 7 O. W. N. 633, 796; 21 D. L. R. 81.—CAN.

PART IX. SECT. 2, SUB-SECT. 1.

r i. — *British Columbia Government Liquor Act*, ss. 26, 46—Does not include *Army & Navy Veterans in Canada (Victoria Unit)*—*Branch association established by corporation.*]—*R. v. VICTORIA UNIT (ARMY & NAVY VETERANS)*, [1921] 3 W. W. R. 694; 66 D. L. R. 512; 36 Can. Crim. Cas. 285; 30 B. C. R. 248.—CAN.

r H. — *Liquor Act, 1912*, s. 156—*Includes corporation.*]—*SMITH v. TRO-CADERO DANSANT, LTD.*, [1927] S. R. O. 39; 21 Q. J. P. 6.—AUS.



2 Ch. 253; *Re Ogle's S. E.*, [1927] 1 Ch. 229; *Re Pedley*,  
Wallace v. Wallace, [1927] 2 Ch. 168.

- 907a.** — **Local tramway Act.**]—A local tramway Act authorised the Board of Trade to make bye-laws providing that engines should be brought to a stand at cross streets, & a penalty was imposed on any person offending :—*Held* : the word “ person ” included a co., & there was no contrary intention to that effect shown in the other words of the sect.—**ST. HELENS TRAMWAYS Co. v. WOOD** (1891), 56 J. P. 71, D. O.
- 910.** *Add. Annotation* :—**Consd. Re Gibbs & Houlder’s Lease, Houlder v. Gibbs**, [1925] Ch. 575.
- 922.** *Add. Annotation* :—**Refd. Deuchar v. Gas Light & Coke Co.**, [1924] 2 Ch. 426.
- 928.** *Add. Annotation* :—**Consd. Garrard v. James**, [1925] Ch. 616.
- 932.** *Add. Annotations* :—**Apld. Deuchar v. Gas Light & Coke Co.**, [1925] A. C. 691. **Mentd. A.-G. v. Westminster City Council**, [1924] 2 Ch. 416.
- 935.** *Add. Annotation* :—*As to* (2) **Refd. Morris v. Harris**, [1927] A. C. 252.
- 935a.** — — —.]—**Pltfs.** were by statute entrusted with the control & management of part of the navigations of the Rivers Ouse & Foss, in Yorkshire, with power to charge such tolls, within limits, as the corpn. deemed necessary to carry on the two navigations in which the public had an interest. In 1888 the corpn. entered into two agreements with the firm of H. L. & Sons. By the Ouse agreement the corpn. covenanted to allow the firm, their successors & assigns, the right to carry cargoes on the Ouse in consideration of the annual payment of £600 in place of the authorised dues & charges, with a proviso that there should each year be refunded to the firm, their successors & assignr, the difference between the £600 & the amount ordinarily charged on the traffic actually carried. By the Foss agreement the firm covenanted to pay the corpn. £200 *per annum* for twenty years as a composition for the ordinary tolls, & the corpn. covenanted to allow the firm, their successors & assigns, the free use of the Foss navigation, on payment of £200 *per annum* in lieu of tolls, for such further term or terms as the firm, their successors or assigns, might from time to time desire. **Defts.** were the successors of H. L. & Sons :—*Held* : the agreements were *ultra vires*, because during their currency, which depended on the wishes of defts., the corpn., no matter what emergency might arise, had disabled itself from exercising its

**PART IX. SECT. 5, SUB-SET. 2.—**  
**D. (b).**

**sn. Power to change rates charged for public utilities.]—***Exp.* MONOTON TRAMWAY ELECTRICITY & GAS CO. (N. B.), [1927] 3 D. L. R. 1112.—**CAN.**

st. *Power to erect shops—On land*

*vested in corporation.*].—There is no power in a municipal corpn. to expend money in the erection of shops on land vested in it either as endowments or otherwise.—TAURANGA BOROUGH CORPN. v. A.-G., [1927] N. Z. L. R. 875.—N. Z.

**PART IX. SECT.\* 6, SUB-SECT. 5.—**  
**B. (a).**

52. *Corporation under Native Land Act, 1909—To member of committee.*—**TATAURANGI, TAIRUAKENA v. MUA CARR, [1927] N. Z. L. R. 688.—N.Z.**

statutory powers to increase the tolls so far as might be necessary ; &, being *ultra vires* at the date of their execution, the agreements did not become *intra vires* by reason of estoppel, lapse of time, ratification, acquiescence or delay.—YORK CORPN. v. LEETHAM (HENRY) & SONS, LTD., [1924] 1 Ch. 557 ; 94 L. J. Ch. 159 ; 131 L. T. 127 ; 40 T. L. R. 371 ; 68 Sol. Jo. 459 ; 22 L. G. R. 371.

**Annotation:—***Dbtd. Birkdale District Electric Supply Co. v. Southport Corpn.*, [1926] A. C. 355.

948. *Add. Annotation* :—**Consd.** Deuchar v. Gas Light & Coke Co., [1924] 2 Ch. 426.
952. *Add. Annotation* :—**Consd.** Deuchar v. Gas Light & Coke Co., [1924] 2 Ch. 426.
955. *Add. Annotations* :—**Consd.** Deuchar v. Gas Light & Coke Co., [1925] A. C. 691. **Refd.** *Re Jubilee Cotton Mills*, [1923] Ch. 1.
964. *Add. Annotation* :—**Refd.** Birkdale District Electric Supply Co. v. Southport Corpn., [1926] A. C. 355.
994. *Add. Annotations* :—**Consd.** Deuchar v. Gas Light & Coke Co., [1924] 2 Ch. 426. **Refd.** A.-G. v. Westminster City Council, [1924] 2 Ch. 416. **Mentd.** A.-G. v. Denby, [1925] Ch. 596.
996. *Add. Annotation* :—**Apld.** A.-G. v. County of London Electric Supply Co., [1926] Ch. 542.
997. *Add. Annotation* :—*As to* (1) **Apld.** A.-G. v. County of London Electric Supply Co., [1926] Ch. 542.
- 997a. *Power to erect information bureau on promenade*—Discretionary powers to erect “conveniences” for persons using promenade for pleasure or health.]—A.-G. v. BLACKPOOL CORPN. (1928), 92 J. P. 50 ; 26 L. G. R. 160, C. A.
998. *Add. Annotations* :—**Apld.** Deuchar v. Gas Light & Coke Co., [1925] A. C. 691. **Refd.** A.-G. v. Westminster City Council, [1924] 2 Ch. 416.
1002. *Add. Annotations* :—*As to* (2) **Refd.** Deuchar v. Gas Light & Coke Co., [1925] 5 A. C. 691. *Generally, Mentd.* *Re Jubilee Cotton Mills*, [1923] 1 Ch. 1.
1006. *Add. Annotations* :—**Distd.** Houghton v. Nohard, Lowe & Wills, [1927] 1 K. B. 246. **Consd.** Kreditbank Cassel G. m. b. H. v. Schenkers, [1927] 1 K. B. 826. **Refd.** Underwood v. Bank of Liverpool, Underwood v. Barclays Bank, [1924] 1 K. B. 775 ; Liggett (Liverpool) v. Barclays Bank (1927), 137 L. T. 443.
1033. *Add. Annotation* :—**Refd.** Attwood v. Llay Main Collieries (1925), 70 Sol. Jo. 265.
1043. *Add. Annotation* :—**Refd.** The Jupiter, No. 3, [1927] P. 122.

## Part X.—Contracts.

1103. *Add. Annotation*:—As to (1) *Appld. Higgins v. Northampton County Borough* (1926), 90 J. P. 82.
1106. *Add. Annotation*:—*Mentd. Dewhurst v. Salford Grdns.* (1924), 41 T. L. R. 151.
1126. *Add. Annotation*:—*Refd. Nixon v. Erith U. C.*, [1924] 1 K. B. 819.
- 1127a. ——— *Local authority acting under Housing of Working Classes Act, 1890 (c. 70).* —The words of sect. 56 of the above Act must be read distributively, & as meaning that if the local authority's district is an urban district it shall have the same power of contracting that an urban sanitary authority has under the Public Health Acts, & if its district is a rural district the power which a rural sanitary authority has under those Acts, with the result that in the former case the authority cannot, when acting under the Act of 1890, contract otherwise than under its common seal if the value or amount of the contract exceeds £50. — *NIXON v. ERITH URBAN COUNCIL*, [1924] 1 K. B. 819; 93 L. J. K. B. 756; 131 L. T. 303; 88 J. P. 115, 40 T. L. R. 373; 68 Sol. Jo. 537; 22 L. G. R. 448, C. A.
- 1127b. ———.]—Pltfs. claimed to have a written contract dated Mar. 17, 1921, under which they agreed to erect fifty-eight concrete workmen's dwellings for deft. borough rectified so as to give effect to what was alleged to have been the common intention "of the parties" when the contract was drawn up. The contract was entered into between H. & deft. borough & was under their seal. H. subsequently assigned the contract to pltfs.: —*Held*: even if there were a common mistake the contract of Mar. 17, 1921, could not be rectified because, having regard to sect. 174 of the above Act, deft. borough were incapable of entering into a contract with H. other than a contract under seal, so that when a tender was made by H. & accepted, there was no contract come to. — *HIGGINS (W.), LTD. v. NORTHAMPTON COUNTY BOROUGH* [1927] 1 Ch. 128; 96 L. J. Ch. 38; 136 L. T. 235; 90 J. P. 82.
1131. *Add. Annotation*:—*Refd. Nixon v. Erith U. C.*, [1924] 1 K. B. 87.
1133. *Add. Annotation*:—*Refd. Crediton Gas Co. v. Crediton U. C.*, [1928] Ch. 447.
- 1134a. ———.]—A firm, of which deft. was the sole surviving member, were employed as architects. Four years after the work was completed dry rot broke out in floors laid over concrete, a large area of which was laid on the ground floor of the new buildings. It was alleged that, in correspondence which passed between the parties after the dispute arose, deft., in consideration of the corpn. refraining from suing, undertook to put the work right at his own expense: —*Held*: deft. was liable under the subsidiary contract, although that contract was not under seal, as the seal was unnecessary. — *LEICESTER GUARDIANS v. TROLLOPE* (1911), 75 J. P. 197; 2 Hudson's B. C., 4th ed., 419.
1135. *Add. Annotation*:—*Consd. Nixon v. Erith U. C.*, [1924] 1 K. B. 819.
1164. *Add. Annotation*:—*Mentd. Anderson v. Daniel* (1924), 130 L. T. 418.
1165. *Add. Annotation*:—*Appld. Crediton Gas Co. v. Crediton U. C.*, [1928] Ch. 447.
1176. *Add. Annotation*:—*Refd. Berners v. Fleming*, [1925] Ch. 264.
1193. *Add. Annotation*:—*Distd. Nixon v. Erith U. C.*, [1924] 1 K. B. 87.
1205. *Add. Annotation*:—*Consd. Michaud v. Montreal (City)* (1923), 92 L. J. P. C. 161.

## Part XI.—Liability and Remedies in Tort.

1223. *Add. Annotation*:—*Distd. Lagan Navigation Co. v. Lambeg Bleaching, Dyeing & Finishing Co.*, [1927] A. C. 226.
1225. *Add. Annotations*:—*Refd. Phillips v. Britannia Hygienic Laundry Co.*, [1923] 2 K. B. 832; *Scammell v. Attlee* (1928), 45 T. L. R. 75.
1227. *Add. Annotation*:—*Refd. Welden v. Smith*, [1924] A. C. 484.
- 1235a. ———.]—By a local Act a canal was vested in applts., who were required by the Act to keep the navigation & locks, & all works to be thereafter executed for the improvement thereof, in an efficient state for the traffic thereon. Applts. raised the coping on both sides of one of their locks & the banks behind it to prevent the lock from being flooded. Resps., adjacent landowners, objected that the effect of the works was to pen back the water in the part of the canal above the lock & to occasion the flooding of their lands, & applts. removed the coping without prejudice to their rights, but they did not reduce the height of the banks: —*Held*: there being no evidence of negligence, applts., in constructing works in the exercise of their statutory powers for the protection of their navigation, were not liable for the flooding of resps.' lands. — *LAGAN NAVIGATION CO. v. LAMBEG BLEACH-*

**PART X. SECT. 1, SUB-SECT. 1.**  
sd. *Co-operative association—Formed to carry on labour or trade—Right to contract for work or services—R. S. O.*, 1877 (c. 158).]—*ONTARIO CO-OPERATIVE STONE CUTTERS' ASSOCN. v. CLARKE* (1880), 31 C. P. 280.—CAN.

**PART X. SECT. 2, SUB-SECT. 1.**  
a i. ———. *Position of purchaser from corporation.*]—*TRUST & LOAN CO.*

*v. MONK* (1868), 14 Gr. 385.—CAN.

**PART X. SECT. 5, SUB-SECT. 1.—**  
A. (a).

t i. ———.]—Where a workman is hired to do work for a corpn. by a person who has no authority to hire him, & the corpn. has not ratified the employment, the fact that he does the work does not create the relationship of employer & workman between him

& the corpn.—*STUART v. PENNANT SCHOOL DISTRICT*, [1927] 2 D. L. R. 940; [1927] 1 W. W. R. 949; 21 Sask. L. R. 465.—CAN.

**PART X. SECT. 7.**  
sf. *Ultra vires contract—Benefit received by corporation—Duty to account.*]—*COUNTY OF HALTON v. TOWNSHIP OF TRAFALGAR*, [1927] 4 D. L. R. 134; 61 O. L. R. 45.—CAN.

ING, DYEING & FINISHING Co., [1927] A. C. 226; 96 L. J. P. C. 25; 136 L. T. 417; 91 J. P. 46; 25 L. G. R. 1, H. L.

1236. *Add. Annotation*:—*Consd.* Howard—*Flanders v. Maldon Corpn.* (1926), 135 L. T. 6.

1261. *Add. Annotation*:—*Apld.* Percy *v. Glasgow Corpn.*, [1922] 2 A. C. 299.

1262. *Add. Citations*:—86 J. P. 201; 20 L. G. R. 605.

1262a. — By solicitor conducting proceedings for corporation—Corporation not liable.]—*EGGINGTON v. LICHFIELD CORPN.* (1855), 5 E. & B. 100; 24 L. J. Q. B. 360; 26 L. T.

O. S. 27; 19 J. P. 819; 1 Jur. N. S. 908; 119 E. R. 418.

*Annotation*:—*Refd.* Flood *v. Jackson*, [1895] 2 Q. B. 21.

1266. *Add. Annotation*:—*Refd.* Sorrell *v. Smith*, [1925] A. C. 700.

1275a. —.]—A public corporate body, although not formed for the acquisition of gain & making no profits, is liable to pay damages in respect of injury caused by its negligence.—*A.-G. & DOMMES v. BASINGSTOKE CORPN.* (1876), 45 L. J. Ch. 726; 24 W. R. 817.

*Annotation*:—*Refd.* Glossop *v. Heston & Isleworth L. B.* (1879), 12 Ch. D. 102.

1281. *Add. Annotation*:—*Mentd.* *Compania Marti-artu v. Royal Exchange Assce.*, [1923] 1 K. B. 650.

## Part XII.—Criminal and Quasi-Criminal Proceedings.

1286. *Add. Annotation*:—*Refd.* *R. v. Cory*, [1927] 1 K. B. 810.

1288. *Add. Annotations*:—*Consd.* Griffiths *v. Studebakers*, [1924] 1 K. B. 102. *Refd.* *R. v. Leinster*, [1924] 1 K. B. 311.

1292. *Add. Annotation*:—*As to* (2) *Refd.* *R. v. Cory*, [1927] 1 K. B. 810.

1292a. —.]—(1) An indictment will not lie against a corpn. either for a felony or for a misdemeanour involving personal violence under Offences against the Person Act, 1861 (c. 100), s. 31.

(2) Criminal Justice Act, 1925 (c. 86), s. 33, is mere machinery to avoid the inconvenience arising from the fact that previously a corpn. could not be indicted at assizes, & does not alter the substantive law so as to render a corpn. liable to be indicted where previously it was not liable.—*R. v. CORY BROTHERS & Co.*, [1927] 1 K. B. 810; 96

L. J. K. B. 761; 136 L. T. 735; 28 Cox, C. C. 346.

1297. *Add. Annotations*:—*Consd.* *R. v. Cory*, [1927] 1 K. B. 810. *Refd.* Griffiths *v. Studebakers*, [1924] 1 K. B. 102.

1298. *Add. Annotation*:—*Refd.* *R. v. Cory*, [1927] 1 K. B. 810.

1303. *Add. Annotation*:—*Refd.* Leyton U. C. *v. Wilkinson*, [1927] 1 K. B. 853.

1303a. — Effect of Criminal Justice Act, 1925 (c. 86), s. 33.]—*R. v. CORY BROTHERS & Co.*, No. 1292a, ante.

1304. *Add. Citations*:—27 Cox, C. C. 225; 16 Cr. App. Rep. 131.

After this case add “*See, now*, Criminal Justice Act, 1925 (c. 86), s. 33.”

1308. After this case add “*Appeal by case stated from justices—Recognisance—How made.*”—*See* MAGISTRATES, Vol. XXXIII., p. 413, No. 1229.”

## Part XIII.—Delegation of Authority for Particular Purposes.

1313. *Add. Annotation*:—*Refd.* Birkdale District Electric Supply Co. *v. Southport Corpn.*, [1926] A. C. 355.

## Part XV. Legal Proceedings by and against Corporations, their Members and Officers.

1329. *Add. Annotation*:—*Refd.* Leyton U. C. *v. Wilkinson*, [1927] 1 K. B. 853.

1330. *Add. Annotation*:—*Refd.* Leyton U. C. *v. Wilkinson*, [1927] 1 K. B. 853.

1365. *Add. Annotation*:—*Refd.* Deuchar *v. Gas Light & Coke Co.*, [1925] A. C. 691.

1376. *Add. Annotation*:—*Mentd.* *Re Kent Coal*

PART XI. SECT. 4, SUB-SECT. 1.  
1252 II. —.]—BURRIS *v. DART-MOUTH CORPN.* (1927), 59 N. S. R. 227.—CAN.

PART XI. SECT. 4, SUB-SECT. 2.  
1 i. —.]—Hospital liable for the negligence of nurses after an operation.—*NYBERG v. PROVOST MUNICIPAL HOSPITAL BOARD*, [1927] 1 D. L. R. 969; [1927] S. C. R. 226.—CAN.

t i. — Dangerous step—Of public library.]—Library Board liable.—*NICKELL v. CITY OF WINDSOR*, [1927] 1 D. L. R. 379; 59 O. L. R. 618.—CAN.

PART XV. SECT. 4.  
sa. For transgression of statutory powers—Action by Attorney-General.]—If a public body constituted under the laws of the Commonwealth trans-

its statutory power, the A.-G. for the Commonwealth on behalf of the public, whether private injury has or has not been alleged, has a right to complain & to obtain a declaration of transgression, & if necessary, an injunction.—*COMMONWEALTH & A.-G. FOR COMMONWEALTH v. AUSTRALIAN COMMONWEALTH SHIPPING BOARD* (1926), 39 C. L. R. 1; [1927] Argus, L. R. 61.—AUS.



- Concessions, *Burn v. Kent Coal Concessions*, [1923] W. N. 328.
1409. *Add. Annotation*:—*Refd.* *Everett v. Griffiths*, [1924] 1 K. B. 941.
1495. *Add. Annotation*:—*Folld. R. v. Poplar B. C.*, *Ex p. L. C. C.*, *R. v. Poplar B. C.* (No. 2), [1922] 1 K. B. 95.
1520. After this case insert “*See, further*, CROWN PRACTICE, Vol. XVI., pp. 405, 406.”
1526. *Add. Annotations*:—*As to* (1) *Refd.* *New York Life Insce. v. Public Trustee*, [1924] 2 Ch. 101; *Swedish Central Ry. v. Thompson*, [1924] 2 K. B. 255. *As to* (2) *Refd.* *Employers' Liability Assce. v. Sedgwick Collins* (1926), 95 L. J. K. B. 1015.
1527. *Add. Annotations*:—*Refd.* *New York Life Insce. v. Public Trustee*, [1924] 2 Ch. 101; *Employers' Liability Assce. v. Sedgwick Collins* (1926), 95 L. J. K. B. 1015.
1528. *Add. Annotation*:—*As to* (1) *Refd.* *Sabatier v. Trading Co.*, [1927] 1 Ch. 495.
1529. *Add. Annotations*:—*Consd.* *New Zealand Shipping Co. v. Thew* (1922), 8 Tax Cas. 208; *Bradbury v. English Sewing Cotton Co.*, [1923] A. C. 744; *Swedish Central Ry. v. Thompson*, [1925] A. C. 495. *Apld.* *Egyptian Delta Land & Investment Co. v. Todd* (1928), 44 T. L. R. 747. *Refd.* *Baelz v. Public Trustee*, [1926] Ch. 863.
1532. *Add. Annotation*:—*Refd.* *Employers' Liability Assce. v. Sedgwick Collins* (1926), 95 L. J. K. B. 1015.
1536. *Add. Annotation*:—*Refd.* *Wilcocks v. Pinto* (1924), 69 Sol. Jo. 178.
1537. *Add. Annotations*:—*Refd.* *New York Life Insce. v. Public Trustee*, [1924] 2 Ch. 101; *Swedish Central Ry. v. Thompson*, [1924] 2 K. B. 255. *Mentd.* *Ellerman Lines v. Read*, [1928] 2 K. B. 144.
1540. *Add. Annotations*:—*Refd.* *New York Life Insce. v. Public Trustee*, [1924] 2 Ch. 101; *Swedish Central Ry. v. Thompson*, [1924] 2 K. B. 255.
- 1544a. — *Manager of London branch.*]—Pltf. issued a writ against deft. co. & A., its managing director, & the writ was served upon A. Some years ago the co. had established a branch of their business in London under the management of A., who had, in obedience to Cos. (Consolidation) Act, 1908 (c. 69), s. 274, on behalf of the co. registered himself as a person resident in the United Kingdom authorised to accept service of process, & the evidence showed that, although at the date of the service of the writ upon A. the co. had long ceased to carry on trade in London, yet certain administrative activities, *e.g.*, the remittance of dividends to shareholders, were then being carried out there, & at no other place, on behalf of the co.:—*Held*: (1) upon the evidence, deft. co., at the date of the service of the writ upon A., had a place of business within the United Kingdom, within sect. 274 of the above Act, & service upon A. was effective service upon the co.; (2) even if the co. had not at the date aforesaid a place of business within the United Kingdom, such service was effective service upon the co.—*SABATIER v. TRADING Co.*, [1927] 1 Ch. 495; 96 L. J. Ch. 211; 136 L. T. 574; 71 Sol. Jo. 104.
- 1544b. — *On person authorised to accept service—Sufficiency of indorsement of writ & affidavit of service.*]—*FESTER FOTHERGILL & HARTUNG v. RUSSIAN TRANSPORT & INSURANCE Co.*, [1927] W. N. 27, C. A.  
*See, also*, COMPANIES, No. 8527a, *ante*.
1546. *Add. Annotation*:—*Refd.* *Sabatier v. Trading Co.*, [1927] 1 Ch. 495.
1548. *Add. Annotations*:—*Refd.* *Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669; *Richardson v. Richardson*, [1927] P. 228.
1557. *Add. Annotation*:—*Refd.* *Employers' Liability Assce. v. Sedgwick Collins* (1926), 95 L. J. K. B. 1015.

## Part XVI.—Dissolution.

1604. *Add. Annotation*:—*Refd.* *Morris v. Harris*, [1927] A. C. 252.

### PART XV. SECT. 8.

1394 i. *To whom addressed.*]—When mandamus proceedings lie against a municipal corporation, it is the better practice to make parties the members of council & officers whose alleged delinquencies are involved.—*R. (READ) v. PEMBINA MUNICIPAL DISTRICT No. 552*, [1922] 3 W. W. R. 857; 70 D. L. R. 559.—CAN.

PART XV. SECT. 10, SUB-SECT. 3.—C.  
sb. *Bye-laws.*]—A clerk in the office

of the treasurer of a municipal corpn., not being the custodian of the bye-laws of the corpn., is not compellable to produce any of them, upon his cross-examination on an affidavit made by him on behalf of the corpn. for use on a motion to which the corpn. is a party.—*WILSON v. FLEMING* (1900), 19 P. R. 203.—CAN.

PART XV. SECT. 12, SUB-SECT. 4.—B. (b).

mi. — — —.]—A writ was issued

against a co., registered & carrying on business in England, but not registered nor carrying on business in Tasmania. The writ was served in London:—*Held*: the writ must be set aside, as there was no authority for the issue of a writ for service upon the co. in London.—*PORT HUON FRUITGROWERS' CO-OPERATIVE ASSOCN., LTD. v. LARKINSON (SAMUEL), LTD.* (1924), 20 Tas. L. R. 1.—AUS.

## COUNTY COURTS.

### Part I.—Courts, Judges and Officers Generally.

14. *Add. Citation* :—15 B. W. C. C. 91.

22. *Add. Annotation* :—*As to* (1) *Consd. A. W. v. Cooper & Hall*, [1925] 2 K. B. 816.

### Part II.—Liability and Protection of Judges and Officers of Court.

61. *Add. Annotation* :—*Apld. Freeborn v. Leeming*, [1926] 1 K. B. 160.

### Part III.—Jurisdiction.

65. *Add. Annotation* :—*Apld. Parsons v. Burgess* (1927), 43 T. L. R. 713.

68. *Add. Annotation* :—*Mentd. De Freville v. Dill* (1927), 96 L. J. K. B. 1056.

70a. **Action for breach of promise of marriage.**—Resp. brought a county ct. action against appct. for the return of money & articles, alleging that the parties had promised to marry one another & that appct. had broken the promise. Resp. contended that the action was brought on a bailment, which was within the county ct. jurisdiction:—*Held*: in substance the claim was for damages for breach of promise of marriage, & a writ of prohibition must issue.—*PARSONS v. BURGESS* (1927), 96 L. J. K. B. 787; 138 L. T. 134; 43 T. L. R. 713.

71. *Add. Annotation* :—*Folld. Brakspear v. Barton*, [1924] 2 K. B. 88.

71a. **Question of repairs—Under Increase of Rent & Mortgage Interest (Restrictions) Act, 1920 (c. 17).**—Deft. was the tenant of a tied public-house with living accommodation, of which pltf. were the landlords. In 1910, the house was let to deft. at a rent of £75 *per annum* for three years. At all material times the ratable value was £68. After certain intermediate tenancies at rents less than two-thirds of the ratable value, deft. in Dec. 1920, took from pltf. a new lease: "To hold the said premises with the appurtenances unto the tenant from Mar. 25, 1920, for the term of seven years . . . at the yearly rent of £120." The reason for the increased rent was a trade revival which had caused a great improvement in the licensed trade of the house. The conditions of the new lease as to repairs were more onerous for the tenant than those of the old. In an action by the landlords for rent, the tenant contended that the repairing clause amounted to a prohibited increase:—*Held*: the question as to repairs could only be decided by the county ct., & the High Ct. had no jurisdiction on this point.—*BRAKSPEAR (W. H.) & SONS, LTD. v. BARTON*, [1924] 2 K. B. 88; 93 L. J. K. B. 801; 131

L. T. 538; 40 T. L. R. 607; 68 Sol. Jo. 718.

73. *Add. Annotation* :—*Mentd. Performing Right Soc. v. Mitchell & Booker*, [1924] 1 K. B. 762; *Falcon v. Famous Players Film Co.* (1925), 42 T. L. R. 91.

83. *Add. Citation* :—*sub nom. GLENNIE v. DELMAR*, 1 L. M. & P. 402.

106. *Add. Annotation* :—*Consd. Egyptian Delta Land & Investment Co. v. Todd* (1928), 44 T. L. R. 747.

139a. — Issue of summons before leave obtained—*Irregularity.*—On Jan. 30, 1924, a tenant of a dwelling-house within the Rent Restrictions Acts lodged two complaints in the West London county ct., the one under sect. 12 (3) of the Act of 1920 for apportionment of rent, & the other under sect. 14 (1) of the same Act for certain sums paid by him in respect of rent which, as he alleged, was irrecoverable by his landlord. These sums were, by sect. 8 (2) of the Act of 1923, recoverable on or before Jan. 31, 1924, but not afterwards. The claim for apportionment could regularly be brought in the West London ct., but the claim for repayment could not be brought in that ct. without the leave of the judge or registrar on an application supported by an affidavit. No affidavit was sworn until Feb. 5, 1924. Notwithstanding this the complaint was entered, a complaint note under the seal of the ct. was given to pltf., & a summons was issued, all bearing the date Jan. 30, 1924. By Ord. 7, r. 2, a summons to appear to a complaint shall be dated of the day on which the complaint was entered, & the date thereof shall be the commencement of the action:—*Held*: (1) the irregular entry of the complaint & issue of the summons before the necessary leave had been obtained did not deprive the county ct. of jurisdiction to hear the action, but the irregularity could be waived by deft.; (2) as deft. had appeared to the summons & raised a defence in no way challenging the jurisdiction of the ct., he had waived the irregularity; the action must therefore be taken to have commenced on

Jan. 30, & pltf. was entitled to recover.—**PRINGLE v. HALES**, [1925] 1 K. B. 573; 94 L. J. K. B. 458; 132 L. T. 785, C. A.

- 147a. — Claim for declaration as to future payments—Involving payment of sums exceeding prescribed limit.]—Where an action was brought in the county ct. to recover a money claim under an agreement, & also for a declaration as to future payments under the agreement:—*Held*: the county ct. judge had no power to make a declaration which might involve the payment of sums of money by deft. in excess of the limit of £100 prescribed by 1888 Act, s. 56.—**SMITH v. SMITH**, [1925] 2 K. B. 144; 94 L. J. K. B. 813; 133 L. T. 345, D. C.

*Annotation*:—*Reid*. **Humber Conservancy Board v. Federated Coal & Shipping Co.**, [1928] 1 K. B. 492.

148. After this case add “Sum lent beyond jurisdiction—Action for relief under Money-lenders Act, 1900 (c. 57).”—*See* **MONEY & MONEY-LENDING**, No. 377a.”

205. *Add. Annotation*:—*Reid*. **Rye v. Purcell**, [1926] 1 K. B. 446.

206. *Add. Annotation*:—*Reid*. *Re* **Keystone Knitting Mills Trade Mk.** (1928), 97 L. J. Ch. 316.

- 206a. Claim for declaration.]—(1) The county ct. has no jurisdiction to entertain a claim for a declaration in an action in which no sum of money is claimed. *Stiles v. Ecclestone*, No. 211, *post*, *overd*.

Upon a contract for the sale of real property at a price exceeding £500 the vendor brought an action in the county ct. against the purchaser, claiming a declaration that deft. had forfeited the deposit paid under the contract by deft. to stake-holders, who were not parties to the action, & that he was entitled to receive payment of the deposit from the stake-holders. No other claim appeared in the plaint or the summons or the particulars of claim:—*Held*: the county ct. had no jurisdiction to entertain the claim, (1) on the above ground, & (2) on the further ground that the claim was for partial specific performance of an agreement for the sale

of property within 1888 Act, s. 67, where the purchase-money exceeded £500, the amount limited by that sect.—**DE VRIES v. SMALLRIDGE**, [1928] 1 K. B. 482; 97 L. J. K. B. 244; 138 L. T. 497, C. A.

- 206b. —.]—Observations as to declarations in county cts.—**HUMBER CONSERVANCY BOARD v. FEDERATED COAL & SHIPPING CO., LTD.**, [1928] 1 K. B. 492; 97 L. J. K. B. 136; 138 L. T. 334; 17 Asp. M. L. C. 338, D. C.

—.]—*See, also*, Nos. 147a, 212.

208. *Add. Annotation*:—*Consd.* **Smith v. Smith**, [1925] 2 K. B. 144.

211. *Add. Annotation*:—*N.F.* **De Vries v. Smallridge**, [1928] 1 K. B. 482.

212. *Add. Annotations*:—*Distd.* **Davey v. Robinson**, [1923] 1 K. B. 563. *Appld.* **Smith v. Smith**, [1925] 2 K. B. 144. *Folld.* **De Vries v. Smallridge**, [1928] 1 K. B. 482. *Reid.* **Humber Conservancy Board v. Federated Coal & Shipping Co.**, [1928] 1 K. B. 492.

213. *Add. Annotation*:—*Reid.* **De Vries v. Smallridge**, [1928] 1 K. B. 482.

After this case add “In remitted action.”—*See* No. 373a, *post*.”

- 235a. —.]—**DE VRIES v. SMALLRIDGE**, No. 206a, *ante*.

249. *Add. Annotations*:—*Consd.* **Rossiter v. Langley**, [1925] 1 K. B. 741; **Rusoff v. Lipovitch** (1925), 94 L. J. K. B. 355. *Reid.* **De Vries v. Sparks** (1927), 137 L. T. 441. *Mentd.* **Turner v. Watts** (1927), 44 T. L. R. 105.

- 272a. — — — —.]—*Re* **BANE v. FOXALL & CANFOR IN THE COUNTY COURT OF NORFOLK** (1856), 20 J. P. Jo. 293.

295. *Add. Annotation*:—*Reid.* **Salter v. Lask**, [1923] 2 K. B. 798.

297. *Add. Annotation*:—*Reid.* **Salter v. Lask**, [1923] 2 K. B. 798.

298. *Add. Annotation*:—*Mentd.* **R. v. Customs & Excise Comrs.**, [1928] A. C. 402.

- 327a. — Appearance—Raising defence not challenging jurisdiction.]—**PRINGLE v. HALES**, No. 139a, *ante*.

## Part IV.—Remitted Actions.

331. After this case add “Action for relief under Money-lenders Act, 1900 (c. 51).”—*See* **MONEY & MONEY-LENDING**, No. 434a.”

352. *Add. Citation*:—91 L. J. K. B. 771.

- 373a. On jurisdiction of county court—Reduction of claim for damages—Alternative claim for injunction.]—Where an action, commenced in the High Ct., has been transferred to a county ct. under 1919 Act, s. 1, the effect of sect. 4 of that Act is to give the county ct. jurisdiction to deal with the matter equal to or the same as that of the High Ct.

Pltf. & deft. entered into an agreement, which provided that in the event of any breach thereof by deft. he should pay to pltf. in respect of each such breach a sum of £150 by way of agreed & liquidated damages. Pltf. alleged that deft. had broken the agreement, & he brought an action in the High Ct. claiming the sum of £150 & an injunction. Pltf. afterwards applied, under 1919 Act,

s. 1, to have the action remitted to a county ct., reducing the money claim to £90, & claiming an injunction in the alternative. The master made an order for remittal. Pltf. then delivered particulars of claim, asking for £90 damages or in the alternative an injunction. He admitted, however, that the real object of the action was to obtain an injunction. On the action coming on for trial the county ct. judge declined jurisdiction on the ground that in substance the action was for an injunction alone. On appeal to a Div. Ct., that ct. held that the county ct. judge had jurisdiction to entertain the action, & sent it back to him for trial:—*Held*: the decision of the Div. Ct. was correct.—**DAVEY v. ROBINSON**, [1923] 1 K. B. 563; 92 L. J. K. B. 336; 128 L. T. 513; 39 T. L. R. 163; 67 Sol. Jo. 246, C. A.

379. *Add. Annotation*:—*Consd.* **Davey v. Robinson**, [1923] 1 K. B. 563.



**404a. Duty of county court judge to specify scale of costs.]—**In an action remitted from the High Ct. to the county ct., it is advisable that the county ct. judge should specify the scale on which costs are to be taxed. *Semble*: in the absence of any direction by him as to scale, the costs must be taxed in accordance with the scale applicable to the amount recovered.—**GOLD BROTHERS & NASH, LTD. v. FULLER** (1925), 134 L. T. 151; 70 Sol. Jo. 284, D. C.

*Annotation*:—**Consd. Davies v. Davies** (1927), 96 L. J. K. B. 1066.

**404b. — Order for costs on higher scale.]—**A county ct. judge cannot award to pltf. in a remitted action costs on a scale higher than that applicable to the amount recovered without giving a certificate in accordance with 1888 Act, s. 119.—**DAVIES v. DAVIES**, [1928] 1 K. B. 364; 96 L. J. K. B. 1066; 137 L. T. 567, D. C.

*Add. Annotation*:—**Refd. Hives v. Dawson** (1927), 44 T. L. R. 37.

**410a. Discretion of county court judge—To deprive successful party of costs.]—**Where a pltf. has begun an action in the High Ct. & within twenty-one days from issue of the writ has obtained, under R. S. C., Ord. 14, an order in respect of part of his claim whereby he may sign judgment for £20 or upwards either unconditionally or unless that sum is paid into ct. or to pltf.'s solr., & the remainder of pltf.'s claim is remitted to a county ct. with leave to defend, the judge of the county ct. has the same jurisdiction as a judge of the High Ct. over the costs of the whole proceedings, & he may order them to be taxed on the High Ct. or on the county ct. scale. But in deciding the scale on which they are to be taxed he must exercise his discretion judicially, & he is not entitled to deprive pltf. of the High Ct. costs of the High Ct. proceedings unless pltf. has been guilty of some misconduct.—**JENKINS & CO. v. SIMON**, [1926] 1 K. B. 111; 95 L. J. K. B. 97; 134 L. T. 88; 42 T. L. R. 39; 70 Sol. Jo. 162, D. C.

## Part V.—Procedure.

**438. Add. Annotation:—*Generally*, **Refd. Friern Barnet U. C. v. Adams**, [1927] 2 Ch. 25.**

**455. Add. Citations:—91 L. J. Ch. 627, [1922] B. & C. R. 155.**

**471. Add. Annotations:—*Mentd. Re Rosse, Parsons v. Rosse* (1923), 93 L. J. Ch. 8; *Performing Right Soc. v. Mitchell & Booker*, [1924] 1 K. B. 762.**

**472. Add. Citation:—20 L. G. R. 567.**

**497a. — Application under Administration of Justice Act, 1920 (c. 81), s. 3—Discretion of judge to order trial without jury.]—**On May 10, 1923, pltf. commenced proceedings claiming from defts. damages for personal injuries caused by the alleged negligence of defts.' servants. Defts. filed a defence denying negligence & afterwards gave pltf. notice of an application to dispense with a jury. The application for trial without a jury was made under the above sect. The county ct. judge, without giving any reasons for his decision, ordered the trial of the action without a jury, & pltf. appealed against that order & alleged that the learned judge had not properly exercised his discretion:—*Held*: the above sect. did not give the county ct. judge an absolute power to order the trial of an action without a jury; the sect. gave him a discretion which must be exercised judicially; in this case there were no proper materials on which the learned judge could exercise his discretion judicially; it would not be a proper exercise of the learned judge's judicial discretion to dispense with a

jury merely because it was inconvenient: on the other hand it is not necessary for the judge to give his reasons for dispensing with a jury, but there must be some grounds for so exercising his discretion.—**WINN v. LONDON COUNTY COUNCIL** (1923), 130 L. T. 350; 88 J. P. 31; 40 T. L. R. 106; 68 Sol. Jo. 502, D. C.

**497b. — Onus on party objecting to jury.]—**On an application in the county ct. for an order that an action be tried with a jury the county ct. judge is bound in law to make the order asked for, unless the party desiring to dispense with a jury under the above sect. establishes to his satisfaction that the action could be as conveniently tried without a jury. Further, the fact that the lists are congested is not a ground on which the county ct. judge is entitled to suspend a litigant's right to trial by jury.—**CALCRAFT v. LONDON GENERAL OMNIBUS CO.**, [1923] 2 K. B. 608; 92 L. J. K. B. 1092; 129 L. T. 794; 39 T. L. R. 466; 67 Sol. Jo. 641, D. C.

*Annotation*:—**Consd. Winn v. L. C. C.** (1923), 130 L. T. 350.

**499a. — Action in which fraud alleged—Whether mere allegation sufficient.]—**To come within the proviso to Administration of Justice Act, 1920 (c. 81), s. 2 (1), a relevant issue of fraud must be raised, which will have to be decided in order to determine the rights of the parties, & it is not sufficient for pltf. merely to allege that deft. acted fraudulently.—**EVERETT v. ISLINGTON GUARDIANS**, [1923] 1 K. B. 44; 92 L. J. K. B. 250; 128 L. T. 447; 87 J. P. 61, D. C.

## Part VI.—Trial, Judgment and Execution.

**554. Add. Annotation:—**Consd. Hoystead v. Taxation Comr.**, [1926] A. C. 155.**

**563. Add. Annotation:—**Refd. Mackenzie-Kennedy v. Air Council**, [1927] 2 K. B. 517**

**565. Add. Annotations:—**Consd. Ord v. Ord**,**

[1923] 2 K. B. 432; *The Koussk*, [1924] P. 140; *Debenhams v. Perkins* (1925), 133 L. T. 252. *Appld. Conquer v. Boot*, [1928] 2 K. B. 336.

*See, also, ESTOPPEL*, No. 447a, *post*.

571. *Add. Annotations*:—**Mentd.** *Fairman v. Perpetual Investment Bldg. Soc.*, [1923] A. C. 74; *Manton v. Brocklebank*, [1923] 1 K. B. 406; *Oldham v. Sheffield Corpn.* (1927), 136 L. T. 681; *Coleshill v. Manchester Corpn.*, [1928] 1 K. B. 776.
578. *Add. Annotation*:—**Mentd.** *Scammell v. Attlee* (1928), 45 T. L. R. 75.
582. *Add. Annotation*:—**Mentd.** *G. N. Ry. v. L. E. P. Transport & Depository*, [1922] 2 K. B. 742.
593. *Add. Annotation*:—**As to** (2) **Refd.** *Campbell v. Pollak* (1927), 43 T. L. R. 495.
617. *Add. Citation*:—15 B. W. C. C. 43.
619. *Add. Annotation*:—**Refd.** *R. v. Copestake, Ex p. Wilkinson* (1926), 90 J. P. 191.
- 645a. — **Goods already in possession of sheriff.**—*A. W., LTD. v. COOPER & HALL, LTD.*, No. 783a, *post*.
- 648a. — **Sum deposited by claimant to goods less than value of goods—More than judgment debt & costs.**—Goods which had been taken in execution under a county ct. judgment were claimed by a claimant. The execution creditor did not admit the claim & claimant deposited with the bailiff under 1888 Act, s. 156, the sum of £26 which was considerably less than the value of the goods claimed, but was more than sufficient to cover the judgment debt & costs of the execution. The money was paid into ct. by the bailiff, who remained in possession of the goods, & an interpleader summons was issued. Before the return day of the interpleader summons the execution creditor gave notice that he admitted the title of claimant to the goods, & the bailiff withdrew from possession. Upon the taxation of the costs the bailiff claimed possession fees up to the date when the execution creditor admitted claimant's title, upon the ground that under sect. 156 he was bound to remain in possession until the amount of the value of the goods was deposited with him:—**Held**: as the £26 was deposited with & taken by the bailiff under sect. 156 of the Act, he must be deemed to have taken it upon the assumption that it represented the amount of the value of the goods, & therefore he had no right to remain in possession or to possession fees after the date of the deposit.—*NEWSUM, SONS & CO., LTD. v. JAMES*, [1909] 2 K. B. 384; 78 L. J. K. B. 761; 100 L. T. 852; 53 Sol. Jo. 521, D. C.
668. *Add. Annotation*:—**Mentd.** *Cohen v. Roche* (1926), 95 L. J. K. B. 945.

## Part VII.—Costs.

677. *Add. Annotation*:—**Refd.** *Russoff v. Lipovitch* (1924), 69 Sol. Jo. 276.
684. After this case insert “*See, also*, Nos. 566–573. *ante*.”
686. *Add. Annotation*:—**Refd.** *Temperance Loan Fund v. Erwood* (1927), 137 L. T. 449.
690. After this case add “— **Action by money-lender.**”—*See MONEY & MONEY-LENDING*, No. 442a.”
691. *Add. Annotation*:—**Refd.** *Campbell v. Pollak*, [1927] A. C. 732.
- 691a. — **Order for costs on lower scale.**—When the amount found due to pltf. is between £20 & £50 the scale of costs applicable is Scale B, & a county ct. judge has no jurisdiction to make an order for costs on a lower scale unless it be shown that pltf.'s action is frivolous or oppressive, or that there has been misconduct or dishonesty on his part.—*HUGHES (W.) & SON v. SATCHELL* (1925), 134 L. T. 93, D. C.
- 691b. — **In remitted action.**—*JENKINS & Co. v. SIMON*, No. 410a, *ante*.
693. *Add. Annotation*:—**Refd.** *Campbell v. Pollak* (1927), 43 T. L. R. 495.
- 695a. — **Pltf.'s motor car, whilst being driven by his wife, was injured, as pltf. alleged, through the negligent driving of a motor lorry by a servant of defts.** At the trial of the action in the county ct. the judge held that both sides were to blame, & gave judgment for defts., but allowed no costs. On appeal on the question of costs:—**Held**: on the facts found at the trial there had been negligence on the part of pltf.'s wife, & therefore pltf. could not have succeeded whether there had or had not been negligence on the part of defts., & the county ct. judge had no discretion to deprive the successful defts. of their costs.—*JACKSON v. ANGLO-AMERICAN OIL Co.*, [1923] 2 K. B. 601; 92 L. J. K. B. 1000; 129 L. T. 792; 67 Sol. Jo. 640, D. C.
- 695b. — **Order for costs on lower scale.**—On a claim by an unsuccessful debt. against an insurance co. as third parties, for indemnity to an amount exceeding £50, judgment was given for the third parties. The county ct. judge, without giving any reasons, ordered the unsuccessful defts. to pay costs to the third parties on Scale B, applicable to cases where the amount does not exceed £50, the scale where that amount exceeds £50 being Scale C. It was not suggested that any facts existed to justify a special direction as to costs under 1888 Act, s. 113:—**Held**: there was no jurisdiction to make the order.—*BEVINGTON v. PERKS & BELL ASSURANCE SOCIETY*, [1925] 2 K. B. 229; 94 L. J. K. B. 829; 133 L. T. 511, D. C.
- Annotation*:—**Appld.** *Hughes v. Satchell* (1925), 134 L. T. 93.
750. *Add. Annotation*:—**N.F.** *Warwick v. Butler & Lauritzen*, [1925] 2 K. B. 294.
- 750a. — **Where under the above rule the registrar, on the application of a debt. who alleges that he neither resides nor carries on business within twenty miles from the ct., makes an order directing pltf. to deposit in ct. a sum of money as security for the costs of debt., the county ct. judge under r. 11, sub-r. 8, has power to vary or rescind the order so made.**—*WARWICK v. BUTLER & LAURITZEN*, [1925] 2 K. B. 294; 94 L. J. K. B. 657; 133 L. T. 240, D. C.

## Part VIII.—Appeals.

*Annotation* :—**Refd.** Hives v. Dawson (1927), 44 T. L. R. 37.

**768a.** ———. ]—**WARWICK v. BUTLER & LAURITZEN**, No. 750a, *ante*.

**776.** *Add. Annotation* :—**Mentd.** Edwards v. Porter (1924), 41 T. L. R. 57.

**776a.** Debt or damage claimed not exceeding £20.] —An appeal to the High Ct. against the decision of a county ct. judge granting a new trial is an appeal “in an action” within 1888 Act, s. 120. & where the debt or damage claimed did not exceed £20 the High Ct. has no jurisdiction to hear the appeal unless applt. has obtained leave of the county ct. judge to appeal.—**WARD v. SNEIMAN** (1925), 133 L. T. 560; 41 T. L. R. 598, D. C.

*Annotation* :—**Refd.** Hives v. Dawson (1927), 44 T. L. R. 37.

**779a.** ——— Claim less than £20.]—There is no appeal without leave from a county ct. judge’s refusal to review a taxation of costs, where the amount claimed is less than £20.—**HIVES v. DAWSON** (1927), 138 L. T. 238; 44 T. L. R. 37, D. C.

**783a.** Order for payment of possession fees of high bailiff—Under Ord. 27, r. 1 (2).]—(1) A Div. Ct. has jurisdiction to hear an appeal from the decision of a county ct. judge who, under the above sub-rule has, on the application of the high bailiff, made an order against the execution creditors, who have directed the high bailiff to withdraw, for the payment of his fees.

On May 15, 1924, the high bailiff of a county ct. under a warrant of execution purported to levy upon the goods of judgment debtors at their premises, & put a man in possession. The sheriff was then in possession of the goods under process of an earlier date, but not to the knowledge of the high bailiff, as the county ct. judge found. The high bailiff on taking possession received from judgment debtors a document which stated that in consideration of his withdrawing from possession they authorised him at any time to re-enter & undertook not to remove any of the goods. On June 12, 1924, the high bailiff on the instruction of the judgment creditors withdrew from possession. The execution was ineffective, except in so far as it brought the parties into negotiation with a view to a settlement. The high bailiff made an application to the county ct. judge under the above rule, for an order for payment by the judgment creditors of his fees for keeping possession from May 15 to June 12. The county ct. judge found that the high bailiff did not withdraw from possession, but was in actual possession & not in mere walking possession of the goods, & made an order for payment of the fees claimed :—**Held** : (2) the possession of the sheriff did not in the circumstances prevent the high bailiff from taking & keeping such possession as would entitle him to claim fees; (3) there was evidence to support the finding of the county ct. judge that the high bailiff did not with-

draw from possession, but kept actual as distinct from walking possession; & therefore the order of the county ct. was right. —**A. W., LTD. v. COOPER & HALL, LTD.**, [1925] 2 K. B. 816; 94 L. J. K. B. 831; 133 L. T. 508.

**789.** *Add. Annotations* :—**Consd.** Ward v. Sneiman (1925), 133 L. T. 560. **Refd.** Lloyd v. Cook (1928), 97 L. J. K. B. 657. **Mentd.** Nimmo v. Connell, [1924] A. C. 595; Dew v. United British S.S. Co. (1928), 139 L. T. 628.

**809.** *Add. Annotation* :—**Refd.** Cohen v. Roche (1926), 95 L. J. K. B. 945.

**810.** *Add. Annotations* :—**Mentd.** *Re* Rosse, Parsons v. Rosse (1923), 93 L. J. Ch. 8; Performing Right Soc. v. Mitchell & Booker, [1924], 1 K. B. 762.

**818.** *Add. Annotation* :—*As to* (1) **Refd.** Phillips v. Britannia Hygienic Laundry Co., [1923] 1 K. B. 539.

**832.** *Add. Annotations* :—*As to* (1) **Distd.** Martin v. Stanborough (1924), 41 T. L. R. 1. **Refd.** Gayler & Pope v. Davies, [1924] 2 K. B. 75.

**842.** *Add. Annotation* :—**Mentd.** Gregg v. Richards, [1926] Ch. 521.

**851.** After this case add the following cross-reference :—**Order directing arbitrator under Agricultural Holdings Acts to state special case.**]—*See* AGRICULTURE, No. 2664.

**852.** *Add. Annotation* :—**Consd.** Leyton U. C. v. Wilkinson, [1927] 1 K. B. 853.

**853.** *Add. Annotation* :—**Mentd.** Commercial Credit Co. of Canada v. Fulton, [1923] A. C. 798.

**900.** *Add. Citation* :—20 L. G. R. 653.

*Add. Annotations* :—**Mentd.** Aston v. Smith, [1924] 2 K. B. 143; Precious v. Reddie, [1924] 2 K. B. 149; Queen’s Club Garden Estates v. Bignell, [1924] 1 K. B. 117.

**903.** *Annotations* :—For the existing annotations substitute as follows :—

*Annotations* :—**Overd.** Abrahams v. Dimmock, [1915] 1 K. B. 662. *Cook v. Gordon* was wrongly decided (BUCKLEY, L.J.). **Refd.** The Crescent, Great Northern S.S. Fishing Co. v. S.S. Crescent (1893), 62 L. J. P. 63.

**913.** *Add. Annotation* :—**Refd.** Simmons v. Crossley, [1922] 2 K. B. 95.

**928a.** Reference to statutory & other orders & to private & local Acts—Duty to supply copies for use of court.]—**PRACTICE NOTE**, [1926] W. N. 308, D. C.

**933.** *Add. Annotations* :—**Mentd.** Llewellyn v. Turner (1922), 126 L. T. 532; Miss Gray, Ltd. v. Cathcart (1922), 38 T. L. R. 562.

**938.** *Add. Annotation* :—**Distd.** Rackham v. Tabrum (1923), 129 L. T. 24.

**945.** *Add. Annotation* :—**Refd.** United States Shipping Board v. Strick, [1926] A. C. 545.

**962a.** ——— Appeal under Poor Persons Rules.]—The ct. may award costs against applt. who appeals under the Poor Persons Rules, if the appeal is entirely frivolous & vexatious & is an abuse of the process of the ct.—**DRUMMOND v. HERVEY** (1927), 138 L. T. 200; 44 T. L. R. 14, D. C.



## Part IX.—Certiorari, Prohibition and Mandamus.

979. *Add. Annotation*:—*Apld.* R. v. Central Criminal Court JJ., *Ex p.* L. C. C., [1925] 2 K. B. 43.
- 980a. — Not action voluntarily brought in county court not having jurisdiction.]—(1) A pltf. who voluntarily sues in a county ct. which, owing to a defence there raised, has no jurisdiction, is not entitled to remove the proceedings to the High Ct. by *certiorari*.  
(2) If such a pltf. succeeds in obtaining an *ex parte* order for *certiorari* deft. need not enter an appearance in the High Ct. Pltf. is not entitled to judgment in default of appearance, & such a judgment, if obtained by him, will be set aside for irregularity.—*GIUSTI PATENTS & ENGINEERING WORKS, LTD. v. MAGGS*, [1923] 1 Ch. 515; 92 L. J. Ch. 345; 40 R. P. C. 199; *sub nom.* *GIUSTI PATENTS & ENGINEERING WORKS, LTD. v. MAGGS*, 129 L. T. 438.
- 1008a. On obligation of defendant to appear—Judgment in default of appearance—Validity.]—*GIUSTI PATENTS & ENGINEERING WORKS, LTD. v. MAGGS*, No. 980a, *ante*.
1016. *Add. Annotations*:—*Consd.* *Re Stanton*, [1928] 1 K. B. 464. *Refd.* R. v. Central Criminal Court JJ., *Ex p.* L. C. C., [1925] 2 K. B. 43.
1038. *Add. Annotation*:—*Consd.* *St. Magnus, etc. Parochial Church Council v. London Diocese Chancellor*, [1923] P. 38. *Refd.* *Hunter v. Stadtische Hochseefischerei Gemeinnützige Gesellschaft* (1925). 133 L. T. 488; *Mansfield v. Robinson* [1928] 2 K. B. 353.
1064. *Add. Annotation*:—*Apld.* *Pringle v. Hales*, [1925] 1 K. B. 573.

## Part XII.—Statutes Conferring Special Jurisdiction.

1146. In the cross-reference following this case |  
for "See, generally, INDUSTRIAL, PROVIDENT | & SIMILAR SOCIETIES" read "See, generally, INSURANCE."

# CRIMINAL LAW AND PROCEDURE.

NOTE.—After June 1, 1926, see Criminal Justice Act, 1925 (c. 86).

## Part I.—Principles of Criminal Liability.

3. *Add. Annotations* :—*Consd.* Sorrell v. Smith, [1925] A. C. 700. —*Refd.* British Oxygen Co. v. Liquid Air, [1925] Ch. 383. *Mentd.* Brimelow v. Casson, [1924] 1 Ch. 302; Sorrell v. Smith, [1924] 1 Ch. 506; Thompson v. British Medical Assocn., [1924] A. C. 764.
21. *Add. Annotation* :—*Refd.* R. v. Cory, [1927] 1 K. B. 810.
22. *Add. Annotation* :—*Refd.* Jarvis v. Surrey County Council, [1925] 1 K. B. 554.
23. *Add. Annotation* :—*Refd.* Jarvis v. Surrey County Council, [1925] 1 K. B. 554.
38. *Add. Annotation* :—*Refd.* R. v. Denyer, [1926] 2 K. B. 258.
40. *Add. Annotation* :—*Consd.* Allard v. Selfridge (1924), 88 J. P. 204.
- 40a. *Right of defendant to give evidence*—As to his state of mind.]—(1) Evidence that deft. is an accessory after the fact does not support an indictment for being a principal, or accessory before the fact.  
(2) On the question of *mens rea*, deft. is entitled to give evidence of the state of his mind at the relevant time.—R. v. FITZPATRICK (1926), 19 Cr. App. Rep. 91, C. C. A.
45. *Add. Annotation* :—*Folld.* Bridges v. Griffin, [1925] 2 K. B. 233.
47. *Add. Annotation* :—*Mentd.* Rodbourne v. Hudson (1924), 41 T. L. R. 132.
55. *Add. Annotation* :—*Refd.* Anderson v. Daniel (1923), 130 L. T. 418.
- 72a. *Refusal to maintain wife & family.*—It is no defence to a charge of “wilfully refusing & neglecting to maintain” a wife & family, whereby they have become chargeable to the common fund of a union, that the husband *bonâ fide* but erroneously believed that he was not legally bound to maintain them in the circumstances. *Mens rea* is immaterial. —BIGGS v. BURRIDGE (1924), 89 J. P. 75; 22 L. G. R. 555, D. C.
167. *Add. Annotation* :—*Refd.* R. v. Denyer, [1926] 2 K. B. 258.
177. *Add. Annotation* :—*Consd.* R. v. Bateman (1925), 94 L. J. K. B. 791.
178. *Add. Annotation* :—*Consd.* R. v. Bateman (1925), 94 L. J. K. B. 791.
212. *Add. Annotation* :—As to (3) *Consd.* R. v. Bailey, [1924] 2 K. B. 300.

### PART I. SECT. 1.

ss. *Misdemeanour.*—*Semble* : at common law disobedience to a statute is a misdemeanour.—O'DEA v. MID-WIVES REGISTRATION BOARD (1924), 26 W. A. L. R. 129.—AUS.

24 i. *Statutory offences*—“Offence”—*Prevention of Crimes Act*, 1871 (c. 112), s. 7.]—STRATHERN v. PADDEN, [1926] S. C. (J.) 9.—SCOT.

24 ii. —“Crime”—*Prevention of Crimes Act*, 1871 (c. 112), ss. 7, 20.]—To be relevant a charge of a contravention of sect. 7 must libel upon its face a conviction on indictment of an offence, & a previous conviction of an offence, both of which offences must be “crimes” as defined in sect. 20.—MURRAY v. MACMILLAN, [1927] S. C. (J.) 14.—SCOT.

### PART I. SECT. 2, SUB-SECT. 1.

29 ii. — *Criminal Code*, s. 247.]—R. v. HURT (1923), 48 Can. Crim. Cas. 82; 55 O. L. R. 48.—CAN.

29 iii. — — —.]—R. v. CANADIAN ALLIS-CHAMBERS, LTD. (1923), 48 Can. Crim. Cas. 63; 54 O. L. R. 38.—CAN.

30 ii. — — —.]—A fish merchant was convicted on a charge of clandestinely taking possession of fish boxes, the property of various fish merchants, well knowing that he had not, & would not have, received permission from the owners to his doing so, & with using the boxes by filling them with fish & dispatching them to the fish market at Glasgow :—*Held* : as there was nothing clandestine in the conduct of accused, he was not guilty of the offence charged.—MURRAY v. ROBERTSON, [1927] S. C. (J.) 1.—SCOT.

### PART I. SECT. 2, SUB-SECT. 2.—A.

38 ii. — — —.]—R. v. CRAWFORD

(N. B.), [1927] 2 D. L. R. 565; 47 Can. Crim. Cas. 134.—CAN.

### PART I. SECT. 2, SUB-SECT. 2.—B.

59 i. *Notification of contagious disease*—*Public Health Act*, R. S. O., 1914 (c. 218), s. 55 (1).]—Where deft., a qualified medical practitioner, honestly believed that a disease was not communicable :—*Held* : there was no *mens rea*, & he could not be guilty of a criminal offence.—R. v. GORDON, [1924] 2 D. L. R. 358; 42 Can. Crim. Cas. 26; 54 O. L. R. 355.—CAN.

o (p. 38) i. — — —.]—*Mens rea* is an essential ingredient of the offence of possessing apparatus suitable for the manufacture of spirits contrary to Inland Revenue Act, s. 180 (e). This does not mean that guilty motive or intention must be shown. *Mens rea* can be shown by the presumptions of fact which may be raised against accused by the nature of the apparatus found in his possession & the circumstances surrounding that possession.—R. (JACKSON) v. HUTCHINSON, [1925] 3 W. W. R. 744.—CAN.

sb. *Keeping beer over legal strength*—*Ontario Temperance Act*, 1916 (c. 50), s. 40.]—*Held* : *mens rea* necessary element.—R. v. HYDE, [1925] 2 D. L. R. 958; 44 Can. Crim. Cas. 1.—CAN.

so. — — —.]—*Held* : *mens rea* not necessary element.—R. v. BURKE, [1925] 3 D. L. R. 625; 44 Can. Crim. Cas. 234.—CAN.

sf. *Using bottle for liquor incorrectly labelled.*—*Held* : *mens rea* essential ingredient.—R. v. SAVICH (Ont.) (1927), 47 Can. Crim. Cas. 262.—CAN.

sj. *Branding animal without authority of owner*—*Brand Act*, R. S. S., 1920 (c. 123), s. 17(b).]—*Held* : *mens rea* essential ingredient.—CLARK v. LAWSON

(Sask.), [1926] 1 W. W. R. 173; 46 Can. Crim. Cas. 118.—CAN.

### PART I. SECT. 3, SUB-SECT. 3.—B.

o. Delete the word “not.”

### PART I. SECT. 5, SUB-SECT. 1.—B. (b).

201 ii. — — —.]—*Proof that accused under fourteen—Onus of proof lies on accused.*—R. v. SCHNEIDER (Sask.), [1927] 1 D. L. R. 999; [1927] 1 W. W. R. 306; 47 Can. Crim. Cas. 61.—CAN.

### PART I. SECT. 5, SUB-SECT. 2.—B. (b).

229 xiii. — — —.]—A man may appreciate the nature & quality of his deed as an illegal act, & may yet be insane in respect that he fails to recognise that the act is morally wrong; & it is sufficient to justify a finding that accused is incapable of instructing his defence that, although sane in ordinary matters, he is insane in regard to the particular subject-matter of the charge which is made against him.—H.M. ADVOCATE v. SHARP, [1927] S. C. (J.) 66.—SCOT.

229 xiv. — — —.]—TOLA RAM v. R. (1927), 1 I. L. R. 8 Lah. 684.—IND.

e i. — — —.]—A man may be suffering from some form of insanity, in the sense in which the word would be used by an alienist, but may not be suffering from unsoundness of mind, as defined in Indian Penal Code, s. 84. The law recognises nothing but incapacity to realise the nature of the act, & presumes that where a man's mind or his faculties of ratiocination are sufficiently clear to apprehend what he is doing, he must always be presumed to intend the consequences of the action he takes.—MANI RAM v. R. (1926), 1 I. L. R. 8 Lah. 114.—IND.

- 230a. —.]—The Ct. of Criminal Appeal has no power to alter the rules in *McNaghten's Case*, No. 229, *ante*.—*R. v. FLAVELL* (1926), 19 Cr. App. Rep. 141, C. C. A.
243. *Add. Annotation*:—*Mentd. R. v. Harris*, [1927] 2 K. B. 587.
- 244a. *S.P.*—*R. v. KOPSCH* (1925), 19 Cr. App. Rep. 50, C. C. A.
302. *Add. Annotation*:—*As to* (1) *Consd. R. v. Bateman* (1925), 94 L. J. K. B. 791.
306. *Add. Annotation*:—*Refd. R. v. Canham* (1925), 18 Cr. App. Rep. 163.
417. *Add. Annotations*:—*Consd. A.-G. for Straits Settlement v. Pang Ah Yew*, [1925] A. C. 555. *Refd. Badman v. R.*, [1924] 1 K. B. 64.
466. *Add. Annotation*:—*Refd. Lake v. Simmons* (1926), 95 L. J. K. B. 586.
610. *Add. Annotation*:—*Mentd. Pickup v. United Kingdom Dental Board*, [1928] 2 K. B. 459.
- 708a. — Not supported by evidence that defendant accessory after the fact.]—*R. v. FITZPATRICK*, No. 40a, *ante*.
- 732a. —.]—*R. v. FITZPATRICK*, No. 40a, *ante*.
- 751a. —.]—On a charge of attempting to obtain by false pretences, "intent" & "attempt" must be carefully distinguished.—*R. v. PUNCH* (1927), 20 Cr. App. Rep. 18, C. C. A.
755. *Add. Annotation*:—*Refd. R. v. Punch* (1927), 20 Cr. App. Rep. 18.
756. *Add. Annotation*:—*Refd. R. v. Punch* (1927), 20 Cr. App. Rep. 18.
812. *Add. Annotations*:—*Consd. Sorrell v. Smith*, [1925] A. C. 700. *Refd. British Oxygen Co. v. Liquid Air*, [1925] Ch. 383. *Mentd. Brimelow v. Casson*, [1924] 1 Ch. 302; *Sorrell v. Smith*, [1924] 1 Ch. 506; *Thompson v. British Medical Assocn.*, [1924] A. C. 764.
814. *Add. Annotations*:—*As to* (1) *Refd. Hardie & Lane v. Chilton*, [1928] 2 K. B. 306. *As to* (2) *Consd. Sorrell v. Smith*, [1925] A. C. 700. *Generally, Refd. G. W. K. v. Dunlop Rubber Co.* (1926), 42 T. L. R. 376. *Mentd. Brimelow v. Casson*, [1924] 1 Ch. 302.
861. *Add. Annotation*:—*Generally, Refd. R. v. Berg, Britt, Carré & Lummies* (1927), 20 Cr. App. Rep. 38.
902. *Add. Annotation*:—*Refd. R. v. Gordon* (1925), 133 L. T. 734.
913. *Add. Annotations*:—*Mentd. R. v. Harris*, [1927] 2 K. B. 587; *R. v. Noble* (1928), 20 Cr. App. Rep. 191.
930. *Add. Annotation*:—*Refd. R. v. Luberg* (1926), 135 L. T. 414.

## PART I. SECT. 5, SUB-SECT. 2.—B. (c).

245 iii. —.]—The driver of a motor car was charged with causing the death of a pedestrian by his reckless driving. He stated that he was not guilty "in respect that by the incidence of temporary mental disassociation due to toxic exhaustive factors he was unaware of the presence of deceased on the highway & of his injuries & death, & was incapable of appreciating his immediately previous & subsequent actions." It was not disputed that the pedestrian's death had been caused by the excessive speed & dangerous manœuvring of the car:—*Held*: if accused was otherwise in a condition which justified his driving a car, & if, through no fault of his own & for some cause outwith his control & which he was not bound to foresee, he became either gradually or suddenly not master of his action, through some mental defect, & was in that state at the time of the accident, the jury were entitled to return a verdict of not guilty.—*H.M. ADVOCATE v. RITCHIE*, [1926] S. C. (J.) 45.—SCOT.

## PART I. SECT. 5, SUB-SECT. 2.—E.

279 i. *Need not be scientific evidence.*—*R. v. McCoskey*, [1927] 2 D. L. R. 539; 47 Can. Crim. Cas. 122; 60 O. L. R. 44.—CAN.

## PART I. SECT. 5, SUB-SECT. 3.—A.

h i. —.]—*WARYAM SINGH v. R.* (1926), 1 L. R. 7 Lah. 141.—IND.

## PART I. SECT. 5, SUB-SECT. 3.—B.

297 iv. —.]—Evidence of drunkenness falling short of a proved incapacity in accused to form the intent necessary to constitute the crime, & merely establishing that his mind was affected by drink so that he more readily gave way to some violent passion, does not rebut the presumption that a man intends the natural consequences of his acts.—*SHERU & GAMA v. R.* (1923), 1 L. R. 7 Lah. 50.—IND.

## PART I. SECT. 6, SUB-SECT. 2.—B.

456 iv. —.]—Where several persons join in beating another with lathis, & inflict such serious injuries on him that he dies shortly after the beating, all are guilty of the offence of murder without distinction.—*R. v. UMED* (1923), 1 L. R. 45 All. 727.—IND.

456 v. —.]—The doing to death of one person at the hands of several persons, in circumstances in which it could never be known by which hand life was actually extinguished, amounts to murder, & not merely attempted murder, on the part of each of the persons concerned.—*GHOSH v. R.* (1924), 41 T. L. R. 27; 1 L. R. 52 Ind. App. 40.—IND.

## PART I. SECT. 6, SUB-SECT. 3.—B. (a).

n i. —.]—A person cannot be said to have aided & abetted another, where the latter had no consciousness of his act & exercised no volition in the matter.—*R. v. RASOOL*, [1924] App. D. 44.—S. AF.

## PART I. SECT. 6, SUB-SECT. 6.—C.

772 i. *Liability for attempt—Larceny.*—*R. v. SHAIN*, [1926] 3 D. L. R. 553; [1926] 2 W. W. R. 319; 46 Can. Crim. Cas. 209; 36 Man. L. R. 64.—CAN.

## PART I. SECT. 6, SUB-SECT. 6.—D.

si. *Charge of assault with intent to commit rape—Amounts to charge of attempted rape.*—*R. v. MACINTYRE* (1925), 43 Can. Crim. Cas. 356.—CAN.

## PART I. SECT. 6, SUB-SECT. 7.—A.

h i. —.]—Every person of legal responsibility who knowingly & voluntarily co-operates with, or aids or assists or advises or encourages another in the commission of a crime is an accomplice, without regard to the degree of his guilt.—*R. v. GAL-*

*JAGHER*, [1924] 4 D. L. R. 1059; 3 W. W. R. 357.—CAN.

## PART I. SECT. 6, SUB-SECT. 8.—A.

si. —.]—Conspiracy cannot exist unless two or more persons are parties to an agreement to do an illegal act, or to do a legal act illegally, both knowing, or being deemed to know, that the carrying out of the purpose involves the commission of an indictable offence.—*R. v. SEGAL*, [1925] 4 D. L. R. 762; Q. R. 39 K. B. 436.—CAN.

## PART I. SECT. 6, SUB-SECT. 8.—C.

831 i. *One alone cannot conspire.*—There can be no conspiracy unless two or more minds are *ad idem* as to their object.—*HARRIS v. R.* (1927), 48 N. L. R. 330.—S. AF.

835 i. *Husband & wife.*—Husband & wife cannot conspire together so as to be guilty of the crime of conspiracy.—*R. v. McKEETUE*, [1926] N. Z. L. R. 1.—N.Z.

## PART I. SECT. 6, SUB-SECT. 8.—N.

894 ii. —.]—*R. v. BOOKHALTER & LANIN*, [1924] 3 D. L. R. 122; 42 Can. Crim. Cas. 186.—CAN.

## PART I. SECT. 6, SUB-SECT. 8.—O (a).

921 i. *Conspiracy may be inferred from facts proved.*—*R. v. SIMINGTON* (B. C.) (1926), 45 Can. Crim. Cas. 249.—CAN.

921 ii. *S. P. R. v. THORNTON* (B. C.) (1926), 46 Can. Crim. Cas. 249.—CAN.

q i. —.]—If an information charges a conspiracy between A., B., C. & D., together & with E. & F. & others, & a conviction finds A. guilty of a conspiracy with B. & with E. & F. & others, the conspiracy on which A. is convicted is not a different conspiracy from the one on which he was charged.—*R. v. MARINO & CRISOPI*, [1927] 2 W. W. R. 468; 47 Can. Crim. Cas. 348; 38 B. C. R. 452.—CAN.



## Part II.—Original Criminal Jurisdiction.

- 960a. —.]—GREY'S (LORD) CASE (1541), 1 State, Tr. 439.
- 961a. Right of Scotch peer.]—SANCHAR'S (LORD) CASE (1612), 9 Co. Rep. 117a; 77 E. R. 902; *sub nom.* SANQUIRE'S (LORD) CASE, 2 State, Tr. 743.
- Annotations:—*Consd.* R. v. Graham (1791), 2 Leach, 547. *Refd.* Clarendon's Case (1667), 6 State, Tr. 291. *Mentd.* Judgment & Execution in Treason & Felony Case (undated), 12 Co. Rep. 129; R. v. Cooke (1826), 7 Dow. & Ry. K. B. 673; Smith v. R. (1849), 13 Q. B. 738; R. v. Eyre (1868), L. R. 3 Q. B. 487; R. v. Plummer, [1902] 2 K. B. 339.
- 967a. — Not by articles exhibited by peer in House of Lords.]—CLARENDON'S (EARL) CASE (1667), 6 State, Tr. 291.
- 975a. —.]—SOMERSET'S (DUKE) CASE (1551), 1 State, Tr. 515.
988. *Add. Annotation*:—*Mentd.* Everett v. Griffiths, [1924] 1 K. B. 941.
989. For "R. v. ELLIOT" read "R. v. ELLIOT, HOLLIS & VALENTINE."  
*Add. Annotations*:—*Refd.* R. v. Paty (1704), 2 Ld. Raym. 1105; Burdett v. Abbot (1811), 14 East, 1.
991. *Add. Annotation*:—*Consd.* R. v. Cory, [1927] 1 K. B. 810.
992. *Add. Annotation*:—*Refd.* Leyton U. C. v. Wilkinson, [1927] 1 K. B. 853.
1004. *Add. Annotation*:—*Mentd.* British Oxygen Co. v. Liquid Air, [1925] Ch. 383.
1007. *Add. Annotations*:—*Generally, Mentd.* R. v. Evening Standard, *Ex p.* Public Prosecutions Director, R. v. Manchester Guardian, *Ex p.* Same, R. v. Daily Express, *Ex p.* Same (1924), 40 T. L. R. 833; R. v. Daily Mirror, *Ex p.* Smith, [1927] 1 K. B. 845.
- 1016a. Power to order payment of taxes in respect of honorarium payable to clerk of court.]—An order made by the Central Criminal Ct. directing that any taxes demanded by the Inland Revenue authorities in respect of an honorarium payable to the clerk of that ct. shall be paid by the public bodies by which the salaries of the ct.'s officials are payable is not invalid & not in excess of the powers of the ct. under Central Criminal Ct. Act, 1834 (c. 36).—R. v. CENTRAL CRIMINAL COURT JJ., *Ex p.* LONDON COUNTY COUNCIL, [1925] 2 K. B. 43; 94 L. J. K. B. 479; 132 L. T. 666; 89 J. P. 65; 41 T. L. R. 269; 69 Sol. Jo. 381; 27 Cox, C. C. 734, D. C.
- 1022a. —.]—R. v. DEVON JJ., *Ex p.* PUBLIC PROSECUTIONS DIRECTOR, No. 1138, *post*.
1030. *Add. Annotation*:—*Distd.* R. v. Teesdale (1927), 138 L. T. 160.
1031. *Add. Annotation*:—*Distd.* R. v. Teesdale (1927), 138 L. T. 160.
- 1031a. —.]—It is not necessary in order that a person may be dealt with as an incorrigible rogue under Vagrancy Act, 1824 (c. 33), s. 5, on a second conviction for any of the offences named in sect. 4 of that Act, that the previous conviction should use the actual words "rogue & vagabond," since the statute itself provides that a person convicted of any of those offences "shall be deemed a rogue & vagabond."—R. v. TEESDALE (1927), 138 L. T. 160; 91 J. P. 184; 44 T. L. R. 30; 28 Cox, C. C. 438; 20 Cr. App. Rep. 113, C. C. A.
1049. *Add. Annotation*:—*Mentd.* Salvesen (or von Lorang) v. Austrian Property Administrator, [1927] A. C. 641.
- 1079a. — Fraudulent conversion begun abroad—Receipt of proceeds in England.]—A fraudulent conversion begun abroad, even though triable there, but completed by receipt of the proceeds in this country, is justiciable in this country.—R. v. LYME (1924), 18 Cr. App. Rep. 59, C. C. A.
1100. *Add. Annotation*:—*Refd.* The Fagernes, [1926] P. 185.
1101. *Add. Annotation*:—*Distd.* The Fagernes, [1927] P. 311.
1124. *Add. Annotations*:—*As to* (2) *Refd.* The Fagernes, [1926] P. 185. *As to* (4) *Refd.* The Fagernes, [1926] P. 185.
1138. For the existing paragraph in original volume substitute the following paragraph:—  
—.]—A person on board one of His Majesty's ships, which was then in commission & lying in the tidal waters of the Firth of Forth above the Forth Bridge, was alleged to have committed larceny as a clerk or servant to the Navy, Army & Air Force Institutes. He was placed under arrest by an executive officer of the ship, & some days later, by which time the vessel had arrived in Torbay, he was apprehended by the Devon police & charged before the justices, who committed him for trial at the Devon quarter sessions. The indictment charged an offence contrary to Larceny Act, 1916 (c. 50), s. 17 (1) (a), committed on the high seas. Prisoner was arraigned & pleaded not guilty & a jury was impanelled, but quarter sessions declined to proceed with the indictment upon the ground that Larceny Act, 1861 (c. 96), s. 115, which was said to give them jurisdiction, did not extend to offences committed in estuaries or rivers in Scotland, & that the offence charged was properly triable only by the Scottish cts.:—*Held*: quarter sessions had jurisdiction to try the indictment inasmuch as it alleged an offence which, by virtue of Naval Discipline Act, 1866 (c. 109), was committed within the jurisdiction of the Admty. of England, & therefore, being an offence mentioned in Larceny Act, 1861, it was triable, under sect. 115 of that Act, in the county where the offender was apprehended.—R. v. DEVON JJ., *Ex p.* PUBLIC PROSECUTIONS DIRECTOR, [1924] 1 K. B. 503; 93 L. J. K. B. 284; 130 L. T. 640; 88 J. P. 73; 40 T. L. R. 213; 68 Sol. Jo. 422; 27 Cox, C. C. 593, D. C.
1235. *Add. Annotations*:—*Mentd.* R. v. Harris, [1927] 2 K. B. 587; R. v. Liddle (1928), 21 Cr. App. Rep. 3.

## PART II. SECT. 3, SUB-SECT. 1.—C. (a).

t i. —.]—*Held*: a letter written by deft. from a city in Pennsylvania to Ontario, enclosing

money for travelling expenses & containing instructions to proceed to Montreal, was deft.'s act committed in Ontario, & a taking & enticing away within sect. 316 of the Code.—R. v. LOFTUS (1926), 45 Can. Crim. Cas.

390; 59 O. L. R. 65.—CAN.

PART II. SECT. 3, SUB-SECT. 3.  
1254 xvi. —.]—R. v. DE BRUGE (1927), 47 Can. Crim. Cas. 311; 60 O. L. R. 277.—CAN.

## Part III.—Limitation of Time for Criminal Proceedings.

1269. *Add. Annotation*:—*Apld. R. v. Hewitt* (1925), 89 J. P. Jo. 721.

## Part IV.—Bail.

1366. *Add. Annotations*:—*Mentd. R. v. Harris*, [1927] 2 K. B. 587; *R. v. Liddle* (1928), 21 Cr. App. Rep. 3.

1411a. ——— *When granted—Only in special circumstances.*—*R. v. GREGORY* (1928), 20 Cr. App. Rep. 185, C. C. A.

1416. *Add. Annotations*:—*Apld. R. v. Williams* (1925), 19 Cr. App. Rep. 67. *Mentd. R. v. Dennis, R. v. Parker*, [1924] 1 K. B. 867; *R. v. McDonnell* (1928), 20 Cr. App. Rep. 163.

1436a. ——— *When term of imprisonment short.*—*In the case of a short sentence, where an appeal cannot be speedily heard, the ct.*

may grant bail.—*R. v. SELKIRK* (1925), 18 Cr. App. Rep. 172, C. C. A.

1439. *Add. Annotation*:—*Mentd. R. v. Chesshire, Lucas & Bottom* (1927), 20 Cr. App. Rep. 47.

1445. *Add. Citation*:—87 J. P. Jo. 536.

*Add. Annotation*:—*Refd. R. v. Davidson* (1927), 20 Cr. App. Rep. 66.

1445a. ———.]—*The ct., in granting an application for leave to appeal against conviction & sentence, offered appct., in view of the interval before the hearing, bail on his own recognisance of £50 & that of a surety in the same sum.*—*R. v. MACDONALD* (1928), 21 Cr. App. Rep. 26, C. C. A.

1446a. ———.]—*R. v. DAVIDSON*, No. 3129b, *post*.

### PART IV. SECT. 1.

1301 vii. ———.]—*R. v. COOPER-BLOOM* (1924), 43 Can. Crim. Cas. 394.—CAN.

1301 viii. ———.]—*The main, although not necessarily the only, consideration that should determine the exercise of a magistrate's discretion is the question of securing the attendance of accused.*—*Kok v. R.* (1927), 48 N. L. R. 267.—S. AF.

mi. ———.]—*Criminal Code, s. 696, provides that where the offence is punishable by imprisonment for more than five years a justice of the peace, jointly with some other justice, may in certain circumstances admit the accused to bail. One justice has no jurisdiction to take the recognisances, & if he does so, no liability is imposed, at least no liability which can be enforced in a summary manner.*—*R. v. McCREE*, [1924] 1 W. W. R. 111; 41 Can. Crim. Cas. 164; 18 Sask. L. R. 60.—CAN.

sg. *Amount of bail—Power to increase.*—*Bail was fixed by a magistrate at the close of a preparatory examination of accused who was committed for trial. The examination was reopened to ascertain whether accused admitted eight previous convictions. Upon his admission, prosecutor applied for an increase of bail, which the magistrate granted. Accused then applied for an order that the bail as originally fixed should stand:—Held: it was competent for the magistrate to reconsider the amount of the bail.*—*SWART v. R.* (1923), 44 N. L. R. 133.—S. AF.

sh. *Effect of bail—Whether reckoned as part of imprisonment.*—*The time during which prisoner is out on bail under an order for bail made at his request cannot be reckoned as part of his term of imprisonment, even though such order was ultra vires.*—*R. v. IACI*, [1925] 2 W. W. R. 129; 43 Can. Crim. Cas. 363.—CAN.

sj. ———.]—*The time of imprisonment for an offence against Manitoba Temperance Act does not continue to run while prisoner is out on bail pending an appeal.*—*R. v. SIREA*, [1925] 3 D. L. R. 361; [1925] 2 W. W. R. 325; 44 Can. Crim. Cas. 60; 35 Man. L. R. 151.—CAN.

sk. *Estreatment of bail.*—*The procedure to be followed on an application to estreat bail is to be found in*

*Bail Act, s. 12 (2).*—*R. v. BRIGGS* (1923), 33 B. C. R. 297.—CAN.

sl. ———.]—*Application to remit—Appeal.*—*No appeal lies from the refusal by a county ct. judge of a motion to remit & discharge the estreat of appct.'s bail-bond.*—*R. v. SCHNEIDER* (1923), 40 Can. Crim. Cas. 206; 56 O. L. R. 215.—CAN.

### PART IV. SECT. 2.

pi. ———.]—*R. v. MURRAY* (1926), 59 N. S. R. 119.—CAN.

1336 iii. ———.]—*The fundamental test on bail motions is the probability of prisoner's evading justice.*—*THE STATE v. PURCELL*, [1926] I. R. 207; 59 I. L. T. 141.—IR.

1344 i. ———.]—*Severity of punishment.*—*The ct. may have regard to (a) the seriousness of the crime charged; (b) the severity of the punishment; (c) the strength of the case on the depositions; (d) the prospect of a reasonably speedy trial; & (e) the opposition of the A.-G.*—*THE STATE v. PURCELL*, [1926] I. R. 207; 59 I. L. T. 141.—IR.

1344 ii. ———.]—*KRISHNA CHANDRA JAGATI v. R.* (1927), I. L. R. 6 Pat. 802.—IND.

1349 i. *Conduct of prisoner—Tampering with Crown witnesses.*—*Tampering with the prosecution witnesses may be a good reason for refusing bail.*—*KRISHNA CHANDRA JAGATI v. R.* (1927), I. L. R. 6 Pat. 802.—IND.

1349 ii. ———.]—*Where bail was opposed, on the ground that accused had been arrested before investigations were complete to prevent his tampering with Crown witnesses:—Held: the magistrate was not warranted in refusing bail for that reason.*—*KOK v. R.* (1927), 48 N. L. R. 267.—S. AF.

### PART IV. SECT. 4.

1361 v. ———.]—*R. v. STAGG* (1925), 44 Can. Crim. Cas. 128.—CAN.

oi. ———.]—*The opposition of the A.-G. to the giving of bail, while entitled to great weight, does not bind the discretion of the ct.*—*THE STATE v. PURCELL*, [1926] I. R. 207; 59 I. L. T. 141.—IR.

1361 vi. ———.]—*THE STATE v. PURCELL*, [1926] I. R. 207; 59 I. L. T. 141.—IR.

1361 vii. ———.]—*R. v. NGA*

*SAN HTWA* (1927), 5 I. L. R. Ran. 276.—IND.

### PART IV. SECT. 8.

1401 v. ———.]—*Where a police magistrate refused to allow accused to be released on bail pending the preliminary hearing, an application by way of habeas corpus for accused's release on bail was granted.*—*R. v. MACDONALD*, [1925] 2 W. W. R. 643.—CAN.

### PART IV. SECT. 12.

sm. *Grounds for granting.*—*While it is not possible to lay down an inflexible rule as to when a person convicted of an offence & sentenced to imprisonment, who appeals against his conviction, should or should not be admitted to bail pending the determination of his appeal, it is important to bear in mind that every one is presumed to be innocent until legally convicted, & that so far as is humanly possible the law should be so administered as not to do injustice to an innocent person.*—*R. v. SMITH, lt. v. BARNARD* (1924), 43 Can. Crim. Cas. 24; 56 O. L. R. 244.—CAN.

sn. *By Supreme Court of Canada.*—*A judge of the Supreme Ct. has no jurisdiction to admit to bail an accused person pending his appeal, such jurisdiction being conferred by Criminal Code, s. 1019 (1), upon the Chief Justice of the appellate ct. or a judge of that ct. designated by him.*—*STEELE v. R.*, [1924] 2 D. L. R. 470; [1924] S. C. R. 1; 42 Can. Crim. Cas. 47.—CAN.

ei. ———.]—*Time for entering into recognisance.*—*On an appeal from a summary conviction, since there is now no time limit for filing the notice of appeal under Criminal Code, s. 750, there is no time limit for entering into the recognisance which may be given under sub-sect. c.*—*R. v. BARILKO*, [1924] 4 D. L. R. 832; 3 W. W. R. 424.—CAN.

ei. ———.]—*R. v. DESJARLAIS*, [1924] 3 W. W. R. 145.—CAN.

### PART IV. SECT. 13.

so. *Refusal by sheriff—Summary complaint.*—*Held: an appeal to the High Ct. of Justiciary against a refusal of bail was not confined to cases tried upon indictment.*—*LIDDELL v. STRATHERN*, [1926] S. C. (J.) 107.—SCOT.

## Part V.—Proceedings Preliminary to Indictment.

1458. *Add. Annotation* :—*Refd.* Conn v. Turnbull (1925), 89 J. P. Jo. 300.

1459. *Add. Annotation* :—*Refd.* Conn v. Turnbull (1925), 89 J. P. Jo. 300.

1484. *Add. Citation* :—31 T. L. R. 401.

1513a. —.]—*R. v. BOULTON* (1871), 12 Cox, C. C. 87.

*Annotation* :—*Mentd.* *R. v. Luberg* (1926), 135 L. T. 414.

1523. *Add. Annotations* :—*Mentd.* *R. v. Harris*, [1927] 2 K. B. 587; *R. v. Noble* (1928), 20 Cr. App. Rep. 191.

1536a. —.]—*R. v. BOULTON* (1871), 12 Cox, C. C. 87.

*Annotation* :—*Mentd.* *R. v. Luberg* (1926), 135 L. T. 414.

1583. *Add. Annotation* :—*Refd.* Glamorgan County Council v. Glasbrook, [1924] 1 K. B. 879.

1611. *Add. Annotations* :—*Refd.* Poland v. Parr, [1927] 1 K. B. 236. *Mentd.* Prager v. Blat-spiel, Stamp & Heacock, [1924] 1 K. B. 566.

1622. *Add. Annotation* :—*Folld.* Isaacs v. Keech, [1925] 2 K. B. 354.

1622a. — Town Police Clauses Act, 1847 (c. 89),

s. 28.]—Under the above sect. in order to entitle a constable to take a person into custody without a warrant it is not necessary that the person should be in fact committing the offence, provided that the constable honestly & on reasonable grounds believes that the person is committing it.—*ISAACS v. KEECH*, [1925] 2 K. B. 354; 94 L. J. K. B. 676; 133 L. T. 347; 89 J. P. 189; 41 T. L. R. 432; 23 L. G. R. 444; 28 Cox, C. C. 22, D. C.

1663a. —.]—*BROWN'S CASE* (1647), cited in 2 Hale, P. C. at p. 111.

*Annotation* :—*Refd.* Howard v. Gossett (1845) 5 L. T. O. S. 144.

1678a. —.]—*BLATCHER v. KEMP* (1782), 1 Hy. Bl. 15, n.; 126 E. R. 10.

*Annotations* :—*Consd.* *R. v. Weir* (1823), 1 B. & C. 288. *Apld.* *A.-G. v. Jefferys* (1824), M'Cle. 270.

1678b. — Except when issued to A. & constable.]—*WEATHERELL v. WATSON* (1822), 1 L. J. O. S. K. B. 2.

1704a. — To rehear charge—Justices equally divided.]—Appct. was charged with the indictable offence of causing grievous bodily

## PART V. SECT. 1, SUB-SECT. 2.—A.

1498 i. *Necessary to inform prisoner under what power constable acting.*—A person about to be arrested is entitled to know under what power the constable is arresting him & if he specifies a certain power, which the person knows the constable has not got, he is entitled to object to such arrest & escape from custody, such custody not being a lawful one.—*APPASANI MUDALIAR v. R.* (1924), 1 L. R. 47 Mad. 442.—IND.

*sp. Second arrest justified—First arrest irregular.*—*Ex p. MALATSKY*, [1925] 2 D. L. R. 242; 43 Can. Crim. Cas. 306.—CAN.

## PART V. SECT. 1, SUB-SECT. 2.—E. (b).

1555 v. —.]—Telegrams from the "police" of a Native State which, in addition to personal description of the fugitive & suggestions of his possible movements, merely alleged that he was wanted for embezzlement of money to the value of two lakhs, do not constitute credible information or reasonable suspicion sufficient to justify his arrest without a warrant in British India.—*SUBODH CHANDRA ROY CHOWDHRY v. R.* (1924), 1 L. R. 52 Cal. 319.—IND.

## PART V. SECT. 1, SUB-SECT. 2.—E. (e) i.

a i. — *Liquor Act, R. S. A., 1922* (c. 226), s. 85.]—Two police officers, suspecting that accused sold liquor contrary to the above Act, went to his premises & without disclosing their identity, asked him to serve them with liquor, which he did. Having consumed the liquor they ordered more, which was being served but not consumed when, disclosing their identity, they arrested accused without a warrant.—*Held*: accused was "found actually committing" an offence, & could be arrested without a warrant.—*R. v. HILLS*, [1924] 1 W. W. R. 651; 44 Can. Crim. Cas. 329; 20 Alta. L. R. 156.—CAN.

a ii. — *Manitoba Temperance Act, C. A., 1924* (c. 118), s. 114.]—*R. v. ZENICK* (Man.), [1927] 3 W. W. R. 424; 48 Can. Crim. Cas. 898.—CAN.

## PART V. SECT. 1, SUB-SECT. 2.—F. (b).

*sq. Inclusion of words not applicable.*—Where deft.'s arrest was justified, as he was not prejudiced in any way:—*Held*: application for his discharge should be dismissed, notwithstanding the inclusion in the warrant of words which were not applicable & should have been omitted.—*OVERSEERS OF THE POOR v. MARYATT* (1924), 42 Can. Crim. Cas. 132; 57 N. S. R. 315.—CAN.

## PART V. SECT. 1, SUB-SECT. 2.—F. (c).

1674 iii. —.]—Where an arrest is not justified without a warrant, it is necessary for the constable making the arrest to have the warrant in his personal possession, even although the person arrested does not demand its production. It is not sufficient that a warrant has been issued directed to "all or any of the police officers" of the province, & is in possession of a constable on whose instructions by telephone another constable at a different place makes the arrest & delivers the person arrested to the constable who holds the warrant.—*R. v. LINDER*, [1924] 3 D. L. R. 505; 2 W. W. R. 646; 20 Alta. L. R. 415.—CAN.

1685 v. —.]—An arrest on a Sunday under a warrant issued for an offence against Manitoba Temperance Act, C. A., 1924 (c. 118), is not illegal.—*R. v. SMITH*, [1927] 2 D. L. R. 982; [1927] 1 W. W. R. 734; 47 Can. Crim. Cas. 345; 35 Man. L. R. 386.—CAN.

a i. *Accused illegally under arrest without warrant.*—Where, when a warrant was issued, accused was illegally under arrest because previously arrested without a warrant:—*Held*: it did not affect the validity of the warrant.—*R. v. BARILKO*, [1924] 1 W. W. R. 60; 41 Can. Crim. Cas. 193; 20 Alta. L. R. 126.—CAN.

## PART V. SECT. 1, SUB-SECT. 3.

d i. — *By other constables acting in concert.*—The authority given by a search warrant to the constable to whom it is addressed extends to the other constables acting in concert with him under it.—*R. v. DIAMOND*, [1924] 1 D. L. R. 1033; 1 W. W. R.

444; 42 Can. Crim. Cas. 90; 20 Alta. L. R. 60.—CAN.

ii. — *Validity of information.*—The ct. refused to set aside a search warrant issued under the above Act, where the grounds of suspicion were written on a separate piece of paper attached to the information but not initialled.—*R. v. WILSON, Ex p. HARRINGTON* (1911), 40 N. B. R. 384.—CAN.

i ii. —.]—A search warrant issued under the above Act will be quashed where no grounds of suspicion are stated in the information.—*R. v. NICKERSON, Ex p. WESTON* (1911), 40 N. B. R. 382.—CAN.

## PART V. SECT. 2, SUB-SECT. 1.

a i. —.]—*R. v. MIAKER*, [1923] 2 W. W. R. 236; 39 Can. Crim. Cas. 384.—CAN.

a ii. — *To try charge without inquiring as to arrest.*—Where an accused person is before a magistrate who has jurisdiction over the offence, the magistrate need not inquire how he came there, but may proceed to try the case, notwithstanding objection by accused that he was wrongfully arrested without warrant.—*R. v. ALBERTS*, [1924] 2 D. L. R. 803; 1 W. W. R. 863.—CAN.

o i. —.]—If accused be found guilty of a lesser included offence, it is unnecessary to amend the charge.—*QUN v. R.*, [1924] 4 D. L. R. 182.—CAN.

o i. — *To hear charge on subsequent information—Prior illegal arrest.*—If a person is duly charged with an offence on an information under oath, & is arrested on a warrant duly issued & brought before the magistrate, the magistrate's jurisdiction is not ousted by the fact that at the time of the information & arrest accused was under detention as the result of an illegal arrest without warrant.—*R. v. JOHNSON*, [1924] 3 D. L. R. 470; 1 W. W. R. 828; 34 Man. L. R. 100.—CAN.

o ii. — *Prior illegal search.*—*Held*: assuming a search to have been illegal, it did not affect subsequent proceedings under a warrant, & there was nothing to affect the jurisdiction of the magistrate.—*R. v. DIPENTA* (1924), 42 Can. Crim. Cas. 152; 57 N. S. R. 204.—CAN.



harm by the reckless & wanton driving of a motor car. The justices were equally divided on the question whether appct. should be committed for trial, & they decided that appct. was not, in these circumstances, entitled to be discharged, & that they would adjourn & have the case reheard on a later date by a reconstituted bench. Appct. then obtained a rule *nisi* for a mandamus to the justices to order his discharge in pursuance of Indictable Offences Act, 1848 (c. 42), s. 25:—*Held*: under that sect. the duty of the justices to discharge the accused arose only when they had reached an actual opinion that the evidence was not sufficient to put the accused upon his trial, & as they had not reached such an opinion, they were entitled to adjourn the hearing for the purpose of having the bench reconstituted, & the rule must be discharged.—*R. v. HERTFORDSHIRE JJ., Ex p. LARSEN*, [1926] 1 K. B. 191; 95 L. J. K. B. 130; 134 L. T. 143; 89 J. P. 205; 42 T. L. R. 77; 28 Cox, C. C. 90, D. C.

1793. *Add. Annotations*:—*Consd. R. v. Beebe* (1925), 133 L. T. 736. *Refd. Statham v. Statham* (1928), 45 T. L. R. 127.

1794. *Add. Annotation*:—*Refd. R. v. Brixton Prison, Ex p. Shure*, [1926] 1 K. B. 127.

1798a. Several prisoners charged on same facts—Differentiation of charges—One prisoner punishable summarily—Other prisoner punish-

able on indictment.]—When charges are to be brought against more than one prisoner on the same set of facts, it is desirable that the charges should not be so differentiated that one prisoner is tried by a jury, while another has no right to such mode of trial, unless there is good reason to the contrary.—*R. v. COPE* (1925), 94 L. J. K. B. 662; 132 L. T. 800; 89 J. P. 100; 41 T. L. R. 418; 27 Cox, C. C. 778; 18 Cr. App. Rep. 181, C. C. A.

1804. *Add. Annotation*:—*Mentd. R. v. Ely JJ., Ex p. Mann* (1928), 45 T. L. R. 92.

1810a. *Add. Citations*:—[1924] 1 K. B. 248; 93 L. J. K. B. 65; 130 L. T. 414; 27 Cox, C. C. 581.

1810b. — How proved.]—(1) An appeal lies to the Ct. of Criminal Appeal against a sentence passed on an alleged breach of a recognisance to be of good behaviour for a certain time, on the ground that applt. has not broken the recognisance.

(2) Breach of recognisance must be proved like any other fact alleged in a criminal ct.—*R. v. SMITH*, [1925] 1 K. B. 603; 94 L. J. K. B. 592; 132 L. T. 799; 89 J. P. 79; 41 T. L. R. 359; 27 Cox, C. C. 782; 18 Cr. App. Rep. 170, C. C. A.

1810c. —.]—Breach of recognisance must be strictly proved.—*R. v. BUTLER* (1926), 19 Cr. App. Rep. 127, C. C. A.

## Part VI.—Indictments.

1823. *Add. Annotation*:—*Refd. Scammell v. Attlee* (1928), 45 T. L. R. 75.

1826. *Add. Annotation*:—*Apld. Hart v. Hudson*, [1928] 2 K. B. 629.

1900a. Receiving property—Known to have been obtained by fraud or false pretences.]—To receive goods knowing that the vendor obtained them on credit under false pretences or by means of fraud other than false pretences is not an offence known to the law.—*R. v. SCHWELLER* (1924), 18 Cr. App. Rep. 52, C. C. A.

1910a. Fresh indictment in respect of another 1913a. Multiplication of indictments—Disap-

offence—Founded on facts disclosed in depositions.]—Where a person has been committed for trial for one offence a fresh indictment cannot be preferred against him in respect of another offence, which comes within Vexatious Indictments Act, 1859 (c. 17), without the leave of the ct., even though such fresh indictment is founded on facts disclosed in the depositions.—*R. v. MORGAN*, [1925] 1 K. B. 752; 94 L. J. K. B. 672; 133 L. T. 94; 89 J. P. 135; 28 Cox, C. C. 1; 18 Cr. App. Rep. 180, C. C. A.

### PART V. SECT. 2, SUB-SECT. 4.

1801 i. *Form of commitment—Omission of time of offence.*]—A warrant of commitment did not comply with Summary Convictions Act, B.C., 1915, in not fixing the time when the offence was committed:—*Held*: bad.—*R. v. RODGERS*, [1923] 3 W. W. R. 955; 41 Can. Crim. Cas. 190; 33 B. C. R. 16.—CAN.

1801 ii. — *Error in statutory description of offence.*]—The use in the warrant of commitment of the words "ceremony of marriage" instead of "form of marriage," as in the statutory description, is no ground for setting aside a conviction, the meaning in both cases being the same & not distinguishable.—*R. v. ROOP*, [1924] 3 D. L. R. 985; 57 N. S. R. 325.—CAN.

### PART V. SECT. 2, SUB-SECT. 5.

g i. —.]—*R. v. McARTHUR's BAIL* 1897), 3 Terr. L. R. 37.—CAN.  
sv. *Estreatment of recognisance.*]—The estreating of a recognisance by a magistrate may be carried out under

Criminal Code, s. 1099, & any further necessary proceedings follow under the subsequent sects. without the requirement of any order of the cts.—*R. v. MCCOY & BROWN* (1924), 34 B. C. R. 14.—CAN.

sw. —.]—*R. v. MARRIOTT* (1924), 57 N. S. R. 227.—CAN.

sz. — *Notice of motion to accused & sureties necessary.*]—*R. v. McTAVISH, Ex p. BROWN* (Man.), [1927] 1 D. L. R. 893; [1927] 1 W. W. R. 182; 47 Can. Crim. Cas. 251.—CAN.

sz. — *When ordered.*]—*R. v. LEPICKI*, [1925] 4 D. L. R. 170; [1925] 2 W. W. R. 726; 44 Can. Crim. Cas. 263.—CAN.

sa. — *One surety bound instead of two.*]—*R. v. CARVERY, Ex p. HOWE*, [1925] 3 D. L. R. 414; 44 Can. Crim. Cas. 69.—CAN.

sb. — —.]—*R. v. SULLIVAN* (1914), 29 W. L. R. 115; 18 D. L. R. 535; 23 Can. Crim. Cas. 174.—CAN.

sd. — *Within discretion of court.*]—*R. v. McTAVISH, Ex p. BROWN* (Man.), [1927] 1 D. L. R. 893; [1927]

1 W. W. R. 182; 47 Can. Crim. Cas. 251.—CAN.

sf. — *Discharge of.*]—*R. v. SCHRAM* (1845), 2 U. C. R. 91.—CAN.

sk. — *Avoidance of.*]—*R. v. MACDONALD* (1925), 43 Can. Crim. Cas. 381.—CAN.

### PART VI. SECT. 2, SUB-SECT. 1.—A.

1814 iii. — *Newly created offence.*]—A statute comes into force on the first moment of the day on which it receives the Royal assent, & if it be one creating a crime, an offence committed on that day, even although before the actual time at which the Royal assent was given, is within the Act.—*R. v. ROCCO*, [1924] 1 D. L. R. 501; 41 Can. Crim. Cas. 101.—CAN.

### PART VI. SECT. 3, SUB-SECT. 1.

1907 i. *Separate indictments in respect of same transaction—Where act constitutes more than one offence—Attempted carnal knowledge of young girl & indecent assault.*]—*R. v. LANGLEY* (N. B.), [1927] 3 D. L. R. 934; 48 Can. Crim. Cas. 293.—CAN.

proved.]—(1) The ct. entirely approves of a ct. of trial dealing with all outstanding charges against a convicted prisoner, at his request, whenever it can legally do so.

(2) The ct. disapproves of the multiplication of indictments when the allegations can be conveniently made in one indictment.—*R. v. TAYLOR (alias SAUNDERS, alias WALLACE)* (1924), 18 Cr. App. Rep. 25, C. C. A.

*Annotation:—Generally, Reidd. R. v. Taylor* (1926), 19 Cr. App. Rep. 146.

1913b. ———.]—*R. v. CLARKE*, No. 2115a, *post*.

1913c. ———.]—*R. v. TYREMAN*, No. 5359b, *post*.

1913d. ———.]—Offences which may lawfully be charged in one indictment ought not to be distributed into more.—*R. v. SMITH* (1926), 19 Cr. App. Rep. 151, C. C. A.

1913e. *S. P. R. v. CARVER* (1927), 20 Cr. App. Rep. 3, C. C. A.

1934. *Add. Annotation:—Folld. R. v. Mosley*, [1924] 2 K. B. 187.

1937a. ———.]—Counts for offences within Vexatious Indictments Act, 1859 (c. 17), may be added to the indictment without the leave of the ct. where they are founded on facts disclosed on the depositions.—*R. v. MOSLEY*, [1924] 2 K. B. 187; 93 L. J. K. B. 894; 130 L. T. 831; 88 J. P. 91, 68 Sol. Jo. 757; 27 Cox, C. C. 635; 18 Cr. App. Rep. 69, C. C. A.

*Annotation:—Reidd. R. v. Morgan*, [1925] 1 K. B. 752.

1978a. *Larceny—Specific articles stolen must be set out.*—*R. v. DOUGLAS* (1926), 19 Cr. App. Rep. 119, C. C. A.

1992a. *S. P. R. v. DRAKE* (1850), 14 J. P. 483; 4 Cox, C. C. 333.

2102a. ——— *Prejudice to one defendant.*—Persons arrested together need not be tried together, & if any one of them is likely to be embarrassed in his defence, ought not to be so tried.—*R. v. TOWNSEND, R. v. HILDER* (1924), 18 Cr. App. Rep. 117, C. C. A.

2105a. ———.]—When a statement by one accused intended to be put in evidence implicates another, the ct. should consider whether accused should not be tried separately.—*R. v. SEYMOUR* (1927), 20 Cr. App. Rep. 98, C. C. A.

#### PART VI. SECT. 4, SUB-SECT. 1.

*i. i.* ———.]—Where the indictment was in the words of the enactment describing the offence:—*Held: sufficient.*—*R. v. McLACHLAN* (1923), 56 N. S. R. 413; 41 Can. Crim. Cas. 249.—CAN.

*k. i.* ———.]—*R. v. CANADIAN ALLIS-CHALMERS, LTD.* (1923), 54 O. L. R. 38.—CAN.

*sa. Rape.*—*R. v. Ross*, [1927] 1 D. L. R. 911; 47 Can. Crim. Cas. 71; 59 N. S. R. 55.—CAN.

#### PART VI. SECT. 4, SUB-SECT. 7.

*sm. Indecent exposure—“With intent to offend.”*—Where the facts alleged necessarily implied that the act charged was committed “wilfully”:—*Held: notwithstanding the omission of that word, the information was sufficient.*—*R. v. SMOTHERS* (1924), 57 N. S. R. 179.—CAN.

#### PART VI. SECT. 4, SUB-SECT. 8.—B. (a).

*i. i.* ———.]—Where ingredients of two distinct offences had been mixed together in a charge contrary to the settled principles of criminal procedure & in violation of Criminal Code,

s. 710 (3):—*Held: prisoner was entitled to his discharge.*—*R. v. CHURCH*, [1924] 4 D. L. R. 300; 34 B. C. R. 177.—CAN.

#### PART VI. SECT. 4, SUB-SECT. 9.—C.

*r.* Read now “2102a i.”

*s.* Read now “2102a ii.”

*t.* Read now “2102a iii.”

*a.* Read now “2102a iv.”

#### PART VI. SECT. 4, SUB-SECT. 10.—D.

*r. i.* ——— *Shopbreaking & receiving stolen goods.*—*R. v. CROSS* (Sask.), [1927] 4 D. L. R. 923; [1927] 3 W. W. R. 432; 49 Can. Crim. Cas. 77.—CAN.

#### PART VI. SECT. 4, SUB-SECT. 10.—E.

2152 i. *Cases requiring separate trial—Indecent assault & theft—Acts forming part of one transaction.*—*R. v. CASSIDY* (Ont.), [1927] 4 D. L. R. 1106; 49 Can. Crim. Cas. 93.—CAN.

2161 i. *Cases not requiring separate trials—Similar acts—Separate indecent assaults.*—An indictment charged accused with indecent assault upon one little girl, & indecent assault, involving murder, upon another little girl. Both offences were libelled as having been committed on the same day at S.:—*Held: the offences charged were so*

2115a. ———.]—Indictments should not be multiplied, but where the law permits separate offences should be charged in separate counts of one indictment.—*R. v. CLARKE* (1925), 18 Cr. App. Rep. 166, C. C. A.

2155a. ———.]—*R. v. LUBERG*, No. 3156d, *post*.

2195. *Add. Annotation:—Reidd. R. v. Central Criminal Court JJ., Ex p. L. C. C.*, [1925] 2 K. B. 43.

2219a. ———.]—Applt. was accused of having obtained sums of money by way of deposit from persons, who desired to be employed as managers of public-houses, by representing to them that he would appoint them to those positions. The indictment contained eighteen counts, relating to nine distinct offences, which were charged alternatively as obtaining sums of money by false pretences, & as larceny by a trick of the same sums. In every one of the counts relating to false pretences, the indictment as originally framed ran: “by falsely pretending that he would appoint . . . as manager.” At the close of the case for the prosecution the judge thought it right to amend the counts relating to false pretences so as to read “by falsely pretending that he was in a position to appoint,” etc. The jury convicted applt. on all counts:—*Held: (1) the conviction for false pretences must be quashed, as the amendment of an indictment allowed by Indictments Act, 1915 (c. 90), s. 5 (1), is an amendment of a defect in form, & not the alteration & revision of the substance of a charge, such as had taken place in this case, which must necessarily prejudice accused; (2) the conviction for larceny must be quashed, because there was no evidence of larceny, as the persons seeking employment had in each case intended to part with their money; (3) Larceny Act, 1916 (c. 50), s. 44 (3), could not apply where the indictment had charged false pretences & was up to the last moment wrong in substance.*—*R. v. HUGHES* (1927), 136 L. T. 671; 91 J. P. 39; 43 T. L. R. 250; 28 Cox, C. C. 336, C. C. A.

2316. For “Criminal Law Amendment Act, 1835 (c. 35),” read “Criminal Law Amendment Act, 1885 (c. 69).”

connected in time, circumstances, & character as to justify their inclusion in one indictment, & no sufficient reason had been shown for separation of the charges.—*H.M. ADVOCATE v. BICKERSTAFF*, [1926] S. C. (J.) 65.—SCOT.

#### PART VI. SECT. 4, SUB-SECT. 13.

*k. i.* ——— *Attempt to give jurisdiction.*—A person committed on a charge which a district ct. judge has no jurisdiction to try under any circumstances, cannot be tried by such judge on a substituted charge, over which the judge has jurisdiction, on the election of accused.—*R. v. CROVI*, [1924] 4 D. L. R. 1072; 3 W. W. R. 534.—CAN.

*r. i.* ———.]—An indictment disclosing no offence & bad in law, was amended at the trial so as to make it an entirely different charge:—*Held: the amendment ought not to have been made.*—*R. v. LOFTUS* (1926), 45 Can. Crim. Cas. 390; 59 O. L. R. 65.—CAN.

#### PART VI. SECT. 4, SUB-SECT. 14.

2241 i. *Application must be made to court of trial.*—*R. v. HANEY*, [1925] 2 D. L. R. 83; 43 Can. Crim. Cas. 297; 56 O. L. R. 293.—CAN.

## Part VII.—Trial of Indictments.

2365. *Add. Annotations*:—*Folld. R. v. Dennis, v. Parker*, [1924] 1 K. B. 867. *Apld. R. v. McDonnell* (1928), 20 Cr. App. Rep. 163. *Refd. R. v. Williams* (1925), 19 Cr. App. Rep. 67.

2365a. ———.]—A criminal ct. has no jurisdiction to try two separate indictments against two defts. at one & the same time, even with the consent of counsel for the prosecution & counsel for defts.—*R. v. DENNIS, R. v. PARKER*, [1924] 1 K. B. 867; 93 L. J. K. B. 388; 130 L. T. 830; 88 J. P. 84; 40 T. L. R. 420; 68 Sol. Jo. 563; 27 Cox, C. C. 632; 18 Cr. App. Rep. 89, C. C. A.

2365b. ———.]—*R. v. McDONNELL* (1928), 20 Cr. App. Rep. 163, C. C. A.

2567. *Add. Annotation*:—*Folld. R. v. Hussey* (1924), 18 Cr. App. Rep. 121.

2567a. ———.]—(1) Applt. was charged upon an indictment with breaking & entering a house with intent to commit a felony. At the trial applt. pleaded guilty to entering only, which plea was treated as a plea of guilty generally:—*Held*: there was no plea of guilty & the case must go back, & prisoner asked to plead again to the indictment.

(2) Applt. at the trial asked that five charges of false pretences might be taken into consideration when awarding sentence, but the ct. refused as they were not offences of a similar nature to housebreaking:—*Held*: the ct. would not make an order that the ct. of quarter sessions should take into consideration the five cases of false pretences, but it might take them into consideration if certain conditions were fulfilled.—*R. v. LLOYD* (1923), 130 L. T. 319; 27 Cox, C. C. 576; 17 Cr. App. Rep. 184, C. C. A.

2571a. Plea of guilty—By person fit to plead but not responsible for his actions—Effect of plea.]—*R. v. TEBBITT* (1912), *Times*, Apr. 26.

2582. *Add. Annotation*:—*Refd. R. v. Gordon* (1925), 133 L. T. 734.

2585a. Crime involving more serious offence in foreign country—Possibility of prosecution by foreign Government.]—*R. v. FRIEDERIKSEN* (1927), 164 L. T. Jo. 45.

2594. *Add. Annotations*:—*Mentd. R. v. Harris*, [1927] 2 K. B. 587; *R. v. Liddle* (1928), 21 Cr. App. Rep. 3.

2710. *Add. Annotation*:—*Refd. R. v. Birch* (1924), 93 L. J. K. B. 385.

2711. *Add. Annotations*:—*Mentd. R. v. Harris*, [1927] 2 K. B. 587; *R. v. Liddle* (1928), 21 Cr. App. Rep. 3.

2730. *Add. Annotations*:—*Refd. R. v. Birch* (1924), 93 L. J. K. B. 385; *R. v. Harris* (1927), 20 Cr. App. Rep. 144.

2730a. ———.]—Where, at the trial of

an accused person for a criminal offence, a witness for the prosecution denies statements contained in the deposition sworn by the witness at the police ct., & leave has been obtained to treat the witnesses as hostile, counsel for the prosecution is entitled to cross-examine the witness on the statements contained in the depositions taken before the justices. But the depositions are not evidence at the trial, though they may be used to impeach the credit of the witness.—*R. v. BIRCH* (1924), 93 L. J. K. B. 385; 88 J. P. 59; 40 T. L. R. 365; 68 Sol. Jo. 540; 18 Cr. App. Rep. 26, C. C. A.

2731a. After close of case for defence.]—A judge at a criminal trial has the right to call a witness not called by either the prosecution or the defence, without the consent of either the prosecution or the defence, if in his opinion that course is necessary in the interests of justice, but in order that injustice should not be done to accused, a judge should not call a witness in a criminal trial after the case for the defence is closed, except in a case where a matter arises *ex improviso*, which no human ingenuity can foresee, on the part of prisoner.—*R. v. HARRIS*, [1927] 2 K. B. 587; 96 L. J. K. B. 1069, 137 L. T. 535; 91 J. P. 152; 43 T. L. R. 774; 28 Cox, C. C. 432; 20 Cr. App. Rep. 86, C. C. A.

*Annotation*:—*Distd. R. v. Liddle* (1928), 21 Cr. App. Rep. 3.

2731b. ——— Where defence of alibi raised.]—*R. v. LIDDLE* (1928), 21 Cr. App. Rep. 3, C. C. A.

2746. *Add. Annotation*:—*Mentd. Royal Exchange Assce. v. Hope*, [1928] Ch. 179.

2823. *Add. Annotation*:—*Apld. R. v. Baggott* (1927), 20 Cr. App. Rep. 92.

2839a. Reference to fact that photographs of accused shown to witnesses.]—(1) Counsel for the prosecution should not employ as part of his case the fact that certain witnesses have been shown a photograph of prisoner, even if the showing of the photograph was perfectly proper.

(2) Where a police witness has been asked by prisoner "where did I stay on the night of the alleged crime?" &, in his answer, has launched a series of fresh charges against the accused, relating to his stay at that place, but based on mere suspicion & not included in the indictment or referred to in the depositions, an irregularity has occurred which goes to the root of a conviction & necessitates that it should be quashed.

(3) Where a successful applt. has a previous unexpired sentence to serve, the ct. will generally order that the time that has elapsed between the notice & the determination of the appeal which has succeeded shall count towards the completion of the earlier sentence,

### PART VII. SECT. 1.

a i. ——— *Sterling parcels from mails & receiving parcels so stolen.*—*Held*: accused entitled to be tried by a jury, even though the value of the property stolen did not exceed \$200.—*R. v. IWANCHUK*, [1927] 3 D. L. R. 539; [1927] 2 W. W. R. 325; 48 Can. Crim. Cas. 213; 22 Alta. L. R. 595.—CAN.

a ii. ——— *Right to elect for trial by*

*judge without jury*—After true bill found—*Criminal Code*, s. 825.]—*R. v. THOMPSON, R. v. FOULKES* (1908), 16 Man. L. R. 608.—CAN.

a iii. ——— *Effect of election.*—*R. v. RELF* (Alta.), [1927] 1 D. L. R. 874; [1927] 1 W. W. R. 29; 47 Can. Crim. Cas. 38.—CAN.

### PART VII. SECT. 5, SUB-SECT. 1.

p i. ——— *Effect of—Accused stopped*

*from calling on prosecution to establish guilt.*—*R. v. ROVONELLI* (1925), 44 Can. Crim. Cas. 354.—CAN.

g i. ———.]—Where accused is indicted for murder, the question of insanity is raised by a plea of not guilty as much as the fact of killing.—*R. v. MCCOSKEY*, [1927] 2 D. L. R. 539; 47 Can. Crim. Cas. 122; 60 O. L. R. 44.—CAN.



even though there has been no application by applt. to that effect.—*R. v. HASLAM* (1925), 194 L. T. 158; 28 Cox, C. C. 105; 19 Cr. App. Rep. 59, C. C. A.

*Annotation:—As to (1) Reidd. R. v. Daily Mirror, Ex p. Smith, [1927] 1 K. B. 846.*

**2839b. Second trial—Reference to quashed conviction.]—**(1) On an allegation of breaking & entering the jury must be directed on the issue of breaking.

(2) When a trial has been set aside on a *venire de novo* the conviction quashed should not be mentioned to the jury at the second trial.—*R. v. LLOYD* (1924), 18 Cr. App. Rep. 12, C. C. A.

**2839c. Overstatements.]—***R. v. DRISCOLL & ROWLANDS* (1928), 20 Cr. App. Rep. 161, C. C. A.

**2862. Add. Annotations:—***Mentd. R. v. Harris, [1927] 2 K. B. 587; R. v. Liddle* (1928), 21 Cr. App. Rep. 3.

**2867. Add. Annotations:—***Reidd. R. v. Harris, [1927] 2 K. B. 587; R. v. Liddle* (1928), 21 Cr. App. Rep. 3.

**2879a. ———.]—**On a plea of guilty (1) there must be legal proof of any previous convictions given in evidence, & (2) no deposition of a witness, absent through illness, should be put in if all the statutory requirements in such a case have not been fulfilled.—*R. v. FINNEY* (1924), 18 Cr. App. Rep. 41, C. C. A.

**2895a. S. P. R. v. HUNT** (1847), 2 Cox, C. C. 261.

**2986a. Defence of alibi—Should be raised at earliest possible moment.]—***R. v. JONES* (1928), 21 Cr. App. Rep. 27, C. C. A.

**2988a. ——— Should not refer to probable consequences of verdict of guilty in murder trial.]—***R. v. FRAMPTON* (1928), 21 Cr. App. Rep. 17, C. C. A.

**2995a. ———.]—**If the ct. is of opinion that there is no case against accused, it ought to be withdrawn from the jury.—*R. v. HASLAM* (1926), 19 Cr. App. Rep. 163, C. C. A.

**3007a. ———.]—**(1) On a trial for larceny as a bailee there must be a direction on the point whether the conversion was fraudulent or not.

(2) An accused person must be asked whether he wishes to give evidence on oath or call witnesses.—*R. v. MOORE* (1924), 18 Cr. App. Rep. 29, C. C. A.

**3008. Add. Annotation:—***Distd. R. v. Villars* (1927), 20 Cr. App. Rep. 150.

**3009. Add. Annotation:—***Folld. R. v. Villars* (1927), 20 Cr. App. Rep. 150.

**3010a. Should give evidence from witness box.]—**A deft. is entitled under Criminal Evidence Act, 1898 (c. 36), to give his evidence from the witness box. The ct. in ordering otherwise must exercise a judicial discretion.—*R. v. SYMONDS* (1924), 18 Cr. App. Rep. 100, C. C. A.

**3011a. ———.]—**A deft. witness may in a proper case be asked in cross-examination whether he imputes improper motive to the witnesses against him.—*R. v. WILSON* (1924), 18 Cr. App. Rep. 108, C. C. A.

**3051. Add. Annotation:—***Reidd. R. v. Dunkley* (1926), 134 L. T. 632.

**3056. Add. Annotations:—***Reidd. R. v. Harris, [1927] 2 K. B. 587. Mentd. R. v. Noble* (1928), 20 Cr. App. Rep. 191.

**3060. Add. Annotation:—***Reidd. R. v. Harris, [1927] 2 K. B. 587.*

**3063. Add. Annotation:—***Reidd. R. v. Harris, [1927] 2 K. B. 587.*

**3065. Add. Annotation:—***Reidd. R. v. Harris, [1927] 2 K. B. 587.*

**3090a. Accused writing & handing in signature.]—**Counsel for the prosecution is not entitled to a second speech against accused, because at the jury's request the latter writes his signature & hands it in.—*R. v. BAGGOTT* (1927), 20 Cr. App. Rep. 92, C. C. A.

**3120a. ——— To assist undefended prisoner—To cross-examine.]—**The ct. should assist an undefended prisoner in putting questions by way of cross-examination.—*R. v. BARKER* (1927), 20 Cr. App. Rep. 70, C. C. A.

**3120b. ——— To inform prisoner of right to give evidence on oath.]—***R. v. VILLARS* (1927), 20 Cr. App. Rep. 150, C. C. A.

**3122a. ——— Does not include making disparaging suggestions.]—**There ought not to be a

**PART VII. SECT. 7, SUB-SECT. 7.—**  
**E. (a).**

**h i. ———.]—***Held:* the mere fact that accused did not have the assistance of a legal adviser did not show that he had not had a full opportunity for cross-examination, as he was present when the deposition was taken & made no request for time or delay.—*R. v. McDONALD, [1927] App. D. 110.—S. AF.*

**k i. ———.]—***R. v. McDONALD, [1927] App. D. 110.—S. AF.*

**p i. ——— Whether attendance procurable under subpoena.]—**G. was indicted for incest. S., a daughter of accused, who had made a deposition at petty sessions in which she swore that accused had committed the alleged offence, was called as a witness at the trial, & failed to appear, having gone into the Irish Free State. Her deposition was read to the jury, who having heard the accused's evidence, convicted him of the offence charged:—*Held:* the conviction should be quashed, as it had not been shown that the attendance of the witness, whose deposition had been put in evidence, could not have been procured by service on her of a writ of subpoena under the Irish Free State Act, 1924.—*R. v. GILCHRIST, [1925] N. 27.—IR.*

*sp. Proof of absence.]—CAUFIELD v. R. (1926), 48 Can. Crim. Cas. 109; Q. R. 42 K. B. 449.—CAN.*

**PART VII. SECT. 7, SUB-SECT. 8.—C.**

**k i. ———.]—**Where a person is charged with stealing goods, & the fact that the goods were sold & delivered to him is proved in evidence, the case must not be allowed to go to the jury.—*R. v. FIESSEL (1924), 42 Can. Crim. Cas. 150.—CAN.*

**st. Trial without jury—Defending counsel entitled to make submission that evidence for Crown insufficient.]—***R. v. JONES (Sask.), [1927] 3 D. L. R. 679; 47 Can. Crim. Cas. 380; [1926] 3 W. W. R. 313.—CAN.*

**PART VII. SECT. 7, SUB-SECT. 9.—A.**

**3061 i. ——— Evidence omitted inadvertently.]—***R. v. GREGOIRE (1927), 47 Can. Crim. Cas. 288; 60 O. L. R. 363.—CAN.*

**PART VII. SECT. 7, SUB-SECT. 10.—B.**

**1 i. ———.]—**Where it was objected that the A.-G. exercised the right of reply, although deft. had called no witnesses:—*Held:* the A.-G. was not bound to sum up for the Crown on the conclusion of the evidence of the prosecution, but had the right of reply.—*R. v. McLACHLAN (1923), 56*

*N. S. R. 413; 41 Can. Crim. Cas. 249.—CAN.*

**PART VII. SECT. 7, SUB-SECT. 11.**

**h i. ——— To decide whether evidence admissible.]—**If evidence is tendered to prove the inadmissibility of evidence *prima facie* admissible, it is the duty of the judge to receive & to decide the question of admissibility before the evidence is given in the hearing of the jury.—*R. v. TREANOR, R. v. FLOOD, R. v. TREANOR, R. v. KELLY, [1924] 2 I. R. 193.—IR.*

**h ii. ——— To decide whether witness by his admission is accomplice.]—**It is for the judge, & not for the jury, to decide on an admission by a witness whether he is or is not an accomplice.—*R. v. YOUNG, [1923] S. A. S. R. 35.—AUS.*

**3122 i. Function of judge—Includes asking leading questions—& suggesting to counsel to waive their rights to address jury.]—***R. v. WEST (1925), 44 Can. Crim. Cas. 109; 57 O. L. R. 446.—CAN.*

**3122 ii. ——— Does not include asking leading questions.]—**A judge is not entitled to put leading questions to a witness, the answers to which are calculated to prejudice accused.—*R. v. LAUBSCHER, [1926] App. D. 276.—S. AF.*

suggestion from the judge that deft. on trial has previously appeared in a criminal ct.—*R. v. MILLER* (1926), 19 Cr. App. Rep. 84, C. C. A.

3129a. —.]—A direction must make it clear that the *onus* of proof is on the prosecution.—*R. v. HAYTON* (1925), 18 Cr. App. Rep. 169, C. C. A.

3129b. —.]—(1) When the evidence on the facts is in direct conflict, the jury should be directed that, if they are in doubt which version of the facts to accept, they should acquit.

Observations on (2) the granting of bail by the trial judge, & on (3) the relation of his opinion of the verdict to the appeal.—*R. v. DAVIDSON* (1927), 20 Cr. App. Rep. 66, C. C. A.

3129c. —.]—A summing up must make it clear to the jury, especially where there is conflicting evidence, that the *onus* of proof is on the prosecution.—*R. v. REES* (1928), 21 Cr. App. Rep. 35, C. C. A.

3133a. — — —.]—While a judge is entitled to express his view of any evidence, he ought not to "invite" the jury to make a definite finding: any expression of his own views ought to be accompanied by a direction that the right of deciding on the facts is solely theirs.—*R. v. MASON* (1924), 18 Cr. App. Rep. 131, C. C. A.

3136a. Avoidance of unhappy expressions suggesting guilt of accused.]—(1) In a direction upon the evidence of children of tender years, there must be a clear warning about the nature of such evidence.

(2) It is wrong to invite a jury to consider whether deft. is "the sort of person" likely to commit the offence charged.—*R. v. MARSHALL* (1925), 18 Cr. App. Rep. 164, C. C. A.

3137a. Where identity of accused in issue.]—

(1) When the issue is identity of accused, especial care is needed in the charge to the jury; there ought to be a direction to them on his silence, if & when he hears a prejudicial statement.

(2) After notice of appeal, supplementary grounds should only be presented to the ct., if they disclose new matter.—*R. v. PORTER* (1927), 20 Cr. App. Rep. 55, C. C. A.

Annotation:—Generally, *Reid. R. v. Walters* (1927), 20 Cr. App. Rep. 69.

PART VII. SECT. 7, SUB-SECT. 12.—A.

31291. Direction as to onus of proof.]—*R. v. KOLOMRJYO* (Man.), [1926] 2 W. W. R. 126; 46 Can. Crim. Cas. 35.—CAN.

3133 iv. — — —.]—A judge, in summing up to a jury in a criminal case, is entitled to comment strongly on the facts.—*R. v. SUTHERLAND*, [1927] App. D. 88.—S. AF.

g (p. 297) i. — Where jury disagree.]—A direction which amounted to no more than telling the jury that it was the duty of the minority not to allow any wilful or obstinate adherence to their own view to prevent them from giving full consideration to the view of the majority:—*Held*: not a misdirection.—*R. v. OLHOLM & McPHERSON*, [1925] V. L. R. 377; 47 A. L. T. 10; 31 Argus L. R. 228.—AUS.

g (p. 298) i. — Distinction between evidence of facts & expert opinions.]—Where there is not only no direct testimony of eye-witnesses that an

alleged criminal act was committed, but there is the direct testimony of an eye-witness called by the Crown that the act had not been committed, & the Crown relies on a chain of circumstantial evidence in which the opinions of scientific witnesses are referred to as an important link, the charge to the jury should point out the importance of the distinction between evidence of scientific opinion & evidence of actual material facts & sufficiently remind the jury that such opinions were not testimony as to facts, & should specifically direct that the circumstances proven as actual objective facts must not only be consistent with the guilt of accused but must also be inconsistent with any reasonable hypothesis which would leave him innocent.—*R. v. HISLOP*, [1925] 1 W. W. R. 887; 43 Can. Crim. Cas. 384.—CAN.

a i. — — — Statements as to powers of Court of Criminal Appeal.]—A judge in his charge to the jury made statements to the effect that "In the Ct. of Criminal Appeal, in the event

3145a. —.]—A judge in summing up is bound to put deft.'s case to the jury. A mere expression of the view of the judge is not sufficient to dispense with the duty of putting the case for the defence to the jury.—*R. v. MARRIOTT* (1924), 18 Cr. App. Rep. 74, C. C. A.

3146. Add. Annotations:—*Folld. R. v. Thorpe* (1925), 133 L. T. 95. *Reid. R. v. Canham* (1925), 18 Cr. App. Rep. 163.

3146a. — — —.]—Where a prisoner is charged with murder, & there is evidence on which a verdict of manslaughter could be found, it is the duty of the judge to leave to the jury the question whether the crime committed has or has not been reduced to manslaughter, even though that defence has not been raised & even though that defence is inconsistent with the defence actually raised; but a judge should not leave the question of manslaughter to the jury, where there is no evidence upon which such a verdict could be based.—*R. v. THORPE* (1925), 133 L. T. 95; 89 J. P. 143; 41 T. L. R. 468; 69 Sol. Jo. 525; 28 Cox, C. C. 4; 18 Cr. App. Rep. 189, C. C. A.

3151a. Must warn jury against accepting mere suggestion by prosecution in cross-examination—No evidence in support.]—The jury must be warned against the acceptance of a mere suggestion by the Crown in cross-examination unsupported by evidence on a material point.—*R. v. ALEXANDER* (1924), 18 Cr. App. Rep. 130, C. C. A.

3156a. Indictment alleging several offences—Cases must be clearly distinguished.]—When an indictment alleges specific offences on distinct dates the jury should be warned to deal with each occasion separately, & not to permit inadequate evidence in the one to supplement inadequate evidence in the other.—*R. v. ROSS* (1924), 18 Cr. App. Rep. 141, C. C. A.

3156b. — — —.]—Where an indictment for indecent assault contains a number of counts, each count charging a separate assault on a different person, the jury should be directed not to return a general verdict but to return a verdict on each count, & they should also be warned to draw a careful distinction between the evidence on each count & the evidence on every other count & not to supplement the evidence on any particular count

of your finding a verdict of guilty, prisoner's counsel is entitled to have the whole matter reviewed," & "When a case goes to the Ct. of Criminal Appeal the natural bent of their minds is to give prisoner the benefit of the doubt":—*Held*: the statements, taken in their proper context, did not amount to misdirection of such a character as to render the trial unsatisfactory, though it was desirable that such references to the Ct. of Criminal Appeal should not be made.—*A.-G. v. MURRAY*, [1926] I. R. 266.—IR.

a ii. — — — Reading passages from law reports.]—Though reading passages from law reports is, as a rule, undesirable, it is not a misdirection.—*R. v. NGA TIN GYI* (1926), I. L. R. 4 Ran. 488.—IND.

PART VII. SECT. 7, SUB-SECT. 12.—B.

3152 i. Need not go into every detail of evidence.]—*R. v. BOAK* (B.C.) (1925), 44 Can. Crim. Cas. 225.—CAN.

by looking at the evidence as a whole.—*R. v. BAILEY*, [1924] 2 K. B. 300; 93 L. J. K. B. 989; 132 L. T. 349; 88 J. P. 72; 27 Cox, C. C. 692; 18 Cr. App. Rep. 42, C. C. A.

**3156c.** ———.]—If counts for fraudulent conversion & for obtaining by false pretences are left to the jury, they must be directed on each offence.—*R. v. MACLENNAN* (1925), 19 Cr. App. Rep. 37, C. C. A.

**3156d.** ——— Indictment containing count for conspiracy.]—(1) Where several prisoners are tried together upon an indictment containing counts for various offences against them individually & also a general count for conspiracy against them all, great care should be taken in directing the jury to keep the issues clear & to explain the relation of each count to the general count for conspiracy. In such a case it is a misdirection for the judge to tell the jury: "You must take the case as a whole & not in bits."

(2) Observations on the practice of charging a specific crime & adding a charge of conspiracy to commit that crime.—*R. v. LUBERG* (1926), 135 L. T. 414; 90 J. P. 183; 28 Cox, C. C. 264; 19 Cr. App. Rep. 133, C. C. A.

**3156e.** ———.]—(1) In cross-examination of a person accused of a sexual offence, questions should not be asked tending to show that he is a person likely to commit the offence alleged.

(2) If separate charges are included in an indictment, the jury should be carefully cautioned against allowing one to corroborate the other.—*R. v. COULMAN* (1927), 20 Cr. App. Rep. 106, C. C. A.

**3157.** For "second trial before same jury—Clear direction essential—Same defendant" read "Second trial—Before same jury—Clear direction essential—Same defendant."

**3157a.** ———.]—A jury trying a second or other charge against accused should be warned to disregard the evidence in the previous trial.—*R. v. LEE* (1927), 20 Cr. App. Rep. 68, C. C. A.

**3158.** For "——— Different defendants" read "——— Different defendants."

**3158a.** ——— First trial set aside on venire de novo—Reference to first conviction.]—*R. v. LLOYD*, No. 2839b, ante.

**3165a.** ———.]—(1) When prisoners are tried together, the direction to the jury must carefully discriminate between the respective cases

(2) In Prevention of Crime Act, 1908 (c. 59), s. 10 (4), "seven days" means seven clear days.—*R. v. DEAN* (1924), 18 Cr. App. Rep. 21, C. C. A.

**3165b.** ——— Counts for other offences included.]—When two persons are jointly in-

dicted for conspiracy, & also, in other counts, for other offences, it is wrong to lead the jury to believe that unless both are convicted, neither may be convicted on one of the other counts.—*R. v. TAYLOR* (1924), 18 Cr. App. Rep. 153, C. C. A.

**3165c.** ———.]—When several accused are jointly charged with knowingly receiving stolen property, there must be a careful ruling about the possession of each.—*R. v. PECKHAM (THE YOUNGER)* (1927), 20 Cr. App. Rep. 72, C. C. A.

**3165d.** ———.]—A charge to a jury trying co-defts. must carefully distinguish between the cases of each.—*R. v. MACDONALD* (1928), 21 Cr. App. Rep. 33, C. C. A.

**3172a.** Where unsworn statement & evidence on oath of witness in conflict.]—*R. v. HARRIS* (1927), 20 Cr. App. Rep. 144, C. C. A.

**3174a.** ———.]—On a trial for murder the defence of manslaughter ought not to be withdrawn from the jury where there is evidence to support it.—*R. v. BALL* (1924), 18 Cr. App. Rep. 149, C. C. A.

**3178.** Add. Annotation:—Consd. *R. v. Thorpe* (1925), 133 L. T. 95.

**3179.** Add. Annotation:—Consd. *R. v. Thorpe* (1925), 133 L. T. 95.

**3179a.** ———.]—*R. v. THORPE*, No. 3146a, ante.

**3180.** After this case add "See, also, Nos. 5933-5938, post."

**3180a.** Direction as to breaking & entering—Defence of bona fide claim of right.]—A defence of breaking & entering under a bona fide claim of right must be definitely put & explained to the jury, & the issue of felonious intent must be distinctly raised.—*R. v. CURTISS* (1925), 18 Cr. App. Rep. 174, C. C. A.

**3180b.** Direction as to larceny by trick—Facts pointing to false pretences.]—On the trial of an indictment for larceny by a trick, the essential elements of that offence should be explained to the jury, & if the facts of the case point to an obtaining by false pretences, the difference between the two offences must be made clear to them in view of a possible verdict of guilty of the latter.—*R. v. FISHER* (1926), 19 Cr. App. Rep. 166, C. C. A.

**3180c.** Direction as to larceny by bailee—Defence of sale on credit.]—*R. v. WARD* (1928), 20 Cr. App. Rep. 167, C. C. A.

**3185.** Add. Annotation:—Refd. *Godman v. Times Publishing Co.*, [1926] 2 K. B. 273.

**3261.** Add. Annotation:—Refd. *Nadan v. R.*, [1926] A. C. 482.

**3272.** Add. Annotation:—Refd. *Broome v. Agar* (1928), 138 L. T. 698.

**3180 i.** Direction as to intent to defraud—Charge of obtaining by false pretences.]—A jury should, in cases under Crimes Act, 1915, s. 181 (a), be told that an intent to defraud is an essential element of the offence, unless in the exceptional cases where the intent is necessarily involved in the false statements made.—*R. v. O'SULLIVAN*, [1925] V. L. R. 514; 547 A. L. T. 3; 31 Argus L. R. 263.—AUS.

**PART VII. SECT. 7, SUB-SECT. 12.—C.**

—*R. v. BRAYDEN* (N. B.), [1926] 4 D. L. R. 765; 46 Can. Crim. Cas. 336.—CAN.

J.S.

b ii. ———.]—*BIGAQUETTE v. R.*, [1927] 1 D. L. R. 1147; [1927] S. C. R. 112; 47 Can. Crim. Cas. 271.—CAN.

**PART VII. SECT. 7, SUB-SECT. 14.—B.**

**3217 ii.** ———.]—*Prima facie* any complete separation of the jury during a trial in a capital case will make the verdict bad, but where the separation occurs through inadvertence, & the result of the trial has not been influenced by what has occurred, the verdict ought to stand.—*R. v. WALTERS*, [1926] 1 D. L. R. 501; 45 Can. Crim. Cas. 77; 58 N. S. R. 306.—CAN.

**PART VII. SECT. 7, SUB-SECT. 15.—A.**

o i. ——— Evidence ruled inadmissible after it has been given.]—*R. v. TREANOR*, *R. v. FLOOD*, *R. v. TREANOR*, *R. v. KELLY*, [1924] 2 I. R. 193.—IR.

**PART VII. SECT. 7, SUB-SECT. 15.—B.**

k i. ———.]—Where evidence given before a judge in a criminal trial was exhibited in a trial *de novo* before a succeeding judge:—*Held*: such procedure was irregular, & consent of accused did not cure the irregularity.—*UMAR HAJEE v. R.* (1922), I. L. R. 46 Mad. 117.—IND.



- 3283a. —.]—R. v. ABRAHAMS & GERSTEIN (1928), 20 Cr. App. Rep. 183, C. C. A.
- 3318a. — —.]—Where an indictment charges two persons with certain offences "with one another," if one is acquitted the other may sometimes but not always be convicted.—R. v. EDWARDS (1924), 18 Cr. App. Rep. 140, C. C. A.
- 3318b. — —.]—Where in separate counts of an indictment a man & a woman are charged with incest, & there are separate trials of each count, the conviction of the man is good although the woman is acquitted.—R. v. GORDON (1925), 133 L. T. 734; 89 J. P. 156; 41 T. L. R. 611; 28 Cox, C. C. 41; 19 Cr. App. Rep. 20, C. C. A.
3323. *Add. Annotation*:—Mentd. The Fagernes, [1927] P. 311.
- 3362a. Indictment for shooting with intent to murder—Verdict of assault.]—On an indictment for shooting with intent to murder or to cause grievous bodily harm, prisoner cannot be convicted of common assault.—R. v. STOKES (1925), 134 L. T. 479; 28 Cox, C. C. 140; 19 Cr. App. Rep. 71, C. C. A.
3366. *Add. Annotation*:—Reid. R. v. Stokes (1925), 134 L. T. 479.
- 3391a. — By trick—Verdict of false pretences—Indictment charging larceny by trick & false pretences alternatively—Indictment for false pretences wrong in substance.]—R. v. HUGHES, No. 2219 a, ante.
3394. *Add. Annotation*:—Reid. R. v. Stokes (1925), 134 L. T. 479.
- 3398a. — Duty of jury to find.]—R. v. LLOYD (1927), 20 Cr. App. Rep. 139, C. C. A.
3407. For "Second indictment to be tried—Right of prosecution to trial by another jury," read "Second indictment to be tried—Whether trial by another jury."
- 3407a. — —.]—It cannot be laid down as a general rule that a jury which has acquitted deft. on one indictment should not try him on another, but it must depend on the circumstances of each case; when it occurs they must be warned that the evidence in the two cases is not cumulative.—R. v. KLEIN (1926), 19 Cr. App. Rep. 161, C. C. A.
3424. *Add. Annotation*:—Reid. R. v. Thorpe (1925), 133 L. T. 95.
3495. *Add. Annotation*:—Mentd. Broome v. Agar (1928), 138 L. T. 698.
3538. *Add. Annotation*:—Consd. R. v. Hertfordshire JJ., *Ex p.* Larsen (1925), 89 J. P. 205.

## Part VIII.—Special Pleas.

3567. *Add. Annotation*:—Reid. *Nadan v. R.*, [1926] A. C. 482.
3560. *Add. Annotation*:—As to (1) *Consd. Pointon v. Cox* (1926), 136 L. T. 506.

## Part X.—Informations.

3665. *Citations*:—For "17 W. R. 567" read "47 W. R. 567."
3718. *Add. Annotation*:—Reid. R. v. Evening News, *Ex p.* Hobbs, [1925] 2 K. B. 158.
- 3751a. By constables to extort money.]—*Held*: there being *bonâ fide* instructions to the constables to watch appct., on which they had acted without unduly harrassing him, & there being no evidence of any conspiracy on the part of the constables, no criminal information could be granted.—*Ex p.* WOLFF (1863), 28 J. P. 23.

### PART VII. SECT. 7, SUB-SECT. 16.—A.

3275 viii. — —.]—On an indictment charging accused with assault the jury returned a verdict of "guilty of common assault under provocation":—*Held*: the verdict was one of guilty.—R. v. BROGAN, [1926] N. Z. L. R. 635.—N.Z.

### PART VII. SECT. 7, SUB-SECT. 16.—D. (b).

n (p. 320). Read now "3362a i."  
o (p. 320). Read now "3362a ii."

### PART VII. SECT. 7, SUB-SECT. 16.—G.

3411 iii. — —.]—R. v. WALTERS, No. 3217 ii, ante.

### PART VII. SECT. 7, SUB-SECT. 16.—K.

g i. — *Meaning of "new trial."*—Where by statute provision is made in the case of a jury disagreeing for a new trial, there is meant by the words "new jury" a jury entirely composed of new or fresh jurymen to the exclusion of all the jurymen who formed the first jury.—R. v. WONG O. SANG, [1924] 3 W. W. R. 45; 34 B. C. R. 8.—CAN.

### PART VII. SECT. 7, SUB-SECT. 17.—F.

so. *Omission of essential element of crime—Conviction invalid.*—R. v. ING YICK ING (1924), 43 Can. Crim. Cas. 392.—CAN.

### PART VII. SECT. 7, SUB-SECT. 17.—G.

3536 ii. — *In prisoner's absence.*—*Held*: the ct. was not *functus officio*.—R. v. HUGHES (1924), 35 B. C. R. 55.—CAN.

3536 iii. — *After removal of conviction by certiorari.*—R. v. KNAPP (1925), 44 Can. Crim. Cas. 338.—CAN.

### PART VIII. SECT. 1, SUB-SECT. 1.

g i. —.]—Where a person has been charged with two offences arising out of the same circumstances, & he pleads guilty to one of the charges, is convicted & fined, & then pleads guilty to the other charge, the previous conviction & penalty cannot be pleaded as a bar to punishment for the other offence.—R. v. GEIGER, [1923] 3 W. W. R. 763; 41 Can. Crim. Cas. 185; 17 Sask. L. R. 412.—CAN.

### PART VIII. SECT. 1, SUB-SECT. 3.—A.

3567 iv. — —.]—A. was prose-

cuted for selling liquor illegally & convicted. Based on the same facts a second prosecution was brought for keeping liquor for sale. A. pleaded *autrefois convict*.:—*Held*: a good plea.—QUEBEC LIQUOR COMMISSION v. DUBOIS, [1924] 2 D. L. R. 861; 42 Can. Crim. Cas. 65.—CAN.

3567 v. — —.]—REED & ROBERTS (*alias* McLEAN) v. R. (1926), 47 Can. Crim. Cas. 142; Q. R. 42 K. B. 35.—CAN.

3567 vi. — —.]—YUOK KUK v. R. (1928), I. L. R. 6 Ran. 386.—IND.

### PART VIII. SECT. 1, SUB-SECT. 3.—D.

b i. — *Previous acquittal for assaulting constable while discharging another duty.*—A mere variation in the nature of the duty, which the officer is alleged to have been engaged in, cannot be considered as a variation in the nature of the offence charged against accused.—R. v. DIAMOND, [1924] 3 D. L. R. 359; 2 W. W. R. 621; 20 Alta. L. R. 419.—CAN.

sm. *Prosecution under Customs Act, R. S. C., 1906 (c. 48), s. 215—Previous conviction under Customs Act, R. S. C., 1906 (c. 48), s. 185.*—R. v. SACCO (Ont.), [1926] 3 D. L. R. 771; 46 Can. Crim. Cas. 243.—CAN.

## Part XII.—Evidence and Proof.

- 3790a.** — Identification of handwriting.]—R. v. MCCARTNEY & HANSEN (1928), 20 Cr. App. Rep. 179, C. C. A.
- 3792a.** —.]—R. v. TAYLOR, WEAVER & DONOVAN (1928), 21 Cr. App. Rep. 20, C. C. A.
- 3801.** *Add. Annotation*:—*Consd.* R. v. Daily Mirror, *Ex p.* Smith, [1927] 1 K. B. 845.
- 3801a.** —.]—(1) It is permissible for a police officer who is in doubt upon the question who shall be arrested for a particular offence to show a photograph to persons in order to obtain information or a clue.  
(2) It is, however, not permissible for a police officer to show beforehand to persons who are afterwards to be called as identifying witnesses photographs of those persons whom they are about to be asked to identify.  
(3) Where photographs are used for the purpose of obtaining information a series of photographs, & not merely one or two, ought to be shown to the person who is expected to give the required information.—R. v. DWYER, R. v. FERGUSON, [1925] 2 K. B. 799; 95 L. J. K. B. 109; 132 L. T. 351; 89 J. P. 27; 41 T. L. R. 186; 27 Cox, C. C. 697; 18 Cr. App. Rep. 145, C. C. A.
- Annotations*:—*As to* (1) *Refd.* R. v. Daily Mirror, *Ex p.* Smith, [1927] 1 K. B. 845. *As to* (2) *Consd.* R. v. Daily Mirror, *Ex p.* Smith, [1927] 1 K. B. 845. *Refd.* R. v. Wainwright (1925), 19 Cr. App. Rep. 52.
- 3801b.** —.]—But may be shown before arrest.]—A prosecutor identified a photograph as that of a prisoner whom the police subsequently arrested. After arrest prisoner was picked out by the prosecutor from a number of men in a room:—*Held*: there was no ground for complaint against the method of identification.—R. v. MELANY (1924), 18 Cr. App. Rep. 2, C. C. A.
- Annotation*:—*Refd.* R. v. Dwyer, R. v. Ferguson, [1925] 2 K. B. 799.
- 3801c.** —.]—R. v. DWYER, R. v. FERGUSON, No. 3801a, *ante*.
- 3810.** *Add. Annotations*:—*Folld.* R. v. Berg, Britt, Carré & Lummies (1927), 20 Cr. App. Rep. 38. *Refd.* R. v. Chesshire, Lucas & Bottom (1927), 20 Cr. App. Rep. 47; Statham v. Statham (1928), 45 T. L. R. 127.
- 3817a.** —.]—The prosecution is not entitled to put in police photographs for the purpose of identification as part of the evidence in chief. Where identification has been obtained by means of such photographs, the facts of such identification ought not to be given in evidence.—R. v. WAINWRIGHT (1925), 19 Cr. App. Rep. 52, C. C. A.
- 3820a.** —.]—Reference to meritorious discharge from army.]—A mere reference to a meritorious discharge from the army by an undefended prisoner in a statement handed to the ct. of trial does not necessarily expose him to cross-examination on his character generally, though it may do so on his career in the army. Such a statement should be looked through in his interest & nothing read to the jury of the legal consequences of which he is not aware.—R. v. PARKER (1924), 18 Cr. App. Rep. 14, C. C. A.
- 3820b.** —.]—Evidence suggesting normal respectability.]—(1) Questions inviting a witness to make suggestions should not be put in cross-examination, especially when they may have the effect of inducing a prisoner to make an attack on the prosecution, which will let in evidence otherwise inadmissible.  
(2) A defending counsel should refrain from putting questions to prisoner giving evidence which suggest normal respectability, but which fall just short of giving evidence of good character.—R. v. BALDWIN (1925), 133 L. T. 191; 89 J. P. 116; 69 Sol. Jo. 429; 28 Cox, C. C. 17; 18 Cr. App. Rep. 175, C. C. A.
- Annotation*:—*As to* (1) *Refd.* R. v. Coulson (1927), 20 Cr. App. Rep. 106.
- 3820c.** —.]—“Good character” of accused within Criminal Evidence Act, 1898 (c. 36), s. 1 (f) (ii), means not only general good character, but any claim to good character incidentally put forward by accused.—R. v. WALKER (1927), 20 Cr. App. Rep. 31, C. C. A.
- 3827.** *Add. Annotations*:—*Consd.* R. v. Noble (1928), 20 Cr. App. Rep. 191. *Mentd.* R. v. Harris, [1927] 2 K. B. 587.
- 3834.** *Add. Annotation*:—*Refd.* R. v. Noble (1928), 20 Cr. App. Rep. 191.
- 3834a.** *S. P. R. v.* NOBLE (1928), 20 Cr. App. Rep. 191, C. C. A.
- 3835.** *Add. Annotation*:—*Refd.* R. v. Dunkley (1926), 134 L. T. 632.
- 3850a.** —.]—Cross-examination of witness for defence constituting attack on character of accused.]—Questions must not be put in cross-examination to a witness called for the defence in such a way as to have the effect of constituting an attack on the character of

## PART XII. SECT. 1.

**3786 i a.** —.]—Evidence is not admissible of the actions of dogs while engaged in tracking down a person accused of a crime, even though the owner of the dogs testifies as to their character & training & their fitness for tracking men.—R. v. WHITE, [1926] 3 D. L. R. 1; [1926] 2 W. W. R. 481; 45 Can. Crim. Cas. 328; 37 B. C. R. 43.—CAN.

**3786 iii.** —.]—GHANSHYAM SINGH v. R. (1927), I. L. R. 6 Pat. 627.—IND.

**3791 i.** *Circumstantial evidence—Exclusion of other causes.*—It is not admissible to convict a person on circumstantial evidence if such evidence can be interpreted to give any other explanation than the accused person's guilt.—R. v. TYMCO (1924), 42 Can. Crim. Cas. 147.—CAN.

**381.** *S. P. GAUNS v. R.* (1926), I. L. R. 7 Lah. 561.—IND.

**381 i.** —.]—R. v. DEMETRIO (1926), 46 Can. Crim. Cas. 133; 59 O. L. R. 249.—CAN.

## PART XII. SECT. 2.

**3807 iv.** —.]—Fingerprint impressions of accused, compulsorily taken before his committal to gaol, are admissible in evidence against him.—R. v. MANGOLD, [1926] App. D. 440.—S. AF.

**3807 v.** —.]—Reference by magistrate to exhibits.]—A magistrate at a trial was called to prove the identifications of accused in gaol & the methods adopted. Instead of stating the details & results, witness referred to documents, described as exhibits, in which

he stated his evidence was to be found. The documents were put on the record as his evidence:—*Held*: the attempt to record evidence in this manner was not only contrary to law, but violated the first principles of evidence, & must be entirely ignored.—LAL SINGH v. R. (1924), I. L. R. 5 Lah. 396.—IND.

**3814 ii.** —.]—*Held*: not a ground for allowing accused's appeal against his conviction.—R. v. BAGLEY (B. C.), [1926] 3 D. L. R. 717; [1926] 2 W. W. R. 513; 46 Can. Crim. Cas. 257.—CAN.

## PART XII. SECT. 3, SUB-SECT. 1.—B.

**3814.** *What is evidence of bad character—Not statements by witness as to disposition & demeanour of prisoner & prisoner's sister.*—A.-G. v. O'LEARY, [1926] I. R. 445.—IR.

the accused, when that is not in issue, even though the object of such questions may be to attack the credit of the witness & not the character of the accused.—*R. v. McCRAIG* (1925), 134 L. T. 160; 90 J. P. 64; 42 T. L. R. 215; 28 Cox, C. C. 109; 19 Cr. App. Rep. 68, C. C. A.

3855a. —.]—A reference in evidence to accused's previous conviction may become relevant by the nature of the cross-examination.—*R. v. LESTER* (1927), 20 Cr. App. Rep. 25, C. C. A.

3924. *Add. Annotation*:—*Reid. Godman v. Times Publishing Co.*, [1926] 2 K. B. 273.

3943a. —.]—On an indictment for embezzlement evidence that, on a series of occasions before & after those mentioned in the indictment, precisely similar errors [to those alleged against prisoner] had been made, & advantage taken of them, by him:—*Held*: admissible to explain motives & intentions.—*R. v. RICHARDSON* (1861), 2 F. & F. 343; 8 Cox, C. C. 448.

*Annotations*:—*Consd. R. v. Stophens* (1888), 58 L. T. 776. *Reid. R. v. Balls* (1871), L. R. 1 C. C. R. 328; *R. v. Francis* (1874), L. R. 2 C. C. R. 128; *R. v. Bond*, [1906] 2 K. B. 389.

3971. *Add. Annotation*:—*Reid. R. v. Berg, Britt, Carré & Lummies* (1927) 20 Cr. App. Rep. 38.

3972. *Add. Annotation*:—*Reid. R. v. Bateman* (1925), 94 L. J. K. B. 791.

3992. *Add. Annotation*:—*Reid. Godman v. Times Publishing Co.*, [1926] 2 K. B. 273.

4009. *Add. Annotation*:—*Appld. R. v. Hewitt* (1925), 89 J. P. Jo. 721.

4009a. —.]—In a charge of unlawful carnal knowledge of a girl under sixteen years of age, evidence independent of the girl's evidence may be given that the accused on a previous occasion indecently assaulted the same girl, & the fact that a considerable time

has elapsed since the earlier act of indecency affects only the weight & not the admissibility of the evidence.—*R. v. HEWITT* (1925), 134 L. T. 157; 90 J. P. 68; 42 T. L. R. 216; 28 Cox, C. C. 101; 19 Cr. App. Rep. 64, C. C. A.

4048. *Add. Annotation*:—*Reid. R. v. Stuart, R. v. Leonard, R. v. Maples, R. v. Tannen, R. v. Taylor* (1927), 43 T. L. R. 715.

4129a. *Statement by wife—In absence of husband.*—A statement by deft.'s wife to third persons is not evidence against deft. on his trial of the facts therein contained, but may be given in evidence with his remarks on them when it is repeated to him.—*R. v. FINDEN* (1926), 19 Cr. App. Rep. 144, C. C. A.

4129b. *Statement by co-defendant—In answer to questions by police.*—(1) A statement relative to a pending charge, obtained in the course of a question addressed by a police officer to a person under arrest on that charge, is not a voluntary statement.

(2) Such a statement is not evidence against a co-deft., but if the jury have been adequately warned on that point the ct. will not interfere on the ground of an ambiguous sentence in the summing up.—*R. v. TURNER* (1926), 19 Cr. App. Rep. 171, C. C. A.

4189. *Add. Citation*:—27 Cox, C. C. 510.

4194. *Add. Annotations*:—*Distd. R. v. Whitehead* (1928), 139 L. T. 640. *Reid. R. v. Coulson* (1927), 20 Cr. App. Rep. 106.

4199. *Add. Annotations*:—*Distd. R. v. Whitehead* (1928), 139 L. T. 640. *Reid. R. v. Coulson* (1927), 20 Cr. App. Rep. 106.

4216a. —.]—On the trial of an indictment for corruptly giving or receiving a gift, a paper found on accused, which may refer to the bribery charged, is admissible in evidence against him.—*R. v. CHESHIRE, LUCAS & BOTTOM* (1927), 20 Cr. App. Rep. 47, C. C. A.

PART XII. SECT. 4, SUB-SECT. 2.—A.

1 i. —.]—*R. v. BRISTOL* (N. S.), [1926] 4 D. L. R. 753; 46 Can. Crim. Cas. 156.—CAN.

PART XII. SECT. 4, SUB-SECT. 2.—B. (a).

3920 iii. —.]—On a charge of theft evidence tending to show that accused has been guilty of criminal acts, other than that upon which he has been charged, is inadmissible, & when allowed entitles accused to a new trial.—*R. v. MORRISON* (1923), 33 B. C. R. 244.—CAN.

3923 ii. —.]—Evidence of other similar acts done by accused is not admissible merely for the purpose of proving that accused by reason of his character or habits is likely to have committed the offence with which he is charged, but it is admissible if it is relevant in any other manner whatever to the guilt of accused, & it is not necessary before evidence of other similar but unconnected acts can be admitted that the prosecution should first lay a foundation for such evidence by establishing a *prima facie* case against accused, sufficient without the help of any such evidence to go to the jury.—*R. v. COOPER*, [1923] N. Z. L. R. 1237; *Gaz. L. R.* 528.—N.Z.

PART XII. SECT. 4, SUB-SECT. 2.—B. (b).

3943 ii. —.]—*HTIN, GYAW v. R.* (1927), I. L. R. 6 Ran. 6.—IND.

3943 iii. —.]—Evidence admitted to prove a system or course of conduct.—*HARRIS v. R.* (1927), 48 N. L. R. 330.—S. AF.

PART XII. SECT. 4, SUB-SECT. 2.—B. (e).

3960 i. *General rule.*—Evidence admitted to rebut a suggestion of accident or mistake.—*HARRIS v. R.* (1927), 48 N. L. R. 330.—S. AF.

PART XII. SECT. 4, SUB-SECT. 2.—B. (h) i.

p i. — *Disguise as revenue officer.*—B. & others were convicted of the murder of the captain of a boat containing a cargo of liquor intended to be illegally delivered in the United States. It was proved that B. had bought a yachtman's cap with a white top & ornamented with gold braid in order to give himself the appearance of a revenue officer, & in concert with the others had attacked the crew of the boat, under the pretence that he & his associates were officers of the law. Evidence was offered by the Crown that B. on one occasion recently, & on another at a considerably earlier date, had employed similar equipment & precisely the same ruse for the purpose of deceiving & disarming the opposition of bootleggers while he took over their illegal possessions:—*Held*: such evidence was admissible as tending to establish a practice.—*BAKER v. R., SOVASH v. R.*, [1926] 1 D. L. R. 115; [1926] S. C. R. 92; 45 Can. Crim. Cas. 19.—CAN.

PART XII. SECT. 4, SUB-SECT. 2.—B. (h) iv.

k i. — *Indecent assault involving murder on another child.*—In reaching a conclusion on a charge of indecent assault, involving murder, upon a little girl:—*Held*: the jury were

neither bound, nor entitled, to shut their eyes to what they might consider to have been proved under a charge of indecent assault upon another little girl, in view of the close association in time, character, & circumstances of the incidents alleged with regard to the two charges.—*H.M. ADVOCATE v. BICKERSTAFF*, [1926] S. C. (J.) 65.—SCOT.

PART XII. SECT. 4, SUB-SECT. 5.—A.

4129a i. *Statement by wife—In absence of husband.*—A statement made by the wife of accused was handed to him at his own request, & he admitted the signature was that of his wife, & made the remark, "I did not think she would let me down like this. Anyhow, it is not true I was sacked from. . . I got testimonials from both places when I left":—*Held*: an acknowledgment of the truth of the statement in whole or in part might be inferred, & the contents of the statement were properly submitted to the jury, the question of admission or not of the truth of the contents being left to them.—*R. v. GRIGG*, [1926] N. Z. L. R. 784.—N.Z.

t i. —.]—*R. v. BROWN* (Sask.), [1927] 4 D. L. R. 779; [1927] 3 W. W. R. 335; 49 Can. Crim. Cas. 37.—CAN.

PART XII. SECT. 4, SUB-SECT. 6.—B.

4200 viii. —.]—On a charge of incest there was evidence of prosecutrix having complained to her stepmother six days after the alleged crime was committed, & further evidence of prosecutrix & her sister was allowed in that two days later she had com-



4222a. —.]—(1) A disorderly house at common law is a house which is so conducted as to violate law & good order.

(2) Letters, if found in such a house referring to unnatural practices, may be given in evidence against a person charged with keeping such a house.—R. v. BERG, BRITT, CARRÉ & LUMMIES (1927), 20 Cr. App. Rep. 38, C. C. A.

plained to her sister of the crime:—*Held*: evidence of the statements made by prosecutrix to her sister eight days after the occurrence when she had had ample opportunity to complain before, was inadmissible, & by its admission a substantial wrong was done to accused, & there should be a new trial.—R. v. PROTEAU (1923), 33 B. C. R. 39.—CAN.

PART XII. SECT. 4, SUB-SECT. 7.

4221 iii. —.]—It was objected that the trial judge improperly received in evidence a book found in prisoner's house, entitled "Theses & Statutes of the Third (Communist) International of Moscow," published in the interests of an organisation with which prisoner had voted to amalgamate:—*Held*: the evidence was admissible.—R. v. McLACHLAN (1923), 56 N. S. R. 413; 41 Can. Crim. Cas. 249.—CAN.

4232 i. *Must be material—Charge of acts of gross indecency—Evidence of possession of lewd pictures—Admitted on general issue.*—Upon a charge of gross indecency, evidence that indecent photographs were found in accused's possession is not admissible, unless there is some specific connection between the articles & the participation of accused in the crime.—R. v. DAVIS, [1925] App. D. 30.—S. AF.

PART XII. SECT. 5, SUB-SECT. 1.

i. *Actual words & not substance of confession should be given.*—The ct. ought to ascertain as far as possible the very words spoken by accused who is said to have confessed. There is no rule of law which precludes the ct. from holding that a confession has been proved even in cases where the evidence gives the substance, though not the actual words of the statement made by accused, if the ct. believes that evidence.—NUR ALI v. R. (1924), 1 L. R. 5 Lah. 140.—IND.

ii. —.]—It is not the law that the statement of accused must be rejected if not in his *ipsissima verba*, but it is a matter for consideration by the judge in arriving at his decision as to the admission or not of the statement.—A.-G. v. M'CABE, [1927] 1 I. R. 129.—IR.

d. *Previous written statement inconsistent with prisoner's evidence at trial.*—*Held*: admissible.—A.-G. v. MURRAY, [1926] 1 I. R. 266.—IR.

se. *Statement inculcating co-prisoners.*—Three appts. together with a woman were convicted of the crime of murder. After arrest the woman had made a statement inculcating appts. under whose compulsion she said she had been acting:—*Held*: the statement was not a confession, & had been improperly admitted in evidence against appts.—R. v. CAMANE, [1925] App. D. 570.—S. AF.

sf. *Statement overheard in cells.*—At the trial of four persons, on charges including a charge of murder against three of the number, a police-officer, who had been on duty on the morning after the murder at the office in which two of the persons charged were being detained, gave evidence. He deposed that prisoners were shouting to each other in the cells to see who was in.

He was then asked by counsel for the Crown, "What did you hear?" —*Held*: the question must be disallowed.—H.M. ADVOCATE v. KEEN, [1926] S. C. (J.) 1.—SCOT.

PART XII. SECT. 5, SUB-SECT. 2.

oi. —.]—Where a magistrate translated what he had written down to accused, who acknowledged it to be correct & affixed his thumb impression:—*Held*: the confession was admissible, any defects in the mode of recording it being cured by Code of Criminal Procedure, s. 533.—R. v. DEO DAT (1922), 1 L. R. 45 All. 166.—IND.

PART XII. SECT. 5, SUB-SECT. 3.

t (p. 408) i. —.]—The evidence of a judgment debtor on an examination for discovery in aid of execution is admissible against him on a subsequent criminal charge, unless he at the time objected to answer on the ground that his answers might tend to incriminate him.—R. v. NOZAKI, [1926] 4 D. L. R. 955; [1926] 3 W. W. R. 332; 46 Can. Crim. Cas. 168; 37 B. C. R. 305.—CAN.

ri. — *Subsequent charge of perjury.*—At the preliminary hearing of another charge, accused, who was in custody, was questioned by the magistrate, when asking for an adjournment. He was not represented by counsel, & had not offered himself as a witness or been sworn, & his answers were not taken down in writing. At the trial accused was questioned as to alleged admissions to the magistrate & he denied them. His denial was the subject of the perjury charge:—*Held*: the conviction for perjury should be quashed.—R. v. CIESLENSKI, [1924] 1 W. W. R. 82; 41 Can. Crim. Cas. 195.—CAN.

PART XII. SECT. 5, SUB-SECT. 4.

4303 x. —.]—Neither the fact that accused was not cautioned before making a statement to a person in authority, nor the fact that it was made in answers to questions put by a police officer, is sufficient to render it inadmissible in law, but they are circumstances which the judge should consider in exercising his discretion to exclude or admit the statement.—R. v. KOOTEN, [1926] 4 D. L. R. 771; [1926] 1 W. W. R. 178; 46 Can. Crim. Cas. 159; 35 Man. L. R. 461.—CAN.

4303 xi. —.]—*Held*: evidence as to a voluntary statement made by prisoner to the police, after being cautioned, was admissible, although the effect of the statement was to indicate the previous bad character of accused.—H.M. ADVOCATE v. M'FADYEN, [1926] S. C. (J.) 93.—SCOT.

4303 xii. —.]—R. v. HAGERUP (Sask.) (1927), 48 Can. Crim. Cas. 95.—CAN.

s (p. 412) i. —.]—If based on an admission or confession to the police, when they were interrogating accused, a conviction on a summary trial will be set aside, unless it can be proved that accused made the admission or confession voluntarily.—R. v. WARD (1924), 41 Can. Crim. Cas. 418.—CAN.

4286. *Add. Annotation*:—Mentd. R. v. Smith, [1924] 2 K. B. 194.

4308. *Add. Annotation*:—Reid. Nadan v. R., [1926] A. C. 482.

4351. *Add. Annotation*:—Reid. R. v. Turner (1926), 19 Cr. App. Rep. 171.

4351a. —.]—R. v. BOOKER, No. 8793a, *post*.

4311 vi. —.]—A confession made to any person under the influence of a promise or threat held out by a person in authority, calculated to induce the confession, is inadmissible, unless it be clearly proved to the satisfaction of the judge, whose duty it is to decide the question, that the promise or threat did not operate upon the mind of the accused, & that the confession was voluntary.—R. v. TREANOR, R. v. FLOOD, R. v. TREANOR, R. v. KELLY, [1924] 2 I. R. 193.—IR.

PART XII. SECT. 5, SUB-SECT. 5.

4326 i. *Before accused is in custody—Inquiries as to offences may be made—Answers admissible in evidence—Caution not necessary.*—R. v. KOOTEN, [1926] 4 D. L. R. 771; [1926] 1 W. W. R. 178; 46 Can. Crim. Cas. 159; Man. L. R. 461.—CAN.

ii. —.]—It is not the law that a statement must be excluded on the sole ground that either the statement was made in answer to questions put by a police officer to accused, or that it was made without a caution having been first administered. It is a matter for the judge to decide whether, in his discretion, he will admit the statement or not, having regard to all the circumstances, & observing the legal requirement that the statement shall be voluntary, though not necessarily volunteered.—A.-G. v. M'CABE, [1927] 1 I. R. 129.—IR.

iii. —.]—Where a statement made by accused, at the time suspected but not then arrested, to a police officer was freely & voluntarily made:—*Held*: the fact that such officer failed to caution accused did not render the statement inadmissible.—R. v. BARLIN, [1926] App. D. 459.—S. AF.

4336 xvi. —.]—A statement made to the police by a boy, between sixteen & seventeen years of age, detained on suspicion of murder, not admitted, in view of the youth of accused, his abnormal physical & mental condition at the time he made the statement, a doubt as to the adequacy of the warning given by the police, the fact that he had not the benefit of the advice of a law-agent, & the fact that the statement had followed upon a conversation with an inspector in which questions put to accused had some bearing on the subject-matter of the charge.—H.M. ADVOCATE v. AITKEN, [1926] S. C. (J.) 83.—SCOT.

4336 xvii. —.]—A statement made to the police by a man detained on suspicion of murder, in reply to a question addressed by one police officer to another, not admitted, as prisoner might have thought that the question was addressed to him, & his statement could not be regarded as voluntary.—H.M. ADVOCATE v. LIESER, [1926] S. C. (J.) 88.—SCOT.

4336 xviii. —.]—*Burden of establishing voluntary character of statement on Crown.*—R. v. BELLOS, [1927] 3 D. L. R. 186; [1927] S. C. R. 258; 48 Can. Crim. Cas. 126.—CAN.

4336 xix. —.]—*How burden discharged.*—SANKEY v. R., [1927] 4 D. L. R. 245; [1927] S. C. R. 436; 48 Can. Crim. Cas. 97.—CAN.

- 4351b. —R. v. TURNER, No. 4129b, *ante*.
- 4357a. Form of statement.]—R. v. O'DONOGHUE, No. 8266a, *post*.
4588. Add. Annotation:—*Refd.* Broome v. Agar (1928), 138 L. T. 698.
4600. Add. Annotations:—*Mentd.* Britannia Hygienic Laundry Co. v. Thornycroft (1925), 94 L. J. K. B. 858; The Paludina, [1925] P. 40.
4620. Add. Annotation:—*Refd.* Shapiro v. La Motta (1923), 130 L. T. 622.
4645. Add. Annotation:—*Refd.* Lake v. Simmons (1926), 95 L. J. K. B. 586.
4650. Add. Annotation:—*Consd.* Pointon v. Cox (1926), 136 L. T. 506.
4659. Add. Citation:—1 Leach, 300, n. Add. Annotation:—*Refd.* R. v. Elworthy (1867), 37 L. J. M. C. 3.
4692. In the cross-reference following this case, for "See Part XXIII., Sect. 1, sub-sect. 1, Q. (b), *post*," read "See Part XXXIII., Sect. 1, sub-sect. 1, Q. (b), *post*."
- 4705a. Duty of counsel—To apply for leave to cross-examine as to character.]—When counsel for the prosecution proposes to cross-examine prisoner on character, under Criminal Evidence Act, 1898 (c. 36), s. 1 (f), it is desirable that he should make an express application for leave to the judge before proceeding to that line of cross-examination.—R. v. McLEAN (1926), 134 L. T. 640, C. C. A.
- 4705b. — To refrain from cross-examining as to character.]—R. v. DUNKLEY, No. 4734a, *post*.
- 4711a. — — —.]—R. v. BALDWIN, No. 3820b, *ante*.
4712. Add. Annotation:—*Consd.* R. v. Baldwin (1925), 133 L. T. 191.
- 4712a. — Cross-examination tending to show accused likely to commit offence charged.]—R. v. COULMAN, No. 3156e, *ante*.
4715. Add. Annotations:—*Refd.* R. v. Dunkley (1926), 134 L. T. 632; R. v. McLean (1926), 134 L. T. 640.
4716. Add. Annotation:—*Distd.* R. v. King (1927), 20 Cr. App. Rep. 158.
4733. Add. Annotation:—*Refd.* R. v. Dunkley (1926), 134 L. T. 632.
- 4734a. — Suggestion that witness deliberately committing perjury.]—(1) To suggest that a witness for the prosecution is deliberately committing perjury because he believes that he has a grievance against prisoner is an imputation on the character of that witness within Criminal Evidence Act, 1898 (c. 36), s. 1 (f), so as to render cross-examination of prisoner as to character admissible. (2) Even where such a line of cross-examination is admissible in law, counsel for the prosecution should refrain from adopting it, unless the circumstances are such as to make it appear to be a positive duty on his part so to cross-examine.—R. v. DUNKLEY, [1927] 1 K. B. 323; 96 L. J. K. B. 15; 134 L. T. 632; 90 J. P. 75; 28 Cox, C. C. 143; 19 Cr. App. Rep. 78, C. C. A.
4735. Add. Annotations:—*Refd.* R. v. Dunkley (1926), 134 L. T. 632; R. v. McLean (1926), 134 L. T. 640.
4742. Add. Annotation:—*Refd.* R. v. Dunkley (1926), 134 L. T. 632.
4747. Add. Annotation:—*Refd.* R. v. Dunkley (1926), 134 L. T. 632.
4748. Add. Annotations:—*Refd.* R. v. Dunkley (1926), 134 L. T. 632; R. v. McLean (1926), 134 L. T. 640.
4749. Add. Annotation:—*Refd.* R. v. Dunkley (1926), 134 L. T. 632.
4750. Add. Annotation:—*Refd.* R. v. Dunkley (1926), 134 L. T. 632.
- 4764a. — Grievous bodily harm.]—Upon an indictment for inflicting grievous bodily harm, the wife of prisoner must not be called as a witness for the Crown.—R. v. KING (1925), 19 Cr. App. Rep. 34, C. C. A.
4770. Add. Annotation:—*Refd.* Statham v. Statham (1928), 45 T. L. R. 127.

PART XII. SECT. 5, SUB-SECT. 6.—C. (b).

q i. —.]—A collecting & an assistant "pancharget" are persons in authority within Evidence Act, s. 24, when they have taken an important part in the inquiry into the circumstances of the commission of the offence.—R. v. GANESH CHANDRA GOLDAR (1922), 1 L. R. 50 Cal. 127.—IND.

PART XII. SECT. 6, SUB-SECT. 1.

4540 iii. —.]—In a criminal prosecution the charge against accused must be proved absolutely. If there is a reasonable doubt the conviction must be quashed.—R. v. DERBY (1924), 42 Can. Crim. Cas. 152.—CAN.

PART XII. SECT. 6, SUB-SECT. 3.—B.

4610 i. Sufficiency of proof—Question of fact for jury.]—The question of intent is for the jury & not for the Crown.—R. v. McLACHLAN (1923), 56 N. S. R. 413; 41 Can. Crim. Cas. 249.—CAN.

4620 i. Whether special intent must be proved—In malicious damage to property.]—R. v. MASHARIGN, [1924] App. D. 11.—S. AF.

PART XII. SECT. 12, SUB-SECT. 1.

n i. — Informer.]—HARRIS v. R.

(1927), 48 N. L. R. 330.—S. AF.

PART XII. SECT. 12, SUB-SECT. 2.—A.

b i. Can be compelled to furnish specimen of handwriting.]—A witness, in a criminal trial, though he be accused testifying on his own behalf, while under cross-examination may be ordered to write certain words dictated to him, & when accused is the witness an effect of such writing may be that a letter, otherwise unproved, is admitted in evidence against him.—R. v. WHITTAKER, [1924] 3 D. L. R. 63; 2 W. W. R. 706; 42 Can. Crim. Cas. 162.—CAN.

g i. — Breach of city by-law.]—R. v. HART (1891), 20 O. R. 611.—CAN.

4695 i. May be cross-examined.]—A. G. v. MURRAY, [1926] 1 L. R. 286.—IR.

PART XII. SECT. 12, SUB-SECT. 2.—C. (e).

4755 ii. —.]—Two prisoners, tried together on one complaint, each gave evidence under Criminal Evidence Act, 1898 (c. 36), s. 1. In the opinion of the judge the evidence of neither incriminated the other:—*Held*: neither was entitled to cross-examine the other, such right of cross-examination

being limited to the case where, in the opinion of the judge, the evidence given incriminated, or tended to incriminate, the fellow prisoner.—GEMMELL & M'FADYEN v. MACNIVEN, [1928] S. C. (J.) —SCOT.

PART XII. SECT. 12, SUB-SECT. 3.—B.

s i. Children Act, 1908 (c. 67)—Whether competent—Offence involving bodily injury.]—A man was tried upon a charge of using certain lewd, indecent & libidinous practices towards a girl aged six:—*Held*: an offence involving bodily injury to the child within the above Act, although no actual physical hurt had been done to her, & the wife of accused could under that Act & Criminal Evidence Act, 1898, be called & examined by the Crown as a witness.—H. M. ADVOCATE v. LEE, [1923] S. C. (J.) 1.—SCOT.

s ii. —.]—A man was tried upon indictment for striking at, & attempting to cut with a razor, a child aged six weeks:—*Held*: an offence involving bodily injury to the child within the above Act, although the child had not been physically injured or actually touched, & the wife of accused could be called & examined by the Crown as a witness.—H. M. ADVOCATE v. MACPHER, [1926] S. C. (J.) 91.—SCOT.

## Part XIII.—Punishment and Prevention of Crime.

4974a. —.]—R. v. JONES, R. v. POOLE, R. v. TERRY (1924), 18 Cr. App. Rep. 135, C. C. A.

4974b. —.]—R. v. WRIGHT (1925), 19 Cr. App. Rep. 19, C. C. A.

4974c. —.]—R. v. BUGGS (1910), 6 Cr. App. Rep. 74, C. C. A.

—.]—The mere fact that a man has been convicted many times is not in

itself sufficient reason for passing a heavy sentence on him for an offence which is trivial in itself.—R. v. TAYLOR (1924), 18 Cr. App. Rep. 143, C. C. A.

4994b. — — —.]—The fact that a prisoner has committed some serious offences is no reason for giving him a sentence of penal servitude for such an offence as breaking into

### PART XII. SECT. 12, SUB-SECT. 4.—B.

a i. — *Criminal Code*, s. 1003.]—R. v. GEMMILL (1924), 43 Can. Crim. Cas. 360.—CAN.

f i. — —.]—Prisoner was indicted for an indecent assault on a girl under thirteen. At the trial there was admitted the unsworn testimony of the child alleged to have been assaulted & of two other children of tender years, & the evidence of the mother of the girl that she had asked the child what she was crying about, & that the child's reply was a complaint of prisoner's conduct to her:—*Held*: (1) the unsworn testimony of a child of tender years could not be corroborated by the unsworn testimony of any number of such children; (2) the answers of the girl to her mother's questions were not evidence of the facts complained of, & could not constitute corroboration of those facts.—R. v. COYLE, [1926] N. 208.—IR.

n i. S. P. R. v. LAMOND, [1926] 1 D. L. R. 826; 45 Can. Crim. Cas. 300; 58 O. L. R. 264.—CAN.

### PART XII. SECT. 13, SUB-SECT. 1.

r i. —.]—The question whether a witness is an accomplice is one of fact for the jury, after the judge has instructed them as to what constitutes an accomplice & has decided that there is evidence from which the jury can reasonably infer that the witness comes within that category.—R. v. GALLAGHER, [1924] 4 D. L. R. 1059; 3 W. W. R. 357.—CAN.

4928 ii a. S. P. R. v. RODGERS (Ont.), [1926] 4 D. L. R. 609; 46 Can. Crim. Cas. 372.—CAN.

4928 ii b. S. P. R. v. BANDEL (Ont.) (1927), 47 Can. Crim. Cas. 266.—CAN.

c i. *Person giving bribe.*—A. & B.

were charged with conspiring to obtain money from C. by unlawful means. The Crown case was that prisoners had conspired to obtain, & had obtained, a large sum of money from C. as a bribe to refrain from taking criminal proceedings against C. or his daughter, both of whom gave evidence for the Crown. Accused denied having asked for or received any money:—*Held*: C. was not an accomplice.—R. v. OLHOLM & MCPHERSON, [1925] V. L. R. 377; 47 A. L. T. 10; 31 Argus L. R. 228.—AUS.

### PART XII. SECT. 13, SUB-SECT. 4.—B.

4891 iii a. —.]—R. v. DAVIDSON (1925), 44 Can. Crim. Cas. 311.—CAN.

4904 ii a. S. P. R. v. RODGERS (Ont.), [1926] 4 D. L. R. 609; 46 Can. Crim. Cas. 372.—CAN.

4904 xii. —.]—R. v. SWITZER (Ont.) (1925), 45 Can. Crim. Cas. 377.—CAN.

4904 xiii. —.]—A charge cannot be said to be established merely on the unsupported testimony of an accomplice.—R. v. SATISH CHANDRA SINGHA (1927), I. L. R. 54 Cal. 721.—IND.

### PART XII. SECT. 13, SUB-SECT. 4.—C.

g i. —.]—General hostility to the victim cannot be considered to be corroboration of a direct statement connecting accused with a particular crime. Corroboration must point to the identification of the person charged with the particular act with which the direct evidence connects him.—R. v. KALWA (1926), I. L. R. 48 All. 409.—IND.

### PART XII. SECT. 13, SUB-SECT. 4.—E.

4960 viii. —.]—Where the evi-

dence of an accomplice has not been corroborated, & the charge to the jury merely tells them that if they believe the accomplice they should convict accused, the jury is not properly directed; & where it is impossible to say that if properly directed they must inevitably have come to the same conclusion, the conviction must be quashed.—R. v. STASIUK (Sask.), [1926] 4 D. L. R. 811; [1926] 2 W. W. R. 723; 46 Can. Crim. Cas. 129.—CAN.

b i. —.]—R. v. GALLAGHER, No. 6064 vii, post.—CAN.

o i. — —.]—Where the judge called the attention of the jury to the rule as to the danger of convicting on the uncorroborated testimony of an accomplice, at the same time pointing out that it was within their province to do so:—*Held*: the conviction should be affirmed.—R. v. SHEMIT, [1925] 2 D. L. R. 1004; 44 Can. Crim. Cas. 10; 58 N. S. R. 116.—CAN.

*See, also, cases in Part XIV, Sect. 7, Sub-sect. 7, B, post.*

### PART XIII. SECT. 1, SUB-SECT. 1.

p i. — —.]—R. v. LEAF, [1926] 1 W. W. R. 888; 45 Can. Crim. Cas. 236; 20 Sask. L. R. 542.—CAN.

4991 i. *Sentence must be proportionate to offence—Trifling offence—Previous convictions.*—R. v. CROSS, [1927] 3 W. W. R. 432.—CAN.

st. *Power of judge to hear evidence of complainant to decide on proper sentence—After plea of guilty—Must avoid consideration of aggravating circumstances likely to change character of offence charged.*—R. v. WHEPDAL (Sask.), [1927] 3 W. W. R. 704; 49 Can. Crim. Cas. 62.—CAN.



a railway station booking-office & stealing some cigarettes & bottles of horse medicine.—*R. v. PRICE* (1924), 18 Cr. App. Rep. 138, C. C. A.

4994c. ———.]—Prisoner obtained various small sums of money from a tobacconist by falsely representing that he had obtained certain appointments, & was sentenced to three years' penal servitude. He had a bad record both in South Africa & in England:—*Held*: in considering whether the sentence was proper the ct. had to beware of treating an offence as serious in itself because it had been committed by a man who previously had committed a series of offences, & the sentence should be reduced to eighteen months' imprisonment with hard labour.—*R. v. DURAND* (1924), 18 Cr. App. Rep. 137, C. C. A.

4994d. ———.]—*R. v. WALLS (alias RUSSELL)* (1925), 19 Cr. App. Rep. 35, C. C. A.

4994e. ———.]—*R. v. DENT* (1925), 19 Cr. App. Rep. 18, C. C. A.

4994f. ———.]—*R. v. GUMBS* (1926), 19 Cr. App. Rep. 74, C. C. A.

—.]—In imposing sentence on persons often previously convicted, regard must be had to the gravity of the offence in question.—*R. v. D'ARCY* (1926), 19 Cr. App. Rep. 22, C. C. A.

4994h. ———.]—*R. v. CHARLES* (1927), 20 Cr. App. Rep. 129, C. C. A.

4998a. ———.]—Sentence reduced, in view of the small value of the property stolen & of prisoner's youth.—*R. v. ROATH* (1927), 20 Cr. App. Rep. 138, C. C. A.

4998b. ———.]—Sentence reduced, in view of the small value of the property stolen, notwithstanding previous convictions.—*R. v. WATSON* (1927), 20 Cr. App. Rep. 119, C. C. A.

4998c. ———.]—Sentence reduced, in view of the small value of the property obtained by false pretences & of prisoner's youth, notwithstanding previous convictions.—*R. v. BOREHAM* (1928), 20 Cr. App. Rep. 182, C. C. A.

5028a. — Prisoners jointly accused.]—There should be discrimination between the sentences of persons jointly accused, in view of their previous records & ages, & account should be taken of the period of detention before trial.—*R. v. ANDREWS* (1927), 20 Cr. App. Rep. 37, C. C. A.

5036a. *S.P. R. v. MOLDON* (1926), 19 Cr. App. Rep. 116, C. C. A.

5039a. ———.]—Previous convictions of a prisoner on trial must be strictly proved.—*R. v. TURNER* (1924), 18 Cr. App. Rep. 161, C. C. A.

*Annotation*:—*Reid. R. v. O'More* (1926), 19 Cr. App. Rep. 175.

5046a. ———.]—*R. v. DRIVER* (1926), 19 Cr. App. Rep. 86, C. C. A.

5049a. ———.]—Where prisoner, a young man, had made a real effort to retrieve his character & to get continuous work:—*Held*: (1) a sentence to penal servitude was not necessary, & prisoner's sentence of five years' penal servitude might suitably be reduced to

twenty-one months' imprisonment with hard labour.

(2) The term of first sentence to penal servitude must depend on the circumstances: there is no general rule that it is three years.—*R. v. TOWNSEND* (1924), 18 Cr. App. Rep. 99, C. C. A.

5049b. ———.]—*R. v. BOURNE, R. v. COLEMAN* (1925), 19 Cr. App. Rep. 17, C. C. A.

5049c. ———.]—*R. v. TROTT* (1927), 20 Cr. App. Rep. 120, C. C. A.

5049d. ———.]—*R. v. ETTRIDGE* (1927), 20 Cr. App. Rep. 126, C. C. A.

5049e. ———.]—*R. v. HINKS* (1927), 20 Cr. App. Rep. 137, C. C. A.

5049f. ———.]—*R. v. HILL* (1928), 20 Cr. App. Rep. 170, C. C. A.

5049g. ———.]—*R. v. WAYE* (1928), 20 Cr. App. Rep. 171, C. C. A.

5057a. ———.]—Sentence mitigated in view of a long period of honest work.—*R. v. WINTER* (1924), 18 Cr. App. Rep. 139, C. C. A.

5057b. ———.]—Sentence reduced in view of a long period of honest work.—*R. v. PORTER* (1926), 19 Cr. App. Rep. 90, C. C. A.

5057c. ———.]—Sentence mitigated in view of an interval of three years' honest life.—*R. v. GUNTRIP* (1925), 19 Cr. App. Rep. 45, C. C. A.

5057d. ———.]—*R. v. WHITBY* (1926), 19 Cr. App. Rep. 115, C. C. A.

5065. *Add. Citations*:—130 L. T. 319; 27 Cox, C. C. 576.

5065a. ———.]—*R. v. ANDREWS*, No. 5028a, *ante*.

5074a. ———.]—*R. v. LLOYD*, No. 2567a, *ante*.

5081a. ———.]—*R. v. TAYLOR (alias SAUNDERS, alias WALLACE)*, No. 1913a, *ante*.

5092a. — Duty of police to supply list of charges.]—Appct. had been convicted at quarter sessions of larceny & had been sentenced to five years' penal servitude. Offences which he admitted & which were other than those charged against him in the indictment were taken into consideration by the ct. of quarter sessions in passing sentence. He applied for leave to appeal against his sentence:—*Held*: as it was difficult to see what other cases had been taken into consideration by the ct. of quarter sessions in passing sentence on appct., it would be convenient if in such a case the police would file at the ct. of trial a list showing (a) the places where the other offences had been committed; (b) the dates & (c) the nature of such offences; (d) if possible, whether or not warrants had been issued in respect of such offences.—*R. v. HICKS* (1924), 88 J. P. 68; 18 Cr. App. Rep. 11, C. C. A.

5092b. Other court should be informed before sentence passed.]—*R. v. TAYLOR*, No. 5314a, *post*.

5097a. ———.]—*R. v. PEACE* (1925), 19 Cr. App. Rep. 58, C. C. A.

5099. *Add. Annotation*:—*Reid. R. v. Peace* (1925), 19 Cr. App. Rep. 58.

5111a. ———.]—There is no rule of law or practice that a co-prisoner should receive a lighter

sentence, in view of his giving evidence for the Crown.—*R. v. O'DARE, DAVIS & MORTON* (1927), 20 Cr. App. Rep. 79, C. C. A.

5116a. Long interval free from conviction.]—Sentence mitigated.—*R. v. HODSON* (1927), 20 Cr. App. Rep. 11, C. C. A.

5119a. ———.]—Applts. treated as first offenders, & sentences reduced.—*R. v. SEATON & FLANAGAN* (1928), 20 Cr. App. Rep. 192, C. C. A.

5125a. ———.]—*R. v. COX* (1924), 18 Cr. App. Rep. 152, C. C. A.

5125b. ———.]—*R. v. HURRELL* (1926), 19 Cr. App. Rep. 89, C. C. A.

5125c. ———.]—*R. v. WARD* (1926), 19 Cr. App. Rep. 126, C. C. A.

5125d. ———.]—Sentence reduced, although the case was serious, in view of the fact that it was prisoner's first offence, & on account of her youth.—*R. v. CHICK* (1925), 19 Cr. App. Rep. 57, C. C. A.

5148a. ———.]—Sentence mitigated in view of youth.—*R. v. HARDY (alias EMMETT)* (1925) 18 Cr. App. Rep. 168, C. C. A.

5148b. ———.]—*R. v. CHICK*, No. 5125d, *ante*.

5148c. ———.]—Sentence mitigated in view of youth, notwithstanding prisoner had been detained in a Borstal institution & had also served a sentence of three months' imprisonment with hard labour.—*R. v. LEATHERLAND* (1926), 19 Cr. App. Rep. 85, C. C. A.

5148d. ———.]—*R. v. GETHING* (1926), 19 Cr. App. Rep. 112, C. C. A.

5155a. ———.]—*R. v. HURRELL* (1926), 19 Cr. App. Rep. 89, C. C. A.

5156a. ———.]—What is post office offence.]—Where a postman had altered the time on a letter in order to make it appear to have been sent before the result of a competition for which he had entered:—*Held*: a sentence of three years' penal servitude was too severe, as the offence was not a post office offence in the ordinary sense.—*R. v. TANNER* (1910), 6 Cr. App. Rep. 62, C. C. A.

5173. Add. Annotation:—*Refd. R. v. Roberts & Morris* (1926), 134 L. T. 635.

5174. Add. Annotation:—*Refd. R. v. Roberts & Morris* (1926), 134 L. T. 635.

5175. Add. Annotation:—*Refd. R. v. Roberts & Morris* (1926), 134 L. T. 635.

5175a. ———.]—There is no rule of law or of

practice forbidding a sentence of simple imprisonment being given to follow a sentence of two years' imprisonment with hard labour.—*R. v. ROBERTS & MORRIS* (1926), 134 L. T. 635; 42 T. L. R. 373; 28 Cox, C. C. 150; *sub nom. R. v. MORRIS*, 90 J. P. 84; 42 T. L. R. 373; 70 Sol. Jo. 426; 19 Cr. App. Rep. 75, C. C. A.

5181. For "in the case of consecutive sentences" read "in the case of concurrent sentences."

5184. Add. Annotation:—*Refd. R. v. Fielder* (1926), 135 L. T. 64.

5190a. ———.]—The term of a sentence must precede the serving of a *remanet*.—*R. v. HARVEY* (1927), 20 Cr. App. Rep. 37, C. C. A.

5190b. ———.]—A *remanet* term cannot be served concurrently with a *fresh* sentence.—*R. v. NALL* (1927), 20 Cr. App. Rep. 85, C. C. A.

5194a. ———.]—Not interrupted by period of special treatment pending appeal against another conviction.]—In a proper case the ct. will order that the period of "special treatment" under Criminal Appeal Act, 1907 (c. 23), s. 14, of an applt. already serving a sentence shall not be added to that term.—*R. v. Fox* (1925), 18 Cr. App. Rep. 192, C. C. A.

5194b. ———.]—*R. v. HASLAM*, No. 2839a, *ante*.

5201a. ———.]—The ct. leans against a longer term of imprisonment with hard labour than two years.—*R. v. LONG* (1927), 20 Cr. App. Rep. 101, C. C. A.

5208a. ———.]—The fact that a convicted prisoner has undergone terms of penal servitude does not of itself justify sentence to a further term; all the circumstances of the case must be considered, including the magnitude of the latest offence.—*R. v. KNEEL* (1926), 19 Cr. App. Rep. 169, C. C. A.

5211a. When to be awarded under Penal Servitude Act, 1926 (c. 58).]—*R. v. ASCOLI* (1927), 20 Cr. App. Rep. 156, C. C. A.

5217. Add. Annotation:—*Refd. R. v. Townsend* (1924), 18 Cr. App. Rep. 99.

5217a. ———.]—*R. v. TOWNSEND*, No. 5049a, *ante*.

5217b. ———.]—There is no rule of law or practice that the term of a first sentence of penal servitude is limited to three years.—*R. v. BASIRE* (1926), 19 Cr. App. Rep. 174, C. C. A.

PART XIII. SECT. 2, SUB-SECT. 5.—C.

5142 II. ———.]—Sentence mitigated in view of youth.—*R. v. HOPPER & GLAVEN* (1924), 57 N. S. R. 438.—CAN.

5142 III. S.P.—*R. v. HAMILTON* (1925), 58 N. S. R. 46.—CAN.

PART XIII. SECT. 3, SUB-SECT. 1.

5182 i. Concurrent sentences.—Imprisonment & penal servitude.]—A prisoner having been found guilty upon two charges, the ct. sentenced him to five years' penal servitude in respect of the first charge & to imprisonment for one year in respect of the second charge, the two sentences to run concurrently.—*H.M. ADVOCATE v. CARSON*, [1927] S. C. (J.) 70.—SCOT.

PART XIII. SECT. 3, SUB-SECT. 2.

52. Of accused acquitted on ground of insanity.—Powers of Lieutenant-Governor.]—*R. v. COLEMAN* (N. S.) (1927), 47 Can. Crim. Cas. 148.—CAN.

PART XIII. SECT. 3, SUB-SECT. 4.

f i. ———.]—On a conviction on a charge of robbery with violence the judge ordered prisoner to be whipped, & not having stated the number of times he was to be whipped, provided for this in the record of conviction in prisoner's absence:—*Held*: the sentence was not illegal.—*R. v. HUGHES* (1924), 35 B. C. R. 55.—CAN.

g i. ———.]—Seduction offences.]—The maximum punishment under Criminal Code, s. 213, is two years, & whippings not authorised & cannot be added to the punishment provided.—*R. v. HIRSCH*, [1924] 2 W. W. R. 342; 42 Can. Crim. Cas. 153.—CAN.

g ii. ———.]—Assault—By young person under sixteen.]—*MACKAY v. LAMB*, [1923] S. C. (J.) 16.—SCOT.

5230 i. ———.]—First offenders.]—Circumstances in which:—*Held*: whipping should not be imposed on a first offender only twenty years old.—*R. v. WHEPDALE* (Sask.), [1927] 3 W. W. R. 704; 49 Can. Crim. Cas. 62.—CAN.

PART XIII. SECT. 3, SUB-SECT. 5.

h i. ———.]—Power of court.]—*HALIFAX CORPN. v. BROWN* (1885), 18 N. S. R. (6 R. & G.) 103.—CAN.

h ii. ———.]—Where an offence is punishable by imprisonment for more than five years, a sentence of a fine & imprisonment in default of payment is improper.—*R. v. ENGLAND* (1925), 43 Can. Crim. Cas. 11; 19 Sask. L. R. 165; [1925] 1 W. W. R. 237.—CAN.

m i. ———.]—Fine not paid.—Warrant not acted on for five years.]—Arrest after five years upheld.—*R. v. MONDSHEIN* (Man.), [1927] 1 D. L. R. 964; [1927] 1 W. W. R. 101; 47 Can. Crim. Cas. 63.—CAN.

o i. ———.]—Fine for violation of Criminal Code.—Judge may not order payment to private individual.]—*R. v. ENGLAND* (1925), 43 Can. Crim. Cas. 11; 19 Sask. L. R. 165; [1925] 1 W. W. R. 237.—CAN.

sa. ———.]—Reduction of fine on appeal.—Effect of.—On person by whom fine paid.]—*LEVINE v. WANLESS* (Ont.) (1927), 47 Can. Crim. Cas. 273.—CAN.

5238a. Power of court to call for expert reports.]—*R. v. HOBBS* (1928), 21 Cr. App. Rep. 14, C. C. A.

5241a. — Youth of prisoner.]—Detention in a Borstal institution substituted for a sentence of imprisonment with hard labour passed on a boy sixteen years of age.—*THORPE'S CASE* (1918), 13 Cr. App. Rep. 176, C. C. A.

5243a. — —.]—Sentence of detention quashed.—*R. v. SMEE* (1928), 20 Cr. App. Rep. 192, C. C. A.

5246a. — —.]—As a general rule, the term of detention in a Borstal institution should be three years.—*R. v. REVILL* (1925), 19 Cr. App. Rep. 44, C. C. A.

5246b. — —.]—Term of detention in a Borstal institution increased to the maximum in applt.'s own interest.—*R. v. FRIER* (1927), 20 Cr. App. Rep. 30, C. C. A.

5255. *Add. Annotation*:—*Appld. R. v. Baxter* (1924), 18 Cr. App. Rep. 127.

5258. *Add. Annotation*:—*Folld. R. v. Dean* (1924), 18 Cr. App. Rep. 21.

5261a. — — —.]—*R. v. DEAN*, No. 3165a, ante.

5269. *Add. Annotation*:—*Refd. R. v. Hayward* (1927), 137 L. T. 64.

5282. *Add. Annotation*:—*Consd. R. v. Norman*, [1924] 2 K. B. 315.

5283a. — — Nothing must be stated to jury about charge until substantive offence dealt with.]—*R. v. TYREMAN*, No. 5359b, post.

5285a. — —.]—An allegation of being a habitual criminal ought to be tried.—*R. v. NASH* (1927), 20 Cr. App. Rep. 1, C. C. A.

*Annotation*:—*Folld. R. v. Rutt* (1928), 20 Cr. App. Rep. 186.

5285b. — —.]—*R. v. RUTT* (1928), 20 Cr. App. Rep. 186, C. C. A.

5290a. Admission of being habitual criminal—Duty of court to explain charge.]—Before an admission of being a habitual criminal is accepted, it should be made clear to prisoner that the allegation is that he was a habitual criminal at the time of his arrest.—*R. v. DONOVAN* (1925), 19 Cr. App. Rep. 2, C. C. A.

5290b. Direction to jury—Necessary contents.]—*R. v. DINSDALE* (1926), 19 Cr. App. Rep. 123, C. C. A.

5290c. — —.]—*R. v. WEALE* (1927), 20 Cr. App. Rep. 153, C. C. A.

5299. *Add. Annotation*:—*Refd. R. v. Stokell* (1924), 18 Cr. App. Rep. 155.

5300. *Add. Annotation*:—*Consd. R. v. Stokell* (1924), 18 Cr. App. Rep. 155.

5303a. — —.]—During the trial of accused as a habitual criminal the judge asked a police witness whether he knew anything of accused beyond his participation in the substantive offence which accused had confessed. The answer was: "I know he has been associating with convicted persons." Association with convicted persons was not one of

the grounds set out in the statutory notice to accused:—*Held*: evidence of facts not included in the statutory notice to accused must not be given at the trial by the prosecution or by any of its witnesses, & the conviction as a habitual criminal must be quashed.—*R. v. BAXTER* (1924), 132 L. T. 256; 27 Cox, C. C. 689; 18 Cr. App. Rep. 127, C. C. A.

5303b. — —.]—No misconduct, whether criminal or not, may be given in evidence on the trial of an allegation of being a habitual criminal unless the statutory notice thereof has been served.—*R. v. STOKELL* (1924), 18 Cr. App. Rep. 155, C. C. A.

5303c. — —.]—*R. v. TYREMAN*, No. 5359b, post.

5303d. — —.]—Evidence that accused is an associate of thieves is not admissible, as an allegation of being a habitual criminal, unless notice has been given of it.—*R. v. YARWOOD* (1928), 21 Cr. App. Rep. 25, C. C. A.

5304a. Must go to question whether prisoner habitual criminal when charged.]—*R. v. WINN*, No. 5355a, post.

5307. *Add. Annotation*:—*Consd. R. v. Hayward* (1927), 137 L. T. 64.

5308a. — —.]—When accused is charged with being a habitual criminal, the three convictions forming the basis of the charge under Prevention of Crime Act, 1908 (c. 59), s. 10 (2) (a), must be strictly proved; but evidence of other convictions may be given, without production of the record & evidence identifying accused with those convictions, as "evidence of character & repute" under sect. 10 (5), on the question whether accused is or is not leading persistently a dishonest or criminal life. Even apart from the statutory provision, such evidence can be given if there is any evidence that accused has admitted the convictions.—*R. v. HAYWARD* (1927), 137 L. T. 64; 28 Cox, C. C. 342; sub nom. *R. v. HAYWARD*, *R. v. LAWRENCE*, 43 T. L. R. 356; 20 Cr. App. Rep. 33, C. C. A.

5312a. — —.]—Applt. was convicted of shopbreaking, & was sentenced to three years' penal servitude. He was also found to be a habitual criminal on the ground that he had been convicted on three previous occasions & that he was leading persistently a dishonest or criminal life, & he was sentenced to five years' preventive detention. In Sept. 1923 applt. was sentenced to twelve months' imprisonment as a suspected person, & he was released on July 23, 1924. From Sept. to Dec. 1924 he was in honest employment. He committed the shopbreaking for which he had now been sentenced on Jan. 2, 1925:—*Held*: it was questionable whether, on these facts, the jury could properly have found applt. to be a habitual criminal, but if they had done so it must be on a direction to them that the burden of proof always rested on the prosecution to

#### PART XIII. SECT. 3, SUB-SECT. 8.

sb. Under Probation of Offenders Act, 1907 (c. 17).]—A licensed publican pleaded guilty to opening his licensed premises for the sale of intoxicating liquor during prohibited hours. His house was well conducted, & this was his first offence. The magistrate having given deft. the benefit of the above Act:—*Held*: as there was nothing in the evidence as to character

to bring the case within sect. 1, & the offence was not a trivial one, & there were no extenuating circumstances, the magistrate was not correct in law in giving deft. the benefit of the Act.

Before a magistrate deals with a case under the above Act, he should be satisfied that the case falls under one of the specific heads of sect. 1, & should state explicitly on which of the grounds he relies if he exercises the discretion conferred on him by the Act.

*v. BRENNAN*, [1926] 1 R. 482.—IR.

so. "Suspended sentence"—Meaning of.]—The expression as used in Criminal Code, s. 1081, does not mean or infer that sentence must be passed & its operation then suspended; it means that no sentence will be passed unless & until the offender is called upon to appear & receive judgment.—*R. v. HIRSH*, [1924] 2 W. W. R. 342; 42 Can. Crim. Cas. 158.—CAN.



show that during the relevant period applt. had been leading, persistently, a dishonest or criminal life; as there were passages in the summing up which might have conveyed to the jury that, when the prosecution had gone a certain length, the burden rested on applt. to show that he had turned over a new leaf, the conviction must be quashed.—*R. v. DRISCOLL* (1925), 89 J. P. 104; 41 T. L. R. 425; 18 Cr. App. Rep. 184, C. C. A.

**5314a.** ———.]—(1) On the trial of an allegation that prisoner is a habitual criminal the direction that if the three statutory convictions are proved, he must be so found, is incorrect; his whole career must be considered by the jury.

(2) When a ct. in passing a sentence takes into account charges pending in another ct., the latter ought to be informed thereof, before passing sentence upon such other charges.—*R. v. TAYLOR* (1926), 19 Cr. App. Rep. 146, C. C. A.

**5319a.** ———.]—*R. v. HAYWARD*, No. 5308a, *ante*.

**5322.** *Add. Annotation:—Refd. R. v. White & Shelton* (1927), 20 Cr. App. Rep. 61.

**5331a.** ———.]—On the trial of an allegation of being a habitual criminal, the interval between the last two convictions is only one of several elements to be considered by the jury; others are accused's silence on his life during that interval, the nature of the crime, & the possession of housebreaking instruments & their number & character at the time of arrest.—*R. v. WHITE & SHELTON* (1927), 20 Cr. App. Rep. 61, C. C. A.

**5341a.** ———.]—*R. v. WHITE & SHELTON*, No. 5331a, *ante*.

**5347.** *Add. Annotations:—Refd. R. v. Lavender* (1927), 20 Cr. App. Rep. 10; *R. v. White & Shelton* (1927), 20 Cr. App. Rep. 61.

**5352a.** ———.]—The mere fact that accused has done honest work in his latest interval of liberty is not a defence to the allegation that he is a habitual criminal.—*R. v. HAYES* (1926), 90 J. P. 190; 19 Cr. App. Rep. 157, C. C. A.

**5355a.** ———.]—*Duty of judge.*—(1) The direction on the allegation of being a habitual criminal must explain the merits of an interval of honest work in each case.

(2) The essential question is whether prisoner is a habitual criminal at the time when he is so charged.—*R. v. WINN* (1925), 69 Sol. Jo. 574; 19 Cr. App. Rep. 1, C. C. A.

**5355b.** ———.]—A direction on the allegation of being a habitual criminal must deal with an interval of honest work.—*R. v. HARRY* (1928), 21 Cr. App. Rep. 21, C. C. A.

**5355c.** ———.]—On the charge of being a habitual criminal, it is not a conclusive defence that accused has done honest work since his last release; it is for the jury on all the facts, including the most recent offence proved against him, to say whether he was, at the time of its commission, "leading persistently a dishonest or criminal life."—*R. v. LAVENDER* (1927), 20 Cr. App. Rep. 10, C. C. A.

**5357.** *Add. Annotation:—Consd. R. v. Norman*, [1924] 2 K. B. 315.

**5358.** *Add. Annotation:—Consd. R. v. Norman*, [1924] 2 K. B. 315.

**5359a.** For the existing paragraph in original volume substitute the following paragraph:—

———.]—Where a person who has been found to be a habitual criminal & has been sentenced to preventive detention subsequently commits another crime & a notice is served upon him under the above sub-sect., the jury are not bound to find prisoner to be at the time when the verdict is given a habitual criminal. In every case it is a question of fact for the jury to say whether or not prisoner is still a habitual criminal, & prisoner is entitled, notwithstanding that he has previously been found to be a habitual criminal & sentenced to preventive detention, to call evidence to show that he is not at the material time a habitual criminal.—*R. v. NORAN*, [1924] 2 K. B. 315; 93 L. J. K. B. 383; 131 L. T. 29; 88 J. P. 125; 40 T. L. R. 693; 68 Sol. Jo. 814; 27 Cox, C. C. 621; 18 Cr. App. Rep. 81, 119, C. C. A.

*Annotation:—Refd. R. v. Tyreman* (1925), 19 Cr. App. Rep. 4.

**5359b.** ———.]—*Conviction remitted.*

(1) There ought not to be two indictments when all charges may be preferred in one.

(2) Nothing must be stated in the presence of jurors about the allegation of being a habitual criminal until the primary charge is disposed of.

(3) When a conviction as a habitual criminal has been remitted in view of the opinion of the Ct. of Criminal Appeal, it ought not to be alleged against prisoner on a subsequent trial.

(4) On the issue whether prisoner has been leading an honest life, no evidence is admissible of periods or of facts which has not been set out in the statutory notice.—*R. v. TYREMAN* (1925), 19 Cr. App. Rep. 4, C. C. A.

**5361a.** ———.]—Before a sentence of preventive detention can be passed three things are requisite: first, that prisoner shall have been convicted of being a habitual criminal; secondly, that the ct. shall have taken such a view of the substantive crime of which prisoner has then been convicted as to think it right, by reason of that crime & not for any other reason, to pass a sentence of penal servitude; & thirdly, that the ct., in the exercise of its independent discretion, shall be of opinion that by reason of the criminal habits & mode of life of prisoner it is expedient for the protection of the public that he should be kept in detention for a lengthened period of years. Sentence of preventive detention quashed where the judge at the trial had not exercised such independent discretion, but had treated the sentence as necessarily following the conviction as a habitual criminal.—*R. v. PAUL*, [1925] 1 K. B. 77; 94 L. J. K. B. 63; 132 L. T. 159; 88 J. P. 200; 41 T. L. R. 35; 69 Sol. Jo. 293; 27 Cox, C. C. 660; 18 Cr. App. Rep. 128, C. C. A.

*Annotation:—Expld. R. v. Turnbull* (1926), 19 Cr. App. 155.

**5369a.** ———.]—A term of penal servitude must not be inflicted, merely to found the jurisdiction of the ct. to impose preventive detention; it must be warranted by the primary offence.—*R. v. TURNBULL* (1926), 19 Cr. App. Rep. 155, C. C. A.

**5369b.** ———.]—*R. v. THOMAS* (OTHER-

- WISE WILLIAMS) (1928), 20 Cr. App. Rep. 172, C. C. A.
- 5372a. ———.]—R. v. PAUL, No. 5361a, *ante*.
- 5373a. ———.]—R. v. MCCARTHY (1910), 4 Cr. App. Rep. 198, C. C. A.
- 5373b. ———.]—R. v. HENRY (1927), 20 Cr. App. Rep. 117, C. C. A.
- 5385a. ———.]—R. v. BEARD (1927), 20 Cr. App. Rep. 155, C. C. A.
5398. *Add. Annotation*:—*Dlstd.* R. v. Douglas (1926), 19 Cr. App. Rep. 119.
5452. *Add. Annotation*:—*Apld.* Freeborn v. Leeming (1925), 89 J. P. 179.
5458. *Add. Annotation*:—*Refd.* Lewis v. Guest, Keen & Nettlefold, Watkins v. Same, Tucker v. Same, Ingram v. Crawshay (Cyfarthfa) (1927), 96 L. J. K. B. 664.
- 5478a. ———.]—(1) In order that a person may be

convicted under Larceny Act, 1916 (c. 50), s. 28 (2), of being "found by night having in his possession without lawful excuse implements of housebreaking", it must be proved that he was found by night, in possession by night, of housebreaking implements. The finding & the possession must both be by night, & the possession must be possession by a free man.

(2) Where a person has pleaded "Not guilty" to an indictment & is about to stand his trial, he ought not to be invited to plead, in the presence of those who, as jurors, will have to try him, to another indictment which recites a previous conviction.—R. v. HARRIS (1924), 94 L. J. K. B. 164; 132 L. T. 672; 89 J. P. 37; 41 T. L. R. 205; 27 Cox, C. C. 746; 18 Cr. App. Rep. 157, C. C. A.

## Part XIV.—Appeal to Court of Criminal Appeal.

5523. *Add. Annotation*:—*Refd.* R. v. Birch (1924), 93 L. J. K. B. 385.
5528. *Add. Annotation*:—*Consd.* R. v. Parkin (1928), 20 Cr. App. Rep. 173.
- 5528a. ——— In what circumstances.]—R. v. PARKIN (1928), 20 Cr. App. Rep. 173, C. C. A.
5534. *Add. Annotation*:—*Refd.* R. v. Cope (1925), 94 L. J. K. B. 662.
5535. *Add. Annotation*:—*Refd.* R. v. Teesdale (1927), 91 J. P. 184.
- 5536a. ———.]—The ct. will not review a

summary conviction of an incorrigible rogue, but it will insist that quarter sessions, for the purpose of sentence, shall hear nothing but legal evidence.—R. v. DEAN (1924), 18 Cr. App. Rep. 133, C. C. A.

*Annotations*:—*Refd.* R. v. Cope (1925), 94 L. J. K. B. 662; R. v. Cadwell (1927), 20 Cr. App. Rep. 60.

5536b. ———.]—The machinery of Vagrancy Act, 1824 (c. 83), must not be used merely because a crime is suspected, but the legal evidence to establish it fails. Sentence reduced.—R. v. CADWELL (1927), 20 Cr. App. Rep. 60, C. C. A.

### PART XIII. SECT. 6.

ki. ——— *Conviction for assault—May be sentenced to whipping.*—MAC KAY v. LAMB, [1923] S. C. (J.) 16.—SCOT.

q i. ———.]—*Re* R. v. SLINN (1926), 47 Can. Crim. Cas. 77; 37 B. C. R. 275.—CAN.

### PART XIII. SECT. 10, SUB-SECT. 1.

k i. ———.]—Pltf., after conviction for manslaughter, began an action for possession of premises in which she & her husband, deft., lived, the property standing in her name & being registered under Real Property Act:—*Held*: there was no disability or incapacity of bringing the action, by virtue of Forfeiture Act, 1870 (c. 23).—ZAWOJOWSKA v. ZAWOJOWSKA (Man.), [1922] 3 W. W. R. 492.—CAN.

### PART XIII. SECT. 11, SUB-SECT. 5.

5504ia. ———.]—Deft. was convicted of a second offence against Liquor Licence Act, the only evidence of the previous conviction being the production of a certificate under the Act, from which it appeared that a person of the same name & address as deft. had been previously convicted before the same magistrate:—*Held*: the evidence was sufficient.—R. v. ATKINSON (N.S.) (1910), 44 N. S. R. 521; 9 E. L. R. 212.—CAN.

### PART XIV. SECT. 1, SUB-SECT. 1.

ti. ———.]—An appeal lies to the Supreme Ct. of Canada under Criminal Code, s. 1024, read with sect. 1013, only where a dissenting opinion has been expressed by a member of the ct. of appeal, upon a question which that ct. deems a question of law & pursuant to its direction.—DAVIS v. R., [1924] 4 D. L. R. 843; [1924] S. C. R. 522.—CAN.

t ii. ———.]—R. v. DE BERTOLI, [1927] 3 D. L. R. 193; [1927] S. C. R. 454; 48 Can. Crim. Cas. 118.—CAN.

a i. ———.]—R. v. BOAK, [1926] S. C. R. 481; 46 Can. Crim. Cas. 164.—CAN.

a ii. ———.]—GURDITTA v. R., [1927] 2 D. L. R. 577; [1927] S. C. R. 80; 47 Can. Crim. Cas. 154.—CAN.

a iii. ———.]—BARRE v. R., [1927] 2 D. L. R. 1097; [1927] S. C. R. 284; 48 Can. Crim. Cas. 91.—CAN.

a iv. ———.]—HOWLEY v. R., [1927] 3 D. L. R. 265; [1927] S. C. R. 529; 48 Can. Crim. Cas. 139.—CAN.

a v. ———.]—CARDINAL v. R., [1927] 4 D. L. R. 325; [1927] S. C. R. 541; 48 Can. Crim. Cas. 243.—CAN.

cc i. ——— *Effect of repeal of provisions for stating case pending appeal.*—Where the trial judge reserved a case for the ct., but before it came on for argument, the sects. of the Code allowing a stated case were repealed, & the ct. set aside the conviction & ordered a new trial:—*Held*: the amendment of the Code did not abrogate the rights possessed by prisoners on the date when they were convicted, but such rights must be determined under the old & not under the new provisions of the Code, which were not then in force.—R. v. TAYLOR & YOUNG (1924), 41 Can. Crim. Cas. 212; 56 N. S. R. 500.—CAN.

sd. *Jury illegally constituted—Leave of Court of Appeal necessary.*—R. v. BOAK, [1925] 3 D. L. R. 887; [1925] S. C. R. 525; 44 Can. Crim. Cas. 218.—CAN.

5528 i. *Certificate granted—Only where judge has doubt on case.*—The trial judge must have an opinion or belief of the fitness of the appeal upon questions of fact or mixed questions of law & fact involved; the burden on

him would appear, therefore, to be greater than if he were asked to grant leave to appeal.—R. v. PAYETTE, [1925] 1 D. L. R. 112; [1924] 3 W. W. R. 863.—CAN.

5528 ii. ——— *Form of certificate.*—A certificate stated generally that the case was a fit one for appeal:—*Held*: not such a certificate as 13 & 14 Geo. 5, c. 41, contemplated.—R. v. SCOTT & WILLIAMSON (1924), 56 O. L. R. 325; 43 Can. Crim. Cas. 364.—CAN.

5528 iii. *Whether applicable to trial without jury.*—R. v. TEWS, [1926] 1 W. W. R. 321; 45 Can. Crim. Cas. 116; 22 Alta. L. R. 161.—CAN.

### PART XIV. SECT. 1, SUB-SECT. 2.

ai. ———.]—Where it was for the trial judge to decide whether prisoner's explanation could reasonably be true, & it was to be assumed from the fact of his finding prisoner guilty that he thought it could not reasonably be true, in which the ct. concurred:—*Held*: not the function of the ct. to retry the case.—R. v. COOKE (1923), 57 N. S. R. 362.—CAN.

### PART XIV. SECT. 1, SUB-SECT. 3.

ci. ——— *What is—Not sentence for rape.*—R. v. DE YOUNG, R. v. LIDDIARD, R. v. DARLING (1927), 47 Can. Crim. Cas. 207; 60 O. L. R. 155.—CAN.

ss. *Jurisdiction of Supreme Court of Canada—To hear appeal from addition to sentence by lower court.*—There is no jurisdiction in the above ct. to entertain an appeal against an addition to sentence by appellate cts., as under Criminal Code, s. 1024, the right of appeal is restricted to an appeal against the affirmance of a conviction.—GOLDHAMMER v. R., [1924] 3 D. L. R. 1009; [1924] S. C. R. 290; 5 C. B. R. 129.—CAN.



5549a. — — —.]—R. v. LAMBERT (1926), 19 Cr. App. Rep. 131, C. C. A.

5550. *Add. Annotation*:—Consd. R. v. Smith, [1925] 1 K. B. 603.

5550a. — — —.]—R. v. SMITH, No. 1810b, *ante*.

5570a. — — —.]—R. v. MACWILLIAM (1928), 21 Cr. App. Rep. 31, C. C. A.

5572. *Add. Annotation*:—Refd. R. v. Porter (1927), 20 Cr. App. Rep. 55.

5574a. — — — Registrar must be informed at earliest possible moment.]—When leave is sought to add new grounds of appeal they should be communicated to the registrar at the earliest possible moment.—R. v. HODGSON (1924), 18 Cr. App. Rep. 7, C. C. A.

5577a. — — —.]—Substantial particulars of misdirection, & of any other objections to the summing up, must be included in the notice of appeal, or must be sent to the registrar with the notice of appeal.—R. v. CAIRNS (1927), 43 T. L. R. 455; 20 Cr. App. Rep. 44, C. C. A.

5577b. — — — Supplementary grounds — When allowed.]—R. v. PORTER, No. 3137a, *ante*.

5585. *Add. Annotation*:—Refd. R. v. Thompson (1925), 18 Cr. App. Rep. 167.

5585a. — — —.]—An applt. may only in exceptional circumstances consent by counsel to be absent.—R. v. THOMPSON (1925), 18 Cr. App. Rep. 167, C. C. A.

5596a. Official transcript of judgment at trial—How far binding.]—The ct. is bound by the official transcript of a judgment of the trial ct., in the absence of evidence of error therein.

—R. v. MARTIN (1927), 20 Cr. App. Rep. 103, C. C. A.

5604. *Add. Annotation*:—Refd. R. v. Porter (1927), 20 Cr. App. Rep. 55.

5605. *Add. Annotation*:—Refd. R. v. Porter (1927), 20 Cr. App. Rep. 55.

5607a. — — —.]—In each of the following cases—(1) a convict under sentence of penal servitude & preventive detention who appeals only against the sentence of preventive detention; (2) a prisoner under sentence of imprisonment & flogging who appeals only against the flogging; (3) a prisoner under sentence of imprisonment & a recommendation to deportation who appeals only against deportation; (4) a prisoner under concurrent sentences of imprisonment & penal servitude who appeals only against the penal servitude; (5) a prisoner under one sentence who appeals only against a sentence consecutive thereon—the person appealing is an applt. within Criminal Appeal Act, 1907 (c. 23), s. 14, & should be treated as such pending the determination of his appeal.—R. v. ROSS, R. v. FRIEND, R. v. BEATTIE, R. v. LLEWELLYN, R. v. YOUNG (1924), 131 L. T. 26; 88 J. P. 90; 40 T. L. R. 617; 27 Cox, C. C. 615; 18 Cr. App. Rep. 55, C. C. A.

5673a. — — —.]—The ct. will, if it thinks fit, hear a plea of insanity even though it was not raised at the trial.—R. v. CANHAM (1925), 18 Cr. App. Rep. 163, C. C. A.

5739a. S. P. R. v. HATCH & SMITH (1928), 20 Cr. App. Rep. 181, C. C. A.

#### PART XIV. SECT. 2.

5566 i. — — — Discretion of court.]—It is not the practice of the Ct. of Criminal Appeal to entertain any application for an extension of time, whether to apply to the trial judge for a certificate for leave to appeal, or to give notice of appeal, or to give notice of application for leave to appeal, if applt. does not, at the time of applying for such extension of time, show that he proposes to rely upon grounds of appeal, or grounds for applying for leave to appeal, which are grounds such as can be entertained by the ct. in the exercise of its statutory jurisdiction.—A.-G. v. M'GANN, [1927] 1 R. 503.—IR.

sk. — — — Notice of appeal defective.]—R. v. MOYLE (Ont.), [1927] 3 D. L. R. 639; 47 Can. Crim. Cas. 349.—CAN.

#### PART XIV. SECT. 5, SUB-SECT. 1.—A.

5630 v. — — —.]—The ct. hearing an appeal is not warranted in weighing probabilities & substituting its view for that of the jury, to which the greatest weight must still be given.—R. v. DE BRUGGE, [1924] 4 D. L. R. 496; 55 O. L. R. 507.—CAN.

5630 vi. — — —.]—R. v. BURKE (1924), 44 Can. Crim. Cas. 205.—CAN.

#### PART XIV. SECT. 6, SUB-SECT. 1.

sm. In Ireland.]—Practice & procedure, as to applications to allow fresh evidence on appeal, laid down by the Ct. of Criminal Appeal.—A.-G. v. M'GANN, [1927] 1 R. 503.—IR.

#### PART XIV. SECT. 6, SUB-SECT. 3.

5740 iii. — — —.]—An application must be refused, where the person whom it was sought to call had been present in ct. at the time of the trial & available to be called by accused or his counsel if they desired to do so.—R. v. CRONAN (1924), 41 Can. Crim. Cas. 320; 57 N. S. R. 25.—CAN.

5766 ii. — — —.]—The defence having been permitted for the purpose of securing a new trial to read the affidavit of one who it contended should have been called as a witness by the prosecution:—*Held*: the omission to call such witness did not result in such a miscarriage of justice, or the possibility of it, as to warrant a new trial.—R. v. GALLAGHER, [1924] 4 D. L. R. 1059; 3 W. W. R. 357.—CAN.

sp. No opportunity of cross-examining former witness on statement at trial.]—R. v. VYE (1925), 44 Can. Crim. Cas. 249; [1925] 3 W. W. R. 100.—CAN.

#### PART XIV. SECT. 6, SUB-SECT. 5.

m. Read now "5793 i." 5793 ii. — — —.]—R. v. HUBLEY (1925), 57 N. S. R. 537.—CAN.

#### PART XIV. SECT. 7, SUB-SECT. 1.

p i. — — — Criminal Appeal (Scotland) Act, 1926 (c. 15).]—The Ct. of Criminal Appeal is not a ct. of review in the sense in which that term is used in civil procedure; it cannot upset a verdict merely because it disagrees with the view either of the evidence or of the credibility of the witnesses on which it proceeded; it cannot interfere unless it thinks the verdict unreasonable. The test of unreasonableness is similar to that applied to verdicts obtained in civil jury trials, viz., was the verdict so flagrantly wrong that no reasonable jury, acting honestly under proper direction, could have given it.—WEBB v. H.M. ADVOCATE, [1927] S. C. (J.) 92.—SCOT.

b i. — — —.]—Deft. was tried on an indictment charging commission of an offence & was convicted of an "attempt to commit" that offence:—*Held*: the evidence was sufficient to sustain the verdict, & his appeal must be dismissed.—R. v. GING (1924), 57 N. S. R. 196.—CAN.

b ii. — — —.]—Where accused is charged with having committed a crime at a named place in a named county &

province, & a place with such name is referred to in the evidence at the trial, the fact that there is nothing in the evidence to show that the place is within such county or province:—*Held*: not such an omission as to give ground for an appeal.—R. v. PAYETTE, [1925] 1 D. L. R. 112; [1924] 3 W. W. R. 863.—CAN.

b iii. — — —.]—Where the Crown's case was founded on the evidence of a very young child, who contradicted herself on the vital point in the trial, & on several minor matters:—*Held*: a conviction founded on such evidence could not be sustained.—R. v. GIRONNE (1925), 34 B. C. R. 554.—CAN.

b iv. — — —.]—R. v. MCKENZIE (1926), 58 N. S. R. 464.—CAN.

b v. — — —.]—Findings of the ct. or a jury on questions of fact are only to be set aside where the findings are obviously & palpably wrong, or are unreasonable & cannot be supported by the evidence.—R. v. M. (1926), 46 Can. Crim. Cas. 80; 58 N. S. R. 512.—CAN.

b vi. — — —.]—Appeal dismissed.—R. v. DAVIDSON (1926), 47 Can. Crim. Cas. 80; 59 N. S. R. 179.—CAN.

b vii. — — —.]—Appeal dismissed.—R. v. NICHOLSON (1926), 47 Can. Crim. Cas. 113; 59 N. S. R. 323.—CAN.

b viii. — — —.]—Appeal dismissed.—R. v. HADDAD (1927), 47 Can. Crim. Cas. 163; 59 N. S. R. 187.—CAN.

b ix. — — —.]—Circumstances in which an appeal against a conviction for forgery, by making interlineations in a document, was allowed.—R. v. ZERERKO (Sask.) (1927), 48 Can. Crim. Cas. 87.—CAN.

bx. — — — Variance between evidence & charge—As to date of offence.]—Conviction quashed.—R. v. DAVIES (Alta.), [1927] 2 W. W. R. 605; 49 Can. Crim. Cas. 86.—CAN.

b xi. — — —.]—The Ct. of Criminal Appeal quashed a verdict & sentence, where the evidence was defective in some important respects, & the evi-



- 5800a. **Conflicting medical views.**—The mere fact that conflicting medical views of the evidence in a case were put before the jury is not a ground for granting leave to appeal.—*R. v. THORNE* (1925), 69 Sol. Jo. 493; 18 Cr. App. Rep. 186, C. C. A.
- 5802a. **Unsatisfactory identification.**—Conviction quashed.—*R. v. HITCHCOCK* (1926), 19 Cr. App. Rep. 181, C. C. A.
- 5802b. **Photograph of accused published in newspaper.**—*R. v. MORRISON*, 6 Cr. App. Rep. 159, C. C. A.
- 5802c. **Insanity—Supervening after trial.**—*R. v. DRISCOLL & ROWLANDS* (1928), 20 Cr. App. Rep. 161, C. C. A.
- 5806a. **Indictment alleging offence under repealed section of statute.**—Where a person is convicted on an indictment framed under a repealed section of a statute, the Ct. of Criminal Appeal will quash the conviction.—*R. v. TAYLOR* (1924), 93 L. J. K. B. 912; 88 J. P. 152; 40 T. L. R. 836; 69 Sol. Jo. 12; 22 L. G. R. 681; 18 Cr. App. Rep. 105, C. C. A.
- 5840a. ———.—*R. v. DANIELS* (1927), 20 Cr. App. Rep. 127, C. C. A.
5850. **Add. Annotation:—***Reid. R. v. Rice* (1927), 20 Cr. App. Rep. 21.
- 5850a. ———.—The exercise of the jurisdiction under Criminal Appeal Act, 1907 (c. 23), s. 4, depends on the circumstances of the particular case, whatever may be the opinion of the judge who tried it.—*R. v. RICE* (1927), 20 Cr. App. Rep. 21, C. C. A.
- Annotation:—Reid. R. v. Davidson* (1927), 20 Cr. App. Rep. 66.
- 5850b. ———.—*R. v. DAVIDSON*, No. 3129b, *ante*.
- 5856a. ———.—*R. v. RICHARDS*, No. 6230a, *post*.
- 5856b. ———.—Conviction quashed on the grounds of non-direction & of receipt of inadmissible evidence.—*R. v. HOWARTH* (1926), 19 Cr. App. Rep. 102, C. C. A.
- 5856c. ———.—*R. v. BERRY* (1926), 19 Cr. App. Rep. 113, C. C. A.
5867. **Add. Annotation:—***Distd. R. v. King* (1927), 20 Cr. App. Rep. 158.
- 5870a. ———.—Convictions quashed on the ground of evidence of previous convictions having been wrongly admitted.—*R. v. GRAHAM, R. v. ANDERSON* (1924), 18 Cr. App. Rep. 8, C. C. A.
- 5870b. ———.—*R. v. KING* (1927), 20 Cr. App. Rep. 158, C. C. A.
- 5873a. ———.—*v. HASLAM*, No. 2839a, *ante*.
- 5877a. ———.—*R. v. HOMER* (1926), 19 Cr. App. Rep. 118, C. C. A.
5884. **Add. Annotation:—***Reid. Godman v. Times Publishing Co.*, [1926] 2 K. B. 273.
5887. **Add. Annotations:—***Reid. R. v. Dunkley* (1926), 134 L. T. 632; *R. v. McLean* (1926), 134 L. T. 640.
5906. **Add. Annotation:—***Consd. R. v. Baldwin* (1925), 133 L. T. 191.
- 5926a. ———.—*R. v. HOWARTH*, No. 5856b, *ante*.
- 5927a. ———.—Where the defence is an *alibi*, the jury must be pointedly directed on the identification.—*R. v. PHILLIPS* (1924), 89 J. P. 16; 41 T. L. R. 190; 18 Cr. App. Rep. 151, C. C. A.
- 5927b. **Direction as to time.**—*R. v. SMITH*, No. 6066a, *post*.
- 5927c. ———.—Where an *alibi* is set up as a defence, the jury must be directed that if it fails they must consider the facts of the case on their merits.—*R. v. CHEW* (1926), 19 Cr. App. Rep. 73, C. C. A.
- 5929a. ———.—When in a trial for larceny asportation of documents has been proved, there must be a direction whether it took place *animo furandi* or not.—*R. v. JONES* (1925), 19 Cr. App. Rep. 39, C. C. A.
- 5932a. ———.—**By ballee—Intent to defraud.**—*R. v. MOORE*, No. 3007a, *ante*.
- 5932b. **Breaking & entering—Breaking.**—*R. v. LLOYD*, No. 2839b, *ante*.
- 5932c. ———.—On an indictment charging breaking & entering, a breaking in law must be proved, & the jury must be distinctly charged on this point.—*R. v. BRIERLEY* (1924), 18 Cr. App. Rep. 136, C. C. A.
- 5938a. ———.—The gist of the crime of obtaining by false pretences is an intent to defraud: direction on this point must be clear.—*R. v. RENTON* (1925), 19 Cr. App. Rep. 33, C. C. A.
- 5938b. ———.—On a charge of obtaining false pretences there must be a direction on the issue of intent.—*R. v. KAY* (1925), 19 Cr. App. Rep. 42, C. C. A.
5959. **Add. Annotations:—***Consd. R. v. Thorpe*

dence, such as it was, was not presented to the jury in such a way as to bring sufficiently clearly before them the questions they had to determine.—*A.-G. v. SMITH*, [1927] 1 L. 564.—*IR. st. Court may reduce sentence—Although no appeal from sentence.*—*R. v. MUSGRAVE (N. S.)* (1926), 46 Can. Crim. Cas. 45.—*CAN.*

**PART XIV. SECT. 7, SUB-SECT. 4.**  
5824 v. ———.—*R. v. BERGER*, [1925] 2 D. L. R. 237; 43 Can. Crim. Cas. 301.—*CAN.*

5824 vi. ———.—Defts. were convicted of the offences of conspiring to defraud a city corp. of money due to the corp. for taxes:—*Held*: an inference of guilty knowledge or belief could not properly be drawn beyond all reasonable doubt, & with such degree of certainty as would warrant the convictions, which were accordingly quashed.—*R. v. EPSTEIN, R. v. WALKER, R. v. SPERON* (1925), 43 Can. Crim. Cas. 348; 50 O. L. R. 587.—*CAN.*

5824 vii. ———.—Deft. was

convicted of rape:—*Held*: having regard to the evidence, the verdict was unreasonable & could not be supported & must be set aside.—*R. v. HUBLEY* (1925), 58 N. S. R. 113.—*CAN.*

5824 viii. ———.—*R. v. WAH SING CHOW (B. C.)* (1927), 48 Can. Crim. Cas. 144.—*CAN.*

5843 viii. ———.—*R. v. NICHOLSON* (1926), 47 Can. Crim. Cas. 113; 59 N. S. R. 323.—*CAN.*

5843 ix. ———.—*R. v. MAY (Sask.)*, [1927] 1 D. L. R. 753; 47 Can. Crim. Cas. 118.—*CAN.*

**PART XIV. SECT. 7, SUB-SECT. 5.**

5856 vii a. *S. P. R. v. CHIN CHONG* (1921), 29 B. C. R. 527.—*CAN.*

5856 xvi. ———.—*R. v. ORTYNSKY*, [1927] 2 D. L. R. 973; [1927] 1 W. W. R. 957; 47 Can. Crim. Cas. 319; 21 Sask. L. R. 448.—*CAN.*

s (p. 522) i. ———.—*Irregularities at former trial—Prosecution for perjury.*—The Ct. can take into consideration circumstances & irregularities as to evidence, which occurred not at the trial,

the verdict at which is in appeal, but at a former trial where the perjury for which accused has been convicted was alleged to have been committed.—*R. v. CIESLENSKI*, [1924] 1 W. W. R. 82; 41 Can. Crim. Cas. 195.—*CAN.*

**PART XIV. SECT. 7, SUB-SECT. 7.—**  
**A. (a).**

a i. ———.—*R. v. AVERILL*, [1927] 2 W. W. R. 310; 48 Can. Crim. Cas. 121; 21 Sask. L. R. 679.—*CAN.*

a ii. ———.—*R. v. COOPER (Ont.)*, [1927] 4 D. L. R. 1093; 49 Can. Crim. Cas. 87.—*CAN.*

**PART XIV. SECT. 7, SUB-SECT. 7.—**  
**A. (b).**

sb. *Bigamy—Felonious intent.*—Where the trial judge directed the jury that if accused intended to be married a second time, his first wife being alive to his knowledge & the first marriage being a lawful marriage, there was felonious intent:—*Held*: this direction was right.—*R. v. KENNEDY*, [1923] S. A. S. R. 183.—*AUS.*

(1925), 138 L. T. 95. *Refd.* R. v. Canham (1925), 18 Cr. App. Rep. 163.

5976. *Add. Annotation*:—*Folld.* R. v. Moore (1924), 18 Cr. App. Rep. 29.

6013. *Add. Annotation*:—*Refd.* R. v. Fisher (1926), 19 Cr. App. Rep. 166.

6056. *Add. Annotations*:—*Consd.* R. v. Evans (1924), 88 J. P. 196. *Apld.* R. v. Beebe (1925), 133 L. T. 736. *Refd.* R. v. Ross (1924), 18 Cr. App. Rep. 141; R. v. Harris, [1927] 2 K. B. 587.

6063. *Add. Annotation*:—*Refd.* R. v. Roberts & Morriss (1926), 134 L. T. 635.

6064. *Add. Annotations*:—*Consd.* R. v. Whitehead (1928), 139 L. T. 640. *Refd.* Statham v. Statham (1928), 45 T. L. R. 127.

6066a. Direction that corroboration exists not warranted on facts.]—(1) It is a ground for quashing a conviction, if the jury is directed that there is corroboration of an accomplice's evidence, when the ct. thinks there is none.

(2) In dealing with the defence of an *alibi*, the ct. of trial ought to direct the jury on any part of the period of time which is relevant.

(3) Without saying that in every case it is proper to sentence an accomplice pleading guilty before he gives evidence for the Crown, it is obvious that where he is not sentenced it is more than ever necessary to warn the jury about accepting his testimony, because his object is to mitigate his own punishment (AVORY, J.).—R. v. SMITH (1924), 18 Cr. App. Rep. 19, C. C. A.

PART XIV. SECT. 7, SUB-SECT. 7.—C. (a).

6006 v. ———.]—In directing the jury, the judge gave them the impression that mere knowledge of the crime without any aiding or abetting thereof was sufficient to make accused a principal offender.—*Held*: a misdirection, & new trial ordered.—R. v. DUTCHAK, [1924] 4 D. L. R. 973.—CAN.

6016 iv. ———.]—It was contended that the judge misdirected the jury in reading to them a sect. of the Criminal Code which had been repealed before the trial took place.—*Held*: as the sect. in question was simply a statement of the common law & could not prejudicially affect prisoner, the case was within the Code, s. 1014 (c), & the objection had no effect.—R. v. McLACHLAN (1923), 56 N. S. R. 413; 41 Can. Crim. Cas. 249.—CAN.

6016 v. ———.]—The fact that the trial judge in charging the jury misstated the law will not, in view of his subsequent correction of this statement after the jury were called back, justify the setting aside of the conviction.—*STEELE v. R.*, [1924] 4 D. L. R. 175; [1924] 1 W. W. R. 1146.—CAN.

PART XIV. SECT. 7, SUB-SECT. 7.—C. (b) i.

6019 iii. ———.]—Where homicide was proved & was not denied, but the defence of temporary insanity caused by intoxicating liquor was set up:—*Held*: the omission from the trial judge's charge of an instruction that accused was entitled to the benefit of a reasonable doubt was a substantial to a

44 Can. Crim. Cas. 209; 35 B. C. R. 81.—CAN.

PART XIV. SECT. 7, SUB-SECT. 7.—C. (b) ii.

d i. ———.]—The omission to place clearly before the jury the law as to the right of private defence of the person, as bearing on the facts set up,

& to direct their attention to the point whether, & how far, accused was justified in attacking deceased, in order to prevent injury to himself:—*Held*: a misdirection vitiating the trial.—R. v. ASERUDDIN (1926), 1 L. R. 53 Calc. 980.—IND.

PART XIV. SECT. 7, SUB-SECT. 8.—A.

i. ———.]—*Criminal Code*, s. 1002.]—Def. was convicted of having had carnal knowledge of a feeble-minded girl:—*Held*: as there was no evidence in corroboration, the conviction must be quashed.—R. v. SIMMS (1924), 43 Can. Crim. Cas. 28; 57 N. S. R. 476.—CAN.

ii. ———.]—*HUBIN v. R.*, [1927] 4 D. L. R. 760; [1927] S. C. R. 442; 48 Can. Crim. Cas. 172.—CAN.

PART XIV. SECT. 7, SUB-SECT. 8.—B.

6064 vii. ———.]—The rule as to the danger of convicting upon the uncorroborated testimony of an accomplice is not a strict rule of law, but merely one of practical wisdom & carefulness, & the omission of the trial judge to give the customary warning, even if technically an error, does not constitute such a miscarriage of justice or substantial wrong as to vitiate the conviction.—R. v. GALLAGHER, [1924] 4 D. L. R. 1059; 3 W. W. R. 357.—CAN.

6064 viii. ———.]—A charge to the jury, that, while it was dangerous to convict on the evidence of an accomplice without corroboration, yet in this case it was the right & duty of the jury, if on the accomplice's evidence they felt no reasonable doubt of the guilt of accused, to convict him:—*Held*: a misdirection.

If a judge discusses the evidence of an accomplice & points out its consistency, he should explain to the jury the considerations which prompt an accomplice to testify against accused.—R. v. SLEE, [1926] 1 D. L. R. 729; 45 Can. Crim. Cas. 190; 58 O. L. R. 313.—CAN.

6066b.

.]—Where the evidence against a prisoner is the uncorroborated evidence of an accomplice the judge must warn the jury that, while they may convict on such evidence, it is always, not generally, dangerous to do so. It is wrong for the judge to tell the jury that if they are quite certain in such a case that the accomplice is telling the truth they ought to act on it.—R. v. BEEBE (1925), 133 L. T. 736; 89 J. P. 175; 41 T. L. R. 635; 28 Cox, C. C. 47; 19 Cr. App. Rep. 22, C. C. A.

*Annotation*:—*Refd.* R. v. Harris, [1927] 2 K. B. 587.

6067a.

.]—The correct direction on a charge of indecent assault is that it is not safe to convict on the uncorroborated evidence of prosecutrix, but that the jury if they are satisfied of her veracity, may, after paying attention to that warning, nevertheless convict.—R. v. JONES (1925), 19 Cr. App. Rep. 40, C. C. A.

6068a. ———.]—When consent is the defence to a charge of rape, the jury must be warned of the absence of corroboration of the female's story.—R. v. SALMAN (1924), 18 Cr. App. Rep. 50, C. C. A.

6069a. ———.]—When the only witness for the Crown on a charge of larceny is the receiver of the stolen property, the jury should be warned that they may require corroboration.—R. v. DIXON (1925), 19 Cr. App. Rep. 36, C. C. A.

6072a. ——— Evidence of young children.]—R. v. MARSHALL, No. 3136a, *ante*.

6064 ix. ———.]—When the evidence against a prisoner is the uncorroborated evidence of an accomplice, it is wrong for the judge to tell the jury that, if they are quite certain that the accomplice is telling the truth, they have not only the right to convict prisoner but that it is their duty to do so. In such a case, the judge should follow the rule laid down in R. v. Baskerville, No. 6056; the judge should warn the jury of the danger of convicting prisoner on the uncorroborated testimony of an accomplice &, in his discretion, may advise them not to convict upon such evidence, but he should point out to the jury that it is within their legal province to convict upon such unconfirmed evidence.—*GOVIN v. R.*, [1926] S. C. R. 539.—CAN.

6064 x. ———.]—Where the evidence of accomplices is uncorroborated, juries should be instructed as nearly as possible in the language in which the rule of practice laid down in *Govin v. R.*, No. 6064 ix, *ante*, is expressed.

A charge which in effect puts the evidence of an accomplice on the same footing as that of an ordinary witness amounts to a miscarriage of justice.—R. v. BACHIU (Sask.), [1927] 3 D. L. R. 1179; [1927] 2 W. W. R. 171; 48 Can. Crim. Cas. 53.—CAN.

*See, also*, cases in Part XII., Sect. 13, Sub-sect. 4, E., *ante*.

6067 iii. ———.]—A verdict of indecent assault founded solely on the testimony of prosecutrix not allowed to stand, where the judge did not warn the jury properly with respect to corroboration.—R. v. ELLERTON (Sask.), [1927] 4 D. L. R. 1126; [1927] 3 W. W. R. 564; 49 Can. Crim. Cas. 94.—CAN.

PART XIV. SECT. 7, SUB-SECT. 10.

a (p. 538) i. One jurymen not sworn.]—Where one of the additional panel of jurymen summoned, who was present & answered to his name when first called by the clerk, was not called to be sworn by the clerk who announced



6090. *Add. Annotations*:—*Folld. R. v. Dennis, R. v. Parker*, [1924] 1 K. B. 867; *Appld. R. v. Williams* (1925), 19 Cr. App. Rep. 67; *R. v. McDonnell* (1928), 20 Cr. App. Rep. 163.
6094. *Add. Annotation*:—*Folld. R. v. Hussey* (1924), 18 Cr. App. Rep. 121.
6110. *Add. Annotation*:—*Distd. R. v. Villars* (1927), 20 Cr. App. Rep. 150.
6111. *Add. Annotation*:—*Folld. R. v. Villars* (1927), 20 Cr. App. Rep. 150.
- 6112a. *Improper question put to prisoner—Prisoner undefended.*—*R. v. WEEKS* (1928), 20 Cr. App. Rep. 188, C. C. A.
6136. *Add. Annotation*:—*Refd. R. v. Morter* (1927), 20 Cr. App. Rep. 53.
6152. *Add. Citation*:—31 T. L. R. 401.
- 6169a. ———.]—The Ct. of Criminal Appeal does not make slight reductions of sentences. The ct. only interferes on matters of principle & on the ground of substantial miscarriages of justice.—*R. v. DUNBAR* (1928), 21 Cr. App. Rep. 19, C. C. A.
- 6177a. ———.]—Reduction of term of sentence in order to carry out intention of the trial judge.—*R. v. FIELDER* (1926), 135 L. T. 64; 90 J. P. 96; 28 Cox, C. C. 186; 19 Cr. App. Rep. 87, C. C. A.
- 6183a. ———.]—The ct. will amend an incorrect record, though it may not vary the sentence.—*R. v. SHARMAN* (1925), 19 Cr. App. Rep. 43, C. C. A.

that the panel was exhausted, which made it necessary to secure an additional jurymen from among those who had stood aside:—*Held*: an objection could not be allowed, as no substantial wrong or miscarriage of justice had occurred.—*R. v. McLACHLAN* (1923), 56 N. S. R. 413; 41 Can. Crim. Cas. 249.—CAN.

PART XIV. SECT. 7, SUB-SECT. 11.—D.

6115 vi. ———.]—*R. v. DE BERTOLI*, [1927] 3 D. L. R. 193; [1927] S. C. R. 454; 48 Can. Crim. Cas. 118.—CAN.

6115 vii. ———.]—*BROOKS v. R.*, [1928] 1 D. L. R. 268; 48 Can. Crim. Cas. 333.—CAN.

PART XIV. SECT. 7, SUB-SECT. 11.—E.

q i. ——— *After jurymen called—By person on panel.*—*Held*: a miscarriage of justice.—*R. v. McNAMARA*, [1926] 4 D. L. R. 880; 46 Can. Crim. Cas. 230; 59 O. L. R. 342.—CAN.

sj. *Disqualification of juror.*—*Held*: such disqualification did not cause a miscarriage of justice.—*R. v. BOAK*, [1925] 3 D. L. R. 887; [1925] S. C. R. 525; 44 Can. Crim. Cas. 218; *revg.*, [1925] 2 D. L. R. 803; [1925] 2 W. W. R. 40; 43 Can. Crim. Cas. 402; 35 B. C. R. 256.—CAN.

PART XIV. SECT. 8, SUB-SECT. 1.—A.

sk. *Jurisdiction of court.*—*R. v. FOX, R. v. SANSONE* (1925), 44 Can. Crim. Cas. 262.—CAN.

hi. ———.]—No definite principle can be laid down upon which a ct. of appeal should proceed in dealing with appeals for the reduction of sentences on the ground of excessive severity; all the circumstances should be carefully taken into account in each instance & full consideration given to matters of

h ii. ———.]—A sentence should be interfered with by a ct. of appeal only the trial judge proceeded on

some wrong principle or gave too great weight to particular circumstances: the fact that individual members of the ct. would have imposed a different sentence is not sufficient.—*R. v. GALLAGHER*, [1924] 4 D. L. R. 1059; 3 W. W. R. 357.—CAN.

h iii. ———.]—In considering the adequacy of a sentence, the ct. should be guided by the same considerations whether the appeal be taken for the reduction or increase of the sentence.—*R. v. HICKS*, [1925] 2 D. L. R. 1000; [1925] 1 W. W. R. 1155; 44 Can. Crim. Cas. 13; 19 Sask. L. R. 359.—CAN.

h iv. ———.]—*DUSTOOR v. R.* (1927), Q. R. 42 K. B. 520.—CAN.

h v. ———.]—Where prisoner was convicted of rape & sentenced to death:—*Held*: circumstances, such as low mentality & baneful environment, which were not brought to the attention of the judge, were sufficient to warrant a reduction of the penalty to twenty years' imprisonment & twenty lashes.—*R. v. MCCATHERN*, [1927] 2 D. L. R. 1142; 48 Can. Crim. Cas. 54; 60 O. L. R. 334.—CAN.

k i. ——— *Abortion.*—An appeal by an abortion-monger against a sentence of four years' imprisonment imposed on her on a conviction for abortion, dismissed.—*R. v. PETCH*, [1925] 4 D. L. R. 671; [1925] 3 W. W. R. 434; 35 Man. L. R. 299.—CAN.

PART XIV. SECT. 8, SUB-SECT. 1.—B.

6172 i. *Variation of sentence—Increase of sentence.*—The Ct. of Appeal is justified in increasing a sentence, if it clearly deems it justice to do so.—*R. v. GASCO* (1927), Q. R. 43 K. B. 116; 8 C. B. R. 291.—CAN.

n i. ———.]—Where an illegal punishment has been imposed, as imprisonment with hard labour where hard labour is not authorised for the offence in question, the ct. will not exercise its powers under Criminal Code, s. 1124, by striking out the unauthorised portion of the penalty in order to uphold the conviction after the illegal punishment has been suffered

6186a. ———.]—*R. v. PILLEY* (1926), 19 Cr. App. Rep. 101, C. C. A.

6187a. ——— *Sentence illegal.*—Sentence reduced in view of its illegality.—*R. v. JACKSON* (1926), 19 Cr. App. Rep. 159, C. C. A.

6187b. ———.]—*R. v. IRVING* (1927), 20 App. Rep. 131, C. C. A.

6203a. *Previous conviction—Court reluctant to hear evidence of in justification of sentence—No previous conviction proved at trial.*—*R. v. GANS* (1928), 21 Cr. App. Rep. 1, C. C. A.

6209a. *Offer of employment—By old employer.*—Sentence reduced.—*R. v. JACKSON* (1927), 20 Cr. App. Rep. 130, C. C. A.

6209b. *S. P. R. v. USHER* (1927), 20 Cr. App. Rep. 130, C. C. A.

6215a. ———.]—*R. v. READE* (1927), 20 Cr. App. Rep. 60, C. C. A.

6215b. ———.]—*R. v. MARTIN* (1928), 20 Cr. App. Rep. 187, C. C. A.

6219a. ———.]—*R. v. LLOYD* (1927), 20 Cr. App. Rep. 139, C. C. A.

6230a. *Housebreaking—To receiving stolen property.*—(1) Evidence improperly admitted at the trial may be a ground for quashing a conviction.

(2) On an indictment charging house-breaking, & knowingly receiving stolen property, if the latter count was not effective, the ct., when quashing the conviction in the former, will not substitute a verdict for

in whole or in part.—*R. v. Low QUONG*, [1924] 3 D. L. R. 666; 2 W. W. R. 695; 33 B. C. R. 522.—CAN.  
n ii. ——— *Imprisonment substituted for fine—Fine inadequate.*—*R. v. SYDORIK & ZOWATSKI* (Sask.), [1926] 3 W. W. R. 458.—CAN.

n iii. ——— *Not after sentence partly served.*—*R. v. NORTHUP* (N. S.) (1926), 46 Can. Crim. Cas. 74.—CAN.

PART XIV. SECT. 8, SUB-SECT. 1.—C.

6202 i. *Prisoner's state of health.*—While a convict's physical state may be taken into consideration in passing sentence, yet changes in his health thereafter more properly afford ground for an application for the clemency of the Crown than for an appeal against the sentence.—*R. v. ZIMMERMAN*, [1926] 2 W. W. R. 882; 46 Can. Crim. Cas. 78; 37 B. C. R. 277.—CAN.

PART XIV. SECT. 9.

6222 i. *Carnal knowledge—To indecent assault.*—*R. v. GIBONE* (1925), 34 B. C. R. 554.—CAN.

6225 i. *Obtaining by false pretences—To attempting to obtain.*—Where a party has been convicted of obtaining goods by false pretences, & on the indictment the jury could have found him guilty of some other offence, *e.g.* attempting to obtain, & it clearly appears by the jury's finding that they must have been satisfied of facts which proved him guilty of attempting:—*Held*: a ct. of appeal, instead of allowing or dismissing the appeal, may substitute a verdict of guilty of attempting to obtain.—*R. v. McMANUS*, [1924] 3 D. L. R. 297; 42 Can. Crim. Cas. 248; 51 N. B. R. 255.—CAN.

sa. *Breaking & entering dwelling-house by day—To stealing in dwelling-house.*—*R. v. SAM CHIN*, [1926] 2 D. L. R. 287; 45 Can. Crim. Cas. 291; 36 B. C. R. 397.—CAN.

sb. *Smuggling—Not to attempting to smuggle—Latter offence only triable summarily.*—*R. v. JOHES* (N. S.), [1926] 3 D. L. R. 659; 46 Can. Crim. Cas. 8.—CAN.



receiving, as applt. was not, in fact, called upon to explain his possession.—*R. v. RICHARDS* (1924), 18 Cr. App. Rep. 144, C. C. A.

**6234a. Exclusion of women from jury.]**  
—The discretion which a judge at a trial has of excluding women from a jury must be exercised judicially, & unless it is shown that it has not been so exercised the ct. will not order a *venire de novo*.—*R. v. VAQUIER* (1924), 18 Cr. App. Rep. 112, C. C. A.

**6234b. Denial of right of challenge.]**  
If deft. is wrongfully denied his right to challenge, the ct. will award a *venire de novo*.—*R. v. WILLIAMS* (1925), 19 Cr. App. Rep. 67, C. C. A.

**6237a. — — —.]—*R. v. LLOYD*, No. 2567a, ante.**

**6249a. — — — Procedure.]—*R. v. KNIGHTON***  
(1927), 20 Cr. App. Rep. 45, C. C. A.

**6262. Add. Annotation:—Mentd. *R. v. Noble***  
(1928), 20 Cr. App. Rep. 191.

**6263. Add. Annotation:—Refd. *R. v. Harris*,**  
[1927] 2 K. B. 587.

**6271. Before this case insert “*See, also, CROWN PRACTICE*, No. 797a.”**

**Add. Annotation:—Folld. *R. v. Maidstone Prison, Ex p. Maguire* (1925), 133 L. T. 710.**

**6277. Add. Annotation:—Mentd. *R. v. Cory*, [1927]**  
1 K. B. 810.

**6284. Add. Annotation:—Refd. *R. v. Maidstone Prison, Ex p. Maguire* (1925), 133 L. T. 710.**

**6293a. Order to repair highway—Highway Act, 1862 (c. 61), s. 18.]—Held: not a judgment in a “criminal cause or matter.”—*LOUGHBOROUGH HIGHWAY BOARD v. CURZON* (1886), 17 Q. B. D. 344; 55 L. J. M. C. 122; 55**

**L. T. 50; 50 J. P. 788; 34 W. R. 621; 2 T. L. R. 678, C. A.**

**Annotations:—Refd. *R. v. Poole Corpn.* (1887), 19 Q. B. D. 602; *Payne v. Wright* (1892), 61 L. J. M. C. 114.**

**6296. Add. Annotations:—Mentd. *Russell v. Russell***  
(1924), 93 L. J. P. 97; *Re A. B.’s Petn.* (1927), 97 L. J. P. 104; *Greenway v. A.-G.* (1927), 44 T. L. R. 124.

**6298a. — Invalidity of bye-law.]—Applt. was charged with frequenting a street for the purpose of betting contrary to a bye-law of a borough, but the charge was dismissed on the ground that the bye-law was *ultra vires* & unreasonable. On a case stated, the High Ct. held that the bye-law was valid:—Held: this being a “criminal cause or matter,” there was no appeal except for error of law apparent on the record, & even if the bye-law were, on the face of it, invalid, that would not be an error of law apparent on the record.—*BURNETT v. BERRY* (1896), 60 J. P. 550; 12 T. L. R. 464; 40 Sol. Jo. 564, C. A.**

**Annotations:—Appld. *McVittie v. Bolton JJ.*, [1924] W. N. 149. Refd. *Godwin v. Walker* (1896), 12 T. L. R. 367; *Teale v. Harris* (1896), 60 J. P. 744; *Jones v. Walters*, (1898), 78 L. T. 167; *Kitson v. Asho*, [1899] 1 Q. B. 425; *White v. Morley*, [1899] 2 Q. B. 34; *Thomas v. Sutters*, [1900] 1 Ch. 10; *Sutton Harbour Improvement Co. v. Foster* (1920), 123 L. T. 549; *Everton v. Walker* (1927), 137 L. T. 594.**

**6298b. “Error of law apparent on record.”]—*BURNETT v. BERRY*, No. 6298a, ante.**

**6298c. — — —.]—The effect of Jud. Act, 1873 (c. 66), s. 47, & Criminal Appeal Act, 1907 (c. 23), s. 20, is that there is no right of appeal to the Ct. of Appeal in a criminal cause or matter, even where the error is apparent on the record.—*McVITTIE v. BOLTON JJ.*, [1924] W. N. 149, C. A.**

After this case add the following new section:—

#### SECT. 15.—APPEALS.

To House of Lords.]—*See Part XV.*

## Part XV.—Appeal to House of Lords and Judicial Committee of the Privy Council.

**6301. Add. Annotations:—As to (1) Appld. *R. v. Berg, Britt, Carré & Lummies* (1927), 20 Cr. App. Rep. 38. Distd. *R. v. Cheshire*,**

***Lucas & Bottom* (1927), 20 Cr. App. Rep. 47. Refd. *Statham v. Statham* (1928), 45 T. L. R. 127.**

## Part XVI.—Costs, Compensation, Rewards and Restitution.

**6408. Add. Annotation:—Refd. *R. v. Ely JJ., Ex p. Mann* (1928), 45 T. L. R. 92.**

**6496a. *S. P. R. v. D'EYNCOURT* (1888), 21 Q. B. D. 109; 57 L. J. M. C. 64; 52 J. P. 628; 37 W. R. 59; 4 T. L. R. 455, D. C.**

**Annotations:—Refd. *Inkipin v. Roll* (1922), 126 L. T. 517; *Conn v. Turnbull* (1925), 89 J. P. Jo. 300.**

**6505. Add. Annotations:—Refd. *Lake v. Simmons*, [1926] 2 K. B. 51. Mentd. *Nanka-Bruce v. Commonwealth Trust* (1925), 94 L. J. P. C. 169; *Greer v. Downs Supply Co.*, [1927] 2 K. B. 28.**

#### PART XIV. SECT. 15.

**s. 1. To Supreme Court—Condition precedent—Certificate—By what court granted.]—The ct. to grant a certificate that a decision of the Ct. of Criminal Appeal involves a point of law of exceptional public importance, & that it is desirable in the public interest**

J.S.

that an appeal should be taken, is the Ct. of Criminal Appeal, & not the Supreme Ct.—*A.-G. v. MURRAY* (No. 2), [1926] 1 R. 300.—IR.

#### PART XVI. SECT. 1, SUB-SECT. 3.

**6441 i. Costs of defendant on acquittal—Libel.]—In Criminal Code, s. 1045,**

the word “information” means “criminal information,” & a dismissal by the magistrate of a charge laid in the usual way by information & complaint is not a “judgment for deft.”—*BUCZKO v. CHOBOTAR* (B. C.), [1926] 1 D. L. R. 1024; [1926] 1 W. W. R. 379; 45 Can. Crim. Cas. 216.—CAN.

## Part XVII.—Offences against the Sovereign.

6619. *Add. Annotations*:—*Mentd.* R. v. Harris, [1927] 2 K. B. 587; R. v. Noble (1928), 20 Cr. App. Rep. 191.  
 6722. For “(1628)” read “(1541).”  
 6723. For “(1628)” read “(1539).”  
 6726. For “(1628)” read “(1443).”  
 6727. For “(1628)” read “(1494).”  
 6732. For “(1628)” read “(1453).”  
 6733. For “(1628)” read “(1462).”

## Part XVIII.—Offences against Public Tranquillity.

6887. *Add. Annotation*:—*Refd.* Motor Union Insce. v. Boggan (1923), 130 L. T. 588. [1927] 2 K. B. 587; R. v. Noble (1928), 20 Cr. App. Rep. 191.  
 6890. *Add. Annotation*:—*Refd.* Jarvis v. Surrey County Council, [1925] 1 K. B. 554.  
 6931. *Add. Annotation*:—*Refd.* Glamorgan County Council v. Glasbrook, [1924] 1 K. B. 879.  
 6946. *Add. Annotations*:—*Mentd.* R. v. Harris, 6953. *Add. Annotation*:—*Mentd.* Lowe v. Bentley (1928), 44 T. L. R. 388.  
 7026. *Add. Annotation*:—*Refd.* Anchor Trust Co. v. Bell, [1926] Ch. 805.

## Part XX.—Offences relating to Administration of Justice.

7276. *Add. Annotation*:—*Refd.* Conn v. Turnbull (1925), 89 J. P. Jo. 300.  
 7416. *Add. Annotation*:—*Refd.* Conn v. Turnbull (1925), 89 J. P. Jo. 300.  
 7564a. *On constables to execute warrant.*—COLEMAN'S CASE (1619), 2 Roll. Rep. 78; 81 E. R. 671.  
*Annotation*:—*Refd.* Miller v. Knox (1838), 4 Bing. N. C. 574.

### PART XVII. SECT. 1, SUB-SECT. 1.

6515 i. *Breach of allegiance to the Crown—Status of State possessing internal sovereignty.*—The crime of high treason can be committed against a State which possesses internal sovereignty, even though its external powers may be limited in certain respects. The Govt. of the Union of South Africa, as mandatory of South-West Africa, possesses sufficient internal sovereignty to warrant a charge of high treason against an inhabitant of the mandated territory who takes up arms with hostile intent against the Govt. of that territory.—R. v. CHRISTIAN, [1924] App. D. 101.—S. AF.

### PART XVII. SECT. 1, SUB-SECT. 4.

e i. —.—]—The crime of treason is constituted by the perpetration of armed attacks upon the State or Govt. with hostile intent. The existence or otherwise of such hostile intent is to be gathered from all the circumstances of the case. Where accused committed acts of hostility towards the State by taking up arms with the express intention of coercing the Govt. & enforcing the will of himself & those acting with him upon the Govt.:—*Held*: accused had been properly convicted of treason.—R. v. ERASMUS, [1923] App. D. 73.—S. AF.

### PART XVIII. SECT. 7.

6821 ii. —.— *Meaning of “prize-fight.”*—R. PELKEY (1913), 24 W. L. R. 804; 4 W. W. R. 1055; 11 D. L. R. 701; 6 Alta. L. R. 103.—CAN.

### PART XVIII. SECT. 8, SUB-SECT. 1.

sn. *Meeting to maintain right bond fide believed to be possessed.*—Where five or more persons assemble for maintaining by force, or show of force, a right which they *bond fide* believe they possess, & not for enforcing by such force, or show of force, a right or supposed right of theirs, they do not constitute an unlawful assembly punishable under India Penal Code, s. 143.—

*Re* VEERABADRA PILLAI (1927), I. L. R. 51 Mad. 91.—IND.

### PART XVIII. SECT. 9, SUB-SECT. 7.

st. *Whether municipal corporation liable.*—GLOBE & RUTGERS FIRE INSURANCE CO. v. GLACE BAY CORPN. (N. S.), [1927] 1 D. L. R. 80.—CAN.

### PART XX. SECT. 2, SUB-SECT. 1.

7236 i. *Nature of the offence.*—Perjury is in itself a contempt of ct.—R. v. ZIZU NATANSON, [1927] 3 D. L. R. 758; [1927] 2 W. W. R. 155; 48 Can. Crim. Cas. 227; 21 Sask. L. R. 532.—CAN.

### PART XX. SECT. 2, SUB-SECT. 5.—A.

r i. —.— *Absence of examiner—Failure to file affidavit.*—An examination for discovery in a county ct. action not conducted in the presence of the deputy clerk is not an examination taken pursuant to County Cts. Act, R. S. M., 1913 (c. 44), & perjury does not lie against the person examined, even though the solrs. agreed that the clerk need not remain during the examination.

The fact that no affidavit was filed prior to such examination is not a bar to a prosecution for perjury, where accused voluntarily agreed to submit to & attended the examination & was sworn & examined.—R. v. ALLEN, [1925] 1 D. L. R. 57; [1925] 1 W. W. R. 718; 43 Can. Crim. Cas. 118.—CAN.

r ii. *S. P. R. v. KOHEL* (Sask.), (1926), 46 Can. Crim. Cas. 279; [1926] 3 W. W. R. 478.—CAN.

### PART XX. SECT. 2, SUB-SECT. 7.

si. —.—]—R. v. FERRISH & DE VASSE (1926), 58 N. S. R. 370.—CAN.

### PART XX. SECT. 2, SUB-SECT. 8.—A.

a i. —.— *Witness protected by Evidence Act, 1912 (c. 27).*—Evidence given at a trial at which the witness is granted the protection of Canada

Evidence Act, 1912, is not receivable against him on a prosecution for perjury on other occasions, e.g., on an inquest & preliminary hearing.—R. v. KRUSCHKOVSKI, [1925] 2 D. L. R. 167; [1925] 1 W. W. R. 426; 43 Can. Crim. Cas. 290.—CAN.

aii. —.—]—Accused was convicted of perjury in testifying in a civil action brought by the Crown against his brother for evading the payment of the proper duty on goods introduced into Canada by accused. The perjury was charged in respect of the statement by accused that he had intended such goods for the members of his family:—*Held*: the testimony of customs officials as to statements made by accused's brother to the customs appraiser on the strength of which the goods had been cleared, should not have been admitted.—R. v. ZIZU NATANSON (No. 2) (Sask.), [1927] 4 D. L. R. 1035; [1927] 3 W. W. R. 550; 49 Can. Crim. Cas. 80.—CAN.

sy. *Circumstantial evidence.*—A conviction for perjury may be founded on circumstantial evidence alone.—R. v. ZIZU NATANSON, [1927] 3 D. L. R. 308; [1927] 2 W. W. R. 127; 48 Can. Crim. Cas. 158; 21 Sask. L. R. 505.—CAN.

### PART XX. SECT. 2, SUB-SECT. 8.—B.

sa. *Writ of summons.*—*Held*: the evidence that the proceeding was a judicial proceeding was sufficient, although the writ of summons therein had not been produced.—R. v. GURDITTA, [1927] 1 W. W. R. 273; 47 Can. Crim. Cas. 103; 38 B. C. R. 66.—CAN.

sb. *Certified copy of record.*—Prior notice not necessary where admission by accused that impeached statements were made in judicial proceedings.—R. v. KOBOLD, [1927] 3 W. W. R. 294; 49 Can. Crim. Cas. 290; 37 Man. L. R. 37.—CAN.

### PART XX. SECT. 2, SUB-SECT. 8.—C.

f i. —.— *Copy of affidavit.*—Where deft. was charged with making a false

## Part XXI.—Offences relating to Arrest, the Prosecution and Punishment of Criminals, and the Execution of Civil Process.

7625. *Add. Annotation* :—*Mentd. Hardie & Lane v. Chilton*, [1928] 2 K. B. 306.
7641. *Add. Annotation* :—*Consd. Hardie & Lane v. Chilton*, [1928] 2 K. B. 306.
7688. *Add. Annotation* :—*Refd. Glamorgan County Council v. Glasbrook*, [1924] 1 K. B. 879.
- 7685a. *Assaulting warder on duty.*—A convict who assaults a warder on duty is liable to be

sentenced by a ct. of summary jurisdiction to six months' hard labour, that being the punishment provided by Prevention of Crimes Act, 1871 (c. 112), s. 12, for assaulting a constable when in the execution of his duty. —*POINTING v. WILSON*, [1927] 1 K. B. 382; 96 L. J. K. B. 309; 136 L. T. 307; 91 J. P. 5; 43 T. L. R. 44; 70 Sol. Jo. 1091; 28 Cox, C. C. 291, D. C.

## Part XXII.—Offences affecting the Property and Prerogative of the Crown.

7785. *Add. Annotation* :—*Refd. R. v. Stokes* (1925), 134 L. T. 479.

## Part XXIV.—Offences on the High Seas.

7864. *Citation* :—Delete 33 J. P. 791.
7866. *Add. Annotation* :—*Refd. Commercial & Estates Co. of Egypt v. Board of Trade*, [1925] 1 K. B. 271.
7878. *Add. Annotation* :—*Refd. Re Letters Patent No. 139,207, Re Carbonit Akt.*, [1924] 2 Ch. 53.

## Part XXV.—Offences relating to Foreign Nations.

7899. *Add. Annotation* :—*Refd. Browning v. Crumlin Valley Collieries*, [1926] 1 K. B. 522

## Part XXVII.—Offences relating to Marriage.

7959. *Add. Annotation* :—*Refd. R. v. Moscovitch* (1927), 138 L. T. 183.
7960. *Add. Annotation* :—*Refd. R. v. Moscovitch* (1927), 138 L. T. 183.

affidavit in the United States of America :—*Held* : a copy of the false affidavit duly authenticated by a witness called before the judge was rightly admitted.—*UNITED STATES v. SNYDER*, [1925] 1 D. L. R. 200; 43 Can. Crim. Cas. 692; 57 N. S. R. 421.—CAN.

### PART XX. SECT. 2, SUB-SECT. 11.

*sd. Evidence—Of falsity of statement—Corroboration unnecessary.*—*R. v. McBETH*, [1926] 2 D. L. R. 801; [1926] 1 W. W. R. 981; 45 Can. Crim. Cas. 357; 22 Alta. L. R. 222.—CAN.

### PART XX. SECT. 2, SUB-SECT. 12.—C.

*m. i. — Affidavit required by foreign law.*—Where deft. was charged with making in America a false affidavit, which affidavit was required by American law :—*Held* : notwithstanding the affidavit had not been made in a judicial proceeding, the crime charged constituted perjury under the law of Canada.—*UNITED STATES v. SNYDER*,

[1925] 1 D. L. R. 200; 43 Can. Crim. Cas. 92; 57 N. S. R. 421.—CAN.

### PART XXI. SECT. 4.

*1 i. — — — — —*—A search warrant issued under Liquor Act, 1922, s. 90, does not authorise the constable, who suspects that a person is leaving the premises with liquor, when no liquor has been found on the premises, to follow him & forcibly bring him back to the premises where the search is being made. If in doing so he is assaulted by such person, the latter cannot be convicted of assaulting the constable while acting in the discharge of his duty under the search warrant.—*R. v. DIAMOND*, [1924] 1 D. L. R. 1033; 1 W. W. R. 444; 42 Can. Crim. Cas. 90; 20 Alta. L. R. 60.—CAN.

### PART XXII. SECT. 4.

*st. What constitutes smuggling—Customs Act, s. 206.*—*R. v. MAYALL* (1926), 45 Can. Crim. Cas. 366; 37 B. O. R. 211.—CAN.

*sg. — — — — —*—*R. v. JOES* (N. S.),

[1926] 3 D. L. R. 659; 46 Can. Crim. Cas. 8.—CAN.

*sh. Burden of proof—That goods imported legally—On accused.*—*Re R. v. MCKENZIE* (1926), 45 Can. Crim. Cas. 144; 58 N. S. R. 313.—CAN.

*sk. — — — — —*—*R. v. LE BLANC* (N. B.), [1927] 2 D. L. R. 793; 47 Can. Crim. Cas. 302.—CAN.

*sl. Indictment for smuggling—No power to substitute conviction for attempting to smuggle—Latter offence only triable summarily.*—*R. v. JOES* (N. S.), [1926] 3 D. L. R. 659; 46 Can. Crim. Cas. 8.—CAN.

### PART XXVII. SECT. 1, SUB-SECT. 1.—A.

*7956 ii. — — — — —*—On indictment for bigamy the first marriage must be strictly proved, but where the person charged has pleaded guilty, it is an admission that strict proof of the marriage can be made & precludes the necessity for proof.—*R. v. ROOP*, [1924] 3 D. L. R. 985; 57 N. S. R. 325.—CAN.



7979. *Add. Annotation*:—*Mentd. Perlak Petroleum Maatschappij v. Deen*, [1924] 1 K. B. 111.
7980. *Add. Annotation*:—*Refd. R. v. Moscovitch* (1927), 44 T. L. R. 4.
- 7989a. —.]—On an indictment for bigamy the validity of a foreign marriage must be proved by the evidence of a professional lawyer, or of a person who is to be deemed by reason of his office to be skilled in the law of the country where it was celebrated.—*R. v. Moscovitch* (1927), 138 L. T. 183; 44 T. L. R. 4; 28 Cox, C. C. 442; 20 Cr. App. Rep. 121, C. C. A.
8026. *Add. Annotation*:—*Refd. R. v. Denyer*, [1926] 2 K. B. 258.
8031. *Add. Annotation*:—*Refd. R. v. Moscovitch* (1927), 44 T. L. R. 4.
8035. *Add. Citation*:—*sub nom. SUGDEN v. LOLLEY*, 2 Cl. & Fin. 567, n.
- Add. Annotation*:—*Mentd. Salvesen (or von Lorang) v. Austrian Property Administrator*, [1927] A. C. 641.
8036. *Add. Annotation*:—*Mentd. Salvesen (or von Lorang) v. Austrian Property Administrator*, [1927] A. C. 641.
8038. *Add. Annotation*:—*Refd. R. v. Denyer*, [1926] 2 K. B. 258.

## Part XXVIII.—Offences against Decency and Morality.

8104. *Add. Annotation*:—*Refd. Statham v. Statham* (1928), 45 T. L. R. 127.
8110. *Add. Annotation*:—*Refd. R. v. Bailey*, [1924] 2 K. B. 300.
8112. *Add. Annotations*:—*Consd. R. v. Whitehead* (1928), 139 L. T. 640. *Refd. Statham v. Statham* (1928), 45 T. L. R. 127.
- 8128a. What is disorderly house.]—*R. v. BERG, BRITT, CARRE & LUMMIES*, No. 4222a, *ante*.
8129. *Add. Annotation*:—*Refd. R. v. Berg, Britt, Carré & Lummies* (1927), 20 Cr. App. Rep. 38.

## Part XXIX. Offences affecting Public Health, Safety and Convenience.

### SECT. 2.—OFFENCES BY INNKEEPERS. (Vol. XV., p. 761).

After this sect. add the following new sect :

### SECT. 3.—DANGEROUS DRUGS.

See FOOD & DRUGS, Vol XXV., pp. 115, 116, No. 388, &, generally, MEDICINE & PHARMACY.

## Part XXXI.—Offences relating to Trade.

- 8195 *Add. Annotations*:—*Apld. Reynolds v Shipping Federation*, [1924] 1 Ch. 28. *Consd. Sorrell v. Smith*, [1925] A. C. 700. *Refd. Brimelow v. Casson*, [1924] 1 Ch. 302; *Sorrell v. Smith*, [1924] 1 Ch. 506; *Thompson v. British Medical Assocn.*, [1924] A. C. 764; *British Oxygen Co. v. Liquid Air*, [1925] Ch. 383.
8198. *Add. Annotations*:—*Distd. Reynolds v. Shipping Federation*, [1924] 1 Ch. 28. *Consd. Sorrell v. Smith*, [1925] A. C. 700. *Refd. Brimelow v. Casson*, [1924] 1 Ch. 302; *G. W. K. v. Dunlop Rubber Co* (1926), 42 T. L. R. 376; *Hardie & Lane v. Chilton*, [1928] 2 K. B. 306.
8219. *Add. Annotations*:—*As to (1) Apld. Pointon v. Cox* (1926), 136 L. T. 506. *As to (2) Consd. Pointon v. Cox* (1926), 136 L. T. 506.

### PART XXVII. SECT. 1, SUB-SECT. 3.— C.

p i. —.]—Accused & his wife were Roman Catholics; they had never lived together, as accused left for active service immediately after the marriage. On his return he informed the priest who had performed the ceremony that he & his wife were first cousins, & asked whether the marriage was valid. The priest replied that in the eyes of the Church the marriage was null & void, & as though it had never taken place. Accused, honestly believing he was free, went through the form of marriage with another woman:—*Held*: accused had been under no mistake of law, & was rightly convicted.—*R. v. KENNEDY*, [1923] S. A. S. R. 183.—AUS.

### PART XXVII. SECT. 1, SUB-SECT. 3.— D.

8038 i. *Effect of mistaken belief*.]—It is a defence in law to a charge of bigamy that prisoner, at the time of the alleged bigamous marriage, believed, in good faith & on reasonable grounds, that he had been divorced from the bond of his first marriage, if in fact he had not been divorced.—*R. v. CARSWELL*, [1926] N. Z. L. R. 321.—N.Z.

### PART XXVIII. SECT. 6, SUB-SECT. 1.— B.

r (p. 755) i. —.]—During a period of six weeks prostitutes resorted to a furnished flat, of which two men were the tenants & occupiers. Some of them went on the invitation of the tenants, others were taken by friends

of the tenants, with their knowledge & consent:—*Held*: if the prostitution had been with the occupiers of the flat only, no offence would have been committed, in respect that the occupiers could not "permit" their own acts; & it was immaterial that no profit was made by accused.—*GIRGAWAY v. STRATHERN*, [1925] S. C. (J.) 31.—SCOT.

h (p. 75) i. — *Omission of "knowingly"*.]—A conviction which does not state that accused "knowingly" permitted his premises to be used for the illegal purpose described, is materially defective.—*R. v. ROZONOWSKI*, [1926] 1 D. L. R. 732; [1926] 1 W. W. R. 241; 45 Can. Crim. Cas. 193; 36 B. O. R. 327.—CAN.

## Part XXXIII.—Offences against the Person.

8247. *Add. Annotation*:—*Consd. R. v. Bateman* (1925), 94 L. J. K. B. 791.
- 8266a. “Newly-born” child.]—(1) Applt. was charged with the murder of her child, who had been born on Aug. 19, 1927, & had been strangled by her on Sept. 21, 1927. The trial judge held that there was no evidence to go to the jury that the child was “newly-born” within Infanticide Act, 1922 (c. 18), s. 1 (2):—*Held*: that ruling was correct.
- (2) Observations on the form of statements made by accused persons while under arrest.—*R. v. O'DONOGHUE* (1927), 97 L. J. K. B. 303; 133 L. T. 240; 91 J. P. 199; 44 T. L. R. 51; 71 Sol. Jo. 897; 28 Cox, C. C. 461; 20 Cr. App. Rep. 132, C. C. A.
8284. *Add. Annotations*:—*Consd. Williams v. Guest, Keen & Nettlefolds*, [1926] 1 K. B. 497. *Refd. Carr v. Port of Glasgow* (1923), 16 B. W. C. C. 331; *Hutchinson v. Kiveton Park Colliery Co.*, [1926] 1 K. B. 279. *Mentd. Raeburn v. Lochgelly Iron & Coal Co.* (1926), 20 B. W. C. C. 637.
8338. *Add. Annotations*:—*Consd. R. v. Thorpe* (1925), 133 L. T. 95. *Refd. R. v. Canham* (1925), 18 Cr. App. Rep. 163.
- 8459a. ———.]—*ANON.* (1523), Y. B. 14 Hen. 8, fo. 16, pl. 3.
- Annotations*:—*Consd. Howard v. Gosset* (1845), 10 Q. B. 359. *Refd. Marshalsea Case* (1613), 10 Co. Rep. 68b; *Mentd. Nector & Sharp v. Gennet* (1596), Cro. Eliz. 466. *Padfield v. Cabell* (1743), Willes, 411; *Butt v. Conant* (1820), 1 Brod. & Bing. 548.
8498. *Add. Annotation*:—*Refd. R. v. Canham* (1925), 18 Cr. App. Rep. 163.
8575. *Add. Annotation*:—*Consd. R. v. Bateman* (1925), 94 L. J. K. B. 791.
8640. *Add. Annotation*:—*Refd. James v. British General Insee.*, [1927] 2 K. B. 311.
- 8640a. ———.]—*R. v. ROSE* (1928), 20 Cr. App. Rep. 164, C. C. A.
8645. *Add. Annotation*:—*Refd. Pratt v. Patrick*, [1924] 1 K. B. 488.
8665. *Add. Annotation*:—*Consd. R. v. Bateman* (1925), 94 L. J. K. B. 791.
8666. *Add. Annotation*:—*Consd. R. v. Bateman* (1925), 94 L. J. K. B. 791.
- 8666a. *S. P. R. v. MARKUSS* (1864), 4 F. & F. 356. *Annotation*:—*Refd. R. v. Bateman* (1925), 94 L. J. K. B. 791.
8667. *Add. Annotation*:—*Consd. R. v. Bateman* (1925), 94 L. J. K. B. 791.
- 8667a. ———.]—*R. v. MARKUSS* (1864), 4 F. & F. 356. *Annotation*:—*Refd. R. v. Bateman* (1925), 94 L. J. K. B. 791.
8668. *Add. Annotation*:—*Consd. R. v. Bateman* (1925), 94 L. J. K. B. 791.
- 8672a. ———.]—Where a doctor is consulted, as possessing medical skill & knowledge, by or on behalf of a patient he owes a duty to that patient to use due caution in undertaking the treatment. If he accepts the responsibility & undertakes the treatment & the patient submits to his direction & treatment accordingly he owes a duty to the patient to use a fair & reasonable degree of diligence, care, knowledge, skill, & caution in administering the treatment. To support an indictment for the manslaughter of a patient, however, the prosecution must satisfy the jury that the negligence or incompetence of the doctor went beyond a mere matter of compensation & showed such disregard for the life & safety of the patient as to amount to a crime against the State & conduct deserving punishment.—*R. v. BATEMAN* (1925), 94 L. J. K. B. 791;

PART XXXIII. SECT. 1, SUB-SECT. 1.  
—A.

h i. ———.]—*H.M. ADVOCATE v. SAVAGE*, [1923] S. C. (J.) 49.—*SCOT.*

PART XXXIII. SECT. 1, SUB-SECT. 1.  
—F. (a).

8312 i. *Provocation answered by use of weapon*.]—Appet., who had grounds of suspicion that his wife had misconducted herself with another man, stabbed her in the legs & lower part of the body with a long knife, causing her to bleed to death in a few minutes:—*Held*: an application for leave to appeal from a conviction for murder must be dismissed.—*R. v. BUTELEZI*, [1925] App. D. 160.—*S. AF.*

PART XXXIII. SECT. 1, SUB-SECT. 1.  
—F. (d.) ii.

d i. ———.]—The fact that while a child is flouting its father's authority its mother “eggs it on” may be found to constitute provocation within Criminal Code, s. 261, under which culpable homicide, which would otherwise be murder, may be reduced to manslaughter.—*R. v. PAYETTE*, [1925] 2 W. W. R. 747; 44 Can. Crim. Cas. 209; 35 B. C. R. 81.—*CAN.*

PART XXXIII. SECT. 1, SUB-SECT. 1.  
—H. (a).

m i. ———.]—*R. v. BEVIS*, [1925] 1 D. L. R. 747; 43 Can. Crim. Cas. 229; 57 N. S. R. 513.—*CAN.*

PART XXXIII. SECT. 1, SUB-SECT. 1.  
—I.

sa. *Wrongful act*.]—Where, although there is no intent to do injury to the person or property of another, death results from the doing of an act which is merely *malum prohibitum*, the wrongful act is not the kind of act that the criminal law requires as a foundation for a charge of manslaughter, unless the statute or prohibition violated is one designed & intended to prevent injury to the person, or the prohibited act is accompanied by negligence.—*R. v. D'ANGELO*, [1927] 4 D. L. R. 593; 48 Can. Crim. Cas. 127; 60 O. L. R. 512.—*CAN.*

PART XXXIII. SECT. 1, SUB-SECT. 1.  
—N. (a).

8584 iii. ———.]—A Christian Science practitioner who gave a sick child “absent treatment,” i.e. prayer, but who prescribed no medicine or other treatment, & who was not shown to have advised the parents not to call in a physician or to have aided, abetted or counselled them to abstain from providing proper medical attendance for the child:—*Held*: wrongly convicted of manslaughter of the child.—*R. v. ELDER*, [1925] 3 D. L. R. 447; [1925] 2 W. W. R. 545; 44 Can. Crim. Cas. 76; 35 Man. L. R. 161.—*CAN.*

PART XXXIII. SECT. 1, SUB-SECT. 1.  
—N. (c) i.

8612 i. *Must be calculated to endanger life*.]—Criminal Code, s. 247, attaches no criminal responsibility to the mere omission, without lawful excuse, to

perform the duty of taking reasonable precautions against & of using reasonable care to avoid endangering human life. To entail criminal responsibility there must be some physical consequences resulting from such omission; the danger itself is not a consequence within the sect.—*R. v. HURT* (1923), 55 O. L. R. 48.—*CAN.*

PART XXXIII. SECT. 1, SUB-SECT. 1.  
—O. (b).

8639 iv. ———.]—Where accused, driving a motor car at night, entered a road which being under repairs was closed to traffic & ran over & killed two coolies, who were sleeping on the road with their bodies completely covered up, except for their faces:—*Held*: accused was not guilty of causing death by a rash & negligent act.—*SMITH v. R.* (1925), 1 L. R. 53 Calc. 333.—*IND.*

8639 v. ———.]—*Gross negligence or wanton misconduct necessary*.]—*R. v. GREISMAN*, [1926] 4 D. L. R. 738; 46 Can. Crim. Cas. 172; 59 O. L. R. 156.—*CAN.*

8639 vi. ———.]—A direction to the jury which sufficiently brought to their mind the difference between the quantum of negligence required to be found in a civil & a criminal trial:—*Held*: sufficient.—*MOORE v. R.*, [1926] S. A. S. R. 52.—*AUS.*

8639 vii. ———.]—The test of negligence to be applied in criminal trials is the same as that applied in civil cases, namely, the standard of skill & care which would be observed by a reasonable man.—*R. v. MEIRING*, [1927] App. D. 41.—*S. AF.*

133 L. T. 730; 89 J. P. 162; 41 T. L. R. 557; 69 Sol. Jo. 622; 28 Cox, C. C. 33; 19 Cr. App. Rep. 8, C. C. A.

8674. *Add. Annotation*:—*Consd. R. v. Bateman* (1925), 94 L. J. K. B. 791.

8676. *Add. Annotation*:—*Consd. R. v. Bateman* (1925), 94 L. J. K. B. 791.

8677. *Add. Annotation*:—*Consd. R. v. Bateman* (1925), 94 L. J. K. B. 791.

8679. *Add. Annotation*:—*Consd. R. v. Bateman* (1925), 94 L. J. K. B. 791.

8680. *Add. Annotation*:—*Consd. R. v. Bateman* (1925), 94 L. J. K. B. 791.

8681. *Add. Annotation*:—*Consd. R. v. Bateman* (1925), 94 L. J. K. B. 791.

8682. *Add. Annotation*:—*Consd. R. v. Bateman* (1925), 94 L. J. K. B. 791.

8684. *Add. Annotation*:—*Consd. R. v. Bateman* (1925), 94 L. J. K. B. 791.

8688. *Add. Annotation*:—*Consd. R. v. Bateman* (1925), 94 L. J. K. B. 791.

8793a. ———.]—(1) The question whether or not a statement made by a person on whom a fatal attack has been made is a dying declaration, i.e. whether or not it has been made by that person while in a hopeless & settled anticipation of immediate dissolution, is for the judge at the trial of the person charged with the murder or manslaughter of the person in question &, to answer it, all the circumstances of each case must be regarded.

(2) Rules as to questions by police officers to detained persons commented on.—*R. v. BOOKER* (1924), 88 J. P. 75; 18 Cr. App. Rep. 47, C. C. A.

8927. *Add. Annotation*:—*Reid. R. v. Punch* (1927), 20 Cr. App. Rep. 18.

9028a. *Within Children Act, 1908* (c. 67), s. 12 (1).]

—An assault within the above sect. must be one which is likely to cause unnecessary suffering or injury to the health of the child.

Applt., who was the stepfather, & had the custody or care, of a girl of eleven years of age, was charged under the above sect. with wilfully assaulting the girl in a manner likely to cause her unnecessary suffering. The evidence of the girl was that applt. committed acts of indecency, not to her, but in her presence, & that when she screamed he put his hand over her mouth:—*Held*: this was not an assault within the sect.—*R. v. HATTON*, [1925] 2 K. B. 822; 94 L. J. K. B. 863; 133 L. T. 735; 89 J. P. 164; 41 T. L. R. 637; 28 Cox, C. C. 43; 19 Cr. App. Rep. 29, C. C. A.

9036. *Add. Annotation*:—*Reid. Gayler & Pope v. Davies*, [1924] 2 K. B. 75.

9103a. ———.]—The old law that the owner of a house, or members of his family, may kill a trespasser who would forcibly dispossess him of the house, although such householder, or members of his family, has not previously retreated until no means of escaping his assailant are left to him, has not been amended or modified by modern practice.—*R. v. HUSSEY* (1924), 89 J. P. 28; 41 T. L. R. 205; 18 Cr. App. Rep. 160, C. C. A.

9161. *Add. Annotations*:—*Mentd. Britannia Hygienic Laundry Co. v. Thornycroft* (1925), 94 L. J. K. B. 858; *The Paludina*, [1925] P. 40.

PART XXXIII. SECT. 1, SUB-SECT. 1.  
—O. (g).

8694 v. ———.]—*R. v. CHOTEM* (1924), 42 Can. Crim. Cas. 156.—CAN.

PART XXXIII. SECT. 1, SUB-SECT. 1.  
—Q. (b) i.

s i. ———.]—In a murder trial where the victim's throat had been cut so that he was unable to speak, evidence of questions put to deceased by the prosecution's witnesses & answers giving by nodding the head & making signs, amount to "verbal statements" under Evidence Act, s. 32, & are admissible as a dying declaration.—*RANGA v. R.* (1924), 1 L. R. 5 Lah. 305.—IND.

PART XXXIII. SECT. 1, SUB-SECT. 1.  
). (b) iii.

8741 xix. ———.]—A native when dying from injuries inflicted upon him said that he was "dead" or had been "killed." He then sent for his children & relatives, but did not take farewell of them, saying that he would say more when the pain allowed or when he was better. He then made a statement inculcating applt.:—*Held*: deceased when he made the statement had not a settled hopeless expectation of death, & the statement should not have been admitted in evidence as a dying declaration.—*R. v. NGCOBO*, [1925] App. D. 561.—S. AF.

8746 i. *Must believe death to be imminent.*]—A statement made when deceased had no expectation of death, but confirmed when he had a belief in impending death:—*Held*: admissible.—*DEBORTOLI v. R.*, [1926] 4 D. L. R. 722; [1926] S. C. R. 492; 46 Can. Crim. Cas. 115.—CAN.

PART XXXIII. SECT. 6, SUB-SECT. 1.  
—C.

d i. ———.]—*Injury resulting in death.*]—Deft. was convicted upon two charges of criminal negligence causing bodily or grievous bodily harm under Criminal Code, ss. 284 & 285:—*Held*: deft. was properly convicted, notwithstanding that death resulted from the injuries inflicted by his negligence.—*R. v. STARK*, [1927] 3 D. L. R. 433; 47 Can. Crim. Cas. 356; 60 O. L. R. 375.—CAN.

PART XXXIII. SECT. 6, SUB-SECT. 1.  
—D.

sd. *Meaning of "actual bodily harm."*]—The above words in sect. 295 of the Code mean little, if anything, more than "battery."—*R. v. TRESEGNE* (1926), 45 Can. Crim. Cas. 270; 58 O. L. R. 634.—CAN.

PART XXXIII. SECT. 6, SUB-SECT. 2.  
—B.

m i. ———.]—*Burden of proof.*]—Where on a charge of unlawfully wounding a person with intent to maim or disable him, the Crown proves that accused discharged a firearm in the direction of a crowd of persons & wounded the person named, it establishes its case, & the onus then shifts to accused to satisfy the ct. that it was either an accident or that he did not intend to wound.—*R. v. SMART* (Alta.), [1927] 3 W. W. R. 763; 49 Can. Crim. Cas. 75.—CAN.

PART XXXIII. SECT. 7, SUB-SECT. 2.  
—C. (a).

9041 i. *Schoolmaster & scholar.*]—Teacher entitled to inflict reasonable punishment.—*R. v. METCALFE* (Sask.), [1927] 3 W. W. R. 194.—

PART XXXIII. SECT. 7, SUB-SECT. 2.  
—C. (b).

9066 iv. ———.]—Punishment causing temporary pain & discolouration of the flesh for a few days:—*Held*: not excessive.—*R. v. METCALFE* (Sask.), [1927] 3 W. W. R. 194.—CAN.

9071 ii. ———.]—*R. v. METCALFE* (Sask.), [1927] 3 W. W. R. 194.—CAN.

PART XXXIII. SECT. 9.

sk. *Injury caused in attempting to stop breach of peace.*]—A person using the force necessary to prevent a continuance or renewal of a breach of the peace, & struck by the party he was attempting to control:—*Held*: justified in striking back.—*R. v. MANSON* (1925), 43 Can. Crim. Cas. 30; [1925] 1 W. W. R. 671.—CAN.

sm. *What is unlawful act—Not breach of municipal bye-law.*]—*R. v. GOSLING* (Alta.) (1927), 47 Can. Crim. Cas. 211.—CAN.

PART XXXIII. SECT. 11, SUB-SECT. 3.

9206 i. *Woman not pregnant.*]—*Held*: an indictment charging accused with performing an operation on a woman, in the belief that she was pregnant, for the purpose of causing her to abort, & with attempting to cause her to abort, was irrelevant, in respect that it did not set forth that the woman was at the time pregnant.—*H.M. ADVOCATE v. ANDERSON*, [1928] S. C. (J.) 1.—SCOT.

PART XXXIII. SECT. 13, SUB-SECT. 1.  
—D.

9281 i. *Consent obtained by fraud—What amounts to fraud.*]—Cohabitation following a feigned marriage is not rape under the law of Canada. It cannot be said as a general proposition, with regard to rape, that fraud vitiates con-



9307a. —.]—It is a misdirection for a judge to tell a jury that absence of denial on the part of a person charged with a crime, after the charge accompanied by the usual caution has been read to him by a police officer, may amount to corroboration of prosecutor's story.—*R. v. WHITEHEAD* (1928), 139 L. T. 640; 92 J. P. 197; 21 Cr. App. Rep. 23, C. C. A.

9311. *Add. Annotation*:—*Consd. Re Stollery, Weir v. Treasury Solicitor*, [1926] Ch. 284.

9320a. —.]—In charges of sexual offences corroboration of the testimony of prosecutrix is not in law essential, but is in practice required.

If, on the trial of such a charge, there is corroboration on one count referring to one date, but there is none on another about another date, & the ct. rejects the corroboration on the former, it being possible that the jury gave credit to it on both counts, it may quash a conviction on both.—*R. v. BERRY* (1924), 18 Cr. App. Rep. 65, C. C. A.

9320b. What amounts to corroboration.]—The mere fact that the accused preserves a letter written to him by prosecutrix of a charge of a sexual offence is not corroboration of her evidence: nor is his mere silence when he is charged with the offence.—*R. v. MARSH* (1925), 19 Cr. App. Rep. 27, C. C. A.

9336. *Add. Annotation*:—*Reid. R. v. Mosley*, [1924] 2 K. B. 187.

9340. *Add. Annotation*:—*Reid. R. v. Roberts & Morriss* (1926), 134 L. T. 635.

9364a. What is an aggravated assault.]—*MUNDAY v. MAIDEN* (1875), 33 L. T. 377; 39 J. P. 742; 24 W. R. 57.

9399a. —.]—Resp. married his wife in 1916 & a child was born in 1917. In 1920 resp. entered into a written separation agreement with his wife, whereby resp. was to pay his wife 25s. a week & his wife was to maintain herself & the child, of which she was to have the sole custody & control without any interference by resp., but resp. was entitled to have reasonable access to the child. Resp. failed to make the payments under the agreement & fell into arrears to the amount of about £100. An information was preferred against resp. for neglecting the child in a manner likely to cause her unnecessary suffering or injury to her health, contrary to Children Act, 1908 (c. 67):—*Held*: the fact of the separation agreement without regard to the way in which its obligations had been performed, did not get rid of the legal presumption that resp. had the custody of the child, & the case must be remitted to the justices to decide whether in fact resp. had wilfully neglected the child in the manner alleged.—*BROOKS v. BLOUNT*, [1923] 1 K. B. 257; 92 L. J. K. B. 302; 128 L. T. 607; 87 J. P. 64; 39 T. L. R. 168; 67 Sol. Jo. 299; 21 L. G. R. 150; 27 Cox, C. C. 399, D. C.

9458. *Add. Annotation*:—*Reid. R. v. Denyer*, [1926] 2 K. B. 258.

9468. *Add. Annotation*:—*Mentd. Cleghorn v. Oldham* (1927), 43 T. L. R. 465.

9483. *Add. Annotation*:—*Mentd. Pickup v. United Kingdom Dental Board*, [1928] 2 K. B. 459.

9488. *Add. Annotation*:—*As to* (1) *Reid. Pointon v. Cox* (1926), 136 L. T. 506.

## Part XXXIV.—Offences against Property.

9498. *Add. Annotation*:—*Reid. Lake v. Simmons*, [1926] 1 K. B. 366.

9499. *Add. Annotations*:—*Reid. Lake v. Simmons*, [1926] 2 K. B. 51; *Lowther v. Harris* (1926), 43 T. L. R. 24.

9500. *Add. Annotations*:—*Reid. Lake v. Simmons* (1926), 95 L. J. K. B. 586; *Lowther v. Harris* (1926), 43 T. L. R. 24.

9537. *Add. Annotations*:—*Consd. Lowther v. Harris* (1926), 43 T. L. R. 24; *Lake v. Simmons*, [1927] A. C. 487.

After this case add "See, also, INSURANCE, Vol. XXIX., p. 417, No. 3258."

9553. *Add. Annotation*:—*Reid. Lake v. Simmons* (1926), 95 L. J. K. B. 586.

sent. The only sorts of fraud which destroy the effect of a woman's consent are frauds as to the nature of the act itself or as to the identity of the person how does the act.—*PEOPLE OF CALIFORNIA STATE v. SKINNER*, [1924] 2 W. W. R. 209; 33 B. C. R. 555.—CAN.

c. For "c. By misrepresentation or fraud—Personation of husband" read "9295 i. Conditions negativing consent—Personation of husband."

d. Read now "9295 ii."

9295 iii. —. —. What amounts to —Not obtaining consent by feigned marriage.]—*PEOPLE OF CALIFORNIA v. SKINNER*, [1924] 2 W. W. R. 209; 33 B. C. R. 555.—CAN.

9295 iv. —. —. Former husband.]—*Held*: an indictment for rape was relevant which bore that the woman was the wife of a second husband who was alive, while the person said to be personated was the woman's former husband who had been officially reported as killed in action.—*H.M. ADVOCATE v. MONTGOMERY*, [1926] S. C. (J.)

### PART XXXIII. SECT. 13, SUB-SECT. 1.—E.

9307 i. What amounts to corroboration.]—Evidence of a witness that he saw accused & the girl leave a dance hall under suspicious circumstances at 11.30 on the night of the alleged seduction amounts to corroboration so as to justify the charge going to the jury.—*STEELE v. R.*, [1924] 4 D. L. R. 175; [1924] 1 W. W. R. 1146.—CAN.

### PART XXXIII. SECT. 13, SUB-SECT. 2.

9308 v. —.]—*R. v. GOSSELIN* (Ont.) (1927), 47 Can. Crim. Cas. 318.—CAN.

9316 v. —.]—On a charge of attempting to have carnal knowledge of a girl under fourteen:—*Held*: corroboration was not necessary.—*R. v. LIZOWYJ* (1927), 48 Can. Crim. Cas. 255; 1 O. L. R. 93.—CAN.

9316 vi. —.]—Nature of corroboration required under Criminal Code, s. 1009, on a charge of carnally knowing

a girl under fourteen.—*HUBIN v. R.*, [1927] 4 D. L. R. 760; [1927] S. C. R. 442; 48 Can. Crim. Cas. 172.—CAN.

sp. Charge of seduction under Criminal Code, s. 211.—*Burden of proof*.]—*R. v. SCHEMMER* (Sask.), [1927] 3 W. W. R. 417.—CAN.

st. Charge of attempted carnal knowledge—*Sufficiency of evidence*.]—*R. v. YELDS*, [1928] N. Z. L. R. 18.—N.Z.

### PART XXXIII. SECT. 14, SUB-SECT. 1.—A.

q i. —.]—A person having a domicile out of Canada, who leaves his family in Canada without means, may be convicted of failing to support his family in Canada.—*R. v. SCOTT* (1925), 44 Can. Crim. Cas. 117.—CAN.

### PART XXXIII. SECT. 21.

sa. Of wife & children—*Genuine to provide necessities*.]—*Held*: a "lawful excuse."—*R. v. BUNTING* (1926), 45 Can. Crim. Cas. 185; 58 O. L. R. 873.—CAN.

9557. *Add. Annotation*:—*Refd. R. v. Fisher* (1926), 19 Cr. App. Rep. 166.

9614a. ———.]—*R. v. HUGHES*, No. 2219a, *ante*.

9702a. *S. P. R. v. BANKS* (1821), Russ. & Ry. 441, C. C. R.

*Annotation*:—*Refd. R. v. Stear* (1848), 1 Den. 349.

9769. *Add. Annotations*:—*Refd. Jones v. Waring & Gillow*, [1926] A. C. 670. *Mentd. Commonwealth Trust v. Akotey* (1925), 94 L. J. P. C. 167.

9773a. ———.]—Where a clerk or servant, who has the mere custody of goods, disposes of them for his own benefit, & in a manner alien from the purposes for which he was intrusted with them, he is guilty of larceny.—*R. v. ROBINSON* (1840), 4 J. P. 620.

9952. Read now "9955."

9953. Read now "9956."

9954. Read now "9952."

9955. Read now "9953."

9956. Read now "9954."

10,115. *Add. Annotation*:—*Mentd. R. v. Porter* (1927), 20 Cr. App. Rep. 55.

10,116. *Add. Citations*:—93 L. J. K. B. 236; 130 L. T. 320; 68 Sol. Jo. 389; 27 Cox, C. C. 579.

*Add. Annotation*:—*Consd. R. v. Hughes* (1927), 136 L. T. 671.

10,143. *Add. Annotation*:—*Refd. Performing Right Soc. v. Mitchell & Booker*, [1924] 1 K. B. 762.

10,200a. *Steward & clerk to guardians.*—*Held*: guilty of embezzlement, though not duly appointed, nor even appointed at all under the common seal.—*R. v. BEACALL, R. v. WELLINGS* (1824), 1 C. & P. 457.

10,315a. ———. *Question of fact for jury.*—(1) Where a deft. is charged with the fraudulent con-

version of money the question whether he has been entrusted with the money or has received it for or on behalf of the persons specified in the indictment is a question of fact for the jury on which the judge must adequately direct them.

(2) Counts charging the fraudulent conversion on a certain date of a general deficiency are bad unless it is the duty of deft., on the date specified, to hand over the lump sum in his hands to the person who is entitled to it.—*R. v. SHEAF* (1925), 134 L. T. 127; 89 J. P. 207; 42 T. L. R. 57; 28 Cox, C. C. 86; 19 Cr. App. Rep. 46, C. C. A.

*Annotation*:—*Generally, Mentd. R. v. Morter* (1927), 20 Cr. App. Rep. 53.

10,315b. ———.]—Whether a transaction is an "entrusting" within Larceny Act, 1916 (c. 50), s. 20 (1), or a loan, entitling the recipient of the property to use it, is a question of fact for the jury.—*R. v. SMITH*, [1924] 2 K. B. 194; 93 L. J. K. B. 1006; 131 L. T. 28; 88 J. P. 108; 69 Sol. Jo. 37; 27 Cox, C. C. 619; 18 Cr. App. Rep. 76, C. C. A.

*Annotation*:—*Folld. R. v. Sheaf* (1925), 89 J. P. 207.

10,315c. ———.]—The true test in a charge under Larceny Act, 1916 (c. 50), s. 20 (1) (iv) (a), is whether accused had control of the property charged or not, in circumstances whereby he became entrusted.—*R. v. MORTER* (1927), 20 Cr. App. Rep. 53, C. C. A.

10,316. *Add. Annotation*:—*Refd. R. v. Smith*, [1924] 2 K. B. 194.

10,317. *Add. Annotation*:—*Refd. R. v. Morter* (1927), 20 Cr. App. Rep. 53.

10,322. *Add. Annotation*:—*Dbtd. R. v. Smith*, [1924] 2 K. B. 194.

10,326a. *Indictment—Necessary averments.*—*R. v. SHEAF*, No. 10,315a, *ante*.

10,333. *Add. Annotation*:—*Refd. R. v. Smith*, [1924] 2 K. B. 194.

PART XXXIV. SECT. 1, SUB-SECT. 9.  
—B. (b).

sl. *Goods on approval—Conversion of good.*—Where a person takes goods on approval under an agreement that property therein was to pass only if he exercised his option to take them, & paid cash in full for certain articles & in part for others:—*Held*: the trust continues till the option is exercised & cash payments made, & he commits a criminal breach of trust if he sells them without such payments.—*KHITISH CHANDRA DEB ROY v. R.* (1924), 1 L. R. 51 Cal. 796.—IND.

PART XXXIV. SECT. 1, SUB-SECT. 13.

sm. *Crop-payment lease—Lessee disposing of whole crop & appropriating proceeds—Not offence of theft.*—*R. v. HANDSBEE*, [1924] 1 D. L. R. 1194; 41 Can. Crim. Cas. 177; [1923] 2 W. W. R. 661.—CAN.

PART XXXIV. SECT. 1, SUB-SECT. 14.—A.

9880 i. *From sheriff—Valid seizure must be proved.*—*R. v. LUCIUK* (Sask.), [1926] 3 W. W. R. 453.—CAN.

PART XXXIV. SECT. 1, SUB-SECT. 20.

10,121 i. For "*R. v. MCINTYRE* (1898), 31 N. S. R. 422," read "*R. v. McCAFFREY* (1900), 33 N. S. R. 232."

10,123 xiii. ———.]—*R. v. ANDREWS* (N.B.) (1925), 44 Can. Crim. Cas. 201.—CAN.

10,123 xiv. ———.]—*R. v. WILSON* (1924), 35 B. C. R. 64.—CAN.

10,123 xv. ———.]—*R. v. JONES* (Sask.), [1926] 3 W. W. R. 313; [1927] 3 D. L. R. 679; 47 Can. Crim. Cas. 380.—CAN.

10,123 xvi. ———.]—Accused was found on May 17 in possession of a bicycle stolen on Feb. 11:—*Held*: the period of three months was not too long to cast upon accused the duty of accounting, or giving some reasonable explanation, for his possession, & in the absence of a reasonable explanation the ct. might infer guilt & convict.—*JAMES v. R.* (1927), 48 N. L. R. 289.—S. AF.

PART XXXIV. SECT. 2, SUB-SECT. 6.

10,298 iv. ———.]—Where a law-agent did not account for sums collected for a client, notwithstanding repeated applications made for the money, & only remitted the sums after he had been arrested:—*Held*: a conviction for embezzlement was justified.—*EDGAR v. MACKAY*, [1926] S. C. (J.) 94.—SCOT.

PART XXXIV. SECT. 3, SUB-SECT. 1.

10,314 ii. ———.]—H. entered the offices of F., Ltd., in V., & in exchange for \$1,000 received £23 in cash & a draft for £200 drawn on P. Bank, Ltd., London, reciting "pay from our credit balance to the order of H. £200," & signed F., Ltd. H. indorsed the draft "pay to the order of L. Bank, Ltd., for deposit to my credit." When H. presented the draft at L. Bank, Ltd., Liverpool, payment was refused. On a charge against F. under Criminal Code, s. 355, for converting the money to his own use & for failing to account for it, it was found by the trial judge that F., Ltd., was an *alias* for F. himself; that F. knew of the transaction carried out by his clerk; that F., Ltd., had no credit either at L. Bank, Liverpool, or at P. Bank, London, & they did not

remit H.'s money to London as undertaken:—*Held*: on the facts stated the case did not come within sect. 355, & the conviction was set aside.—*R. v. FAULDS* (1922), 40 Can. Crim. Cas. 300; 31 B. C. R. 421.—CAN.

10,314 iii. ———.]—Where a person hands over money to another pursuant to a proposal & undertaking of the latter to invest the money in certain securities, there is in substance a "direction," within Criminal Code, s. 357, so to invest it.—*R. v. CAMPBELL* (1926), 45 Can. Crim. Cas. 159; 22 Alta. L. R. 219; [1926] 1 W. W. R. 671.—CAN.

PART XXXIV. SECT. 3, SUB-SECT. 2.

10,327 iv. ———.]—To be guilty of theft under Criminal Code, s. 355, accused must have received money, valuable security, or other things on terms requiring him to hand over the thing received, or the proceeds thereof, to some person other than the person from whom he received it, & have fraudulently converted it to his own use.—*R. v. CONNORS* (1923), 51 N. B. R. 247.—CAN.

10,327 v. ———.]—Where A. delivers goods to B. requiring him to account to him, A., for them, the case is not within Criminal Code, s. 355.—*R. v. LUCIUK* (Sask.), [1926] 3 W. W. R. 453.—CAN.

PART XXXIV. SECT. 3, SUB-SECT. 3.

10,334 v. ———.]—On the trial of a charge under Criminal Code, s. 357, the jury should be instructed to determine, leaving aside any directions which may be in evidence with respect to the disposition of the money alleged to have been misapplied, whether

10,480. *Add. Annotations*:—*Reid*. R. v. Denyer, [1926] 2 K. B. 258; *Hardie & Lane v. Chilton*, [1928] 2 K. B. 306.

10,487a. Demand of money as alternative to inclusion in stop list—Protection of trade interests.]—D., a servant & stop list superintendent of the Motor Trade Assocn., wrote a letter to R., a garage proprietor, stating that the assocn. offered an alternative to R. to inclusion in the stop list of the assocn., namely, the payment of a certain sum, & the publication of an undertaking to observe protected prices of motor cars, etc.:—*Held*: D. was rightly convicted of uttering a letter demanding money with menaces contrary to Larceny Act, 1916 (c. 50), s. 29 (1), & it was immaterial that his motive in writing the letter was the protection of a trade interest.—R. v. DENYER, [1926] 2 K. B. 258; 95 L. J. K. B. 699; 134 L. T. 637; 42 T. L. R. 452; 28 Cox, C. C. 153; 19 Cr. App. Rep. 93, C. C. A.

*Annotations*:—N.F. *Hardie & Lane v. Chilton*, [1928] 2 K. B. 306. (NOTE.—For the purposes of the administration of criminal law, unless & until R. v. Denyer is reversed by the only competent tribunal [viz., the House of Lords], it is binding upon, & will be enforced by, the Ct. of Criminal Appeal against any person or persons offending in like manner (LORD HEWART, C. J.) (1928), 20 Cr. App. Rep., at pp. 185 & 186). *Reid*. *Auto-Mart (London) v. Chilton* (1927), 43 T. L. R. 463.

10,505a. —.]—Appls. were convicted of threatening to accuse of a crime within Larceny Act, 1916 (c. 50), s. 29 (2) (b), with intent to extort money. They had enticed a man into a compromising situation with one of themselves & then threatened to accuse him of "improper conduct":—*Held*: the mere fact of the words being capable of being understood to mean some offence not within the sect. was no defence, as it was a question for the jury what was the effect on the mind of the man on whom they were intended to operate, & as there was evidence on which the jury could properly come to the conclusion that the threat was a threat to accuse of the particular crime mentioned in the indictment, & the convictions must be affirmed.—R. v. STUART, R. v. LEONARD, R. v. MAPLES, R. v. TANNEN, R. v. TAYLOR

(1927), 43 T. L. R. 715; 20 Cr. App. Rep. 74, U. C. A.

10,725a. — Finding must be by night.]—R. v. HARRIS, No. 5478a, ante.

10,731a. — Possession must be by night.]—R. v. HARRIS, No. 5478a, ante.

10,752. *Add. Citation*:—68 Sol. Jo. 254.

10,754a. —.]—R. v. HYMAN (1926), 19 Cr. App. Rep. 125, C. C. A.

10,754b. — Or obtained—Meaning.]—"Obtained" in Larceny Act, 1916 (c. 50), s. 33, means obtained physically.—R. v. MISSELL, R. v. RINGLE, R. v. ERRINGTON (1926), 19 Cr. App. Rep. 109, C. C. A.

10,779. *Add. Annotation*:—*Reid*. *Conn v. Turnbull* (1925), 89 J. P. Jo. 300

10,815a. — Under Frauds by Workmen Act, 1777 (c. 56), s. 10—"Dwelling-house"—Includes warehouse not attached to dwelling-house.]—R. v. EDMUNDSON (1859), 2 E. & E. 77; 28 L. J. M. C. 213; 33 L. T. O. S. 237; 23 J. P. 710; 5 Jur. N. S. 1351; 7 W. R. 565; 8 Cox, C. C. 212; 121 E. R. 30.

*Annotations*:—*Mentd*. *Gunnestad v. Price*, *Fullmore v. Wait* (1875), L. R. 10 Exch. 65; *Re Layard*, *Layard v. Bessborough* (1916), 85 L. J. Ch. 505; *A.-G. v. Brown*, [1920] 1 K. B. 773.

10,878a. —.]—R. v. DAWSON (1926), 19 Cr. App. Rep. 128, C. C. A.

10,878b. —.]—The proper direction on a charge of receiving with guilty knowledge is that, if the jury are satisfied that deft.'s explanation is consistent with his innocence, they ought to, not may, acquit, even if they do not accept the explanation given by a witness for the defence.—R. v. KETTERINGHAM (1926), 19 Cr. App. Rep. 159, C. C. A.

10,898. *Add. Annotation*:—*Reid*. *Eadie v. I. R. Comrs.*, [1924] 2 K. B. 198.

10,905a. —.]—R. v. REYNOLDS (1927), 20 Cr. App. Rep. 125, C. C. A.

10,906a. —.]—On the trial of an indictment for receiving with guilty knowledge, the jury must be clearly warned that the contents of a statement made by the thief before the trial are not evidence against deft., & if the

without such directions the relationship of debtor & creditor would exist between the parties, & that if it would the directions must have been in writing, & that, if it would not, oral directions would be sufficient to support the charge.—R. v. SWIRYK, [1925] 1 D. L. R. 1015; [1925] 1 W. W. R. 656; 43 Can. Crim. Cas. 245.—CAN.

#### PART XXXIV. SECT. 8, SUB-SECT. 2.

10,459 i. — Letter addressed to non-existent person.]—Deft. was convicted of sending a threatening letter addressed to "Sir James W. Moir" at 40, Duke St., Halifax. There was no such person as "Sir James W. Moir," but 40 Duke St. was the business address of James W. Moir, by whom the letter was received:—*Held*: deft.'s appeal from the conviction failed.—R. v. VARBEFF (1922), 57 N. S. R. 415.—CAN.

#### PART XXXIV. SECT. 8, SUB-SECT. 3.

p i. — Extortion by constable.]—R. v. LAPHAM (1913), 24 O. W. R. 111; 4 O. W. N. 838; 21 Can. Crim. Cas. 79; 10 D. L. R. 315.—CAN.

#### PART XXXIV. SECT. 9, SUB-SECT. 3.

10,679 i. Intent must be alleged.]—

R. v. ROSS, [1927] 1 D. L. R. 911; 47 Can. Crim. Cas. 71; 59 N. S. R. 55.—CAN.

#### PART XXXIV. SECT. 14, SUB-SECT. 1.

o i. — Distinct from receiving goods knowingly stolen.]—R. v. YEAMAN, [1924] 2 D. L. R. 1116; 2 W. W. R. 452; 42 Can. Crim. Cas. 78; 33 B. C. R. 390.—CAN.

#### PART XXXIV. SECT. 14, SUB-SECT. 3.

—B.

10,789 iii. —.]—The mere finding of stolen property in the house where accused lived is not of itself sufficient to prove possession by him, where there are other inmates of the house. There must be control, exclusive or joint, as well. Especially is this the case where accused was only a casual inmate of the house & where the place where the property was found hidden was accessible, not only to the other inmates of the house, but to outsiders as well.—R. v. PAWLETT, [1923] 1 W. W. R. 1453; 40 Can. Crim. Cas. 312; 33 Man. L. R. 103.—CAN.

#### PART XXXIV. SECT. 14, SUB-SECT. 4.

—A.

10,828 i. Onus of proof.]—R. v.

BERELOVITCH (N. S.) (1926), 46 Can. Crim. Cas. 148.—CAN.

#### PART XXXIV. SECT. 14, SUB-SECT. 5.

s i. —.]—While it is true that the recent possession of stolen property raises a presumption of fact that, if not reasonably explained, the possessor is the thief, yet for the raising of such a presumption the exclusiveness of the possession or access is material.—R. v. PAWLETT, [1923] 1 W. W. R. 1453; 40 Can. Crim. Cas. 312; 33 Man. L. R. 103.—CAN.

10,851 i. What is recent—Materiality of nature of article.]—R. v. JONES (Sask.), [1926] 3 W. W. R. 313; [1927] 3 D. L. R. 679; 47 Can. Crim. Cas. 380.—CAN.

10,852 iv. —.]—R. v. ANDREWS (N.B.) (1925), 44 Can. Crim. Cas. 201.—CAN.

10,852 v. —.]—R. v. JONES (Sask.), [1926] 3 W. W. R. 313; [1927] 3 D. L. R. 679; 47 Can. Crim. Cas. 380.—CAN.

#### PART XXXIV. SECT. 14, SUB-SECT. 8.

10,901 i. Recent possession of stolen property—As evidence of receiving.]—R. v. JONES (Sask.), [1926] 3 W. W. R. 313; [1927] 3 D. L. R. 679; 47 Can. Crim. Cas. 380.—CAN.



- former is called at the trial before he is sentenced, there must be a careful direction on his testimony.—*R. v. BAGULEY* (1925), 19 Cr. App. Rep. 54, C. C. A.
- 10,927a. Several accused charged with receiving—Direction as to possession.—*R. v. PECKHAM* (THE YOUNGER), No. 3165c, ante.
- 10,940. Add. Annotation:—*Refd. R. v. Berg, Britt, Carré & Lummies* (1927), 20 Cr. App. Rep. 38.
- 10,997. Add. Annotation:—*Refd. Lake v. Simmons* (1926), 95 L. J. K. B. 586.
- 11,011. Add. Annotation:—*Mentd. Perlak Petroleum Maatschappij v. Deen*, [1924] 1 K. B. 111.
- 11,038a. —.—]—False pretences are not proved, unless the falsity of the words used is unequivocal & intentional.—*R. v. SEELY* (1928), 21 Cr. App. Rep. 18, C. C. A.
- 11,069. Add. Annotation:—*Mentd. Short v. Poole Corpn.* (1925), 42 T. L. R. 107.
- 11,120. Add. Annotation:—*Refd. R. v. Punch* (1927), 20 Cr. App. Rep. 18.
- 11,346. Add. Annotation:—*Refd. R. v. Punch* (1927), 20 Cr. App. Rep. 18.
- 11,375. Add. Citations:—[1924] 1 K. B. 311; 93 L. J. K. B. 144; 130 L. T. 318; 27 Cox, C. C. 574; [1924] B. & C. R. 78.
- 11,467. Add. Annotation:—*Refd. Shapiro v. La Motta* (1923), 130 L. T. 622.
- 11,642a. Charge under Metropolitan Police Courts Act, 1839 (c. 71), s. 38—Time for bringing—Existing tenancy.—Where a landlord, during the existence of a tenancy, charged his tenant under the above sect. with having three months before wilfully damaged his premises:—*Held*: the charge should have been made within one month.—*DOWELL v. BENINGFIELD* (1841), Car. & M. 9.
- 11,686. Add. Annotation:—*Refd. British Broadcasting Co. v. Wireless League Gazette Publishing Co.* (1926), 95 L. J. Ch. 272.
- 11,709. Add. Annotation:—*Refd. Barnard v. Evans*, [1925] 2 K. B. 794.
- 11,738. Add. Annotation:—*Refd. Conn v. Turnbull* (1925), 89 J. P. Jo. 300.

## Part XXXV.—Forgery.

- 11,797. Add. Annotation:—*Refd. McDonald v. Nash*, [1924] A. C. 625.
- 11,834. Add. Annotations:—*Consd. Lloyds Bank v. Chartered Bank of India, Australia & China* (1928), 97 L. J. K. B. 609; *Reckitt v. Barnett, Pembroke & Slater*, [1928] 2 K. B. 244. *Refd. Goldman v. Cox* (1924), 40 T. L. R. 423; *Underwood v. Bank of Liverpool, Underwood v. Barclays Bank*, [1924] 1 K. B. 775. *Mentd. Australian Bank of Commerce v. Perel*, [1926] A. C. 737; *Jones v. Waring & Gillow*, [1926] A. C. 670.
- 11,962. Add. Annotation:—*Refd. R. v. FERGUSON* (1845), 5 L. T. O. S. 458.

### PART XXXIV. SECT. 14, SUB-SECT. 9.

sn. Several articles received by different persons—*Receivers triable jointly*.—*MUSSAMMAT GULJANIA v. R.* (1927), 1 L. L. R. 6 Pat. 583.—IND.

### PART XXXIV. SECT. 16, SUB-SECT. 1.

10 975 ii. —.—]—In order to constitute the offence of obtaining money by false pretences, it is not necessary that the fraud should operate in precisely the way intended or expected by prisoner. If in fact the fraud operated as a direct cause of the payment of money, it is immaterial that the chain of causation was different from that which prisoner intended or expected.—*It. v. LAMBASSI*, [1927] V. L. R. 349; 49 A. L. T. 23; [1927] Argus L. R. 297.—AUS.

### PART XXXIV. SECT. 16, SUB-SECT. 2.

11,001 ii. —.—]—Where accused was found guilty of an offence under Crimes Act, 1915, s. 181 (a), for obtaining goods by false pretences:—*Held*: under the above sect. it was not necessary that the property in the goods obtained should pass to accused, the passing of the property from the person defrauded being sufficient.—*R. v. O'SULLIVAN*, [1925] V. L. R. 514; 547 A. L. T. 3; 31 Argus L. R. 263.—AUS.

### PART XXXIV. SECT. 16, SUB-SECT. 2.

m i. —.—]—Where a party is

induced by false representation to part with possession of goods, but does not part with the right of property therein, there can be no conviction for obtaining goods under false pretences.—*R. v. McMANUS*, [1924] 3 D. L. R. 297; 42 Can. Crim. Cas. 248; 51 N. B. R. 255.—CAN.

### PART XXXIV. SECT. 16, SUB-SECT. 3.

11,191 i. Value or extent of business.—*R. v. PENNY* (1925), 35 B. C. R. 414.—CAN.

### PART XXXIV. SECT. 21, SUB-SECT. 2.

11,383 i. Who is a "creditor."—A person who sells goods, other than necessities, to an infant, & who has no enforceable claim for the price, is not a "creditor" within Criminal Code, s. 417.—*R. v. RASH* (1923), 41 Can. Crim. Cas. 215; 53 O. L. R. 245.—CAN.

### PART XXXIV. SECT. 26, SUB-SECT. 1.

sq. Intentional wrongful injury.—To constitute the crime of malicious injury to property, all that is necessary is an intentional wrongful injury to another's property. Upon proof of the wrongful intention the ct. will presume malice, though that presumption may be rebutted.—*R. v. MASHARIGN*, [1924] App. D. 11.—S. AF.

### PART XXXIV. SECT. 26, SUB-SECT. 17.

11,699 ii. —.—]—The fact that a stray bull is castrated, in accordance with a local custom among stock breeders to protect pure-bred stock, is not a defence to a prosecution under Criminal Code, s. 510 (B) (b), for maiming or wounding the stray bull.—*R. v. ENGLAND* (1925), 43 Can. Crim. Cas. 11; 19 Sask. L. R. 165; [1925] 1 W. W. R. 237.—CAN.

### PART XXXIV. SECT. 26, SUB-SECT. 20.

11. —.—]—The form of conviction should state the amount of injury done, although it should adjudge the whole penalty, including the amount to be applied according to law.—*R. v. KRUTZEL*, [1924] 1 D. L. R. 621; 1 W. W. R. 342; 41 Can. Crim. Cas. 279; 20 Alta. L. R. 19.—CAN.

### PART XXXV. SECT. 2, SUB-SECT. 2.

11,762 i. Ante-dating.—The ante-dating of a document is not a forgery, unless it has or could have operated to the prejudice of any one.—*R. v. GOBIND SINGH* (1926), 1 L. L. R. 5 Pat. 573.—IND.

### PART XXXV. SECT. 8, SUB-SECT. 1.

sz. Utterer need not be actual forger.—*BARR v. H.M. ADVOCATE*, [1927] S. C. (J.) 51.—SCOT.

## Part XXXVI. Deceit by Fortune Telling, Witchcraft, Sleight of Hand, etc.

12,169a. — The offence under Vagrancy Act, 1824 (c. 83), s. 4, of professing to tell fortunes is complete without any allegation or proof that deft. did not believe in the possession of the powers claimed. Merely to tell fortunes is an offence in itself, whatever the state of mind of deft.—STONEHOUSE v. MASSON, [1921] 2 K. B. 818; 91 L. J. K. B. 93; 125 L. T. 463; 85 J. P. 167;

37 T. L. R. 621; 19 L. G. R. 477; 27 Cox, C. C. 23, D. C.

*Annotation*:—*Folld. Irwin v. Barker* (1925), 69 Sol. Jo. 589.]

12,169b. — ——.]—It is not necessary to prove a deceitful purpose or fraudulent intent as a condition precedent to a conviction under Vagrancy Act, 1824 (c. 83), s. 4, of a person professing to tell fortunes.—IRWIN v. BARKER (1925), 69 Sol. Jo. 589, D. C.

## CONTEMPT OF COURT, ATTACHMENT AND COMMITTAL.

## Part I.—Contempt of Court Generally.

3. *Add. Annotation* :—Mentd. *Glasbrook v. Glamorgan County Council*, [1925] A. C. 270.

## Part III.—Jurisdiction to Commit or Fine for Contempt.

46. *Add. Citations* :—*sub nom.* *R. v. BROWNELL*, 1 Ad. & El. 598 ; 3 L. J. M. C. 118 ; 110 E. R. 1335.

## Part IV.—Criminal Contempt.

98. *Add. Citation* :—*sub nom.* *Re DAVIES, BUTSON v. DAVIES*, 4 T. L. R. 580.

164a. ———.]—Observations on the distinction between legitimate criticism of a judge & such an imputation of unfairness & lack of impartiality as constitutes contempt of ct.—*R. v. NEW STATESMAN (EDITOR), Ex p. PUBLIC PROSECUTIONS DIRECTOR* (1928), 44 T. L. R. 301, D. C.

165a. ———.]—*R. v. NEW STATESMAN (EDITOR), Ex p. PUBLIC PROSECUTIONS DIRECTOR*, No. 164a, *ante*.

166. *Add. Annotations* :—As to (1) *Appl. R. v. New Statesman, Ex p. Public Prosecutions Director* (1928), 44 T. L. R. 301. As to (2) *Appl. R. v. New Statesman, Ex p. Public Prosecutions Director* (1928), 44 T. L. R. 301.

167. *Add. Annotation* :—*Refd. R. v. People, Ex p. Hobbs* (1925), 69 Sol. Jo. 494.

179. *Add. Annotations* :—*Refd. R. v. Evening Standard, Ex p. Public Prosecutions Director. R. v. Manchester Guardian, Ex p. Same, R. v. Daily Express, Ex p. Same* (1924), 40 T. L. R. 833 ; *R. v. Daily Mirror, Ex p. Smith*, [1927] 1 K. B. 845.

179a. ———]—Results of investigations of private detectives.]—When an accused person is under arrest on a criminal charge, it is contempt of ct. for the persons responsible for conducting a newspaper to employ amateur detectives for the purpose of investigating the facts of the

alleged crime & to publish the results of that investigation.—*R. v. EVENING STANDARD, Ex p. PUBLIC PROSECUTIONS DIRECTOR, R. v. MANCHESTER GUARDIAN, Ex p. SAME, R. v. DAILY EXPRESS, Ex p. SAME* (1924), 40 T. L. R. 833, D. C.

180a. Charge to grand jury.]—A charge to the grand jury delivered by the Recorder of London in a place to which the public & reporters are admitted is a public judicial proceeding in a ct. of justice, of which newspapers have a right to publish a fair & accurate report.

Consideration of the question whether or not a report published in a newspaper of a charge by the Recorder of London to the grand jury was a fair & accurate report & should be regarded as privileged.—*R. v. EVENING NEWS, Ex p. HOBBS*, [1925] 2 K. B. 158 ; 94 L. J. K. B. 511 ; 132 L. T. 767 ; 41 T. L. R. 291 ; 27 Cox, O. C. 764, D. C.

182a. Publication of statement that money paid into court—Libel action against newspaper—Libel Act, 1845 (c. 75), s. 2.]—(1) The amount of a payment into ct. by deft. under Libel Act, 1845 (c. 75), s. 2, amending Libel Act, 1843 (c. 96), s. 2, is not to be communicated to the jury, & where money has been so paid in, it is contempt of ct. to publish before the trial a statement that a particular sum has been paid by deft. to pltf.'s solr., inasmuch as the publication of

## PART III. SECT. 2.

k i. ———.]—*Irish Free State*.]—The High Ct. of Justice of the Irish Free State has jurisdiction to commit for contempt of ct.—*A.-G. v. O'KELLY*, [1928] I. R. 308.—IR.

## PART IV. SECT. 1.

97 iv. ———.]—The phrase "contempt of ct." does not in the least describe the true nature of the class of offence committed, viz., interfering with the administration of the law in impeding & preventing the course of justice. Imprisonment for breach of interdict being in vindication of public law, it must not be assumed that an order for release will follow upon an apology & promise of obedience to the orders of the ct., even though such apology is accompanied by a

statement on behalf of complainer that he no longer requires the protection which the original interdict gave him.—*JOHNSON v. GRANT*, [1923] S. C. 789.—SCOT.

## PART IV. SECT. 3, SUB-SECT. 1.

sp. Sending letter to judge containing offensive references to judgment.]—*Re MILLER* (1921), 54 N. S. R. 529.—CAN.

## PART IV. SECT. 3, SUB-SECT. 2.

166 ii. ———.]—A newspaper in the course of an article called a judge "sycophantic," & accused him of having decided a case not according to the dictates of justice but in order to please others.—*Held*: (1) the publication of an article referring to a case which had been decided might amount to contempt; (2) an article scandalising a ct. or judge was a

contempt of ct.—*R. v. SAYYAD HABIB* (1925), 1 L. R. 6 Lah. 529.—IND.

## PART IV. SECT. 3, SUB-SECT. 3.—A. (a).

170 i. ———.]—*No proceedings pending*.]—*Appl.* was fined for contempt in respect of matter published by him :—*Held*: (1) there being no attack on any ct. or its members, there could be no contempt of ct. in respect of anything tending to obstruct the course of justice in the absence of any pending proceedings to which the published matter could apply; (2) there was nothing in the published matter which was calculated to prejudice the course of justice; (3) the order must be set aside.—*PORTER v. R., Ex p. CHIN MAN YEE* (1926), 37 C. L. R. 433.—AUS.



such a statement is calculated to prejudice the fair trial of the action.

(2) In such a case the proper procedure to be adopted by deft., who alleges that pending the trial of the action pltf. has been guilty of contempt of court, is not to apply for a rule nisi for attachment, but to proceed by notice of motion in the action.—*R. v. WEALDSTONE NEWS & HARROW NEWS (EDITOR, PRINTER & PUBLISHER), HARLEY v. SHOLL* (1925), 41 T. L. R. 508; 69 Sol. Jo. 642, D. C.

190. *Add. Annotations*:—As to (1) *Apld. R. v. Wealdstone News & Harrow News, Harley v. Sholl* (1925), 41 T. L. R. 508. *Refd. R. v. Evening Standard, Ex p. Public Prosecutions Director, R. v. Manchester Guardian, Ex p. Same, R. v. Daily Express, Ex p. Same* (1924), 40 R. L. R. 833; *R. v. People, Ex p. Hobbs* (1925), 69 Sol. Jo. 494; *R. v. Daily Mirror, Ex p. Smith*, [1927] 1 K. B. 845; *R. v. Daily Mail, Ex p. Factor* (1928), 44 T. L. R. 303.

192a. ———.]—A publication made with the clear intention of prejudicing the fair trial of an issue pending before a ct. is obviously a contempt of ct., & will be punished as such. But where the ct. is satisfied that there was no such intention & yet the publication might prejudice a pending trial, the ct. will, in considering whether a writ of attachment should issue, take into account the circumstances of the case, & no attachment will be

granted unless (*inter alia*) the ct. is satisfied that the pending proceeding is a genuine proceeding, brought & intended to be prosecuted to effect its avowed purpose.—*R. v. DAILY MAIL (EDITOR), Ex p. FACTOR* (1928), 44 T. L. R. 303, D. C.

200. *Add. Annotation*:—*Refd. R. v. Daily Mail, Ex p. Factor* (1928), 44 T. L. R. 303.

234. *Add. Annotation*:—*Refd. R. v. Daily Mail, Ex p. Factor* (1928), 44 T. L. R. 303.

236. *Add. Annotation*—*Dbtd. R. v. Payne*, [1896] 1 Q. B. 577. In my opinion, in some instances, the cts. have gone rather too far (LORD RUSSELL, C.J.).

283a. *Photograph of prisoner—Identity in issue.*]—It is a contempt of ct. in newspaper to publish the photograph of a person charged with a criminal offence, where it is reasonably clear that the question of the identity of accused with the criminal has arisen or may arise, & such publication is calculated to prejudice a fair trial.—*R. v. DAILY MIRROR, Ex p. SMITH*, [1927] 1 K. B. 845; *sub nom. R. v. "DAILY MIRROR" (EDITOR & PROPRIETORS), R. v. "DAILY MAIL" (EDITOR & PROPRIETORS), Ex p. SMITH*, 96 L. J. K. B. 352; 136 L. T. 539; 43 T. L. R. 254; 28 Cox, O. C. 324.

301. *Add. Annotations*:—As to (1) *Refd. Greenway v. A.-G.* (1927), 44 T. L. R. 124. As to (2) *Consd. Re A. B.'s Pctn.* (1927), 97 L. J. P. 104.

## Part V.—Contempt in Procedure.

429a. ——— *Consent order—Breach of scheduled terms.*]—There is a distinction between a case where there is in the body of an order an express direction or undertaking, & a case where the ct. is merely staying an action on terms which the parties have agreed, & only keeping the action alive for the purpose of enforcing those terms. In the latter case the terms are not an order of the ct. capable of being enforced by proceedings for contempt, but must be enforced by an action for specific performance of the terms or for an injunction to restrain breach of the terms, followed by proceedings for contempt in the

event of further breach, while in the former case contempt proceedings can be launched forthwith on breach.—*DASHWOOD v. DASHWOOD* (1927), 71 Sol. Jo. 911.

456. *Add. Annotation*:—*Mentd. Ellerman Lines v. Read*, [1928] 2 K. B. 144.

459. *Add. Annotations*:—*Mentd. The Volant* (1842), 1 Wm. Rob. 383; *The Mary Caroline* (1848), 6 Notes of Cases, 536; *The Mellona* (1848), 3 Wm. Rob. 16; *The Benares* (1850), 14 Jur. 581; *The Milan* (1861), 5 L. T. 590; *R. v. City of London Court Judge*, [1892] 1 Q. B. 273; *The Dictator*, [1892] P. 304.

### PART IV. SECT. 3, SUB-SECT. 3.—A. (d) i.

193 ii. ———.]—*R. v. McINROY, Re WHITESIDE* (1915), 32 W. L. R. 764; 9 W. W. R. 846.—CAN.

193 iii. ———.]—*MERIDEN BRITANNIA CO., LTD. v. WALTERS, Re LEWIS* (1915), 9 O. W. N. 87; 34 O. L. R. —CAN.

193 iv. ———.]—The publication of comments on a case pending trial in a ct. amounts to contempt of ct., if the comments are such as are likely to prejudice the administration of justice in the case.—*R. v. MAUNG TIN SAW* (1927), 1 L. R. 6 Ran. 39.—IND.

### PART IV. SECT. 3, SUB-SECT. 3.—A. (d) iv.

sq. *General rule.*]—A newspaper may

not, in the guise of reporting public judicial proceedings, indicate the writer's own opinion of the demeanour of a witness & so comment on that demeanour.—*A.-G. v. DAVIDSON*, [1925] N. Z. L. R. 849.—N.Z.

### PART IV. SECT. 3, SUB-SECT. 3.—A. (e).

e i. ——— *Liability of printer.*]—A printer cannot escape liability, by alleging a contract with the owner of the press that he was not to be responsible for the contents of the publications.—*R. v. MAUNG TIN SAW* (1927), 1 L. R. 6 Ran. 39.—IND.

### PART V. SECT. 1, SUB-SECT. 1.—B. (a).

st. *Discretion of court to commit—Party unable to obey order.*]—Where a

party could neither be said to have refused nor neglected to comply with an order of the ct.:—*Held*: he was not guilty of contempt.—*R. v. OTTY, Ex p. ROBERTS, R. v. WHITE, Ex p. ROBERTS* (1922), 50 N. B. R. 401, 411.—CAN.

### PART V. SECT. 2, SUB-SECT. 3.—K.

sw. *To hand over papers—By one solicitor to another—Offer to comply subject to condition.*]—A solr. was ordered by the ct. to hand over papers to another solr. & failed to do so:—*Held*: guilty of contempt.

An offer was made to hand over subject to certain specified conditions:—*Held*: a refusal of this offer was justified.—*Re BRYANT, ISARD & Co., Ex p. LANGLEY*, [1924] 1 D. L. R. 49.—CAN.

## Part VI.—Attachment and Committal.

487. *Add. Annotation*:—Mentd. *R. v. Woolwich B. C., Ex p. Woolwich Gdns.* (1922), 128 L. T. 374.
599. *Add. Annotations*:—Mentd. *Duff Development Co. v. Kelantan Government*, [1923] 1 Ch. 385; *Engelke v. Musmann*, [1928] A. C. 433.
607. *Add. Annotation*:—Refd. *Capron v. Capron*, [1927] P. 243.
698. *Citations*:—For “3 Bing. 223; 11 Moore, C. P. 55; 4 L. J. O. S. C. P. 57; 130 E. R. 498” read “3 Bing. 223; 130 E. R. 498; *sub nom.* *THORPE v. GIBBOURNE*, 11 Moore, C. P. 55; 4 L. J. O. S. C. P. 57.”
709. *Add. Annotation*:—Folld. *R. v. Wealdstone News & Harrow News, Harley v. Sholl* (1925), 41 T. L. R. 508.
- 709a. —.]—*R. v. WEALDSTONE NEWS & HARROW NEWS (EDITOR, PRINTER & PUBLISHER), HARLEY v. SHOLL*, No. 182a, *ante*.
710. *Add. Annotation*:—As to (1) Refd. *Shrager v. Dighton*, [1924] 1 K. B. 274.
750. *Add. Annotations*:—Mentd. *Re Wingfield & Blew*, [1904] 2 Ch. 665; *Russell v. Russell*, [1924] A. C. 687; *Warren v. Warren*, [1925] P. 107.
- 776a. *Substituted service—When ordered.*]—*Re A SOLICITOR*, [1892] W. N. 22; 36 Sol. Jo. 271.
- 781a. *On former clerk—At place where solicitor's name on door.*]—*Held*: the service was not sufficient.—*BRAGG v. HATCHARD* (1858), 28 L. J. Ex. 35; *sub nom. Re BRAGG & HATCHARD*, 32 L. T. O. S. 132.
894. *Add. Annotation*:—As to (1) Refd. *R. v. Central Criminal Court JJ., Ex p. L. C. C.*, [1925] 2 K. B. 43.
- 931a. —. Irregularity of attachment.]—*Re BEVAN & GIRLING* (1863), 12 W. R. 196, L. JJ.
948. *Add. Annotation*:—Mentd. *Pitchers v. Surrey County Council*, [1923] 2 K. B. 57.
- 1039a. —. —. —. —.]—After an order for a writ of attachment had been made against a solr. in default further time was given by his client, the creditor, on part payment being made. On further default the writ was executed, & the solr. imprisoned:—*Held*: the right to enforce the writ had not been waived.—*Re A SOLICITOR* (1895), 64 L. J. Ch. 894.

## Part VII.—Position of Party in Contempt.

1128. *Add. Annotations*:—Generally, Mentd. *Evans v. Evans & Blyth* (1904), 20 T. L. R. 612; *Re Wigand, R. v. Wigand* (1913), 82 L. J. K. B. 735; *Russell v. Russell*, [1924] A. C. 687; *Warren v. Warren*, [1925] P. 107.

PART VI. SECT. 5, SUB-SECT. 3.—  
B. (a) ii.

574 i. *General rule*—Notice sufficient without service.]—If a person enjoined by a prohibitory injunction becomes aware without personal service of the existence of the order & nevertheless commits a fault, he is just as liable to attachment as if he had been personally served.—*ELLIOTT v. APPLETON* (1923), 19 Tas. L. R. 20.—AUS.

## PART VI. SECT. 6, SUB-SECT. 4.

sz. *Direction to issue writ of attachment may be to clerk of Supreme Court—Writ to be entitled in Supreme Court.*]—*Re DROUGHT AREA RELIEF ACT, SNOWDEN v. BAKER*, [1922] 3 W. W. R. 1002.—CAN.

## PART VI. SECT. 7, SUB-SECT. 3.

974 i. *Attachment—Whether sheriff can take bail—Before return of writ.*]—

*LANE v. KINGSMILL* (1850), 6 U. C. R. 579.—CAN.

## PART VI. SECT. 9, SUB-SECT. 2.—A.

h i. —. *Not breach of undertaking by solicitor.*]—*Re KEAN & BIRD*, [1927] 4 D. L. R. 561; [1927] 3 W. W. R. 369; 48 Can. Crim. Cas. 363.—CAN.

## PART VI. SECT. 10, SUB-SECT. 6.—A.

b i. —. —.]—*HARRIS v. MYERS* (1864), 1 Ch. Ch. 229.—CAN.

## Part IV.—Jurisdiction.

22. *Add. Annotation*:—**Mentd.** *Sassoon v. Graham & Oriental Navigation Co.* (1925), 133 L. T. 805.
- 22a. **Death of judge during trial—Jurisdiction of another judge to continue hearing.**—*Semble*: a judge has no jurisdiction to continue the hearing of a case, in which witnesses have been called in ct. in the course of a trial before a jury & another judge.—**COLESHILL v. MANCHESTER CORPN.**, [1928] 1 K. B. 776; 97 L. J. K. B. 229; 138 L. T. 537; 92 J. P. 37; 44 T. L. R. 258; 26 L. G. R. 124, C. A.
23. *Add. Annotation*:—**Generally, Mentd.** *St. Magnus Parochial Church Council, etc. v. London Diocese Chancellor*, [1923] P. 38.
24. *Add. Annotation*:—**Mentd.** *Pryce v. Pioneer Press* (1925), 42 T. L. R. 29.
25. *Add. Annotation*:—**Consd.** *Sassoon v. Graham & Oriental Navigation Co.* (1925), 133 L. T. 805.
28. *Add. Annotation*:—**Mentd.** *Tallack v. Tallack & Broekema*, [1927] P. 211.
30. *Add. Annotations*:—**Refd.** *A.-G. for Alberta v. Cook*, [1926] A. C. 444. **Mentd.** *Salvesen (or von Lorang) v. Austrian Property Administrator*, [1927] A. C. 641.
- 33a **Will not try hypothetical case.**—It is not the function of a ct. of law to advise parties as to what would be their rights under a hypothetical state of facts (**LORD LORE-BURN, C.**).—**GLASGOW NAVIGATION CO. v. IRON ORE CO.**, [1910] A. C. 293; 79 L. J. P. C. 83; 102 L. T. 435; 11 Asp. M. L. C. 387, H. L.
- 33b. **Will not decide academical question.**—**TINDALL v. WRIGHT** (1922), 127 L. T. 149; 86 J. P. 108; 38 T. L. R. 521; 66 Sol. Jo. 524; 27 Cox, C. C. 212, D. C.
35. *Add. Annotations*:—**Refd.** *Duff Development Co. v. Kelantan Government*, [1923] 1 Ch. 385; *Compania Mercantil Argentina v. United States Shipping Board* (1924), 93 L. J. K. B. 816; *Duff Development Co. v. Kelantan Government*, [1924] A. C. 797.
37. *Add. Annotation*:—**Consd.** *The Fagernes*, [1926] P. 185.
- 37a. — **Waters within fauces terrae.**—**Defts.**, an Italian co., moved to set aside an order for service of notice of a writ *in personam* upon them in Italy, in respect of a collision between their vessel, which sank, & **pltf's.** vessel in the Bristol Channel some 10½ or 12½ miles from the English coast & 9½ or 7½ miles from the Welsh coast according to the respective cases. The ct. was informed by the A.-G. that he was instructed by the Secretary of State for Home Affairs that the spot where the collision was alleged to have occurred was not within the limits to which the territorial sovereignty of His Majesty extended:—**Held**: having regard to the statement of the A.-G. (*see CONSTITUTIONAL LAW*, No. 136a, *ante*), the place where the collision took place was not within the jurisdiction of the High Ct., & the order for service of notice of the writ on **defts.** in Italy must be set aside.—**THE FAGERNES**, [1927] P. 311; 96 L. J. P. 183; 138 L. T. 30; 43 T. L. R. 746; 17 Asp. M. L. C. 326; *sub nom.* **THE FAGERNES, CORNISH COAST (OWNERS) v. SOCIETA NAZIONALE DI NAVIGAZIONE**, 71 Sol. Jo. 634, C. A.
38. *Add. Annotation*:—**As to (1) Consd.** *The Fagernes*, [1926] P. 185.

### PART I.

sa. *Not income tax board of appeal.*—A board of appeal created under Income Tax Assessment Act, 1922–1923, s. 41, is not a High Ct. or a federal ct.—**BRITISH IMPERIAL OIL CO., LTD. v. FEDERAL COMB. OF TAXATION** (1925), 35 C. L. R. 422; 31 Argus L. R. 129.—AUS.

sb. *Not Medical Council of Phy.*—The Medical Council of

Physicians & Surgeons of Saskatchewan acting under Medical Profession Act, R. S. S., 1920 (c. 135), s. 40, is not a ct.—**HUNT v. COLLEGE OF PHYSICIANS & SURGEONS OF SASKATCHEWAN**, [1925] 4 D. L. R. 834; [1925] 3 W. W. R. 758.—CAN.

### PART IV. SECT. 3, SUB-SECT. 2.

45 vii a. — — — — —.]—**DEPUTY FEDERAL COMR. OF TAXATION FOR**

**TASMANIA v. THOMAS** (1924), 35 C. L. R. 299.—AUS.

45 vii b. — — — — —.]—Jurisdiction of a county ct. action against a non-resident of the judicial division in which the action is entered cannot be sustained on the ground that the cause of action arose within the division, unless the whole cause of action arose therein.—**COMBA v. SIMPSON**, [1925] 4 D. L. R. 1002; [1925] 3



66. *Add. Annotation* :—*Generally*, *Reid. Re Key-stone Knitting Mills Trade Mk.* (1928), 97 L. J. Ch. 316.
74. *Add. Annotation* :—*Reid. Owl Mill Co.* (1920) *v. Croft*, *Elliott v. Duchess Mill* (1926), 95 L. J. K. B. 635.
- 137a. —.]—*LEADER v. MOXON* (1773), 2 Wm. Bl. 924; 3 Wils. 461; 95 E. R. 1157.
- Annotations* :—*Mentd. British Cast Plate Manufacturers Co. v. Meredith* (1792), 4 Term Rep. 794; *Sutton v. Clarke* (1815), 6 Taunt. 29; *Boulton v. Crowther* (1824), 2 B. & C. 703; *Hall v. Smith* (1824), 2 Bing. 156; *Mersey Dock Trustees v. Gibbs*, *Mersey Dock Trustees v. Penhallow* (1866), L. R. 1 H. L. 93; *R. v. St. Luke's Chelsea* (1871), L. R. 7 Q. B. 148.
142. *Add. Annotation* :—*Apld. Witham Outfall Board v. Boston Corpn.* (1926), 136 L. T. 756.
147. *Add. Annotations* :—*Reid. Everett v. Griffiths*, [1924] 1 K. B. 941; *Whitney v. I. R. Comrs.* (1925), 42 T. L. R. 58; *Wigg v. A.-G. of Irish Free State* (1927), 96 L. J. P. C. 88. *Mentd. Boston Corpn. v. Fenwick* (1923), 129 L. T. 766; *Sheppy Glue & Chemical Works v. Medway River Conservators* (1926), 24 L. G. R. 457; *Whitney v. I. R. Comrs.*, [1926] A. C. 37; *Dee Conservancy Board v. McConnell*, [1928] 2 K. B. 159.
149. *Add. Annotations* :—*Apld. Hallen v. Spaeth*, [1923] A. C. 684. *Consd. Caven v. Canadian Pacific Ry.* (1925), 133 L. T. 774; *Apld. Cayzer, Irvine v. Board of Trade*, [1927] 1 K. B. 269. *Reid. Board of Trade v. Cayzer, Irvine*, [1927] A. C. 610; *Gowar v. Hales* (1927), 96 L. J. K. B. 1088; *Hyman v. Hyman, Hughes v. Hughes* (1928), 139 L. T. 416; *Wales v. Iron Trades Employers' Assocn.* (1928), 21 B. W. C. C. 316. *Mentd. Lothian v. Epworth Press* (1927), 137 L. T.
150. *Add. Citations* :—15 Asp. M. L. C. 566; *affg. S. C. sub nom. DREYFUS & Co. v. ATLANTIC SHIPPING & TRADING Co.* (1921) 37 T. L. R. 417, C. A.
- Add. Annotations* :—*As to* (1) *Consd. Ford v. Compagnie Furness (France)*, [1922] 2 K. B. 797. *Reid. Pinnock v. Lewis & Peat*, [1923] 1 K. B. 690. *As to* (2) *Reid. Reed v. Page & East*, [1927] 1 K. B. 743. *Generally, Mentd. The Christel Vinnen*, [1924] P. 61.
155. *Add. Annotation* :—*Mentd. Re Boundary between Canada & Newfoundland in Labrador Peninsula* (1927), 137 L. T. 187.
157. *Add. Annotation* :—*Mentd. Graham v. Graham*, [1923] P. 31.
170. *Add. Annotations* :—*Reid. St. Magnus Parochial Church Council, etc. v. London Diocese Chancellor*, [1923] P. 38; *Hunter v. Städtische Hochseefischerei Gemeinnützige Gesellschaft* (1925), 133 L. T. 488; *Mansfield v. Robinson*, [1928] 2 K. B. 353.
172. *Add. Annotation* :—*Reid. Duff Development Co. v. Kelantan Government*, [1924] A. C. 797.
185. *Add. Annotation* :—*Folld. Pringle v. Hales*, [1925] 1 K. B. 573.
199. *Add. Annotation* :—*Reid. Hunter v. Städtische Hochseefischerei Gesellschaft*, [1925] 2 K. B. 493.
235. *Add. Annotation* :—*Mentd. Wigg v. A.-G. of Irish Free State* (1927), 96 L. J. P. C. 88.

## Part VI.—Right of Public to Admission.

- 276.** *Add. Annotations:—Folld. Re A. B.'s Petn.* (1927), 97 L. J. P. 104. *Consd. Greenway v. A.-G.* (1927), 44 T. L. R. 124.
- 277a.** *—*.]—In cross suits for divorce the case for the wife having been opened in public & the wife on being called as a witness finding it almost impossible to give her evidence by reason of the presence of people in ct., the President directed this part of the case to be heard *in camera*.—**MOOSBRUGGER v. MOOSBRUGGER, MOOSBRUGGER v. MOOSBRUGGER & MARTIN** (1913), 29 T. L. R. 658.
- Annotation:—Reid. Statham v. Statham* (1928), 45 T. L. R. 127.
- 280a.** In proceedings under Legitimacy Act, 1926 (c. 60).]—A petition filed under the above Act for the legitimization of a person who was

W. W. R. 541; 35 Man. L. R. 235.—  
CAN.

45 vii c. —————.]—*Re* NOBLE  
v. CLINE (1889), 18 O. R. 33.—CAN.

45 xil a. —————.]—*Re* PIKE  
v. WALKER, [1926] 3 D. L. R. 439; 59  
O. L. R. 47.—CAN.

45 xiv. ——— *Municipal Courts Act, R. S., 1923 (c. 219), s. 9 (4).*—*BISHOP v. KILCUP*, [1927] 1 D. L. R. 231; 59 N. S. R. 109.—CAN.

e (p. 105) i. ———.]—HUTTON,  
MCLEA & Co. v. KELLY (1818), 1 Nfld.  
L. R. 105.—NFLD.

• (p. 105) ii. ———.]—**MORRIS v. CAMERON** (1862), 12 C. P. 422.—**CAN.**

e (p. 105) iii. ———.]—FLEMING  
v. LIVINGSTONE (1873), 6 P. R. 63.—  
CAN.

• (p. 105) iv. ———.]—CANADIAN  
OIL COS., LTD. v. MARGESON (1917), 51  
N. S. R. 331.—CAN.

**I** (p. 105) **i.** —.]—CURRIE v. NICHOLSON (1925), 58 N. S. R. 234.—**CAN.**

f (p. 105) ii. — *Whether amount liquidated by act of parties.*—WALL-

BRIDGE v. BROWN (1859), 18 U. C. R.  
158.—CAN.

1 (p. 105) iii. ———.]—WATSON  
v. SEVERN (1881), 6 A. R. 559.—CAN.

**1** (p. 105) iv. ———.]—**BROWN v.**  
**HOSE** (1890), 14 P. R. 3.—**CAN.**

f (p. 105) v. ———.]—OSTROM v.  
BENJAMIN (1894). 21 A. R. 467.—CAN.

**f** (p. 105) vi. —EVANS v.  
CHANDLER (1900), 19 P. R. 160.—CAN.

n i. ——— *Unconnected items.*—  
READ v. WEDGE (1870), 29 U. C. R.  
456.—CAN.

**s (p. 107) i. — Exceptions to rule—  
District court of Thunder Bay—47**

*Vict. c. 14 (O.).*—**MCQUAID v. COOPER** (1886), 11 O. R. 213.—**CAN.**  
**sk. Injunction.**—*Power of district*

court.]—ROSE v. DILKE VILLAGE,  
[1926] 1 D. L. R. 190; [1926] 1  
W. W. R. 85; 20 Sask. L. R. 259.—

**CAN.**  
sl. *Action for rescission—Agreement for sale of land—Cannot be entertained*

**TROTTER (1914), 28 W. L. R. 553; 18**

D. L. R. 508; 6 W. W. R. 1123; 24  
Man. L. R. 473.—CAN.

**sm. Action for specific performance—**  
**Agreement for sale of land—Cannot**  
**be entertained by district court.]—**  
**BYERS v. SINGLETON, [1921] 2 W. W. R.**  
**71; 14 Sask. L. R. 195.—CAN.**

**sn. Application under Vendors & Purchasers Act—Cannot be entertained by local judge.]—Re LEVY & JACOBS; [1927] 4 D. L. R. 937; 61 O. L. R. 296.—CAN.**

**sp. Petition for amendment of registered plan of land—Under Registry Act, R. S. O., 1897 (c. 136)—Jurisdiction of county court other than that of county in which land lay.]—Re McDONALD & LISTOWEL (1903), 24 O. L. T. 8; 6 O. L. R. 556; 2 O. W. R. 1000.—CAN.**

st. *Local masters—Jurisdiction.*]—  
LORCH v. OLSON (Sask.), [1927] 3  
W. W. R. 780.—CAN.

**SW.** ——— *To order transfer of action.*—**HAMELIN v. PHILLIPS** (Sask.), [1927] 4 D. L. R. 1107; [1927] 3 W. W. R. 504.—**CAN.**

born illegitimate, but whose parents were married subsequently to his birth, is not a proceeding which entitles petitioner to a hearing *in camera*.—*Re A. B.'s PETITION* (1927), 97 L. J. P. 104; *sub. nom. Re C. D.'s PETITION*, 138 L. T. 208; *sub. nom. GREENWAY v. A.-G.*, 44 T. L. R. 124; 71 Sol. Jo. 882.

286. *Add. Annotation*:—Generally, *Mentd. Sharp*

& Dohme Inc. *v. Boots Pure Drug Co.* (1928), 45 R. P. C. 153.

289a. — Includes justices hearing *ex parte* application for summons.]—*KIMBER v. PRESS ASSOCN.*, [1893] 1 Q. B. 65; 62 L. J. Q. B. 152; 67 L. T. 515; 57 J. P. 247; 41 W. R. 17; 9 T. L. R. 6; 37 Sol. Jo. 8; 4 R. 95, O. A.

## Part VII.—Classification of Courts.

292. *Add. Annotation*:—*Consd. R. v. Central Criminal Court JJ., Ex p. L. C. C.*, [1925] 2 K. B. 43.

293. *Add. Annotation*:—*Consd. R. v. Central Criminal Court JJ., Ex p. L. C. C.*, [1925] 2 K. B. 43.

302a. *Justices.*]—*ANON.* (1523), Y. I 14 Hen. 8, fo. 16, pl. 3.

*Annotations*:—*Reid. Nector v. Gennet* (1556), Cro. Eliz. 466; *Marshalsea Case* (1613), 10 Co. Rep. 68b; *Butt v. Conant* (1820), 1 Brod. & Bing. 548; *Howard v. Gossett* (1845), 10 Q. B. 359. *Mentd. R. v. Waller v. Hanger* (1615), 3 Bulst. 1; *Padfield v. Cabell* (1743), Willes, 411.

## Part X.—The Judicial Committee of the Privy Council.

329. *Add. Annotation*:—*Reid. R. v. North, Ex p. Oakey* (1926), 43 T. L. R. 60.

339. *Add. Annotation*:—*Apprvd. Campbell v. Pollak*, [1927] A. C. 732.

341. *Add. Annotation*:—*Reid. Campbell v. Pollak*, [1927] A. C. 732.

342. *Add. Annotation*:—*Consd. Campbell v. Pollak*, [1927] A. C. 732.

344. *Add. Annotation*:—*Reid. Campbell v. Pollak*, (1927), 96 L. J. K. B. 1093.

345. *Add. Annotation*:—*Reid. Campbell v. Pollak*, [1927] A. C. 732.

348a. *Interlocutory order.*]—As a general rule an interlocutory order is not a suitable subject for review by the Judicial Committee.—*BEVOY KRISHNA MUKHERJIR v. SATISH CHANDRA GIRI* (1927), 55 L. R. Ind. App. 131.

349. *Add. Annotation*:—Generally, *Mentd. Prager v. Blatspiel, Stamp & Heacock*, [1924] 1 K. B. 566.

350. *Add. Annotation*:—*Reid. Ware v. Whitlock*, [1923] 2 K. B. 418.

352a. *Affidavit of service of notice of intended*

application—Necessity for lodging—Judicial Committee Rules, 1925, r. 4.]—PRACTICE NOTE, [1925] W. N. 164, P. C.

363. *Add. Annotation*:—*Mentd. Re Letters Patent No. 139,207, Re Carbonit Akt.*, [1924] 2 Ch. 53.

373. *Add. Citations*:—*sub nom. Ex p. KENSINGTON*, 15 Moo. P. C. C. 209; 15 E. R. 473.

388a. ——— When further security ordered.]—*CORPORATION AGENCIES, LTD. v. HOME BANK OF CANADA*, [1926] W. N. 58, P. C.

403a. ———.]—In a suit claiming property by adoption, one of defts. denied the alleged adoption & claimed widow's maintenance. The first ct. found for the alleged adoption but decreed maintenance at a sum less than that claimed. The appellate ct. varied the decree by increasing the amount of maintenance, & refused leave to appeal:—*Held*: special leave to appeal should be granted limited to the question of the maintenance allowance.—*ANNAPURNABAI v. RUPRAO* (1924), L. R. 51 Ind. App. 319, P. C.

### PART VII. SECT. 3, SUB-SECT. 1.

sa. *Board of Valuation & Revision—Under Winnipeg Charter, s. 341.*]—*Re WINNIPEG CHARTER, Re COMMUNITY OF SISTERS OF THE HOLY NAMES OF JESUS & MARY*, [1922] 2 W. W. R. 258; 68 D. L. R. 506.—CAN.

### PART X. SECT. 1.

321 i. *Status of Judicial Committee—Advisers of Crown.*]—The Judicial Committee sit in the capacity of judges; their report is acted on by the Sovereign in full Privy Council, so that proceedings before the Committee are in substance strictly judicial. The Judicial Committee is not an English body in any exclusive sense; it is not a body with any location. The Sovereign is everywhere throughout the Empire in the contemplation of the law. He may as well sit in Dublin, or at Ottawa or in South Africa, or in Australia, or in India, as in London, & it is only for convenience & because the members of the Privy Council are conveniently in London that the Judicial Committee

J.S.

do sit there.—*HULL v. M'KENNA*, "FREEMAN'S JOURNAL" *v. FERNSTROM & TRAESLIBERI*, [1926] I. R. 402.—IR.

### PART X. SECT. 2, SUB-SECT. 8.

348 ii. ———.]—A question of procedure is not one upon which an appeal to the Privy Council will be entertained.—*A.-G. FOR ONTARIO v. DALY*, [1924] A. C. 1011; 94 L. J. P. C. 21; 132 L. T. 210; 40 T. L. R. 814.—CAN.

### PART X. SECT. 3, SUB-SECT. 1.—A. (c).

sa. *Time occupied in prosecuting application for review—Addition to prescribed period.*]—Appl. allowed to add the time occupied by the prosecution in good faith of an application for review to the period prescribed for presenting a petition for leave to appeal.—*NARIMAN RUSTOMJI MEHTA v. HASHAM ISMAYAL VALAD HAJI KHAMISA* (1924), I. L. R. 49 Bom. 149.—IND.

### PART X. SECT. 3, SUB-SECT. 1.—C.

379 iia. ———.]—*BATTLE CREEK TOASTED CORN FLAKE CO. v. KELLOGG TOASTED CORN FLAKE CO.*, [1924] 2 D. L. R. 1238; 54 O. L. R. 629.—CAN.

iia. ———.]—The ct. can, under Civil Procedure Code (Act V. of 1908), 1908, Ord. 45, r. 17, read with Privy Council Rules, 1920, r. 9, enlarge the time for furnishing security & making the deposit, beyond the period prescribed by Ord. 45, r. 7.—*NILKANTH BALWANT NATU v. SHRI SATCHIDANAND VIDYA NARSINHA BHARATI* (1927), I. L. R. 51 Bom. 430.—IND.

390 i. ——— *Form of security.*]—An order to furnish security for costs of resp. in an appeal to the Privy Council in a form other than cash or Govt. Bonds can be made only at the time of granting the certificate & not afterwards.—*ARUNACHALA NAIDU v. BALAKRISHNA & Co.* (1924), I. L. R. 48 Mad. 559.—IND.

— **Immaterial documents—Inclusion disapproved.**—Documents not material to an appeal should not be included in the record. If one party wishes a document to be included, but the other party considers it unnecessary, the matter should be referred to the High Ct. or its registrar. It does not follow that because unnecessary documents have been printed in India they should be included in the books for the Judicial Committee. It is the duty of the solr. in England to make a selection of the necessary documents, the other papers being ready in case they are required. In cases of doubt, the solr. should take counsel's advice, for which purpose, on application being made, a fee will be allowed. —**SONATON PAL v. GALSTAN** (1927), 54 L. R. Ind. App. 118; 43 T. L. R. 224, P. C.

**488a. Form of case—Necessity for signature of one of counsel appearing at hearing.**—**MONTREAL LIGHT, HEAT & POWER Co. v. MONTREAL (CITY)** (1924), 68 Sol. Jo. 419, P. C.

**486. Add. Annotations:—****Consd. Hoystead v. Taxation Comr.**, [1926] A. C. 155. **Mentd. Pickford v. Quirke**, **Pickford v. I. R. Comrs.** (1927), 44 T. L. R. 15.

**526. Add. Annotation:—****Mentd. Reckitt v. Barnett, Pembroke & Slater**, [1928] 2 K. B. 244.

**535a. —.**—It is no part of the functions of the Judicial Committee, generally speaking, to interpret an Order in Council unless it be brought before them in the ordinary way of appeal. In the present case, however, in which a suit had been remitted to the High Ct. to assess damages & that ct. had adjourned an appeal in order that the parties might apply to the Board to ascertain the intention & effect of the Order made, their Lordships entertained a petition by resp. with that object, though upon the facts the declaration prayed for was refused with costs.—**HURNANDRAI FULCHAND v. PRAGDAS BUDHSEN, Ex p. PRAGDAS BUDHSEN** (1924), L. R. 52 Ind. App. 118.

**554. Add. Annotation:—****Mentd. Reckitt v. Barnett, Pembroke & Slater**, [1928] 2 K. B. 244.

**578a. —.**—Applt. obtained leave to appeal conditionally upon entering into a

bond, & the native agent of applt., who had conducted the litigation, executed a bond on his behalf in the presence of the chief registrar of the ct., who accepted it without objection. Upon the appeal coming on for hearing, the appellate ct. dismissed it, upon a preliminary objection that the authority of the agent to execute the bond should have been strictly proved. Under the rules of the ct. there was power to make any order which was considered necessary for doing justice:—**Held**: there had been a failure to do justice between the parties, & the case should be remitted to be heard, the appellate ct. giving an opportunity to prove the authority, if that was deemed necessary in the circumstances.—**KOJO PON v. ATTA FUA**, [1927] A. C. 693; 96 L. J. P. C. 121; 137 L. T. 706, P. C.

**585a. —.**—A Chinese resident in Penang executed a deed settling a fund upon his "sons & grandsons" equally. Applt. having claimed that his father, T., was a "son" of the settlor entitled to share in the gift, an inquiry whether T. was legitimate, as being a son by a "t'sip," or secondary wife, was remitted for rehearing, applt. not having had an opportunity of adducing certain evidence upon which he relied, & because the view of the lower ct. that a Christian woman could not be a "t'sip" required reconsideration, seeing that no ceremony was needed to constitute that status. Further consideration was also needed of the possible jural conceptions: (a) that a child might be legitimate, although its parents were not, & could not be, legitimately married; & (b) that a father might legitimatise his natural child by a mother free to contract a legitimate union.—**KHOO HOOI LEONG v. KHOO HEAN KWEE**, [1926] A. C. 529; 95 L. J. P. C. 94; 135 L. T. 170, P. C.

**609. Add. Citation:—**128 L. T. 10.

**611a. Matter of terms.**—In default of evidence the Judicial Committee will accept the decision of the local ct. as to what terms are proper in a particular case, that ct. being better informed on the subject than the Board can be.—**SUNDER MULL v. SATYA KINDER SAHANA** (1927), 55 L. R. Ind. App. 85.

**PART X. SECT. 3, SUB-SECT. 5.**

**447 i. When allowed—***Suits involving same question.*—Actions brought by pltf. against three cos. were based on separate contracts, precisely similar in form. On an appeal to the Privy Council, application was made to the Ct. of Appeal (B.C.) to consolidate the appeals. Application refused.—**VAN HEMELRYCK v. NEW WESTMINSTER CONSTRUCTION & ENGINEERING Co.** (No. 2) (1920), 29 B. C. R. 60.—CAN.

**PART X. SECT. 3, SUB-SECT. 9.—A.**

**487 iv. —.**—The operation of a judgment restraining debts from selling certain goods under certain trade names is not stayed pending an appeal of debts, to the Privy Council, although under Privy Council Appeals Act, 1914, ss. 3, 4, upon the perfecting of security by debts, execution shall be stayed in the original cause.—**BATTLE CREEK TOASTED CORN FLAKE Co. v. KELLOGG TOASTED CORN FLAKE Co.** (1924), 55 O. L. R. 127.—CAN.

**PART X. SECT. 3, SUB-SECT. 10.—B.**

**st. Documents not produced at trial.**—The Judicial Committee has

unrestricted power to admit documents where sufficient ground is shown for their not having been produced at the initial stage of the litigation.—**INDRAJIT PRATAP SAHI v. AMAR SINGH** (1923) L. R. 50 Ind. App. 183.—IND.

**PART X. SECT. 3, SUB-SECT. 10.—C. (b).**

**536 v. —.**—The Privy Council will only deal with the original issues raised at the trial, & cannot consider new pleadings & the issues raised therein.—**BROWN v. MOORE**, [1924] 2 D. L. R. 545; *affg.* 69 D. L. R. 14; 55 N. S. R. 460.—CAN.

**536 vi. —.**—A new contention, which involves an amendment of the plaint, cannot be entertained.—**GAJADHAR MAHTON v. AMBIKA PRASAD TIWARI** (1925), 1 L. R. 47 All. 459.—IND.

**536 vii. —.**—The Privy Council declined to entertain an argument which had not been presented to, or sifted by, the cts. in India, especially as the subject to be decided concerned the diversified & complicated law of India as to tenure of land.—**SECRETARY OF STATE FOR INDIA IN COUNCIL v.**

**RAJA JYOTI PRASHAD SINGH** (1926), 53 L. R. Ind. App. 100.—IND.

**536 viii. —.**—Where a question whether minor members of a family were bound by a decree in a former suit brought by the managing member, has been abandoned in the High Ct., it cannot be raised before the Judicial Committee, as the question is one of mixed law & fact.—**LINGANGOWDA v. BASANGOWDA** (1927), 54 L. R. Ind. App. 122.—IND.

**PART X. SECT. 3, SUB-SECT. 10.—C. (c).**

**sm. Effect of order—***Case remitted "to the jury" for assessment of damages—Not order for assessment by original jury.*—**LEW v. WING LEE**, [1926] 1 L. R. 678; 37 B. C. R. 81.—CAN.

**PART X. SECT. 3, SUB-SECT. 10.—D. (b) ii.**

**650 vi. —.**—Where all the cts. below have concurred in the findings of fact, the Judicial Committee will ordinarily accept them & not review them.—**LAING v. TORONTO GENERAL TRUSTS CORPN.**, [1924] 4 D. L. R. 1138.—OF



651. *Add. Annotation*:—*Mentd. Gabriel v. Eliatamby*, [1926] A. C. 133.
653. *Add. Annotation*:—*Refd. Robins v. National Trust Co.*, [1927] A. C. 515.
- 658a. ——— *Applicable to appeals from every court in Empire.*—*ROBINS v. NATIONAL TRUST CO.*, [1927] A. C. 515; 96 L. J. P. O. 84; 137 L. T. 1; 43 T. L. R. 243; 71 Sol. Jo. 158, P. O. •
676. *Add. Annotation*:—*Refd. Robins v. National Trust Co.*, [1927] A. C. 515.
685. *Add. Annotation*:—*As to (1) Consd. Re Article X of Articles of Agreement for Treaty between Great Britain & Ireland (1928)*, 45 T. L. R. 57.
690. *Add. Annotation*:—*Consd. Re Article X of Articles of Agreement for Treaty between Great Britain & Ireland (1928)*, 45 T. L. R. 57.
- 690a. *Add. Annotations*:—*Consd. Re Article X of*

- Articles of Agreement for Treaty between Great Britain & Ireland (1928)*, 45 T. L. R. 57. *Mentd. Rhondda's Petition (1922)*, 92 L. J. P. O. 81; *Capel St. Mary, Suffolk v. Packard*, [1927] P. 289.
- 690b. ———.]—*There is no inherent incompetency in the Judicial Committee of the Privy Council to order the rehearing of a case which has already been decided by the Judicial Committee, even where a question of a right of property has been involved, but such an indulgence will only be granted in very exceptional circumstances.*—*Re ARTICLE X OF ARTICLES OF AGREEMENT FOR TREATY BETWEEN GREAT BRITAIN & IRELAND (1928)*, 45 T. L. R. 57.
763. *Add. Annotation*:—*Mentd. F Letters Patent No. 139,207, Re Carbonit Akt.*, [1924] 2 Ch. 53.
771. *Add. Annotation*:—*Refd. Hyman v. Hyman, Hughes v. Hughes (1928)*, 139 L. T. 416.

## Part XI.—The Supreme Court of Judicature.

775. In the cross-reference before this case for "Judicature Acts, 1873 (c. 66) to 1902 (c. 31)" read "Judicature (Consolidation) Act, 1925 (c. 49)."
779. *Add. Annotation*:—*Appld. Horrell v. St. John of Bletso*, [1928] 2 K. B. 616.
781. *Add. Annotation*:—*Refd. Ideal Films v. Richards*, [1927] 1 K. B. 374.
782. *Add. Annotation*:—*Mentd. Purnell v. Roche*, [1927] 2 Ch. 142.
784. *Add. Annotation*:—*As to (1) Refd. Campbell v. Pollak*, [1927] A. C. 732.
786. *Add. Annotation*:—*Refd. Lowe v. Bentley (1928)*, 44 T. L. R. 388.
788. *Add. Annotation*:—*Mentd. Public Trustee v. Elder*, [1926] Ch. 776.
789. *Add. Annotation*:—*Refd. Earle v. Hemsworth R. D. C. (1928)*, 44 T. L. R. 758.
790. *Add. Annotation*:—*Refd. The Fagernes*, [1926] P. 185.
792. *Add. Annotations*:—*Mentd. Re A Bankruptcy Notice*, [1924] 2 Ch. 76; *Rawlinson v. Ames (1924)*, 69 Sol. Jo. 142.
793. *Add. Annotations*:—*Mentd. Clarkson v. Davies*, [1923] A. C. 100; *Duffner v. Bowyer (1924)*, 40 T. L. R. 700; *The Koursk*, [1924] P. 140; *Re Pennington & Owen*, [1925] Ch. 825; *Bennett v. Whitehead*, [1926] 2 K. B. 380; *Firm of R. M. K. R. M. v. Firm of M. R. M. V. L.*, [1926] A. C. 761; *Pirie v. Richardson (1926)*, 70 Sol. Jo. 1023; *Hardie & Lane v. Chiltern (1927)*, 96 L. J. K. B. 773.

797. *Add. Annotation*:—*Mentd. Re Bueb*, [1927] W. N. 299.
809. *Add. Annotation*:—*Refd. Rackham v. Tabrum (1923)*, 129 L. T. 24.
827. *Add. Annotation*:—*Refd. Capron v. Capron*, [1927] P. 243.
- 831a. ———.]—*When a judge adjourns a chambers summons into ct. under R. S. O., Ord. 54, r. 22, & does not direct that it is to be heard in ct. as chambers, the matter is in ct. for all purposes & is open to the press.*—*HARDIE & LANE v. CHILTERN (1927)*, 96 L. J. K. B. 773; 43 T. L. R. 477; *on appeal*, [1928] 1 K. B. 663; 96 L. J. K. B. 1040; 138 L. T. 14, C. A.
- 834a. ———.]—*HARDIE & LANE v. CHILTERN*, No. 831a, *ante*.
- 840a. *To order amendments—Judge trying causes in short cause list.*—*Although it may be a condition precedent to the master's power to order a cause to be tried in the short cause list, that the claim specially indorsed on the writ should be for a liquidated demand, yet when once he has made the order giving leave to defend, & has ordered the cause to be put in the short cause list, there is no restriction whatever on the powers of the judge to order such an amendment as he is authorised to make under the rules of ct. The judge trying causes in the short cause list has the full powers of amendment that are given to him by the rules of ct. as though he were hearing the cause in the ordinary list.*

650 vii. ———.]—*MONTREAL TRANSPORTATION CO., LTD. v. R.*, [1926] 2 L. R. 862.—CAN.

PART X. SECT. 3, SUB-SECT. 10.—  
D. (c).

680 i. *Want of prosecution—Jurisdiction of Court of Appeal over costs.*—*CLEAVE v. McDONALD*, [1927] N. Z. L. R. 433.—N.Z.

PART X. SECT. 3, SUB-SECT. 11.

i. ——— *Against legal representatives of respondents.*—*Where some of resps. in the appeal before the Privy Council were dead, & their legal representa-*

*tative had not been brought on the record when the appeal was heard & judgment delivered by the Privy Council:—Held: the decree against them was not a nullity under Judicial Committee Act, 1833, s. 23.*—*KALYANI PILLAI v. THIRUVENKADASWAMI AY-YANGAR (1924)*, 1 L. R. 47 Mad. 618.—IND.

PART X. SECT. 3, SUB-SECT. 13.—  
A. (a) i.

719 ii. ——— *Not appearing but lodging case.*—*Resps., who did not appear, but had lodged a case, allowed costs up to the date of doing so.*—GAJADHAR

MAHTON v. AMBIKA PRASAD TIWARI (1925), 1 L. R. 47 All. 459.—IND.

PART XI. SECT. 2, SUB-SECT. 1.—  
A. (a).

*sp. To hear action.*—*A judge of the High Ct. may direct the whole of a case which comes before him for hearing to be argued before the Full Ct.*—*STATE OF NEW SOUTH WALES v. COMMONWEALTH (1926)*, 38 C. L. R. 74.—AUS.

PART XI. SECT. 2, SUB-SECT. 3.

*st. To rescind patent—Although voidable or void at law.*—*MARTIN v. KENNEDY (1850)*, 2 Gr. 80.—CAN.

- THOMAS *v.* ALDERTON, LTD., [1928] 1 K. B. 638 ; 97 L. J. K. B. 259 ; 138 L. T. 315, C. A.
865. *Add. Annotation*:—*Refd.* Capron *v.* Capron, [1927] P. 243
913. *Add. Annotation*:—*Mentd.* Performing Right Soc. *v.* London Theatre of Varieties, [1924] A. C. 1.
919. *Add. Citation*:—*sub nom.* R. *v.* ILLINGWORTH, 32 W. R. 451.  
After this case add “*See, now*, Judicature (Consolidation) Act, 1925 (c. 49), s. 25.”
944. *Add. Annotations*:—*Refd.* Davey *v.* Robinson, [1923] 1 K. B. 563 ; Shrager *v.* Dighton, [1924] 1 K. B. 274. *Mentd.* Hunter *v.* Städtische Hochseefischerei Gesellschaft, [1925] 2 K. B. 493 ; Pringle *v.* Hales, [1925] 1 K. B. 573.
- SECT. 5.—OFFICERS AND CENTRAL OFFICE  
(Vol. XVI., p. 189).  
Add the following case:—
- 949a. *Officer*—*Right to institute suit*—*Personal interest*.]—It is against public policy to allow an officer of the ct. to institute suits, in the conduct of which he may have a direct personal interest.—HOSANNA ARATHOON KERAKOOSSE *v.* SERLE (1844), 3 Moo. Ind. App. 329 ; 4 Moo. P. O. C. 459 ; 18 E. R. 523.

## Part XVI.—Consular Courts.

951. *Add. Annotation*:—*Mentd.* Nadan *v.* R., [1926] A. C. 482.
954. *Add. Annotations*:—*Refd.* Rudd *v.* Rudd, [1924] P. 72 ; Bartlett *v.* Bartlett, [1925] A. C. 377. *Mentd.* *Re* Annesley, Davidson *v.* Annesley, [1926] Ch. 692.
- 956a. ——— To make declaration as to validity of divorce—Granted on grounds not authorised by English law.]—Resp. & his wife, applt., who were British subjects of the Jewish religion & resident in Egypt, were divorced by the Grand Rabbinate at Alexandria in accordance with the Jewish religion, but upon grounds which would not have supported a decree for divorce according to English law. Applt. brought an action against resp. in the Supreme Ct. for Egypt for a declaration that the divorce was effectual to dissolve the marriage. The Order in Council of 1910, by which civil jurisdiction over British subjects was conferred, provided by art. 90 that “in all matters relating to marriage, inheritance, or other questions involving religious law or custom the ct. shall, in the case of persons belonging to non-Christian communities, recognise & apply the religious law or custom of the persons concerned.” Art. 103 conferred “all such jurisdiction in matrimonial causes, except the jurisdiction relative to dissolution or nullity or jactitation of marriage, as for the time being belongs to the High Ct. in England”:—*Held*: applt. was entitled to the declaratory decree which she sought.—SASSON *v.* SASSON, [1924] A. C. 1007 ; 94 L. J. P. C. 13 ; 132 L. T. 163, P. C.
- Annotation*:—*Refd.* Bartlett *v.* Bartlett, [1925] A. C. 377.
- 956b. ——— To try action for damages for breach of contract—Breach in England.]—By the Ottoman Order, 1910, the jurisdiction of the Supreme Ct. thereby established extends, as regards Egypt, to, so far as material: “(i) British subjects, as herein defined, within the limits of this Order.
- (ii) The property & all personal & proprietary rights & liabilities within the said limits of British subjects, whether the said subjects are within the said limits or not.” Rules of ct. made under the order contain a provision for substituted service, but none for service out of the jurisdiction. Applt., a British subject resident in England, contracted in England to buy from resp., who was resident in Egypt, a concession granted by the Egyptian Govt. in connection with irrigation, & for the employment of resp. in Egypt. Applt. repudiated the contracts by a cable despatched from England. Resp. issued a writ in the Supreme Ct. for Egypt claiming damages from applt. for breach of the contracts, & obtained an order for substituted service in Egypt:—*Held*: the cable repudiating the contracts having been despatched in England, the breach took place there, & the Supreme Ct. had no jurisdiction in the case.—MARTIN *v.* STOUT, [1925] A. C. 359 ; 94 L. J. P. C. 71 ; 132 L. T. 673 ; 41 T. L. R. 176, P. C.
- 969a. ——— Transfer of jurisdiction—Effect of Treaty of Peace (Turkey) Act, 1924 (c. 7).]—Petitioner, the wife of a British subject domiciled in Turkey, obtained in His Britannic Majesty’s Supreme Ct. for the Dominions of the Sublime Porte (Matrimonial Jurisdiction) a decree *nisi* for a divorce on the ground of her husband’s adultery. In consequence of the ratification of the Treaty of Lausanne the above ct. ceased to exist before the decree was made absolute:—*Held*: by virtue of the combined effect of the above Act, art. 16 of the Convention between Turkey & Great Britain of the same date as the Treaty, & art. 2 of the Treaty of Peace (Turkey) Order, 1924, the Divorce Division of the High Ct. had jurisdiction to make the decree absolute.—SEAGER *v.* SEAGER, [1925] P. 105 ; 94 L. J. P. 66 ; 133 L. T. 319 ; 69 Sol. Jo. 724.

## Part XVII.—Forest Courts.

- 974a. Court books—Duty of clerk to produce for inspection.]—A.-G. *v.* BROWN (1844), 2 L. T. O. S. 424 ; 8 J. P. 711.

## Part XXI.—Palatine Courts.

1014a.

-.]—DYKE *v.* STEPHENS (1885), 29 Sol. Jo. 682.

## Part XXIII.—Borough and Local Courts of Record.

1019. *Add. Annotation* :—**Mentd.** Debenhams *v.* Perkins (1925), 133 L. T. 252.

1024a. *S. P.* PENDRED *v.* CHAMBERS (1591), Cro. Eliz. 256 ; 78 E. R. 512.

*Annotation* :—**Refd.** Goodson *v.* Duffield (1612), Cro. Jac. 313.

1053. To the reference before this case add “ ; Liverpool Corporation Act, 1921 (c. lxxiv), ss. 224-263.”

## Part XXV.—Judicial Commissioners.

1126. *Add. Annotation* :—**Refd.** Salisbury & Fordingbridge District Drainage Board *v.* Southern Tanning Co. (1920), Ltd., [1927] 2 K. B. 566.



## CROWN PRACTICE.

## Part I. Proceedings on the Revenue Side of the King's Bench Division.

- 46a. **Bail to answer & pay penalties—Liability of sureties.**—Where a person is proceeded against in the High Ct. by writ of *capias*, under Customs Consolidation Act, 1876 (c. 36), s. 247, for the recovery of penalties for offences against the Customs Acts he shall be bound to answer & pay all the penalties sued for with two or more sureties who shall be jointly & severally sufficient for the amount of the bail indorsed on the writ.—*Re ATTFIELD* (1924), 93 L. J. K. B. 1064.
166. *Add. Annotation* :—*Reid*. Food Controller v. Cork (1923), 130 L. T. 1.
- 240a. **Bills of exchange—Transmitted from abroad by foreign agents.**—*R. v. HUNTER* (1817), 4 Price, 258 ; 146 E. R. 457.
- 246a. **Rights of landlord—Not entitled to payment from sheriff of rent due before writ.**—*R. v. DE CAUX* (1815), 2 Price, 17 ; 146 E. R. 7.
- 246b. — **Subsequent arrears of rent—Goods kept locked up by sheriff for long time.**—The ct. refused to interfere, so far as to order the effects to be sold, & the rent in arrear to be paid out of the produce.—*R. v. HILL* (1818), 6 Price, 19 ; 146 E. R. 729.
313. *Add. Annotation* :—*Reid*. *Re Kent Coal Concessions*, *Burn v. The Co.*, [1923] W. N. 328.

## Part II.—Petition of Right.

319. *Add. Annotation* :—*Reid*. *Constantinesco v. R.* (1927), 11 Tax Cas. 730.
320. *Add. Annotation* :—*Reid*. *Badman v. R.*, [1924] 1 K. B. 64.
322. *Add. Annotation* :—*Reid*. *Rowland v. Air Council* (1923), 39 T. L. R. 228.
323. *Add. Annotation* :—*Reid*. *Re Mason*, [1928] Ch. 385.
- 323a. **Claim against Dominion.**—A petition of right cannot be brought in the High Ct. of Justice of England which has for its object a judgment against the Crown, which is to be satisfied out of the Exchequer of a Dominion.—*A.-G. v. GREAT SOUTHERN & WESTERN RY. CO. OF IRELAND*, [1925] A. C. 754 ; 94 L. J. K. B. 772 ; 133 L. T. 568 ; 41 T. L. R. 576 ; 69 Sol. Jo. 744, H. L. ; *reusg. S. C. sub nom. Great Southern & Western Ry. Co. of Ireland v. R.*, [1924] 2 K. B. 450, C. A.
333. *Add. Annotation* :—*Reid*. *A.-G. for Ontario v. McLean Gold Mines Co.* (1926), 95 L. J. P. C. 217.
347. *Add. Citation* :—15 Asp. M. L. C. 574.  
*Add. Annotation* :—*Reid*. *Brocklebank v. R.*, [1925] 1 K. B. 52.
351. *Add. Annotation* :—*Distd.* *A.-G. for Straits Settlements v. Pang Ah Yew*, [1925] A. C. 555.
352. *Add. Annotations* :—*As to* (1) *Distd. A.-G. for Straits Settlements v. Pang Ah Yew*, [1925] A. C. 555. *Reid*. *Jamieson v. Downie*, [1923] A. C. 691 ; *Badman v. R.*, [1924] 1 K. B. 64.
- 353a. — **Compensation for injury to property in Ireland.**—No claim for compensation for injuries done to property in Ireland is maintainable against the Crown in an English ct.—*PRICE v. R.* (1925), 42 T. L. R. 179.
355. After this case add **Effect of Indemnity Act, 1920 (c. 48).**—*See CONSTITUTIONAL LAW*, pp. 280, 281, Nos. 526a–526c, 534a, *ante*."
356. *Add. Annotation* :—*Folld.* *A.-G. for Straits Settlements v. Pang Ah Yew*, [1925] A. C. 555.
- 356a. — — — — —.]—Under Crown Suits Ordinance No. 22 of the Straits Settlements a petition of right can be maintained to recover damages arising from a collector of land revenue selling land under Ordinance No. 35 for arrears of revenue without first serving a

## PART I. SECT. 1, SUB-SECT. 4.—A.

sa. **Power of court to give relief to debtor.**—*R. v. BONTER* (1843), 6 O. S. —CAN.

PART I. SECT. 1, SUB-SECT. 4.—C. (d). 85ii. — — — — —.]—*R. v. WATSON* (1828), N. B. Dig. 447.—CAN.

## PART I. SECT. 2, SUB-SECT. 1.

ad. **Effect of writ—On accrual of prerogative rights.**—Prerogative rights which might accrue to the Crown by virtue of a writ of extent are dependent upon the issue of the writ itself. As it was too late to issue the writ :—*Held* : there was no direct liability to the Crown by the insolvent co.—*Re EXCELSIOR ELECTRIC DAIRY MACHIN-*

*ES, LTD.*, [1923] 3 D. L. R. 1176 ; 52 O. L. R. 225 ; 2 C. B. R. 599.—CAN.

## PART II. SECT. 1.

317 i. **Purposes.**—Upon petition of right there is no power in the ct. to compel the Crown to make a grant of land.—*KEEWATIN POWER CO., LTD. v. KEEWATIN FLOUR MILLS CO., LTD.*, *KEEWATIN POWER CO., LTD. v. LAKE OF THE WOODS MILLING CO., LTD.*, [1926] 4 D. L. R. 531 ; 59 O. L. R. 406.—CAN.

## PART II. SECT. 2, SUB-SECT. 1.

o i. — **Property in possession of third party.**—*A.-G. FOR ONTARIO v. McLEAN GOLD MINES, LTD.* [1927] A. C. 185 ; 95 L. J. P. C. 217 ; 136 L. T. 194, P. C.—CAN.

## PART II. SECT. 2, SUB-SECT. 3.—A.

346 ii. — — — — —.]—*MAUNSELL v. R.*, [1925] Exch. C. R. 133.—CAN.

346 iii. — — — — —.]—*R. v. CANADA STEAMSHIP LINES, LTD.*, [1927] 1 D. L. R. 991 ; [1927] S. C. R. 68.—CAN.

346 iv. — — — — —.]—*KENNEY v. R.* (1882), 1 Exch. C. R. 68.—CAN.

st. **Refund of part of price of rights in land under sea.**—*KETCHEN v. R.* (B. C.), [1927] 3 W. W. R. 152.—CAN.

## PART II. SECT. 2, SUB-SECT. 3.—C.

351 viii. — — — — —.]—*KENDALL v. R.*, [1926] Exch. C. R. 34.—CAN.

written notice of demand as required by s. 4. The collector in selling is an agent of the Crown although he acts under statutory authority, & the fact that he has carried out his duties in an unauthorised manner does not prevent the Crown from being liable.—**A.-G. FOR STRAITS SETTLEMENTS v. PANG AH YEW**, [1925] A. C. 555 ; 94 L. J. P. C. 150 ; 138 L. T. 106, P. C.

360. *Add. Annotations* :—**Distd.** *Wigg v. A.-G. for Irish Free State*, [1927] A. C. 674. **Refd.** *Re Article X of Articles of Agreement for Treaty between Great Britain & Ireland* (1928), 45 T. L. R. 57.
361. *Add. Annotations* :—**Distd.** *Wigg v. A.-G. for Irish Free State*, [1927] A. C. 674. **Refd.** *Re Article X of Articles of Agreement for Treaty between Great Britain & Ireland* (1928), 45 T. L. R. 57.
368. *Add. Annotations* :—**Consd.** *Commercial & Estates Co. of Egypt v. Board of Trade*, [1925] 1 K. B. 271. **Refd.** *Netherlands-American Steam Navigation Co. v. Procurator-General* (1925), 42 T. L. R. 81.
369. *Add. Annotation* :—**Refd.** *Buerger v. New York Life Assce.* (1927), 96 L. J. K. B. 930.
370. *Add. Annotations* :—**Consd.** *Re Mason* (1928), 97 L. J. Ch. 321. **Mentd.** *Cayzer, Irvine v. Board of Trade* (1925), 95 L. J. K. B. 134; *Wigg v. A.-G. of Irish Free State* (1927), 96 L. J. P. C. 88.
371. After this case add “**Compensation for use of invention by Crown.**” — See PATENTS, No. 1673a, *post*.”

874. *Add. Annotation* :—*Apld.* *Badman v. R.*,  
[1924] 1 K. B. 64.

**When allowed.]—**Under Petitions of Right Act, 1860 (c. 34), s. 7, the ct. has jurisdiction to allow a petition of right to be amended, provided the amendment does not involve a substantial alteration in the cause of action, so that the allowance of it without a fresh fiat would operate in derogation of the prerogative of the Crown. The test whether a particular amendment ought to be allowed is this: if the petition had originally been presented in the form in which it stands after amendment, is there a reasonable probability that the fiat would not have been refused?—**BADMAN BROTHERS v. R.**, [1924] 1 K. B. 64; 93 L. J. K. B. 132; 130 L. " 264; 68 Sol. Jo. 166. C. A.

- 374b.** — Service of copy on person in possession of property claimed—[Petitions of Right Act, 1860 (c. 34), s. 5.]—Circumstances (see DESCENT, No. 336a, *post*) in which:—*Held*: the above sect. did not apply.—*Re* MASON, [1928] 1 Ch. 385; 97 L. J. Ch. 321; 139 L. T. 477; 44 T. L. R. 225; *on appeal*, [1929] 1 Ch. 1, C. A.
- 375.** *Add. Annotation*:—*Re*fd. *Buerger v. New York Life Assce.* (1927), 96 L. J. K. B. 930.
- 381.** *Add. Annotations*:—*As to* (1) *Re*fd. *Jamieson v. Downie*, [1923] A. C. 691. *As to* (3) *Apprvd.* *Badman v. R.*, [1924] 1 K. B. 64.
- 388.** *Add. Annotations*:—*As to* (1) *Re*fd. *Cayzer, Irvine v. Board of Trade* (1925), 95 L. J. K. B. 134. *Re* *Mason* (1928), 97 L. J. Ch. 321; *Generally*, *Mentd.* *Wigg v. A.-G. of Irish Free State* (1927), 96 L. J. P. C. 88.

## Part III.—Scire Facias.

- 441. Add. Annotations:—**Mentd. British Thomson-Houston Co. v. Sterling Accessories, Same v. Crowther & Osborn, [1924] 2 Ch. 33; Parker & Cooper v. Reading, [1926] Ch. 975; Thomas v. Evans, Jones v. South-West Lancashire Coal-Owners' Asscn. (1926), 42 T. L. R.

- 401; *Howson v. Buxton* (1928), 97 L. J. K. B.  
749.

- 449. Add. Annotation :—***Consd. Re Letters Patent No. 139,207, Re Carbonit Akt.*, [1924] 2 Ch. 53.

**PART II. SECT. 8.**

374a i. — *May be amended*  
*court—When allowed.*]—Where a sup-  
 plicant seeks to substitute or add a  
 substantially new cause of action, the  
 amendment should not be allowed in  
 the absence of the Lieutenant-  
 Governor's fiat or the consent of the  
 A.-G.; but if the substance of the  
 case is not changed, the ct. can help  
 the suppliant by amendment.—  
 NORTHERN CONSTRUCTION CO. v. R.,  
 [1923] 3 D. L. R. 1069; 2 W. W. R.  
 759.—CAN.

374a H. ———.—.]—Even if the ct. has power in some cases to amend a petition without the consent of the Crown, that power must be limited to minor matters, & cannot go the length of allowing a suppliant to change the character of his claim against the Crown, either by adding

to it or withdrawing part of it or by adding parties as co-defts. with the Crown.—**FLEXLUME SIGN CO. v. MACEY SIGN CO.** [1923] 1 D. L. R. 1185; 51 O. L. R. 595.—**CAN.**

374a ill. — — — — —.]—A petition cannot be amended, unless one month's notice of the substance of the petition is given to a law officer.—  
OFFICIAL ASSIGNEE v. R., [1922]  
N. Z. L. R. 265.—N.Z.

874a iv. ————.]—FITZ-  
PATRICK v. R. (1925), 57 O. L. R. 178.—  
CAN.

g i. ——— Defence—When particulars ordered.]—O'BRIEN & DORENY v. R., [1925] Exch. C. R. 1.—CAN.

sk. Claim against individual as well as Crown—Necessity for separate action against individual—Action & petition of right tried together.)—

**NORTHERN CONSTRUCTION Co. v. R.,**  
[1923] 3 D. L. R. 1069; 2 W. W. R.  
759.—CAN.

393 1. *Discovery—Suppliant's right as against Crown.*—In proceedings by petition of right against the Crown, an order will not be made for the examination by petitioner of an officer of the Crown for discovery before trial.—*CROMBIE v. R.*, [1923] 2 D. L. R. 542; 52 O. L. R. 72.—CAN.

394 i. Evidence—Burden of proof—Negligence charged against officers & servants of Crown.]—The burden of proof is upon the suppliant, who must show that there was negligence, & the maxim *res ipsa loquitur* cannot be invoked to relieve him of the *onus* in such actions under Exch. Ct. Act, 1906, s. 20.—MONTREAL TRANSPORTATION Co. v. R., [1924] 4 D. L. R. 808.—CAN.

## Part V.—Habeas Corpus.

464. *Add. Annotation*:—*Refd.* Secretary of State for Home Affairs *v.* O'Brien, [1923] A. C. 603.
469. *Add. Annotations*:—*As to* (1) *Distd.* Secretary of State for Home Affairs *v.* O'Brien, [1923] A. C. 603. *As to* (4) *Refd.* R. *v.* Maidstone Prison, *Ex p.* Maguire, [1925] 2 K. B. 265.
470. *Add. Citations*:—[1923] 2 K. B. 361; 92 L. J. K. B. 797; 129 L. T. 419; 87 J. P. 166; 21 L. G. R. 419; 27 Cox, C. C. 433; *sub nom.* O'BRIEN *v.* SECRETARY OF STATE FOR HOME AFFAIRS, 67 Sol. Jo. 553; *on appeal, sub nom.* SECRETARY OF STATE FOR HOME AFFAIRS *v.* O'BRIEN, [1923] A. C. 603, H. L.  
*Add. Annotation*:—*Refd.* Campbell *v.* Pollak, [1927] A. C. 732.
491. *Add. Annotation*:—*Mentd.* R. *v.* Secretary of State for Home Affairs, *Ex p.* O'Brien, [1923] 2 K. B. 361.
492. *Add. Annotation*:—*Refd.* Secretary of State for Home Affairs *v.* O'Brien, [1923] A. C. 603.
493. *Add. Annotation*:—*As to* (1) *Consd.* Sobhuza II. *v.* Miller, [1926] A. C. 518.
498. *Add. Annotation*:—*Refd.* R. *v.* Home Secretary, *Ex p.* Bressler (1924), 131 L. T. 386.
508. *Add. Annotations*:—*As to* (1) *Apld.* Campbell *v.* Pollak, [1927] A. C. 732. *Generally, Refd.* Eshugbayi Eleko *v.* Nigeria Government, [1928] A. C. 459.
553. *Add. Annotation*:—*Refd.* R. *v.* Brixton Prison, *Ex p.* Shure, [1926] 1 K. B. 127.
554. *Add. Annotations*:—*Consd.* R. *v.* Brixton Prison, *Ex p.* Shure, [1926] 1 K. B. 127. *Refd.* R. *v.* Brixton Prison, *Ex p.* Perry, [1924] 1 K. B. 455.
570. *Add. Annotation*:—*Mentd.* Everett *v.* Ryder (1926), 135 L. T. 302.
- 585a. — *Form of summons.*—A summons taken out during the long vacation with a view to obtaining a writ of *habeas corpus* to bring the body of appct. before the High Ct. should require the parties concerned to show cause, not why the writ should not issue, but why an order *nisi* for the writ should not issue, inasmuch as the former procedure does not, whereas the latter does, disclose the grounds upon which the application is made.—R. *v.* BRIXTON PRISON (GOVERNOR), *Ex p.* SHURE, [1926] 1 K. B. 127; 95 L. J. K. B. 361; 134 L. T. 317; 28 Cox, C. C. 126; [1926] B. & C. R. 1, D. C.
601. *Citations*:—For "*sub nom.* R. *v.* HOME SECRETARY, *Ex p.* O'BRIEN, 39 T. L. R. 487, C. A.; *sub nom.* HOME SECRETARY *v.* O'BRIEN, Times, May 15, H. L.," read "*sub nom.* R. *v.* SECRETARY OF STATE FOR HOME AFFAIRS, *Ex p.* O'BRIEN, [1923] 2 K. B. 361, C. A.; *sub nom.* SECRETARY OF STATE FOR HOME AFFAIRS *v.* O'BRIEN, [1923] A. C. 603, H. L." *Add. Annotation*:—*Refd.* Campbell *v.* Pollak, [1927] A. C. 732,
611. *Add. Annotations*:—*Consd.* Eshugbayi Eleko *v.* Nigeria Government, [1928] A. C. 459. *Refd.* Secretary of State for Home Affairs *v.* O'Brien, [1923] A. C. 603.
- 613a. May be made to successive judges.]—Each judge of the High Ct. established by Jud. Act, 1873 (c. 66), has jurisdiction to entertain an application for a writ of *habeas corpus*, in term time or in vacation, & is bound to hear & determine the application on its merits, notwithstanding that some other judge has already refused a similar application; & this principle applies in the case of the judges of the Supreme Ct. of Nigeria.—ESHUGBAYI ELEKO *v.* NIGERIA GOVERNMENT (ADMINISTERING OFFICER), [1928] A. C. 459; 97 L. J. P. C. 97; 139 L. T. 527; 44 T. L. R. 632; 72 Sol. Jo. 452, P. C.
- Re LOO LEN (No. 2), [1924] 1 D. L. R. 910; 1 W. W. R. 735; 41 Can. Crim. Cas. 388; 33 B. C. R. 213.—CAN.
- 611 vii. — — —.]—An appct. for a writ of *habeas corpus* whose discharge is refused by one judge, may make another application before another judge, even of the same ct., on the same or on different grounds, & so on from judge to judge, each judge being uncontrolled by the previous decisions.—R. *v.* GEE DEW (No. 1), [1924] 3 D. L. R. 153; 2 W. W. R. 773; 42 Can. Crim. Cas. 188; 33 B. C. R. 524.—CAN.
- 611 viii. — — —.]—When an application for a writ of *habeas corpus* has been refused on its merits by a judge of the Ct. of K. B. in Manitoba, the only ct. of original jurisdiction in Manitoba in questions of that kind, the application cannot be renewed before any other single judge.—R. *v.* ROMAN-CHUK, [1924] 3 D. L. R. 229; 2 W. W. R. 351; 42 Can. Crim. Cas. 231; 34 Man. L. R. 371.—CAN.
- 611 ix. — — —.]—The dismissal of a *habeas corpus* application or applications is not a bar to the making of a new application for *habeas corpus* before the same judge.—R. *v.* IACI, [1925] 2 W. W. R. 129; 43 Can. Crim. Cas. 363.—CAN.
- PART V. SECT. 1, SUB-SECT. 3.—A.  
501 iv. — — —.]—REID *v.* DRAKE (1867), 4 P. R. 141.—CAN.
- PART V. SECT. 1, SUB-SECT. 3.—B. (b).  
523 i. *Where warrant prima facie valid.*—R. *v.* WONG YUEN (1925), 44 Can. Crim. Cas. 338.—CAN.
- PART V. SECT. 1, SUB-SECT. 3.—C.  
557 i. — — —.]—*Acting without jurisdiction—Magistrate.*—*Ex p.* MOHAMED ALI (N. S.) (1919), 32 Can. Crim. Cas. 65.—CAN.  
o. For "4 C. L. R. 101" read "4 V. L. R. 101."  
r i. — — —.]—R. *v.* MOORE, [1924] 3 W. W. R. 923.—CAN.  
sl. *Where proceedings so irregular as to preclude fair trial.*—Accused discharged upon a writ of *habeas corpus*.—R. *v.* CAMPBELL (1924), 43 Can. Crim. Cas. 340.—CAN.  
sm. *Not decisions of court of record—County court judge's criminal court.*—*Ex p.* MARTIN, [1927] 3 D. L. R. 1134; 48 Can. Crim. Cas. 23; 60 O. L. R. 577.—CAN.
- PART V. SECT. 1, SUB-SECT. 3.—D. (c).  
sp. *Person outside British India.*—The High Ct. can issue a writ of *habeas corpus* for the production of a person outside British India, provided he is in the custody, or under the contrl, of a person within its jurisdiction.—MAHOMEDALI ALLABUX *v.* ISMAILJI ABDULALI & SARDAR SYEDNA TAHER SAIFUDDIN MULLAJI SAHEB (1926), 1 L. R. 50 Bom. 616.—IND.
- PART V. SECT. 1, SUB-SECT. 4.—A. (b).  
st. *To court in another province—Conviction under Opium & Narcotic Drug Act, 1923—Not without good reason.*—R. *v.* JUNGO LEE (No. 2), [1927] 1 W. W. R. 578; 47 Can. Crim. Cas. 255; 38 B. C. R. 313.—CAN.
- PART V. SECT. 1, SUB-SECT. 4.—A. (c).  
595 v. — — —.]—An application for *habeas corpus* must be supported by an affidavit of prisoner, or an affidavit showing that his affidavit cannot be obtained.—R. *v.* MURRELL, [1924] 2 D. L. R. 647; 40 Can. Crim. Cas. 298.—CAN.  
595 vi. — — —.]—R. *v.* LEE (B. C.), [1926] 3 W. W. R. 264.—CAN.  
599 ii a. — — —.]—R. *v.* MURRELL, No. 595 v., *ante.*—CAN.  
599 ii b. S. P. R. *v.* BANNITT, [1926] 1 D. L. R. 424; 45 Can. Crim. Cas. 75; 58 L. L. R. 165.—CAN.
- PART V. SECT. 1, SUB-SECT. 4.—A. (d).  
611 vi. — — —.]—An appct. for a writ of *habeas corpus* is not at liberty to go from judge to judge of the Supreme Ct. in his quest of release.—
- PART V. SECT. 1, SUB-SECT. 4.—B.  
sw. *Order nisi—Notification of prosecutor & magistrate not necessary.*—R. *v.* KUZVOK, [1924] 1 W. W. R. 872; 42 Can. Crim. Cas. 144.—CAN.



656a. —.]—RUDYARD'S CASE (1670), 2 Vent. 22; 86 E. R. 286.

Annotations:—*Refd.* R. v. Wilkes (1763), 2 Wils. 151; Wood's Case (1771), 3 Wils. 172; R. v. Dunn (1840), 12 Ad. & El. 509.

660a. —.]—Assuming that an order transferring a convict sentenced to penal servitude in Northern Ireland to an English prison was not valid to justify the transfer between the Irish & the English prisons, it is a sufficient answer by the governor of the English prison, to whom a rule *nisi* for a writ of *habeas corpus* has been directed, that appct. was lawfully sentenced to a term of penal servitude, which is still current, & that he detains him under an order lawfully made by the Home Secretary.—R. v. MAIDSTONE PRISON (GOVERNOR), *Ex p.* MAGUIRE, [1925] 2 K. B. 265; 94 L. J. K. B. 679; 133 L. T. 710; 89 J. P. 89; 41 T. L. R. 456, D. C.; on appeal, 95 L. J. K. B. 55, C. A.

666. *Add. Annotation*:—As to (3) *Consd.* Eshugbayi Eleko v. Nigeria Government, [1928] A. C. 459.

682a. —.]—SECRETARY OF STATE FOR HOME AFFAIRS v. O'BRIEN, No. 801, *post*.

750. *Add. Annotation*:—As to (2) *Refd.* Secretary of State for Home Affairs v. O'Brien, [1923] A. C. 603.

787. *Add. Citation*:—17 Jur. 1163.

792. *Add. Annotations*:—As to (1) *Consd.* Eshugbayi Eleko v. Nigeria Government, [1928] A. C. 459. As to (2) *Refd.* Campbell v. Pollak, [1927] A. C. 732.

793. *Add. Annotations*:—*Distd.* Secretary of State for Home Affairs v. O'Brien, [1923] A. C. 603. *Refd.* G. v. G. (1928), 45 T. L. R. 7.

795. *Add. Annotation*:—*Refd.* R. v. Maidstone Prison, *Ex p.* Maguire (1925), 133 L. T. 710.

797a. — Person sentenced to penal servitude.]—Where, on an application for a writ of *habeas corpus*, a Div. Ct. has held that a person sentenced to penal servitude by a ct. in Northern Ireland has been lawfully transferred to a convict prison in England to serve his sentence, no appeal lies to the Ct. of Appeal as the question of the legality of the transfer & detention is one arising out of a

criminal cause or matter.—R. v. MAIDSTONE PRISON (GOVERNOR), *Ex p.* MAGUIRE (1925), 95 L. J. K. B. 55; 133 L. T. 710; 89 J. P. 161; 41 T. L. R. 554; 69 Sol. Jo. 691, C. A.

800. *Add. Annotation*:—*Mentd.* R. v. Maidstone Prison, *Ex p.* Maguire, [1925] 2 K. B. 265.

801. For the existing paragraph in original volume substitute as follows:—

From order declaring prisoner's right to liberty—Order not directing discharge—Order of Court of Appeal—No appeal to House of Lords.]—No appeal lies from an order of a competent ct. for the issue of a writ of *habeas corpus* where the ct. determines the illegality of appct.'s detention & his right to liberty, although the order does not direct his discharge.

Upon the application of a man whom the Home Secretary had caused to be arrested & deported to Dublin, where he was interned by the Govt. of the Irish Free State, the Ct. of Appeal, reversing the decision of the Div. Ct., granted an order *nisi*, which they subsequently made absolute, for the issue of a writ of *habeas corpus* directed to the Home Secretary, the ct. holding that the detention was illegal as the Home Secretary had no power to order a person to be interned in the Irish Free State; &, owing to a doubt whether the Home Secretary had control of the body, the order allowed him a week within which to make his return to the writ. Before the week had elapsed an appeal by the Home Secretary to the House of Lords was heard on the question of competency:—*Held*: notwithstanding the generality of the language of Appellate Jurisdiction Act, 1876 (c. 59), s. 3, the House had no jurisdiction to entertain the appeal.—SECRETARY OF STATE FOR HOME AFFAIRS v. O'BRIEN, [1923] A. C. 603; 92 L. J. K. B. 830; 129 L. T. 577; 87 J. P. 174; 39 T. L. R. 638; 67 Sol. Jo. 747; 21 L. G. R. 609; 27 Cox, C. C. 466, H. L.; *previous proceedings, sub nom.* R. v. SECRETARY OF STATE FOR HOME AFFAIRS, *Ex p.* O'BRIEN, [1923] 2 K. B. 361, C. A.

*Annotation*:—*Consd.* Campbell v. Pollak, [1927] A. C. 732.

PART V. SECT. 1, SUB-SECT. 4.—C. (d).

g i. —.]—Where a judge of the Ct. of Appeal grants a writ of *habeas corpus*, the Ct. of Appeal has the right to quash the judge's order if granted erroneously.—R. v. ROMANCHUK, [1924] 3 D. L. R. 229; 2 W. W. R. 351; 42 Can. Crim. Cas. 231; 34 Man. L. R. 371.—CAN.

PART V. SECT. 1, SUB-SECT. 4.—D. (f) ii.

726 v. —.]—The ct. is entitled, on a *habeas corpus* application, to receive affidavit evidence to show that the magistrate had no jurisdiction or has exceeded his jurisdiction in convicting appct.—R. v. MONTEMURRO, [1924] 2 W. W. R. 250.—CAN.

726 vi. —.]—If, on an application to make absolute an order for a writ of *habeas corpus*, no want or excess of jurisdiction appears on the face of the documents filed with the return to

the rule *nisi*, affidavits are admissible to establish such want or excess of jurisdiction, even although they may directly contradict facts stated in the documents filed with such return.—*Re* CAVENETT, [1926] N. Z. L. R. 755.—N. Z.

PART V. SECT. 1, SUB-SECT. 4.—E.

sx. *Duty of court*—To consider all evidence, records & proceedings taken.]—R. v. PAGE (1923), 41 Can. Crim. Cas. 59.—CAN.

sa. *S. P. Re* HILLMAN (N. S.), [1927] 1 D. L. R. 725; 46 Can. Crim. Cas. 308.—CAN.

PART V. SECT. 1, SUB-SECT. 4.—G.

so. *Discretion of court*.]—*Ex p.* LEADLEY (N. S.) (1926), 46 Can. Crim. Cas. 298.—CAN.

PART V. SECT. 1, SUB-SECT. 4.—H.

q i. —.]—The Ct. of Appeal in

British Columbia has no jurisdiction to hear an appeal from the refusal of a judge to grant a writ of *habeas corpus* in aid of criminal matters.—R. v. MCADAM, [1925] 4 D. L. R. 33; [1925] 3 W. W. R. 257; 44 Can. Crim. Cas. 155; 35 B. C. R. 168.—CAN.

a i. — *Grounds for allowing or refusing*.]—*Re* WOOD (N. S.), [1927] 4 D. L. R. 537; 48 Can. Crim. Cas. 146.—CAN.

798 v. —.]—When a judge or the full Ct. of K. B. has granted a writ of *habeas corpus* & discharged prisoner, there is no appeal.—R. v. ROMANCHUK, [1924] 3 D. L. R. 229; 2 W. W. R. 351; 42 Can. Crim. Cas. 231; 34 Man. L. R. 371.—CAN.

PART V. SECT. 1, SUB-SECT. 4.—I.

sm. *When not given*—*Application of Crown Costs Act*.]—R. v. TEN CHINAMEN (1924), 34 B. C. R. 349.—CAN.

## Part VI.—Mandamus.

900. *Add. Annotations*:—As to (1) *Refd. Mersey Docks & Harbour Board v. Hay*, [1923] A. C. 345; *Tate & Lyle v. L. & N. E. Ry. & L. M. & S. Ry.* (1926), 43 T. L. R. 49.
912. *Add. Annotation*:—*Refd. A.-G. v. Denby*, [1925] Ch. 596.
- 926a. —. —.]—*Re HEWARD* (1845), 2 Dow. & L. 753; *sub nom. Re HEYWARD*, 14 L. J. Q. B. 113.
958. *Add. Annotation*:—*Appld. R. v. Harris*, [1927] 2 K. B. 587.
1022. *Add. Annotation*:—*Refd. Clarke v. Epsom R. D. C.* (1928), 45 T. L. R. 106.
1066. *Add. Citation*:—*sub nom. R. v. POPLAR BOROUGH COUNCIL, Ex p. LONDON COUNTY COUNCIL, R. v. POPLAR BOROUGH COUNCIL, Ex p. METROPOLITAN ASYLUMS BOARD*, 2 B. R. A. 810.
1091. *Add. Annotations*:—*Refd. R. v. Leicester JJ., Ex p. Allbrighton*, [1927] 1 K. B. 557. *Mentd. R. v. Bath Compensation Authority*, [1925] 1 K. B. 685.
1130. *Add. Annotation*:—*Mentd. Harper v. Hedges*, [1923] 2 K. B. 314.
- 1141a. *Income Tax Act, 1918* (c. 40), s. 125, Sched. A., No. V., rr. 7, 8—*Remedy by way of appeal*.]—As a result of information disclosed in connection with a claim to relief for the year 1920–21 under the above r. 8 the Inspector of Taxes discovered that the rents of certain properties had been increased during that year & that, by the above r. 7 (2), the owners were not entitled to the deductions in respect of repairs which had previously been granted from the Sched. A. assessments on the properties for that year. Additional assessments to income tax, Sched. A., were accordingly made in respect of the tax undercharged, & the Inspector of Taxes refused to certify the claim under r. 8 on the ground that relief under that rule applied only to assessments which were reduced for purposes of collection under r. 7. Notice of appeal was given by the owners against the additional assessments & against the refusal of the Inspector to certify the claim under r. 8, but at the owners' request the hearing of the appeals was postponed pending the decision of the ct. on rules *nisi*, which the owners had applied for & obtained, calling upon (a) the General Comrs. & the Inspector of Taxes to show cause why a writ of prohibition should not issue, prohibiting them from proceeding with the additional assessments; & (b) the Inspector of Taxes to show cause why writs of *certiorari* & *mandamus* should not issue, quashing his refusal to certify the claim under r. 8, & commanding him to furnish the requisite certificate in connection with the claim:—*Held*: discharging the rules *nisi*, the General Comrs. & the Inspector of Taxes had acted within their jurisdiction, & as the statute prescribed procedure for appealing against the additional assessments & against the Inspector's refusal to certify the claim under r. 8, prohibition, *certiorari* & *mandamus* would not lie.—*R. v. KINGSLAND PARISH INSPECTOR OF TAXES, Ex p. PEARSON, KINGSLAND ESTATE, R. v. KINGSLAND PARISH INCOME TAX COMRS. & INSPECTOR OF TAXES* (1922), 8 Tax Cas. 327.
- Annotation*:—*Refd. R. v. Swansea Income Tax Comrs., Ex p. English Crown Spelter Co.*, [1925] 2 K. B. 250.
1150. *Add. Annotations*:—*Refd. Phillips v. Britannia Hygienic Laundry Co.*, [1923] 2 K. B. 832. *Mentd. Clarke v. Epsom R. D. C.* (1928), 45 T. L. R. 106.
1152. *Add. Annotation*:—*Refd. R. v. Lancashire JJ., Ex p. Tyrer*, [1925] 1 K. B. 200.
1156. *Add. Annotation*:—*Generally, Mentd. Huyton & Roby Gas Co. v. Liverpool Corpn.* (1925), 42 T. L. R. 116.
1181. *Add. Annotations*:—*Mentd. R. v. Labour Minister*, [1924] 2 K. B. 210; *L. & N. E. Ry. v. Easington Union Assmt. Com. & Easington-with-Thorpe Parish Council* (1925), 95 L. J. K. B. 255; *R. v. Swansea Income Tax Comrs., Ex p. English Crown Spelter Co.*, [1925] 2 K. B. 250.
1182. *Add. Annotations*:—*Refd. Adamson v. Melbourne & Metropolitan Board of Works* (1928), 45 T. L. R. 3. *Mentd. Barber v. Chudley* (1922), 92 L. J. K. B. 711; *Re Hummeltenberg, Beatty v. London Spiritualistic Alliance*, [1923] 1 Ch. 237; *Jackson v. Voss*, [1923] 2 K. B. 357; *Re Ludlow, Bence-Jones v. A.-G.* (1923), 93 L. J. Ch. 30; *Re Shakespeare Memorial Trust, Lytton v. A.-G.*, [1923] 2 Ch. 398; *A.-G. v. National Provincial Bank*, [1924] A. C. 262; *Brighton College v. Marriott No. 1* (1924), 69 Sol. Jo. 229; *Verge v. Somerville*, [1924] A. C. 496; *Brighton College v. Marriott*, [1925] 1 K. B. 312; *Chesterman v. Federal Taxation Comr.* (1925), 42 T. L. R. 121; *Re Gray, Todd v. Taylor*, [1925] Ch. 362; *R. v. Income Tax Special Comrs., Ex p. Headmasters' Conference, Same v. Same, Ex p. Incorporated Asscn. of Preparatory Schools* (1925), 41 T. L. R. 651; *I. R. Comrs. v. Falkirk Temperance Café Trust* (1926), 11 Tax Cas. 353; *I. R. Comrs. v. Glasgow Musical Festival Asscn.* (1926), 11 Tax Cas. 154; *I. R. Comrs. v. Peeblesshire Nursing Asscn.* (1926), 11 Tax Cas. 335; *Jackson's Trustees v. Lord Advocate*

## PART VI. SECT. 1, SUB-SECT. 3.—A.

919 i. *Writ sought for ulterior motive—To satisfy personal enmity & spite—Mandamus refused.*—*Ex p. SWIM* (1921), 49 N. B. R. 207.—CAN.

## PART VI. SECT. 1, SUB-SECT. 3.—B. (b).

949 ii. —.]—An application for a *mandamus* was dismissed, where it was an attempt to secure the performance of an alleged private right by a public body, & not to secure the performance of any public duty.—*R. (BUTLER) v. NAVAN URBAN DISTRICT COUNCIL*, [1926] I. R. 92, 466.—IR.

## PART VI. SECT. 1, SUB-SECT. 3.—C.

954 vi. —.]—Before a mandatory order can be obtained, appct. must show that he has some specific right in law to enforce the duty, performance of which he asks the aid of the ct. to compel.—*Re WATSON & COBBOURG TOWN*, [1924] 4 D. L. R. 459; 55 O. L. R. 531.—CAN.

## PART VI. SECT. 1, SUB-SECT. 3.—E. (a).

1004 viii. —.]—*CONDs v. KABOTA*, [1925] 3 D. L. R. 376; [1926] 2 W. W. R. 620.—CAN.

## PART VI. SECT. 1, SUB-SECT. 3.—F. (a).

1038 iv. —.]—An application for a *mandamus* was dismissed, where appcts. had an adequate alternative remedy.—*R. (JOHANNESSEN) v. CARTIER RURAL MUNICIPALITY*, [1922] 2 W. W. R. 670; 68 D. L. R. 741.—CAN.

1038 v. —.]—A *mandamus* is not available if another remedy is by statute.—*Re VIKING MUNICIPAL HOSPITAL DISTRICT No. 10*, [1923] 4 D. L. R. 1123.—CAN.

- (1926), 10 Tax Cas. 460; *Martin v. Lowry*, *Martin v. I. R. Comrs.*, [1926] 1 K. B. 550; *Scottish Woollen Technical College, Galashiels v. I. R. Comrs.* (1926), 11 Tax Cas. 139; *I. R. Comrs. v. Yorkshire Agricultural Soc.* (1927), 44 T. L. R. 59; *Re Williams, Public Trustee v. Williams*, [1927] 2 Ch. 283; *General Medical Council v. I. R. Comrs.*, *English Branch Council of General Medical Council v. I. R. Comrs.* (1928), 97 L. J. K. B. 578.
1185. *Add. Annotation*:—As to (2) *Reid. St. Magnus, etc. Parochial Church Council v. London Diocese Chancellor*, [1923] P. 38. *Generally, Reid. R. v. North, Ex p. Oakey* (1926), 43 T. L. R. 60.
1186. *Add. Annotation*:—*Consd. R. v. Central Criminal Court JJ., Ex p. L. C. C.*, [1925] 2 K. B. 43.
1218. *Add. Annotation*:—*Distd. Port of London Authority v. I. R. Comrs.* (1919), 12 Tax Cas. 122.
1217. *Add. Annotations*:—*Reid. R. v. Roberts, Ex p. Scurr*, [1924] 2 K. B. 695; *Roberts v. Hopwood*, [1925] A. C. 578; *Short v. Poole Corpn.* (1925), 42 T. L. R. 107. *Mentd. Sadler v. Sheffield Corpn., Dyson v. Sheffield Corpn.*, [1924] 1 Ch. 483.
1219. *Add. Annotation*:—*Reid. Short v. Poole Corpn.*, [1926] Ch. 66.
1221. *Add. Citations*:—3 Nev. & M. K. B. 802; 3 L. J. M. C. 117.
1225. *Add. Citations*:—3 L. T. O. S. 180; 8 J. P. 662.
1228. *Add. Citation*:—*sub nom. R. v. LEICESTER, DEPUTIES OF FREEMEN*, 15 Q. B. 671; 117 E. R. 613. *Add. Annotations*:—*Folld. R. v. Monmouth Corpn., R. v. Bolton Corpn.* (1870), L. R. 5 Q. B. 251. *Reid. Ex p. Portingell*, [1892] 1 Q. B. 15; *R. v. Somerset JJ.* (1900), 16 T. L. R. 166. *Mentd. R. v. Pawlett* (1873), L. R. 8 Q. B. 491.
1293. *Add. Annotation*:—*Generally, Mentd. Hesketh v. Birmingham Corpn.* [1924] 1 K. B. 260.
1306. *Add. Annotations*:—*Mentd. R. v. Labour Minister*, [1924] 2 K. B. 210; *L. & N. E. Ry. v. Easington Union Assmt. Com. & Easington-with-Thorpe Parish Council* (1925), 95 L. J. K. B. 255.
1308. *Add. Annotation*:—*Reid. Reigate Corpn. v. Surrey County Council*, [1928] Ch. 359.
1323. *Add. Annotation*:—*Reid. Everett v. Griffiths*, [1924] 1 K. B. 941.
1337. *Add. Annotation*:—*Reid. Everett v. Griffiths*, [1924] 1 K. B. 941.
- 1433a. *Reference to statutory & her orders & to private & local Acts—Duty to supply copies for use of court.*—PRACTICE NOTE, [1926] W. N. 308.
1457. *Add. Annotations*:—*Consd. Bowker v. Woodroffe, Bowker v. Premier Drug Co.*, [1928] 1 K. B. 217. *Mentd. Bowker v. Woodroffe, Bowker v. Premier Drug Co.* (1927), 96 L. J. K. B. 750.
- 1466a. — Cross-examination of deponent—When ordered—Only in very special circumstances.]—*R. v. KENT JJ., Ex p. SMITH*, [1928] W. N. 137, D. C.
- 1486a. — — —.]—*R. v. HANCOCK, ALDERMAN OF NORTH WEST WARD OF BOROUGH OF POOLE* (1839), 3 J. P. 723.
1524. *Add. Annotation*:—*Mentd. Leconfield v. Thorneiy*, [1926] A. C. 10.
1736. *Add. Annotations*:—*Reid. R. v. Cory*, [1927] 1 K. B. 810. *Mentd. Griffiths v. Studebakers*, [1924] 1 K. B. 102.
1740. *Add. Citation*:—2 B. R. A. 639.
- 1749a. — — —.]—*R. v. VAYLE* (1844), 8 J. P. Jo. 212.

## PART VI. SECT. 1, SUB-SECT. 5.—A. (b).

*ni. — Architects Registration Board.*—Where an application by resp. for registration as an architect had been refused by the above Board:—*Held*: *mandamus* would not lie directing the Board to register resp.—*ARCHITECTS REGISTRATION BOARD OF VICTORIA v. HUTCHISON*, [1925] V. L. R. 195; 35 C. L. R. 404; 31 Alta. L. R. 93.—AUS.

## PART VI. SECT. 1, SUB-SECT. 5.—A. (d).

1221 vii. — *Not to hear case without its jurisdiction.*—*R. v. BRINDA*, [1924] 3 D. L. R. 1092; 57 N. S. R. 323.—CAN.

1221 viii. — *In criminal matter.*—The Supreme Ct. of Ontario has jurisdiction to *mandamus* a county ct. judge's criminal ct. to try, according to the procedure of Criminal Code, s. 827, a person against whom an indictment has been found by a grand jury for the county. The fact that no rules have been made as to the issue of a *mandamus* in a criminal matter does not preclude the Supreme Ct. from exercising its full powers.—*A.-G. FOR ONTARIO v. DALY*, [1924] A. C. 1011; 94 L. J. P. O. 21; 132 L. T. 210; 40 T. L. R. 814.—CAN.

## PART VI. SECT. 1, SUB-SECT. 5.—A. (e).

*si. —*—The Supreme Ct. of Ontario has jurisdiction to grant a *mandamus* to a judge of a division ct. to hear an appeal from a conviction of deft., by a police magistrate, of an

offence contrary to Inland Revenue Act, 1906, s. 180 (f).—*R. v. SPEIRS* (1924), 55 O. L. R. 290.—CAN.

## PART VI. SECT. 1, SUB-SECT. 5.—A. (g).

1237 ii. — — —.]—*Re HOLLAND* (1875), 37 U. C. R. 214.—CAN.

## PART VI. SECT. 1, SUB-SECT. 5.—A. (h).

*sp. To sign record of acquittal—After retirement of judge.*—A retired judge of a county ct. criminal ct. cannot be compelled by *mandamus* to sign a record of acquittal for lack of jurisdiction, after a long interval of time. If there is any right to have the record signed, the only competent person is the present judge.—*Re HALL* (1922), 38 Can. Crim. Cas. 55.—CAN.

## PART VI. SECT. 1, SUB-SECT. 5.—B.

1270 iv. — *Not where dismissal justified.*—*Re MONAGHAN* (1924), 57 N. S. R. 242.—CAN.

1270 v. — — —.]—*ADAMS RIVER LUMBER Co. v. KAMLOOPS SAWMILLS, LTD.* (1921), 70 D. L. R. 863; 30 B. C. R. 354.—CAN.

## PART VI. SECT. 1, SUB-SECT. 5.—D.

1292 i. *General rule—Bill pending to repeal Act.*—Where a duty is imposed upon a local authority to carry out an Act, the fact that a bill has been introduced to repeal that Act does not justify the local authority in refusing to carry out the duty, & *mandamus* lies to compel performance.—*R. v. RATHMINES URBAN DISTRICT COUNCIL*, [1928] I. R. 260.—IR.

## PART VI. SECT. 1, SUB-SECT. 5.—E.

*sr. Municipal council—Imposing conditions to permission to erect petrol pump outside legitimate scope of council's functions.*—*Held*: a *mandamus* should be granted.—*Re RANDWICK MUNICIPAL COUNCIL, Ex p. BOWSER & Co.* (1927), 27 S. R. N. S. W. 209; 44 N. S. W. W. N. 57.—AUS.

## PART VI. SECT. 2.

1326 iv. — — —.]—*CASTLEMAN v. JOHNSON*, [1921] 3 W. W. R. 830; 70 D. L. R. 862; 30 B. C. R. 354.—CAN.

## PART VI. SECT. 3.

1341 i. *When action for mandamus pending.*—An interlocutory *mandamus* should not be granted, unless it can be shown that pltf. will suffer injury by waiting for the result of the trial. Proof of the claim for damages is not a condition precedent to the granting of an interlocutory *mandamus*.—*RIDINGS v. ELMHURST SCHOOL TRUSTEES* (Sask.), [1926] 4 D. L. R. 81; [1926] 2 W. W. R. 752.—CAN.

## PART VI. SECT. 6, SUB-SECT. 1.—A. (a).

1350 i. *Necessary parties—Mandamus against municipal corporation.*—In *mandamus* proceedings against a municipal corpn. it is the better practice to make parties to the proceedings the members of council & officers whose alleged delinquencies are involved.—*R. (READ) v. PEMBINA MUNICIPAL DISTRICT No. 552*, [1922] 3 W. W. R. 857; 70 D. L. R. 559.—CAN.



- Comrs. v. Burrell, [1924] 2 K. B. 52; Herbert v. I. R. Comrs., I. R. Comrs. v. Herbert (1925), 9 Tax Cas. 593; I. R. Comrs. v. Hawley, [1928] 1 K. B. 578.**

## Part VII.—Quo Warranto.

1837. *Add. Annotations* :—*Refd.* Metcalfe v. Boyce, [1927] 1 K. B. 758. *Mentd.* Layzell v. Thompson (1926), 43 T. L. R. 58.
1846. *Add. Annotation* : — *Refd.* Everett v. Griffiths, [1924] 1 K. B. 941.
1847. *Add. Annotation* : — *Refd.* Everett v. Griffiths, [1924] 1 K. B. 941.
1952. *Add. Annotation* : — *Refd.* Everett v. Griffiths, [1924] 1 K. B. 941.
1954. *Add. Annotation* : — *Refd.* Everett v. Griffiths, [1924] 1 K. B. 941.
2007. *Add. Annotation* : — *Refd.* Everett v. Griffiths, [1924] 1 K. B. 941.
2034. *Add. Annotation* :—*Mentd.* Leconfield v. Thornely (1925), 89 J. P. 199.
- 2046a. — Reference to statutory & other orders & to private & local Acts—Duty to supply copies for use of court.]—PRACTICE NOTE, [1926] W. N. 308.

## Part VIII.—Prohibition.

2110. *Add. Annotations*:—**Refd.** St. Magnus, etc. Parochial Church Council v. London Diocese Chancellor, [1923] P. 38; *Hunter v. Stadtsche Hochseefischerei Gemeinnützige Gesellschaft* (1925), 133 L. T. 488; *Mansfield v. Robinson*, [1928] 2 K. B. 353.
2112. *Add. Annotation*:—*As to* (1) **Refd.** St. Magnus, etc. Parochial Church Council v. London Diocese Chancellor, [1923] P. 38.
2121. *Add. Annotation*:—*As to* (2) **Folld.** R. v. North, *Ex p.* Oakey (1926), 43 T. L. R. 60.
2128. *Add. Annotation*:—**Mentd.** R. v. Electricity Comrs., *Ex p.* Yorkshire Electric Power Co. (1927), 138 L. T. 230.

**PART VII, SECT. 2.**

**1840 i. Discretion of court—Court bound to consider all circumstances.]—**On application for a *quo warranto*, the ct. will consider whether in all the circumstances the public interest calls for the exercise of its discretion in favour of appet.—**R. (BOUDROT) v. JOHNSTON, [1923] 2 D. L. R. 278; 56 N. S. R. 214.—CAN.**

1840 li. — — —.] — Where an application for *quo warranto* is made to the Ct. of K. B., the granting or withholding of leave is in the discretion of the ct., & the discretion ought to be exercised upon a sound consideration of the particular circumstances of each case.—*R. (MATHESON) v. HUBER*, [1924] 2 D. L. R. 905; 2 W. W. R. 596.—**CAN.**

**PART VII. SECT. 3, SUB-SECT. 1.—**  
**A. (d).**

1871 iii. —.—.]—An application for a *quo warranto*, to test the validity of the appointment of an inspector, on the ground that the appointment was illegal because there was already an inspector in office, was dismissed, as the municipality had power to appoint "one or more inspectors."—R. v. THIBAUT (1926), 59 N. S. R. 93.—CAN.

**PART VII. SECT. 3, SUB-SECT. 1.—F.**

st. ——— *Failure to post name of candidate.*]—Where after being legally nominated as a councillor for a rural municipality, a candidate informs the clerk & returning officer that he is considering withdrawing, but does not withdraw, & the returning officer does not post his name as one of the nominees but declares another candidate elected by acclamation, a *quo warranto* proceeding is the correct method for testing the latter's right to the office.—R. (MACKAY) v. Goon, [1922] 1 W. W. R. 712; 66 D. L. R. 763.—CAN.

— *Disqualification of candidate.*—Where a person elected to a municipal office is at the time of his election disqualified for election, the election can only be attacked by an election petition; but where he is disqualified from holding municipal office his case comes under the category of continuing disqualifications which afford good ground for a proceeding by *quo warranto*.—R. (NUTTALL) *v.* BROWN [1923] 2 W. W. R. 511; 33 Man. L. R. 184.—CAN.

**sz. — Statutory remedy avail-  
able.]**—The remedy by *quo warranto* is  
not excluded by another statutory  
remedy, unless the Legislature has so  
declared expressly or by necessary  
implication.—**R. (MCARTHUR) v. MAY-  
COCK, [1924] 4 D. L. R. 1222; 3  
W. W. R. 540.—CAN.**

**PART VII. SECT. 4, SUB-SECT. 2.—**  
**B. (a).**

t i. ———— *Proof of interest.*]—  
R. v. MCKENZIE (1851), 2 C. L. Ch. 36.  
—CAN.

**PART VII. SECT. 4, SUB-SECT. 2.—**  
**B. (b).**

ci. ---.] — R. (MATHESON) v.  
HUBER, [1924] 2 D. L. R. 905; 2  
W. W. R. 596.—CAN.

**PART VII. SECT. 4, SUB-SECT. 2.—**  
**B. (c).**

1958 iii. ————.]—R. v. ADAMS  
(1850), 1 C. L. Ch. 203.—CAN.

1969 i. *What is acquiescence.*]—Acquiescence by a relator in the alleged offence, to be fatal, must be acquiescence at the time the alleged offence is committed. The subsequent conduct of a relator in agreeing to overlook the equal alleged guilt of others does not constitute disqualifying acquiescence.—R. (MATHESON) v. HUBER. [1924] 2 D. L. R. 905; 2 W. W. R. 596.—CAN.

**PART VII. SECT. 4. SUB-SECT. 3.**

1990 1. *Effect of delay.*—Unnecessary delay in making an application for a rule nisi for *quo warranto* is a bar to that remedy. A delay from Oct. to Apr., the ct. having sat twice in the meantime, is a delay of such length.—*Re CROSMAN & MCLEOD'S ELECTION, Ex p. HOWARD* (1922), 70 D. L. R. 589.—CAN.

**PART VII. SECT. 4, SUB-SECT. 4.—A.**

**52. Necessity for — That motion made at instance of relator.]—**On a motion for a *quo warranto*, an affidavit stating that the motion is made at the instance of the relator must be filed before the service of the notice of motion or petition, & where it has not been so filed the motion will fail. —**R. (MACKAY) v. GOOD, [1922] 1 W. W. R. 712; 66 D. L. R. 763.-**  
**CAN.**

**PART VII. SECT. 4, SUB-SECT. 4.—C.**

**2017 i.** *Acceptance of office—Acceptance or acting in office need not be stated.*—*R. v. STEPHENSON* (1851), 1 C. L. Ch. 270.—**CAN.**

**PART VII. SECT. 5.**

1 i. ———.]—R. (MCARTHUR) v. DOUCET, [1924] 3 D. L. R. 812.—CAN.

**sb. Defence—Failure to answer objection—Is admission of truth of objection.**  
—R. v. SCOTT (1851), 2 C. L. Ch. 98.—  
**CAN.**

**PART VIII. SECT. 2.**

**h i. ——— ——— ———.]— MINISTER  
FOR LABOUR & INDUSTRY (N. S. W.)  
v. MUTUAL LIFE & CITIZENS ASSURANCE  
CO., LTD. (1922), 30 C. L. R. 488; 28  
Argus L. R. 252; 22 S. R. N. S. W.  
610; 39 N. S. W. W. N. 94; (1922),  
N. S. W. Ind. Arbu. Cas. 20.—AUS.**

2129. *Add. Annotations*:—*Appld.* St. Magnus, etc. Parochial Church Council v. London Diocese Chancellor, [1923] P. 38. *Refd.* R. v. North, *Ex p.* Oakey (1926), 43 T. L. R. 60.

2130. *Add. Annotation*:—*Refd.* R. v. Electricity Comrs., *Ex p.* London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171; R. v. Powell, *Ex p.* Camden, [1925] 1 K. B. 641.

2132. *Add. Annotations*:—*Consd.* R. v. Swansea Income Tax Comrs., *Ex p.* English Crown Spelter Co., [1925] 2 K. B. 250. *Refd.* R. v. Electricity Comrs., *Ex p.* London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171.

2132a. ———.]—R. v. KINGSLAND PARISH, INSPECTOR OF TAXES, *Ex p.* PEARSON, KINGSLAND ESTATE, R. v. KINGSLAND PARISH INCOME TAX COMRS. & INSPECTOR OF TAXES, No. 1141a, *ante*.

2138. *Add. Annotation*:—*Mentd.* R. v. Labour Minister, [1924] 2 K. B. 210.

2142a. ———.]—A writ of prohibition will not lie to restrain justices in petty sessions from enforcing a warrant of imprisonment on an order for payment of rates where no remedy of a preventive, as distinct from a corrective, nature can result from the issue of the writ.—R. v. NORFOLK JJ., *Ex p.* DAVIDSON (1925), 69 Sol. Jo. 558, D. C.

2149a. ———.]—Appcts. having obtained a rule for a writ to prohibit the General Comrs. from making, allowing, confirming, enforcing, or otherwise proceeding upon an assessment to income tax:—*Held*: prohibition would not lie to the General Comrs., who had acted in accordance with their statutory duty in making the assessment & had not exceeded their jurisdiction.—R. v. SWANSEA INCOME TAX COMRS., *Ex p.* ENGLISH CROWN SPELTER CO., [1925] 2 K. B. 250; 94 L. J. K. B. 718; 133 L. T. 143; 41 T. L. R. 505; 9 Tax Cas. 437; *sub nom.* R. v. INCOME TAX GENERAL COMRS., *Ex p.* ENGLISH CROWN SPELTER CO., LTD., 69 Sol. Jo. 606.

2168. *Add. Annotation*:—*Apprvd.* R. v. North, *Ex p.* Oakey, [1927] 1 K. B. 491.

2185. *Add. Annotation*:—*Mentd.* R. v. Electricity Comrs., *Ex p.* Yorkshire Electric Power Co. (1927), 138 L. T. 230.

2187a. ———.]—In the case of the misinterpreta-

tion of an Act by an inferior ct., the consideration of which arises incidentally in the course of a proceeding which is confessed to be within its jurisdiction, a prohibition will not lie, unless it be made appear to the superior ct. that the party applying for the prohibition has, in the course of the proceedings in the inferior ct., alleged the grounds for a contrary interpretation of the Act on which he applies for the prohibition, & that the inferior ct. has proceeded notwithstanding such allegation.—HOME v. CAMDEN (EARL) (1795), 6 Bro. Parl. Cas. 203; 2 Hy. Bl. 533; 126 E. R. 687; *affg.* S. C. *sub nom.* CAMDEN (LORD) v. HOME (1791), 1 Hy. Bl. 476.

*Annotations*:—*Consd.* Gould v. Gapper (1804), 5 East, 345. *Distd.* Wadsworth v. Spain (1851), 17 Q. B. 171. *Appld.* R. v. Greenwich County Court Judge (1888), 60 L. T. 248. *Refd.* Gare v. Gapper (1803), 3 East, 47. Veley v. Burder (1841), 12 Ad. & El. 265; *Re* Appellate Commutation (1845), 8 Q. B. 139; Egyptian Bonded Warehouses Co. v. Yoyasu Goshi Kaisha, [1922] 1 A. C. 111. *Mentd.* The St. Tudno, [1918] P. 174.

2196. *Add. Annotation*:—*Mentd.* Laphin v. Braithwaite (1924), 93 L. J. K. B. 1123.

2200. *Add. Annotations*:—*Consd.* St. Magnus, etc. Parochial Church Council v. London Diocese Chancellor, [1923] P. 38; R. v. North, *Ex p.* Oakey (1926), 43 T. L. R. 60.

2220. *Add. Annotation*:—*Refd.* R. v. Electricity Comrs., *Ex p.* London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171.

2221. *Add. Annotation*:—*Consd.* R. v. Electricity Comrs., *Ex p.* London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171.

2254. *Add. Annotation*:—*Refd.* R. v. Electricity Comrs., *Ex p.* London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171.

2287. *Add. Annotations*:—*Consd.* R. v. Electricity Comrs., *Ex p.* London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171. *Mentd.* R. v. Maidstone Prison, *Ex p.* Maguire (1925), 133 L. T. 710.

2290. *Add. Annotation*:—*Consd.* R. v. Electricity Comrs., *Ex p.* London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171.

2303. For the existing paragraph in original volume substitute as follows:—

**Electricity Commissioners.**—The powers of the Electricity Comrs. are to be exercised judicially & not ministerially, & a writ of prohibition will issue if they make an order

PART VIII. SECT. 4, SUB-SECT. 2.

2150 vi. ———.]—Prohibition is granted where there is want of jurisdiction in an inferior ct.—ROSENBERG v. THE MACCABEES, [1923] 2 W. W. R. 320.—CAN.

2150 vii. ———.]—*Re* WOODROOF, [1925] 3 D. L. R. 913; 44 Can. Crim. Cas. 199.—CAN.

2150 viii. ———.]—*Re* R. v. LAMBERTON Ont. (1926), 46 Can. Crim. Cas. 13.—CAN.

2150 ix. ———.]—Prohibition should not issue, unless it is clear on the face of the proceedings that there is want of jurisdiction.—CHILDREN'S AID SOCIETY OF ST. ADELARD v. STE. ROSE RURAL MUNICIPALITY (Man.), [1926] 4 D. L. R. 466; [1926] 3 W. W. R. 8; 46 Can. Crim. Cas. 305.—CAN.

2150 x. ———.]—The writ of prohibition may be resorted to only where there is a complete lack of jurisdiction.—R. v. DEE (Man.), [1927] 4 D. L. R. 1065; [1927] 3 W. W. R. 529; 49 Can. Crim. Cas. 57.—CAN.

2150 xi. S. P. R. v. JOYCE, *Ex p.*

MEREDITH, [1927] V. L. R. 481; 49 A.L. T. 57; [1927] Argus L. R. 348.—AUS.

PART VIII. SECT. 4, SUB-SECT. 4.—A.

2184 iv. ———.]—*Re* WILTON FARMERS' CO-OPERATIVE ASSOC. v. BURGESS, [1924] 4 D. L. R. 435; 55 O. L. R. 534.—CAN.

PART VIII. SECT. 5, SUB-SECT. 1.

*sc. Before hearing.*—A writ of prohibition prohibiting a district ct. judge from hearing an appeal from a summary conviction, on the ground of want of jurisdiction:—*Held*: good.—R. (LAMSON) v. SHARPE & INGLIS, [1921] 3 W. W. R. 674; 66 D. L. R. 521; 36 Can. Crim. Cas. 326; 15 Sask. L. R. 35.—CAN.

*sd.* ———.]—A motion for prohibition being commenced before the magistrate has heard the evidence in a charge may be dismissed without prejudicing appet. as to any motion he may make at a later stage.—R. v.

JAEGGER Co. (1922), 38 Can. Crim. Cas. 180.—CAN.

PART VIII. SECT. 5, SUB-SECT. 3.—A.

*si. Before defence filed or matter dealt with.*—Where want of jurisdiction does not appear on the face of the proceedings, the application should be made before judgment. The fact that a defence has not been filed, or that the matter has not been dealt with by the inferior ct., is not a ground against deff. applying for prohibition.—ROSENBERG v. THE MACCABEES, [1923] 2 W. W. R. 320.—CAN.

PART VIII. SECT. 6.

2287 i. ———.]—*Not to persons without lawful authority purporting to act as court.*—R. (KELLY) v. MAGUIRE & O'SHEIL, [1923] 2 I. R. 58.—IR.

*si. S. P.*—WATERSIDE WORKERS' FEDERATION OF AUSTRALIA v. GILCHRIST, WATT & SANDERSON, LTD. (1927), 34 C. L. R. 482.—AUS.

*b. Add "revsd. on other grounds."* 16 S. C. R. 707."

giving effect to an *ultra vires* scheme.—*R. v. ELECTRICITY COMRS., Ex p. LONDON ELECTRICITY JOINT COMMITTEE Co. (1920), Ltd., [1924] 1 K. B. 171; 93 L. J. K. B. 390; 130 L. T. 164; 88 J. P. 13; 39 T. L. R. 715; 68 Sol. Jo. 188; 21 L. G. R. 719, C. A.*

*Annotations:—Apld. R. v. Church Assembly Legislative Committee & Church Assembly, Ex p. Haynes Smith (1927), 44 T. L. R. 68. Rejd. R. v. Electricity Comrs., Ex p. Yorkshire Electric Power Co. (1927), 91 J. P. 191. Mentd. Prager v. Blatspiel Stamp & Heacock, [1924] 1 K. B. 566.*

2309. *Add. Annotation:—Rejd. R. v. Electricity Comrs., Ex p. London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171.*

2310. *Add. Annotation:—Rejd. R. v. Electricity Comrs., Ex p. London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171.*

2312. *Add. Annotation:—Rejd. R. v. Electricity Comrs., Ex p. London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171.*

2314. *Add. Annotation:—Mentd. Graham v. Graham, [1923] P. 31.*

2321. *Add. Citation:—[1923] P. 38.*

2326a. *Reference to statutory & other orders & to private & local Acts—Duty to supply copies for use of court.]—PRACTICE NOTE, [1926] W. N. 308.*

2345. *Add. Annotation:—Rejd. Engelke v. Musmann, [1928] A. C. 433.*

2382. *Add. Annotations:—Rejd. St. Magnus, etc. Parochial Church Council v. London Diocese Chancellor, [1923] P. 38. Mentd. R. v. North, Ex p. Oakey (1926), 43 T. L. R. 60.*

2388. *Add. Annotations:—Rejd. Pickford v. Quirke, Pickford v. I. R. Comrs. (1927), 43 T. L. R. 659. Mentd. Ingle v. Farrand, [1925] 2 K. B. 728; Pickford v. Quirke, Pickford v. I. R. Comrs. (1927), 138 L. T. 500.*

2401. *Add. Annotation:—Rejd. Campbell v. Pollak, [1927] A. C. 732.*

## Part IX.—Certiorari.

2421. *Add. Annotations:—As to (1) Rejd. R. v. Electricity Comrs., Ex p. London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171. As to (3) Rejd. R. v. Electricity Comrs., Ex p. London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171. Generally, Mentd. Frome United Breweries Co. v. Bath JJ., [1926] A. C. 586; R. v. Sheffield JJ., Ex p. Rawson (1927), 91 J. P. 193.*

2422a. — *Remedy by way of appeal—Notice of appeal given.]—R. v. KINGSLAND PARISH, INSPECTOR OF TAXES, Ex p. PEARSON, KINGSLAND ESTATE, R. v. KINGSLAND PARISH INCOME TAX COMRS. & INSPECTOR OF TAXES, No. 1141a, ante.*

2430. *Add. Annotations:—Mentd. Ord v. Ord, [1923] 2 K. B. 432; Jacobson v. Frachon (1927), 138 L. T. 386; Salvesen (or von Lorang) v. Austrian Property Administrator, [1927] A. C. 641.*

2448. *Add. Annotation:—Folld. R. v. Central*

*Criminal Court JJ., Ex p. L. C. C., [1925] 2 K. B. 43.*

2449a. *Not to quash order.]—The K. B. Div. of the High Ct. of Justice has no jurisdiction to issue a writ of certiorari for the purpose of removing into that ct. an order of the Central Criminal Ct. with a view to its being quashed.—R. v. CENTRAL CRIMINAL COURT JJ., Ex p. LONDON COUNTY COUNCIL, [1925] 2 K. B. 43; 94 L. J. K. B. 479; 132 L. T. 666; 89 J. P. 65; 41 T. L. R. 269; 69 Sol. Jo. 381; 27 Cox, C. C. 734, D. C.*

2458. *Add. Annotations:—As to (3) Apld. R. v. Church Assembly Legislative Committee & Church Assembly, Ex p. Haynes Smith (1927), 44 T. L. R. 68. Rejd. R. v. Electricity Comrs., Ex p. London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171.*

2521. *Add. Annotation:—Rejd. R. v. Cory, [1927] 1 K. B. 810.*

### PART VIII. SECT. 7.

2319 *via.* — — — — —.]—Circumstances in which:—*Held:* resp., by applying to the judge of the Division Ct., under Division Cts. Act, to set aside a judgment, had not waived his rights to move for prohibition.—*Re ORR v. KREPKY, [1925] 3 D. L. R. 1018; 57 O. L. R. 353.—CAN.*

2319 *viii.* — — — — —.]—Where a person appears at the hearing of an affiliation summons only to protest & to object to the jurisdiction, he does not, by remaining there after his objection is overruled, & by endeavouring to discredit complainant's story, voluntarily submit himself to the jurisdiction or deprive himself of the right to apply for a prohibition.—*Ex p. HOLMES (1927), 27 S. R. N. S. W. 253; 44 N. S. W. W. N. 82.—AUS.*

### PART VIII. SECT. 8, SUB-SECT. 4.

*sk. Against parties.]—Prohibition lies against parties as well as against the judge of the inferior ct.—ROSENBERG v. THE MACCABEES, [1923] 2 W. W. R. 320.—CAN.*

### PART VIII. SECT. 8, SUB-SECT. 10.

2401 *1. Not from order as to costs.]—*

On granting a writ of prohibition preventing a magistrate from proceeding with the hearing of a charge, costs were given against the informant. On appeal as to costs:—*Held:* the appeal should be dismissed.—*R. v. LEONARD, [1921] 3 W. W. R. 768; 66 D. L. R. 497; 36 Can. Crim. Cas. 265; 15 Sask. L. R. 29.—CAN.*

### PART IX. SECT. 1.

*g i.* — — — — —.]—*R. v. DENNY (1921), 61 D. L. R. 663; 36 Can. Crim. Cas. 77; 51 O. L. R. 121.—CAN.*

*g ii.* — — — — —.]—*R. v. WOODSTOCK, TOWN ASSESSORS, Ex p. BANK OF NOVA SCOTIA (1922), 68 D. L. R. 48.—CAN.*

*g iii.* — — — — —.]—*R. v. WOOD (1924), 43 Can. Crim. Cas. 382.—CAN.*

*g iv.* — — — — —.]—*MAHAMMAD RAZA SAHEB BELGAMI v. SADASIYA RAO (1925), 1 L. R. 49 Mad. 49.—IND.*

*g v.* — — — — —.]—*R. v. O'BRIEN, Ex p. THEBAULT (1917), 45 N. B. R. 275; 39 Can. Crim. Cas. 141; 41 D. L. R. 97.—CAN.*

*z i.* — — — — —.]—*R. v. OLSEN (1923), 32 B. C. R. 516.—CAN.*

### PART IX. SECT. 4.

*sl. General rule—Persons illegally purporting to act as court.]—Where the assumption of authority by a tribunal is illegal from the beginning, it is not subject to certiorari.—R. (KELLY) v. MAGUIRE & O'SHEIL, [1923] 2 I. R.*

### PART IX. SECT. 5, SUB-SECT. 2.—A.

2495 *ii.* — — — — —.]—A writ of certiorari is not granted *ex debito iustitiae* or as a matter of legal right, but is an application to the sound discretion of the ct., & where there are disputed questions of fact which cannot be satisfactorily tried out on affidavits, but should be tried by *viva voce* testimony, & the questions involved are pending for decision in the Ct. of K. B., the application for certiorari will not be granted.—*WORKMEN'S COMPENSATION BOARD v. BATHURST LUMBER CO., [1923] 4 D. L. R. 84.—CAN.*

### PART IX. SECT. 6, SUB-SECT. 1.—A.

*t i.* — — — — —.]—Where the inferior ct. has, & the ct. above has not, jurisdiction, certiorari cannot be granted.—*PINGENT v. BOYD & McDONNELL, 4 Nfld. L. R. 727.—NFLD.*



2522. *Add. Annotation*:—*Reid*. Leyton U. C. v. Wilkinson. [1927] 1 K. B. 853.

2556. *Add. Citation*:—4 Jur. 151.

2566. *Add. Annotation*:—*Reid*. R. v. Harris, [1927] 2 K. B. 587.

2713. *Add. Annotation*:—*Consd.* R. v. Electricity Comrs., *Ex p.* London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171.

2730. *Add. Annotation*:—*Reid*. R. v. Sheffield JJ., *Ex p.* Rawson (1927), 91 J. P. 193.

2734. *Add. Annotation*:—*As to* (2) *Reid*. Frome United Breweries Co. v. Bath JJ., [1926] A. C. 586.

2735. *Add. Annotation*:—*Reid*. Frome United Breweries Co. v. Bath JJ., [1926] A. C. 586.

2736a. — *Certificate of Post Office medical officer—Workmen's Compensation Act, 1925 (c. 84).*—Appct., a telegraphist in the employment of the Postmaster-General, complained to the Post Office medical officer at G. that she was suffering from telegraphist's cramp. In accordance with the regulations of the Post Office medical service, the case was referred to the chief medical officer, who had special knowledge of telegraphist's cramp, & he certified that appct. was not suffering from it:—*Held*: (1) the giving of a certificate was a judicial act, in respect of which *certiorari* would lie; (2) it issued *ex debito justitiae* at the instance of an aggrieved person; (3) an appeal to a medical referee under sect. 43 (1) (f) of the above Act was not equally beneficial, since he could only deal with the medical correctness of the cer-

tificate & could not inquire into its validity.—*R. v. POSTMASTER-GENERAL Ex p. CARMICHAEL*, [1928] 1 K. B. 291; 96 L. J. K. B. 347; 137 L. T. 26; 91 J. P. 43; 43 T. L. R. 228; 21 B. W. C. C. 226, D. C.

2771. *Add. Citation*:—2 B. R. A. 612.

2795. *Add. Citation*:—27 Cox, C. C. 253.

*Add. Annotations*:—*Reid*. R. v. Lincolnshire JJ., *Ex p.* Brett, [1926] 2 K. B. 192. *Mentd.* *Nadan v. R.*, [1926] A. C. 482.

2797. *Add. Annotation*:—*Reid*. R. v. Sheffield JJ., *Ex p.* Rawson (1927), 91 J. P. 193.

2812. *Add. Annotation*:—*Expld. & Dstd.* R. v. Central Criminal Court JJ., *Ex p.* L. C. C., [1925] 2 K. B. 43.

2820. *Add. Annotation*:—*Mentd.* *Fox v. Fox*, [1925] P. 157.

2822. *Add. Annotation*:—*Appld.* R. v. Postmaster-General, *Ex p.* Carmichael (1927), 96 L. J. K. B. 347.

2830. *Add. Annotation*:—*Reid*. Palmer v. Crone, [1927] 1 K. B. 804.

2834. *Add. Annotations*:—*Reid*. R. v. Adams, *Ex p.* Pope, [1923] 1 K. B. 415; Palmer v. Crone, [1927] 1 K. B. 804.

2862. *Add. Annotation*:—*Reid*. Frome United Breweries Co. v. Bath JJ., [1926] A. C. 586.

2869. *Add. Annotation*:—*Consd.* Frome United Breweries Co. v. Bath JJ., [1926] A. C. 586.

2923. *Add. Annotation*:—*Reid*. Kenney v. Kenney (1925), 133 L. T. 400.

2955. *Add. Annotation*:—*Dstd.* R. v. Central

PART IX. SECT. 6, SUB-SECT. 2.—A.

2711 i. — *Distress warrant for liquor exportation tax.*—Where the duty of assessing a tax rested with the A.-G. for the province, & the provincial Secretary-Treasurer had power only to determine whether the tax should be recovered by distress or by action:—*Held*: *certiorari* would not lie to bring into the Supreme Ct. a distress warrant signed by the Secretary-Treasurer for an amount so assessed, his act being ministerial & not judicial.—*HETHERINGTON v. SECURITY EXPORT CO., LTD.*, [1924] A. C. 988; 94 L. J. P. C. 1; 132 L. T. 216.—CAN.

d i. — *Decision of county court reversing dismissal of offender.*—Where on the trial of an offence punishable by summary conviction the magistrate dismisses the charge, & on appeal to the county ct. he is reversed & accused convicted, redress may be sought by *certiorari*.—*R. v. MEEHAN*, [1925] 2 D. L. R. 411; [1925] 1 W. W. R. 819; 43 Can. Crim. Cas. 325.—CAN.

PART IX. SECT. 6, SUB-SECT. 2.—B. (a).

2763 i. *General rule.*—*R. v. BARRY, Ex p. LINDSAY* (1922), 70 D. L. R. 193; 38 Can. Crim. Cas. 190.—CAN.

2763 ii. — *The question whether a decision of a wreck comr. sitting as a ct. under Canada Shipping Act, R. S. C., 1906 (c. 113), Part X., was made in excess of his jurisdiction can be inquired into on certiorari.*—*Re BARQUIST*, [1925] 2 D. L. R. 696; [1925] 1 W. W. R. 1084.—CAN.

2763 iii. — *Ex p. JONES (N.B.)*, [1926] 1 D. L. R. 587; 45 Can. Crim. Cas. 169.—CAN.

2789 i. *Sufficiency of evidence in court below—Conviction under Temperance Act, R. S. C., 1920 (c. 194).*—Application for a *certiorari* to quash a conviction under the above Act on above grounds, dismissed.—*R.*

GRANT (SASK.), [1922] 2 W. W. R. 624; 69 D. L. R. 718; 38 Can. Crim. Cas. 234.—CAN.

2789 ii. — *When a county ct. judge has acted entirely within his jurisdiction & has decided a question of fact upon evidence properly before him, certiorari does not lie to remove & quash such decision, merely upon the ground that it is not warranted by the evidence or weight of evidence.*—*Ex p. SMITH LUMBER CO., LTD.* (1924), 51 N. B. R. 440.—CAN.

2789 iii. — *Re HILLMAN (N.S.)* (1926), 46 Can. Crim. Cas. 308.—CAN.

sm. *Plea of "guilty" disputed.*—Deft. having pleaded guilty & being summarily convicted by a police magistrate, moved for a *certiorari*, denying that he had so pleaded:—*Held*: deft. had pleaded guilty, & the motion was dismissed.—*R. v. ARMSTRONG* (1922), 38 Can. Crim. Cas. 98.—CAN.

sn. — *Where deft. had been summarily convicted by a magistrate, who had been informed by a sworn interpreter that deft. pleaded guilty:—Held: certiorari was not available, unless the presumption that the proceedings were regular was rebutted.*—*R. v. LEE WAH DAI* (1923), 41 Can. Crim. Cas. 162.—CAN.

sp. — *The ct. on certiorari will quash a conviction by a magistrate, made without evidence being taken but on the statement of the sworn interpreter that accused pleaded guilty, where it appears to the ct. that accused did not really understand what offence he was charged with. In such a case, accused cannot be taken to have pleaded guilty & the magistrate had no jurisdiction to convict.*—*R. v. MLAKER*, [1923] 3 W. W. R. 988; 40 Can. Crim. Cas. 287.—CAN.

PART IX. SECT. 6, SUB-SECT. 2.—B. (b) i.

2801 i. *General rule.*—Want of jurisdiction in a magistrate & irregu-

larities in procedure which touch the substantial rights of appct. constitute those exceptional circumstances which justify relief by way of *certiorari*, even though appct. has a right of appeal.—*OKREY v. SPANGLER*, [1925] 1 D. L. R. 859; [1925] 1 W. W. R. 518; 19 Sask. L. R. 256.—CAN.

2801 ii. — *R. v. RYAN*, [1925] 1 D. L. R. 877; 43 Can. Crim. Cas. 223; 52 N. B. R. 104.—CAN.

PART IX. SECT. 6, SUB-SECT. 2.—B. (b) iii.

2826 i. *General rule.*—Where the jurisdiction of an inferior ct. depends upon a fact collateral to the actual matter which that ct. has to try, it cannot by a wrong decision with regard to that fact give itself jurisdiction which it would not otherwise possess. The lower ct. must decide as to the collateral fact in the first instance, but the superior ct. may upon *certiorari* inquire into the correctness of that decision.—*R. (GREENAWAY) v. ARMAGH JJ.*, [1924] 2 I. R. 55.—IR.

PART IX. SECT. 6, SUB-SECT. 2.—B. (d).

2870 i. *General rule.*—Where a conviction was bad on its face:—*Held*: a writ of *certiorari* should issue & the conviction be quashed.—*R. (EUSTACE) v. TIPPERARY COUNTY DISTRICT JUSTICE*, [1924] 2 I. R. 69.—IR.

2888 i. *Convictions—Formal defect in.*—It is the duty of the ct. on *certiorari* to see that convictions are perfectly regular in form.—*R. v. HING HOP*, [1926] 1 W. W. R. 799; 45 Can. Crim. Cas. 239; 37 B. C. R. 158.—CAN.

PART IX. SECT. 6, SUB-SECT. 3.—B. (e).

st. *Perjury.*—A conviction can be attacked on *certiorari* on the ground of perjury or other fraud.—*R. v. SAFRUK*, [1924] 1 D. L. R. 695; 40 Can. Crim. Cas. 222; 19 Alta. L. R. 677; [1923] 2 W. W. R. 1126.—CAN.

Criminal Court JJ., *Ex p. L. O. C.*, [1925] 2 B. 43.

3069. *Add. Annotation*:—*Reid. R. v. Adams, Ex p. Pope* (1923), 128 L. T. 597.

3131a. Who may apply—Not plaintiff.]—*SOWTON v. CUTLER & CLERKE* (1675), 2 Rep. Ch. 108; 21 E. R. 630.

*Annotation*:—*Apld. Giusti Patents & Engineering Works v. Maggs*, [1923] 1 Ch. 515.

3131b. *S. P. GIUSTI PATENTS & ENGINEERING WORKS, LTD. v. MAGGS*, [1923] 1 Ch. 515; 92 L. J. Ch. 345; 40 R. P. C. 199; *sub nom. GIUSTI PATENTS & ENGINEERING WORKS, LTD. v. MAGGS*, 129 L. T. 438.

3142a. Reference to statutory & other orders & to private & local Acts—Duty to supply copies for use of court.]—PRACTICE NOTE, [1926] W. N. 308.

3168a. — Removal of cause applied for by plaintiff.]—*SOWTON v. CUTLER & CLERKE* (1675), 2 Rep. Ch. 108; 21 E. R. 630.

*Annotation*:—*Apld. Giusti Patents & Engineering Works v. Maggs*, [1923] 1 Ch. 515.

3168b. — No appearance by defendant in proceedings in superior court.]—*GIUSTI PATENTS & ENGINEERING WORKS, LTD. v. MAGGS*, [1923] 1 Ch. 515; 92 L. J. Ch. 345; 40 R. P. C. 199; *sub nom. GIUSTI PATENTS & ENGINEERING WORKS, LTD. v. MAGGS*, 129 L. T. 438.

3185a. — — — — —.]—*GUNN v.* (1750), 1 Wils. 277; 95 E. R. 617.

3185b. — — — — —.]—On the removal of a cause from an inferior to a superior ct., if pltf. declares *de novo*, he is not bound to declare in the same form of action as that in the inferior ct.—*BOWERBANK v. WALKER* (1787), 2 Chit. 517.

3209a. Reference to statutory & other orders & to private & local Acts—Duty to supply copies for use of court.]—PRACTICE NOTE, [1926] W. N. 308.

3352a. *S. P. Re KAYE* (1822), 1 Dow. & Ry. K. B. 436; 1 Dow. & Ry. M. C. 114.

3356. *Add. Annotation*:—*Mentd. R. v. Corfield* (1923), 128 L. T. 305.

3433a. — Cross-examination of deponent—When ordered—Only in very special circumstances.]—*R. v. KENT JJ., Ex p. SMITH*, [1928] W. N. 137.

3456a. Reference to statutory & other orders & to private & local Acts—Duty to supply copies for use of court.]—PRACTICE NOTE, [1926] W. N. 308.

3560. *Add. Citation*:—2 L. M. & P. 130.

3581. After this case add “*See, now, Judicature (Consolidation) Act, 1925 (c. 49), s. 25.*”

## Part X.—The Attorney-General.

3637. *Add. Annotations*:—*Folld. A.-G. v. Westminster City Council*, [1924] 2 Ch. 416. *Reid. A.-G. v. Denby*, [1925] Ch. 596. *Mentd. Deuchar v. Gas Light & Coke Co.*, [1924] 2 Ch. 426.

3637a. .]—Where the A.-G. has exercised his discretion by issuing his fiat for the prosecution of an action against a public body to restrain an unauthorised exercise of its

powers, the ct. will not consider whether the action is one proper to be brought in the circumstances.—*A.-G. v. WESTMINSTER CITY COUNCIL*, [1924] 2 Ch. 416; 93 L. J. Ch. 573; 131 L. T. 802; 88 J. P. 145; 40 T. L. R. 711; 68 Sol. Jo. 736; 22 L. G. R. 506, C. A.

3651. *Add. Annotation*:—*As to* (1) *Reid. A.-G. v. Denby*, [1925] Ch. 596.

3684. *Add. Annotations*:—*Reid. A.-G. v. West-*

### PART IX. SECT. 7, SUB-SECT. 2.—C. (a).

3042-i. *Right not taken away—Unless expressly stated.*]—Where a statute takes away the right of *certiorari*, it does not disentitle the Crown to *certiorari*, where the Crown is not named & there are no words necessarily implying a reference to the Crown.—*R. v. ON SING*, [1924] 2 W. W. R. 258.—CAN.

### PART IX. SECT. 9, SUB-SECT. 2.—I.

3287 i. *No appeal lies—Criminal matter.*]—The Ct. of Appeal in British Columbia has no jurisdiction to hear an appeal from the refusal of a judge to grant a writ of *certiorari* in aid in criminal matters.—*R. v. MCADAM*, [1925] 4 D. L. R. 33; [1925] 3 W. W. R. 257; 44 Can. Crim. Cas. 155; 35 B. C. R. 168.—CAN.

### PART IX. SECT. 9, SUB-SECT. 3.—A. (e).

3373 ii. — *May be amended.*]—Leave may be given to amend a notice of motion to quash a conviction by including additional particulars intended to be relied upon.—*R. (LESLIE) v. MARCOVICH*, [1923] 2 W. W. R. 975.—CAN.

### PART IX. SECT. 9, SUB-SECT. 3.—A. (d) ii.

3410 i. *Absence or excess of juris-*

*diction—May be shown by affidavit.*]—While on *certiorari* the depositions before the magistrate cannot be considered by the ct. in determining whether his jurisdiction was established, yet appct. who seeks to quash a conviction, on the ground of want of or excess of jurisdiction, may incorporate in proper material, & thus present to the ct., any facts, whether within or outside the depositions, which would affect the jurisdiction of the magistrate.—*R. v. ROZONOWSKI*, [1926] 1 D. L. R. 732; [1926] 1 W. W. R. 241; 45 Can. Crim. Cas. 193; 36 B. C. R. 327.—CAN.

### PART IX. SECT. 9, SUB-SECT. 3.—A. (e).

*sw. Affidavits tending to establish guilt of accused—Not admissible.*]—*R. v. MLAKER*, [1923] 3 W. W. R. 988.—CAN.

### PART IX. SECT. 9, SUB-SECT. 3.—K.

3556 i. *General rule—Whether court will examine evidence—Summary conviction.*]—In the case of a summary conviction for an indictable offence the ct. on *certiorari* is not precluded from examining the evidence to ascertain if there was any legal evidence upon which accused could be or ought to have been convicted.—*R. v. OAKES*, [1923] 1 W. W. R. 1220; 39 Can. Crim. Cas. 329.—CAN.

3556 ii. — — — — —.]—*R. v. JACKSON*, [1924] 1 W. W. R. 847; 41 Can. Crim. Cas. 416.—CAN.

3556 iii. — — — — —.]—*R. v. BRANDELINA*, [1927] 1 W. W. R. 832; 47 Can. Crim. Cas. 166; 38 B. C. R. 87.—CAN.

### PART IX. SECT. 9, SUB-SECT. 3.—M.

*sy. Whether appeal lies—Criminal proceedings.*]—No appeal lies to the Ct. of Appeal from an order made by a judge of the King's Bench on an application for *certiorari*, with respect to a conviction under the Criminal Code.—*Re NAGY, NAGY v. GALL (Sask.)*, [1926] 3 W. W. R. 759; 46 Can. Crim. Cas. 333.—CAN.

### PART X. SECT. 3, SUB-SECT. 1.

*sz. Cannot sue in official name on behalf of himself personally.*]—*A.-G. FOR ONTARIO v. RUSSELL* (1921), 64 D. L. R. 59; 49 O. L. R. 103.—CAN.

### PART X. SECT. 3, SUB-SECT. 2.

3683 ii. — — — — —.]—*Semble*: a bill to remove a fixed bridge across a navigable river as impeding navigation, & to erect instead a drawbridge, as provided for by statute, should be by the A.-G., where the statute was passed for the general benefit of the public.—*CULL v. GRAND TRUNK RY. Co.* (1864), 10 Gr. 491.—CAN.

minster City Council, [1924] 2 Ch. 416.  
Mentd. *Deuchar v. Gas Light & Coke Co.*,  
[1925] A. C. 691.

1. *Add. Annotation*:—*Reid. A.-G. v. County*  
*of London Electric Supply Co.*, [1926] Ch. 542.

3688. *Add. Annotation*:—*Reid. A.-G. v. Denby*,  
[1925] Ch. 596.

3708. *Add. Annotation*:—*Reid. R. v. Copestake*,  
*Ex p. Wilkinson*, [1927] 1 K. B. 468.

3715. *Add. Annotation*:—*Reid. Salisbury & Ford-*  
*ingbridge District Drainage Board v. Southern*  
*Tanning Co. (1920), Ltd.*, [1927] 2 K. B.  
566.

3718. *Add. Annotation*:—*Reid. Hardie & Lane v.*  
*Chiltern (1927)*, 96 L. J. K. B. 773.

3719. *Add. Annotations*:—*Appld. Hurley v. Stepney*  
*B. C. (1923)*, 67 Sol. Jo. 767. *Mentd. St.*  
*Nicholas, Acons v. L. C. C. [1928] A. C. 469.*

3720. *Add. Annotation*:—*Consd. Salisbury &*  
*Fordingbridge District Drainage Board v.*

*Southern Tanning Co. (1920), Ltd.*, [1927] 2  
K. B. 566.

3722a. *Proceedings to restrain borough council*  
*from reducing wages of employees.*—In an  
action by three members of a borough  
council for a declaration that a resolution of  
the council reducing the wages of the council's  
employees was *ultra vires* & invalid, on the  
ground that the resolution was not passed  
by a two-thirds majority in accordance with  
the council's bye-laws:—*Held*: the A.-G.  
must be a party to the action.—*HURLEY v.*  
*STEPNEY BOROUGH COUNCIL (1923)*, 67 Sol.  
Jo. 767.

3733. *Add. Annotations*:—*Reid. Re Letters Patent*  
*No. 139,207, Re Carbonit Akt.*, [1924] 2 Ch.  
53; *R. v. Copestake, Ex p. Wilkinson (1926)*,  
96 L. J. K. B. 65.

3736. *Add. Annotations*:—*As to (1) Reid. Re Letters*  
*Patent No. 139,207, Re Carbonit Akt.*, [1924]  
2 Ch. 53. *Generally, Mentd. Campbell v. Pol-*  
*lak, [1927] A. C. 732.*

PART X. SECT. 5.

3723 1. *Effect of fiat—On amount*  
*recoverable.*—An award for a sum in

excess of that named in the A.-G.'s  
fiat:—*Held*: void, even though A.-G.'s  
consent was afterwards obtained.—  
*BEACH v. HYDRO-ELECTRIC POWER*

COMMISSION OF ONTARIO, [1925] 4  
D. L. R. 513; *affg.*, [1924] 4 D. L. R.  
995; 56 O. L. R. 35.—CAN.



## CUSTOM AND USAGES.

## Part I.—Custom.

22. *Add. Annotation* :—*Generally, Mentd. Moser v. Ambleside U. D. C.* (1925), 89 J. P. 118.
32. *Add. Annotation* :—*Mentd. Horlick v. Scully*, [1927] 2 Ch. 150.
48. *Add. Annotation* :—*Refd. The Harkaway*, [1928] P. 199.
61. *Add. Annotations* :—*Mentd. Sack v. Jones*, [1925] Ch. 235; *Brooke v. Bool*, [1928] 2 K. B. 578.
65. *Add. Annotation* :—*Refd. Busby v. Avgherino*, [1927] 2 Ch. 33.
74. *Add. Annotations* :—*Refd. Glamorgan County Council v. Glasbrook*, [1924] 1 K. B. 879.
75. *Add. Annotation* :—*Refd. Busby v. Avgherino*, [1928] A. C. 290.
77. *Add. Annotation* :—*Consd. Busby v. Avgherino*, [1928] A. C. 290.
86. *Add. Annotation* :—*Generally, Mentd. Moser v. Ambleside U. D. C.* (1925), 89 J. P. 118.
164. *Add. Annotation* :—*Refd. Moser v. Ambleside U. D. C.* (1925), 89 J. P. 118.
212. *Add. Annotation* :—*Mentd. The Fagernes*, [1926] P. 185.

## Part II.—Usages Generally.

303. *Add. Annotation* :—*Mentd. Browning v. Crumlin Valley Collieries*, [1926] 1 K. B. 522.
304. *Add. Annotations* :—*Refd. Layton v. General Steam Navigation Co.* (1923), 130 L. T. 662; *Lake v. Simmons* (1926), 95 L. J. K. B. 586. *Mentd. Rederiakt. Transatlantic v. Compagnie Francaise des Phosphates de l'Océanie* (1926), 136 L. T. 619.
369. *Add. Annotation* :—*Mentd. Hirji Mulji v. Cheong Yue S.S. Co.*, [1926] A. C. 497.
384. *Add. Annotation* :—*Mentd. Horlick v. Scully*, [1927] 2 Ch. 150.
393. *Add. Annotation* :—*Mentd. Britannia Hygienic Laundry Co. v. Thornycroft* (1926), 135 L. T. 83.
397. *Add. Annotation* :—*Mentd. Re A Debtor*, [1927] 2 Ch. 367.
434. *Add. Annotation* :—*Refd. Schiller v. Petersen* (1924), 130 L. T. 810.
451. *Add. Annotation* :—*Mentd. Akt. Ocean v. Harding*, [1928] 2 K. B. 371.
462. *Add. Annotation* :—*Refd. Elder, Dempster v. Paterson, Zochonis, Griffiths Lewis Steam Navigation Co. v. Paterson, Zochonis*, [1924] A. C. 522.
485. *Add. Annotation* :—*Refd. Finlay v. N. V. Kwik Hoo Tong Handel Maatschappij*, [1928] 2 K. B. 604.
- 492a. *Add. Annotation* :—*Refd. Smith, Hogg v. Bamberger* (1928), 97 L. J. K. B. 725.
497. *Add. Annotation* :—*Refd. Scriven v. Schmoll Fils Insee.* (1924), 40 T. L. R. 677.
501. *Add. Annotation* :—*Refd. Rederi Akt. Acolus v. Hillas* (1925), 134 L. T. 184.
510. *Add. Annotation* :—*Refd. United States Shipping Board v. Strick*, [1926] A. C. 545.
537. *Add. Annotations* :—*Refd. Rederi Akt. Acolus v. Hillas* (1925), 134 L. T. 184; *Smith, Hogg v. Bamberger* (1928), 97 L. J. K. B. 725.
540. *Add. Annotation* :—*Mentd. Richardsons & Bradley v. Bernhard*, [1925] 2 K. B. 121.
543. *Add. Citation* :—*affg. S. C. sub nom. THE TURID*, [1921] P. 146, C. A.
- Add. Annotations* :—*Folld. Hillas v. Rederi Akt. Acolus* (1926), 43 T. L. R. 67. *Consd. Smith, Hogg v. Bamberger* (1928), 97 L. J. K. B. 725. *Refd. The Rensfjell, The Ornesfjell, The Uppland, The Fritioff, The Svein Jarl* (1924), 131 L. T. 764; *Akt. Dampskibs Steinstad v. Pearson* (1927), 137 L. T. 533.
544. *Add. Annotation* :—*Refd. Smith, Hogg v. Bamberger* (1928), 97 L. J. K. B. 458.
- 544a. —.]—Pltfs., shipowners, chartered a steamer to defts. to carry a cargo of timber from the Baltic to Hull. The charterparty contained a clause as follows: "Cargo to be loaded & discharged with customary steamship dispatch according to the custom of the respective ports. The cargo to be brought to & taken from alongside the steamer at charterer's risk & expense as customary." The steamer discharged the cargo at Hull in due course, but disputes arose between pltfs. & defts. as to the division of the cost of discharging the cargo. Pltfs. brought an action to recover a sum which they had paid in effecting the discharge which they said should have been paid by defts. Defts. refused to pay on the ground that by the custom of the port of Hull the expense in question should be borne by the shipowners:—*Held*: the custom relied on by defts. was inconsistent with the language of the charterparty & was not admissible in order to decide upon whom the expense in question

## PART II. SECT. 3, SUB-SECT. 1.—A.

303 vii. —.]—The question whether a trade custom or usage exists is one of fact, & clear & convincing testimony is required to prove its existence; it must be shown that the custom or usage relied on is certain & reasonable, & so universally recognised that everyone engaged in

the trade knows, or should know, of it. —YEATES v. BARRETT (Sask.), [1927] 3 D. L. R. 812; [1927] 3 W. W. R. 286.—CAN.

## PART II. SECT. 3, SUB-SECT. 2.

340 iv. —.]—YEATES v. BARRETT, No. 303 vii, *ante*.—CAN.

## PART II. SECT. 3, SUB-SECT. 3.

350 ii. —.]—YEATES v. BARRETT, No. 303 vii, *ante*.—CAN.

## PART II. SECT. 6, SUB-SECT. 2.—B. (a).

472 ii. —.]—HOLMES, WILSON & CO., LTD. v. BATA KRISTO DE (1927), 1 L. R. 54 Calc. 549.—IND.

- should rest.—**REDERI AKT. ACOLUS v. HILLAS & Co., LTD.** (1926), 96 L. J. K. B. 186; 136 L. T. 385; *sub nom.* HILLAS (W. N.) & Co., LTD. *v.* REDERI AKT. ACOLUS, 43 T. L. R. 67; 32 Com. Cas. 69; 17 Asp. M. L. C. 193. H. L. *Annotation*:—**Appld.** Smith, Hogg *v.* Bamberger (1928), 97 L. J. K. B. 725.
545. *Add. Annotation*:—**Refd.** Rederi Akt. Acolus *v.* Hillas (1925), 134 L. T. 184.
546. *Add. Annotation*:—**Consd.** Rederi Akt. Acolus *v.* Hillas (1925), 42 T. L. R. 69.
550. *Add. Annotation*:—**Mentd.** Rye *v.* Purcell, [1926] 1 K. B. 446.
559. *Add. Annotation*:—**Mentd.** Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289.
587. *Citations*:—For “9 App. Cas. 508,” read “8 App. Cas. 508.”
588. *Add. Annotation*:—**Refd.** Smith, Hogg *v.* Bamberger (1928), 97 L. J. K. B. 458.

### Part III.—Particular Usages.

595. *Add. Annotation*:—**Mentd.** Laurie & Morewood *v.* Dudin, [1925] 2 K. B. 383.
616. *Add. Annotation*:—**Refd.** United States Shipping Board *v.* Strick, [1926] A. C. 545.
625. *Add. Annotations*:—**Consd.** Michalinos *v.* Drefus (1924), 131 L. T. 177; Bunge y Born Co. *v.* Brightman, [1925] A. C. 799. **Refd.** Brightman *v.* Bunge y Born, [1924] 2 K. B. 619; Matheos S.S. *v.* Dryfus, [1925] A. C. 654. **Mentd.** Einar Bugge A. S. *v.* Bowater (1925), 31 Com. Cas. 1.
636. *Add. Annotation*:—**Refd.** Lake *v.* Simmons (1926), 95 L. J. K. B. 586.
643. *Add. Annotation*:—**Refd.** Kimber Coal Co. *v.* Stone & Rolfe, [1926] A. C. 414.
646. *Add. Annotation*:—**Appld.** Hart *v.* Riversdale Mill Co. (1927), 96 L. J. K. B. 691.
663. *Add. Annotation*:—**Mentd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.
678. *Add. Annotation*:—**Mentd.** Allen *v.* Royal Bank of Canada (1925) 41 T. L. R. 625.
690. *Add. Annotation*:—**Mentd.** Hirji Mulji *v.* Cheong Yue S.S. Co., [1926] A. C. 497.
700. *Add. Annotation*:—**Distd.** Mikkelsen *v.* Arcos (1925), 42 T. L. R. 3.
701. *Add. Annotations*:—**Mentd.** Finn *v.* Shelton Iron, Steel & Coal Co. (1924), 131 L. T. 213; Westminster Bank *v.* Hilton (1926), 136 L. T. 315; Sassoon *v.* International Banking Corp., [1927] A. C. 711.
710. *Add. Annotations*:—**Refd.** Tournier *v.* National Provincial & Union Bank of England, [1924] 1 K. B. 461; Hirji Mulji *v.* Cheong Yue S.S. Co., [1926] A. C. 497.
712. *Add. Annotation*:—**Refd.** Williams *v.* Manis-salian Frères (1923), 29 Com. Cas. 42.
- 729a. **Carriage of wool.**—The contract of carriage customary in the trade for the carriage of wool from import ship in London to Bradford *via* Goole is one by which the carrier undertakes to deliver the wool in a good condition as he receives it, the act of God & the King's enemies excepted.—FRANCE, FENWICK & Co. *v.* MANNHEIM INSURANCE Co. (1905), 10 Com. Cas. 242.

## DAMAGES.

## Part I.—Definitions, Nature and Classification.

1. *Add. Annotation*:—*Refd.* *Marbé v. George Edwardes (Daly's Theatre)* (1927), 43 T. L. R. 460.
3. *Add. Annotation*:—*Mentd.* *Sassoon v. International Banking Corp.*, [1927] A. C. 711.
8. *Add. Annotation*:—*Refd.* *Peyrae v. Wilkinson*, [1924] 2 K. B. 166.
9. *Add. Annotations*:—*Consd.* *Admiralty Comrs. v. S.S. Chekiang*, [1926] A. C. 637; *Admiralty Comrs. v. S.S. Susquehanna*, [1926] A. C. 655.
14. *Add. Annotations*:—*Refd.* *Performing Right Society v. Mitchell & Booker*, [1924] 1 K. B. 762; *Falcon v. Famous Players Film Co.* (1925), 42 T. L. R. 91.
15. *Add. Annotation*:—*Consd.* *Shapiro v. La Motta* (1923), 130 L. T. 622.
19. *Add. Annotation*:—*Consd.* *Ilford U. D. C. v. Beal*, [1925] 1 K. B. 671.

## Part II.—Rules and Principles in Awarding Damages.

20. *Add. Annotation*:—*Mentd.* *Everett v. Ryder* (1926), 135 L. T. 302.
22. *Add. Annotation*:—*Refd.* *Lloyds Bank v. Chartered Bank of India, Australia & China* (1928), 97 L. J. K. B. 609.
26. *Add. Annotations*:—*Consd.* *The Chekiang*, [1925] P. 80; *The Susquehanna*, [1925] P. 196.
- 29a. ——— *Property destroyed by fire.*—A cottage was almost completely destroyed by fire caused by a spark emitted from a steam-roller which was found to constitute a nuisance. In assessing the damages recoverable by the owner of the cottage:—*Held*: the measure of damage was not the fair cost of rebuilding the cottage & making it as good & habitable as before the fire, but the difference between the money value of the owner's interest before & after the fire.—*Moss v. CHRISTCHURCH RURAL DISTRICT COUNCIL, ROGERS v. SAME*, [1925] 2 K. B. 750; 95 L. J. K. B. 81; 23 L. G. R. 331.
30. *Add. Annotation*:—*Refd.* *York Glass Co. v. Jubb* (1925), 134 L. T. 36.
34. *Add. Annotation*:—*Appryd.* *Swift v. Board of Trade*, [1925] A. C. 520.
40. *Add. Annotation*:—*Mentd.* *Valentine v. Hyde*, [1919] 2 Ch. 129.
41. *Add. Annotation*:—*Mentd.* *Putsman v. Taylor*, [1927] 1 K. B. 637.
53. *Add. Annotations*:—*Consd.* *Admiralty Comrs. v. S.S. Chekiang*, [1926] A. C. 637; *Admiralty Comrs. v. S.S. Susquehanna*, [1926] A. C. 655.
54. *Add. Annotations*:—*Consd.* *Admiralty Comrs. v. S.S. Chekiang*, [1926] A. C. 637. *Refd.* *Admiralty Comrs. v. S.S. Susquehanna*, [1926] A. C. 655.
57. *Add. Annotation*:—*Consd.* *The Chekiang*, [1925] P. 80.
58. *Add. Annotation*:—*Refd.* *Admiralty Comrs. v. S.S. Susquehanna*, [1926] A. C. 655.
61. *Add. Annotation*:—*Refd.* *Conquer v. Boot*, [1928] 2 K. B. 336.

## PART I.

7 i. *Nominal damages—Defined.*—Nominal damages does not necessarily mean small damages.—*McGEE v. CLARKE*, [1927] 1 W. W. R. 593; 38 B. C. R. 156.—CAN.

c i. ———.—*LUNDY v. McLEOD v. POWELL (Sask.)*, [1922] 3 W. W. R. 991; 70 D. L. R. 659.—CAN.

## PART II. SECT. 3.

29a i. *Application of rule—In tort—Property destroyed by fire.*—Where damages were recovered for loss through destruction of property by fire caused by deft.'s negligence:—*Held*: the measure of damages was not the cost of replacing the property destroyed, but the value of the property as it stood at the time of the destruction. The cost of replacing may be taken into account in arriving at such value.—*STEVENS v. ABBOTSFORD LUMBER CO.*, [1924] 1 D. L. R. 1163; 1 W. W. R. 660; 33 B. C. R. 299.—CAN.

29a ii. ———.—Where there had been misdirection as to the damages, viz. that they should be assessed on a replacement basis:—*Held*: there should be a new trial.—*O'NEIL v. DOMINION COAL CO.*, [1924] 1 D. L. R. 961; 57 N. S. R. 126.—CAN.

30 v. ——— *Where plaintiff has alternative claim—Duty to elect.*—Damages cannot be recovered both in tort & for breach of contract, when the tort & the breach of contract result from the same act; in such a case pltf. must elect or be deemed to have elected; & if he seeks to recover damages for breach of contract, they must be measured upon that basis, & not upon the basis of any coincident or concomitant act of tort.—*TORONTO HOCKEY CLUB v. ARENA GARDENS, LTD.*, [1924] 4 D. L. R. 384; 55 O. L. R. 509; *affd.* [1925] 4 D. L. R. 546; 57 O. L. R. 610; *affd.*, [1926] 4 D. L. R. 1; [1926] 3 W. W. R. 26.—CAN.

## PART II. SECT. 4.

38 xii. ——— *Goods not of warranted description—Allowance made.*—Certain goods supplied under a contract not answering the warranted description were taken back & an adjustment made in respect of them:—*Held*: the purchaser could not claim damages for the breach.—*HAMILTON GEAR & MACHINE CO. v. LEWIS BROTHERS*, [1924] 3 D. L. R. 367; 54 O. L. R. 583.—CAN.

42 iv. ———.—In an action for wrongfully obstructing the flow of a

river by increasing the height of a weir, whereby pltf.'s lands, abutting on the river, were flooded, the judge declined to direct the jury that actual damage was essential to maintain the action:—*Held*: the direction was right.—*M'GLONE v. SMITH* (1888), 22 L. R. Ir. 750.—IR.

51 iv. ——— *No reasonable expectation of pecuniary benefit—Death of young child in accident.*—*Held*: a verdict of damages awarded to parents of young children killed in an accident arising from negligence could not stand, where there was no reasonable expectation of future pecuniary benefit. In a case of this kind damages are not awarded as a solatium nor from sentimental considerations.—*HOGAN v. R.*, [1924] 2 D. L. R. 1211; 2 W. W. R. 307; 17 Sask. L. R. 37.—CAN.

51 v. ——— *Accident to wife—No deprivation of services or society.*—Pltf. having suffered physical injury through a street accident causing nervous shock:—*Held*: an award of damages to pltf.'s husband could not stand as he had not been deprived of his wife's services or society.—*HOGAN v. R.*, [1924] 2 D. L. R. 1211; 2 W. W. R. 307; 17 Sask. L. R. 37.—CAN.



63. *Add. Annotations*:—**Refd.** *The Koursk*, [1924] P. 140; *Debenham v. Perkins* (1925), 133 L. T. 252; *Conquer v. Boot*, [1928] 2 K. B. 336.
64. *Add. Annotations*:—**Refd.** *Huyton & Roby Gas Co. v. Liverpool Corpn.* (1925), 42

T. L. R. 116; *Conquer v. Boot*, [1928] 2 K. 336.

98. *Add. Annotation*:—*As to* (1) **Refd.** *Franco-British Ship Store Co. v. Compagnie des Chargeurs Francaise* (1926), 42 T. L. R. 735.

## Part III.—Directness and Remoteness.

101. *Add. Annotations*:—*As to* (1) **Consd.** *Re Hall & Pim* (1928), 139 L. T. 50. **Refd.** *Patrick v. Russo-British Grain Export Co.*, [1927] 2 K. B. 535. *As to* (2) **Consd.** *Patrick v. Russo-British Grain Export Co.*, [1927] 2 K. B. 535.
113. *Add. Annotation*:—**Refd.** *Canadian Pacific Ry. v. Kelvin Shipping Co.* (1927), 138 L. T. 369.
114. *Add. Annotations*:—**Consd.** *Sorrell v. Smith*, [1925] A. C. 700. **Refd.** *Black v. Admiralty Comrs.* (1924), 93 L. J. K. B. 341; *Rely-A-Bell Burglar & Fire Alarm Co. v. Eisler*, [1926] Ch. 609; *Scammell v. Attlee* (1928), 45 T. L. R. 75. **Mentd.** *G. W. K. v. Dunlop Rubber Co.* (1926), 42 T. L. R. 376.
123. *Add. Annotation*:—**Refd.** *Britannia Hygienic Laundry Co. v. Thornycroft* (1926), 135 L. T. 83.
126. *Add. Annotation*:—**Refd.** *Browning v. Crumlin Valley Collieries*, [1926] 1 K. B. 522.
131. *Add. Annotation*:—**Mentd.** *Sassoon v. International Banking Corpn.*, [1927] A. C. 711.
- 141a. *Agreement not to arrest ship—Arrest & disposal of ship.*—Circumstances (*see* CONFLICT OF LAWS, No. 1135a, *ante*), in which:—**Held**: pltf. were entitled to damages, & were entitled to recover the value of the ship as at the date when pltf. were first deprived of her use by arrest.—**ELLERMAN**

*LINES, LTD. v. READ*, [1928] 2 K. B. 144; 97 L. J. K. B. 366; 138 L. T. 625; 44 T. L. R. 285; 17 Asp. M. L. C. 421; 3<sup>rd</sup> Com. Cas. 219, C. A.; *revsq.* (1927), 44 T. L. R. 7.

- 146a. ——— **As result of shock.**—Defts.' servant had a motor lorry at the top of an incline in a street, with the handbrake on, the engine running, & the wheels straight. The lorry began to run down the incline & it struck & injured pltf.'s daughter, a child, & pltf.'s wife suffered a severe shock & died in hospital about ten days later. Pltf. claimed damages under Fatal Accidents Act, 1846 (c. 93), for negligence causing the death of his wife:—**Held**: pltf. would establish a cause of action if he established that the death of his wife resulted from the shock occasioned by negligence involved in the running away of the lorry, that the shock resulted from what pltf.'s wife either saw or realised by her unaided senses & not from something which some one told her, & that the shock was due to a reasonable fear of immediate personal injury either to herself or to her children.—**HAMBROOK v. STOKES BROTHERS**, [1925] 1 K. B. 141; 94 L. J. K. B. 435; 132 L. T. 707; 41 T. L. R. 125, C. A.

149. *Add. Annotations*:—**Consd.** *Hambrook v. Stokes* (1924), 41 T. L. R. 125. **Mentd.** *Venn v. Tedesco*, [1926] 2 K. B. 227.

### PART II. SECT. 5.

83 i. *Damages caused the gist of the action—Prospective damage—Whether recoverable.*—A married woman having suffered from nervous shock as the result of an accident, but not so as to deprive her husband of her services or society:—**Held**: that he might be put to expense in the future was a consideration too remote to entitle him to damages.—**HOGAN v. R.**, [1924] 2 D. L. R. 1211; 2 W. W. R. 307; 17 Sask. L. R. 37.—**CAN.**

83 ii. ————]—In an action for damages resulting, not from the construction of works, but from the operating thereof, as, *e.g.*, the putting of water into a canal, damages are assessable only for the injury done up to the trial, & prospective damages cannot be assessed, but pltf. must seek further damages from time to time as he suffers injury.—**LETHBRIDGE NORTHERN IRRIGATION DISTRICT BOARD TRUSTEES v. MUNSELL**, [1926] 4 D. L. R. 690; [1926] S. C. R. 603.—**CAN.**

### PART II. SECT. 8.

97 i. *Ascertainment difficult—No ground for refusal to award.*—H. passed a mtge. bond over his farm, a condition being that H. would, on demand by the mtgee., pass a collateral bond over his movable property on the farm. In breach of this condition, H. sold & delivered such movables to a third party:—**Held**: although the damages, if any, were difficult to assess, the mtgee. was entitled to some damages

for a wilful invasion of his rights.—**CATO v. ALION** (1923), 44 N. L. R. 113.—**S. AF.**

### PART III. SECT. 1.

101 v. ————]—Damages must be limited to such as arise naturally from the breach of contract or such as might reasonably be supposed to have been in the contemplation of the parties.—**TORONTO HOCKEY CLUB v. ARENA GARDENS, LTD.**, [1924] 4 D. L. R. 384; 55 O. L. R. 509; *affd.*, [1925] 4 D. L. R. 546; 57 O. L. R. 610; *affd.*, [1926] 4 D. L. R. 1; [1926] 3 W. W. R. 26.—**CAN.**

### PART III. SECT. 2, SUB-SECT. 2.

sa. *Sale of goods—Refusal to take delivery—Loss of time in urging acceptance.*—In an action for damages for breach of contract by refusal to take delivery of goods:—**Held**: a claim for time lost in going to deft.'s residence to urge him to take delivery could not stand.—**BRADLEY v. BAILEY & JASPERSON**, [1923] 2 D. L. R. 504; 52 O. L. R. 439.—**CAN.**

sb. *Contract for work & labour—Work unperformed—Cost of performance.*—Resp. gave applt. an option to purchase a mine. On the first instalment falling due, applt. negotiated for an extension of time for payment, which was granted by resp. on condition that applt. should do certain development work not mentioned in the option. Applt. failed to pay, & subsequently relinquished possession

of the mine & surrendered the option without having done the work:—**Held**: resp. entitled to recover damages amounting to the cost of the work.—**CUNNINGHAM v. INSINGER**, [1924] 2 D. L. R. 433; [1924] S. C. R. 8.—**CAN.**

### PART III. SECT. 2, SUB-SECT. 3.

147 i. *Pain & suffering.*—In an action for damages for personal injuries arising from negligence:—**Held**: items which should go to make up pltf.'s damages were (*inter alia*) a sum, not to compensate for, but to represent the inconvenience of his condition, & his pain & suffering, past & future.—**COSGROVE v. CANADIAN NATIONAL RAILWAYS**, [1923] 4 D. L. R. 818; 3 W. W. R. 1152.—**CAN.**

147 ii. ——— *Ejectment from tramcar—Illness from exposure to cold.*—**Held**: not too remote a cause for damages.—**TORONTO RY. CO. v. GRINSTED** (1895), 24 S. C. R. 570.—**CAN.**

149 i. ——— *Nervous shock—Actual impact.*—Damages claimed for nervous shock, as a result of an accident arising from negligence, cannot be recovered where the nervous shock produces only a mental disturbance unaccompanied by any actual physical injury. If impact is not necessary, it is a question of fact in each case whether or not pltf. sustained physical injury & whether such injury was the natural & reasonable result of deft.'s negligence.—**HOGAN v. R.**, [1924] 2 D. L. R. 1211; 2 W. W. R. 307; 17 Sask. L. R. 37.—**CAN.**

150. *Add. Annotation*:—*Consd. Hambrook v. Stokes* (1924), 41 T. L. R. 125.

151. *Add. Annotations*:—*Apprvd. Hambrook v. Stokes* (1924), 41 T. L. R. 125. *Mentd. Venn v. Tedesco*, [1926] 2 K. B. 227.

152. *Add. Annotation*:—*Consd. Hambrook v. Stokes* (1924), 41 T. L. R. 125.

165. *Add. Annotation*:—*Refd. Leeds Industrial Co-op. Soc. v. Slack*, [1924] A. C. 851.

166. *Add. Annotations*:—*Refd. Leeds Industrial Co-op. Soc. v. Slack*, [1924] A. C. 851. *Mentd. Light v. West*, [1926] 2 K. B. 238.

174. *Add. Annotation*:—*Refd. Patrick v. Russo-British Grain Export Co.*, [1927] 2 K. B. 535.

181. *Add. Annotations*:—*Dbtd. Marbé v. George Edwardes (Daly's Theatre)*, [1928] 1 K. B. 269. *Refd. Marbé v. George Edwardes (Daly's Theatre)* (1927), 96 L. J. K. B. 980.

181a. ———.]—Pltf., an actress, was engaged by defts. to play in a play for the period of rehearsal & for the run of the play, & there was a collateral agreement that defts. would advertise her in a prominent position. Defts. refused to allow pltf. to play, but they

paid her the whole of her salary down to the end of the run of the play. In an action for breach of contract the jury awarded to pltf., over & above her salary already paid, damages for loss of reputation through her not being employed to play the part:—*Held*: as there was an express agreement to advertise pltf. this necessarily implied an obligation to give pltf. an opportunity of acting, & pltf. was entitled, in addition to her salary already paid, to the damages awarded by the jury for loss of reputation.—*MARBÉ v. GEORGE EDWARDES (DALY'S THEATRE), LTD.*, [1928] 1 K. B. 269; 96 L. J. K. B. 980; 138 L. T. 51; 43 T. L. R. 809, C. A.

182. *Add. Annotation*:—*Refd. Britannia Hygienic Laundry Co. v. Thornycroft* (1926), 135 L. T. 83.

193. *Add. Annotations*:—*Distd. Re Hall & Pim* (1928), 139 L. T. 50. *Refd. Patrick v. Russo-British Grain Export Co.*, [1927] 2 K. B. 535.

194. *Add. Annotations*:—*Refd. Hall v. Pim* (1927), 137 L. T. 585. *Mentd. Verelst's Administratrix v. Motor Union Insee.*, [1925] 2 K. B. 137.

149 ii. ———.]—Damages cannot be recovered for nervous shock unaccompanied by any physical impact.—*PENMAN v. WINNIPEG ELECTRIC Ry. Co.*, [1925] 1 D. L. R. 497; [1925] 1 W. W. R. 156.—CAN.

149 iii. ———.]—*False statement*.]—Def. falsely stated that pltf.'s son had hanged himself. The report was told to pltf., who, believing it, suffered a violent shock & became ill:—*Held*: the damage was the natural & probable cause of deft.'s act, & pltf. had a good cause of action.—*BIELITSKI v. OBADISK*, [1922] 2 W. W. R. 238; 65 D. L. R. 627; 15 Sask. L. R. 155; *affg.* 61 D. L. R. 494.—CAN.

149 iv. ———.]—A man & a woman to whom he was engaged were knocked down by a motor omnibus. The man was struck by the omnibus & received considerable physical injury. The woman did not appear to have been actually struck, & she received no direct physical injury, but she suffered severely from shock. In an action of damages at her instance the judge directed the jury that, if by the fault of defts. pursuer had suffered nervous shock through apprehension for her own safety, they were entitled, in assessing damages, to include any aggravation of that shock occasioned by the fact that her companion was involved in the catastrophe. The jury found that pursuer had suffered personal injury resulting in nervous shock involving apprehension for her own safety, aggravated by anxiety for the safety of her companion, & awarded damages:—*Held*: in the circumstances the jury could not be asked to discriminate between the amount of shock suffered by pursuer due to apprehension for her own safety & the amount due to anxiety for her companion.—*CURRIE v. WARDROP*, [1927] S. C. 538.—SCOT.

149 v. ———.]—*Assault on husband in wife's presence—Loss of consortium*.]—An action lies for mental anguish, ill health or shock sustained by reason of acts done to a third person, & not causing any apprehension of danger to pltf., & an action *quare consortium amittit* lies at the suit of a wife.—*JOHNSON v. COMMONWEALTH* (1927), 27 S. R. N. S. W. 133; 44 N. S. W. W. N. 54.—AUS.

162 i. *Loss of or injury to property—Collision at sea—Loss of musical manuscripts*.]—In an action of damages against steamship owners, arising out of the sinking of one of their ships,

pursuer claimed £15,000 in respect of the loss of certain music & orchestral settings in manuscript used by a concert party of which she was manager. She averred that the lost manuscripts were the sole copies of the compositions in question, & that she had the sole right to publish, perform, or issue mechanical reproductions, & to obtain copyright thereof. The compositions had cost pursuer about £2,000, but she averred that, through her concert party, they had acquired a reputation among the public which had greatly enhanced their value, & she further averred that she would have made substantial profits from the lost music in respect of copyright royalties, publication & sale, & disposal of performing & mechanical rights, apart from the use of it by her concert party:—*Held*: (1) pursuer's averments as to loss of contingent profits from copyright royalties, publication & sale, & disposal of performing & mechanical rights, were irrelevant; (2) the measure of her damages in respect of the lost music was the cost of its replacement as nearly as might be, ascertained either by the market price of actual replacement, or by consideration of the commission which would have to be paid to composers of music of the class to which the lost compositions belonged.—*REAVIS v. CLAN LINE STEAMERS, LTD.*, [1926] S. C. 215.—SCOT.

sd. *Loss of earning power—Physical or mental*.]—In an action for damages for personal injuries arising from negligence:—*Held*: items which should go to make up pltf.'s damages were (*inter alia*) a sum to compensate for loss of earning power by reason of physical injury & any incidental mental injury.—*COBROVE v. CANADIAN NATIONAL RAILWAYS*, [1923] 4 D. L. R. 818; 3 W. W. R. 1152.—CAN.

st. *Loss of time—Injury in motor-car collision*.]—In an action for damages for injuries arising out of a motor collision, where it was found that the accident was caused by pltf.'s negligence:—*Held*: damages should be given deft. for loss of time, repairs to the car & costs.—*TIEMAN v. MCKENZIE*, [1923] 1 D. L. R. 1189.—CAN.

#### PART III. SECT. 3, SUB-SECT. 2.

sk. *Depreciation in price—Machinery components purchased by vendor to perform contract*.]—*Held*: the vendor was not entitled, as damages for breach of contract to purchase an ammonia gas compressing outfit, to a sum for

loss through decrease in price of the parts purchased for the purpose of the contract, this not being a loss "directly & naturally resulting in the ordinary course of events from the buyer's breach of contract," as there was nothing in the negotiations for the contract to give the purchaser to understand that the vendor would have to go into the market & buy the various parts to make up the plant.—*GENERAL SUPPLY CO. OF CANADA v. O'NEILL MORKIN MACHINERY Co.*, [1923] 2 W. W. R. 928.—CAN.

sl. *Loss of custom—Defective goods sold but replaced*.]—Certain goods supplied under contract not complying with the warranted description:—*Held*: it could not reasonably be supposed to have been in the contemplation of the parties, at the time they made the contract, that pltf. were to compensate defts. for such loss of business as defts. might incur by the withdrawal of their customers on account of a few of the articles resold being defective, such articles being replaced when complaint was made.—*HAMILTON GEAR & MACHINE Co. v. LEWIS BROTHERS*, [1924] 3 D. L. R. 307; 54 O. L. R. 585.—CAN.

#### PART III. SECT. 3, SUB-SECT. 3.

194 i. ———.]—*Loss of profit*.]—W. entered into a contract to supply a paper co. with pulpwood. He had previously made a contract with M., who agreed to deliver certain pulpwood at a lower price & who was informed of the first-mentioned contract, though not of all its terms. At the end of the season M. was short of the quantity he agreed to deliver:—*Held*: W. was entitled to recover damages from M. for non-performance of his contract, & the measure of those damages was the profit W. would have made under his contract with the paper co.—*MONDOR v. WILLETS*, [1923] 2 D. L. R. 964; [1923] S. C. R. 433; 2 W. W. R. 486.—CAN.

#### PART III. SECT. 4, SUB-SECT. 1.

p (p. 107) i. ———.]—In an action for damages for breach of contract by refusal to take delivery of goods:—*Held*: a claim for expenses incurred in going to deft.'s residence to urge him to take delivery could not stand.—*BRADLEY v. BAILEY & JASPERSON*, [1923] 2 D. L. R. 504; 52 O. L. R. 439.—CAN.

k (p. 108) i. ———.]—*Medical attendance*.]—In an action for damages



212. *Add. Annotation*:—*Mentd. Stoney v. Eastbourne R. D. C. & Devonshire* (1925), 90 J. P. 183.
214. *Add. Annotations*:—*Folld. Bennett v. Kreeger* (1925), 41 T. L. R. 609. *Apld. Slavovski v. La Pelleterie de Roubaix Soc. Anon.* (1927), 137 L. T. 645. *Consd. Re Hall & Pim* (1928), 139 L. T. 50. *Refd. Britannia Hygienic Laundry Co. v. Thornycroft* (1926), 135 L. T. 83; *Kasler & Cohen v. Slavouski* (1927), 96 L. J. K. B. 850; *Patrick v. Russo-British Grain Export Co.*, [1927] 2 K. B. 535; *Finlay v. N. V. Kwik Hoo Tong Handel Maatschappij*, [1928] 2 K. B. 604.
215. *Add. Annotations*:—*Folld. Bennett v. Kreeger* (1925), 41 T. L. R. 609. *Consd. Britannia Hygienic Laundry Co. v. Thornycroft* (1926), 135 L. T. 83. *Refd. Kasler & Cohen v. Slavouski* (1927), 96 L. J. K. B. 850.
- 215a. —.]—Pltfs. bought a coat with fur collar attached, for re-sale, from deft. & sold it to a customer. Owing to the colouring matter with which the fur was dyed, the customer contracted a skin disease & brought an action against pltfs., claiming damages. Pltfs. informed deft. thereof & requested him to undertake the defence of the action. Deft. denied liability but never suggested that pltfs. had no answer to the action, with the result that pltfs. defended the action & a jury awarded the customer damages for her suffering, & pltfs. had to pay the costs of the action:—*Held*: pltfs. were entitled to recover from deft. the damages so awarded, together with the customer's taxed costs of the action & their own costs of defending the action as between solr. & client.—*BENNETT (SIDNEY) LTD. v. KREEGER* (1925), 41 T. L. R. 609.
217. *Add. Annotation*:—*Refd. Sheppy Glue & Chemical Works v. Medway River Conservators* (1926), 24 L. G. R. 457.
220. *Add. Annotation*:—*Refd. Britannia Hygienic Laundry Co. v. Thornycroft* (1926), 135 L. T. 83.
223. *Add. Annotation*:—*Refd. Britannia Hygienic Laundry Co. v. Thornycroft* (1926), 135 L. T. 83.
224. *Add. Annotation*:—*Generally, Mentd. Stoney v. Eastbourne R. C.*, [1927] 1 Ch. 367.
- 227a. — Several sub-sales.]—Defts. sold skins to pltfs., who resold to a sub-vendee. That sub-vendee sold to a second sub-vendee, who sold one of the skins, which had been made into the collar of a fur coat, to a third sub-vendee. The third sub-vendee sold to a woman who wore the coat & developed dermatitis on the face in consequence of antimony contained in the skin. In each sale the vendor knew the particular purpose for which the goods were required by the purchaser, & there was an implied warranty that the goods were reasonably fit for such purpose. The ultimate purchaser brought an action for breach of contract against her supplier, the third sub-vendee. The third sub-vendee defended the action, & in so doing acted reasonably; but in the result the ultimate purchaser recovered damages & costs against him. The third sub-vendee, who had incurred certain additional costs in connection with the action, claimed to be reimbursed by the second sub-vendee, & after some resistance, incurring further costs, the second sub-vendee paid. The second sub-vendee then claimed against the first sub-vendee, who after some dispute incurring further costs, also paid. The first sub-vendee claimed against pltfs., who, after taking advice, occasioning further costs, paid. Pltfs. sued defts. for breach of contract, claiming as damages the damages recovered by the ultimate purchaser, the costs on both sides in that action, & the costs of the intermediate actions:—*Held*: pltfs. were entitled to recover the damages which might reasonably be supposed to have been in the contemplation of the parties at the time of the contract; the parties must have contemplated that damages would be claimed, if there were a breach of contract of the kind that had occurred, by parties separated by several contractual steps from each of the immediate parties to each of the contracts along the line; pltfs.' damages should include (1) the damages recovered by the ultimate purchaser, (2) the costs on both sides in that action, inasmuch as it was reasonably defended, & (3) the costs of the intermediate actions, in so far as they were reasonably incurred.—*KASLER & COHEN v. SLAVOUSKI*, [1928] 1 K. B. 78; 96 L. J. K. B. 850; 137 L. T. 641; *subsequent proceedings, sub nom. SLAVONSKI v. LA PELLETERIE DE ROUBAIX SOCIETE ANONYME* (1927), 137 L. T. 645.
- 235a. — Costs awarded in previous proceedings, but not recovered.]—Pltfs. sought to recover from defts., as special damage, the costs which they themselves had incurred in previous litigation in which they were defts. Pltfs. in the present action sent a motor lorry to be overhauled by defts. The repairs were carried out & the lorry was returned. Very shortly afterwards, while the lorry was in use on the highway, one of the wheels came off & damaged the van of pltf. in the previous litigation, who brought an action in the county ct. to recover damages against present pltfs. He won the action at the hearing, but the decision was reversed on appeal. He was a man of straw & unable to pay the costs incurred. Present pltfs. sued present defts. for damages for alleged breach of contract & negligence, & a common jury found in pltfs.' favour. After argument as to the right of pltfs. to recover as special damage against defts., on account of their breach of contract & negligence, the costs of all previous litigation:—*Held*: such damage was not too remote.—*BRITANNIA HYGIENIC LAUNDRY CO. v. THORNYCROFT & CO.* (1925), 94 L. J. K. B. 858; 41 T. L. R. 667; *on appeal*, 95 L. J. K. B. 237; 135 L. T. 83; 42 T. L. R. 198.

for personal injuries arising from negligence:—*Held*: the items which should go to make up pltf.'s damages were (*inter alia*) medical & hospital bills. — *COSGROVE v. CANADIAN NATIONAL RAILWAYS*, [1928] 4 D. L. R. 818; 3 W. W. R. 1152.—CAN.

k (p. 108) H. — — — — — On wife.]—S. & his wife brought an action

against deft. for damages for personal injuries. Deft. was found guilty of negligence, but the action by S. was dismissed on account of contributory negligence. The ct. awarded damages to the wife against deft. It was sought to give in evidence the wife's medical & hospital bills:—*Held*: the bills had been contracted by the wife

as her husband's agent & were his liability alone.—*SCOBLE v. WOODWARD*, [1924] 1 W. W. R. 1040.—CAN.

r (p. 108) i. — *Injury to chattel—Costs of repairs & depreciation.*—*Held*: recoverable.—*WALTER v. SEIBAL*, [1927] 2 D. L. R. 1005; [1927] 1 W. W. R. 967 21 Sask. L. R. 452.—CAN.



237. *Add. Annotations* :—**Consd.** Harnett v. Bond, [1924] 2 K. B. 517. **Refd.** Hambrook v. Stokes (1924), 41 T. L. R. 125; Tournier v. National Provincial & Union Bank of England, [1924] 1 K. B. 461; Britannia Hygienic Laundry Co. v. Thornycroft (1926), 135 L. T. 83; Singleton Abbey (Owners) v. Paludina (Owners), The Paludina (1926), 95 L. J. P. 135.
- 260a. *S. P. HARRISON v. MCSHEEHAN*, [1885] W. N. 207.
265. *Add. Annotations* :—**Refd.** Britannia Hygienic Laundry Co. v. Thornycroft (1926), 135 L. T. 83; Dee Conservancy Board v. McConnell, [1928] 2 K. B. 159.
268. *Add. Annotations* :—**Refd.** Sutcliffe v. Clients Investment Co., [1924] 2 K. B. 746. **Mentd.** Harnett v. Fisher (1926), 135 L. T. 724; De Freville v. Dill (1927), 43 T. L. R. 702; Coleshill v. Manchester Corp., [1928] 1 K. B. 776.
279. *Add. Annotations* :—**Refd.** Noble v. Harrison, [1926] 2 K. B. 332; Smith v. G. W. Ry. (1926), 135 L. T. 112.
280. *Add. Annotation* :—**Refd.** Canadian Pacific Ry. v. Kelvin Shipping Co. (1927), 138 L. T. 369.
282. *Add. Annotations* :—*As to* (1) **Distd.** Martin v. Stanborough (1924), 41 T. L. R. 1. **Refd.** Gayler & Pope v. Davies, [1924] 2 K. B. 75.
284. *Add. Annotation* :—**Refd.** Oldham v. Sheffield Corp., (1927), 136 L. T. 681.
288. *Add. Annotations* :—**Consd.** The St. Nicolai (1925), 133 L. T. 640. **Distd.** G. W. Ry. v. S.S. Mostyn, [1928] A. C. 57. **Refd.** British-American Tobacco Co. v. Jones (1925), 134 L. T. 405; Witham Outfall Board v. Boston Corp., (1926), 136 L. T. 756. **Refd.** Dee Conservancy Board v. McConnell, [1928] 2 K. B. 159. **Mentd.** Abrahams v. MacFisheries, [1925] 2 K. B. 18.

## Part IV.—Aggravation and Mitigation.

290. *Add. Annotation* :—**Refd.** *Martin v. Stout*, [1925] A. C. 359.
298. *Add. Annotation* :—**Refd.** *Cohen v. Sellar*, [1926] 1 K. B. 536.
301. *Add. Annotation* :—**Refd.** *Cohen v. Sellar*, [1926] 1 K. B. 536.
341. *Add. Annotations* :—**Refd.** *Ellis' Trustee v. Dixon-Johnson* (1924), 131 L. T. 652; *Martin v. Stout*, [1925] A. C. 359; *Never-Stop Ry. (Wembley) v. British Empire Exhibition* (1924) Incorporated, [1926] Ch. 877. **Mentd.** *Berners v. Fleming*, [1925] Ch. 264.
343. *Add. Annotations* :—**Refd.** *Finlay v. N. V. Kwik Hoo Tong Handel Maatschappij*, [1928] 2 K. B. 604. **Mentd.** *Northwood v. L. C. C.* (1927), 137 L. T. 49; *Roberts v. Anglo-Saxon Insce. Assocn.* (1927), 96 L. J. K. B. 590.
347. *Add. Annotation* :—**Mentd.** *Black v. Admiralty Comrs.*, [1924] 1 K. B. 661.
- 347a. —. ]—Pltf.'s duty to minimise damage is limited to doing what is reasonable in all the facts of the case, the *onus* of showing a breach of that duty being on deft.—**FINLAY (JAMES) & Co. v. N. V. KWIK HOO TONG HANDEL MAATSCHAPPIJ**, [1928] 2 K. B. 604; 97 L. J. K. B. 817; 139 L. T. 582; 44 T. L. R. 643; 72 Sol. Jo. 468.
351. *Add. Annotation* :—**Refd.** *Finlay v. N. V. Kwik Hoo Tong Handel Maatschappij*, [1928] 2 K. B. 604.
352. *Add. Annotation* :—**Refd.** *Martin v. Stout*, [1925] A. C. 359.
356. *Add. Annotation* :—**Refd.** *Ellis' Trustee v. Dixon-Johnson* (1924), 131 L. T. 652.
377. *Add. Annotation* :—**Refd.** *Martin v. Benson*, [1927] 1 K. B. 771.

**PART IV. SECT. 2. SUB-SECT. 1.—B.**

**341 x. ---.]—CANADIAN FLEXIBLE  
SKATE CO., LTD. v. MONARCH BRASS  
MANUFACTURING CO., LTD., [1925] 2  
D. L. R. 387; 56 O. L. R. 362.—CAN.**

341 xi. —.]—McKENNY v. DRUMMOND & DVORETSKY (1926), 29 W. A. L. R. 6.—AUS.

**352 i. Sale of goods—Refusal to accept.]—**Unless a purchaser has by the contract of sale a right to repudiate, he cannot repudiate the sale. If he does so, the vendor may sue the purchaser for the price, or re-sell the article; & if by such sale he incurs a loss, then the purchaser must make it good. But the vendor must take into consideration such payments as the purchaser may have made on account.—**FOSTER v. HEINTZMAN & Co., [1923] 4 D. L. R. 166.—CAN.**

352 ii. — — —.] — BRADLEY v.  
BAILEY & JASPERSON, [1923] 2 D. L. R.  
504; 52 O. L. R. 439.—CAN.

**354 i.** — *Anticipatory breach.*]—Where there had been a breach of contract by defts.:—*Held*: pltf's, were entitled to nominal damages only, as when pltf's. found that defts. would not carry out the contract, they should have gone into the market & done the best they could with a similar contract.—**CAMPBELL v. MAHLER** (1919), 43 O. L. R. 395; 14 O. W. N. 348; *affd.* 15 O. W. N. 339.—**CAN.**

**sm. — Trouble & risk attending performance of contract.]**—In allowing damages for wrongful repudiation of a contract to accept delivery of poles not yet cut:—*Held*: there should be taken into consideration the risks of disappointment & difficulty in cutting & delivery that might arise from unexpected sources; & an allowance in reduction of damages should be made for the release from the care, trouble & risk attending a full execution of the contract.—**CONNORS v. MCGREGOR**, [1924] 2 D. L. R. 86; 2 W. W. R. 294; 20 Alta. L. R. 289.—**CAN.**

**PART IV. SECT. 2. SUB-SECT. 2.**

**m l. ——— Continuing contract with doctor.]**—Where a person has a contract with a doctor whereunder he is entitled to the doctor's services when they are required as a result of disease, accident or other causes, he cannot, in an action for damages for personal injuries, recover as damages the amount which such services would have cost had he not entered into such contract.—**TAYLOR v. TURNER**, [1925] 3 D. L. R. 574; [1925] 2 W. W. R. 490.—**CAN.**

**PART IV. SECT. 8.**

**q i. — Conversion—Onus of proof.]**  
 —Where it was found that there was no authority in deft. bank to sell shares pledged as collateral security without judicial process:—*Held*: as to damages, the burden was on the bank to show it got full value for the shares.—**GEORGESON v. DOMINION BANK, [1924] 3 D. L. R. 607; 2 W. W. R. 931.—CAN.**

## Part V.—Measure of Damages.

388. *Add. Annotation*:—Mentd. *Re Lanyon, Lanyon v. Lanyon*, [1927] 2 Ch. 264.

393. For the cross-reference following this case, "As to interest under Civil Procedure Act, 1833 (c. 42), s. 28, & damages in lieu of such interest.]—See MONEY & MONEY LENDING," read "As to interest under Civil Procedure Act, 1833 (c. 42), s. 28, & damages in lieu of such interest, see MONEY & MONEY-LENDING."

408a. *Option to purchase—Profit on resale lost by improper withdrawal.*]—Pltf., having an option from deft. to purchase a freehold house for £4,000, agreed to sell the property to S. for £4,500, & then wrote accepting deft.'s offer to sell the house. In the meantime deft. had sold the property to B. for £4,000:—*Held*: as specific performance of the contract was impossible by reason of deft.'s own act, pltf. was entitled to recover from deft. as damages £500, the difference between the price at which the property was offered to pltf. & that at which pltf. contracted to sell it.—*GOFFIN v. HOULDER* (1920), 90 L. J. Ch. 488; 124 L. T. 145.

412a. *Continuation of contract depending on third party.*]—Defts. agreed in writing to purchase from pltfs. all the stores that they required

in the United Kingdom for their vessels, pltfs.' profits on the net price invoiced by the manufacturers to pltfs. to be discussed every six months, & the agreement was to remain in force as long as another agreement between a third co. & defts. continued. This other agreement had been previously made on the same day, but it was not signed till the following day, & it was to remain in force for ten years unless certain payments were sooner made. After observing the agreement with pltfs. for five months defts. repudiated it:—*Held*: as the continuation of the agreement between pltfs. & defts. for more than six months depended on the solution of a third party, & as the agreement contained nothing to prevent defts. from buying their stores outside the United Kingdom, pltfs. were entitled only to damages in respect of a period of one month.—*FRANCO-BRITISH SHIP STORE CO., LTD. v. COMPAGNIE DES CHARGEURS FRANÇAISE* (1926), 42 T. L. R. 735.

413. *Add. Annotation*:—Mentd. *Hardie & Lane v. Chiltern*, [1928] 1 K. B. 663.

418. *Add. Annotations*:—As to (1) *Appld. Smith v. Schilling*, [1928] 1 K. B. 429. As to (2) *Refd. Martin v. Benson*, [1927] 1 K. B. 771.

420. *Add. Annotation*:—Mentd. *Sorrell v. Smith*, [1925] A. C. 700.

## Part VI.—Liquidated Damages or Penalty.

424. *Add. Annotation*:—Generally, *Refd. Admiralty Comrs. v. S.S. Chekiang*, [1926] A. C. 637.

426. *Add. Annotations*:—As to (2) *Appld. English Hop Growers v. Dering*, [1928] 2 K. B. 174.

Generally, Mentd. *Palmolive Co. (of England) v. Freedman* (1927), 44 T. L. R. 86.

426a. —.]—Deft. was a member of pltf. society, which was formed to organise the marketing

### PART V. SECT. 1, SUB-SECT. 1.

380 xi. —.]—In an action for damages for breach of contract, the measure of damage is the estimated loss directly & naturally resulting from the breach thereof.—*HATFIELD & Co. v. CRONWHITE* (1922), 50 N. B. R. 456.—CAN.

380 xii. —.]—In an action for damages for non-acceptance of goods, the measure of damages is the estimated loss directly & naturally resulting in the ordinary course of events from the buyer's breach of contract.—*RECORD FOUNDRY & MACHINE CO. v. GARSON*, [1923] 2 D. L. R. 142; 50 N. B. R. 110.—CAN.

380 xiii. —.]—*Goods manufactured or partly manufactured.*]—In respect of goods manufactured or partly manufactured & ready or partly ready for delivery, before defts. repudiated their contract:—*Held*: pltfs. were entitled to recover, as damages for breach of contract, a sum equal to the contract price of the finished or partly finished goods, less their value at the time of or within a reasonable time of the breach.—*HAMILTON GEAR & MACHINE CO. v. LEWIS BROTHERS*, [1924] 3 D. L. R. 367; 54 O. L. R. 585.—CAN.

sn. *Consignment of wheat for sale—Failure to sell.*]—Where grain is consigned for sale & the consignee is instructed to sell it as soon as it is unloaded, if the price be then a certain figure or better, but he neglects to carry out such instructions, the consignor is entitled in damages to the

difference between the price at the time of unloading & the lower price on the day when he learns that the grain has not been sold, even though he does not immediately notify the consignee that his instructions have not been carried out.—*PARADIS v. FEDERAL GRAIN CO., LTD.*, [1925] 2 W. W. R. 164.—CAN.

sw. *Agreement to exchange & sell timber berths—Loss of profits—Substantial damages.*]—*KNOX & LEWIS v. HALL*, [1927] 2 D. L. R. 1128; [1927] 3 W. W. R. 27; 38 B. C. R. 348.—CAN.

sb. *Agreement to pay for mineral claim & keep up assessment work—Claim allowed to lapse.*]—*Held*: the measure of damages was the value, if any, of the property lost.—*McGEE v. CLARKE*, [1927] 1 W. W. R. 593; 38 B. C. R. 165.—CAN.

sd. *Wrongful eviction of lessee.*]—In regard to damages recoverable by a wrongfully evicted lessee, the case is governed by the general rule applicable to all breaches of contract, namely, that the party wronged is, so far as money can do it, to be placed in the same situation, with respect to damages, as if the contract had been performed. Compensation to the lessee will not be confined to the value of the unexpired term, but will include all loss naturally resulting from the eviction.—*HAACK v. MARTIN*, [1927] 3 D. L. R. 19; [1927] S. C. R. 413.—CAN.

st. *Lease of racehorse to trainer for specified period—Owner taking horse*

away before expiration of period—Loss of prospective winnings recoverable.]—*HOWE v. TEEFY* (1927), 27 S. R. N. S. W. 301; 44 N. S. W. W. N. 102.—AUS.

### PART V. SECT. 1, SUB-SECT. 2.

414 ii. *Revsd.* on other grounds, Q. R. 15 K. B. 11; [1907] A. C. 454.

### PART VI. SECT. 1, SUB-SECT. 2.

424 vii. —.]—A rate of damages provided for in a contract between a co-operative co. & a grower of fruits & vegetables, under which the latter agreed to deliver all his products to the co. to be marketed by it, for the breach thereof:—*Held*: to be liquidated damages & not a penalty.—*ASSOCIATED GROWERS OF BRITISH COLUMBIA, LTD. v. BRITISH COLUMBIA FRUIT LAND, LTD.*, [1925] 1 D. L. R. 871; [1925] 1 W. W. R. 505; 34 B. C. R. 533.—CAN.

424 viii. —.]—A contract between pltfs. & deft. provided that should deft. fail to deliver to pltfs. all the wheat covered by the contract, he would pay to pltfs. as liquidated damages 25 cents per bushel for all wheat which he should have failed to deliver:—*Held*: the 25 cents per bushel was not a penalty but liquidated damages.—*SASKATCHEWAN CO-OPERATIVE WHEAT PRODUCERS, LTD. v. ZUROWSKI* (Sask.), [1926] 3 D. L. R. 810; [1926] 2 W. W. R. 604.—CAN.

424 ix. —.]—*BOUCAUT BAY CO., LTD. v. THE COMMONWEALTH*, [1927] Argus L. R. 415.—AUS.

of home-grown hops by their sale through pltfs., & by a written agreement deft. undertook to deliver to pltfs. all hops grown or produced by him in 1926 on certain land. The agreement also provided that if deft. failed to deliver to pltfs. the hops or disposed of them otherwise than through pltfs., he would pay to pltfs. as & for liquidated damages £100 per acre or proportionately on a less acreage:—*Held*: as a breach of the agreement might occasion serious damage which it might be difficult to value exactly or ascertain before-

hand, the sum fixed by the parties as a pre-estimate of the damage, namely, £100 per acre, was not a penalty but liquidated damages.—*ENGLISH HOP GROWERS v. DER-ING*, [1928] 2 K. B. 174; 97 L. J. K. B. 569; 139 L. T. 76; 44 T. L. R. 443, C. A.

455. *Add. Annotation*:—*Refd.* English Hop Growers v. Dering, [1928] 2 K. B. 174.

461. *Add. Annotation*:—*Refd.* English Hop Growers v. Dering, [1928] 2 K. B. 174.

## Part VII.—Pleading, Proof and Assessment.

561. *Add. Annotation*:—*Mentd.* Agricultural Wholesale Soc. v. Biddulph & District Agricultural Soc., [1925] Ch. 769.

574a. ——— *Contingent damages.*—When a verdict is found for deft. upon an issue which bars the action, the jury cannot assess contingent damages for pltf., without the assent of deft.—*NEWTON v. HARLAND* (1840), 1 Man. & G. 644; 1 Scott. N. R. 474; 2 Jur. 350; 133 E. R. 490.

*Annotations*:—*Mentd.* Harvey v. Bridges (1845), 3 Dow. & L. 55; Wright v. Burroughes (1846), 3 C. B. 685; Davis v. Burrell (1851), 10 C. B. 821; Delaney v. Fox (1856), 1 C. B. N. S. 166; Carter v. Hughes (1858), 2 H. & N. 714; Pollen v. Brewer (1859), 1 L. T. 9; Accidental Death Insee. v. Mackenzie (1861), 5 L. T. 20; Blades v. Higgs (1861), 10 C. B. N. S. 713; Telford v. Laws (1874), 31 L. T. 90; Beddall v. Maitland (1881), 17 Ch. D. 174; Edridge v. Hawker (1881), 50 L. J. Ch. 577; Edwick v. Hawkes (1881), 18 Ch. D. 199; Jones v. Foley (1891), 60 L. J. Q. B. 464; Hemmings v. Stoke Poges Golf Club, [1920] 1 K. B. 720.

576. After this case add “——— In matrimonial causes.”—*See* HUSBAND & WIFE, No. 4677a.”

### PART VI. SECT. 1, SUB-SECT. 3.

442 i. ——— *Onus of disproof.*—If the sum mentioned in a bond is expressed to be a penalty, the *onus* of showing that it was intended as liquidated damages is on the person asserting it.—*R. (A.-G. OF CANADA) v. LONDON GUARANTEE & ACCIDENT CO., LTD.*, [1920] 2 W. W. R. 83.—CAN.

448 iii. ———.]—Where a sum is stipulated to be paid as liquidated damages, & is payable, not on the happening of a single event, but of one or more of a number of events, some of which might result in inconsiderable damage, the ct. may decline to construe the words “liquidated damages” according to their ordinary meaning & may treat such a sum as a penalty.—*SHATILLA v. FEINSTEIN*, [1923] 3 D. L. R. 1035; 18 Sask. L. R. 454; [1923] 1 W. W. R. 1474.—CAN.

453 iv. ———.]—*Held*: having regard to the language in a clause of a contract of service, fixing a sum as liquidated damages for violation by deft. of any or all of the provisions of the contract, the sum fixed was not in the nature of a penalty.—*DOMINION ART CO., LTD. v. MURPHY* (1923), 54 O. L. R. 332.—CAN.

### PART VI. SECT. 1, SUB-SECT. 5.

471 ii. ———.]—The sum mentioned in a bond given under Canada Grain Act by one licensed to operate a country elevator:—*Held*: to be a penalty & only recoverable to the extent of the actual loss shown, there being no evidence to show it was intended as liquidated damages, & because the conditions of the bond consisted in the performance of many acts, some of which might be of great & others of trifling importance.—*R.*

(A.-G. OF CANADA) v. LONDON GUARANTEE & ACCIDENT CO., LTD., [1920] 2 W. W. R. 83.—CAN.

### PART VI. SECT. 1, SUB-SECT. 6.

pi. ——— *Agreement for share of profits under option—Failure to take up option—Liquidated damages.*—*KENNEDY v. HARRIS* (1912), 23 O. W. R. 179; 4 O. W. N. 183; 7 D. L. R. 291.—CAN.

### PART VI. SECT. 1, SUB-SECT. 7.

529 iii. ———.]—Pltf. gave deft. the exclusive agency for six months for the sale of certain land. Deft. covenanted that if he failed to effect a sale of 1,000 acres in the first six months he would pay as liquidated damages an amount equal to \$2 per acre for each acre of the 1,000 acres unsold. Deft. failed to effect a sale:—*Held*: not a penalty, but liquidated damages arising on proof of failure to make the sales, without having to show actual loss.—*NORTHERN TRUSTS CO. v. RASMUSSEN*, [1924] 2 W. W. R. 1015.—CAN.

### PART VII. SECT. 1.

549 xv. ———.]—To recover special damages, a pltf. must expressly claim them in his pleadings & prove them strictly at the trial.—*CARROLL v. BAER*, [1924] 2 D. L. R. 452; 1 W. W. R. 1249; 18 Sask. L. R. 292.—CAN.

549 xvi. *S. P. BUTT v. OSHAWA CORPN., WILKINSON v. OSHAWA CORPN.*, [1926] 4 D. L. R. 1138; 59 O. L. R. 520.—CAN.

### PART VII. SECT. 2.

559 i. *Necessity for proof of special damage.*—On a claim for damages for

592a. ———.]—Where a jury has improperly awarded an annuity by way of damages instead of a lump sum the judge should redirect the jury; he has no power to enter judgment for the capitalised amount of the annuity.—*FOURNIER v. CANADIAN NATIONAL RY. CO.*, [1927] A. C. 167; 95 L. J. P. C. 177; 135 L. T. 609; 42 T. L. R. 629, P. C.

594. *Add. Annotation*:—*Refd.* Martin v. Stout, [1925] A. C. 359.

598. *Annotation*:—For “*Refd.* S.S. Celia v. S.S. Volturmo, [1921] 2 A. C. 544,” read “*Expld.* S.S. Celia v. S.S. Volturmo, [1921] 2 A. C. 544.”

601. *Add. Annotation*:—*N.F.* Peyrae v. Wilkinson, [1924] 2 K. B. 166.

602. *Add. Annotation*:—*Refd.* Ellis’ Trustee v. Dixon-Johnson, [1924] 2 Ch. 451.

604. *Add. Annotations*:—*Refd.* Ellis’ Trustee v.

personal injuries, pltf. cannot claim for special damages for nursing where he fails to show that he has either paid or is under any legal obligation to pay for the nursing done; the fact that he intends to pay a sum to his nurse is not sufficient.—*CARROLL v. BAER*, [1924] 2 D. L. R. 452; 1 W. W. R. 1249; 18 Sask. L. R. 292.—CAN.

ci. ———.]—*CLAUSEN v. CANADIAN TIMBER & LANDS, LTD.* (1925), 35 B. C. R. 461.—CAN.

### PART VII. SECT. 3, SUB-SECT. 3.—B.

598 i. *Amount due in foreign currency—Date of judgment sued on.*—Where deft. in a suit in Bombay contended that the rate of exchange should be that on the day on which the ct. pronounced judgment:—*Held*: the rate to be taken was that prevailing on the day judgment was given in the High Ct. in England, which gave pltf. the cause of action for the suit in Bombay.—*MADHAVJI VISRAM v. RAMNIKLAL VADILAL* (1921), 1 L. L. R. 47 Bom. 487.—IND.

si. ———.]—*Held*: the rate for conversion of dividends payable in foreign currency was the rate ruling on the date when each dividend became due.—*THE CUSTODIAN v. BLUCHER*, [1927] 3 D. L. R. 40; [1927] S. O. R. 420.—CAN.

603 iii. ———.]—In cases of breach of contract, the date on which the rate of exchange is to be taken for the purpose of converting one set of currency into another is the date on which under the agreement the money was to be paid & on which a breach occurred by its not being paid.—*SHAKOOL & CO. v. FINLAY FLEMING & CO.* (1923), 1 L. L. R. 1 Ran. 339.—IND.



- Dixon-Johnson, [1924] 2 Ch. 451. *Mentd.* Richardson v. Richardson, [1927] P. 228.
611. *Add. Annotation*:—*Folld.* Peyrae v. Wilkinson, [1924] 2 K. B. 166.
612. For the existing paragraph in original volume substitute the following paragraph:—  
 ———.]—In an action in this country for a debt payable in a foreign currency the debt must be converted into English currency at the rate of exchange prevailing at the date when the debt became due & payable, & not at the rate of exchange prevailing at the date of judgment.—PEYRAE v. WILKINSON, [1924] 2 K. B. 166; 93 L. J. K. B. 121; 130 L. T. 511.
- 612a. ———.]—Between 1903 & 1909 pltf.s., Russian subjects, effected with defts., an American insurance co. then having a branch in Russia, insurances in the form of four endowment life policies & paid the premiums in Russia in roubles down to 1918. The amounts secured by two of the policies having become payable:—*Held*: judgment should be entered for pltf.s. for the sterling equivalent of the amounts due in chervonetz roubles at the date when those amounts became due.—BUERGER v. NEW YORK LIFE ASSURANCE Co. (1927), 96 L. J. K. B. 930; 137 L. T. 431; 43 T. L. R. 601, C. A.
613. *Citations*:—Add “15 Asp. M. L. C. 570.” Delete “*revsg.* S. C. *sub nom.* DREYFUS & Co. v. ATLANTIC SHIPPING & TRADING Co. (1921), 37 T. L. R. 417, C. A.”  
*Annotations*:—Delete “*Mentd.* Czarnikow v. Roth, Schmidt (1922), 92 L. J. K. B. 81; Ford v. Compagnie Furness (France), [1922] 2 K. B. 797; Pinnock v. Lewis & Peat, [1923] 1 K. B. 690.”
614. *Add. Annotation*:—*Consd.* Anderson v. Equitable Life Assce. Soc. of United States (1926), 134 L. T. 557.
615. After this case add “*See, also*, INSURANCE, Vol. XXIX., p. 389, No. 3104.”
618. *Add. Citations*:—93 L. J. Ch. 263; 130 L. T. 109.  
*Add. Annotations*:—As to (1) *Consd.* Anderson
- v. Equitable Life Assce. Soc. of United States (1926), 134 L. T. 557; Buerger v. New York Life Assce. (1927), 96 L. J. K. B. 930. *Generally*, *Refd.* Ellis' Trustee v. Dixon-Johnson, [1924] 2 Ch. 451.
625. *Add. Annotation*:—*Generally*, *Mentd.* Hardie & Lane v. Chiltern, [1928] 1 K. B. 663.
626. *Add. Annotations*:—*Refd.* The Kursk, [1924] P. 140; Pirie v. Richardson, [1927] 1 K. B. 448. *Mentd.* Cumberland v. Lanarkshire Tram. Co. (1927), 20 B. W. C. C. 780.
638. *Add. Annotation*:—*Consd.* The Kursk, [1924] P. 140.
648. *Add. Annotation*:—*Consd.* Wing Lee v. Lew, [1925] A. C. 819.
673. *Add. Annotation*:—*Refd.* Canadian Pacific Ry. v. Kelvin Shipping Co. (1927), 138 L. T. 369.
- 721a. ———.]—The Ct. of Appeal may set aside the assessment of damages by a jury where the amount assessed is so small or so large as that twelve sensible jurors could not reasonably have given the verdict, or as to lead the ct. to the conclusion that the jury must have taken into consideration matter which they ought not to have considered, or that they have omitted to pay regard to matter which they ought to have considered.—SMITH v. SCHILLING, [1928] 1 K. B. 429; 97 L. J. K. B. 276; 138 L. T. 475; 44 T. L. R. 109, C. A.
737. *Add. Annotation*:—*Mentd.* Williams v. Barton, [1927] 2 Ch. 9.
751. *Add. Annotation*:—*Refd.* Smith v. Schilling, [1928] 1 K. B. 429.
- 751a. ———.]—SMITH v. SCHILLING, No. 721a, *ante*.
753. *Add. Annotation*:—*Mentd.* Hearn v. Southern Ry. (1925), 41 T. L. R. 305.
784. *Add. Annotation*:—*Refd.* Smith v. Schilling, [1928] 1 K. B. 429.
- 784a. ———.]—SMITH v. SCHILLING, No. 721a, *ante*.
830. After this case add “*See, also*, JURIES, Vol. XXX., pp. 245, 246.”
- 832a. ———.]—SMITH v. SCHILLING, No. 721a, *ante*.

PART VII. SECT. 3, SUB-SECT. 4.

627 ii. ———.]—GAY Co., LTD. v. TRICK, [1927] 1 D. L. R. 1091; 60 O. L. R. 8.—CAN.

PART VII. SECT. 3, SUB-SECT. 5.

*st. When assessment must be by master.*—HENNIGAR v. HENNIGAR (N. B.), [1926] 1 D. L. R. 891.—CAN.

PART VII. SECT. 4, SUB-SECT. 3.—A.

661 x. ———.]—COGHLIN v. LA FONDERIE DE JOLIETTE (1903), 34 S. C. R. 153.—CAN.

PART VII. SECT. 4, SUB-SECT. 3.—

680 v a. ———.]—*Held*: although the damages were excessive, the ct. would not interfere upon that account.—McMONAGLE v. ORTON (1888), 5 Man. L. R. 193.—CAN.

———.]—*Misconduct of jury.*—Where an assessment of damages is not thought to be unconscionable but only excessive, it ought to be set aside if the jury took into account something which they ought not to have taken into account & failed to take into account something which they

ought to have taken into account.—COSGROVE v. CANADIAN NATIONAL RAILWAYS, [1923] 4 D. L. R. 818; [1923] 3 W. W. R. 1152.—CAN.

692 viii a. ———.]—Where the damages were excessive:—*Held*: there should be a new trial, unless pltf. consented to reduce his verdict.—CLARKE v. MURRAY (1877), Temp. Wood, 127.—CAN.

xviii. action for damages for breach of contract, the jury awarded pltf. £30 for special damages, including law costs, £250 for loss of profits, & £20 for general damages. Def. moved for a new trial upon the ground that the award of anything more than a merely nominal sum as general damages was excessive:—*Held*: as no substantial wrong or miscarriage of justice had been occasioned, a new trial ought not to be ordered, but the judgment should stand, subject to pltf. consenting to the elimination of the amount awarded as general damages.—STEWART v. O'BRIEN, [1925] N. Z. L. R. 400.—N.Z.

692 xix. ———.]—GOLDMAN v. KIRBY & SONS, LTD., [1927] S. R. S. 58.—AUS.

705 iii. ———.]—MASON SOUTH NORFOLK RY. Co. (1889), 19 O. R. 132.—CAN.

731 ix. ———.]—In an action to recover an amount due under a contract for purchase of an hotel, def. set up a breach of warranty, but at the trial a plea of misrepresentation was substituted. The jury were directed that the proper measure of damages recoverable by def. would be that applicable in an action on a breach of warranty:—*Held*: there should be a new trial, for the purpose of assessing damages upon the basis of the difference between the market price at the date of the contract & the contract price.—HARDMAN v. McLEOD (1926), 26 S. R. N. S. W. 578; 43 N. S. W. W. N. 194.—AUS.

PART VII. SECT. 4, SUB-SECT. 3.—B. (c).

748 i. *Mistake—Acting upon wrong principle.*—Where a jury assessed damages on a wrong principle:—*Held*: the ct. would set aside the verdict on the ground of excessive damage having been given.—FENRERTY v. HALIFAX COUNTY (1858), 3 N. S. R. (2 Thom.) 412.—CAN.

## Part II.—Instruments Under Hand—Non-Testamentary.

527. *Add. Annotation*:—*Mentd. Inche Noriah Binte Mohamed Tahir v. Shaik Allie Bin Omar Bin Abdullah Bahashuan* (1928), 45 T. L. R. 1.
555. *Add. Annotation*:—*Consd. Swift v. Board of Trade*, [1925] A. C. 520.
557. *Add. Annotation*:—*Mentd. Rye v. Purcell*, [1926] 1 K. B. 446.

## Part III. Interpretation of Deeds and Non-Testamentary Instruments.

581. *Add. Annotations*:—*Refd. Sharpe & Dohme Inc. v. Boots Pure Drug Co.* (1927), 44 R. P. C. 367; *British Thomson-Houston Co. v. Metropolitan-Vickers Electrical Co.* (1928), 45 R. P. C. 1.
582. *Add. Annotation*:—*Refd. Finlay v. N. V. Kwik Hoo Tong Handel Maatschappij*, [1928] 2 K. B. 604.
587. *Add. Annotations*:—*Refd. Tournier v. National Provincial & Union Bank of England*, [1924] 1 K. B. 461; *Livock v. Pearson* (1928), 33 Com. Cas. 188.
592. After this case insert "*Sec, generally, CONTRACT, Vol. XII., pp. 79 et seq.*"
597. *Add. Annotation*:—*Refd. Schiller v. Petersen* (1924), 130 L. T. 810.

### PART I. SECT. 5, SUB-SECT. 1.—A.

*sa. Proof of execution—Deeds within county*—9 Vict. c. 34, s. 7.]—*Re YORK COUNTY REGISTRAR* (1847), 3 U. C. R. 188.—CAN.

### PART I. SECT. 5, SUB-SECT. 1.—E.

188 iii. — *Attestation required by statute—Deed improperly attested—Execution admitted by grantor.*]—*Held*: as the mtge. deed was not attested within Transfer of Property Act, s. 59, it was invalid in spite of the grantor's admission.—*HIRA BIBI v. RAM HARI LAL* (1925), L. R. 52 Ind. App. 362.—IND.

*sb. Certificate of—Sufficiency of—Absence of date.*]—*Held*: the deed was properly recorded.—*McKENZIE v. LAMONT* (1877), 11 N. S. R. (2 R. & C.) 517.—CAN.

### PART I. SECT. 5, SUB-SECT. 2.—C.

231 vii. — — —.]—*HUGGARD v. ONTARIO & SASKATCHEWAN LAND CORPN.* (1908), 1 Sask. L. R. 526; 6 W. L. R. 645; 8 W. L. R. 860.—CAN.

### PART I. SECT. 5, SUB-SECT. 4.

*hi. — — — Land Act, 1888, s. 26.*]—*HJORTH v. SMITH* (1897), 5 B. C. R. 369.—CAN.

### PART I. SECT. 5, SUB-SECT. 7.—A.

*e i. — — —.*]—Some of the persons named as joining in a covenant cannot be bound, where the others who are named, & whose concurrence is necessary to the accomplishment of the object recited in the deed, have not joined.—*MOORE v. IRWIN*, [1926] 4 D. L. R. 1120; 59 O. L. R. 546.—CAN.

### PART I. SECT. 6, SUB-SECT. 1.

406 iv. — — —.]—A deed under seal cannot bind a person who is not a party to the deed.—*BATTLE CREEK TOASTED CORN FLAKE CO. v. KELLOGG TOASTED CORN FLAKE CO.*, [1923] 4 D. L. R. 543.—CAN.

### PART I. SECT. 7.

425 v. — — —.]—*BENNETT v. KIDD*, [1926] N. 50.—IR.

### PART I. SECT. 8, SUB-SECT. 3.

*bi. — — —.*]—*DYNES v. BALES* (1878), 25 Gr. 593.—CAN.

### PART I. SECT. 8, SUB-SECT. 5.

454 vi. — — —.]—Under an agreement between pltf. & defts. for the sale of a business the latter undertook to incorporate a co. & to assume &

pay the amount due on a chattel mtge. In carrying out the agreement pltf. signed what he thought was a mere transfer of the business to the co., but which was in fact a new agreement which expressly released defts. from its obligation to pay off the chattel mtge. There was no evidence of anything being said to or by pltf. with respect to such release, & the evidence as to whether he read the new agreement over before signing it was conflicting:—*Held*: the release had been fraudulently inserted, & pltf. was entitled to be indemnified by defts. against his liability on the mtge.—*JACK v. NANOOSE WELLINGTON COLLIERIES, LTD.*, [1925] 3 D. L. R. 398; [1925] 2 W. W. R. 267; 35 B. C. R. 295.—CAN.

### PART III. SECT. 1.

*sd. Parent & child bearing same name—No addition of "senior" or "junior"—Presumption in favour of parent.*]—*NEW BRUNSWICK POWER CO. v. PRICE HATT* (1924), 52 N. B. R. 1.—CAN.

### PART III. SECT. 2.

576 x. — — —.]—*INCHES v. FOGG & DOWLING* (1870), 13 N. B. R. (2 Han.) 149.—CAN.

1. *Add. Annotation*:—*Mentd. Charles v. Cardiff Collieries* (1928), 44 T. L. R. 448.
622. *Add. Annotations*:—*Apld. G. W. Ry. v. S.S. Mostyn*, [1928] A. C. 57. *Refd. Abrahams v. Macfisheries* [1925] 2 K. B. 18; *British-American Tobacco Co. v. Jones* (1925), 134 L. T. 405; *Dee Conservancy Board v. McConnell*, [1928] 2 K. B. 159. *Mentd. The St. Nicolai* (1925), 133 L. T. 640; *Witham Outfall Board v. Boston Corpn.* (1926), 136 L. T. 756.
627. *Add. Annotation*:—*Refd. Greenhill v. Federal Insee.* (1926), 95 L. J. K. B. 717.
631. *Add. Annotations*:—*Consd. Sherwood v. Tucker*, [1924] 2 Ch. 440. *Refd. Batchelor v. Murphy* (1924), 41 T. L. R. 153.
665. *Add. Annotation*:—*Apld. Saunders v. Young's Brewery* (1925), 42 T. L. R. 136.
679. *Add. Annotation*:—*Mentd. Parr v. A.-G.*, [1926] A. C. 239.
697. *Add. Annotation*:—*Refd. Samuel v. Dumas*, [1924] A. C. 431.
700. *Add. Annotation*:—*Refd. Russell v. Russell*, [1924] A. C. 687.
701. *Add. Annotation*:—*Refd. The Penelope*, [1928] P. 180.
743. *Add. Annotation*:—*Refd. Herbert's Trustee v. Higgins*, [1926] Ch. 794.
750. *Add. Annotations*:—*Refd. Re Hammond, Parry v. Hammond*, [1924] 2 Ch. 276. *Mentd. Re Hack, Beadman v. Beadman*, [1925] Ch. 633.
786. *Add. Annotation*:—*Refd. The Ruapehu*, [1927] P. 47.
792. *Add. Annotation*:—*Consd. Lorden v. Brooke-Hitching*, [1927] 2 K. B. 237.
801. *Add. Annotation*:—*Mentd. Cohen v. Sellar*, [1926] 1 K. B. 536.
- 815a. *Recurring words—Same construction.*—There is no rule of general application that in construing a document the same meaning must be assigned to an expression throughout; it is only in cases of doubt or ambiguity that it is necessary or permissible to resort to the device.—*WATSON v. HAGGITT*, [1928] A. C. 127; 97 L. J. P. 44 T. L. R. 90; 71 Sol.
825. *Add. Annotations*:—*Consd. Schiller v. Petersen*, [1924] 1 Ch. 394. *Refd. Phipps v. Rogers*, [1925] 1 K. B. 14.
842. *Add. Annotation*:—*Refd. Brakspear v. Barton*, [1924] 2 K. B. 88.
853. *Add. Annotation*:—*Refd. Re Whitrod, Burrows v. Base*, [1926] Ch. 118.
882. *Add. Annotation*:—*Refd. United States Shipping Board v. Strick*, [1926] A. C. 545.
893. *Add. Annotation*:—*Consd. Re Ellwood*, [1927] 1 Ch. 455.
895. *Add. Annotation*:—*Refd. Wilston S.S. Co. v. Weir* (1925), 31 Com. Cas. 111.
900. *Add. Annotations*:—*Refd. Jones v. Oceanic Steam Navigation Co.*, [1924] 1 K. B. 730; *A.-G. v. Blackpool Corpn.* (1928), 92 J. P. 50. *Mentd. Pailin v. Northern Employers' Mutual Indemnity Co.*, [1925] 2 K. B. 73.
969. *Add. Annotation*:—*Refd. Busby v. Avgherino*, [1927] 2 Ch. 33.
981. *Add. Annotation*:—*Generally, Refd. Berners v. Fleming*, [1925] Ch. 264.
998. *Add. Annotation*:—*Mentd. Re Villar, Public Trustee v. Villar* (1928), 45 T. L. R. 13.
1007. *Add. Annotation*:—*Refd. Lowther v. Clifford* (1926), 95 L. J. K. B. 576.
1009. *Add. Annotation*:—*Mentd. Re Keystone Knitting Mills Trade Mk.* (1928), 97 L. J. Ch. 316.
1015. *Add. Annotation*:—*Refd. Westminster Bank v. Hilton* (1926), 136 L. T. 315.
1031. *Add. Annotations*:—*Mentd. Elliott v. Bax-Ironside*, [1925] 2 K. B. 301; *Kettle v. Dunster & Wakefield* (1927), 43 T. L. R. 770.
1065. *Add. Annotation*:—*Consd. Taylor v. British Legal Life Assce.* (1925), 94 L. J. Ch. 284.
1067. *Add. Annotation*:—*Refd. Elder, Dempster v. Paterson, Zochonis, Griffiths Lewis Steam Navigation Co. v. Paterson, Zochonis*, [1924] A. C. 522.
1098. *Add. Annotation*:—*Refd. Gregg v. Richards*, [1926] Ch. 521.

**PART III. SECT. 3, SUB-SECT. 3.—A.**

632 ii. ———.—*MANUFACTURERS LIFE INSURANCE CO. v. SWINNEY*, [1925] 2 D. L. R. 503.—CAN.

**PART III. SECT. 3, SUB-SECT. 3.—B.**

705 xi. ———.—*In deciding whether a given transaction is an out & out sale with a condition for re-purchase or a mtge. by conditional sale, it is the intention of the parties at the time of entering into the transaction which must be regarded. That intention must be gathered from the terms of the deed itself & the surrounding circumstances.*—*BISKAWBAD v. MUKAMNAD* (1923), 1 L. R. 45 All. 58.—IND.

705 xii. ———.—*The intention of the parties to an instrument must be collected from the language of the instrument, & may be elucidated by the conduct they have pursued.*—*MIDNAPORE ZAMINDARI CO., LTD. v. MUKTAKESHI PATRANI* (1926), 1 L. R. 6 Pat. 51.—IND.

**PART III. SECT. 3, SUB-SECT. 4.**

716 xxi. ———.—*When a person agrees to purchase, he impliedly covenants to pay in the absence of terms exhibiting a different intention, but the whole document must be construed & may show that such implication*

*is not to be drawn.*—*GRIEVE MCGLODY, LTD. v. DOME LUMBER CO., LTD. & THOMPSON*, [1923] 2 D. L. R. 154; 1 W. W. R. 989.—CAN.

716 xxii. ———.—*BARTEL v. BEYEA* (N. B.), [1926] 1 D. L. R. 1196.—CAN.

**PART III. SECT. 3, SUB-SECT. 8.—A.**

773 xxx. ———.—*Held: the words "net proceeds" did not mean "net profits."*—*SCOTT v. MONTGOMERY*, [1920] 1 W. W. R. 140; 50 D. L. R. 394; 30 Man. L. R. 90.—CAN.

d. Read now "815 a i."

815 a ii. ———.—*Held: evidence to show that a word was used in a different sense in one sentence from that in which it was used in a preceding sentence, was rightly excluded.*—*MCDONALD v. HALIFAX CORPN.* (1895), 28 N. S. R. (16 R. & G.) 84.—CAN.

**PART III. SECT. 3, SUB-SECT. 9.**

874 ii. ———.—*SHUKIN v. DEMOSKY* (Sask.), [1927] 1 D. L. R. 649.—CAN.

**PART III. SECT. 3, SUB-SECT. 13.—B. (b).**

948 vi. ———.—*As soon as there is an adequate & sufficient definition, with convenient certainty, of what is intended to pass by a deed, any subsequent erroneous addition will not vitiate it.*—*DARAPALE, ETC. v. NAZIR* (1923), 1 L. R. 50 Calc. 394.—IND.

949 xvi. ———.—*WILSON v. R.*, [1926] Exch. C. R. 8.—CAN.

**PART III. SECT. 3, SUB-SECT. 14.**

951 ii. ———.—*PRICE BROTHERS & CO., LTD. v. R.*, [1926] 3 D. L. R. 642.—CAN.

**PART III. SECT. 3, SUB-SECT. 16.**

r i. ———.—*Grant of easement—Reference to plan—Plan omitted.*—*Held: where there was no plan, parol evidence was admissible to identify the land.*—*BANKS PENINSULA ELECTRIC POWER BOARD v. AKAROA BOROUGH COUNCIL*, [1923] N. Z. L. R. 880.—N.Z.

**PART III. SECT. 3, SUB-SECT. 18.—A.**

988 vi. ———.—*Where there are two possible interpretations of a contract & one would lead to an obvious absurdity or injustice, the other interpretation is to be accepted.*—*THOMPSON v. NORTH BATTLEFORD*, [1924] 1 D. L. R. 169; 1 W. W. R. 51.—CAN.

988 vii. ———.—*Re FORD & HARDY* (Ont.), [1926] 2 D. L. R. 749.—CAN.

988 viii. ———.—*CANADIAN STEVEDORING CO., LTD. v. ROBIN LINE S.S. CO., CANADIAN STEVEDORING CO., LTD. v. SEAS SHIPPING CO. (B. C.)*, [1927] 4 D. L. R. 614; [1927] 2 W. W. R. 737.—CAN.



1101. *Add. Annotation*:—*Mentd. Bradford v. Gammon*, [1925] Ch. 132.
1. *Gregg v. Richards*,  
Sewing Cotton Co. (1923), 8 Tax Cas. 481;  
Whelan v. Henning (1924), 41 T. L. R. 141;  
Alianza Co. v. I. R. Comrs., [1925] A. C. 644;  
Foulsham v. Pickles, [1925] A. C. 458; Swedish  
Central Ry. v. Thompson, [1925] A. C. 495;  
Whitney v. I. R. Comrs. (1925), 42 T. L. R.  
58; Archer-Shee v. Baker (1926), 95 L. J.  
K. B. 929; I. R. Comrs. v. Anderström (1927),  
13 Tax Cas. 482; I. R. Comrs. v. Pakenham,  
I. R. Comrs. v. Longford (1927), 96 L. J. K. B.  
882.
1108. *Add. Annotation*:—*Mentd. Browning v. Crumlin Valley Collieries*, [1926] 1 K. B. 522.
1109. *Add. Annotations*:—*Reid. Reed v. Page & East* (1926) 42 T. L. R. 744. *Mentd. Elder, Dempster v. Paterson, Zochonis, Griffiths Lewis Steam Navigation Co. v. Paterson, Zochonis*, [1924] A. C. 522.
1129. *Add. Annotation*:—*Mentd. Bisset v. Wilkinson* (1926), 42 T. L. R. 727.
1149. *Add. Annotation*:—*Mentd. Rye v. Purcell*, [1926] 1 K. B. 446.
- 1157a. ———]—ANON. (1849), 13 L. T. O. S. 325.
1171. *Add. Citation*:—109 L. T. 820.
- 1177a. ———]—DAVIS v. SYMONDS (1787), 1 Cox Eq. Cas. 402; 29 E. R. 1221.
1192. *Add. Annotation*:—*Reid. Kimber Coal Co. v. Stone & Rolfe*, [1926] A. C. 414.
1205. *Add. Annotations*:—*Consd. United States Shipping Board v. Bunge & Born* (1924), L. R. 73. *Reid. Frenkel v. MacAndrews*, 139 L. T. 327.
1224. *Add. Annotation*:—*Mentd. Rye v. Purcell*, [1926] 1 K. B. 446.
1230. *Add. Annotation*:—*Reid. Jacobs v. Batavia & General Plantations Trust* (1924), 93 L. J. Ch. 520.
1233. *Add. Annotation*:—*Mentd. Baldry v. Marshall*, [1925] 1 K. B. 260.
1235. *Citations*:—For the existing citations substitute "GREVILLE v. ATKINS (1829), as reported in 4 Man. & Ry. K. B. 372 at p. 379."
1237. *Add. Annotation*:—*Reid. Re Gardner, Ellis v. Ellis*, [1924] 2 Ch. 243.
1248. *Add. Annotations*:—*Reid. Jacobs v. Batavia & General Plantations Trust* (1924), 93 L. J. Ch. 520. *Mentd. Berners v. Fleming*, [1925] Ch. 264.
1262. *Add. Annotation*:—*Mentd. Midland Bank v. I. R. Comrs.*, [1927] 2 K. B. 465.
1322. *Add. Annotation*:—*Reid. Nagoremull v. Triton Insce.* (1924), 41 T. L. R. 168.
1327. *Add. Annotation*:—*Reid. Cohen v. Roche* (1926), 95 L. J. K. B. 945.
- 1329a. ———]—Parol evidence is admissible to show that a party to a written agreement to purchase entered into it as agent to another.—MARSTON v. ROE d. FOX (1838), 8 Ad. & El. 14; 2 Nev. & P. K. B. 504; Will. Woll. & Dav. 712; 8 L. J. Ex. 293; 112 E. R. 742, Ex. Ch.
- Annotations*:—*Consd. Israell v. Rodon* (1839), 2 Moo. P. C. C. 51. *Reid. Matson v. Magrath* (1849), 1 Rob. Eccl. 680. *Mentd. Doe d. Evans v. Evans* (1839), 2 Per. & Dav. 378.

PART III. SECT. 4, SUB-SECT. 1.

- 1144 x. ———]—Blanks in printed form not filled in.—*Re DEMPSEY & MIDLAND L. & S. Co.*, [1925] 4 D. L. R. 570.—CAN.
- 1144 xi. ———]—CANADIAN COLLIERIES (DUNSMUIR), LTD. v. DUNSMUIR, DUNSMUIR v. MACKENZIE (1911), 18 B. C. R. 538.—CAN.
- 1144 xii. ———]—LACHMAN DAS v. RAM PRASAD (1927), 1 L. R. 49 All. 680.—IND.
- h i. ———]—WILLARD v. McNAB (1851), 2 Gr. 601.—CAN.
- h ii. ———]—PAPINEAU v. GUARD (1851), 2 Gr. 512.—CAN.
- h iii. ———]—MCGILL v. MCGLASHAN (1857), 6 Gr. 324.—CAN.
- 1174 i. *As to nature of transaction—Absolute conveyance—Relationship of mortgagor & mortgagee.*—Where a registered instrument clearly shows a transaction between the parties to be a sale, oral evidence to show that it was intended to be a mtge. is inadmissible in evidence.—MAUNG SHWE PHOO v. MAUNG TUN SHIN (1927), 1 L. R. 5 Ran. 644.—IND.

PART III. SECT. 4, SUB-SECT. 2.

- 1176 xxviii. ———]—Where parties to a contract have set out its terms & conditions in writing, which is presumably intended to be a record of the transaction, the law does not permit the introduction of other terms by means of oral evidence.—STEINE v. MATHIEU, [1923] 3 W. W. R. 493.—CAN.
- 1176 xxix. ———]—Where an original agreement has complied with Stat. Frauds, evidence of an alleged parol variation of its terms is inadmissible.—HALL v. GOLDSTONE, [1923] N. Z. L. R. 916.—N.Z.
- 1176 xxx. ———]—KASTER v. COWAN, [1925] 2 D. L. R. 742; [1925]

2 W. W. R. 186; 21 Alta. L. R. 366; *revg.*, [1923] 4 D. L. R. 491; [1923] 3 W. W. R. 610.—CAN.

1176 xxxi. ———]—Defts. excepted to a declaration on the ground that pltf. could not vary the terms of a written deed of transfer by evidence of a prior agreement, unless or until he expressly claimed a cancellation, ratification, or reformation of the deed of transfer:—*Held*: the exception should be upheld.—ADAM v. JHAVARY (1925), 46 N. L. R. 190.—S. AF.

1176 xxxii. ———]—BARTEL v. BEYEA (N. B.), [1926] 1 D. L. R. 1196.—CAN.

1176 xxxiii. ———]—TYSON v. ABERCROMBIE (1888), 16 O. R. 98.—CAN.

1176 xxxiv. ———]—LILLY v. PITTMAN (1899), 8 Nfld. L. R. 170.—NFLD.

1176 xxxv. ———]—Where an agreement signed by deft. was not accepted by pltf., & there was no memorandum in writing of the agreement actually entered into between the parties:—*Held*: the rule prohibiting the introduction of oral evidence to vary the terms of a writing had no application.—DOREY v. GRAY (1908), 42 N. S. R. 259.—CAN.

1176 xxxvi. ———]—The rule of law that extrinsic evidence is not, in general, admissible to contradict, vary or explain written instruments, must be enforced in cases that fairly come within it.—FORMAN v. UNION TRUST Co., LTD., [1927] S. O. R. 1.—CAN.

1189 i. ———]—*Held*: parol evidence was not admissible to contradict a statement in a document as to ownership by showing that a wife, in signing it, was acting as agent of her husband.—KATZMAN v. OWNARHOME REALTY Co., [1924] 1 D. L. R. 201; [1924] S. C. R. 18.—CAN.

1222 iv. ———]—ADVANCE RUMELY THRESHER Co. v. MANSKE, [1920] 3 W. W. R. 78.—CAN.

1228 ii. ———]—BLAKIE v. MCLENNAN (1901), 33 N. S. R. 558.—CAN.

PART III. SECT. 4, SUB-SECT. 3.

1237 v. ———]—When the ct. infers that a written document was not intended by the parties to contain the whole agreement, evidence of other terms not included in it may be given if they are not inconsistent with what is written. This intent must be sought in the conduct & language of the parties & the surrounding circumstances.—CONNORS v. MCGREGOR, [1924] 2 D. L. R. 86; 2 W. W. R. 294; 20 Alta. L. R. 280.—CAN.

1237 vi. ———]—Extrinsic evidence to add a condition to a concluded contract:—*Held*: not admissible.—FORMAN v. UNION TRUST Co. (Can.), [1927] 1 D. L. R. 68.—CAN.

PART III. SECT. 4, SUB-SECT. 5.—A.

m i. ———]—*Held*: oral evidence was admissible to explain the surrounding circumstances.—SCHECTER v. SCHNIER, SCHNIER v. SCHECTER (Man.), [1927] 3 D. L. R. 1167; [1927] 3 W. W. R. 111.—CAN.

o i. ———]—HERRON v. MAYLAND (Alta.), [1927] 4 D. L. R. 171; [1927] 2 W. W. R. 768.—CAN.

PART III. SECT. 4, SUB-SECT. 6.—B.

1341 xiii. ———]—LEWIS & SILL v. HUGHES (1906), 13 B. C. R. 228.—CAN.

1341 xiv. ———]—An agreement for the sale of land was evidenced by a receipt, which did not specify the land:—*Held*: parol evidence was admissible, in an action for specific performance of the agreement, to show what was the subject matter.—BAXTER v. ROLLO (B. C.) (1912), 21 W. L. R. 892; 6 D. L. R. 764; 2 W. W. R. 786.—CAN.  
sp. Account.—*Held*: parol evidence

1354. *Add. Annotation*:—Mentd. Performing Right Soc. v. Mitchell & Booker, [1924] 1 K. B. 762.
1364. *Add. Annotation*:—Consd. Boot v. Uttoxeter U. D. C. (1924), 88 J. P. 118.
1401. *Add. Annotations*:—Refd. Sherwood v. Tucker, [1924] 2 Ch. 440. Mentd. Batchelor v. Murphy, [1925] Ch. 220.
1410. *Add. Annotation*:—Mentd. Capel St. Mary, Suffolk v. Packard, [1927] P. 289.
1443. *Add. Annotation*:—Refd. Marbé v. George Edwardes (Daly's Theatre) (1927), 96 L. J. K. B. 980.
1459. *Add. Annotation*:—Refd. In the Estate of Musgrove, Davis v. Mayhew, [1927] P. 264.
1469. *Add. Annotation*:—Distd. Crediton Gas Co. v. Crediton U. C., [1928] Ch. 447.
1471. *Citations*:—For the existing citations read "MILDMAY'S CASE (1584), 1 Co. Rep. 175 a; Jenk. 247; 76 E. R. 379; sub nom. MILDMAY v. STANDISH, Cro. Eliz. 34; Moore, K. B. 144."
1485. *Add. Annotation*:—Refd. Bird v. I. R. Comrs. (1924), 12 Tax Cas. 785.
1513. *Add. Annotation*:—Refd. Michael v. Phillips (1923), 130 L. T. 142.
1534. *Add. Annotation*:—Refd. Smith, Hogg v. Bamberger (1928), 97 L. J. K. B. 725.
1537. *Add. Annotation*:—Consd. Jacobs v. Batavia & General Plantations Trust, [1924] 2 Ch. 329.
1542. *Add. Annotation*:—Mentd. Edwards v. Porter (1924), 41 T. L. R. 57.
1562. *Add. Annotation*:—Consd. Allen v. Royal Bank of Canada (1925), 41 T. L. R. 625.
1576. *Add. Annotation*:—Refd. Collins v. Hopkins, [1923] 2 K. B. 617.
1582. *Add. Annotations*:—Consd. Jacobs v. Batavia & General Plantations Trust (1924), 93 L. J. Ch. 520. Refd. Michael v. Phillips (1923), 130 L. T. 142.
1588. *Add. Annotations*:—Consd. Jacobs v. Batavia & General Plantations Trust (1924), 93 L. J. Ch. 520. Refd. Michael v. Phillips (1923), 130 L. T. 142.
1607. *Add. Annotations*:—Consd. United States Shipping Board v. Bunge y Born Limitada Sociedad (1925), 134 L. T. 303. Refd. Cunard S.S. Co. v. Buerger (1926), 135 L. T. 494.
1628. *Add. Annotation*:—Consd. Jacobs v. Batavia & General Plantations Trust (1924), 93 L. J. Ch. 520.
1638. *Add. Annotation*:—Mentd. Morris v. Harris, [1927] A. O. 252.
1652. *Add. Annotation*:—Refd. Re Carnarvon's Chesterfield S. E., Re Carnarvon's Highclere S. E. (1926), 70 Sol. Jo. 977.
1672. *Add. Annotation*:—Mentd. Samuel v. Dumas, [1924] A. O. 431.
1675. *Add. Annotation*:—Refd. Excess Insce. v. Mathews (1925), 31 Com. Cas. 43.
- 1678a. *Printed words deleted*.—Words deleted in a printed form of mercantile contract are to be treated as if they had not formed part of the printed contract; they cannot be used to construe added words.—SASSOON (M. A.) & SONS, LTD. v. INTERNATIONAL BANKING CORPN., [1927] A. C. 711; 96 L. J. P. C. 153; 137 L. T. 501, P. O.
1694. *Add. Annotation*:—Mentd. Brakspear v. Barton, [1924] 2 K. B. 88.
1709. *Add. Annotation*:—Mentd. S. E. Ry. v. Cooper, [1924] 1 Ch. 211.
1733. *Add. Annotation*:—Mentd. Re Quintin Dick, Cloncurry v. Fenton, [1926] Ch. 992.
- 1735a. *Incorporation of guarantee clause—Identity of clause uncertain—Clause not available*.—Pltfs., a ship-repairing co., requiring a new intermediate pressure cylinder for the engines of a steamer which they had contracted to repair, obtained a quotation from defts.,

was admissible, to show what an account referred to in an agreement was, & to identify such account.—DES BRISAY v. GLENROSS (1850), 12 N. B. R. (1 Han.) 105.—CAN.

PART III. SECT. 4, SUB-SECT. 7.

g i. — "Right of way clearing."—Held: extrinsic evidence was properly admitted to show that amongst railway contractors, & in railway construction work, the above words had acquired a special & technical meaning, & applied only to land requiring to be cleared & not to the full area of the right of way.—LAINE v. KENNEDY (1914), 43 N. B. R. 173.—CAN.

g ii. — "Wood cutting voyage."—Where an insurance policy contained an exception that the ship was not covered if lost when engaged on a wood cutting voyage, the ct. refused to allow parol evidence to be given in explanation of the word "wood."—THOMAS v. MARINE INSURANCE CO. (1857), 4 Nfld. L. R. 173.—NFLD.

PART III. SECT. 4, SUB-SECT. 8.—A.

1396 x. — — — — —.]—The doctrine of *contemporanea expositio* is applied, speaking generally, only where the contract is ambiguous.—MYERS v. UNION NATURAL GAS CO. (1922), 53 O. L. R. 88.—CAN.

1396 xi. — — — — —.]—Re CANADIAN NORTHERN RY. CO. & OTTAWA, [1924] 4 D. L. R. 1217; 56 O. L. R. 153.—CAN.

PART III. SECT. 4, SUB-SECT. 11.—D.

st. To prove illegality of consideration

—Evidence inadmissible.]—DAUPHINEE v. DAUPHINEE (1924), 57 N. S. R. 506.—CAN.

PART III. SECT. 4, SUB-SECT. 11.—E. (a).

1496 iv. — — — — —.]—AVERBACH v. BLOOM & DWORKIN (Can.), [1927] 3 D. L. R. 721.—CAN.

PART III. SECT. 4, SUB-SECT. 11.—G. (a).

h i. — — — — —.]—MCLEAN v. JOHNSON, [1923] 4 D. L. R. 178; 32 B. C. R. 495; [1923] 3 W. W. R. 913.—CAN.

h ii. — *Contemporary oral agreement acted on by parties*.—In an action for foreclosure & sale on default in payment of principal, according to the written terms of a mtgo.:—Held: an oral agreement that payment would not be exacted until a subsequent date could be proven & enforced.—JOHNSON INVESTMENTS, LTD. v. PAGRITIDE, [1923] 2 D. L. R. 985; [1923] 2 W. W. R. 736.—CAN.

m i. — *Mortgage*.—DICK v. SCHWARTZ (Man.), [1926] 3 D. L. R. 894.—CAN.

PART III. SECT. 4, SUB-SECT. 11.—G. (b).

1573 i. *Evidence admissible—Proof of consideration*.—Regard may be had to a collateral oral agreement to show that a deed is in fact founded on a valuable consideration.—KIRK v. GREAVES, [1924] N. Z. L. R. 260.—N.Z.

m i. — — — — —.]—Where a

complete agreement was contained in a written contract & it satisfied Stat. Frauds:—Held: an oral arrangement as to remuneration was a separate collateral agreement.—PERRY v. ESLEY, [1924] 4 D. L. R. 1280; 3 W. W. R. 674.—CAN.

m ii. — — — — —.]—When the ct. infers that a written document was not intended by the parties to contain the whole agreement, evidence of other terms not included in it may be given if they are not inconsistent with what is written.—CONNORS v. MCGREGOR, [1924] 2 D. L. R. 86; 2 W. W. R. 294; 20 Alta. L. R. 289.—CAN.

PART III. SECT. 5, SUB-SECT. 4.

r i. — *Meaning to words given though grammatical construction faulty*.—Re DEMPSEY & MIDLAND L. & S. Co., [1925] 4 D. L. R. 570.—CAN.

PART III. SECT. 6.

t i. — — — — —.]—The date mentioned in a deed is not conclusive, & the actual date of the execution may be shown.—DOE d. CONNEL v. DICKINSON (1860), 12 N. B. R. (1 Han.) 456.—CAN.

PART III. SECT. 7, SUB-SECT. 2.

sw. "Et cetera."—The phrase "et cetera" does not render a contract uncertain, if its application appears from the context.—AVERBACH v. BLOOM & DWORKIN (Can.), [1927] 3 D. L. R. 721.—CAN.

marine engineers. At the head of defts.' letter was a printed notice, "All offers are subject to our usual strike & guarantee clauses, accidents, etc." Pltfs. ordered the cylinder, but after it had been delivered & fitted it was found to be defective. A new cylinder was subsequently supplied by defts., but owing to the delay pltfs. were not able to complete the repairs in accordance with their contract with the shipowners & had to pay them damages. In an action to recover the amount of the damages defts. alleged that the contract for the supply of the cylinder was made subject to "our usual" guarantee clause & that their guarantee clause provided (*inter alia*) that "the contractors shall not in any case be liable for any detention of the vessel or other consequential damages howsoever arising":—*Held*: as it was not clear what guarantee clause was incorporated, since the clause suggested by defts. was the clause in their usual engine agreement which was drawn to meet the case of engines being supplied to a shipowner & not to meet such a case as the

present, & as it was not proved that defts. had made it clear that they intended to limit their liability, pltfs. were entitled to recover.—ALISON (J. GORDON) & Co., LTD. v. WALLSEND SLIPWAY & ENGINEERING Co., LTD. (1927), 43 T. L. R. 323, O. A.

1744. *Add. Annotation*:—*Reid. Re Griffiths, Jones v. Jenkins*, [1926] Ch. 1007.

1869a. — *Curtilage, garden & adjoining close.*—ANON. (1531), Bro. N. C. 86; 73 E. R. 885.

1910. *Add. Annotation*:—*Mentd. Re Wait*, [1927] 1 Ch. 606.

1913. *Add. Annotation*:—*Apprvd. Public Trustee v. Lancaster Duchy*, [1927] 1 K. B. 516.

1941. *Add. Annotation*:—*Mentd. Hyman v. Hyman, Hughes v. Hughes* (1928), 139 L. T. 416.

1944a. *Limitation to commence after existing lease—Lease void.*—A conveyance which is limited to commence after an existing lease takes effect presently, if that lease is void.—BLACKMORE v. CUMBERFORD (1680), 1 Freem. K. B. 527; 89 E. R. 395.

## Part IV.—Covenants and Provisoes.

2037. *Add. Annotations*:—*Mentd. Re Harrington Motor Co., Ex p. Chaplin*, [1928] Ch. 105; *Hood's Trustees v. Southern Union General Insce. Co. of Australasia*, [1928] Ch. 793.

2101. *Add. Annotation*:—*Mentd. Civil Service Co-op. Soc. v. McGrigor's Trustee*, [1923] 2 Ch. 347.

2111. *Add. Annotation*:—*Reid. Wise v. Whitburn*, [1924] 1 Ch. 460.

2125. *Add. Annotation*:—*Mentd. Rely-A-Bell Burglar & Fire Alarm Co. v. Eisler*, [1926] Ch. 609.

2131. *Add. Annotation*:—*Consd. Everett v. Griffiths*, [1924] 1 K. B. 941.

### PART III. SECT. 8, SUB-SECT. 1.—A. (a).

1737 i. *General rule.*—If both the recitals & the operative part of a deed are clear & unambiguous, but are inconsistent with each other, the operative part must prevail.—HUSSAIN v.

CHIN CHONG (1924), 1. L. R. 3 Ran. 53.—IND.

### PART III. SECT. 10, SUB-SECT. 1.—D.

i. —.—]—DAVISON v. BENJAMIN (1874), 9 N. S. R. (3 G. & O.) 474.—CAN.

### PART IV. SECT. 1, SUB-SECT. 2.—A.

1990 i. *General rule.*—Cts. always construe clauses in deeds as covenants rather than conditions if they reasonably do so.—WOLFE v. CROFT (N. S.) (1911), 9 E. L. R. 402.—CAN.



## DEPENDENCIES.

INCLUDING DOMINIONS, DEPENDENCIES, COLONIES AND BRITISH POSSESSIONS.

## Part I.—In General.

3. *Add. Annotation*:—**Refd.** *Sobhuza II. v. Miller*, [1926] A. C. 518.

7. *Add. Annotation*:—**Refd.** *Sobhuza II. v. Miller*, [1926] A. C. 518.

10a. ———.]—An extension of British jurisdiction in a British protectorate by Orders in Council may be referred to an exercise of power by an act of State, unchallengeable in any British ct., or to statutory powers given by Foreign Jurisdiction Act, 1890 (c. 37), under which the jurisdiction acquired by the Crown in a protected country is indistinguishable in legal effect from that acquired by conquest. The Crown cannot, except by statute, deprive itself of freedom to make Orders in Council, even such as are inconsistent with previous Orders.

Before the conquest & annexation of the South African Republic Swaziland was an independent native State, treated as a protected dependency of that Republic, by which it was administered under a Con-

vention made in 1894 between Great Britain & the Republic. The Convention provided for the preservation of native law, & the agricultural & grazing rights of the natives. The annexation did not extend to Swaziland. Subsequently under Orders in Council certain lands in Swaziland were expropriated to the Crown, to the extinguishment of the use & occupation of them by natives under native law, certain lands being allotted exclusively to the natives:—**Held**: the Orders in Council were effective, even if they were not within the powers recognised by the Convention.—*SOBHUZA II. v. MILLER*, [1926] A. C. 518; 95 L. J. P. C. 137; 135 L. T. 215; 42 T. L. R. 446, P. C.

13. *Add. Annotations*:—**Refd.** *Netherlands-American Steam Navigation Co. v. Procurator-General* (1925), 42 T. L. R. 81. **Mentd.** *Commercial & Estates Co. of Egypt v. Board of Trade*, [1925] 1 K. B. 271.

## Part II.—Colonial and Dominion Government.

14. *Add. Annotation*:—**Generally, Mentd.** *A.-G. for Ontario v. Reciprocal Insurers*, [1924] A. C. 328.

20a. **Power of expropriation in mandated territory.** —By the Mandate for Palestine, dated July 24, 1922, the Council of the League of Nations, acting under art. 22 of the Covenant of the League, entrusted to Great Britain the administration of Palestine. Art. 2 of the Mandate provided that Great Britain should be responsible for "safeguarding the civil & religious rights of the inhabitants of Palestine irrespective of race & religion." In 1923 an Order in Council authorised the High Comr. for Palestine to promulgate such ordinances as might be necessary for the peace, good order, & government of the country, & were not inconsistent with the Mandate. The High Comr. promulgated an ordinance expropriating certain springs for the purpose of supplying water to Jerusalem, with certain provisions for compensation. In an action by the owners of the springs the Supreme Ct., sitting as a ct. of first instance, held that the ordinance was *ultra vires*, on the ground that it was inconsistent with the Mandate in that the provisions for compen-

sation were inadequate. Special leave to appeal was granted, all questions of jurisdiction being left open. An Order in Council had made provision for appeals to the Privy Council, but only from orders of the Supreme Ct. sitting as a Ct. of Appeal:—**Held**: (1) the appeal was competent, since the jurisdiction under the Mandate was jurisdiction in a foreign country within the description in the preamble to Foreign Jurisdiction Act, 1890 (c. 37); (2) it was the right & duty of the ct. to consider whether the ordinance was consistent with the Mandate, but art. 2 had been misconstrued, & the ordinance was valid; (3) art. 2 did not mean that in every case of expropriation for a public purpose full compensation must be given. Natural justice required that in the absence of exceptional circumstances, fair provision should be made for compensation, but that depended not upon civil right, but upon the principles of sound administration, & it was not within the province of the ct. to consider whether an ordinance was within those principles. Further, the ordinance did make adequate provision for compensation.—*JERUSALEM-JAFFA DISTRICT GOVERNOR v. SULEIMAN*

## PART II. SECT. 2, SUB-SECT. 1. -A.

sa. *Dut. to accept advice of* ——— *Decision by Governor-General in Council.*]—Where a statute directs that a matter shall be decided by the Governor-General in Council, the Governor-General is bound to accept the advice of the Executive Council, there being no discretion in the

Governor-General personally, & there is no legal duty upon him to peruse documents placed before him & make up his mind upon them.—*SCHIERHOUT v. UNION GOVERNMENT*, [1927] App. D. 94.—S. AF.

t (p. 419) l. ——— *Proclamation fixing importation duties.*]—The Governor-General purporting to act under Act

35 of 1922, s. 5, issued two proclamations, the first fixing an exchange duty for asbestos cement sheets imported from Belgium & the second confining the first to certain cheaper kinds of asbestos sheets:—**Held**: the proclamations were *intra vires* the Governor-General.—*CUSTOMS COMR. v. AIRTON TIMBER Co., LTD.*, [1926] App. D. 1.—S. AF.

- [1926] A. C. 321; 95 L. J. P. C. 46; 134 L. T. 609; 42 T. L. R. 299, P. C.
23. *Add. Annotation*:—*Consd. A.-G. v. G. S. & W. Ry. of Ireland*, [1925] A. C. 754.
- 24a. — Grant of proprietary right in river—*Canada*.]—By letters patent issued by the Lieutenant-Governor of Quebec in 1910 under Companies Act of that province, applt. co. was incorporated for the purpose of carrying on the business of producers of electricity, & with power to construct & maintain dams in a river of the province within certain limits, after having acquired from the riparian proprietors the properties necessary for that purpose. In 1923 applts. not having then constructed any works, the provincial Govt. granted to resps. a lease of the water power & bed of the river within limits which overlapped those referred to in applts.' letters patent. Applts. brought an action against resps., claiming a declaration that applts. had a vested right in the river to construct dams, & an injunction:—*Held*: the action failed, since the letters patent contained no grant of a proprietary right in, or power to take possession of, any part of the river or its bed.—*UNITED MANUFACTURING CO. v. ST. MAURICE POWER CO.*, [1926] A. C. 708; 95 L. J. P. C. 149; 135 L. T. 389; 42 T. L. R. 495, P. C.
34. For "(1774)" read "(1775)".  
*Add. Annotation*:—*Reid. Tallack v. Tallack & Broekema*, [1927] P. 211.
- 52a. *Legislative Council of Nova Scotia—Appointment to.*]—The Lieutenant-Governor of Nova Scotia, acting by & with the advice of the Executive Council of Nova Scotia, has power to appoint in the name of the Crown so many members of the Legislative Council of Nova Scotia that the total number would (a) exceed twenty-one or (b) exceed the total number at the union mentioned in British North America Act, 1867 (c. 3), s. 88. The membership of the Council is not limited in number. The tenure of office of members of the Council appointed before May 7, 1925, is during the pleasure of His Majesty the King, represented in that behalf by the Lieutenant-Governor of Nova Scotia acting by & with the advice of the Executive Council of Nova Scotia.—*A.-G. FOR NOVA SCOTIA v. NOVA SCOTIA LEGISLATIVE COUNCIL*, [1928] A. C. 107; 97 L. J. P. C. 27; 138 L. T. 114; 44 T. L. R. 1; 71 Sol. Jo. 864, P. C.
- 52b. *Membership of—Tenure of office.*]—*A.-G. FOR NOVA SCOTIA v. NOVA SCOTIA LEGISLATIVE COUNCIL*, No. 52a, *ante*.
62. *Add. Annotation*:—*Mentd. Falcon v. Famous Players Film Co.* (1925), 42 T. L. R. 91.
68. *Add. Annotation*:—*As to (1) Reid. The Fagernes*, [1927] P. 311.
72. *Add. Annotation*:—*Distd. Re Article X of Articles of Agreement for a Treaty between Great Britain & Ireland* (1928), 45 T. L. R. 57.
90. *Add. Annotation*:—*Consd. Toronto Electric Comrs. v. Snider*, [1925] A. C. 396.
- 91a. *Enactment preventing King in Council from granting leave to appeal—Criminal case.*]—Sect. 1025 of the Criminal Code of Canada, if & so far as it is intended to prevent the King in Council from giving effective leave to appeal against an order of a Canadian ct. in a criminal case, is invalid. The legislative authority of the Parliament of Canada as to criminal law & procedure, under British North America Act, 1867 (c. 3), s. 91, is confined to action to be taken in Canada. Further, an enactment annulling the royal prerogative to grant special leave to appeal would be inconsistent with Judicial Committee Acts, 1833 (c. 41) & 1844 (c. 69), & would be invalid under Colonial Laws Validity Act, 1865 (c. 63), s. 2. The royal assent to the Criminal Code could not give validity to an enactment which was void by Imperial statute; exclusion of the prerogative could be accomplished only by an Imperial statute.
- According to the well-settled practice of the Judicial Committee His Majesty is advised to intervene in a criminal case only if it is shown that, by a disregard of the power of legal process, or by some violation of natural justice, or otherwise, substantial & grave injustice has been done.
- Applt. was convicted in Alberta of an offence under Govt. Liquor Control Act of Alberta, which did not incorporate sect. 1025 of the Criminal Code of Canada, & of an offence under Canada Temperance Act, R. S. Can., 1906 (c. 152). For each offence he was sentenced to a fine, & in default imprisonment. The Supreme Ct. of Alberta, rejecting contentions as to the construction & invalidity of the material sects., affirmed the convictions, but gave leave to appeal to the Privy Council. The Crown petitioned the Judicial Committee to quash the appeals as incompetent, having regard to sect. 1025. Applt. petitioned for special leave to appeal. The petitions were heard with the appeals:—*Held*: (1) each appeal was in a "criminal case" to which sect. 1025 applied, so far as it was valid; (2) in the absence of argument to the contrary, sect. 1025 prevented the Appellate Div. from giving effective leave to appeal; (3) sect. 1025 did not exclude the prerogative right to give leave to appeal; (4) the cases

PART II. SECT. 3, SUB-SECT. 2.—A.

*st. Cannot suspend Habeas Corpus Act.*]—The Imperial Parliament alone can suspend the above Act.—*Re BLANSHAY (Que.)* (1918), 24 R. de J. 578.—CAN.

*st. Disqualified member voting—Liability to penalties.*]—Since Constitution Act, R. S. B. C., 1924 (c. 45), imposes but one penalty for each day on which a disqualified person sits & votes as a member of the Legislative Assembly, there is but one cause of action for each such day, & where an action is brought on such cause of action that penalty, if recovered,

belongs to pltt. therein, who thereby attaches or appropriates it to himself. Such action, even though dismissed, is a bar to a subsequent action for the same penalty, unless such prior action was collusive.—*KEENE v. COLLEY*, [1925] 4 D. L. R. 229; [1925] 3 W. W. R. 250.—CAN.

PART II. SECT. 3, SUB-SECT. 2.—B.

59 iv. —.]—When an Act of the Dominion Parliament is in part repugnant to an Imperial Act, effect given to its enactments in so far as they agree.—*Re THE RAREWELL* (1881), 7 Q. L. R. 380.—CAN.

PART II. SECT. 3, SUB-SECT. 4.—A. (a).

*st. Recital in preamble to private Act—Effect of.*]—A recital in the preamble to a special private Act enacted by the Parliament of Canada is not such a declaration as that contemplated by B. N. A. Act, 1867, s. 92 (10) (c), in order to bring the subject-matter of the legislation within the jurisdiction of Parliament.—*HEWSON v. ONTARIO POWER CO.* (1906), 36 S. C. R. 596.—CAN.

*st. Incidental subjects included.*]—*BENNETT v. QUEBEC PHARMACEUTICAL ASSOCN.* (1931), 1 D. C. A. 336; 2 Cart. 260.—CAN.

were clearly not within the category of the exceptional cases in which special leave to appeal was advised in a criminal matter.—*NADAN v. R.*, [1926] A. C. 482; 95 L. J. P. C. 114; 134 L. T. 706; 42 T. L. R. 356; 28 Cox, C. C. 167, P. C.

*Add. Annotation*:—*Refd.* Lord's Day Alliance of Canada v. A.-G. for Manitoba, [1925] A. C. 384.

97. *Add. Annotations*:—*Appld.* A.-G. for Ontario v. Reciprocal Insurers, [1924] A. C. 328. *Distd.* Toronto Electric Comrs. v. Snider, [1925] A. C. 396.

98. For the paragraph in the original volume substitute the following paragraph:—

**Bona vacantia**—**Right of Crown in right of province.**—*Bona vacantia* are "royalties" within British North America Act, 1867 (c. 3), s. 109, & accordingly belong to the province in which they are situate or arise, & not to the Dominion. The word "royalties" is used in the sect. as the equivalent of *jura regalia*. Its meaning is not limited by its association with the words "lands, mines, minerals."—*R. v. A.-G. OF BRITISH COLUMBIA*, [1924] A. C. 213; 93 L. J. P. C. 76; 130 L. T. 231; 40 T. L. R. 13; 68 Sol. Jo. 138, P. C.

- 98b. ———.]—(1) Land in Alberta granted by the Crown either before or after Sept. 1, 1905, when Alberta Act, 1905 (c. 3 Dom.), came into force, in the absence of heirs, escheats to the Crown in the right of the Dominion.

(2) Effect of Land Titles Act, 1894 (c. 28 Dom.), & Land Titles Act, 1906 (Alta.).

(3) Meaning of "royalties" in Alberta Act, s. 21.

(4) *Bona vacantia* in Alberta belong to the Crown in the right of the province. The effect of Alberta Act, s. 3, was to place the Province of Alberta in the same position in regard to property as the provinces previously constituted save so far as the Act provided otherwise, either expressly or by reasonable implication.

(5) Ultimate Heir Act, R. S. A., 1922 (c. 144), is *ultra vires* so far as it purported

to affect real property.—*A.-G. FOR ALBERTA v. A.-G. FOR CANADA*, [1928] A. C. 475; 97 L. J. P. C. 106; 139 L. T. 532; 44 T. L. R. 651, P. C.

101. *Add. Annotations*:—*Consd.* Toronto Electric Comrs. v. Snider, [1925] A. C. 396. *Refd.* A.-G. for Ontario v. Reciprocal Insurers, [1924] A. C. 328.

105. *Add. Annotations*:—*Appld.* A.-G. for Ontario v. Reciprocal Insurers, [1924] A. C. 328. *Refd.* Toronto Electric Comrs. v. Snider, [1925] A. C. 396.

106. *Add. Annotations*:—*Consd.* Toronto Electric Comrs. v. Snider, [1925] A. C. 396. *Refd.* A.-G. for Ontario v. Reciprocal Insurers, [1924] A. C. 328.

108. *Add. Citations*:—93 L. J. P. C. 101; 130 L. T. 101.

*Add. Annotation*:—*Distd.* Toronto Electric Comrs. v. Snider, [1925] A. C. 396.

- 108a. ——— Question of substance, not of form.]—(1) The Parliament of Canada cannot, by purporting to create penal sections under head 27 of the above sect., appropriate to itself exclusively a field of jurisdiction in which, apart from that procedure, it could exert no legal authority; if, when examined as a whole, legislation in form criminal is found, in aspects & for purposes exclusively within the provincial sphere, to deal with matters committed to the provinces, it cannot be upheld as valid.

Reciprocal Insurance Act 1922, of Ontario, authorised any person to exchange, through the medium of an attorney, with persons, whether in Ontario or elsewhere, reciprocal contracts of insurance, subject to provisions as to licences & other conditions; & it was provided that actions in respect of such contracts might be maintained in the cts. of the province. A Dominion Act of 1917 inserted in the Criminal Code (R. S. Can. 1906, c. 146), sect. 508c, by which it was made an indictable offence for any person to solicit or accept any insurance risk except on behalf of a co. or assocn. licensed under Insurance Act, 1917, of Canada. In

98 i. *Bona vacantia*—*Right of Crown in right of Dominion—Saskatchewan.*]

—In 1916, H. domiciled in the province of S. died, leaving no heirs or other persons legally entitled to his estate. Both the Dominion & the province claimed the estate as *bona vacantia* by right of escheat:—*Held*: as the province of S. was not at the date of its establishment owner of the lands, nor had any vested rights in any duties or revenues in respect to the lands from which the province was carved, differing in this respect from the original provinces of Confederation, B. N. A. Act, ss. 102, 109 did not apply, notwithstanding Saskatchewan Act, s. 3, & in any event, these sects. did not purport to transfer any "property" or rights to the provinces.—*R. v. WESTERN TRUST CO., A.-G. OF PROVINCE OF SASKATCHEWAN & SHULZE* (1921), 21 Exch. C. R. 1; 59 D. L. R. 597.—CAN.

sr. "Royalties" *British North America Act*, 1867, s. 109—*Construction.*—"Royalties" in this sect. does not embrace all kinds of royalties, but is limited in its meaning by the text to such as are connected with lands, mines & minerals; such as (*inter alia*) the right to *bona vacantia* & of escheat arising by reason of a failure of heirs.—*R. v. WESTERN TRUST CO., A.-G.*

OF PROVINCE OF SASKATCHEWAN & SHULZE (1921), 21 Exch. C. R. 1; 59 D. L. R. 597.—CAN.

## PART II. SECT. 3, SUB-SECT. 4.— A. (b) i.

h i. ———.]—*R. v. HANEL, R. v. YELLE* (Que.) (1925), 45 Can. Crim. Cas. 381.—CAN.

h ii. ———.]—Provincial legislation repugnant to B. N. A. Act, 1867, s. 93 (2), is "absolutely void & inoperative," & is not appealable under sub-sect. 3 to the Governor in Council.—*HIRSCH v. MONTREAL PROTESTANT BOARD SCHOOL COMRS.*, [1926] 2 D. L. R. 8; [1926] S. C. R. 246; *varying*, 31 R. de J. 440.—CAN.

h iii. ———.]—Any provincial legislation repugnant to B. N. A. Act 1867, s. 93 (1), is to the extent of such repugnancy absolutely void & inoperative.—*TINY SEPARATE SCHOOL TRUSTEES v. R.* (1926), 59 O. L. R. 96.—CAN.

k. For "k. ———.]—" substitute "101 ii. ———.]—"

101 iii. ———.]—Where both the Dominion Parliament & a provincial legislature have legislated on the same subject & with the same object, & the

legislation is within the powers of the Dominion Parliament, the provincial legislation is inoperative.—*R. v. SHENDAN*, [1924] 3 D. L. R. 339; 3 W. W. R. 617; 34 B. C. R. 161.—CAN.

106 i. ——— *Power to repeal local Act.*—*RUMSEY v. HARE* (1877), 3 R. & C. 4.—CAN.

st. *Creation of new province—Restriction of legislative powers.*—In exercising the authority to establish new provinces given to it by B. N. A. Act, 1871, the Dominion Parliament had power to enact Alberta Act, s. 17 with its protective provisions restricting full legislative power as to education, notwithstanding that those provisions are a modification of B. N. A. Act, 1867, s. 93.—*R. (BROOKS) v. ULMER*, [1923] 1 D. L. R. 304; 1 W. W. R. 1; 38 Can. Crim. Cas. 207; 19 Alta. L. R. 12.—CAN.

sv. *Legislation inconsistent with provincial rights—Powers conferred on Board of Commerce.*—The Dominion Parliament cannot confer on the Board of Commerce jurisdiction that would restrict the liberty of the inhabitants of a province.—*A.-G. FOR ONTARIO v. CANADIAN WHOLESALE GROCERS ASSOCN.*, [1923] 2 D. L. R. 617; 39 Can. Crim. Cas. 272.—CAN.



answer to questions referred by the Lieutenant-Governor of Ontario to the Appellate Div.:—*Held*: (2) the Act of 1922 was *intra vires* the province, since (a) its provisions were capable of receiving a meaning according to which, whether enabling or prohibitive, they applied only to persons & acts within the territorial jurisdiction of the province, & (b) although it might incidentally affect aliens & dominion cos., it did not deal with them as such, but was an Act dealing with contracts of insurance; (3) the making & carrying out of contracts licensed pursuant to the Act were not rendered illegal, or otherwise affected, by Criminal Code, s. 508c; that sect. was invalid, since, in substance though not in form, it was in regulation of contracts of insurance, subjects not within the legislative competence of the Dominion; (4) the answers under (2) & (3) would be the same if any of the persons subscribing to a reciprocal insurance contract was (a) a British subject not resident in Canada immigrating into Canada, or (b) an alien. In so answering this question no opinion was expressed as to the competence of the Dominion Legislature to enact Insurance Act, 1917, ss. 11 & 12 (1), whereby restrictions were placed upon aliens & British cos. in the matter of carrying on insurance business in Canada; but sect. 12 (2) was held to be invalid in relation to the subject of immigration.—A.-G. FOR ONTARIO *v.* RECIPROCAL INSURERS, [1924] A. C. 328; 130 L. T. 738; 68 Sol. Jo. 383; *sub nom.* A.-G. FOR ONTARIO *v.* RECIPROCAL INSURERS, CRAIGON *v.* R., OTTE *v.* R., 93 L. J. P. C. 137; 40 T. L. R. 273, P. C.

*Annotations*:—*As to* (1) *Folld. Toronto Electric Comrs. v. Snider*, [1925] A. C. 396. *Refd.* A.-G. for Alberta *v.* A.-G. for Canada, [1928] A. C. 475.

116. *Add. Annotation*:—*Refd.* A.-G. for Quebec *v.* Nipissing Central Ry. & A.-G. for Canada, [1926] A. C. 715.

117. *Add. Annotations*:—*Refd.* A.-G. for Ontario *v.* Reciprocal Insurers, [1924] A. C. 328; *Toronto Electric Comrs. v. Snider*, [1925] A. C. 396.

119. *Add. Annotations*:—*As to* (1) *Refd.* Montreal Corp'n. *v.* Montreal Harbour Comrs., Tetreault *v.* Montreal Harbour Comrs., A.-G. for Quebec *v.* A.-G. for Canada (1925), 42 T. L. R. 98; A.-G. for Quebec *v.* Nipissing Central Ry. & A.-G. for Canada, [1926] A. C. 715.

PART II. SECT. 3, SUB-SECT. 4.—  
A. (b) ii.

m (p. 431) i. —.—]—KINNEY *v.* DUDMAN (1876), 2 R. & C. 19; 2 Cart. 412.—CAN.

m (p. 431) ii. —.—]—PEEK *v.* SHIELDS (1881), 6 A. R. 639; 3 Cart. 266.—CAN.

o (p. 431) i. —.—]—*Bankruptcy Act*, 1920 (c. 34), s. 11 (1) (10)—*Intra vires.*]—BELANGER, ETC. *v.* ROYAL BANK OF CANADA, [1926] 2 D. L. R. 929; [1926] S. C. R. 218; *affd. sub nom.* ROYAL BANK OF CANADA *v.* LABUE, [1928] A. C. 187; 139 L. T. 562, P. C.—CAN.

sw. *Building societies—In Quebec—Liquidation of—Ultra vires.*]—MCCLANAGHAN *v.* ST. ANN'S MUTUAL BUILDING SOCIETY (1880), 24 L. C. J. 162; 2 Cart. 237.—CAN.

sy. *Cheese factories—Act to prevent fraud against—Valid.*]—R. *v.* STONE (1892), 23 O. R. 46.—CAN.

sz. *Copyright.*]—SMILES *v.* BELFORD (1877), 1 A. R. 436; 1 Cart. 576.—CAN.

sb. *Education.*]—*Held*: Alberta Act (D., 1905, c. 3), s. 17, was within the powers of the Dominion Parliament.—*Re* ALBERTA ACT, SECTION 17, [1927] 2 D. L. R. 993; [1927] S. C. R. 364.—CAN.

114 iv. —.—]—Part IV. added to Canada Temperance Act, prohibiting the importation of intoxicating liquor into those provinces where its sale for beverage purposes is forbidden by provincial law, is *intra vires* the Dominion Parliament.—GOLD SEAL, LTD. *v.* DOMINION EXPRESS CO. & A.-G. FOR ALBERTA PROVINCE (1921), 62 D. L. R. 62; 62 S. C. R. 424; [1921] 3 W. W. R. 710; *affg.* 58 D. L. R. 51; 34 Can. Crim. Cas. 259; 16 Alta. L. R. 118.—CAN.

115 iit. —.—]—*By* 45 Vict. c. 119—*Valid.*]—*Re* QUEBEC TIMBER CO. (1882), Cout. 43.—CAN.

r (p. 432) i. —.—]—*Regulations as to inland fisheries—Valid.*]—BAYER *v.* KATZER (1894), 26 N. S. R. 280.—CAN.

120. *Add. Annotation*:—*Refd.* The Fagernes, [1927] P. 311.

121. *Add. Annotation*:—*Refd.* A.-G. for Quebec *v.* Nipissing Central Ry. & A.-G. for Canada, [1926] A. C. 715.

121a. —.—]—*Safeguarding navigation of river obstructed by bridge included.*]—British North America Act, 1867 (c. 3), s. 91 (10), gives to the Parliament of the Dominion exclusive legislative authority over navigation & shipping, & sect. 92 (10) excludes from the jurisdiction of the provincial legislatures railways & other works extending beyond the limits of the province, & any works which, although wholly situate within the province, have been declared by the Parliament of Canada to be for the general advantage of Canada. In the case of two railway bridges, one of them authorised by dominion statute, which fell within the exception:—*Held*: (1) the right & power of safeguarding the navigation of the river passing under & alleged to be obstructed by them was also in the hands of the Dominion; (2) the rights & powers of the Dominion were not affected by the provisions of a treaty entered into between Great Britain & the United States in 1842, the Ashburton Treaty, which proceeded on the assumption that the Govt. of New Brunswick had power to make regulations as to the navigation of the river in question, there being no undertaking or guarantee, either to the United States or to New Brunswick, that such powers should remain unaltered for all time, & the change made being wholly consistent with the treaty.—A.-G. FOR NEW BRUNSWICK *v.* CANADIAN PACIFIC RY. CO., A.-G. FOR CANADA INTERVENING (1925), 94 L. J. P. C. 142; 133 L. T. 436, P. C.

122. *Add. Annotation*:—*Refd.* A.-G. for Quebec *v.* Nipissing Central Ry. & A.-G. for Canada, [1926] A. C. 715.

122a. —.—]—*Expropriation of provincial Crown lands.*]—Railway Act, 1919 (c. 68), s. 189, which empowers any railway co., with the consent of the Governor-General, to take for the use of the railway provincial Crown lands as well as Dominion Crown lands, was within the legislative powers of the Parliament of Canada under British North America Act, 1867 (c. 3), ss. 91 (29), 92 (10).—A.-G. FOR QUEBEC *v.* NIPISSING CENTRAL RY. CO. & A.-G. FOR CANADA, [1926] A. C. 715; 95

r (p. 432) ii. —.—]—The provisions of Fisheries Act, 1914 (c. 8) (Dom.), ss. 7A, 18, for the licensing & taxing of fish canneries:—*Held*: *ultra vires.*—R. *v.* SOMERVILLE CANNERY CO., LTD. (B. C.), [1927] 4 D. L. R. 494; [1927] 3 W. W. R. 215; 49 Can. Crim. Cas. 65.—CAN.

b (p. 432) i. —.—]—*Guarding of crossings.*]—*Re* CANADIAN PACIFIC RY. CO. & COUNTY & TOWNSHIP OF YORK (1896), 27 O. R. 559.—CAN.

y i. —.—]—*Dominion Insurance Act*, ss. 11, 12 (1), 71, 71A, 134, 134A—*Ultra vires.*]—*Re* INSURANCE CONTRACTS, [1926] 2 D. L. R. 204; 58 O. L. R. 404.—CAN.

sd. *Interest—Amount of—R. S. C.*, 1886 (c. 127), s. 7—*Intra vires.*]—BRADBURN *v.* EDINBURGH LIFE ASSURANCE CO. (1903), 23 C. L. T. 199; 5 O. L. R. 657; 2 O. W. R. 253.—CAN.

o (p. 433). For “ substitute

L. J. P. C. 221; 135 L. T. 520; 42 T. L. R. 591, P. C.

**125a. — Regulation of running rights.]—**Applts. owned a short railway line in Alberta branching from a line which branched from the Canadian Northern Railway at a point within the province. Both branches were operated by the Canadian Northern Railway Co. under agreements, & traffic could pass from applts.' line without interruption into such other provinces as were served by that co.'s railway. The Railway Board made an order declaring its power to grant an application by first resp. for running rights over applts.' line, with permission to construct a short track joining it:—*Held*: the Railway Board had power to grant the application, since applts.' line was part of a system of railways operated together, & connecting one province with another, & it was within the legislative authority of the Dominion under British North America Act, 1867 (c. 3), s. 92 (10) (a).—*LUSCAR COLLIERIES v. McDONALD*, [1927] A. C. 925; 97 L. J. P. C. 21; 137 L. T. 779; 43 T. L. R. 801, P. C.

**128a. Question of substance, not of form.]—**A.-G. FOR ONTARIO *v.* RECIPROCAL INSURERS, No. 108a, *ante*.

**128b. Power to impose customs duty—Alcoholic liquor imported by province.]—**Customs & other duties imposed by the Dominion of Canada upon alcoholic liquors imported into Canada can be levied upon alcoholic liquors imported by the Govt. of British Columbia for the purpose of sale by it. The power of the Dominion under British North America Act, 1867 (c. 3), s. 91, heads 2 & 3, to impose duties upon the importation of goods into Canada is not limited by sect. 125, which exempts the "property" of a province from

taxation.—A.-G. OF BRITISH COLUMBIA *v.* A.-G. OF CANADA, [1924] A. C. 222; 130 L. T. 257; 40 T. L. R. 4; 68 Sol. Jo. 58, P. C.

**130a. "Peace, order & good government of Canada"—Whether trade disputes included.]—**TORONTO ELECTRIC COMRS. *v.* SNIDER, No. 179a, *post*.

**130b. Taxation—Income tax.]—**(1) The Parliament of Canada had power under British North America Act, 1867 (c. 3), s. 91, head 3, to enact Income War Tax, 1917, & the amending Act of 1919, whereby every person residing, or ordinarily residing, or carrying on business in Canada is rendered liable to pay income tax.

(2) A minister of the Govt. of a province is liable under the Acts in respect of the salary & sessional indemnity payable to him under statutes of the province.—*CARON v. R.*, [1924] A. C. 999; 94 L. J. P. C. 9; 132 L. T. 218; 40 T. L. R. 874, P. C.

**130c. — Salary of provincial official—Whether liable.]—***CARON v. R.*, No. 130b, *ante*.

**130d. Navigation of river—Formerly considered as in provincial control—Ashburton Treaty.]—**A.-G. FOR NEW BRUNSWICK *v.* CANADIAN PACIFIC RY. CO., A.-G. FOR CANADA INTERVENING, No. 121a, *ante*.

**131. Add. Annotation:—***Refd.* Royal Bank of Canada *v.* Larne, [1928] A. C. 187.

**132. Add. Annotation:—***Appld.* Royal Bank of Canada *v.* Larne, [1928] A. C. 187.

**134. Add. Annotation:—***Consd.* A.-G. for Ontario *v.* Reciprocal Insurers, [1924] A. C. 328.

**135. Add. Annotations:—***Refd.* A.-G. for Manitoba *v.* A.-G. for Canada, [1925] A. C. 561. *Mentd.* A.-G. for British Columbia *v.* Canadian Pacific Ry., [1927] A. C. 934.

**128b ii. — Imposition of additional customs duties.]—***Held*: 53 Vict. c. 20, s. 19, was not *ultra vires* the Dominion Parliament.—A.-G. OF CANADA *v.* FOSTER (1892), 31 N. B. R. 153.—CAN.

**st. Migratory Birds Protection Act, 1917 (c. 18)—How far intra vires.]—***R. v. STUART*, [1925] 1 D. L. R. 12; [1924] 3 W. W. R. 648.—CAN.

**sj. Soldier Settlement Act, ss. 33, 34—Intra vires.]—***R. v. POWERS*, [1923] Exch. C. R. 131.—CAN.

**sk. Judges Act, R. S. C., 1906 (c. 138), ss. 33–35.]—**In so far as the above sects. attempt to disqualify or prohibit a judge of the King's Bench from acting as an arbitrator in matters lying wholly within provincial control, they are *ultra vires*.—*WINNIPEG CORPN. v. CROSS* (Man.), [1926] 4 D. L. R. 318; [1926] 2 W. W. R. 868.—CAN.

**sl. Live-stock & Live-stock Products Act, 1923, & regulations made thereunder—How far ultra vires.]—***R. v. COLLINS*, [1926] 4 D. L. R. 548; 46 Can. Crim. Cas. 282; 59 O. L. R. 453.—CAN.

**129 i. Pilotage.]—***R. v. PETERS* (1873), N. B. Dig. 138.—CAN.

**l (p. 434) i. —.]—***Held*: Criminal Code, 1892, ss. 865 & 866, were *intra vires* the Dominion Parliament.—*FLICK v. BRISBIN* (1895), 26 O. R. 423.—CAN.

**o (p. 434) i. —.]—**If an act prohibited by the Dominion Parliament is one that may be considered a criminal matter, its prohibition & the subject of evidence establishing such act are within the powers of Parliament, even though the act is one that relates to property & civil rights.—*R. v. POULIN* (Alta.), [1925] 1 D. L. R. 618; [1925] 1 W. W. R. 16; 43 Can. Crim. Cas. 242.—CAN.

**o (p. 434) ii. —.]—**Criminal Code, s. 734:—*Held*: *intra vires*.—*DOWSETT v. EDMUNDS* (Alta.), [1926] 4 D. L. R. 796; [1926] 3 W. W. R. 447; 46 Can. Crim. Cas. 330.—CAN.

**s (p. 434) i. — Canada Grain Act, 1919, s. 95 (7)—Whether ancillary to or necessary for operation of Dominion law.]—**The above Act is not in the nature of an ancillary provision which, whilst encroaching upon matters assigned to the provincial legislatures, is required to prevent a scheme of a Dominion law being defeated; nor is it a case where, in order to operate a validly enacted law, procedure must be adopted to make effective that law even though it invades the legislative fields of the provinces in respect of property or civil rights.—*R. v. EASTERN TERMINAL ELEVATOR CO.*, [1925] S. C. R. 434.—CAN.

**s (p. 434) ii. —.]—**The provisions of the above Act, requiring a primary grain-dealer to take out a licence thereunder, & prescribing the form of contract to be used on the purchase of grain, are *ultra vires*.—*TRIMBLE v. CAPLING*, [1927] 1 D. L. R. 717; [1927] 1 W. W. R. 188; 22 Alta. L. R. 536.—CAN.

**s (p. 434) iii. — War legislation—Establishment of Canada Wheat Board.]—***Held*: the legislation & Orders in Council establishing the Board were *intra vires* the Dominion Parliament as being either (a) legislation arising out of war, or (b) regulation of trade & commerce.—A.-G. FOR CANADA *v.* ALEXANDER BROWN MILLING & ELEVATOR CO., [1923] 4 D. L. R. 443; 53 O. L. R. 298.—CAN.

**dd i. Courts—Power to establish—**

*Maritime court—Jurisdiction limited to Ontario—Valid.]—*THE PICTON (1879), 4 S. C. R. 648; 1 Cart. 557.—CAN.

**dd ii. — Power to extend jurisdiction—Court created by Imperial Act—Valid.]—**A.-G. OF CANADA *v.* FLINT (1884), 16 S. C. R. 707; 4 Cart. 288.—CAN.

**dd iii. —.]—***Held*: the Dominion Parliament had power to confer jurisdiction on a ct. to try offences against Inland Revenue Act, R. S. C. c. 34.—*IL. v. KENNEDY* (1902), 35 N. S. R. 266.—CAN.

**sp. Appeal to Supreme Court of Canada—42 Vict. c. 39, s. 6—Ultra vires.]—**GRAND TRUNK RY. CO. *v.* CREDIT VALLEY RY. CO. (1875–1908), 1 Cout. Dig. 282.—CAN.

**st. Jury—Selection of jurors—In criminal cases.]—***R. v. O'ROURKE* (1882), 32 C. P. 388.—CAN.

**PART II. SECT. 3, SUB-SECT. 4.—**  
A. (b) iii.

**w i. — Nova Scotia Railway Arrangement Act—Ultra vires.]—**MURDOCH *v.* WINDSOR & ANNAPOLIS RY. CO. (1877), 3 Cart. 368.—CAN.

**w ii. — Nova Scotia Winding-up Act—Valid.]—***Re* WALLACE HUESTIS GREY STONE CO. (1881), 3 Cart. 374.—CAN.

**a (p. 435). For "a. Taxation—Direct—Power to impose.]—" substitute "135a i. Taxation—Direct—What is.]—" "**

**b (p. 435). For "b" substitute "135a ii."**

**c (p. 435). For "c" substitute "135a iii."**



**135a.** — Direct—What is.]—A tax is not "direct taxation" within British North America Act, 1867 (c. 3), s. 92, head 2, unless in substance it is one which is demanded from the person who it is intended should pay it, even if the Act imposing it declares that it is to be a direct tax upon the person who pays.

In answer to questions referred by the Governor-General, namely: (1) whether the legislature of Manitoba had authority to enact c. 17 of its statutes for 1923, entitled "An Act to provide for the collection of a tax from persons selling grain for future delivery," & (2), if the Act was *ultra vires* in certain parts, then in what particulars it was *ultra vires*:—*Held*: the Act was wholly *ultra vires*, since in many transactions to which it related the person paying the tax would indemnify himself at the expense of others, & it was not possible to assume that the legislature intended to pass it in a truncated form.—A.-G. FOR MANITOBA v. A.-G. FOR CANADA, [1925] A. C. 561; 94 L. J. P. C. 146; 133 L. T. 193; 41 T. L. R. 409; 69 Sol. Jo. 445, P. C.

*Annotation*:—*Consd.* A.-G. for British Columbia v. Canadian Pacific Ry., [1927] A. C. 934.

**135b.** — — — — —.]—A tax imposed by a provincial legislature, in respect of a commodity, is an indirect tax, & *ultra vires* under British North America Act, 1867 (c. 3), s. 92 (2), if from the terms of the Act there appears an expectation & intention that the person required to pay the tax will indemnify himself upon a resale of the commodity taxed, even if in the case under consideration no resales have taken place.

An Act of the legislature of British Columbia, Fuel-Oil Tax Act, R. S. B. C., 1924 (c. 251), requiring that every person who shall purchase within the province fuel-oil for the first time after its manufacture in, or importation into, the province, shall pay a tax thereon, is invalid.—A.-G. FOR BRITISH COLUMBIA v. CANADIAN PACIFIC RY. CO., [1927] A. C. 934; 96 L. J. P. C. 149; 137 L. T. 745; 43 T. L. R. 750; 71 Sol. Jo. 761, P. C.

*iv.* — — — — —.]—City Act (Sask.), s. 415a, which empowers the city council to enact a bye-law requiring every person attending a place of amusement to pay a tax upon each admission to such place, is *intra vires*, as it is a direct tax & comes within the taxation powers of B. N. A. Act, s. 92 (2).—CLARKE v. MOOSE JAW (CITY), [1923] 2 D. L. R. 216; 16 Sask. L. R. 332; [1923] 1 W. W. R. 1126.—CAN.

**135a v.** — — — — —.]—A municipal tax sought to be imposed on a trustee on assessment under Ontario Assessment Act, R. S. O., 1914 (c. 195), s. 13 (3), as enacted by 1922 (c. 78), s. 12, in respect of income "not wholly distributed annually," is an indirect tax & *ultra vires*.—CITY OF WINDSOR CORPN. v. McLEOD, [1926] 2 D. L. R. 97; [1926] S. C. R. 450; 57 O. L. R. 15.—CAN.

*e.* (p. 435) i. — — — — —.]—PLUMMER WAGON CO. v. WILSON (1885), 3 Man. L. R. 68.—CAN.

**141 iii.** — — — — —.]—The tax under Succession Duty Act (B. C.), as applied to "movables" outside the province belonging to a person who died domiciled within the province, is a direct tax & *intra vires*.—*Re* INVERARITY ESTATE, [1924] 1 D. L. R.

1020; 1 W. W. R. 901; 33 B. C. R. 318.—CAN.

**141 iv.** — — — — —.]—Succession Duty Act, R. S. O., 1914 (c. 24):—*Held*: *intra vires*.—A.-G. FOR ONTARIO v. BABY, [1926] 3 D. L. R. 928; 59 O. L. R. 181.—CAN.

**141 v.** — — — — —.]—Succession Duty Act, 1915, s. 10 (6):—*Held*: *intra vires*.—R. v. DONEGAL (MAR-CHIONESS) (1923), 51 N. B. R. 309; [1924] 2 D. L. R. 1191.—CAN.

*j i.* — Exemption from.]—*Held*: the power & authority to raise revenue for Dominion purposes was specially given to the Parliament of Canada, & any legislation passed by the Old Province of Canada, denying the right to tax or exempting any subject in Ontario to pay such tax, could not be valid after the passing of B. N. A. Act, 1867.—HOLMSTEAD v. MINISTER OF CUSTOMS & EXCISE, [1927] Exch. C. R. 68.—CAN.

*l* (p. 436) i. — — — — —.]—Hawkers & Pedlars Act, R. S. S., 1920 (c. 147), applies to a hawker & pedler acting as such as the agent of a Dominion co., even though its letters patent give it the power to sell & make known its products through "salesmen & agents going from house to house & displaying

**135c.** — — — — —.]—The Halifax Corpn. charter provided that the owner of property let to the Crown, or to any person exempt from taxation, should be deemed to be in occupation thereof, & should be assessed & rated to business tax if the premises were used for business purposes:—*Held*: the tax was a direct tax falling within the authority of British North America Act, 1867 (c. 3), s. 92 (2), & was within the powers of the province.—HALIFAX CORPN. v. FAIRBANKS' ESTATE (1927), 44 T. L. R. 5; 71 Sol. Jo. 946, P. C.

Succession duty.]—See Nos.

140–142, *post*.

**135d.** — — — — —.]—Owners Tax Act, 1923 (c. 33), of Alberta, purported to impose upon every mineowner, as therein defined, a percentage tax upon the gross revenue of his mine during each preceding month:—*Held*: the tax was not direct taxation within British North America Act, 1867 (c. 3), s. 92 (2), & the Act was *ultra vires*.—R. v. CALEDONIAN COLLIERIES, [1928] A. C. 358; 97 L. J. P. C. 94; 139 L. T. 525; 44 T. L. R. 622, P. C.

**136.** *Add. Annotations*:—*Consd.* Halifax Corpn. v. Fairbanks' Estate (1927), 44 T. L. R. 5; R. v. Caledonian Collieries, [1928] A. C. 358. *Refd.* Caron v. R., [1924] A. C. 999; A.-G. for Manitoba v. A.-G. for Canada, [1925] A. C. 561; A.-G. for British Columbia v. Canadian Pacific Ry., [1927] A. C. 934.

**138.** *Add. Annotations*:—*Refd.* A.-G. for Manitoba v. A.-G. for Canada, [1925] A. C. 561; A.-G. for British Columbia v. Canadian Pacific Ry., [1927] A. C. 934.

**140.** *Add. Annotations*:—*Mentd.* New York Life Insce. v. Public Trustee, [1924] 2 Ch. 101; Richardson v. Richardson, [1927] P. 228.

**141.** *Add. Annotations*:—*Consd.* A.-G. for Manitoba v. A.-G. for Canada, [1925] A. C. 561. *Refd.* Halifax Corpn. v. Fairbanks' Estate (1927), 44 T. L. R. 5.

**142.** *Add. Annotations*:—*Consd.* A.-G. for Manitoba v. A.-G. for Canada, [1925] A. C. 561. *Refd.* Brassard v. Smith, [1925] A. C. 371.

samples," etc., the licence fee imposed by the Act not being an indirect tax, & not being made so by the fact that an employer pays it for his agents.—R. (SINCLAIR) v. GEBHARDT, [1926] 2 D. L. R. 950; [1926] 2 W. W. R. 235; 45 Can. Crim. Cas. 321; 20 Sask. L. R. 485.—CAN.

*n* (p. 436) i. — Of Dominion — forming part of bank reserve—*Valid*.—WINDSOR v. COMMERCIAL BANK OF WINDSOR (1882), 3 R. & G. 420; 3 Cart. 377.—CAN.

*q* (p. 437) i. — — — — —.]—Ontario Insurance Act, 1924, ss. 168, 180:—*Held*: *intra vires*.—*Re* INSURANCE CONTRACTS, [1926] 2 D. L. R. 204; 58 O. L. R. 404.—CAN.

*q* (p. 437) ii. — — — — —.]—*Held*: the right to empower the imposition of license fees on insurance cos. was *intra vires*.—HALIFAX CITY CORPN. v. WESTERN ASSURANCE CO. (1885), 18 N. S. R. (6 R. & G.) 387.—CAN.

*q* (p. 437) iii. — — — — —.]—*Held*: Ordinance incorporating City of Calgary (No. 38 of 1893), s. 117 (41), was *intra vires*.—ENGLISH v. O'NEILL (1899), 4 Terr. L. R. 74.—CAN.

**146 iii a.** — — — — —.]—Lefrere v. (1891), 17 Q. L. R. 226.—CAN.



144. *Add. Annotation*:—*Reid. Halifax Corp'n. v. Fairbanks' Estate* (1927), 44 T. L. R. 5.

145. *Add. Annotations*:—*Reid. A.-G. for Ontario v. Reciprocal Insurers*, [1924] A. C. 328; *Caron v. R.*, [1924] A. C. 999; *Toronto Electric Comrs. v. Snider*, [1925] A. C. 396.

145a. — Construction of legislation—Limitation to provincial jurisdiction.]—A.-G. FOR ONTARIO *v. RECIPROCAL INSURERS*, No. 108a, *ante*.

150. *Add. Annotations*:—*Reid. Nadan v. R.*, [1926] A. C. 482. *Mentd. R. v. Lincolnshire JJ., Ex p. Brett*, [1926] 2 K. B. 192.

153. *Add. Annotation*:—*Reid. The Fagernes*, [1927] P. 311.

154a. — No power to confirm transfer of federal railway.]—*BOURGOIN v. COMPAGNIE DU CHEMIN DE FER DE MONTRÉAL, OTTAWA, ET OCCIDENTAL* (1880), 5 App. Cas. 381; 49 L. J. P. C. 68; 42 L. T. 414, P. C.

159. *Add. Annotation*:—*Reid. A.-G. for Ontario v. Reciprocal Insurers*, [1924] A. C. 328.

161. *Add. Citations*:—[1924] A. C. 203; 93 L. J. P. C. 33; 130 L. T. 227.

162a. — Legislation incidentally affecting.]—A.-G. FOR ONTARIO *v. RECIPROCAL INSURERS*, No. 108a, *ante*.

164. *Add. Annotation*:—*Distd. Lord's Day Alliance*

of Canada *v. A.-G. for Manitoba*, [1925] A. C. 384.

164a. —.]—Lord's Day Act (R. S. Can., 1906, c. 153) made it a punishable offence to run or conduct Sunday excursions "except as provided by any provincial Act or law now or hereafter in force." An Act passed by the legislature of Manitoba in 1923 to amend Lord's Day Act of that province, enacted that it should be lawful to run or conduct Sunday excursions to resorts within the province. Sunday excursions were not unlawful by the laws of England existing in 1870, which were part of the law of Manitoba by 51 Vict. c. 33 (Dom.):—*Held*: the Manitoba statute of 1923 being merely permissive, & not dealing with a matter brought within the criminal law, was competent to the provincial legislature under British North America Act, 1867 (c. 3), s. 92, heads 13, 16; & that being so, the Act was a provincial Act "now or hereafter in force" within Lord's Day Act of Canada; it was unnecessary to consider whether the Act of 1923 could be justified as Dominion legislation by delegation or reference.—*LORD'S DAY ALLIANCE OF CANADA v. A.-G. FOR MANITOBA*, [1925] A. C. 384; 94 L. J. P. C. 84; 132 L. T. 678; 41 T. L. R. 225, P. C.

146 xii. —.]—Govt. Liquor Act, 1921 (c. 30), which vests in a Board of Control the exclusive sale of intoxicating liquor within the province, is *intra vires*.—*R. v. FERGUSON* (B.C.), [1922] 2 W. W. R. 473; 69 D. L. R. 153; 37 Can. Crim. Cas. 89.—CAN.

146 xiii. —.]—The imposition by Govt. Liquor Act, 1921 (c. 30), s. 55, of a tax upon any liquor not purchased from a vendor at a govt. liquor store, is *intra vires* the provincial legislature.—*LITTLE v. A.-G. FOR BRITISH COLUMBIA* (B.C.), [1922] 2 W. W. R. 359; 65 D. L. R. 297; 37 Can. Crim. Cas. 189; *affg.*, 60 D. L. R. 335; 30 B. C. R. 343.—CAN.

146 xiv. —.]—Saskatchewan Temperance Act, R. S. S., 1920 (c. 194), s. 11 (2), requiring every brewer, distiller, & liquor exporter to make certain returns to the Commission is *intra vires* the provincial legislature, even in respect to a liquor export co. incorporated by the Dominion Parliament.—*R. v. REGINA WINE & SPIRIT, LTD., R. v. PRAIRIE DRUG CO., LTD.*, [1922] 1 W. W. R. 195; 65 D. L. R. 268; 36 Can. Crim. Cas. 348; 15 Sask. L. R. 100.—CAN.

t (p. 438) i. —.]—*KREEFE v. MCLENNAN* (1876), 2 R. & C. 5; 2 Cart. 400.—CAN.

o (p. 438). For "— Prohibition Act—Confiscatory provisions" read "— Confiscatory provisions—Prohibition Act."

o (p. 438) i. —.]—*Act of 1886* (c. 3), s. 55.—*Held*: the right to impose forfeiture under the above sect. of an offender's goods as punishment was within the powers of the provincial legislature.—*R. v. GARDNER* (1892), 25 N. S. R. (13 R. & G.) 48.—CAN.

d (p. 438) i. —.]—*Alberta Liquor Control Act*, 1924 (c. 14).—*Held*: sect. 113 (3) of the above Act was *ultra vires*.—*R. v. FORHAN* (Alta.), [1927] 1 W. W. R. 689; 48 Can. Crim. Cas.

f (p. 438) i. —.]—*Restrictions on export*.—The requirements in Saskatchewan Temperance Act, that all warehouses in which liquor is kept for export be located in cities having a population of 10,000, is *intra vires* CANADA DRUGS, LTD. *v.*

SASKATCHEWAN (SASK.), [1922] 2 W. W. R. 1089; 67 D. L. R. 3; 38 Can. Crim. Cas. 69; 15 Sask. L. R. 508; *varying*, 66 D. L. R. 815; 37 Can. Crim. Cas. 367.—CAN.

k (p. 438) i. —.]—*Creation of criminal offences*.—Saskatchewan Temperance Act, R. S. S., 1920 (c. 194), s. 68 (2), as amended, is *ultra vires* the provincial legislature, in so far as it professes to set up certain acts as a criminal offence, namely, the obstruction of the "officer" mentioned in sect. 2 (7a) in the execution of his duties under the Act.—*R. (WILBUR) v. MAGEE* (SASK.), [1923] 3 W. W. R. 55.—CAN.

k (p. 438) ii. —.]—*Imposition & recovery of fines & penalties—Valid*.—*R. v. McMILLAN* (1873), 2 Pug. 110; 2 Cart. 489.—CAN.

k (p. 438) iii. *S. P. R. v. RONAN* (1891), 23 N. S. R. 421.—CAN.

k (p. 438) iv. —.]—*Amendment of Temperance Act, 1884 (c. 18)—Validity*.—*COOKEY v. BROME MUNICIPALITY* (1877), 2 Cart. 385.—CAN.

151 i. *Barristers—Provision authorising remuneration by share of proceeds of action*.—It is *ultra vires* a provincial legislature to alter the law relating to champerty, authorising barristers & solrs. within the province to contract with clients for payment for professional services by way of a share of the proceeds of actions in lieu of the usual costs.—*TAYLOR v. MACKINTOSH*, [1924] 3 D. L. R. 926; 3 W. W. R. 97; 34 B. C. R. 56.—CAN.

151 ii. *S. P. R. Questions Determination Act, Re Legal Professions Act* (B. C.), [1927] 4 D. L. R. 195; [1927] 2 W. W. R. 808; 48 Can. Crim. Cas. 278.—CAN.

o (p. 439) i. —.]—It is not competent to the legislature of the Province of Alberta to enact legislation authorising the construction & operation of railways in such a manner as to interfere with the physical structure or with the operation of railways subject to the jurisdiction of the Parliament of Canada.—*Re ALBERTA LEGISLATION* (1913), 24 W. 630; 4 W. W. R. 608; 48 D. L. R. 150; 16 Ry. Cas. 1.—CAN.

o (p. 439) ii. —.]—*Nova Scotia Railway Arrangement Act—Valid*.—*Re WINDSOR & ANNAPOLIS RY. CO.* (1883), 4 R. & G. 312; 3 Cart. 387.—CAN.

q (p. 440) i. —.]—*Chinese Regulation Act, 1884, s. 14—Ultra vires*.—*R. v. GOLD COMR. OF VICTORIA DISTRICT* (1886), 1 B. C. R. pt. 2, 260.—CAN.

164 v. —.]—*Held*: Lord's Day Ordinance, s. 3, was *intra vires*.—*FALLIS v. DALTHASER* (1912), 21 W. L. R. 171; 2 W. W. R. 132; 4 D. L. R. 705; 4 Alta. L. R. 361.—CAN.

165 vi. —.]—*KERLEY v. LONDON & LAKE ERIE RY. & TRANSPORTATION CO.* (1913), 28 O. L. R. 606; 4 O. W. N. 1234.—CAN.

165 vii. —.]—*Restrictions on sale of shares*.—Sale of Shares Act, R. S. S. (1920), s. 4, in so far as it purports to apply to the sale of its own shares by a Dominion co., is *ultra vires* the provincial legislature.—*LUKEY & A.-G. FOR SASKATCHEWAN v. RUTHENIAN FARMERS ELEVATOR CO., LTD.*, [1924] 1 D. L. R. 706; [1924] S. C. R. 56; 1 W. W. R. 577.—CAN.

165 viii. —.]—Sale of Securities Act, 1923 (N. B.), s. 4, so far as it purports to apply to sales of shares of Dominion cos., is *ultra vires* the provincial legislature.—*R. v. HENDERSON, Ex p. QUEEN* (1924), 51 N. B. R. 346.—CAN.

165 ix. —.]—Sale of Shares Act, 1924 (c. 175) (Man.), & Municipal & Public Utility Board Act, 1926 (c. 33) (Man.), so far as they purport to apply to the sale of its own shares by a Dominion co.:—*Held*: *ultra vires*.—*Re SALE OF SHARES ACT & MUNICIPAL & PUBLIC UTILITY BOARD ACT*, [1927] 2 W. W. R. 480; 36 Man. L. R. 583.—CAN.

f (p. 442) i. —.]—*Held*: the Dominion Parliament had power under B. N. A. Act, 1871, to enact Alberta Act, s. 17 with its protective provisions restricting full legislative power as to education, notwithstanding that those provisions are a modification of B. N. A. Act, 1867, s. 93, & School Attendance Act does not violate any of the protective provisions preserved by Alberta Act, s. 17.—*R. (BROOKS)* [1923] 1 D. L. R. 304;

168. *Add. Annotations*:—*Refd.* A.-G. for Ontario v. Reciprocal Insurers, [1924] A. C. 328; Caron v. R., [1924] A. C. 999.

170a. ——— *Legislation incidentally affecting.*—A.-G. FOR ONTARIO v. RECIPROCAL INSURERS, No. 108a, *ante*.

177a. ——— *Separate schools—Roman Catholic separate schools—Courses of study & grades of education in—Right to share in legislative grants.*—ROMAN CATHOLIC SEPARATE SCHOOL TRUSTEES v. R., [1928] A. C. 363; 97 L. J. P. C. 69; 139 L. T. 493; 44 T. L. R. 611, P. C.

177b. ——— *Act affecting Protestant or Roman Catholic minority—Appeal to Governor-General in Council.*—BROPHY v. A.-G. OF MANITOBA, [1895] A. C. 202; 64 L. J. P. C. 70; 72 L. T. 163; 11 T. L. R. 198; 11 R. 385, P. C.

*Annotations*:—*Consd.* Hirsch v. Protestant School Comrs. of Montreal, [1928] A. C. 200; Roman Catholic Separate School Trustees v. R., [1928] A. C. 363.

177c. ——— ——— ———.]—ROMAN CATHOLIC SEPARATE SCHOOL TRUSTEES v. R., [1928]

Can. Crim. Cas. 207; 19 Alta. L. R. 12; [1923] 1 W. W. R. 1.—CAN.

q (p. 442) i. ———.]—A local legislature can fix the number of grand jurors who shall compose the panel, but not the number of grand jurors necessary to find a good bill of indictment.—R. v. COX (1898), 31 N. S. R. 311.—CAN.

a (p. 442) i. ——— *Remuneration of judges.*—Having regard to B. N. A. Act, 1867, ss. 92 (14), 96–101, the matters dealt with in Judges Act, R. S. C. 1906, s. 34 are within the exclusive authority of the provincial legislatures in so far as the judges of the provincial cts. are concerned.—*Re JUDGES ACT*, [1923] 2 D. L. R. 604; 52 O. L. R. 105.—CAN.

a (p. 442) ii. ——— *Appointment of commissioner with judicial powers.*—MCLEAN GOLD MINES, LTD. v. A.-G., [1923] 1 D. L. R. 10; 54 O. L. R. 573.—CAN.

a (p. 442) iii. ——— *Alteration of constitution of court.*—An amendment altering the quorum of the Ct. of Appeal, making it unnecessary for the judge ordinary to sit as a member of the ct.:—*Held*: *intra vires*.—KING v. KING (1904), 37 N. S. R. 204.—CAN.

a (p. 442) iv. ——— *Power to restrict bringing of action.*—A local legislature can enact that no civil action for damages shall be brought against any particular person or persons, including members of the legislature.—THOMAS v. HALIBURTON (1893), 26 N. S. R. 55.—CAN.

a (p. 442) v. ——— *Payment to debt by instalments.*—An Act authorising the making of a judge's order for such a payment:—*Held*: *intra vires*.—GOULD v. RYAN (1894), 26 N. S. R. 461.—CAN.

a (p. 442) vi. ——— *Imprisonment of fraudulent judgment debtors—Valid.*—*Ex p.* ELLIS (1878), 1 P. & B. 593; 2 Cart. 527.—CAN.

t (p. 443) i. ———.]—38 Vict. c. 88:—*Held*: not *ultra vires* as being an interference with trade & commerce.—*Ex p.* FAIRBAIRN (1878), 18 N. B. R. (2 P. & B.) 4.—CAN.

t (p. 443) ii. ———.]—JONAS v. GILBERT (1881), 5 S. C. R. 356.—CAN.

t (p. 443) iii. S. P. JONAS v. MARSHALL (1880), 20 N. B. R. 81.—CAN.

a (p. 443) i. ———.]—FORTIER v. LAMBE (1895), 25 S. C. R. 422.—CAN.

a (p. 443) ii. ——— *Company incorporated abroad.*—HALIFAX CITY v. JONES (1896), 28 N. S. R. 452.—CAN.

n (p. 443) i. ——— *Vancouver Island Settlers Rights Act, 1904—Intra vires.*

—MCGREGOR v. ESQUIMALT & NANAIMO RY. CO., [1907] A. C. 462.—CAN.

o (p. 443) i. ———.]—CANADIAN PACIFIC RY. CO. v. OTTAWA FIRE INSURANCE CO. (1907), 39 S. C. R. 405.—CAN.

o (p. 443) ii. ——— *Works wholly within province.*—R. v. MOHR (1881), 7 Q. L. R. 183; 2 Cart. 257.—CAN.

cc p. 443) i. ——— *Penalties for fraudulent conveyances.*—Stat. 13 Eliz. c. 5, s. 3, is not in force in Alberta. 13 & 14 Geo. v, c. 5 (Alta.), s. 46, declaring this stat. to have been in force, could not have the effect of introducing s. 3. The Federal Parliament having made the commission of fraudulent acts a crime, the subject-matter is criminal law & beyond the competence of the provincial legislature.—CONNORS v. EGLI, [1924] 2 D. L. R. 59; 1 W. W. R. 1050 20 Alta. L. R. 205.—CAN.

cc (p. 443) ii. ——— *Collection of freight & wharfage & warehouse charges—Ultra vires.*—EASTERN DEVELOPMENT CO. v. MCKAY (1888), 20 N. S. R. (8 R. & G.) 325.—CAN.

d (p. 444) i. ———.]—MURNE v. MORRISON (1882), 1 B. C. R. pt. 2, 120.—CAN.

(p. 444) i. ——— *Jurisdiction—Power to define.*—The power given to provincial Govts. to legislate regarding the constitution, maintenance, & organisation of provincial cts. includes the power to define the jurisdiction of such cts. territorially as well as in other respects, & also to define the jurisdiction of the judges who constitute such acts.—*Re COUNTY COURTS OF BRITISH COLUMBIA* (1892), 21 S. C. R. 446; 5 Cart. 490.—CAN.

l (p. 445) i. ——— *No power to alter or amend.*—*Held*: Revised Statutes (3rd series), c. 159, being part of the criminal law of Canada, the legislature of Nova Scotia had no power to alter or amend any of its provisions.—R. v. HALIFAX ELECTRIC TRAMWAY CO. (1898), 30 N. S. R. 499.—CAN.

m (p. 445) i. ——— *What are—Not Act to prevent fraud against cheese factories.*—R. v. WASON (1890), 17 A. R. 221; 4 Cart. 578.—CAN.

m (p. 445) ii. ——— *Not Act respecting appeals on prosecutions to enforce penalties & punish offences under provincial Acts.*—R. v. WASON (1890), 17 A. R. 221; 4 Cart. 578.—CAN.

a (p. 445) i. ——— *Powers of medical council.*—Medical Profession Act, R. S. S., 1920 (c. 135), s. 40, is not

A. C. 363; 97 L. J. P. C. 69; 139 L. T. 493; 44 T. L. R. 611, P. C.

177d. *Building & public health—Application to denominational schools.*—British North America Act, 1867 (c. 3), s. 93, does not prevent the provisions of Municipal Act of Ontario with reference to building, & other matters relating to the health & convenience of the population, from applying to denominational schools.—TORONTO CORPN. v. ROMAN CATHOLIC SEPARATE SCHOOLS TRUSTEES, [1926] A. C. 81; 95 L. J. P. C. 12; 133 L. T. 779; 41 T. L. R. 658, P. C.

178. *Add. Annotation*:—*Refd.* Nadan v. R., [1926] A. C. 482.

178a. *Property & civil rights—Ultimate Heir Act, R. S. A., 1922 (c. 144)—Ultra vires.*—A.-G. FOR ALBERTA v. A.-G. FOR CANADA, No. 98b, *ante*.

179a. *Trade disputes.*—Industrial Disputes Investigation Act, 1907, of Canada, provided that upon a dispute occurring between employers & employees in any of a large

*ultra vires* on the ground that it infringes on the powers of the Governor-General under B. N. A. Act, 1867, s. 96.—HUNT v. COLLEGE OF PHYSICIANS & SURGEONS OF SASKATCHEWAN, [1925] 4 D. L. R. 834; [1925] 3 W. W. R. 758.—CAN.

d (p. 445) i. ———.]—A provincial enactment altering the law relating to champerty, by authorising solrs. within the province to contract with clients for payment for professional services by way of a share of the proceeds of actions in lieu of the usual costs, is an invasion of the legislative domain of the Dominion Parliament relative to criminal law.—TAYLOR v. MACKINTOSH, [1924] 3 D. L. R. 926; 3 W. W. R. 97; 34 B. C. R. 56.—CAN.

178ai. *Property & civil rights—Closing disorderly house.*—10 Geo. V., c. 81 (Q.), authorising a judge to order the closing of a disorderly house, is *intra vires* the provincial legislature, as it deals with matter of property & civil rights by providing for the suppression of a nuisance & not with criminal law by aiming at the punishment of a crime.—BEDARD v. DAWSON & A.-G. FOR QUEBEC, [1923] 4 D. L. R. 293; [1923] S. C. R. 681; 3 W. W. R. 412.—CAN.

sb. *Labour in industrial undertakings.*—The matter of labour in industrial undertakings in Canada is primarily within the competence of provincial legislatures, but Parliament can legislate as to labour in territories not yet organised into, or forming part of, a province, & as to labour of servants of the Dominion, if these are within the scope of the draft convention adopted by the International Labour Conference of the League of Nations in 1919.—*Re TREATY OF VERSAILLES, Re HOURS OF LABOUR*, [1925] 3 D. L. R. 1114; [1925] S. C. R. 505.—CAN.

sk. *Marriage.*—Marriage Act, R. S. O., 1914 (c. 148), ss. 15 & 36, as amended by Marriage Law Amendment Act, 1919 (c. 35), ss. 2 & 4, are within the powers of the provincial legislature.—STEWART v. STEWART, [1925] 1 D. L. R. 1; 56 O. L. R. 57.—CAN.

sm. ———.]—Marriage Act, R. S. O., 1914 (c. 148), & its amendments, are *intra vires* the provincial legislature, in so far as they provide for dissolution or nullity of a marriage.—DOYLE v. DEADY, [1925] 3 D. L. R. 317; 57 O. L. R. 44.—CAN.

sp. *Wide Tire Act, 1889 (c. 22)—Intra vires.*—R. v. HOWE, McNEIL v. HOWE (1890), 2 B. C. R. 36.—CAN.



number of important industries in Canada the Minister for Labour for the Dominion might appoint a board of investigation & conciliation. The board was to make investigations, with power to summon witnesses & inspect documents & premises, & was to try to bring about a settlement; if no settlement resulted, they were to make a report with recommendations as to fair terms, but the report was not to be binding upon the parties. After a reference to a board, a lock-out or strike was to be unlawful & subject to penalties:—*Held*: the Act was not within the competence of the Parliament of Canada under British North America Act, 1867 (c. 3); it clearly was in relation to property & civil rights in the provinces, a subject reserved to the provincial legislatures by sect. 92 (13), & was not within any of the overriding powers of the Dominion Legislature specifically set out in sect. 91; the Act could not be justified under the general power in sect. 91 to make laws "for the peace, order, & good government of Canada," as it was not established that there existed in the matter any emergency which put the national life of Canada in anticipated peril.—*TORONTO ELECTRIC COMRS. v. SNIDER*, [1925]

A. C. 396; 94 L. J. P. C. 116; 132 L. T. 738; 41 T. L. R. 238; 69 Sol. Jo. 325, P. C.

181a. Appointment of judges.]—Judicature Act, 1924, of Ontario, s. 2 (2—6), & s. 4 (1) & (2), are *ultra vires* the legislature of the province, since their effect is to authorise the Lieutenant-Governor of the province to assign, that is to say to appoint, certain judges of the High Ct. Div. of the Supreme Ct. to be judges of the Appellate Div. of that ct., & also to designate, that is to say to appoint, certain judges to hold the offices of Chief Justice of Ontario & Chief Justice of the High Ct. Div., & consequently the provisions are inconsistent with British North America Act, 1867 (c. 3), s. 96, under which the powers of appointment referred to are given to the Governor-General of Canada. Sect. 4 (3), however, which provided that upon a vacancy occurring among the judges of the Appellate Div. or of the High Ct. Div. before the provisions of the Act came fully into force, the Divs. were to consist of the remaining judges, was not open to objection.—*A.-G. FOR ONTARIO v. A.-G. FOR CANADA*, [1925] A. C. 750; 94 L. J. P. C. 132; 133 L. T. 434, P. C.

PART II. SECT. 3, SUB-SECT. 4.—  
A. (c).

s i. —.—.—.—.—.]—*Held*: 37 Vict. c. 32, was *ultra vires*.—*SEVERN v. R.* (1878), 2 S. C. R. 70; 1 Cart. 414.—CAN.

a i. —.—.—.—.—.]—*Liquor Act*, 1902, s. 2.]—*Held*: although unusual, it was well within the powers of the legislature.—*R. v. WALSH* (1903), 23 C. L. T. 186; 5 O. L. R. 527; 2 O. W. R. 222; 3 O. W. R. 31.—CAN.

b i. —.—.—.—.—.]—*Right to appeal to Supreme Court of Canada—Restrictions on—Ultra vires.*—*CLARKSON v. RYAN* (1890), 17 S. C. R. 251; 4 Cart. 439.—CAN.

d i. —.—.—.—.—.]—*Betting Information Act*, 1923 (c. 5)—*Ultra vires.*—*R. v. LIGHTMAN* (1923), 42 Can. Crim. Cas. 1; 54 O. L. R. 502.—CAN.

l i. —.—.—.—.—.]—*Education—As to Jews—3 Edw. 7, c. 16—How far ultra vires.*—*HIRSCH v. MONTREAL PROTESTANT BOARD SCHOOL COMRS.*, [1926] 2 D. L. R. 8; [1926] S. C. R. 246; *varied* [1928] A. C. 200, P. C.—CAN.

l ii. —.—.—.—.—.]—*Succession Duties Act*, 1914 (c. 10)—*Valid.*—*BARTHE v. SHARPLES* (1918), Q. R. 55 S. C. 301.—CAN.

PART II. SECT. 3, SUB-SECT. 4.—  
B. (a).

o (p. 447) i. —.—.—.—.]—*Customs Tariff (Industries Preservation) Act*, 1921–1922, deals only with the imposition of taxation, & does not infringe the first paragraph of sect. 55 of the Constitution. Customs Tariff (Industries Preservation) Act, 1921–1922, s. 8, deals with duties of customs only, & does not infringe the second paragraph of sect. 55 of the Constitution. The tax imposed by sect. 8 is imposed by the Commonwealth Parliament, & is not an infringement of sect. 90 of the Constitution.—*NOTT BROTHERS & CO., LTD. v. BARKLEY* (1925), 36 C. L. R. 20; 31 Argus L. R. 256.—AUS.

o (p. 447) ii. —.—.—.—.]—*Held*: neither Income Tax Assessment Act, 1922–1924, nor Income Tax Assessment Act, 1922–1925, nor either of Income Tax Acts which incorporated those Assessment Acts, was obnoxious to any of the provisions of sect. 55 of the Constitution.—*FEDERAL TAXATION COMR. v. MUNRO, BRITISH IMPERIAL OIL CO., LTD. v. FEDERAL TAXATION COMR.* (1926), 38 C. L. R. 153.—AUS.

o (p. 447) iii. —.—.—.—.]—*Held*: War-time Profits Tax Assessment Act, 1917–1918, s. 14 (5), was not obnoxious to sect. 55 of the Constitution.—*FEDERAL TAXATION COMR. v. HIPSLEYS, LTD.* (1926), 38 C. L. R. 219.—AUS.

e (p. 447) i. —.—.—.—.]—*Commonwealth Shipping Act*, 1923—*Validity.*—*COMMONWEALTH & A.-G. FOR COMMONWEALTH v. AUSTRALIAN COMMONWEALTH SHIPPING BOARD* (1927), 39 C. L. R. 1; [1927] Argus L. R. 61.—AUS.

h (p. 447) i. —.—.—.—.]—*Judiciary Act*, 1903–1920, s. 39 (2) (a) [as interpreted in No. 605 i, *post*], is a valid exercise of the power conferred by sect. 77 (iii.) of the Constitution.—*LIMERICK S.S. CO. v. COMMONWEALTH OF AUSTRALIA* (1924), 25 S. R. N. S. W. 293; 35 C. L. R. 69; 31 Argus L. R. 153.—AUS.

h (p. 447) ii. S. P. THE COMMONWEALTH v. KREGLINGER & FERNAU, LTD. & BARDSLEY (1926), 37 C. L. R. 393; [1926] V. L. R. 331; [1926] Argus L. R. 161.—AUS.

o (p. 448) i. —.—.—.—.]—*Election for Senate.*—*Held*: Commonwealth Electoral Act, 1918–1925, s. 128A (12), was a valid exercise of the power conferred by sect. 9 of the Constitution upon the Commonwealth Parliament to make laws "prescribing the method of choosing senators."—*JUDD v. McKEON* (1926), 38 C. L. R. 380.—AUS.

st. Removal of proceedings to High Court.]—*Judiciary Act*, 1903–1920, s. 40, is a valid exercise of the powers conferred by sects. 76 & 77 of the Constitution.—*Re YATES, Ex p. WALSH, Re YATES, Ex p. JOHNSON* (1925), 37 C. L. R. 36; [1926] Argus L. R. 46.—AUS.

sv. —.—.—.—.]—*Judiciary Act*, 1903–1920, s. 40A, is a valid exercise of the power conferred by sects. 77 (ii) & 51 (xxxix) of the Constitution.—*PIRRIE v. McFARLANE* (1925), 36 C. L. R. 170.—AUS.

sw. Trading by Commonwealth—Through agents—War Precautions (Wool) Regulations.]—During the war & after the making of the above regulations, the Executive Govt. of the Commonwealth entered into agreements with a co., engaged in the manufacture & sale of wool tops. Each of these agreements was either an agree-

ment to give consent to a sale of wool tops by the co. in return for a share of the profits, called by the parties a "licence fee," or an agreement that the business of manufacturing wool tops should be carried on by the co. as agent in consideration of an annual sum from the Commonwealth, or a combination of both these agreements:—*Held*: apart from any authority conferred by an Act of Parliament of the Commonwealth or by regulations thereunder, the Executive Govt. had no power to make or ratify any of the agreements.—*COMMONWEALTH & CENTRAL WOOL COMMITTEE v. COLONIAL COMBING, SPINNING & WEAVING CO., LTD.* (1922), 31 C. L. R. 421.—AUS.

sy. Power to confer judicial powers.]—The powers which Income Tax Assessment Act, 1922–1923, by ss. 44, 50 & 51, purports to confer upon a Board of Appeal created under the Act are part of the judicial power of the Commonwealth, which under sect. 71 of the Constitution can only be vested in the High Ct. or a federal ct., & a Board of Appeal not being such a ct., the conferring of those powers is *ultra vires* the Commonwealth Parliament.—*BRITISH IMPERIAL OIL CO., LTD. v. FEDERAL COMR. OF TAXATION* (1925), 35 C. L. R. 422; 31 Argus L. R. 129.—AUS.

sz. Power to give appellate jurisdiction to High Court—Appeal from non-federal court.]—The Commonwealth Parliament may confer upon the High Ct. jurisdiction to entertain an appeal from a ct. established by the Parliament in a territory, notwithstanding that the ct. so established is not a federal ct. within sect. 71 of the Constitution; & jurisdiction to entertain an appeal from the Supreme Ct. of the Northern Territory is lawfully conferred upon the High Ct. by Supreme Ct. Ordinance, 1911–1922, s. 21, & Northern Territory (Administration) Act, 1910, s. 13.—*PORTER v. R., Ex p. CHIN MAN YEE* (1926), 37 C. L. R. 433.—AUS.

sa. Discovery—Against State.]—*Judiciary Act*, 1903–1920, s. 64, in so far as it gives pltf., resident of one State, in an action against another State, the right to obtain discovery of documents from, & to administer interrogatories to, defts., is within the legislative power of the Commonwealth Parliament.—*GRIFFIN v. SOUTH AUSTRALIA*



**184a.** Power to compel British company to deduct income tax from dividends on shares situate in England.]—Pltfs., a British co., held shares in deft. co., which was a British co., but which had its head office & board of directors in Australia, though it had a London committee for registering transfers of shares & issuing certificates. Deft. co. having declared a dividend, the Australian income tax authorities, acting under Australian Income Tax Acts, required deft. co. to deduct the Australian income tax from the dividend due to pltf. co. In an action claiming the amount so deducted:—*Held*: the debt created by the declaration of a dividend was situate in England, & the Commonwealth legislature had no power to impose taxation on pltf. co. in respect of such debt, & the action succeeded.—*LONDON & SOUTH AMERICAN INVESTMENT TRUST, LTD. v. BRITISH TOBACCO CO. (AUSTRALIA), LTD.*, [1927] 1 Ch. 107; 96 L. J. Ch. 58; 70 Sol. Jo. 1024; *sub nom. PASS v. BRITISH TOBACCO CO. (AUSTRALIA), LTD.* (1926), 42 T. L. R. 771.

**199. Add. Annotation:—***Reid. Bhagchand Dag-*

(STATE) (1924), 35 C. L. R. 200; 31 Argus L. R. 81.—AUS.

*sb. Immigration.*]—Immigration Act, 1901–1925, s. 8AA, is a valid exercise of the power conferred by sect. 51 (xxvii) of the Constitution.—*Re YATES, Ex p. WALSH, Re YATES, Ex p. JOHNSON* (1925), 37 C. L. R. 36; [1926] Argus L. R. 46.—AUS.

*sc. —.*]—Immigration Act, 1901–1925, s. 5 (3) (3A) (3B):—*Held*: valid.—*WILLIAMSON v. AH ON* (1927), 39 C. L. R. 95; [1927] Argus L. R. 13.—AUS.

*sd. Power to grant financial aid to States.*]—*Held*: Federal Aid Roads Acts, 1926, was a valid exercise of the power conferred upon the Commonwealth Parliament by sect. 96 of the Constitution, to grant financial assistance to any State on such terms & conditions as the Parliament might think fit.—*STATE OF VICTORIA v. COMMONWEALTH* (1926), 38 C. L. R.

**PART II. SECT. 3, SUB-SECT. 4.—B. (b).**

*r i. — Power to impose customs & excise duties.*]—*Held*: Taxation (Motor Spirit Vendors) Act, 1925 (S. A.), was invalid.—*COMMONWEALTH & COMMONWEALTH OIL REFINERIES, LTD. v. STATE OF SOUTH AUSTRALIA, LTD.* (1926), 38 C. L. R. 408, [1927] Argus L. R. 40.—AUS.

*r ii. —.*]—*Held*: Finance (Newspapers Taxation) Act, 1926 (N. S. W.), & Finance (Taxation Management) Act, 1926 (N. S. W.), ss. 2, 3, 5, 6 & 7, were invalid.—*FAIRFAX (JOHN) & SON, LTD. & SMITH'S NEWSPAPERS, LTD. v. NEW SOUTH WALES STATE* (1927), 39 C. L. R. 139; [1927] Argus L. R. 87.—AUS.

*si. Power to alter Federal award.*]—When an award has been made by the Commonwealth Ct. of Conciliation & Arb'n. pursuant to Commonwealth Conciliation & Arb'n. Act, 1904–1921, the Parliament of a State cannot alter the terms of the award, or confer or impose on the parties to it rights or obligations which are inconsistent with such terms.—*CLYDE ENGINEERING CO., LTD. v. COWBURN, METTERS, LTD. & LEVER BROTHERS, LTD. v. PICKARD* (1926), 37 C. L. R. 466; [1926] Argus L. R. 214.—AUS.

**PART II. SECT. 3, SUB-SECT. 4.—C.**

*sj. Samoa Act, 1921—Valid.*]—*TAGALON v. INSPECTOR OF POLICE, FUATAGA v. INSPECTOR OF POLICE*, [1927] N. Z. L. R. 883.—N. Z.

*dusa Gujrathi v. Secretary of State for India in Council* (1927), 43 T. L. R. 617.

**200a. Appointment — What constitutes.] — A.-G. FOR ONTARIO v. A.-G. FOR CANADA, No. 181a, ante.**

**200b. — Rights of existing judge—On constitution of new court.]—**Judicature Act, 1919, of Alberta, s. 6, requires for its working the appointment of two Chief Justices, one of the Appellate Div., & the other of the Trial Div., of the Supreme Ct., & the fact that before the passing of the Act the Chief Justice was Chief Justice of the Supreme Ct. did not necessarily entitle him to be, or to be appointed, Chief Justice of the Appellate Div., & his non-appointment to that office did not constitute an infringement of any legal right to which he was entitled.—*SCOTT v. A.-G. FOR CANADA* (1923), 40 T. L. R. 6, P. C.

**201. Add. Annotation:—***Mentd. Re Letters Patent No. 139,207; Re Carbonit Akt.*, [1924] 2 Ch. 58.

**208. Add. Annotation:—***Reid. Palmer v. Crone*, [1927] 1 K. B. 804.

**PART II. SECT. 3, SUB-SECT. 4.—D.**

*hi. — Distribution of dividends.*]—The tax imposed upon financial cos. by Transvaal Provincial Ordinance 8 of 1923, s. 3, of one shilling for each pound of dividend distributed after a certain date, is a direct tax *intra vires* the Provincial Council under South Africa Act, s. 85 (1).—*JOHANNESBURG CONSOLIDATED INVESTMENT CO., LTD. v. TRANSVAAL PROVINCIAL ADMINISTRATION*, [1925] App. D. 477.—S. AF.

*h ii. — Receipt of premiums.*]—The tax imposed by Tax Ordinance of 1923 (Transvaal) upon insurance cos., on premiums received, is a direct tax *intra vires* the Provincial Council under South Africa Act, s. 85 (1).—*INLAND REVENUE COMR. v. ROYAL EXCHANGE ASSURANCE CO.*, [1925] App. D. 223.—S. AF.

*h iii. — Control of trading licences.*]—*Held*: Transvaal Provincial Ordinance 12 of 1926 was *ultra vires* the Provincial Council.—*RELOOMAL v. RECEIVER OF REVENUE*, [1927] App. D. 401.—S. AF.

*ki. — Proclamation of local areas.*]—Natal Provincial Ordinance 7 of 1923, which confers on the Administrator power to proclaim local areas & provides for the election of committees to function therein, such committees being established with the sole object of carrying out Public Health Act 36 of 1919, & not of creating any form of local self-government, is *ultra vires* the Provisional Council under South Africa Act, s. 85 (6).—*ISIPINGO HEALTH COMMITTEE v. JADWAT*, [1926] App. D. 113.—S. AF.

*k ii. — Municipal franchise.*]—Ord. 19, 1924, s. 13 (1):—*Held*: *intra vires*.—*ABRAHAM v. DURBAN CORPN.* (1926), 47 N. L. R. 356.—S. AF.

*k iii. — Enrolment of burgesses.*]—*Held*: Natal Ordinance 19 of 1924, s. 13 (1), was *intra vires* the Provincial Council.—*ABRAHAM v. DURBAN CORPN.*, [1927] App. D. 444.—S. AF.

*sk. Rhodesia—Taxation of non-residents carrying on business within territory.*]—Under the power conferred upon the legislature of Southern Rhodesia by the Order in Council of 1898, s. 35, it is *intra vires* for that legislature to levy a tax upon income accruing to a non-resident from a source not within the territory, where such non-resident carries on business within the territory.—*RHODESIA RYS. v. COMR. OF TAXES*, [1925] App. D.

*sl. Transkeian Territories—Immigration of Asiatics.*]—*Held*: Proclamation 264 of 1904 was *ultra vires*.—*R. v. BARMANIA*, [1927] App. D. 537.—S. AF.

**PART II. SECT. 3, SUB-SECT. 4.—E.**

*sm. Crown grants.*]—Crown Grants Act, XV. of 1895, which enacts that grants by the Crown of estates unknown to the law are not invalid, is not *ultra vires* the Indian legislature.—*SECRETARY OF STATE FOR INDIA v. RAJA PARTHASARATHY APPA RAO* (1926), 1 L. R. 49 Mad. 349.—IND.

*sp. Taxation.*]—*Held*: Income Tax Act, s. 67, was not *ultra vires*.—*DR. R. N. SINGHA v. SECRETARY OF STATE FOR INDIA IN COUNCIL* (1927), 1 L. R. 5 Ran. 825.—IND.

**PART II. SECT. 4, SUB-SECT. 1.—A.**

*oi. — Whether presumed—Commissioner with judicial powers.*]—To appoint a comr. under Mining Act (Ont.), s. 123, & then invest him with powers exercisable by a superior ct., as that term is to be understood in B. N. A. Act, is to enable the provincial authority in effect to appoint a judge of a superior ct., which is beyond its power; & it could not be presumed that the Governor-General had given the provincial appointee a patent designating him a judge of a superior ct.—*Re MCLEAN GOLD MINES, LTD. v. A.-G.*, [1923] 1 D. L. R. 10; 54 O. L. R. 573.—CAN.

*st. Remuneration — Restrictions on.*]—*Held*: Judges Act, R. S. C. 1906, s. 34, has no application to the remuneration of a judge whose appointment to perform the duty or service was made before the enactment of that sect.—*Re JUDGES ACT*, [1923] 2 D. L. R. 604; 52 O. L. R. 105.—CAN.

**PART II. SECT. 4, SUB-SECT. 2.—A.**

*sw. Canada—District court.*]—Except as to matters for which particular statutory directions provide otherwise, a district ct. has jurisdiction over persons & property throughout the province & may entertain an action irrespective of where within the province the cause of action arose, the property is situated, or defts. reside.—*POLAR AERATED*

D. L. R. 403; 17 Alta. L. R. 150.—CAN.

*sz. Prince Edward Island.*]—The ct. of last resort in Prince Edward Island

**234a. Court of civil judge of Secunderabad—Limitation of action.]—**Applt. sued resps. in the ct. of the civil judge at Secunderabad to recover money lent to a deceased relative. Both the borrower & the alleged surety & their representatives were residents in Hyderabad, in which the civil judge's ct. had no jurisdiction. If the suit had been brought in the Nizam's ct.—at Hyderabad, it would have been barred by Stat. Limitations, but,

in the Secunderabad ct. foreign residence could be claimed by way of exemption from limitation. Judgment of the Resident at Hyderabad dismissing the suit affirmed, no part of the cause of action having arisen within the local limits of the ct. of the civil judge at Secunderabad.—**RAI BAHADUR BANSILAL ABIRCHAND v. GHULAN KHAN** (1925), 42 T. L. R. 5, P. C.

### Part III.—Laws of the Colonies.

**238a. Rule of English law as to parliamentary control of revenue—Application in New Zealand.]—**It is a principle of the British constitution, inherited in the constitution of New Zealand, that no money can be taken out of the Consolidated Fund into which the revenues of the State have been paid, except under a distinct authorisation by Parliament itself; a payment made without that authority is illegal & *ultra vires*, & the money, if it can be traced, can be recovered by the Govt.

An agreement made in 1913 provided (*inter alia*) that the Minister of Railways of New Zealand, representing the Crown, should pay to applts. £7,500 when applts. granted a lease to B. & Co. The making of the agreement had been authorised by an Act of 1912, which empowered the Minister, without further appropriation, to pay to applts. out of the Public Works Fund such sum as might be payable in accordance with the agreement. Owing to an alteration in the scheme to which the agreement related, the Minister did not require applts. to grant the lease, & it was not granted. Nevertheless the £7,500 was paid by the Minister of Railways to applts. in 1914 out of a vote included in the Public Works Schedule to the Appropriation Act for the year, & the Controller & Auditor-General passed the sum as being so payable :—**Held** : as the lease had not been granted the payment of the £7,500 was not authorised by the Act of 1912, & it was recoverable by the Govt. & could be deducted from a larger sum admittedly due to applts.—**AUCKLAND HARBOUR BOARD v. R.**, [1924] A. C. 318 ; 93 L. J. P. C. 126 ; 130 L. T. 621, P. C.

**Annotation :—**Reid. A.-G. v. G. S. & W. Ry. of Ireland, [1925] A. C. 754.

**241. Add. Annotation :—**Consd. Arseculeratne v. Perera, [1928] A. C. 173.

**242. Add. Annotations :—**Reid. A.-G. for Alberta

is the Supreme Ct. in that province.—**KELLY v. SULLIVAN** (1876), 1 S. C. R. 1.—CAN.

**sl. Northern Ireland — Power to make order against "neighbouring counties"—**Limited to counties in Northern Ireland.]—Under Grand Jury (Ireland) Act, 1836, s. 140, the expression "neighbouring counties" must be taken to mean "neighbouring counties" in Northern Ireland. The jurisdictions respectively set up by Govt. of Ireland Act, 1920, are mutually independent & exclusive of each other within the respective areas.—**FLANN & ORR v. FERMANAGH COUNTY COUNCIL**, [1923] 2 I. R. 54.—I

**PART II. SECT. 4, SUB-SECT.**

**228 II.**

**HATIMBHAI HASSANALLY v. DINSHAW** (1927), 1 L. L. R. 51 Bom. 516.—IND.

#### PART III. SECT. 1, SUB-SECT. 1.

**239 I. Introduction of English law by colonial statute.]—**The custom whereby, when marine insurance was effected through a broker, the broker & not the assured was liable to the underwriter for the premium, while the underwriter was directly responsible to the assured for the loss, was not so firmly established as part of the law of England in 1792 that it was to be deemed to have been introduced into Upper Canada by S. c. 1.—**O'KEEFE & LYNCH OF LTD. v. TORONTO**

**D. L. R. 477 ; O. L. CAN.**

**v. Cook**, [1926] A. C. 444 ; **Sa'vesen (or von Lorang) v. Austrian Property Administrator**, [1927] A. C. 641.

**252a. — Revenue laws.]—**When a foreign colony becomes a British colony the British laws of revenue immediately attach.—**THE FRIENDSHIP** (1814), 1 Dods. 373 ; 165 E. R. 1346.

**265a. Recognition of existing proprietary rights—Effect of proclamation.]—**After a sovereign State has acquired territory, either by consent, or by cession under treaty, or by the occupation of territory theretofore unoccupied by a recognised ruler, or otherwise, an inhabitant of the territory can enforce in the municipal cts. only such proprietary rights as the Sovereign has conferred or recognised. Even if a treaty of cession stipulates that certain inhabitants shall enjoy certain rights that gives them no right which they can so enforce. The meaning of a general statement in a proclamation that existing rights will be recognised is that the Govt. will recognise such rights as upon investigation it finds existed. The Govt. does not thereby renounce its right to recognise only such titles as it considers should be recognised, nor confer upon the municipal cts. any power to adjudicate in the matter.

Appls. brought a suit for a declaration that they were proprietors of certain lands situated within territory which in 1860 had been ceded to the British Govt. under a treaty :—**Held** : upon the facts, & applying the above principles, the suit failed.—**VAJESINGJI JORAVARSINGJI v. SECRETARY OF STATE FOR INDIA** (1924), L. R. 51 Ind. App. 357, P. C.

**271a. — — —.]—WIJEYEWARDENE v. JAYAWARDENE** (1924), 94 L. J. P. C. 44 ; 132 L. T. 161 ; 69 Sol. Jo. 793.

**290. Add. Annotation :—**Reid. Nadan v. R., [1926] A. C. 482.

**239 II. —.]—**The rule in *any* Case is not part of the law of Alberta, since it was not "applicable" within North-West Territories Act, 1884, to the Territories.—**Re SIMPSON ESTATE** (Alta.), [1927] 4 D. L. R. 817 ; [1927] 3 W. W. R. 534.—CAN.

#### PART III. SECT. 2, SUB-SECT. 1.—A.

**h. i. Mode of exclusion — Subject-matter covered by colonial legislation.]—**The provisions, relating to fraudulent & preferential assignments, of Assignments Act, 1907, repealed in 1921, re-enacted in 1922, & consolidated in Fraudulent Preferences Act, R. S. A. 1922, constituted a complete code upon the subject which had the effect of excluding Stat. 13 Eliz. c. 5, s. 8, as to a penal action.—**CONNORS v. EGLI**, [1924] 2 D. L. R. 59 ; 1 W. W. R. 1050 ; 20 Alta. L. R. 205.—CAN.



315. *Add. Annotation*:—*Mentd.* Bristol Corp'n. v. Virgin, [1928] 2 K. B. 622.

315a. — Limitation Act, 1623 (c. 16)—Extends to India.]—EAST INDIA CO. v. ODTCHURN (1850), 7 Moo. P. C. C. 85; 5 Moo. Ind. App. 43; 14 Jur. 253; 13 E. R. 811, P. C.

*Annotations*:—*Foll.* Ruckmaboye v. Mottichund (1853), 8 Moo. P. C. C. 4. *Mentd.* Reigate R. D. C. v. Sutton

District Water Co. (1908), 6 L. G. R. 936; Spencer v. Hemmerde (1922), 91 L. J. K. B. 941.

315b. S. P. RUCKMABOYE v. LULLOOBHOY MOTTICHUND (1853), 8 Moo. P. C. C. 4; 5 Moo. Ind. App. 234; 22 L. T. O. S. 203; 14 E. R. 2, P. C.

318. *Add. Annotation*:—*Refd.* Ellesmere v. Wallace (1928), 44 T. L. R. 798.

## Part V.—Extradition and Fugitive Offenders.

365. *Add. Annotation*:—*Mentd.* Re Paget, *Ex p.* Official Receiver, [1927] 2 Ch. 85.

## Part VI.—Conflict of Laws—Colonial Judgments.

366. *Add. Annotation*:—*Mentd.* Employers' Liability Assce. v. Sedgwick Collins (1926), 95 L. J. K. B. 1015.

## Part VIII.—Property in Land.

369. *Add. Annotation*:—*Mentd.* Ontario & Minnesota Power Co. v. R., [1925] A. C. 196.

371. *Add. Annotation*:—*Mentd.* Ontario & Minnesota Power Co. v. R., [1925] A. C. 196.

378a. — Foreshore & bed of navigable river—St. Lawrence.]—The King, as representing the Province of Quebec, is the sole owner of the foreshore & bed of the St. Lawrence River at the place where the Montreal harbour comrs. constructed works which necessitated the outlet of a sewer in the city of Montreal being changed. The Dominion statutes did not authorise the harbour comrs. to take possession of the lands of the Province of Quebec without compensation.—MONTREAL CORPN. v. MONTREAL HARBOUR COMRS., TETREAULT v. MONTREAL HARBOUR COMRS., A.-G. FOR QUEBEC v. A.-G. FOR CANADA, [1926], A. C. 299; 95 L. J. P. C. 60; 134 L. T. 578; 42 T. L. R. 98, P. C.

378b. — Boundary between Canada & Newfound-

land.]—The effect of various Orders in Council, Proclamations, & Statutes being to give the Govt. of Newfoundland, not mere rights of inspection & regulation upon a line of shore, but territory which became as much a part of the colony as the island of Newfoundland itself & was capable of being defined by metes & bounds:—*Held*: the boundary between Canada & Newfoundland in the Labrador Peninsula was along the crest of the watersheds of the rivers flowing into the sea on the shore of Labrador.—*Re* BOUNDARY BETWEEN CANADA & NEWFOUNDLAND IN LABRADOR PENINSULA (1927), 137 L. T. 187; 43 T. L. R. 289, P. C.

381. *Add. Annotations*:—*Appl.* A.-G. for Alberta v. A.-G. for Canada, [1928] A. C. 475. *Mentd.* Re Ellwood, [1927] 1 Ch. 455.

381a. — ]—A.-G. FOR ALBERTA v. A.-G. FOR CANADA, No. 98b, *ante*.

### PART III. SECT. 2, SUB-SECT. 1.—B.

w i. Forfeiture Act, 1870 (c. 23)—*Not applicable to Saskatchewan.*]—*Re* NOBLE (Sask.), [1927] 1 W. W. R. 938.—CAN.

t (p. 464) i. Real Estate Charges Act, 1867 (c. 69), s. 2—*Applicable to Saskatchewan.*]—*Re* MACDOUGALL, [1927] 3 D. L. R. 464; [1927] 1 W. W. R. 612; 21 Sask. L. R. 397.—CAN.

mm (p. 464) i. — *Applicable to Alberta.*]—LAMB v. LAMB, [1925] 4 D. L. R. 526; [1925] 3 W. W. R. 397.—CAN.

b (p. 465) i. — *Applicable to India.*]—The above Act extends to India, & applies to Hindus & Mahomedans as well as Europeans, in civil actions in the Supreme Ct.—RUCKMABOYE v. LULLOOBHOY MOTTICHUND (1853), 5 Moo. Ind. App. 234.—IND.

### PART VIII. SECT. 1.

370 i. Canada—Respective rights of Dominion & Province—Territory ceded to Indians.—British North America Act, 1867 (c. 3).]—PROVINCE OF QUEBEC v. DOMINION OF CANADA, *Re* DOMINION OF CANADA & PROVINCES OF ONTARIO & QUEBEC, *Re* INDIAN CLAIMS (1898), 30 S. C. R. 151.—CAN.

e i. — Rights of Dominion & private person—Grant of land by pro-

vince before confederation.]—Where pltf. claimed under a grant issued by the province, in 1857, prior to confederation:—*Held*: the Crown, as represented by the Dominion under B.N.A. Act, 1867, s. 91 (12), could not grant by licence power to erect a weir on private property.—DELAP v. HAYDEN [1924] 3 D. L. R. 11; 57 N. S. R. 346.—CAN.

e ii. — Indian Reserves—Indians not entitled to alienate by lease or sale—Right of Crown to recover possession.]—R. v. MCMASTER, [1926] Exch. C. R. 68.—CAN.

e iii. — Boundaries—Whether extended acts of possession by Indians.]—R. v. HEISLER (N. S.) (1913), 13 E. L. R. 375.—CAN.

e iv. — Right to sell cordwood cut on unsundered reserve land.]—FEGAN v. MCLEAN (1869), 29 U. C. R. 202.—CAN.

sp. India—Land held by East India Company.]—A village not permanently assessed was granted by the East India Co. in 1843 to the predecessor of pltf. with a condition restraining its alienation without the Govt.'s previous sanction:—*Held*: though the formal assumption of sovereignty in India by the Crown was only in 1858, yet the possessions were, as provided by the

previous Charter Acts, held by the East India Co. only as the delegates of & in trust for the Crown.—SECRETARY OF STATE FOR INDIA v. RAJA PARTHASARATHY APPA RAO (1926), 1 L. R. 49 Mad. 349.—IND.

### PART VIII. SECT. 2.

qi. — Whether sale of ordnance land cancelled.]—MURPHY v. R. (1892), 3 Exch. C. R. 75.—CAN.

q ii. — Timber cut on Crown lands—Necessity for marking.]—HARRISON BAY CO., LTD. v. GAUTHIER (1925), 35 B. O. R. 498.—CAN.

q iii. — Decision of Minister of Lands, Forests & Mines—Effect of.]—The decision of the above Minister in favour of the issuing of a patent is merely an intimation that he will recommend such issue; it is not a final adjudication & does not bind the Crown.—FITZPATRICK v. R., [1926] 4 D. L. R. 239; 59 O. L. R. 331.—CAN.

ri. — Canal Reserve, Ottawa.]—*Held*: legislation with respect to Ordinance lands vested in the Province of Canada the lands comprised in 19 Vict. c. 45, sched. 2, & any trust with which the lands were impressed was put an end to as to the lands under that schedule by such legislation, & 7 Vict. c. 11 gave power to sell any vacant land not required for military or canal



390a. — Land held under Discharged Soldiers' Settlement Acts—Eviction.]—If a person holding Crown land in South Australia under Australian Discharged Soldiers' Settlement Act, 1917, & amending Acts, fail to carry out the conditions laid down in his agreement with the Govt., he can be ejected without a

judicial or quasi-judicial inquiry.—*LAFFER v. GILLEN*, [1927] A. C. 886; 96 L. J. P. C. 166; 137 L. T. 701; 43 T. L. R. 694, P. C.

391. *Add. Annotations*:—*Appl. Sunmonu v. Disu Raphael*, [1927] A. C. 881. *Refd. Sobhuza II. v. Miller*, [1926] A. C. 518.

## Part IX.—Judicial Committee of the Privy Council.

394. *Add. Annotation*:—*Refd. Nadan v. R.*, [1926] A. C. 482.

398a. *Supreme Court of Palestine—Sitting as court of first instance.*]—*JERUSALEM-JAFFA DISTRICT GOVERNOR v. SULEIMAN MURRA*, No. 20a, *ante*.

401. *Add. Annotation*:—*Refd. Nadan v. R.*, [1926] A. C. 482.

405. *Add. Annotations*:—*Consd. Re Article X of Articles of Agreement for a Treaty between Great Britain & Ireland* (1928), 45 T. L. R. 57. *Mentd. St. Magnus the Martyr, London Bridge* (1924), 41 T. L. R. 3; *Capel St. Mary, Suffolk v. Packard*, [1927] P. 289.

406. *Add. Annotation*:—*Consd. Re Article X of Articles of Agreement for a Treaty between Great Britain & Ireland* (1928), 45 T. L. R. 57.

445. *Add. Annotation*:—*Refd. Nadan v. R.*, [1926] A. C. 482.

465. *Add. Annotation*:—*Appl. A.-G. for Alberta v. Cook*, [1926] A. C. 444.

485a. — Directly or indirectly involved—Successful appeal rendering possible prosecution of claim for larger sum.]—Upon a dispute as to a contract for the sale of goods, arbitrators awarded Rs. 18,000 to petitioner & Rs. 3,900 to resps. The award in favour of petitioner having been set aside, he brought a suit to set aside the award in favour of resps. The

appellate ct. in India made a decree dismissing the suit & refused to certify under Code of Civil Procedure, 1908, s. 110, that the case was a fit one for appeal to the Privy Council in that it would "involve, directly or indirectly, some claim or question to or respecting property" of Rs. 10,000, or upwards. Petitioner contended that he had a right of appeal under the above words of sect. 110, since if the appeal succeeded he could proceed with a suit, which had been stayed, claiming Rs. 81,000 damages under the contract:—*Held*: without defining the meaning of "property" as used in sect. 110 petitioner's claim upon the contract was too remote to be considered as being property indirectly involved, & his petition should be dismissed.—*UDOYCHAND PANNALAL v. GUZDAR (P. E.) & Co.* (1925), L. R. 52 Ind. App. 207, P. C.

490. *Add. Annotations*:—*Mentd. Prager v. Blat-spiel, Stamp & Heacock*, [1924] 1 K. B. 566; *Poland v. Parr*, [1927] 1 K. B. 236.

501. *Add. Annotation*:—*Refd. Nadan v. R.*, [1926] A. C. 482.

525. *Add. Annotation*:—*Refd. Nadan v. R.*, [1926] A. C. 482.

526a. *From Canadian court.*]—*NADAN v. R.*, No. 91a, *ante*.

527. *Add. Annotation*:—*Refd. Nadan v. R.*, [1926] A. C. 482.

purposes or for the Ordnance Dept.—*OTTAWA (CITY) v. GRAND TRUNK RY. CO., OTTAWA (CITY) v. OTTAWA & NEW YORK RY. CO.* (1920), 64 D. L. R. 337; 50 O. L. R. 239.—CAN.

*t i. S. P. R. v. CUDDIHY* (1831), 2 Nfld. L. R. 8.—NFLD.

386 i. *Australia—Right of New South Wales—To Garden Island.*]—*Held*: New South Wales was entitled as against the Commonwealth, which claimed in right of the Imperial Govt., to possession to Garden Island.—*STATE OF NEW SOUTH WALES v. COMMONWEALTH* (1926), 38 O. L. R. 74.—AUS.

### PART IX. SECT. 4, SUB-SECT. 2.—A.

448 i. *General rule.*]—Special leave to appeal should only be granted where the case involves matters of public interest or some important question of law.—*RICHERS v. CITY OF MOOSE JAW*, [1925] 4 D. L. R. 320; [1925] 3 W. W. R. 399.—CAN.

476 i. *Leave granted on terms—By what court imposed.*]—Where leave to appeal to the Privy Council is granted, the conditions attached to such leave, & the terms on which it is allowed, should be left to the Judicial Committee.—*STEVENSON v. FLORANT*, [1926] 1 D. L. R. 601; [1926] S. C. R. 90.—CAN.

477 i. — *Security—By whom allowed—Privy Council Appeals Act, R. S. O., 1914 (c. 54), s. 11.*]—*MCBRIDE v. ONTARIO JOCKEY CLUB, LTD.*, [1926]

1 D. L. R. 743; 58 O. L. R. 267.—CAN.

### PART IX. SECT. 4, SUB-SECT. 2.—B. (a).

483 iv. — *Partnership suit.*]—Where leave to appeal to the Privy Council was applied for, petitioner contending that the decree involved a claim respecting property of Rs. 10,000 within the meaning of Civil Procedure Code, 1908, s. 110 (2):—*Held*: it was the value of applt.'s share in the partnership that must be looked to, & not the value of the whole of the partnership property.—*NARIMAN RUSTOMJI MEHTA v. HASHAM ISMAYAL VALAD HAJI KHAMISA* (1924), 1 L. R. 49 Bom. 149.—IND.

483 v. — *"Property"—Loss of trade & goodwill.*]—Where the result of a judgment was to destroy or prevent debts from trading by depriving them of goodwill & of trade names which they had hitherto used:—*Held*: these were "property"; & as any of the matters in controversy was worth more than \$4,000, the matter was a "pecuniary amount" exceeding that sum within Privy Council Appeals Act, s. 2.—*BATTLE CREEK TOASTED CORN FLAKE CO. v. KELLOGG TOASTED CORN FLAKE CO.*, [1924] 2 D. L. R. 1238; 54 O. L. R. 629.—CAN.

h ii. — — —.]—On an application for leave to appeal to the Privy Council mesne profits subsequent to the date of the High Ct. decree cannot

be taken into account in making an estimate of value under Civil Procedure Code, 1908, s. 110 (2).—*SESHGIRI SHAMBHULINGAM v. MANJAYYA* (1925), 1 L. R. 50 Bom. 160.—IND.

st. *Not amount of penalty imposed by fine or forfeiture under penal statute.*]—*R. v. REGINA WINE & SPIRIT, LTD.* (No. 2), [1929] 2 W. W. R. 1166; 67 D. L. R. 436.—CAN.

### PART IX. SECT. 4, SUB-SECT. 3.—A.

532 i. *Not a court of criminal appeal.*]—The Judicial Committee will neither accept nor share the responsibility for the administration of criminal justice in India, unless there has been some violation of the principles of justice or some disregard of legal principles.—*RUSTOM v. R., RANDIR SINGH v. R., TABA SINGH v. R., RHUDA BAKSH v. R.* (1923), 1 L. R. 48 Bom. 515.—IND.

532 ii. — — —.]—The power of the Judicial Committee to entertain appeals from a lower ct. is not that of a ct. of criminal appeal, but as the Privy Council advising the Sovereign with regard to the exercise of the prerogative, which is a remnant of the powers of the Crown to interfere with tribunals of justice, which do not exist in this country at all. There must be proof that there was no proper trial & that the forms of all judicial procedure were disregarded, not only according to local ordinances, but according to the unvarying character which is common to all.—*HUNMANTRAO v. R.* (1924), 1 L. R. 49 Bom. 455.—IND.

534. *Add. Annotation*:—*Reid. Nadan v. R.*, A. C. 482.

538a. *Question of jurisdiction of colonial court*—*To issue mandamus to inferior court.*—The Supreme Ct. of Ontario has jurisdiction to mandamus a county ct. judges criminal ct. to try, according to the procedure provided by Criminal Code of Canada, s. 827, a person against whom an indictment has been found by a grand jury for the county. The fact that no rules have been made as to the issue of a mandamus in a criminal matter does not preclude the Supreme Ct. from exercising its full powers.

Special leave to appeal to the Privy Council was granted upon a petition alleging two grounds: (1) that the Supreme Ct. had not jurisdiction to issue a mandamus in the circumstances above referred to, & (2) that under the Criminal Code the persons indicted had not the option given by sect. 827 to be tried without a jury. Special leave was granted on the first ground; the question whether the appeal could be entertained was reserved:—*Held*: the appeal should be dismissed, since the ground upon which special leave was given failed, & the second ground was merely a question of procedure & was not one upon which an appeal would be entertained.—A.-G. FOR ONTARIO *v. DALY*, [1924] A. C. 1011; 94 L. J. P. C. 21; 132 L. T. 210; 40 T. L. R. 814, P. C.

*Annotation*:—*Reid. Nadan v. R.*, [1926] A. C. 482.

538b. *Question of procedure.*—A.-G. FOR ONTARIO *v. DALY*, No. 538a, *ante*.

542. *Add. Annotations*:—*Reid. Umra v. R.* (1924), 41 T. L. R. 86; *Nadan v. R.*, [1926] A. C. 482; *Kishan Singh v. R.* (1928), 44 T. L. R. 690.

549. *Add. Annotation*:—*Reid. Nadan v. R.*, [1926] A. C. 482.

549a. ————.]—*NADAN v. R.*, No. 91a, *ante*,

549b. ————. *Misinterpretation of statute.*—The contention that in a criminal case a ct. in India has come to a wrong conclusion upon the interpretation of an Indian statute is not necessarily tantamount to an allegation of substantial & grave injustice such as to induce the Privy Council to give special leave to appeal.—*UMRA v. R.* (1924), 41 T. L. R. 86, P. C.

559. *Add. Annotations*:—*As to* (1) *Consd. Umra v. R.* (1924), 41 T. L. R. 86; *Nadan v. R.*, [1926] A. C. 482.

560. *Add. Annotation*:—*Reid. Nadan v. R.*, [1926] A. C. 482.

586a. *Discretion of court below*—*Judicial Committee will not interfere*—*Though members of court below disagree.*—Under Civil Code of Quebec, art. 189, a husband or wife may demand a separation on the ground of "outrage, ill-usage, or grievous insult"; & by art. 190: "The grievous nature & sufficiency of such outrage, ill-usage & insult, are left to the discretion of the ct., which, in appreciating them, must take into consideration the rank, condition & other circumstances of the parties." In such a case the Judicial Committee will be very reluctant to interfere with the discretion of the ct. below, even where there has been a great difference of judicial opinion, unless it appears that there has been a miscarriage of justice.—*BALDWIN v. BALDWIN* (1922), 91 L. J. P. C. 208; 128 L. T. 10, P. C.

598. *Add. Annotation*:—*Consd. Re Letters Patent No. 139,207, Re Carbonit Akt.*, [1924] 2 Ch. 53.

606. *Add. Annotation*:—*Reid. Nadan v. R.*, [1926] A. C. 482.

608. *Add. Annotation*:—*Reid. A.-G. of British Columbia v. A.-G. of Canada*, [1924] A. C. 222.

PART IX. SECT. 4, SUB-SECT. 3.—B. (a).

538 ii. ————.]—*R. v. SCOTT* (No. 2) (1924), 57 N. S. R. 201.—CAN.

538 iii. ————. *Evidence improperly admitted.*—*Held*: the use made in evidence of books & documents found in the library of a suspected person presented a question of "great general & public importance."—*R. v. McLAUGH- LAN*, [1924] 1 D. L. R. 1109; 42 Can. Crim. Cas. 86; 56 N. S. R. 549.—CAN.

PART IX. SECT. 8, SUB-SECT. 1.

605 i. ————. *Operation of Australian Judiciary Act, 1903.*—*Judiciary Act, 1903-1920*, s. 39 (2) (a), excludes an appeal as of right to the Privy Council from a decision of the Supreme Ct. exercising Federal jurisdiction, & gives to the High Ct. jurisdiction to entertain an appeal from such a decision.—*LIMERICK S.S. Co. v. COMMONWEALTH OF AUSTRALIA* (1924), 35 C. L. R. 69; 25 S. R. N. S. W. 293; 31 Argus L. R. 153.—AUS.

PART IX. SECT. 8, SUB-SECT. 2.

sb. *Competency of appeal* — *From Divisional Court of Appellate Division.*—No appeal lies, unless the case falls within Privy Council Appeals Act, R. S. O., 1914 (c. 54), or unless leave to appeal is granted by the Judicial Committee.—*BOLAND v. CANADIAN NATIONAL RY. Co.*, [1926] 1 D. L. R. 420; 58 O. L. R. 225.—CAN.

———. *From advisory opinion*—*"Final judgment."*—Where questions were referred to the ct. for its consideration, & the matter was heard before

a ct. composed of four judges who were equally divided in opinion:—*Held*: (1) for the purpose of appeal to the Privy Council the opinion of the ct., although advisory only, could be treated as a final judgment between parties; (2) the words "final judgment" in the Privy Council Rules mean that which is regarded as a final judgment under Canadian law.—*Re NOVA SCOTIA LEGISLATIVE COUNCIL* (No. 2) (1926), 59 N. S. R. 49.—CAN.

sf. ————. *Order for trial by jury.*—Leave to appeal to the Privy Council from an order refusing to set aside an order providing for a jury trial of an action for damages for personal injuries, refused.—*BRADSHAW v. BRITISH COLUMBIA RAPID TRANSIT Co., LTD.*, [1927] 1 W. W. R. 425; 38 B. C. R. 111.—CAN.

q i. ————. *Necessity for.*—Ever since 34 Geo. 3, c. 2, s. 36, now found, substantially unchanged, in Privy Council Appeals Act, R. S. O., 1914 (c. 54), s. 2, the right of appeal in cases falling within its terms has stood unchallenged, & no leave to appeal, either to be given by the Judicial Committee or by the ct. below, has been regarded as necessary. Although the Act is absolute in prohibiting an appeal in cases which do not fall within it, this does not deprive his Majesty of the prerogative right to grant leave to appeal in any case in which he sees fit to exercise that right.—*MCBRIDE v. ONTARIO JOCKEY CLUB, LTD.*, [1926] 1 D. L. R. 743; 58 O. L. R. 267.—CAN.

t i. ————.] ————. oo., having been held liable for approximately

\$7,000, appealed giving security only for \$500 for the costs of the appeal. The appeal having been dismissed, applts. applied for a stay of proceedings pending a projected appeal to the Judicial Committee of the Privy Council:—*Held*: the application as made could not be granted.—*FIDELITY PHENIX FIRE INSURANCE Co. of NEW YORK v. McPHERSON*, [1925] 3 D. L. R. 131; [1925] S. O. R. 104.—CAN.

f i. ————.]—An application for special leave to appeal to the Privy Council, & even the granting of such leave, do not *ipso facto* operate as a suspension of proceedings in execution of the judgment rendered by the Supreme Ct. of Canada.—*STEVENSON v. FLORANT*, [1926] 1 D. L. R. 601; [1926] S. O. R. 90.—CAN.

k (p. 498) i. ————.]—(1) Leave to appeal to the Privy Council should not be granted in a criminal case, but parties desiring to appeal should be left to their remedy by application to the Privy Council for such leave.

(2) Assuming the ct. to have power to grant leave to appeal, such leave should be refused in any case not coming within the principles laid down in *Re Dillet*, No. 542, *ante*.—*R. v. R.* (1926), 46 Can. Crim. Cas. 367; 57 N. S. R. 457.—CAN.

sk. *Appeals pending in Supreme Court & before Privy Council*—*Stay of proceedings in Canadian appeal.*—Where, A. & B. being co-defts., A. had first inscribed an appeal for hearing in the Supreme Ct. of Canada, & B. later on had inscribed an appeal to the Judicial Committee of the Privy Council, upon motion on behalf of B.



621. *Reid. Nadan v. R.*, [1926]

A. C. 482.

626. *Add. Annotation :—Reid. Nadan v. R.*, [1926]  
A. C. 482.

640a. ——— If merely advisory.]—App'ts. claimed to deduct from the income on which they had been assessed a sum paid to underwriters on an issue of preference shares on the ground that it was "expenditure incurred for making profits in their business" within Indian Income Tax Act, 1918. The collector of taxes, the chief revenue authority, & the High Ct. successively decided against them. They then appealed to His Majesty in Council :—*Held* : on a preliminary objection, the decision, judgment, or order made by the High Ct. under Indian Income Tax Act, 1918, s. 51, was merely advisory & not final, & the appeal to His Majesty in Council was, therefore, incompetent.—*TATA IRON & STEEL Co. v. BOMBAY CHIEF REVENUE AUTHORITY*

(1923), L. R. 50 Ind. App. 212 ; 39 T. L. R. 288, P. C.

640b. ——— Order of High Court—On appeal from application to district judge to file award.]—An appeal to the Privy Council lies under Code of Civil Procedure, 1908, s. 109, from a decree or final order of a High Ct. made upon appeal from an order of a district judge upon an application to him to file an award in ct. The appeal is not precluded by sect. 104 (2) of the Code ; that provision applies only to an appellate order of a district judge where the application has been made to a subordinate judge.—*RAMLAL HARGOPAL v. KISHANCHAND* (1923), L. R. 51 Ind. App. 72, P. C.

662. *Add. Annotation :—Reid. Nadan v. R.*, [1926]  
A. C. 482.

662a. ——— Appeal from deportation order made by Administration of Western Samoa.]—*NELSON v. R.*, [1928] W. N. 197, P. C.

## Part XII.—Irish Free State.

718. *Add. Citation :—21 L. G. R. 419, C. A.*

*Add. Annotation :—Mentd. Campbell v. Pollak*, [1927] A. C. 732.

714. For the paragraph in the original volume substitute the following paragraph :—

—— Transference of liabilities of British Government to Irish Free State.]—By agreements made in 1917, during the war with Germany, it was agreed between the British Govt. & resp. co., that the co. should make certain alterations in their railway lines in order to facilitate the carriage of coal from certain collieries for purposes connected with the war, the Govt. undertaking to reinstate the lines after the conclusion of the war.

the proceedings on the first appeal were stayed pending the decision of the Privy Council upon B.'s appeal.—*ASHBRIDGE v. SHAVER & HARRISON*, [1925] 4 D. L. R. 1048 ; [1925] S. C. R. 694.—CAN.

### PART IX. SECT. 8. SUB-SECT. 3.

p i. ———.]—A judgment of the High Ct. on the Appellate Side, granting probate to a person, is a final decree, from which an appeal lies to His Majesty in Council.—*VELLASAWMY SERVAI v. L. SIVARAMAN SERVAI* (1926), I. L. R. 5 Ran. 119.—IND.

t i. ———.]—*SYED KHAN v. SYED EBRAHIM* (1927), I. L. R. 6 Ran. 169.—IND.

a i. ——— From interlocutory orders.]—Appeals on matters interlocutory in their nature should be allowed to be preferred to His Majesty in Council only when their decision will practically put an end to the litigation & finally decide the rights of the parties.—*BHAGWATI DAYAL v. DHAN KHUNWAR* (1925), I. L. R. 48 All. 329.—IND.

639 ii. ——— From order refusing to enrol legal practitioner.]—An order of the High Ct. refusing to enrol a person as a legal practitioner under Legal Practitioners Acts, 1879, is not one from which the High Ct. has jurisdiction to grant leave to appeal to the Privy Council.—*Re Miss* (1922), I. L. R. 1 Pat. 590.—IND.

b i. ——— Valuation of property compulsorily acquired.]—In appeals involving the valuation of property in

India, the Judicial Committee will entertain an appeal under Act XIX, 1921, s. 2, as to the value of property compulsorily acquired only upon questions of principle, including errors in appreciating or applying the rules of evidence, or the judicial methods of weighing evidence.—*NOWROJI RUSTOMJI WADIA v. BOMBAY GOVERNMENT* (1925), I. L. R. 49 Bom. 700.—IND.

f i. ———.]—The question of law involved need not be of general importance ; it is sufficient if there is a substantial question of law between the parties.—*RAGHUNATH PRASAD SINGH v. PARTABGASH DEPUTY COMRS.* (1927), 54 L. R. Ind. App. 126.—IND.

f ii. ———.]—*DELHI CLOTH & GENERAL MILLS Co., LTD. v. DELHI INCOME TAX COMRS.* (1927), 54 L. R. Ind. App. 421.—IND.

f iii. ———.]—*MATHURA, KURMI v. JAGDEO SINGH* (1927), I. L. R. 50 All. 208.—IND.

f iv. ——— Matter of general importance.]—*Held* : a case was a fit one for appeal to the Privy Council, where the question in dispute was of general importance, as the execution of documents with an option of re-purchase was very common & a considerable amount of litigation came before the cts. in connection therewith.—*JIVANGIRI GURU CHAMELGIRI v. GAJANAN NARAYAN PATKAR* (1926), I. L. R. 50 Bom. 753.—IND.

651 i. Sum below appealable value—When appeal lies.]—*MAUNG BA. THAN. v. PEGU DISTRICT COUNCIL* (1927), I. L. R. 6 Ran. 43.—IND.

In 1922, Irish Free State (Agreement) Act, 1922 (c. 4), & Irish Free State Constitution Act, 1922 (session 2) (c. 1), were passed. At the date of the passing of these Acts the contracts with the Govt. were still executory :—*Held* : the effect of these Acts, & of the Orders made under them, was to transfer the liability under the contracts of 1917 from the British Govt. to the Govt. of the Irish Free State.—*A.-G. v. GREAT SOUTHERN & WESTERN RY. Co. OF IRELAND*, [1925] A. C. 754 ; 94 L. J. K. B. 772 ; 133 L. T. 568 ; 41 T. L. R. 576 ; 69 Sol. Jo. 744, H. L. ; *revsq.* S. C. *sub nom.* *GREAT SOUTHERN & WESTERN RY. Co. OF IRELAND v. R.*, [1924] 2 K. B. 450, C. A.

### PART IX. SECT. 8. SUB-SECT. 4.

k (p. 503) i. ———.]—*Judges equally divided.*]—The Ct. of Appeal granted leave to appeal to the Privy Council from a decision of the Ct. of Appeal reversing an order for a new trial, the verdict of the jury being for more than £500, & the judges, including the trial judge, being equally divided.—*TREMAIN v. MANAWATU DRAINAGE BOARD*, [1926] N. Z. L. R. 416.—N.Z.

sm. Irish Free State—Leave to appeal—When granted.]—The general principles governing applications for leave to appeal stated.—*HULL v. M'KENNA*, "FREEMAN'S JOURNAL" v. FERNSTROM & TRAESLIBERI, [1926] I. R. 402.—IR.

sn. ———.]—Leave to appeal refused.—*O'CALLAGHAN v. O'SULLIVAN*, [1926] I. R. 586.—IR.

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715.

### PART XII.

714 i. Irish Free State Constitution Act, 1922 (session 2) (c. 1)—Transference of assets of British Government to Irish Free State.]—*Held* : a debt due to the Land Commission, although incurred in 1922, was an "asset" that had been transferred from the former Govt. of the United Kingdom of Great Britain & Ireland to the Govt. of the Irish Free State.—*Re MALONEY*, [1926] I. R. 202.—IR.

714 ii. ——— Effect on jurisdiction of existing courts—Pending establishment of courts for Irish Free State.]—*R. v. WICKLOW COUNTY COURT JUDGE*, [1924] 2 I. R. 139.—IR.



**714a.** — Effect of on Judgments Extension Act, 1868 (c. 54).]—The effect of Irish Free State Constitution Act, 1922 (session 2) (c. 1), s. 1, & art. 73 of the Schedule thereto, & of Irish Free State (Consequential Provisions) Act, 1922 (session 2) (c. 2), s. 1 (1), is that Judgments Extension Act, 1868, has, since Dec. 5, 1922, ceased to apply to the Irish Free State.—**BANFIELD v. CHESTER** (1925), 94 L. J. K. B. 805; 133 L. T. 623; 41 T. L. R. 563; 69 Sol. Jo. 692, C. A.

— — —.]—*See, also*, No. 716.

**714b.** Government of Ireland Act, 1920 (c. 67), s. 56 (6), Sched. VIII—Constitution of Irish Free State (Saorstát Éireann) Act, 1922 (No. 1 of 1922), Sched. I, art. 78—Right of transferred civil servants to compensation on

retirement in consequence of change of government.]—**WIGG v. A.-G. OF IRISH FREE STATE**, [1927] A. C. 674; 98 L. J. P. C. 88; 137 L. T. 460; 43 T. L. R. 457, P. C.

*Annotation*:—Expld. *Re* Article X of Articles of Agreement for a Treaty between Great Britain & Ireland (1928), 45 T. L. R. 57.

**714c.** *S. P. Re* ARTICLE X OF ARTICLES OF AGREEMENT FOR A TREATY BETWEEN GREAT BRITAIN & IRELAND (1928), 45 T. L. R. 57, P. C.

**715.** After this case add “*See, also*, cases in Part IX., Sect. 8, sub-sect. 4, *ante*.”

**716.** *Add. Citations*:—[1924] 1 K. B. 214; 93 L. J. K. B. 331; 130 L. T. 269.

*Add. Annotation*:—*Folld. Banfield v. Chester* (1925), 94 L. J. K. B. 805.

## Notes on Canadian Constitutional Cases

(Vol. XVII., p. 508).

Cases coming under this head decided since the publication of the original volume have been included on pp. 514–521, *ante*.

**714 b i.** *Government of Ireland Act, 1920 (c. 67), ss. 54, 55, Sched. VIII—Constitution of Irish Free State (Saorstát Éireann) Act, 1922 (No. 1 of 1922), Sched. I, Art. 78—Right of transferred civil servants to compensation on retirement in consequence of change of Government.*]—**LONSDALE v. A.-G.**, [1928] I. R. 35.—

*st. Irish Free State (Agreement) Act, 1922 (c. 4)—Effect on Companies Acts.*]—On petition by a shareholder for the compulsory winding up of a co. as an unregistered co.:—*Held*: not-

withstanding the provisions of the above act & of the Orders thereunder, the Cos. Acts remain in full force until revoked or altered by a competent legislature, & the cts. of Southern Ireland had no jurisdiction to make the order.—*Re PORTARLINGTON ELECTRIC LIGHT & POWER CO., LTD.*, [1922] 1 I. R. 100.—*IR.*

*sw. Power of Oireachtas.*]—Within the whole area of the Irish Free State, the Oireachtas is a free & unfettered legislature, & there is nothing in the

treaty, the constitution, or the statute confirming them, to limit the power of the Oireachtas to authorise the detention of untried persons.—*R. (O'CONNELL) v. HARE PARK CAMP (MILITARY GOVERNOR)*, [1924] 2 I. R. 104.—*IR.*

*sz. — Public Safety (Powers of Arrest & Detention) Temporary Act (I. F. S.), 1924—Intra vires.*]—*R. (O'CONNELL) v. HARE PARK CAMP (MILITARY GOVERNOR)*, [1924] 2 I. R. 104.—*IR.*

## DESCENT AND DISTRIBUTION.

NOTE.—For the references to Law of Property Act, 1922 (c. 10), substitute references to Administration of Estates Act, 1925 (c. 23).

### Part III.—Devolution of Real and Personal Estate.

9. *Citations* :—Delete “C. A.”  
 10. After this case add “— Death after 1925.]—See, now, Administration of Estates Act, 1925 (c. 23), s. 9.”

### Part IV.—Descent of Real Estate.

74. *Add. Annotation* :—*Reid. Re Price*, [1928] Ch. 579. (DUCHESS) (1710), 2 Vern. 61 ; 3 P. Wms. 264, n. ; 23 E. R. 1035.  
*Annotation* :—*Consd. Bearpark v. Hutchinson* (1830), 7 Bing. 178.  
 113a. *Lease pur autre vie—To A. & his heirs—Heir special occupant.*—*PHILPOTTS d. PHILPOTTS v. JAMES* (1784), 3 Doug. K. B. 425 ; 99 E. R. 730.  
*Annotations* :—*Distd. Re Sheppard, Sheppard v. Manning*, [1897] 2 Ch. 67. *Consd. Re Inman, Inman v. Inman*, [1903] 1 Ch. 241.  
 133. After this case insert “— *Liability to legacy duty.*—See *ESTATE & OTHER DEATH DUTIES*, Vol. XXI., p. 58, No. 377.”  
 133a. *S. P. LOCK v. LOCK* (1710), 2 Vern. 666 ; 23 E. R. 1035.  
 134a. *Construction of ancient customary — “Nepos.”*—*WHITLOCK v. WHITLOCK* (1924), 40 T. L. R. 566, D. C.  
 132a. — .]—*RAWLINSON v. MONTAGUE*

### Part V.—Distribution of Personal Estate.

- 165a. *Subject to interest of posthumous child.*—*Distributory share vests on the intestate's death, but not so as to exclude a posthumous child.*—*EDWARDS v. FREEMAN* (1727), 2 P. Wms. 435 ; 24 E. R. 803, L. C.  
*Annotations* :—*Folld. Wallis v. Hodson* (1740), Barn. Ch. 272. *Reid. Villar v. Gilbey*, [1907] A. C. 139. *Mentd. Evelyn v. Evelyn* (1731), 2 P. Wms. 659 ; *Morris v. Burroughs* (1737), 1 Atk. 399 ; *Green v. Ekins* (1742), 2 Atk. 473 ; *Parsons v. Parsons* (1744), 9 Mod. Rep. 464 ; *Elliot v. Collier* (1747), 3 Atk. 526 ; *Boyd v. Boyd* (1867), L. R. 4 Eq. 305 ; *Taylor v. Taylor* (1875), L. R. 20 Eq. 155 ; *Re Blockley, Blockley v. Blockley* (1885), 29 Ch. D. 250 ; *Re Ford, Ford v. Ford* (1901), 46 Sol. Jo. 51.  
 165b. — .]—*J. W. died intestate in 1724, & left issue T. W. who died within a week after his father, & his wife enceinte, & on May 29 following pltf. was born ; she is entitled to her share under the Statute of Distributions, as much as if she had existed in his lifetime.*—*WALLIS v. HODSON* (1740), 2 Atk. 114 ; Barn. Ch. 272 ; 26 E. R. 472, L. C.  
*Annotations* :—*Folld. Burnet v. Mann* (1748), 1 Ves. Sen. 156 ; *Thellusson v. Woodford* (1799), 4 Ves. 227. *Reid. Thellusson v. Woodford* (1805), 1 Bos. & P. N. R. 357 ; *Villar v. Gilbey*, [1907] A. C. 139.  
 165c. — .]—*A child en ventre sa mère may take under the Statute of Distribution.*—*THELLUSSON v. WOODFORD* (1799), 4 Ves. 227 ; 31 E. R. 117, L. C. *affd.* (1805), 1 Bos. & P. N. R. 357, H. L.  
*Annotations* :—*Reid. Blackburn v. Stables* (1814), 2 Ves. & B. 367 ; *Re Burrows, Claghorn v. Burrows*, [1895] 2 Ch. 497 ; *Re Wilner's Trusts, Moore v. Wingfield*, [1903] 1 Ch. 874 ; *Villar v. Gilbey*, [1907] A. C. 139. *Mentd. Godfrey v. Davis* (1801), 6 Ves. 43 ; *St. Paul's v. Morris* (1804), 9 Ves. 316 ; *Underhill v. Horwood* (1804), 10 Ves. 209 ; *Beard v. Westcott* (1813), 5 Taunt. 393 ; *Southampton v. Hertford* (1813), 2 Ves. & B. 54 ; *Cadell v. Palmer* (1833), 10 Bing. 140 ; *Doe d. Winter v. Perratt* (1843), 6 Man. & G. 314 ; *Cooke v. Turner* (1844), 14 Sim. 218 ; *Nightingale v. Goulbourn* (1848), 2 Ph. 594 ; *Egerton v. Brownlow* (1853), 8 State Tr. N. S. 193 ; *Langdale v. Briggs* (1856), 8 De G. M. & G. 391 ; *Turvin v. Newcome* (1856), 3 K. & J. 16 ; *Thellusson v. Rendlesham* (1859), 7 H. L. Cas. 429 ; *Eastern Counties, etc. Cos. v. Marriage* (1860), 9 H. L. Cas. 32 ; *Income Tax Special Purposes Comrs. v. Pemsel*, [1891] A. C. 531 ; *Re Stamford & Warrington, Payne v. Grey*, [1911] 1 Ch. 255.  
*See, now, Administration of Estates Act, 1925 (c. 23), ss. 47 (1), 55 (2).*

#### PART I.

a i. *Meaning of “legally represent” & “legal representatives of”*—*Ontario Devolution of Estates Act, s. 30.*—*Re MACKENZIE*, [1927] 4 D. L. R. 825 ; 61 O. L. R. 230.—CAN.

sa. *Murderer—Not entitled to share in estate of victim.*—*Re MEDAINI ESTATE*, [1927] 4 D. L. R. 1137 ; [1927] 2 W. W. R. 38 ; 38 B. C. R. 319.—CAN.

sb. *Marriage Ordinance, 1884, of Southern Nigeria, ss. 38, 39—Construction.*—*MARTINS v. FOWLER*, [1926] A. C. 746 ; 95 L. J. P. C. 189 ; 135 L. T. 582.—NIGERIA.

J.S.

#### PART III. SECT. 1.

sd. “*Devolve*”—*Local Registration of Title Act, s. 84.*—*M'DONNELL v. STENSON*, [1921] 1 I. R. 80.—IR.

sf. —*COLLINS v. COLLINS*, [1924] 1 I. R. 72.—IR.

#### PART IV. SECT. 1

h i. —.]—*MACLEAN & GRAHAM v. SMITH & MACKINTOSH*, [1927] N. 109.—IR.

h ii. — *Who are.*—*LEE v. BRANSCOMBE* (1925), 52 N. B. R. 239.—CAN.

sj. *Effect of Dominion Land Titles*

*Act, 1894 (c. 28), s. 3.*—*Re JENSEN* (Alta.), [1927] 1 D. L. R. 76 ; [1926] 3 W. W. R. 737.—CAN.

#### PART IV. SECT. 4, SUB-SECT. 2.

h. Read now “113a i.”  
 k. Read now “113a ii.”  
 i. Read now “113a iii.”

#### PART V. SECT. 1.

n i. — *As amended by 17 Geo. 5, c. 35, s. 2—Effect of.*—*Re Shier, ante*, not overruled, & the practice adopted since that decision not altered. —*Re ALLISON*, [1927] 4 D. L. R. 729 ; 61 O. L. R. 261.—CAN.

34

173. . Annotation:—Consd. *Re Jones, Johnson v. A.-G.*, [1925] Ch. 340.
180. Add. Annotation:—Reid. *Re Bower Williams*, p. Trustee, [1927] 1 Ch. 441.
181. Add. Annotation:—Consd. *Re Bower Williams*, Ex p. Trustee, [1927] 1 Ch. 441.
187. Add. Annotation:—Consd. *Re Bower Williams*, Ex p. Trustee, [1927] 1 Ch. 441.
232. Add. Annotation:—N.F. *Re Brooks, Public Trustee v. White*, [1928] Ch. 214.
234. In the cross-reference following this case for "p. 148, No. 374," read "p. 374, No. 148."
256. Add. Annotation:—Consd. *Re Merrall, Greener v. Merrall*, [1924] 1 Ch. 45.

## Part VII.—Escheat and bona vacantia.

285. Add. Annotations:—Consd. A.-G. for Alberta v. A.-G. for Canada, [1928] A. C. 475. Mentd. *Re Ellwood*, [1927] 1 Ch. 455.
292. Add. Annotation:—Reid. *Re Deloitte, Griffiths v. Deloitte*, [1926] Ch. 56.
306. Add. Annotations:—Mentd. *The Carlgarth, The Otarama*, [1927] P. 93; *Lagan Navigation Co. v. Lambeg Bleaching, Dyeing & Finishing Co.*, [1927] A. C. 226.
311. Add. Citations:—[1924] 2 Ch. 19; 93 L. J. Ch. 483; 130 L. T. 800; 68 Sol. Jo. 419.
315. After this case add "Land in Alberta granted by Crown."—See DEPENDENCIES, No. 98b."
329. Add. Annotation:—Reid. *Re Cullum, Mercer v. Flood*, [1924] 1 Ch. 540.
330. After this case add "Property in Alberta."—See DEPENDENCIES, No. 98b."
- 336a. ———.]—A lunatic, at the date of her death in 1798, was entitled to certain funds in ct. representing the residuary estate of her father. In 1794 the master had reported that the lunatic had no heir-at-law or next of kin. In 1798 & 1801 the Crown made *ex gratia* grants of the funds to certain persons & obtained an indemnity in respect of the grants. In 1926 a petition was presented by persons claiming to be the next of kin of the lunatic for the payment to them of the whole of her personal estate. The parties sought a determination of the following questions: (1) whether the petition was maintainable on the assumption that no part of the funds ever came into the hands of or was dealt with by his present Majesty or his nominees or grantees or was carried to the Consolidated Fund; (2) whether the petition was barred by any Statute of Limitations; (3) whether in view of Petitions of Right Act, 1860 (c. 34), s. 5, suppliants could proceed without serving the petition upon the successors in title of the persons to whom the *ex gratia* grants had been made:—*Held*: the first question must be answered in favour of suppliants.—*Re MASON*, [1928] Ch. 385; 97 L. J. Ch. 321; 139 L. T. 477; 44 T. L. R. 225; *affd.*, [1929] 1 Ch. 1, C. A.
- 337a. ———.]—*Re MASON*, No. 336a, ante.
344. Add. Annotation:—Mentd. *Ormond Investment Co. v. Betts*, [1928] A. C. 143.
345. Add. Annotation:—Mentd. A.-G. for Ontario v. McLean Gold Mines Co. (1926), 95 L. J. P. C. 217.

PART V. SECT. 3, SUB-SECT. 2.  
sk. *Effect of charge.*—*Held*: the widow is not entitled to any portion of the real estate in specie.—CUNNINGHAM v. CUNNINGHAM, [1920] 1 I. R. 119.—IR.

sl. *S. P. DUNICAN v. DUNICAN*, [1920] 1 I. R. 212.—IR.

PART V. SECT. 3, SUB-SECT. 3.—A.  
213 i. *Covenant to secure payment of sum of money—Satisfaction pro tanto.*—F. on his marriage executed a bond, whereby, in the event of his death in the lifetime of his wife, a sum of money was to be paid to two trustees in trust for his wife. F. predeceased his wife, intestate & without issue:—*Held*: the sum secured by the bond was to be regarded, in the absence of evidence of any other intention, as satisfaction pro

tanto of the widow's share of her husband's estate.—MATHEWS v. DONEGAN & COOKE, [1925] 1 I. R. 201.—IR.

PART V. SECT. 4, SUB-SECT. 1.  
229 v. ———.]—The words "child or children of a deceased brother or sister" in Intestate Successions Act, R. S. A., 1922 (c. 143), s. 7 (2), mean issue in the first generation only, & do not include grandchildren or more remote descendants.—*Re EMSLEY (ALTA.)*, [1926] 1 W. W. R. 816.—CAN.

a i. ———.]—*Held*: such child not entitled in Saskatchewan to share in the estate of the father dying intestate & domiciled in Saskatchewan before the coming into force of Adoption of Children Act, 1922.—BURNFIEL v. BURNFIEL, [1926] 2 D. L. R. 129;

[1926] 1 W. W. R. 657; 20 Sask. L. R. 407.—CAN.

PART V. SECT. 6.  
sp. *Not widow of only brother predeceasing intestate.*—*Re HENDERSON*, [1926] 2 D. L. R. 536.—CAN.

st. *Brothers & sisters—Of infant dying after father who predeceased grandfather—Infant's share in grandfather's estate—Devolution of Estates Act, R. S. S., 1920 (c. 73), ss. 18, 23.*—*Re GEORGET ESTATES (Sask.)*, [1928] 1 D. L. R. 230; [1927] 3 W. W. R. 769.—CAN.

PART V. SECT. 9.  
273 iv a. *S. P. Re JENSEN (Alta.)*, [1927] 1 D. L. R. 76; [1926] 3 W. W. R. 737.—CAN.



## DISCOVERY, INSPECTION, AND INTERROGATORIES.

## Part I.—In General.

10. *Add. Annotation*:—*Mentd. Lapiash v. Braithwaite*, [1925] 1 K. B. 474.

## Part II.—Discovery of Documents.

86. *Add. Annotation*:—*N.F. Wakefield v. Board* (1928), 45 R. P. C. 261.

- 87a. ———.]—*WAKEFIELD & Co., LTD. v. BOARD (TRADING AS J. P. BOARD & Co.)* (1928), 45 R. P. C. 261.

99. *Add. Annotation*:—*As to (2) Apld. Cavendish v. Cavendish* (1925), 42 T. L. R. 134.

126. *Add. Annotation*:—*Folld. Seddon v. Commercial Salt Co.* (1924), 69 Sol. Jo. 159.

127. *Add. Annotation*:—*Overd. Seddon v. Commercial Salt Co.*, [1925] Ch. 187.

- 127a. ———.]—By an underlease lands & works were demised to the first defts. for the term of twenty-one years less one day. The underlease contained a covenant by these defts. that they would not assign, transfer or part with possession of the demised premises or any part thereof without the consent of the underlessor, & that in case of the breach of such covenant it should be lawful for the underlessor to re-enter upon the demised premises, & that thereupon the demise should absolutely determine. Pltf., the purchaser of the reversion on the underlease, brought an action to recover possession of the premises. By his statement of claim he alleged that the first defts., in breach of their covenant, had transferred, underlet or parted with the possession of the premises to the second defts., &/or the third defts. By their respective defences defts. traversed the allegations in the statement of claim. On a summons taken out by pltf. asking that the second defts. might be ordered to file a full & sufficient affidavit of documents, the judge, considering himself bound by *Powis (Earl) v. Negus*, No. 127, made the order asked for:—*Held*:

there was one issue only between pltf. & the three defts., namely, whether the underlease, subject to which pltf. as he alleged derived his title to the possession of the land in question, was still subsisting or had been determined by the exercise by pltf. of his right of re-entry, & that being so, the well-established rule that the ct. would not assist a forfeiture by ordering discovery of documents applied, & the order made against the second defts. must be discharged. *Powis (Earl) v. Negus*, No. 127, *overd.*—*SEDDON v. COMMERCIAL SALT CO., LTD.*, [1925] Ch. 187; 94 L. J. Ch. 225; 132 L. T. 437; 69 Sol. Jo. 159, C. A.

171. *Add. Annotations*:—*As to (2) Consd. Soviet Republics Union v. Belaiew* (1925), 42 T. L. R. 21. *Refd. Duff Development Co. v. Kelantan Government*, [1924] A. C. 797.

238. *Add. Annotation*:—*Refd. Tecalemit v. Ex-A-Gun* (1926), 44 R. P. C. 62.

242. *Add. Annotation*:—*Consd. Godman v. Times Publishing Co.*, [1926] 2 K. B. 273.

279. *Citations*:—For "BITT. PRAC. CAS. 1" read "BITT. PRAC. CAS. 13."

324. *Add. Annotation*:—*Consd. Godman v. Times Publishing Co.*, [1926] 2 K. B. 273.

- 373a. ———.]—*THE CITY OF BARODA*, No. 874a, *post*.

378. *Add. Annotations*:—*Mentd. Huyton & Roby Gas Co. v. Liverpool Corpn.* (1925), 42 T. L. R. 116; *Conquer v. Boot* [1928] 2 K. B. 336.

379. *Add. Annotation*:—*Mentd. Parkinson v. College of Ambulance & Harrison* [1925] 2 K. B. 1.

382. *Add. Annotation*:—*Apld. Reddaway v. Hartley* (1928), 72 Sol. Jo. 502.

## PART II. SECT. 4, SUB-SECT. 1.

- 130 (iv. ———.)—*BAILIE v. INGLIS & Co., LTD. & JAMISON*, [1926] N. 53.—IR.

## PART II. SECT. 5, SUB-SECT. 1.

86. *Not till issues defined.*—When it is necessary, before an order for discovery can be made, that certain questions in the suit should first be decided, the proper order to make is that the suit should be set down for the settlement of the issues. The judge will then be in a position to decide which of the issues are necessary to be determined before the question of inspection or discovery can be decided.—*EAGLE STAR & BRITISH DOMINIONS INSURANCE Co. v. DINANATH* (1922), 1 L. R. 47 Bom. 509.—IND.

## PART II. SECT. 9, SUB-SECT. 4.

p. i. ——— "Pleadings & proceedings in specified action."—*ISITT & ISITT v. HAMMOND & NATIONAL RESOURCES SEC. Co.* (1924), 34 B. C. R. 183.—CAN.

## PART II. SECT. 9, SUB-SECT. 5.

370 (iii. ———.)—When in an affidavit of discovery privilege is claimed in respect of any document or documents, such document or documents must be specified individually in the schedule attached to the affidavit of discovery, & not referred to as being included among others contained in a bundle.—*RUSHBROOKE v. O'SULLIVAN & HIBERNIAN FIRE INSURANCE Co., LTD.*, [1926] 1 R. 500; 59 I. L. T. 161.—IR.

370 (iv. ———.)—Where privilege is claimed with respect to documents deponent is not required to describe the documents in such a manner as would disclose the nature or particulars of such documents. "A bundle of documents marked 'A' & numbering 1 to 160, all of which documents were initialled by this deponent," is a sufficient identification of the documents.—*CAMPBELL v. WOODS, IRMIE & THE CANADIAN PRESS (Alta.)*, [1926] 2 D. L. R. 805; [1926] 2 W. W. R. 99.—CAN.

## PART II. SECT. 10.

385 (iv. ———.)—Where deft.

obtained an order for discovery, & in the affidavit of discovery it was sworn on behalf of pltf. that a document in his possession related solely to pltf.'s case & did not support deft.'s case, & the Supreme Ct. had refused an application, by deft. for inspection of the document:—*Held*: on the evidence there was no substantial ground upon which to base a conclusion that the statement in the affidavit was made erroneously or under a misconception of the character of the document, & the application was properly refused.—*SMITH, ETC. v. SUNDAY TIMES* (1923), 31 C. L. R. 552.—AUS.

388 i. ——— *Claim of privilege.*—Where an affidavit sets out positively & definitely that privilege is claimed for certain documents, on the ground that they arose out of negotiations carried on "without prejudice," that statement cannot be contradicted by affidavits or material from the other side; but it can be attacked or impugned only by some admission or qualification coming from that side.—*BLACK v. OCEAN ACCIDENT & GUARANTEE Co. (Man.)*, [1926] 2 D. L. R. 985; [1926] 1 W. W. R. 883.—CAN.

- l. Add. Annotations:—As to (2) Folld. The Hopper No. 13, [1925] P. 52. Apld. The City of Baroda (1926), 134 L. T. 576.*
- 405a. *R. S. C., Ord. 31, r. 19A (3)—Effect of.]—REDDAWAY (F.) & Co. v. HARTLEY (1928), 72 Sol. Jo. 502; 45 R. P. C. 432.*
- 436a. *—.]—ASTRA - NATIONAL PRODUCTIONS, LTD. v. NEO-ART PRODUCTIONS, LTD., [1928] W. N. 218.*
456. *Add. Citations:—93 L. J. K. B. 169; 130 L. T. 139; 16 Asp. M. L. C. 236.*
- 462a. *— — — Effect of.]—Where in an action on a marine policy the usual order is made for the filing of an affidavit of ship's papers &*

*for a stay of proceedings meanwhile, this stay does not operate to paralyse the activities of either party & prevent him preparing his case; & on a taxation of costs it is for the taxing master to determine, having regard to the stay & all other material factors, whether the costs were reasonably or prematurely incurred.—PÊCHERIES OSTENDAISES (SOC. ANON.) v. MERCHANTS' MARINE INSURANCE Co., [1928] 1 K. B. 750; 97 L. J. K. B. 445; 138 L. T. 532; 44 T. L. R. 270; 72 Sol. Jo. 102; 17 Asp. M. L. C. 404, C. A.*

*Annotation:—Refd. The Channel Queen, [1928] P. 157.*

468. *After this case add "For form of order for production of ship's papers, see R. S. C. (No. 1), 1915, r. 11."*

## Part III.—Production and Inspection.

494. *After this case add "Receiver & manager appointed by debenture-holders—Liability to produce."—See COMPANIES, No. 5067a, ante."*
- 528a. *— Action on bill of exchange—Deed giving time to principal debtor.]—Where an action on bills of exchange was brought against deft., who pleaded that he was liable, if at all, as a surety only:—Held: he was not entitled to the inspection of a deed in pltf.'s possession, by which it was suggested time had been given to the principal debtor, but to which deed the surety was no party.—SMITH v. WINTER (1838), 3 M. & W. 309; 6 Dowl. 386; 1 Horn. & H. 45; 7 L. J. Ex. 79; 150 E. R. 1162.*
539. *Add. Annotation:—Refd. Godman v. Times Publishing Co., [1926] 2 K. B. 273.*
- 539a. *— Action for slander.]—DAY v. TUCKETT (1846), 7 L. T. O. S. 234.*
- 555a. *—.]—In an action of slander imputing to pltf. that he was the writer of a scandalous letter reflecting upon deft., the latter in one of his pleas set forth the letter & justified the words spoken:—Held: pltf. should inspect the letter with witnesses, in order that he might be prepared at the trial to show that it was not in his handwriting.—CURTIS v. CURTIS (1833), 3 Moo. & S. 819.*
- 640a. *Broker's book.]—BROWNING v. AYLWIN*

- (1827), 7 B. & C. 204; 9 Dow. & Ry. K. B. 801; 5 L. J. O. S. K. B. 320; 108 E. R. 699.*
- Annotations:—Distd. Smith v. Winter (1838), 3 M. & W. 309; Day v. Tuckett (1846), 10 J. P. Jo 358. Refd. Mutter v. Eastern & Midland Ry. (1888), 38 Ch. D. 92.*
- 650a. *— — —.]—ROSS v. LAUGHTON (1813), 1 Ves. & B. 349; 35 E. R. 136.*
- Annotations:—Consd. Griffiths v. Griffiths (1843), 12 L. J. Ch. 397; Simmonds v. G. E. Ry. (1868), 3 Ch. App. 797; Re Hawkes, Ackerman v. Lockhart, [1898] 2 Ch. 1; Re Rapid Road Transit Co., [1909] 1 Ch. 96. Refd. Bozon v. Bolland, Husband v. Bolland (1839), 4 My. & Cr. 354.*
- 651a. *— — —.]—BAKER v. HENDERSON (1830), 4 Sim. 27; 58 E. R. 11.*
- Annotations:—Distd. Warburton v. Edge (1839), 9 Sim. 508. Refd. Re Hawkes, Ackerman v. Lockhart, [1898] 2 Ch. 1.*
653. *Add. Annotations:—Apld. Re Cameron's Coalbrook, etc., Ry. (1859), 25 Beav. 1. Refd. Lockett v. Cary (1864), 3 New Rep. 405; Fowler v. Fowler (1881), 29 W. R. 800; Re Hawkes, Ackerman v. Lockhart, [1898] 2 Ch. 1.*
714. *Add. Annotation:—As to (1) Distd. The City of Baroda (1926), 134 L. T. 576.*
- 805a. *—.]—Completed drafts of documents [settled by counsel] in support of an application for the fiat of the A.-G. to counterclaim for revocation of a patent are privileged documents, & defts. are not bound to produce them for inspection by pltf's.—VIGNERON-DAHL (BRITISH & COLONIAL), LTD. v. PETTIT (1925), 69 Sol. Jo. 693; 42 R. P. C. 431.*

### PART III. SECT. 5, SUB-SECT. 1.

525 ii. *—.]—HAMILTON v. STREET (1850), 1 Gr. 327.—CAN.*

*—.]—In an action on a policy of insurance against liability for damages, to recover the amount of a judgment which the insured had paid & which had been recovered against them in an action in which the insurance co. had conducted the defence:—Held: pltf's. were entitled on discovery to know all that was done by the insurance co. in defending the action & to see all papers & documents connected therewith, & also were entitled to the benefit of all investigations made, & opinions obtained, by the co.—WILLIAMS v. LONDON GUARANTEE & ACCIDENT CO., LTD., [1925] 1 W. W. R. 1023.—CAN.*

### PART III. SECT. 5, SUB-SECT. 3.

577 iii. *—.]—BRADBURY v. MOFFATT & CARMAN (1884), 1 Man. L. R. 92.—CAN.*

### PART III. SECT. 5, SUB-SECT. 5.—F.

*sl. General rule.]—In the case of*

*public documents there is a common law right of inspection, but that right must necessarily be exercised within certain limits. The right ought to be restricted to those persons who can prove themselves to be interested, & there are documents which, for reasons of State, ought not to be disclosed.—Re FITZGERALD, [1925] 1 I. R. 42.—IR.*

*sj Register of titles to land kept under Local Registration of Title (Ireland) Act, 1891 (c. 66).]—The above register is a public register, & the documents kept in the office for registration of titles are public documents.—Re FITZGERALD, [1925] 1 I. R. 42.—IR.*

### PART III. SECT. 6,

*ol. — May be dispensed with.]—The master has jurisdiction to provide, in an order for directions which calls for the production of documents, that "the service of a notice to produce such documents be dispensed with & that the service of a copy of this order*

*upon the solrs. of the respective parties shall have the same effect as the service of a notice to produce."—ROYAL TRUST CO. v. CANADIAN PACIFIC RY. Co., [1925] 4 D. L. R. 772; [1925] 3 W. W. R. 571.—CAN.*

### PART III. SECT. 9, SUB-SECT. 1.—A.

*r i. — Letter dictated by solicitor—& reply thereto.]—Held: privileged.—MERCHANTS BANK v. MOFFATT (1876), 6 P. R. 348.—CAN.*

*r ii. — Notes of evidence taken during arbitration.]—Held: not privileged from discovery & inspection in a subsequent action between the same parties.—EAST TAMARI CO-OPERATIVE DAIRY Co. v. NORNEN, [1928] N. Z. L. R. 395.—N.Z.*

### PART III. SECT. 9, SUB-SECT. 1.—C. (b).

807 ii. *— Letter included in—Not privileged.]—MOFFATT v. HANGAR, [1923] N. Z. L. R. 448.—N.Z.*

823. *Add. Annotation*:—As to (1) *Appld. The City of Baroda* (1926), 134 L. T. 576.

874a. ———.]—Pltfs. claimed for short delivery of certain parcels of bristles, in respect of which they were holders of bills of lading, loaded at Shanghai upon defts.' steamship. Defts. denied liability alleging that the loss was due to pilferage by an organised band of thieves. Defts. had called for reports from the first, second, third, & fourth officers of the steamer, in order to investigate the question of the management of the vessel & the conduct of their officers in the prevention of theft, which reports were in due course obtained through defts.' agents in China. Defts. claimed that these reports were privileged from discovery:—*Held*: (1) the reports were not privileged. (2) Observations upon the form & contents of an affidavit claiming privilege from discovery for deponent's documents.—*THE CITY OF BARODA* (1926), 134 L. T. 576; 70 Sol. Jo. 1044; 17 Asp. M. L. C. 27.

891a. ———.]—In obedience to general instructions issued by the Port of London Authority to the masters of their vessels that, in the event of a casualty, the circumstances of the occurrence were to be reported on a printed form supplied for the purpose, the master of one of the Authority's dredgers reported the details of a collision with a sailing barge belonging to pltfs. The form was headed, "Confidential report for the information of the Authority's solr. . . ." The report was sent to the master's superior officers, who passed it on to the manager of the Authority's insurance department, & he in turn sent it to the solrs. who acted for the Authority's underwriters. Pltfs. contended

that the report must be produced:—*Held*: there having been a collision it was to be anticipated that there would be litigation, & although the report went through various hands, it was made for the purpose of being put before the solrs.; the report therefore complied with the tests laid down by *BUCKLEY, L.J.*, in *Birmingham & Midland Motor Omnibus Co. v. London & North Western Ry. Co.*, No. 394, *ante*, & was privileged from production.—*THE HOPPER* No. 13, [1925] P. 52; 94 L. J. P. 45; 132 L. T. 736; 41 T. L. R. 189; 16 Asp. M. L. C. 473, D. C.

*Annotation*:—*Distd. The City of Baroda* (1926), 134 L. T. 576.

905. *Add. Annotation*:—*Refd. The Hopper* No. 13, [1925] P. 52.

1039a. ———.]—*GREENWOOD v. ROTHWELL* (1844), 7 Beav. 291; 13 L. J. Ch. 226; 2 L. T. O. S. 496; 49 E. R. 1077.

1090a. *S. P. A.-G. OF PRINCE OF WALES v. LAMBE* (1848), 11 Beav. 213; 17 L. J. Ch. 154; 10 L. T. O. S. 498; 12 Jur. 386; 50 E. R. 798.

1144. *Add. Citation*:—1 Leach, 300, n.

*Add. Annotation*:—*Refd. R. v. Elworthy* (1867), 37 L. J. M. C. 3.

1197. *Add. Annotation*:—*Refd. Seddon v. Commercial Salt Co.*, [1925] Ch. 187.

1198. *Add. Annotation*:—*Refd. Waterhouse v. Barker* (1924), 132 L. T. 15.

1212. *Add. Annotation*:—*Consd. Isaacs v. Cook*, [1925] 2 K. B. 391.

1218. *Add. Annotation*:—*Consd. Isaacs v. Cook*, [1925] 2 K. B. 391.

1285. *Add. Annotation*:—*Mentd. Re Southerden, Adams v. Southerden*, [1925] P. 177.

## Part IV.—Interrogatories.

1314. *Add. Annotation*:—As to (1) *Consd. Sutherland v. British Dominions Land Settlmt. Corpn.*, [1926] Ch. 746.

1343. *Add. Annotation*:—*Mentd. Jarvis v. Surrey County Council*, [1925] 1 K. B. 554.

1345. *Add. Annotation*:—*Mentd. Jarvis v. Surrey County Council*, [1925] 1 K. B. 554.

1360. *Add. Annotation*:—*Mentd. Soviet Republics Union v. Belaiew* (1925), 134 L. T. 64.

### PART III. SECT. 9, SUB-SECT. 1.—F. (a).

856 i. *No privilege—Litigation not contemplated.*—*SMITH v. C. N. RY.* (Alta.), [1926] 2 D. L. R. 372.—CAN.

g i. ———. *Report of local manager—To head office of insurance company.*—*Held*: privileged.—*GRAIN CLAIMS BUREAU, LTD. v. CANADIAN SURETY CO. (Man.)*, [1927] 4 D. L. R. 297; [1927] 2 W. W. R. 407.—CAN.

### PART III. SECT. 9, SUB-SECT. 1.—F. (b) ii.

• i. *S. P. STEPHENSON v. E. D. & B. C. R.* (Alta.), [1926] 2 D. L. R. 380.—

• ii. ———. *Reports of claims agent.*—*STEPHENSON v. E. D. & B. C. R.* (Alta.), [1926] 2 D. L. R. 680.—CAN.

886 ii. ———.]—*LAURENSEN v. WEL-LINGTON CITY CORPN.*, [1927] N. Z. L. R. 510.—N.Z.

### PART III. SECT. 9, SUB-SECT. 1.—H.

924 i. *Privileged—Communication with view to compromise—Copy not retained by solicitor.*—*Held*: although

the occasion on which the document was written was not privileged, the document, owing to its nature & effect, was privileged from production.—*MOFFATT v. HANGAR*, [1923] N. Z. L. R. 448.—N.Z.

924 ii. ———. *Stipulation in event of failure to agree.*—Negotiations carried on "without prejudice," & with a view to the settlement of an action, & all letters & communications arising out of such negotiations, are privileged from production.—*BLACK v. OCEAN ACCIDENT & GUARANTEE CO. (Man.)*, [1926] 2 D. L. R. 985; [1926] 1 W. W. R. 883.—CAN.

### PART III. SECT. 9, SUB-SECT. 5.

b i. ———. *Not taken away by Alberta Evidence Act, R. S. A., 1922 (c. 87), ss. 3, 7.*—*CAMPBELL v. WOODS, IRMIE, & THE CANADIAN PRESS (Alta.)*, [1926] 2 D. L. R. 805; [1926] 2 W. W. R. 99.—CAN.

### PART III. SECT. 9, SUB-SECT. 8.

f i. ———.]—*HELLET v. SOUTH AFRICAN RAILWAYS & HARBOURS* (1927), 48 N. L. R. 65.—S. AF.

sk. *Publication against public policy—Objection by Attorney-General.*—Where, in an action to which a State is a party, the State objects to produce for inspection documents which are in fact State papers, a statement by the A.-G. for that State, that their production for inspection would be prejudicial to the public interests, is conclusive & an answer to an application for an order for inspection.—*GRIFFIN v. STATE OF SOUTH AUSTRALIA* (1925), 36 C. L. R. 378.—AUS.

### PART III. SECT. 12.

o i. ———.]—The party who has obtained an order for production of documents may insist on obedience to that part of the order which requires the documents produced to be deposited with the prothonotary.—*BLOOMFIELD v. MONARCH, ETC., Co.* (No. 1), [1927] 1 W. W. R. 140; *affd.*, [1927] 3 D. L. R. 335; [1927] 2 W. W. R. 196; 36 Man. L. R. 603.—CAN.

### PART IV. SECT. 1.

r i. ———.]—Under r. 328 a foreign pltf. has not a *prima facie* right to be examined for discovery at



1422. *Add. Annotation:—Refd. Wakefield v. Board* (1928), 45 R. P. C. 261.

1442a. —.]—Deft., a shipowner, was sued by the cargo owners & charterers for non-delivery of the cargo. Deft. alleged that the non-delivery was caused by perils of the sea excepted in the charterparty & bill of lading:—*Held*: interrogatories asking plffs. whether the cargo was insured, & if so, with whom, by whom, & to what amount, were irrelevant & inadmissible.—*BOLCKOW, VAUGHAN & Co. v. YOUNG* (1880), 42 L. T. 690; 4 Asp. M. L. C. 301.

1444. *Add. Annotation:—Consd. Sutherland v. British Dominions Land Settlmt. Corp.,* [1926] Ch. 746.

place of residence. The place & manner of his examination are matters to be determined by the ct., having regard to what is "just & convenient."—*SWEENEY v. MANUFACTURERS HOLDING CORPN.*, [1924] 2 D. L. R. 296; 54 O. L. R. 250.—CAN.

r ii. —. —. *Temporary absence—Rules* 270, 272, 275.]—*ABRAMSON v. UNITED STATES FIRE INSURANCE CO.*, [1927] 1 D. L. R. 834; [1927] 1 W. W. R. 252; 21 Sask. L. R. 372.—CAN.

#### PART IV. SECT. 3.

f (p. 184) i. —.]—Rule 267 (Sask.) provides that a person for whose immediate benefit an action is prosecuted or defended shall be regarded as a party for the purpose of examination in discovery, but where a party to the action wishes to avail himself of the rule & the pleadings do not disclose that the action has been brought for the immediate benefit of the person sought to be examined, the registrar is not in a position to say that the party seeking the appointment is entitled to examine such person, & he should therefore not issue an appointment without an order of the ct. or a judge.—*JOHNSON v. HAWKES*, [1924] 3 D. L. R. 524; [1924] 2 W. W. R. 965.—CAN.

f (p. 184) ii. —.]—In order to obtain an order for the examination for discovery of a person who is not a party to the action, appot. must show that pltf. in whose name the action was brought is not really pltf., but that the person whose examination is asked for is the real pltf. & that the action is being prosecuted for his benefit.—*CANADIAN CREDIT MEN'S TRUST ASSOCN. v. MORTON*, [1925] 1 W. W. R. 772.—CAN.

sl. *Person for whose immediate benefit action defended—Beneficiary under will—Action against trustees.*]—In an action against trustees under a will to rescind a contract for the sale of property of the estate:—*Held*: a beneficiary who was entitled to the rents & profits of such property, whether sold or not, was not "a party for whose immediate benefit the action was defended," & was not examinable for discovery.—*WOOLWORTH CO. v. POOLEY*, [1925] 2 W. W. R. 481.—CAN.

g (p. 185) i. —. *Co-defendant not actively defending.*]—Where plffs. sued C. & G. to recover the balance of the purchase-price of land, & C. did not defend otherwise than by delivering demand of notice, & G. alleged that C. shared in a secret commission paid by one of the plffs. to procure G. to enter into the agreement of purchase:—*Held*: G. was not a person "adverse in interest" to C. so as to make C. examinable for discovery by G. under r. 234.—*HEGLER v. MACNAB*, [1924] 3 D. L. R. 501; [1924] 2 W. W. R. 649.—CAN.

m (p. 185) i. *Counterclaim for balance of account—Assignment from assignee of insolvent stockbroker.*]—*Held*: the

stockbroker was examinable, at the instance of pltf., under r. 285, O. J. Act.—*CARNEGIE v. COX* (1886), 11 P. R. 311.—CAN.

s (p. 186) i. *Employee.*]—In order to be examinable for discovery under r. 234 an employee of a party must have been directly connected with the transaction in issue, not merely as a witness, but because of the character of his employment.—*WEISS v. SCHIESOEL* (Alta.), [1926] 1 W. W. R. 154.—CAN.

s (p. 186) ii. —. *Does not include minister of Crown.*]—R. (PROVINCIAL TREASURER OF ALBERTA) v. SMITH, [1927] 2 D. L. R. 69; [1927] 1 W. W. R. 474; 22 Alta. L. R. 544.—CAN.

c (p. 186) i. —.]—Under County Ct. Ord. 8, r. 17, an infant, a party to an action, may be examined by the opposite party for discovery before the trial.—*LANCASTER v. VAUGHAN* (1924), 33 B. C. R. 159.—CAN.

c (p. 186) ii. —.]—An infant pltf., who is competent to testify at the trial, is subject to examination for discovery.—*WATSON v. MOTOR LIVERY CO. (Alta.)*, [1926] 1 W. W. R. 652.—CAN.

l (p. 186) i. —. —. —.]—Deft., in an action by a corpn., has a right to select the officer of the corpn. whom he will examine.—*TRINITY COLLEGE v. LEVINTER*, [1924] 2 D. L. R. 584; 54 O. L. R. 290.—CAN.

l (p. 186) ii. —. —. —.]—In an action for libel against the publishers of a newspaper, wherein the only questions in issue were those of malice & damages, an order was made designating an officer of deft. co. as its officer to be examined for discovery as to matters affecting damages.—*KART v. STAR PUBLISHING CO.*, [1925] 1 W. W. R. 774.—CAN.

e (p. 187) i. —. —. —.]—*Held*: an officer of the railway co.—*GORDANIER v. C. N. R.* (1904), 15 Man. L. R. 1.—CAN.

m (p. 187) i. —. —. *Street foreman.*]—*Held*: not an officer examinable for discovery.—*WEBSTER v. TORONTO CORPN.* (1892), 15 P. R. 21.—CAN.

n (p. 187) i. —. —. *Fire warden.*]—*Held*: an officer examinable for discovery.—*KING LUMBER MILLS v. CANADIAN PACIFIC RY. CO.* (1912), 19 W. L. R. 950; 17 B. C. R. 26; 2 D. L. R. 345.—CAN.

e (p. 188) i. —. —. —.]—An order may be made for the examination of a deft. corpn. by its officer outside the jurisdiction. The question is one of convenience.—*CAVEN v. CANADIAN PACIFIC RY. CO.*, [1924] 2 D. L. R. 1112; [1924] 2 W. W. R. 200.—CAN.

f (p. 188) i. —. —. —.]—In an action against a landlord for damages for illegal distress, the bailiff not being a party to the action is not examinable for discovery.—*HARVEY v. SYLVIA COURT, LTD.*, [1924] 3 W. W. R. 849.—CAN.

.]—The of the steamship N., one of two ships found jointly to blame in a collision action, limited their liability & paid the amount into ct. Claims against the fund were in due course filed by the owners of the N. & the owners of the other ship, the S., & also by the owners of cargo on the S. The same solrs. presented the claims on behalf of the owners of both ships. The owners of cargo on the S., who were not parties to the collision action, then sought leave to administer four interrogatories to the owners of the S. Nos. 1 & 2 asked whether there had been, as between the owners of the two ships, a mutual abandonment of claim or a settlement on other terms. No. 3 inquired whether there

sp. *Minister of Crown.*]—*Held*: not an officer within r. 250.—R. (PROVINCIAL TREASURER OF ALBERTA) v. SMITH, [1927] 2 D. L. R. 69; [1927] 1 W. W. R. 474; 22 Alta. L. R. 544.—CAN.

#### PART IV. SECT. 4.

m i. —. —. —.]—While a judge or master in chambers has jurisdiction to direct that a party shall not examine an opposite party for discovery until the examining party has himself made discovery of documents, such jurisdiction should be exercised only under special circumstances.—*MILLER v. GREAT WEST NATURAL GAS CORPN., PAGE HERSEY IRON TUBE & LEAD CO. v. GREAT WEST NATURAL GAS CORPN.* (1923), 20 Alta. L. R. 379; [1924] 1 W. W. R. 1100.—CAN.

sm. *After amendment of pleadings.*]—If a party, after all discovery ordered has been made, desires to amend his pleadings & then desires to have a further examination for discovery, this can be granted by a judge or master under r. 234.—*MILLER v. GREAT WEST NATURAL GAS CORPN., PAGE HERSEY IRON TUBE & LEAD CO. v. GREAT WEST NATURAL GAS CORPN.* (1923), 20 Alta. L. R. 379; [1924] 1 W. W. R. 1100.—CAN.

#### PART IV. SECT. 5, SUB-SECT. 6.

1416 v. —. —. —.]—A party cannot be required to state what course he proposes to adopt at the trial, or to disclose the names of his informants or witnesses.—*NEMEROVSKY v. McBRIDE* (No. 2) (Man.), [1927] 1 D. L. R. 148; [1926] 3 W. W. R. 436.—CAN.

#### PART IV. SECT. 5, SUB-SECT. 7.

1432 iii. —. —. —.]—If the answers to an interrogatory can disclose anything which can be fairly said to be material to enable pltf. either to maintain his own case, or to destroy that of his adversary, the interrogatory ought to be answered, but if the answers cannot be material for either of these purposes deft. ought not to be ordered to answer.—*HEIDNER & Co. v. THE HANNA NIELSEN*, [1926] 2 D. L. R. 1059; [1926] 2 W. W. R. 397; 37 B. C. R. 207.—CAN.

1434 iv. —. —. —.]—Under r. 423 imported into county ct. procedure, interrogatories must be directly relevant to the matters in issue.—*DUNLOP DRUG DEPOT v. HARTT BOOT & SHOE CO.* (Man.), [1926] 2 W. W. R. 92.—CAN.

#### PART IV. SECT. 5, SUB-SECT. 9.

1457 i. *How far admissible.*]—In a suit to set aside an agreement on the ground of fraudulent misrepresentations:—*Held*: deft. was entitled to ask for the substance of the conversations.—*WEST v. CONWAY* (1928), 23 S. R. N. S. W. 344; 40 N. S. W. W. N.

had been any assignment of the claim of the owners, master, & crew of the *S.*; & No. 4 asked by whom the particular solrs. were instructed to present the claim of the owners of the *S.*:—*Held*: the first three interrogatories were necessary either for disposing fairly of the cause or matter or for saving costs, within R. S. O., Ord. 31, r. 2, & must be allowed. No. 4 was not pressed.—*THE NEDENES* (1924), 41 T. L. R. 248.

1464. *Add. Annotation*:—*Reid*. *Perlak Petroleum Maatschappij v. Deen* (1923), 93 L. J. K. B. 158.

1465. *Add. Citations*:—93 L. J. K. B. 158; 130 L. T. 234.

*Add. Annotation*:—*Reid*. *La Radiotechnique v. Weinbaum*, [1928] Ch. 1.

1531. *Add. Annotation*:—*Consd.* *Isaacs v. Cook*, [1925] 2 K. B. 391.

1532. *Add. Annotation*:—*Reid*. *Aga Khan v. Times Publishing Co.*, [1924] 1 K. B. 675.

1549. *Add. Annotation*:—*Reid*. *Tournier v. National Provincial & Union Bank of England*, [1924] 1 K. B. 461.

1555. *Add. Annotations*:—*Reid*. *Aga Khan v. Times Publishing Co.*, [1924] 1 K. B. 675. *Mentd.* *Sutherland v. Stopes* (1924), 41 T. L. R. 106.

1571. *Add. Annotations*:—*Reid*. *Aga Khan v. Times Publishing Co.*, [1924] 1 K. B. 675. *Mentd.* *Sutherland v. Stopes* (1924), 41 T. L. R. 106.

1625a. ———.]—In an action for infringement of a patent, defts. alleged prior user by V., & prior publication by J.:—*Held*: (1) defts. alleging that the prior user was by machine, they ought to state whether any such machine existed, & if so, whether any such machine was in their possession, custody, or power, & the present address of V.; (2) defts. alleging that the prior publication was by document, they ought so to state & sufficiently identify the document & the present address of J.—*GENERAL ELECTRIC Co. (1900), LTD. v. SAFETY LIFT & ELEVATOR Co. (1903)*, 21 R. P. C. 109.

1626a. *Prior publication*.]—*GENERAL ELECTRIC Co. (1900), LTD. v. SAFETY LIFT & ELEVATOR Co.*, No. 1625a, *ante*.

1631a. *Chemical composition of infringing substance*.]—*SHARPE & DOHME, INCORPORATED v. BOOTS PURE DRUG Co., LTD.* (1927), 44 R. P. C. 69.

1631b. *General question as to process used in manufacturing infringing article*.]—*Held*: inad-

missible.—*OSRAM LAMP WORKS v. POPE'S ELECTRIC LAMP Co., LTD.* (1914), 31 R. P. C. 313, O. A.

1677a. ———. *Ownership*—*Alleged fraudulent representations by seller*.]—In an action against an auctioneer for the price of a horse sold by him for pltf., deft., who pleaded fraud, was not allowed to ask whether the horse was pltf.'s & if so how did it become his.—*SIVIER v. HARRIS* (1876), Bitt. Prac. Cas. 98; 2 Char. Cham. Cas. 54.

1690a. *As to ingredients of infringing articles*.]—*COCA COLA Co. v. DUCKWORTH & Co.* (1928), 45 R. P. C. 225.

1695. *Add. Annotation*:—*Mentd.* *Sharp & Dohme Inc. v. Boots Pure Drug Co.* (1928), 45 R. P. C. 153.

1705a. *Shares*—*Refusal of company to register transfer*—*Grounds for refusal*.]—Art. 27 of a co.'s arts. of assocn. was as follows: "The directors may without assigning any reason decline to register any transfer of shares not fully paid up made to any person not approved by them or made by any member jointly or alone indebted or under any liability to the co." Pltf. was the holder of 10,000 partly paid cumulative preference shares of £1 each in the co., & in Dec. 1925, executed a transfer of 8,000 of these shares to a transferee. Registration of the transfer was refused, & pltf. brought an action claiming a declaration that deft. co. was not entitled to refuse registration of the transfer & rectification of the co.'s register accordingly. Earlier in 1925 the co. had issued debentures secured by a debenture trust deed, in which the co. covenanted with the trustees that it would not in regard to 100,000 preference shares register until the shares were fully paid any transfer of any of them to any proposed transferee not approved by the trustees, & would not, except with the previous written consent of the trustees, release any of the holders of these shares from any money payable or which might become payable in respect of such shares. Pltf. alleged by his statement of claim that deft. co. had wrongfully refused to register the transfer, that the directors did not exercise any proper discretion under the arts., & that they had abdicated their discretion by entering into the above covenant with the trustees. Defts. by their defence claimed to have exercised the discretion under the art. *bona fide*. Pltf. sought to interrogate deft. co. by asking: (1) Whether the co. said that the

PART IV. SECT. 5, SUB-SECT. 12.

1476 i. ———. *Material in part*.]—On an application to set aside interrogatories, on the ground that they were prolix, oppressive, & unnecessary:—*Held*: they should be set aside as a whole, even though some of them, taken by themselves, might be unobjectionable.—*LYTE v. CURREY*, [1927] V. L. R. 472; 49 A. L. T. 47; [1927] Argus L. R. 353.—AUS.

PART IV. SECT. 5, SUB-SECT. 15.—F.

1590 i. *Document in hands of third party*.]—On examination for discovery the party being examined can be asked to tell what are the contents of a document not under his control & not produced to him.—*HARRISON v. KING*, [1925] 1 D. L. R. 1072; [1925] 1 R. 649; 21 Alta. L. R. 373.—

PART IV. SECT. 5, SUB-SECT. 15.—G.

1596 ii. ———.]—*HILLMAN v. IMPERIAL BANK OF CANADA*, [1926] 3 D. L. R. 192; [1926] 2 W. W. R. 276; 20 Sask. L. R. 507.—CAN.

PART IV. SECT. 5, SUB-SECT. 15.—I.

1614 i. *Partnership accounts*.]—*MACDONALD v. MCARTHUR* (1887), 4 Man. L. R. 56.—CAN.

PART IV. SECT. 5, SUB-SECT. 15.—R.

1700 i. *Agency*—*Whether representations made by agent*—*Name of agent*—*Disallowed*.]—*WEST v. CONWAY* (1928), 23 S. R. N. S. W. 344; 40 N. S. W. W. N. 50.—AUS.

1709 i. *Wrongful dismissal*—*Acts justifying dismissal*.]—Pltf., a doctor, sued defts. for wrongful dismissal.

He had been dismissed on the ground that he had recommended, as a suitable person to be a nurse in defts. hospital, a woman with whom he had lived in adultery. Upon an application to compel pltf. to answer questions as to his relations with the woman:—*Held*: he was bound to answer such as referred to his alleged adultery.—*INES v. CALGARY GENERAL HOSPITAL* (1899), 4 Terr. L. R. 58.—CAN.

sa. *Action for alienation of affections*.]

—On examination for discovery in an action for alienation of affections, the wife having been deft.'s housekeeper, he may be required to answer the question whether he ever heard from her of any objection by her husband to her working at his house.—*HARRISON v. KING*, [1925] 1 D. L. R. 1072; [1925] 1 W. W. R. 649; 21 Alta. L. R. 373.—CAN.



directors had declined registration in exercise of the power to decline to register any transfer made to any person not approved by them or in exercise of the power to decline to register any transfer by a member jointly or alone indebted to the co.; (2) whether they said that the transfer was to a person of whom the directors did not approve; (3) whether they said pltf. was in fact a person jointly or alone indebted to the co.; (4) whether the debenture trust deed was referred to by any one at any meeting at which the question of registering the transfer was discussed:—*Held*: all the interrogatories were proper to be allowed. Deft. co. was not entitled to refuse to state which of the grounds mentioned in the art. the directors had acted under, although it might refuse to say what

reasons influenced them in exercising their discretion upon that ground.—*SUTHERLAND (DUKE) v. BRITISH DOMINIONS LAND SETTLEMENT CORPN., LTD.*, [1926] Ch. 746; 95 L. J. Ch. 542; 135 L. T. 732.

1710. *Add. Citations*:—93 L. J. K. B. 158; 130 L. T. 234.

*Add. Annotation*:—*Refd. La Radiotechnique v. Weinbaum* (1927), 137 L. T. 638.

1817. *Add. Annotation*:—*Refd. Cavendish v. Cavendish* (1925), 42 T. L. R. 134.

1855. *Add. Annotation*:—*Refd. Tournier v. National Provincial & Union Bank of England*, [1924] 1 K. B. 461.

1895. *Add. Annotation*:—*Refd. British Thomson-Houston Co. v. British Insulated & Helsby Cables*, [1924] 2 Ch. 160.

PART IV. SECT. 6, SUB-SECT. 1.

*sk. Under Marginal Rules, rr. 344 (2), 348.*—*ESQUIMALT & NANAIMO RY. CO. v. GRANBY CONSOLIDATED MINING, SMELTING & POWER CO. (B. C.)*, [1926] 3 W. W. R. 240.—CAN.

PART IV. SECT. 8, SUB-SECT. 1.

1732 xiv. —.]—The person examined must make full disclosure of information which he has secured from others that has a bearing on the issue; & he must give his belief, if any, with reference to the matters in issue; this belief may be founded on information which he has secured from others, but he must state what it is; & he may also give his reasons therefor.—*KIRKPATRICK v. CANADIAN PACIFIC RY. CO. (Sask.)*, [1926] 3 D. L. R. 542; [1926] 2 W. W. R. 861.—CAN.

1748 ix. —.]—Where a party is interrogated as to matters in issue done by his agents or servants, or done or omitted in their presence in the course of their employment, he is bound to obtain the information they have, & does not sufficiently answer by saying that he does not know & has no information on the subject.—*DUNLOP DRUG DEPOT v. HARTT BOOT & SHOE CO. (Man.)*, [1926] 2 W. W. R. 92.—CAN.

PART IV. SECT. 8, SUB-SECT. 3.

1803 i. *Officers acting as solicitor—Claim of professional privilege.*—*Held*: the fact that the chancellor of pltf. corp. was a member of the firm acting for the corp. was not a reason for refusing to allow him to be examined: if he had as solr. information which pltf. corp. had the privilege of preventing him from disclosing, the privilege could be exercised when a question was put

as to something which he had learned in his professional capacity.—*TRINITY COLLEGE v. LEVINTER*, [1924] 2 D. L. R. 584; 54 O. L. R. 290.—CAN.

q i. — *Equivalent to examination of corporation.*—Under the present Alberta rules as to examination for discovery, there is no room for making any distinction between individual parties & corp. parties, & the examination of a corp.'s officer, selected in accordance with r. 250, is the examination of the corp.—*CAVEN v. CANADIAN PACIFIC RY. CO.*, [1924] 2 D. L. R. 1112; [1924] 2 W. W. R. 200.—CAN.

PART IV. SECT. 8, SUB-SECT. 4.—B.

1813 xii. —.]—The provisions of Canada Evidence Act, R. S. C., 1906 (c. 145), & Alberta Evidence Act, R. S. A., 1922 (c. 87), that a witness shall not be excused from answering a question on the ground that the answer may tend to criminate him, do not apply to an examination for discovery, but his common law right to refuse to answer a question tending to criminate does apply; & on discovery the person examined may on such ground refuse to answer the question whether he has committed adultery.—*HARRISON v. KING (No. 2)*, [1925] 3 D. L. R. 395; [1925] 2 W. W. R. 407; 21 Alta. L. R. 381; *revsq.*, [1925] 2 D. L. R. 1111; [1925] 2 W. W. R. 276.—CAN.

PART IV. SECT. 8, SUB-SECT. 4.—C.

1847 i. *Communication with legal adviser or agents—Contract of employment or agency not established.*—*Re U.S.A. v. MAMMOTH OIL CO.*, [1925] 2 D. L. R. 966; 56 O. L. R. 635; *affg.*, [1925] 2 D. L. R. 66; 56 O. L. R. 307.—CAN.

t i. —.]—While members of the Executive Council of the Irish Free

State, sued as corp. sole, are liable to the ordinary orders for discovery by way of interrogatories & discovery of documents, & to orders for better discovery on filing inadequate answers to interrogatories, a claim to privilege made by them on grounds of public interest is conclusive, & must be recognised as paramount, on the same principle as that underlying the recognition of a similar claim by a British Minister under the royal prerogative.—*LEEN v. PRESIDENT OF THE EXECUTIVE COUNCIL, ETC.*, [1926] 1 R. 456.—IR.

PART IV. SECT. 8, SUB-SECT. 4.—D.

st. *Disclosure of name of person on whose behalf privilege claimed.*—Privilege may be claimed without disclosing to the ct. the name of the client or person on whose behalf it is claimed.—*Re U.S.A. v. MAMMOTH OIL CO.*, [1925] 2 D. L. R. 966; 56 O. L. R. 635; *affg.*, [1925] 2 D. L. R. 66; 56 O. L. R. 307.—CAN.

PART IV. SECT. 9.

1877 iv. —.]—Where the only question which appert. for an order for a re-examination for discovery wished to put was one which the party to be examined was entitled to refuse to answer, & his counsel stated that he would instruct him to refuse to answer it, the order was refused.—*HARRISON v. KING (No. 2)*, [1925] 3 D. L. R. 395; [1925] 2 W. W. R. 407; 21 Alta. L. R. 381.—CAN.

PART V. SECT. 3.

sw. *Conditions precedent to order—Decision that questions properly put & refusal to answer questions on further examination.*—*HANSON v. GLEANER, LTD.*, [1925] 3 D. L. R. 189.—CAN.



## DISTRESS.

## Part II.—Distress for Rent.

43. For the paragraph "Defts. were partners in business . . . for his quiet tenantry" substitute:—"Defts. were partners in business & one of them, in the name of the firm, signed a warrant of distress authorising a broker to levy off the goods of pltf. for rent due 'to me.' Pltf. held under a lease from the Board of Ordnance & defts. were sureties for pltf.:—*Held*: it was an illegal distress because the rent was not due to the partner authorising the distress but to the Board of Ordnance."
- Add. Annotations*:—*Refd.* The Koursk, [1924] P. 140; Performing Right Soc. v. Mitchell & Booker, [1924] 1 K. B. 762. *Mentd.* Falcon v. Famous Players Film Co. (1925), 42 T. L. R. 91.
63. *Add. Annotation*:—*As to* (1) *Refd.* Carrington Manufacturing Co. v. Saldin (1925), 133 L. T. 432.
128. *Add. Annotation*:—*Refd.* Prout v. Hunter, [1924] 2 K. B. 736.
175. *Add. Annotation*:—*As to* (1) *Refd.* Conquer v. Boot, [1928] 2 K. B. 336.
234. *Add. Citation*:—*sub nom.* HUDSON v. SNELGAR, 2 Roll. Rep. 212.
- 421a. ——— Agreement with one of two joint tenants.]—Premises were demised to two persons jointly: one of them hired from applts. a piano under a hire-purchase agreement:—*Held*: the piano was liable to distress for arrears of rent of the premises under Law of Distress Amendment Act, 1908 (c. 53), s. 4 (1), although the other of the joint tenants had not been a party to the hire-purchase agreement.—*GAMAGE (A. W.), LTD. v. PAYNE* (1925), 134 L. T. 222; 90 J. P. 14; 42 T. L. R. 138, D. C.
435. *Add. Annotation*:—*Mentd.* Gre v. Richards, [1926] Ch. 521.
523. *Add. Annotation*:—*Consd.* Drughorn v. Moore, [1924] A. C. 53.
581. *Add. Annotation*:—*Refd.* Allen v. Royal Bank of Canada (1925), 41 T. L. R. 625.
583. *Add. Annotation*:—*As to* (1) *Refd.* Allen v. Royal Bank of Canada (1925), 41 T. L. R. 625.
623. *Add. Annotation*:—*Mentd.* Purnell v. Roche, [1927] 2 Ch. 142.
- 654a. ——— Distress by landlord in person.]—There is nothing in the above Act to prevent an uncertificated landlord from distraining in person.—*JACKSON v. BENNAN* (1893), 37 Sol. Jo. 282.
735. *Add. Annotation*:—*Mentd.* Sorrell v. Smith [1925] A. C. 700.
923. *Add. Annotation*:—*Mentd.* The Jupiter (No. 3) (1927), 137 L. T. 333.

## PART II. SECT. 3, SUB-SECT. 2.—A.

44 vii. ———.]—When a new lease is substituted for an existing one, the right of distress for rent due under the prior lease is at an end.—*CRYSTALL v. OLSEN* (Alta.), [1927] 3 D. L. R. 85; [1927] 2 W. W. R. 35.—CAN.

## PART II. SECT. 4, SUB-SECT. 7.—B. (a) i.

160 vii. ———.]—A mtgee. of land who under an attornment clause distrains for arrears of interest or principal due under his mtge. can make a valid distress only on the goods & chattels of the mtgor. or his assigns, & the word "assigns" does not include a purchaser from the mtgor. under an executory contract of sale of land, even though such purchaser be actually in possession.—*KLENMAN v. ISMAN*, [1924] 2 D. L. R. 146; 1 W. W. R. 883; 18 Sask. L. R. 171.—CAN.

160 viii. ——— *Distress Act, R. S. A., 1922* (c. 97), s. 6—*Effect*.]—*BANK OF MONTREAL v. LYON* (Alta.), [1927] 4 D. L. R. 1012; [1927] 3 W. W. R. 520.—CAN.

## PART II. SECT. 5, SUB-SECT. 1.

sb. *Goods sold after seizure for taxes & left in charge of city chamberlain.*]—*Held*: liable to seizure for rent due to the original landlord.—*LANGTON v. BACON* (1859), 17 U. C. R. 559.—CAN.

## PART II. SECT. 5, SUB-SECT. 3.

261 ii. ———.]—The remedy of distress is not available against the Crown, & the interest of the Crown cannot be affected by any distress made by the landlord.—*A.-G. FOR CANADA v. GORDON*, [1925] 1 D. L. R. 654; 56 O. L. R. 48.—CAN.

## PART II. SECT. 5, SUB-SECT. 4.—D.

sd. *Market—Goods in.*]—Where pltf. was not using premises as a market,

but simply as a shop in which to offer, in the ordinary way, goods purchased to be sold for a profit:—*Held*: a claim for exemption, on the ground that the goods seized were in a public market for sale, failed.—*BENT v. McDOUGALL* (1881), 2 R. & G. 468; 2 C. L. T. 262.—CAN.

## PART II. SECT. 5, SUB-SECT. 10.

sf. *Not grain removed & sold under execution before claim for rent made.*]—*DOUGLAS v. CARRINGTON* (1914), 29 W. L. R. 90; 7 W. W. R. 59; 7 Sask. L. R. 80; 20 D. L. R. 919.—CAN.

## PART II. SECT. 5, SUB-SECT. 11.

q i. ——— *Goods assigned.*]—*FARR v. ANNABLE*, [1926] 2 D. L. R. 127; 58 O. L. R. 387.—CAN.

## PART II. SECT. 5, SUB-SECT. 12.—A.

405 i. *General rule—Goods not privileged.*]—When a lessee sublets premises to a sub-lessee, the head landlord may distrain upon the goods of the sub-lessee for all the rent owing by the lessee.—*Re CHAMBERLAIN & PEERLESS BUMPER & ACCESSORIES, LTD.*, [1924] 4 D. L. R. 298.—CAN.

## PART II. SECT. 5, SUB-SECT. 13.

sj. *Conditional Sales Act—Interest of seller under conditional sale.*]—A landlord is not entitled to distrain on the interest of a seller in goods bought by the tenant under a conditional sale agreement, even though the above Act has not been complied with.—*BELL & SCHIESEL v. JACOBSON & WEITZER*, [1925] 2 D. L. R. 393; [1925] 1 W. W. R. 913.—CAN.

## PART II. SECT. 6, SUB-SECT. 1.

440 iv. ———.]—*ALBERT v. STOREY*, [1925] 4 D. L. R. 274.—CAN.

## PART II. SECT. 6, SUB-SECT. 5.

456 iii. ———.]—A distress for

rent, when made at night, is invalid even as against a third party, when the tenant has not waived the objection.—*ROACH v. LAPPAS*, [1926] 1 D. L. R. 391; [1926] 1 W. W. R. 74; 20 Sask. L. R. 246.—CAN.

461 i. *Waiver of irregularity by tenant—Whether distress valid as against third party.*]—*ROACH v. LAPPAS*, [1926] 1 D. L. R. 391; [1926] 1 W. W. R. 74; 20 Sask. L. R. 246.—CAN.

## PART II. SECT. 9, SUB-SECT. 3.

566 iii. ———.]—Where there was a crop payment lease, & prior to the lease there was a mtge. over the property & the mtgees. had exercised their right to take possession:—*Held*: the lessor had no right to distrain.—*It. v. SULLIVAN*, [1924] 2 D. L. R. 429; 42 Can. Crim. Cas. 44.—CAN.

## PART II. SECT. 12, SUB-SECT. 3.—A.

779 iv. ———.]—*MACDONALD v. CUMMINGS* (1892), 8 Man. L. R. 406.—CAN.

## PART II. SECT. 12, SUB-SECT. 3.—C. (e).

833 i. *Effect of—Property seized under Absconding Debtors Act.*]—Property seized upon a warrant issued under the above Act is not liable to the landlord for a year's rent, though notice of his claim is given to the sheriff before the delivery of the property to the trustees.—*STANTON v. JOHNSTON* (1858), 4 All. 54.—CAN.

## PART II. SECT. 13, SUB-SECT. 2.

880 i. *Bar to action for rent—Goods insufficient to satisfy rent.*]—The existence of a distress is, until the sale, an answer to an action for rent, regardless of whether the distress be sufficient or not to satisfy the amount for which the levy is made.—*FAWELL v. ANDREW*, [1917] 2 W. W. R. 400; 34 D. L. R. 12; 10 Sask. L. R. 162.—CAN.

1266a. Evidence—Terms of tenancy.]—If a tenant suing his landlord for a wrongful distress does not put in the agreement of tenancy, the jury, as against him, may infer its terms from his own admission or his own

evidence in the case.—COWNE v. CORDERY (1862), 10 W. R. 347.

1271. Add. Annotation:—Reid. Elliott v. Boynton, [1924] 1 Ch. 236.

## Part III.—Distress for Rates.

1378. Add. Annotation:—Mentd. L. & N. E. Ry. v. Easington Union Assmt. Com. & Easington-with-Thorpe Parish Council (1925), 95 L. J. K. B. 255.

1379. Add. Annotation:—Mentd. L. & N. E. Ry. v. Easington Union Assmt. Com. & Easington-with-Thorpe Parish Council (1925), 95 L. J. K. B. 255.

1396. Add. Annotation:—Reid. L. C. C. v. Hackney B. C., [1928] 2 K. B. 588.

1409. Add. Citation:—2 B. R. A. 949.

1412. Add. Citation:—1 B. R. A. 450.  
Add. Annotation:—Consd. L. C. C. v. Hackney B. C., [1928] 2 K. B. 588.

1413. Add. Annotation:—Folld. L. C. C. v. Hackney B. C., [1928] 2 K. B. 588.

1414. Add. Citation:—2 B. R. A. 919.  
Add. Annotations:—Reid. Kingston Mill, Stockport v. Owen (1928), 92 J. P. Jo. 782;

L. C. C. v. Hackney B. C., [1928] 2 K. B. 588.

1419a. ———.]—The poor rate payable in respect of a dwelling-house of which pltf. was weekly tenant was £5 10s. a year. A demand note for a half-year's rate, namely £2 15s., was served on pltf., but he failed to pay the money & a summons was issued against him. Pltf. did not appear before the justices, who refused to hear his landlord's daughter on his behalf. Evidence having been given on the part of the overseers, the justices issued a distress warrant against pltf.'s goods, although, before they signed the warrant, the landlord's daughter had addressed them again & intimated that pltf. was a weekly tenant, a fact of which one of the justices was aware:—Held: although, if the full facts had been proved, it would have been apparent to the justices that they had no jurisdiction to issue the warrant, they

### PART II. SECT. 13, SUB-SECT. 10.

sl. On goods sold under conditional sale by wife to husband—Bailiff's sale a mere pretence.]—BARLOW v. BREEZE (B. C.), [1917] 1 W. W. R. 270.—CAN

### PART II. SECT. 17, SUB-SECT. 1.—C.

a i. ———.]—To entitle a landlord to follow & distrain & sell goods which his tenant has removed from the demised premises it is necessary that the rent should be actually due at the time of the tenant's removal of the goods. If no rent is due at the date of removal, & the landlord follows & distrains & sells the goods for rent subsequently falling due, the distress & sale are illegal & the landlord is liable in damages.—ZUROUVINSKI v. DUKE, [1924] 4 D. L. R. 326; 3 W. W. R. 49.—CAN.

i. ———. Necessity for.]—A landlord on becoming aware that his tenant who was in arrear with his rent was removing the *invecla et illata*, prevented the tenant from doing so by force without any application to the ct. for an attachment or interdict:—Held: the landlord's hypothec was inoperative until an order of attachment was obtained from the ct., & the landlord was not entitled to prevent forcibly the removal of the *invecla et illata*.—REDDY v. JOHNSON (1923), 44 N. L. R. —S. AF.

### PART II. SECT. 17, SUB-SECT. 1.—F.

1000 iv. ———.]—A lease to C. provided that in case the lessee attempted to abandon the premises or to remove his goods & chattels so that there would not be a sufficient distress for three months' rent, the rent for the current & ensuing three months should immediately become due. The premises were in fact occupied by a co., of which C. was a shareholder & official, though no assignment of the lease was made. The co. proceeded to abandon the premises & to remove its goods, & the lessor distrained:—Held: this clause did not justify a seizure of the co.'s goods, upon which there was no right to distrain for rent not in arrear.—CRYSTAL, LTD. v. WILLARD

KITCHEN, LTD., [1924] 2 D. L. R. 1051; 2 W. W. R. 344.—CAN.

### PART II. SECT. 19, SUB-SECT. 4.—C. (a).

i. ———.]—DICKS v. BARBOUR (P. E. I.), [1927] 4 D. L. R. 478.—CAN.

### PART II. SECT. 19, SUB-SECT. 4.—E. (b).

g i. ———.]—Held: a replevin bond with one surety was sufficient.—TAYLOR v. BURPEE (1861), 10 N. B. R. (5 All.) 191.—CAN.

### PART II. SECT. 19, SUB-SECT. 4.—E. (c) i.

i. ———.]—P. brought a replevin action, & the goods were delivered to him. The judgment in his favour was reversed, but return of the goods or damages for their detention was neither demanded nor adjudged:—Held: as the obligees could in the replevin action have claimed & obtained an order for return of the goods or for damages, they could not claim it in an action on the replevin bond.—PETRIE v. RIDEOUT, [1925] 1 D. L. R. 1078; [1925] S. O. R. 347.—CAN.

### PART II. SECT. 19, SUB-SECT. 4.—F. (a).

p (p. 380) i. ———. Breach of covenant forfeiting rent claimed—Admissible.]—In an action of replevin by a sub-lessee against the lessor, pltf. is entitled to prove, on cross-examination of the lessor, that there had been a breach of a covenant in the lease which forfeited the rent claimed, the sub-lessee being entitled to the benefit of such covenant, though there has been no assignment of the lease in writing.—RIGNUETTE v. HERBERT (1905), 37 N. B. R. 68.—CAN.

st. Stay of ordered.]—DEWHURST v. MCCOPPIN (1870), 17 Gr. 572.—CAN.

### PART II. SECT. 19, SUB-SECT. 4.—F. (e).

a i. ———. Effect of.]—ALEXANDER v. COWIE (1880), 19 N. B. R. (3 P. & B.) 599.—CAN.

### PART II. SECT. 19, SUB-SECT. 4.—F. (f).

sd. Plaintiff ordered to return goods.]—Pltf. obtained possession of goods by virtue of an order for replevin & subsequently discontinued his action:—Held: the ct. had power to order the return of the goods.—PASSARINI v. MARTIN, [1925] 2 D. L. R. 914; 58 N. S. R. 121.—CAN.

### PART II. SECT. 19, SUB-SECT. 5.—A. (a).

1259 i. Against landlord—Pleading.]—SCOTT v. MCCABE (1871), 31 U. C. R. 220.—CAN.

### PART II. SECT. 19, SUB-SECT. 5.—A. (b).

d i. ———.]—Where a landlord follows & distrains & sells goods for rent subsequently falling due, & the distress & sale are illegal:—Held: the quantum of damages is the full value of the goods lost to the tenant after allowing for depreciation, but exemplary damages cannot be awarded where the landlord considered that he was acting within his rights & did not act in a wanton or insolent manner in making the seizure.—ZUROUVINSKI v. DUKE, [1924] 4 D. L. R. 326; 3 W. W. R. 49.—CAN.

### PART III. SECT. 1, SUB-SECT. 1.

tenant under a lease has covenanted to pay all municipal taxes, the landlord, against whom the taxes are assessed, is a person liable therefor with the tenant under Mercantile Law Amendment Act, 1856, s. 5, & payment by the landlord to the creditor, the city, is a prerequisite to the landlord becoming entitled to the securities or to use the remedies of the city. But the city's right of distress is not a security under the Act, nor is it a remedy which, upon payment, the landlord can use.—Re HINGSTON-SMITH, *Ex p.* MACPHERSON ESTATE, [1924] 3 D. L. R. 844; 2 W. W. R. 1081; 34 Man. L. R. 5 C. B. R. 41.—CAN.

ought to consider only facts known to them in their judicial capacity from materials properly before them, & they had acted correctly in point of law on the evidence which had been so proved.—*PALMER v. CRONE*, [1927] 1 K. B. 804; 96 L. J. K. B. 604; 137 L. T. 88; 91 J. P. 67; 43 T. L. R. 265; 25 L. G. R. 161.

1420. *Add. Annotation*:—*Reid. Gateshead Assessment Committee v. Redheugh Colliery*, [1925] A. C. 309.

1422. *Add. Annotation*:—*Reid. Palmer v. Crone*, [1927] 1 K. B. 804.

1423. *Add. Annotation*:—*Reid. Palmer v. Crone*, [1927] 1 K. B. 804.

1424. *Add. Annotation*:—*Reid. Pigg v. Weardale Union Tow Law Overseers* (1923), 22 L. G. R. 17.

1431. *Add. Annotation*:—*As to (2) Reid. R. v. North, Ex p. Oakey* (1926), 43 T. L. R. 60.

1438. *Add. Annotation*:—*As to (1) Reid. L. C. C. v. Hackney B. C.*, [1928] 2 K. B. 588.

1462. *Add. Annotation*:—*Reid. Palmer v. Crone*, [1927] 1 K. B. 804.

1471. *Add. Annotation*:—*As to (1) Consd. R. v. Norfolk JJ., Ex p. Porter* (1926), 43 T. L. R. 53.

1472. *Add. Annotation*:—*Folld. R. v. Norfolk JJ., Ex p. Porter* (1926), 43 T. L. R. 53.

1484. *Add. Annotation*:—*Reid. L. C. C. v. Hackney B. C.*, [1928] 2 K. B. 588.

1484a. ————.]—Where a rate, duly made & confirmed, has been levied in respect of a vacant building, occupied by a caretaker only, not being held in readiness for use, & not being fitted for any use, & a distress

warrant has been issued by justices in enforcement of payment of such rate; an action of replevin will not lie; the jurisdiction of the justices depends simply on occupation within the parish, & not on beneficial occupation.—*LONDON COUNTY COUNCIL v. HACKNEY BOROUGH COUNCIL*, [1928] 2 K. B. 588; 97 L. J. K. B. 694; 139 L. T. 407; 92 J. P. 138; 44 T. L. R. 592; 26 L. G. R. 366.

1489. *Add. Annotation*:—*Reid. L. C. C. v. Hackney B. C.*, [1928] 2 K. B. 588.

1491. *Add. Annotations*:—*Consd. L. C. C. v. Hackney B. C.*, [1928] 2 K. B. 588. *Mentd. Kingston Union v. Metropolitan Water Board*, [1926] A. C. 331; *Metropolitan Meat Industry Board v. Sheedy*, [1927] A. C. 899.

1506. *Add. Annotation*:—*As to (1) Reid. Palmer v. Crone*, [1927] 1 K. B. 804.

1532. *Add. Citation*:—*sub nom. BLETCHINGDON SURVEYOR v. DAND*, 3 New Sess. Cas. 640.

1542. *Add. Citation*:—1 B. R. A. 570.

1548. *Add. Annotation*:—*Reid. L. C. C. v. Hackney B. C.*, [1928] 2 K. B. 588.

1582. *Add. Citation*: *sub nom. NEARE v. WALKER*, 7 J. P. 143.

1588a. *Costs of distress—Power to levy.*]—The power given to Comrs. of Sewers by Sewers Act, 1833 (c. 22), s. 55, to levy the costs of a distress is limited in the cases of distress for sums under £20 by Distress (Costs) Acts, 1817 (c. 93) & 1827 (c. 17).—*R. v. NORFOLK JJ., Ex p. PORTER* (1926), 96 L. J. K. B. 158; 136 L. T. 327; 91 J. P. 14; 43 T. L. R. 53; 70 Sol. Jo. 1198; 25 L. G. R. 44, D. C.; *sub nom. R. v. SMITH, Ex p. PORTER*, [1927] 1 K. B. 478.

## Part IV.—Distress for Assessed Taxes.

1607. *Add. Annotations*:—*Reid. R. v. Swansea Income Tax Comrs., Ex p. English Crown Spelter Co.*, [1925] 2 K. B. 250. *Mentd. Ingle v. Farrand*, [1927] A. C. 417.

1609. *Add. Annotation*:—*As to (1) Reid. Glamor-*

*gan County Council v. Glassbrook*, [1924] 1 K. B. 879.

1636. *Add. Annotation*:—*Reid. Pickford v. Quirke, Pickford v. I. R. Comrs.* (1927), 138 L. T. 500.

### PART III. SECT. 1, SUB-SECT. 4.—A.

1427 i. *By whom made—Collector.*]—The right to serve notice & the right to receive payment of municipal taxes rest in the collector of taxes & not in the city, & the service of the notice is not a remedy of the city which, upon payment, the landlord is entitled to use against his tenant.—*Re HINGSTON-SMITH, Ex p. MACPHERSON ESTATE*, [1924] 3 D. L. R. 844; 2 W. W. R. 1081; 34 Man. L. R. 312; 5 C. B. R. 41.—CAN.

1427 ii. ———— *Under Village Act, R. S. S., 1920 (c. 88).*]—The duties of the secretary-treasurer of a village under this Act do not include that of levying distress. Where no person is appointed by the Act for such purpose, the village must appoint some person when necessary, & where distress has been levied by a person not authorised, the village may subsequently ratify & adopt his acts.—*MANITOBA OIL PRODUCTS, LTD. v. LANGENBURG VILLAGE*, [1923] 4 D. L. R. 260; 3 W. W. R. 308.—CAN.

### PART III. SECT. 1, SUB-SECT. 6.—A. (b).

*sk. Measure of damages.*]—The

seizure of goods, worth over \$5,000 to satisfy a debt of \$178 is an excessive seizure, & a village corpn. having made or ratified such an unauthorised seizure, was found liable in damages; & the measure of damages was the difference between the full value of the goods seized & the value of the goods necessary to be sold to realise the amount of the taxes & the incidental costs.—*MANITOBA OIL PRODUCTS, LTD. v. LANGENBURG VILLAGE*, [1923] 4 D. L. R. 260; 3 W. W. R. 308.—CAN.

### PART IV. SECT. 1.

g i. ————.]—Where several quarter sections are separately assessed, a seizure for taxes of goods belonging to a person other than the person taxed or owner of the land in possession thereof can be made only for the taxes owing with respect to the particular quarter section on which the goods are found.—*SPRINGBANK MUNICIPALITY v. WALKER*, [1925] 1 D. L. R. 925; [1925] 1 W. W. R. 697; 21 Alta. L. R. 344.—CAN.

g ii. ————.]—Under Municipal District Act, R. S. A., 1922 (c. 110), the right to seize chattels lying on the land taxed, but not belonging to the person taxed, is limited to the case in which the person assessed is in actual

occupation of the land.—*SCOTT v. MUNICIPAL DISTRICT OF WOODFORD (ALTA.)*, [1925] 4 D. L. R. 783; [1925] 3 W. W. R. 727; *affg.*, [1925] 2 W. W. R. 578.—CAN.

sm. *Right of sheriff to sell land—Insufficient distress.*]—*DOE d. BEEL v. REAUMORE* (1834), 3 O. S. 243.—CAN.

sn. ————.]—*FOLEY v. MOODIE* (1858), 16 U. C. R. 254.—CAN.

sp. ————.]—*FRAZER v. MATTICE* (1860), 19 U. C. R. 150.—CAN.

st. *Sale of mortgaged land—Purchase by mortgagee—Right of mortgagee—To surplus.*]—*Re GRANT* (1891), 7 Man. L. R. 468.—CAN.

sv. ————.]—*To whole security.*]—*FARROW v. MASSEY-HARRIS Co., LTD.*, [1927] 3 D. L. R. 997; [1927] 2 W. W. R. 539; 21 Sask. L. R. 610.—CAN.

sw. ————.]—*Validity—Failure to give notice to "persons interested."*]—*STANDARD TRUSTS Co. v. HIRAM MUNICIPALITY*, [1927] 1 D. L. R. 1063; [1927] S. C. R. 50.—CAN.

*Notice to mortgagee of for title sent to*

D. L. R. 1048; [1927] 2 W. W. R. 522; 21 Sask. L. R. 637.—CAN.



## Part V.—Distress for Tolls.

1638. *Add. Annotation:—Mentd.* Layzell v. Thompson (1926), 43 T. L. R. 58. 1649. *Add. Annotation:—Mentd.* Aylott v. West Ham Corp'n., Sisson v. Same (1926), 95 L. J. Ch. 533.
1639. *Add. Annotation:—Mentd.* The Jupiter (No. 3) (1927), 137 L. T. 333. 1653. *Add. Annotation:—Mentd.* The Jupiter (No. 3) (1927), 137 L. T. 333.

## Part VII.—Distress Damage Feasant.

1780. *Add. Annotation:—Refd.* Back v. Daniels (1924), 69 Sol. Jo. 160.

## Part VIII.—Distress for other Purposes.

1870. *Add. Citations:—sub nom.* R. v. FORDHAM, L. R. 8 Q. B. 501; 42 L. J. M. C. 153; 22 W. R. 85.

### PART VI. SECT. 3, SUB-SECT. 1.

*sa. Imposition of hard labour—Validity—Criminal Code, s. 739 (2).—R. v. RILEY (N. S.) (1905), 14 Can. Crim. Cas. 346.—CAN.*

### PART VII. SECT. 8, SUB-SECT. 1.—A.

*e (p. 445) i. — Notice — Under Stray Animals Act.*—On an appeal from a summary conviction under the above Act for illegal impounding:—*Held:* the conviction should be quashed as the record did not show that the notice required by s. 34 was given to the poundkeeper.—*STAHN v. PEUTERT* (1922), 70 D. L. R. 285; [1922] 2 W. W. R. 835.—CAN.

### PART VII. SECT. 8, SUB-SECT. 1.—B.

1818 i. *Must be a fit & proper pound.*—Under Stray Animals Act, 1920, animals impounded must be placed in the pound provided by the municipal council under s. 9; & where a pound-keeper placed & kept horses upon a fenced quarter section owned by him & separated by a road allowance from the pound provided by the municipality & the fence being broken down, the horses escaped or were driven off:—*Held:* the municipality was liable under s. 9, as it must be taken to have assumed the risk of placing & keeping the horses in a place other than an authorised pound.—*SINWICK v. ELFROS*, [1924] 2 W. W. R. 755.—CAN.

### PART VII. SECT. 8, SUB-SECT. 1.—E.

*k i. — — — — —.*—Where under Stray Animals Act, 1915, s. 27 (1), the posting of notices of sale of impounded animals were not complied with:—*Held:* the sale amounted to a conversion & the pound-keeper, & the municipality employing him, were liable in damages, as (1) the posting of two notices within the municipality & one outside it was not a compliance with the Act; (2) where animals are branded, the

pound-keeper is guilty of negligence in failing to mention the brands in the notices.—*LEACH v. MANTARIO RURAL MUNICIPALITY NO. 262 & MOIR*, [1921] 1 W. W. R. 132; 56 D. L. R. 735; 14 Sask. L. R. 25.—CAN.

*k ii. — — — — —.*—Where there is nothing indicating the presence of a brand on an impounded animal the poundkeeper is not obliged to feel all over its body in search of a possible brand, in order properly to describe the animal in the prescribed advertisement.

The sale of an impounded horse by a poundkeeper:—*Held:* defective because notices of the impounding & of the sale had not been properly posted, & both the pound-keeper & the municipality which employed him were liable in conversion for the value of the horse at the time of sale.—*BROWN v. RURAL MUNICIPALITY OF ST. FRANCOIS XAVIER & BRELAND (Man.)*, [1925] 1 W. W. R. 42.—CAN.

*sd. Payment of residue to owner—Domestic Animals Act, 1921 (c. 50)—Municipal District Act, 1911 (c. 3).—*The effect of the amendment made by ss. 27, 28 of the former Act extends the period of twelve months provided by s. 213 of the latter Act, for application for payment to the owner of the residue of the proceeds of sale of an impounded animal, to twenty-four months from the date of sale.—*GOLLAN v. STEHLING*, [1924] 3 W. W. R. 209.—CAN.

### PART VII. SECT. 9.

*sf. Conviction — Under Stray Animals Act, 1920 (c. 124).*—Where the evidence showed that accused had been wrongfully convicted of an offence of unlawfully rescuing cattle under a provincial Act, in that he had merely made an attempt:—*Held:* (1) the offence, not being an indictable offence, could not be remitted to the magistrate to convict of an attempt under Criminal Code, s. 949; (2) s. 49 (d) of the above

Act did not apply to the portion of the province within which the offence was charged to have been committed.—*R. v. GURSKI* (1922), 69 D. L. R. 191; 38 Can. Crim. Cas. 139; [1922] 3 W. W. R. 540.—CAN.

### PART VII. SECT. 12.

*g i. — — — — Measure of damages.*—Damages were fixed on the basis of prices obtained at auction sales, for while it may be that prices paid at auction sales are not as large as are usually obtained at private sales, still the prices obtained at auction sales very often have a great deal to do with fixing the price of an animal in the community.—*SINWICK v. ELFROS*, [1924] 2 W. W. R. 755.—CAN.

*g ii. — — — — Allowance for pound-keeper's fees & expenses.*—In an action for damages for the conversion of animals illegally sold at a pound-sale, debts have no right to an allowance for the pound-keeper's fees or expenses.—*LEACH v. MANTARIO RURAL MUNICIPALITY NO. 262 & MOIR*, [1921] 1 W. W. R. 132; 56 D. L. R. 735; 14 Sask. L. R. 25.—CAN.

*k i. — — — — —.*—Pltf. impounded with a poundkeeper cattle which had come on to his land through a wire fence & claimed damages. The poundkeeper, without obtaining payment of the damages or security therefor, released the cattle to the owner on receipt of the latter's cheque, payment of which was stopped. On appeal by the owner the council of the municipality decided that the fence was not a lawful fence & that pltf. was not entitled to damages. Pltf. sued the poundkeeper & the municipality for the damages:—*Held:* pltf. was entitled as against both debts to the damages claimed.—*JOHNSON v. MUNICIPAL DISTRICT OF BEAVER DAM*, [1925] 4 D. L. R. 299; [1925] 3 W. W. R. 369.—CAN.

# EASEMENTS AND PROFITS À PRENDRE.

## Part I.—Nature and Characteristics of Easements.

4. *Add. Annotations*:—As to (1) *Refd. Sack v. Jones*, [1925] Ch. 235. *Generally, Mentd. Brooke v. Bool*, [1928] 2 K. B. 578.
27. *Add. Annotation*:—*Refd. Simpson v. Weber* (1925), 133 L. T. 46.
48. *Add. Annotations*:—*Refd. Back v. Daniels* (1924), 69 Sol. Jo. 160; *Hackney B. C. v. Metropolitan Asylums Board* (1924), 131 L. T. 136.

## Part III.—Creation of Easements.

89. *Add. Annotation*:—*Refd. Lord Strathcona S.S. Co. v. Dominion Coal Co.* [1926] A. C. 108.
97. *Add. Annotations*:—*Expld. & Dlst. S. E. Ry. v. Cooper*, [1924] 1 Ch. 211. *Consd. York Corpn. v. Leetham*, [1924] 1 Ch. 557. *Refd. Birkdale District Electric Supply Co. v. Southport Corpn.*, [1926] A. C. 355.
98. *Add. Annotations*:—*Consd. S. E. Ry. v. Cooper*, [1924] 1 Ch. 211. *Refd. Birkdale District Electric Supply Co. v. Southport Corpn.*, [1926] A. C. 355.
112. *Add. Annotation*:—*Generally, Mentd. S. E. Ry. v. Cooper*, [1924] 1 Ch. 211.
124. *Annotations*:—For "*Mentd. Poulton v. Moore* (1913), 83 L. J. K. B. 875," read "*Consd. Poulton v. Moore* (1913), 83 L. J. K. B. 875."
- 147a. According to intention of parties — Common approach—Not effective until approach cleared.]—*SWAN v. SINCLAIR*, No. 515, *post*.
183. *Add. Annotation*:—*Consd. Gregg v. Richards* (1926), 95 L. J. Ch. 209.
- 186a. ———.]—In the conveyance to pltf. of a house & land there was an express grant to her of a way described as coloured green on the plan indorsed on the deed. The part coloured green was four feet wide & formed part of a wider roadway running along the back of the adjoining houses to the back premises of pltf.'s house. At the time of the conveyance a right of access for vehicles to pltf.'s back premises over the whole roadway was enjoyed with the house conveyed. The habendum in the conveyance was "to hold same with the benefit of all such easements & privileges in the nature of easements as are now subsisting in respect of the property hereby conveyed." Pltf. claimed that the right to use the whole width of the roadway for the purpose of access of vehicles to her back premises passed to her under her conveyance:—*Held*: that the right claimed passed to pltf. by virtue of sect. 6 (2) of the above Act, there being no unequivocal "contrary intention" expressed in the deed within sect. 6 (4), sufficient to negative the passing of such right.—*GREGG v. RICHARDS*, [1926] Ch. 521; 95 L. J. Ch. 209; 135 L. T. 75; 70 Sol. Jo. 443, C. A.
190. *Add. Annotation*:—As to (1) *Refd. Gregg v. Richards* (1926), 95 L. J. Ch. 209.
- 204a. ——— Intention of parties—No evidence of intention to determine status quo.]—Two adjoining houses, originally belonging to one person, subsequently became vested in pltf. & deft. respectively. For some years before the severance of ownership, a creeper had been growing in what was now deft.'s garden with its foliage spreading along the wall of pltf.'s house. Also, again before the severance of ownership, the post of a gate leading from what was now deft.'s garden had been fastened by plugs & nails into pltf.'s wall. The growth of the creeper had from time to time reached pltf.'s gutter, & he had been obliged to cut it back. Pltf. brought an action for trespass in respect of the two above-mentioned acts, & the county ct. judge found both acts to be trespasses:—*Held*: both the growth of the creeper on pltf.'s wall & the fastening of the gate to pltf.'s wall would amount to trespasses, unless they could be justified by the existence of an easement; the implied reservation of

### PART I. SECT. 2, SUB-SECT. 2.

20 v. ———.]—*GAPES v. FISH*, [1927] V. L. R. 88; 48 A. L. T. 161; [1927] Argus L. R. 111.—AUS.

### PART II.

76 i. *Distinguished from profits à prendre*.]—*BRATT v. TOWNSHIP OF MALDEN*, [1927] 1 D. L. R. 1116; 60 O. L. R. 102.—CAN.

80 i. *Distinguished from licence*.]—*WHIPP v. MACKEY*, [1927] I. R. 372.—IR.

### PART III. SECT. 1, SUB-SECT. 1.

sa. *Public right*.]—Though the public cannot acquire ownership of a land, it can acquire over it an easement by grant.—*USSAN KASIM SAIT v.*

*SECRETARY OF STATE FOR INDIA* (1923), I. L. R. 47 Mad. 116.—IND.

### PART III. SECT. 1, SUB-SECT. 2.—A.

98 i. *Must not be ultra vires*.]—A corpn. having agreed to grant an easement to lay pipes over certain land:—*Held*: the granting of such easement being quite consistent with the purposes for which the corpn. was authorised to hold land, it was competent for the corpn. to make such grant.—*BANKS PENINSULA ELECTRIC POWER BOARD v. AKAROA BOROUGH COUNCIL*, [1923] N. Z. L. R. 880.—N.Z.

98 ii. ——— *Quebec Public Utility Commission*.]—*Held*: the above commission had no power to create a servitude, or any other right, in property of a "public utility."

*MONTREAL TRAMWAYS CO. v. MONTREAL-NORD VILLE*, [1924] A. C. 904.—CAN.

### PART III. SECT. 1, SUB-SECT. 6.—A.

n. For "n" substitute "147a i."  
o. For "o" substitute "147a ii."  
p. For "p" substitute "147a iii."

### PART III. SECT. 2, SUB-SECT. 1.—A.

i. ———.]—*NANTAIS v. PAZNER*, [1926] 4 D. L. R. 258; 59 O. L. R. 318.—CAN.

ii. ———.]—*EDINBURGH LIFE ASSURANCE CO. v. BARNHART* (1886), 17 C. P. 63.—CAN.

iii. ———.]—*LANCASTER v. LLOYD* (1927), 27 S. R. N. S. W. 379; 44 N. S. W. W. N. 89.—AUS.

an easement in a grant of property depends on the common intention of the parties; here there was no evidence that it was not the intention of the parties to the conveyance that creeper & gate-post should remain, & therefore an easement in each case was impliedly reserved; there was, however, a duty on the part of the grantee to use care that the grantor's property was not unduly interfered with; deft. in allowing the creeper to obstruct pltf.'s gutter had failed to use necessary care, & as to this part of the case the award as to damages must stand.—*SIMPSON v. WEBER* (1925), 133 L. T. 46; 41 T. L. R. 302, D. C.

223. *Add. Annotation*:—*Refd. Sack v. Jones*, [1923] Ch. 235.

229. *Add. Annotations*:—*Apld. Sack v. Jones*, [1925] Ch. 235. *Refd. Simpson v. Weber* (1925), 133 L. T. 46.

253. *Add. Annotation*:—*As to* (1) *Refd. Simpson v. Weber* (1925), 133 L. T. 46.

264. *Add. Annotation*:—*Refd. O'Cedar v. Slough Trading Co.*, [1927] 2 K. B. 123.

282. *Add. Annotation*:—*As to* (2) *Apprvd. Gregg v. Richards*, [1926] Ch. 521.

291. *Add. Annotation*:—*As to* (1) *Refd. Simpson v. Weber* (1925), 133 L. T. 46.

299. In the last line of the first paragraph add the word "not" after the word "ought."

*Add. Annotations*:—*Consd. Yorkshire East Riding County Council v. Selby Bridge Co.*, [1925] Ch. 841. *Refd. Winsford Entertainments v. Winsford U. D. C.* (1924), 23 L. G. R. 254; *Layzell v. Thompson* (1926), 43 T. L. R. 58. *Mentd. Jaeger v. Jaeger* (1927), 44 R. P. C. 487.

320. *Add. Annotation*:—*Refd. Birkdale District Electric Supply Co. v. Southport Corpn.*, [1926] A. C. 355.

322. *Add. Annotation*:—*Generally, Mentd. Verge v. Somerville*, [1924] A. C. 496.

329. *Add. Annotation*:—*As to* (1) *Refd. Busby v. Avgherino*, [1928] A. C. 290.

346. *Add. Annotation*:—*Refd. Layzell v. Thompson* (1927), 137 L. T. 106.

347. *Add. Annotations*:—*Refd. Stoney v. Eastbourne R. D. C.*, [1927] 1 Ch. 367. *Mentd. Moser v. Ambleside U. D. C.* (1924), 89 J. P. 118.

359. *Add. Annotation*:—*Refd. Birkdale District Electric Supply Co. v. Southport Corpn.*, [1926] A. C. 355.

389. *Add. Annotation*:—*As to* (3) *Refd. Slack v. Leeds Industrial Co-op. Soc.* (1924), 94 L. J. Ch. 46.

435. *Add. Annotation*:—*As to* (1) *Refd. Stoney v. Eastbourne R. C. & Devonshire* (1926), 95 L. J. Ch. 312.

### PART III. SECT. 2, SUB-SECT. 1.—C.

*g i. ——— Land bounded by private road.*—*Pltf.*, a lessee, claimed to be entitled to a right of way over a private road existent at the time of the lease & maintained by the lessor, owner of adjoining lands, as one of the approaches from the highway to his own house, & permitted to be used by tenants in prior years without objection. The leased property as described in the lease did not embrace this road, but the lessee claimed that he & prior occupiers of the leased house had the use of it, & as one of the named boundaries was the roadway, the lease impliedly gave him a right of way over it:—*Held*: the lessee was not entitled to the right-of-way.—*BREADY v. MCLENNAN* (No. 2), [1924] 3 W. W. R. 924; 33 B. C. R. 460.—CAN.

### PART III. SECT. 2, SUB-SECT. 1.—D.

284 i. *Conveyances not simultaneous—Right of way.*—*PHILLIPS v. ROSS*, [1926] 1 D. L. R. 605; 58 N. S. R. 326.—CAN.

### PART III. SECT. 3, SUB-SECT. 2.

*sm. The public.*—To a suit by a private person against the Govt. for a declaration of his ownership of a land, the acquisition of an easement over it by the public is no defence. Though the public cannot acquire ownership of a land, it can acquire over it an easement by prescription.—*USSAN KASIM SAIT v. SECRETARY OF STATE FOR INDIA* (1923), 1 L. L. R. 47 Mad. 116.—IND.

*oi. ——— In land of lessor.*—Although a tenant cannot acquire a prescriptive right of easement in land belonging to his lessor, he may claim a right of easement based on immemorial user.—*TINKOWRI, ETC. v. RAM, ETC.* (1922), 1 L. L. R. 50 Calc. 356.—IND.

### PART III. SECT. 3, SUB-SECT. 3.

*s i. ———*—In India a tenant can

establish his right to irrigate his field from his landlord's tank by proof of open & continuous user from time immemorial.—*TINKOWRI, ETC. v. RAM, ETC.* (1922), 1 L. L. R. 50 Calc. 356.—IND.

*sw. Not right to use railway.*—*MEAGHER v. CANADIAN PACIFIC RY. CO.* (1912), 42 N. B. R. 46.—CAN.

*sz. Right to trap.*—*RIOI LAKE FUR CO., LTD. v. MCALLISTER*, [1925] 2 D. L. R. 506; 56 O. L. R. 440.—CAN.

### PART III. SECT. 3, SUB-SECT. 5.—A.

345 i. *Origin of doctrine.*—When enjoyment of a right of easement has continued uninterrupted for a long series of years, such enjoyment should be attributed to a legal origin, & the ct. should presume a grant or an agreement.—*TINKOWRI, ETC. v. RAM, ETC.* (1922), 1 L. L. R. 50 Calc. 356.—IND.

### PART III. SECT. 3, SUB-SECT. 5.—E.

*sa. Proof of commencement of tenancy—User immemorial.*—Where the origin of a tenancy is known, but the origin of a right of easement has not been traced, the tenancy does not rebut the presumption of a grant which arises upon proof of immemorial user.—*TINKOWRI, ETC. v. RAM, ETC.* (1922), 1 L. L. R. 50 Calc. 356.—IND.

### PART III. SECT. 3, SUB-SECT. 6.—

O. (b) i.

*t i. S. P. SUBBA RAO v. LAKSHMANA RAO* (1925), 1 L. L. R. 49 Mad. 820.—IND.

*t ii. ———*—*CARPET IMPORT CO., LTD. v. BEATH & CO., LTD.*, [1927] N. Z. L. R. 37.—N.Z.

### PART III. SECT. 3, SUB-SECT. 6.—

O. (b) ii.

413 i. *Evidence that user not of right—Parol licence granted during statutory period.*—Parol licence is of no moment unless it is applied for & granted

within the period of forty years prescribed by Limitations Act, R. S. O., 1914, s. 35, in which case it will negative the enjoyment of the easement as of right for forty years.—*BOWES v. REID*, [1924] 2 D. L. R. 399; 54 O. L. R. 253.—CAN.

### PART III. SECT. 3, SUB-SECT. 6.—

O. (c) i.

*sb. Forty years—Whether conclusive.*—Limitations Act, R. S. O., 1914, s. 35, makes a right which has been enjoyed for the full period of forty years indefeasible, unless it appears that it was enjoyed by virtue of some consent or agreement expressly given by deed or writing.—*BOWES v. REID*, [1924] 2 D. L. R. 399; 54 O. L. R. 253.—CAN.

433 i. *Against whom time computed—Reversioner.*—*EISENHAEUER v. WHY-NACHT* (1902), 35 N. S. R. 295.—CAN.

### PART III. SECT. 5, SUB-SECT. 2.

*sd. Plea of user—Road within well-defined limits—Slight variation of via trita—Sufficient.*—*BOWES v. REID*, [1924] 2 D. L. R. 399; 54 O. L. R. 253.—CAN.

### PART IV. SECT. 1.

*sl. Whether assignable.*—In July, 1916, deft. & another granted to S. a right to lay down a tramway through deft.'s land for the purpose of removing S.'s timber. In 1919 S. assigned his rights under the agreement to pltf., who continued to use the tramway. The assignment was known to deft., who raised no objection. Deft., in Aug. 1922, placed obstructions across the tramway. On a motion for an injunction, deft. contended that the contract granting the tramline was not assignable:—*Held*: the grant was not a personal one, & pltf. had an equitable interest by assignment from S. in the easement.—*MACDONALD v. PEDDLE*, [1923] N. Z. L. R. 987.—N.Z.



## Part V.—Preservation and Repair of Easements.

482. *Add. Annotation*:—*Reid. Sack v. Jones*, [1925] Ch. 235. 483. *Add. Annotation*:—*Reid. Metropolitan Water Board v. L. & N. E. Ry.* (1924), 181 L. T. 123.

## Part VI.—Extinguishment of Easements.

493. *Add. Annotations*:—*As to (1) Apld. Swan v. Sinclair*, [1924] 1 Ch. 254. *Reid. Swan v. Sinclair*, [1925] A. C. 227.  
 494. *Add. Annotation*:—*As to (2) Reid. Swan v. Sinclair*, [1925] A. C. 227.  
 502. *Add. Annotation*:—*Reid. Swan v. Sinclair*, [1925] A. C. 227.  
 505. *Add. Annotation*:—*Reid. Swan v. Sinclair*, [1925] A. C. 227.  
 511. *Add. Annotation*:—*As to (1) Reid. Swan v. Sinclair*, [1925] A. C. 227.

515. For the paragraph in the original volume substitute the following paragraph:—

— *Acquiescence in obstruction of way.*—

In 1870 a row of houses was put up for sale by auction in eleven lots. One of the conditions was that a strip of land fifteen feet in width, running the entire length of the lots & being the rear portions of the back gardens of the houses, was intended to form a right of way from the back garden of each house into Church Road, which bounded the side of lot 1 on the south, & that the lots would be sold subject to & with the benefit of such right of way, & that the respective purchasers should at the earliest possible moment remove the fifteen feet of end garden wall & form the right of way. This condition was recited in each of the conveyances. Lot 1 was conveyed subject to the right of way of the owners of the other lots & lots 2 & 3 with the benefit of & subject to the right of way. The purchaser of lot 1 let it for a term of fifty years, which expired on June 15, 1922, subject to the right of way. In 1904 *pltf.* took an assignment of this lease, & in 1911 he purchased the fee simple of lots 2 & 3, with the benefit & subject to the right of way.

*Deft.* was the present owner of lot 1. For fifty years from the date of the original sale no attempt was made to form the proposed roadway, the garden walls dividing the several lots remained intact, & the wall separating lot 1 from Church Road was not breached. Church Road was six feet above the level of the back gardens. In 1883 the original lessee of lot 1 in the course of erecting some stables in his back garden raised the surface of the strip of land at the end of his lot to the level of Church Road, with the result that there was a drop of six feet from that strip into lot 2. In 1919 *pltf.*, in anticipation of the expiration of his lease, proposed to build a garage on lots 2 & 3. With that object in view he pulled down part of the wall which separated the rear portion of lot 1 from Church Road & erected gates there, & he also raised the level of the rear portion of lot 2; & subsequently he caused a car to be driven through the gates over the strip in lot 1 into lot 2. On the expiration of the lease *deft.* blocked up the gates & obstructed the way. In an action by *pltf.* as owner of lots 2 & 3 to enforce his right of way against the *deft.*:—*Held*: (1) until the land was cleared there could be no effectual creation of a right of way; (2) having regard to the time which had elapsed before any purchaser attempted to assert his rights under the original conveyance, the inevitable inference was that the arrangement made in 1870 had been abandoned by common consent.—*SWAN v. SINCLAIR*, [1925] A. C. 227; 94 L. J. Ch. 104; 132 L. T. 577; 89 J. P. 38; 41 T. L. R. 158; 22 L. G. R. 705, H. L.

541. *Add. Annotation*:—*Mentd. Public Trustee v. Lancaster Duchy*, [1927] 1 K. B. 516.

### PART VI. SECT. 2, SUB-SECT. 2.—B.

507 i. *Non-user alone as presumption of abandonment*—*Abandonment question of fact.*—While mere non-user is not sufficient to amount to abandonment of a right of way, it is a fact to be taken into consideration, as it is from all such facts that the *ct.* has to decide whether or not a clear intention to abandon can be inferred or is indicated. Where *pltf.* & his predecessors in title had failed to exercise a right of way had fenced off their land, so as to shut off the right of way & had omitted any specific mention of the right in various conveyances:—*Held*: an abandonment was established.—*CHRISTOPHER v. COHEN* (1924), 1 L. R. 2 Ran. 534.—IND.

508 v. —.—.]—Non-user is not of

itself evidence of abandonment.—*NANTAIS v. PAZNER*, [1928] 4 D. L. R. 258; 59 O. L. R. 318.—CAN.

### PART VI. SECT. 3, SUB-SECT. 1.

1 i. —.—.]—The unity of the dominant & servient estates in the same person extinguishes the easement appurtenant to the dominant estate.—*TINKOWRI, ETC. v. RAM, ETC.* (1922), 1 L. R. 50 Calo. 356.—IND.

1 ii. —.—.]—*Easement of support.*—*BACKUS v. SMITH* (1880), 5 A. R. 341.—CAN.

549 i. *Unity of possession without unity of title*—*Suspension of easement*—*Water.*—*TINKOWRI, ETC. v. RAM, ETC.* (1922), 1 L. R. 50 Calo. 356.—IND.

*easement may be revived after it has been extinguished, by the union of the dominant & servient tenements in one owner, by their subsequent severance, provided the easement is apparent, continuous & essential to the enjoyment of the dominant tenement.*—*TINKOWRI, ETC. v. RAM, ETC.* (1922), 1 L. R. 50 Calo. 356.—IND.

### PART VI. SECT. 4.

*sk. Sale of servient tenement for taxes under statutory power.*—Under Calgary Charter a sale for taxes of the servient tenement does not extinguish a true easement.—*HUTCHINGS v. CAMPBELL, WILSON & HORNE, LTD.*, [1924] 2 D. L. R. 299; 1 W. W. R. 1070; 20 Alta. L. R. 275.—CAN.

## Part VII.—Rights of Way.

581. In the cross-references following this case for "Church ways.]—See HIGHWAYS," substitute "Church ways.]—See ECCLESIASTICAL LAW, p. 307, post."
598. *Add. Annotation*:—*Refd. Taylor v. British Legal Life Assce.* (1925), 94 L. J. Ch. 284.
641. *Add. Annotation*:—*Refd. Taylor v. British Legal Life Assce.* (1925), 94 L. J. Ch. 284.
684. *Add. Annotation*:—*Consd. S. E. Ry. v. Cooper*, [1924] 1 Ch. 211.
687. *Add. Citations*:—[1924] 1 Ch. 211; 130 L. T. 273; 88 J. P. 37.  
*Add. Annotations*:—*As to* (2) *Refd. Birkdale District Electric Supply Co. v. Southport Corpn.*, [1926] A. O. 355. *Generally, Mentd. Kelly v. Barrett*, [1924] 2 Ch. 379.
738. *Add. Annotation*:—*Consd. S. E. Ry. v. Cooper*, [1924] 1 Ch. 211.
743. *Add. Annotation*:—*Consd. S. E. Ry. v. Cooper*, [1924] 1 Ch. 211.
754. *Add. Annotation*:—*Refd. Taylor v. British Legal Life Assce.* (1925), 94 L. J. Ch.
795. *Add. Annotation*:—*As to* (1) *Appld. Oldham v. Sheffield Corpn.* (1927), 136 L. T. 681.

## Part VIII.—Light.

830. *Add. Annotation*:—*As to* (6) *Consd. Slack v. Leeds Industrial Co-op. Soc.* (1924), 94 L. J. Ch. 46.
858. *Add. Annotations*:—*Consd. Foster v. Lyons* (1926), 70 Sol. Jo. 1182. *Mentd. Rye v. Purcell*, [1926] 1 K. B. 446.
896. *Add. Annotation*:—*As to* (1) *Refd. Rye v. Purcell*, [1926] 1 K. B. 446.
898. *Add. Annotation*:—*As to* (1) *Folld. Foster v. Lyons* (1926), 70 Sol. Jo. 1182.
- 898a. ————]—A reservation in a lease empowering the lessor to build on adjoining

## PART VII. SECT. 1.

586 ii. ———— *Agreement between co-owners.*]—*Deft. & B.*, each of whom owned one-half of a lot of land, entered into an agreement for a right of way to a building in the rear, each contributing from his half one foot nine inches, so as to make a right of way, three feet six inches in width:—*Held*: the deed providing for the establishment of the way must be construed as a mutual conveyance from each party to the other of an interest in the land necessary to be used in common for the alleged right of way, & not as an agreement to establish a right of way by grant or otherwise.—*TRAVIS INVESTMENT Co. v. POWER*, [1925] 1 D. L. R. 232; 57 N. S. R. 432.—CAN.

r. For "BADHANATH" read "RADHANATH."

## PART VII. SECT. 2, SUB-SECT. 5.

602 i. *Extent of user of way*—*Grant subject to existing obstruction.*]—When a right of way is granted over land on which there exists an obstruction at the date of the grant, it is a question of interpretation of the grant whether the easement is subject to the obstruction or free from it.—*SPEAR v. ROWLATT*, [1924] N. Z. L. R. 801.—N.Z.

## PART VII. SECT. 3, SUB-SECT. 2.—D.

g i. ————]—*FIELDER v. BANNISTER* (1860), 8 Gr. 257.—CAN.

## PART VII. SECT. 6, SUB-SECT. 3.—B. (a).

683 v. ————]—*TRAVIS INVESTMENT Co. v. POWER*, [1925] 1 D. L. R. 232; 57 N. S. R. 432.—CAN.

ii. ————]—Where there was a grant of way to & from claimant's warehouse solely for the purpose of taking goods to & from the warehouse, & at the time of the grant claimant had no building which could be described as a warehouse, but was then contemplating the building of one:—*Held*: when the grant was made the parties must have intended to create

a right of way in connection with the warehouse to be erected in the future, & the grant ought to be so considered.—*PATERSON & BARR, LTD. v. OTAGO UNIVERSITY*, [1925] N. Z. L. R. 191.—N.Z.

## PART VII. SECT. 6, SUB-SECT. 3.—B. (b).

690 i. *Limited by user proved*—*Only when terminus ad quem of special nature.*]—The only cases in which servitudes of way acquired by prescription are limited by reference to the purposes of the traffic carried by them are those cases in which there is some special feature attached to the terminus to which the roadway leads, as in a way to a mill, kirk, or peat moss.—*CARSTAIRS v. SPENCE*, [1924] S. C. 380.—SCOT.

## PART VII. SECT. 6, SUB-SECT. 3.—B. (i).

716 i. *Whether way for general purposes.*]—Where proprietors of certain lands sought to interdict the proprietor of adjoining lands from carting building materials for dwelling-houses over a roadway or track which traversed their lands:—*Held*: during a period defenders had acquired a servitude right of access for cart traffic; & the fact that the carting had been for agricultural purposes did not limit the servitude to a right of passage for such purposes, but a right of access by cart for all purposes, including the carting of building materials, had been acquired.—*CARSTAIRS v. SPENCE*, [1924] S. C. 380.—SCOT.

716 ii. ————]—Where a dominant owner, who has acquired a right of way over the servient heritage for the agricultural uses of his land, seeks to use that right of way for non-agricultural purposes, he has a right to do so, provided that additional burden is not thereby imposed on the servient heritage.—*MANOHERSHA SORABJI v. VIRJIVALLABHDAS JEKI-*

*SONDAS* (1926), I. L. R. 50 Bom. 635.—IND.

## PART VII. SECT. 6, SUB-SECT. 3.—D. (a).

754i. ———— *Method of*—*Whether reasonable.*]—*Deft.* leased to *pltf.* an island, standing in a shallow lake, which in the dry season became a muddy marsh. The land surrounding the island belonged to *deft.*, & the lease provided that *pltf.* should have a right of way across it, nothing being said as to the mode of exercising the right. *Pltf.* having built a trestle bridge from the island to the main land:—*Held*: *pltf.*'s mode of user was reasonable, & *deft.* was not justified in interfering with the bridge.—*BUTCHART v. DOYLE* (1897), 24 A. R. 615.—CAN.

ii. *Removal of existing obstruction*—*Way granted free of obstruction.*]—Where a right of way is granted over land on which there exists an obstruction at the date of the grant, but free from it, it is for the grantee to get rid of the obstruction by his own act. The grantor is not under any obligation in the absence of a contract to that effect.—*SPEAR v. ROWLATT*, [1924] N. Z. L. R. 801.—N.Z.

## PART VII. SECT. 6, SUB-SECT. 3.—D. (b).

759 i. *General rule.*]—Apart from special custom or express contract, the owner of a servient tenement is not bound to execute any repairs necessary to ensure the enjoyment of the easement by the owner of the dominant tenement.—*SPEAR v. ROWLATT*, [1924] N. Z. L. R. 801.—N.Z.

## PART VII. SECT. 8.

p i. ————]—*Deft.* having, by grant, a right of way over a strip of land, the property of *pltf.*:—*Held*: *pltf.* was entitled to erect a fence upon the boundary between the strip & *deft.*'s land, allowing *deft.* reasonable access by a gate or gates to the way.—*LEWIS v. WAKELING* (1923), 54 O. L. R. 647.—CAN.

land, notwithstanding such building might obstruct any lights on the demised land, prevents the lessee from acquiring a right to light under Prescription Act, 1832 (c. 71), s. 3.—*FOSTER v. LYONS & Co.*, [1927] 1 Ch. 219; 96 L. J. Ch. 79; 136 L. T. 372; 70 Sol. Jo. 1182.

903. *Add. Annotation*:—*Generally*, *Mentd.* *John-son v. Clarke*, [1928] Ch. 847.

934a. —. ]—The standard as to the amount of light required to be left so as to prevent a nuisance is an absolute one, & if an ob-

struction to an ancient light renders a room inadequately lighted & causes an actionable nuisance, the obstruction does not cease to be actionable because the room is situated in a manufacturing town.—*HORTON'S ESTATE, LTD. v. BEATTIE, LTD.*, [1927] 1 Ch. 75; 96 L. J. Ch. 15; 136 L. T. 218; 42 T. L. R. 701; 70 Sol. Jo. 917.

956. *Add. Annotation*:—*Consd.* *Slack v. Leeds Industrial Co-op. Soc.*, [1924] 2 Ch. 475.

982. *Add. Annotation*:—*As to* (1) *Refd.* *Slack v. Leeds Industrial Co-op. Soc.*, [1924] 2 Ch. 475.

## Part IX.—Water.

1016. *Add. Annotation*:—*Apld.* *Attwood v. Llay Main Collieries* (1925), 70 Sol. Jo. 265.

1117. *Add. Annotations*:—*Consd.* *Ilford U. D. C.*

*v. Beal & Judd*, [1925] 1 K. B. 671. *Refd.* *Noble v. Harrison*, [1926] 2 K. B. 332.

## Part X.—Support.

1165. *Add. Annotations*:—*Refd.* *Graigola Merthyr Co. v. Swansea Corpn.*, [1928] Ch. 31. *Mentd.* *Martins v. Fowler*, [1926] A. C. 746.

1193. *Add. Annotation*:—*Consd.* *Ilford U. D. C. v. Beal & Judd*, [1925] 1 K. B. 671.

1195. *Add. Annotation*:—*Generally*, *Mentd.* *Graigola Merthyr Co. v. Swansea Corpn.*, [1928] Ch. 235.

1223. *Add. Annotation*:—*Apld.* *Sack v. Jones*, [1925] Ch. 235.

1226a. *Whether party-wall entitled to support—From adjacent building.*]—*Pltf. & deft. were*

the owners of adjoining houses, separated by a party-wall, & with implied mutual rights of support. *Pltf.* alleged that owing to lack of repair & underpinning *deft.*'s house was subsiding, dragging the party-wall over, & thereby damaging *pltf.*'s house:—*Held*: *pltf.*'s allegations had not been substantiated by the evidence. *Seemle*: even if they had been substantiated *pltf.* would have had no cause of action.—*SACK v. JONES*, [1925] Ch. 235; 94 L. J. Ch. 229; 133 L. T. 129.

1231. *Add. Annotation*:—*As to* (2) *Refd.* *Brooke v. Bool*, [1928] 2 K. B. 578.

## Part XI.—Miscellaneous Easements.

1282. *Add. Annotations*:—*Consd.* *L. C. C. v. Hackney B. C.*, [1928] 2 K. B. 588. *Refd.* *Back v. Daniels* (1924), 69 Sol. Jo. 160; *Hackney B. C. v. Metropolitan Asylums Board* (1924), 131 L. T. 136.

1302. *Add. Annotation*:—*Mentd.* *O'Cedar v. Slough Trading Co.*, [1927] 2 K. B. 123.

1322a. *To attach creeper to wall.*]—*SIMPSON v. WEBER*, No. 204a, *ante*.

1322b. *To attach post to wall.*]—*SIMPSON v. WEBER*, No. 204a, *ante*.

PART IX. SECT. 2, SUB-SECT. 2.—C.  
1035 iii. —. ]—*CARTER v. SUDDABY* (Ont.), [1927] 1 D. L. R. 812.—CAN.

### PART IX. SECT. 3.

1133 iii. —. ]—*FORTIN v. CARON* (Can.), [1927] 4 D. L. R. 936.—CAN.

sm. *Irrigation from tank—Prescription by lessee.*]—In India, a tenant can establish his right to irrigate his field from his landlord's tank by proof of open & continuous user from time immemorial.—*TINKOWRI, ETC. v. RAM, ETC.* (1922), 1 L. R. 50 Calc. 356.—IND.

### PART IX. SECT. 4.

sn. *Unity of seisin for different*

*estates—Enjoyment of irrigation rights continued by tenant.*]—Where the tenancy in execution of a rent decree was sold & purchased by the landlord, but the tenant continued in occupation in the undisturbed enjoyment of the right of irrigation & the rent was substantially enhanced:—*Held*: in such circumstances the right of irrigation was not extinguished, but momentarily suspended & revived.—*TINKOWRI, ETC. v. RAM, ETC.* (1922), 1 L. R. 50 Calc. 356.—IND.

### PART X. SECT. 1, SUB-SECT. 1.—A. (b).

1143 i. *General rule—Support in natural state.*]—A person must not excavate on his land so as to destroy

the lateral support sufficient to maintain the soil on his neighbour's adjoining land in its natural state.—*METROPOLITAN LIFE ASSURANCE CO. v. MCQUEEN*, [1924] 2 D. L. R. 942; 2 W. W. R. 981.—CAN.

### PART X. SECT. 1, SUB-SECT. 1.—B. (b).

1189 i. *Weight of building contributing to subsidence.*]—Where a person by an excavation on his land causes subsidence on his neighbour's land, because of the added weight of a building thereon, he is not liable. The neighbour is not entitled to sufficient support to maintain his building.—*METROPOLITAN LIFE ASSURANCE CO. v. MCQUEEN*, [1924] 2 D. L. R. 942; 2 W. W. R. 981.—CAN.



## Part XII.—Disturbance of Easements.

- 1352.** *Add. Annotation* :—As to (2) **Consd.** *Free-born v. Leeming*, [1926] 1 K. B. 160.
- 1356.** *Add. Annotations* :—As to (2) **Consd.** *Slack v. Leeds Industrial Co-op. Soc.*, [1924] 2 Ch. 475; *Horton's Estate v. Beattie* (1926), 42 T. L. R. 701.
- 1396.** *Add. Annotation* :—**Refd.** *Slack v. Leeds Industrial Co-op. Soc.*, [1924] 2 Ch. 475.
- 1399.** For the paragraph in the original volume substitute the following paragraph :—

—.] — Chancery Amendment Act, 1858 (c. 27), s. 2, confers on the Ct. of Ch. jurisdiction to award damages in lieu of an injunction in the case of a threatened injury. Notwithstanding the repeal of that Act by Statute Law Revision & Civil Procedure Act, 1883 (c. 49), the combined effect of Jud. Act, 1873 (c. 66), s. 16, & Statute Law Revision Act, 1898 (c. 22), s. 1, is to maintain in force the jurisdiction conferred by Chancery Amendment Act, 1858, s. 2.

Where therefore an action was brought in the Ch. Div. for an injunction to restrain an obstruction of ancient lights, & the ct. found that defts.' buildings when completed would cause an actionable obstruction to pltf.'s lights, but that no such obstruction had yet taken place :—*Held* : the ct. had jurisdiction to award damages in lieu of an injunction.—**LEEDS INDUSTRIAL CO-OPERATIVE SOCIETY, LTD. v. SLACK**, [1924] A. C. 851 ; 93 L. J. Ch. 436 ; 131 L. T. 710 ; 40 T. L. R. 745 ; 68 Sol. Jo. 715, H. L. ; *revsg.* S. C. *sub nom.* **SLACK v. LEEDS INDUSTRIAL CO-OPERATIVE SOCIETY, LTD.**, [1923] 1 Ch. 431, C. A. ; *subsequent proceedings*, [1924] 2 Ch. 475, C. A.

- 1399a. -]. In an action brought by pltf. against def't. society for an injunction & damages in respect of an alleged obstruction of ancient lights, the judge found that def'ts.' buildings when completed would cause an actionable obstruction to pltf.'s lights, but that no such obstruction had yet taken place, & he expressed the opinion that the interference with pltf.'s legal rights when the building was completed would be small, & could be adequately compensated by damages, but held, contrary to his own opinion, that he was bound by the opinion of the Ct. of Appeal in *Dreyfus v. Peruvian Guano Co.* (1889), 43 Ch. D. 316, that there was no

jurisdiction under Chancery Amendment Act, 1858 (c. 27), to give damages in lieu of an injunction where the injury was threatened but had not been sustained, & he therefore granted an injunction. The Ct. of Appeal, without going into the merits, by a majority, upheld the view that the ct. had no jurisdiction in such a case to award damages in lieu of an injunction. The House of Lords, by a majority, reversed this decision, & remitted the case to the Ct. of Appeal to deal with it on its merits:—*Held*: the findings of the judge brought the case within the “good working rule” suggested by A. L. SMITH, L.J., in *Shelfer v. City of London Electric Lighting Co.*, No. 1356, *ante*, as that which might guide the ct. in exercising the discretion given it by Chancery Amendment Act, 1858, to award damages in lieu of an injunction; that was still the rule to be adopted by the ct. as a guide & was not affected by anything that was decided in *Colls v. Home & Colonial Stores*, No. 830, *ante*; therefore, there being evidence to support the findings of the judge, the injunction granted by him, contrary to his own opinion, ought to be discharged, & in lieu thereof an inquiry directed as to damages. —*SLACK v. LEEDS INDUSTRIAL CO-OPERATIVE SOCIETY, LTD.*, [1924] 2 Ch. 475; 94 L. J. Ch. 46, O. A.

- 1406a.** — **Erection of building interfered with acquiesced in by defendant.**—Where pltf. & deft. held adjoining pieces of ground under a common landlord, & pltf., with the licence of the landlord, & without objection by deft., had erected a manufactory, an injunction was granted to restrain deft. so building as to obstruct the lights of pltf.'s manufactory pending trial.—**CROOK v. WILSON** (1855), 3 W. R. 378.

- 1408. Add. Annotation:—***As to (1) Consd. Slack v. Leeds Industrial Co-op. Soc. (1924), 94 L. J. Ch. 46.*

- 1442a. — Against lessee—Freeholder not party to action—Light.]—BARNES v. ALLEN (1927), 64 L. Jo. 92; 164 L. T. Jo. 83.**

- 1444a. ———.]—SLACK v. LEEDS INDUSTRIAL CO-  
OPERATIVE SOCIETY, LTD., No. 1399a, ante.**

- 1471. Add. Annotation:—Folld. Horton's Estate v. Beattie (1926), 42 T. L. R. 701.**

**PART XII. SECT. 2, SUB-SECT. 2.—**  
**B. (a).**

**st. Mortgagee.—Though not in possession.**—A mtgee. of land, though not in possession, has a right to have his security left unimpaired, & if the owner of adjoining land excavates on the mortgaged land, although the mtgee. may not be entitled to maintain an action for trespass, he has a right of action for injunction or damages, independent

of any that the owner of the mortgaged land might have.—METROPOLITAN LIFE ASSURANCE CO. v. McQUEEN, [1924] 2 D. L. R. 942; 2 W. W. R. 981.—CAN.

**PART XII. SECT. 2, SUB-SECT. 2.—**  
**D. (b) 1.**

1451 iii. ———.]—Under Specific Relief Act, 1877, the question of an

injunction to restrain a party from erecting a building so as to interfere with his neighbour's easements of light & air presents itself in a different light to what it does in the English etc. ; & the ct. has a discretion, & may issue an injunction where the injury is such that pecuniary compensation would not afford adequate relief.—**MAHOMED AUZAM ISMAIL v. JAGANATH JAMNADAS** (1925), I. L. R. 3 Ran. 230.—**IND.**

## Part XIII.—Profits à Prendre.

1503. *Add. Annotation* :—Generally, *Reid*. *Stoney v. Eastbourne R. C. & Devonshire* (1926), 95 L. J. K. B. 312.

1570. *Add. Annotations* :—As to (2) *Reid*. *The Fagernes*, [1926] P. 185.

1573. *Add. Annotations* :—Generally, *Mentd*. *The*

*Carlgarth, The Otarama*, [1927] P. 93; *Lagan Navigation Co. v. Lambeg Bleaching, Dyeing & Finishing Co.*, [1927] A. C. 226.

1589. *Add. Annotations* :—*Reid*. *Abrahams v. Mac Fisheries*, [1925] 2 K. B. 18; *Roe v. Russell*, [1928] 2 K. B. 117.

PART XIII. SECT. 4, SUB-SECT. 1.—A.  
sw. *Who may acquire — Public.*] —  
Though the public cannot acquire  
ownership of a land it can acquire *profits*  
*d prendre* over it by grant.—*USSAN*  
*KASIM SAIT v. SECRETARY OF STATE*

FOR INDIA (1923), I. L. R. 47 Mad.  
116.—IND.

PART XIII. SECT. 4, SUB-SECT. 2.—B.  
1586 i. *The public.*]—Though the

public cannot acquire ownership of a  
land, it can acquire *profits d prendre*  
over it by prescription.—*USSAN KASIM*  
*SAIT v. SECRETARY OF STATE FOR*  
*INDIA* (1923), I. L. R. 47 Mad. 116.—  
IND.

## ECCLESIASTICAL LAW.

## Part I.—In General.

- 1a. **Church Assembly—Legislative Committee.**—Neither the Legislative Committee of the Church Assembly, nor the Church Assembly itself, is a body to which a writ of *certiorari* or of prohibition will issue, as neither of them is a body which is under a duty to act in a judicial capacity.—*R. v. CHURCH ASSEMBLY*

LEGISLATIVE COMMITTEE & CHURCH ASSEMBLY, *Ex p. HAYNES SMITH*, [1928] 1 K. B. 411; 97 L. J. K. B. 222; 138 L. T. 399; 44 T. L. R. 68; 71 Sol. Jo. 947, D. C.

*Add. Annotation:—Mentd. Capel St. Mary, Suffolk v. Packard*, [1927] P. 289.

## Part III.—Constitution of the Church of England.

16. *Add. Annotation:—Generally, Refd. R. v. North, Ex p. Oakey* (1926), 43 T. L. R. 60.
36. *Add. Annotations:—Generally, Mentd. Capel St. Mary, Suffolk v. Packard*, [1927] P. 289; *Re Article X of Articles of Agreement for Treaty between Great Britain & Ireland* (1928), 45 T. L. R. 57.
70. *Add. Annotation:—As to (1) Refd. Re Mason* (1928), 97 L. J. Ch. 321.
135. *Annotations:—For “Re Letters Patent No. 139,207, Re Carbonit Akt., [1923] 2 Ch. 504,” read “Re Letters Patent No. 139,207, Re Carbonit Akt., [1924] 2 Ch. 53.”*  
*Add. Annotation:—Generally, Mentd. Swift v. Board of Trade*, [1926] 2 K. B. 131.
185. *Add. Annotation:—As to (2) Consd. Vincent v. St. Magnus the Martyr, etc.*, [1925] P. 1.
199. *Add. Annotation:—As to (3) Consd. Vincent v. St. Magnus the Martyr, etc.*, [1925] P. 1.
270. *Add. Annotation:—Refd. R. v. Church Assembly Legislative Committee & Church Assembly, Ex p. Haynes Smith* (1927), 44 T. L. R. 68.
276. *Add. Annotation:—As to (2) Refd. R. v. North, Ex p. Oakey* (1926), 43 T. L. R. 60.
292. *Add. Citations:—sub nom. AYER v. ORME*, 2 Dyer 221b; Ben. 129; *sub nom. ANON.*, Dal. 53; 1 And. 9.  
*Annotations:—Refd. Cromwel’s Case* (1601), 2 Co. Rep. 69b; *Lyn v. Wyn* (1665), O. Bridg. 122.
306. *Add. Annotation:—Mentd. Beaumont v. Jeffery* (1924), 40 T. L. R. 796.
- 472a. *Liability of lay-impropriation to sequestration.*—*WALWYN v. AWBERRY*, No. 2599a, *post*.
- 482a. *— — — — —*—A tenant of premises rated at £125, who sublet the greater part & retained for his personal occupation a portion which was over £40 in ratable value, but not separately assessed:—*Held: qualified as a vestryman under Metropolis Management Acts, 1855 (c. 120), & 1856 (c. 112).*—*GORDON v. WILLIAMSON*, [1892] 2 Q. B. 459; 61 L. J. Q. B. 820; 67 L. T. 214; 57 J. P. 166; 40 W. R. 692; 8 T. L. R. 705, C. A.  
*Annotation:—Refd. London & India Docks Co. v. Woolwich Borough* (1902), 71 L. J. K. B. 394.
569. *Add. Annotation:—As to (3) Refd. R. v. North, Ex p. Oakey* (1926), 43 T. L. R. 60.
1063. *Add. Annotation:—As to (1) Refd. A.-G. for Alberta v. Cook*, [1926] A. C. 444.

## Part IV.—Ecclesiastical Courts.

1115. *Add. Annotations:—As to (1) Folld. Capel St. Mary, Suffolk v. Packard*, [1927] P. 289.  
*Refd. Vincent v. St. Magnus the Martyr, etc.*, [1925] P. 1.
1125. *Add. Annotation:—Generally, Mentd. Capel St. Mary, Suffolk v. Packard*, [1928] P. 69.
1145. *Add. Annotations:—As to (1) Consd. Re Article X of Articles of Agreement for Treaty between Great Britain & Ireland* (1928), 45 T. L. R. 57. *As to (8) Consd. Vincent v. St. Magnus the Martyr, etc.*, [1925] P. 1.  
*Generally, Refd. Capel St. Mary, Suffolk v. Packard*, [1927] P. 289.
1146. *Add. Annotations:—As to (1) Refd. Capel St. Mary, Suffolk v. Packard*, [1927] P. 289.  
*As to (2) Refd. Re Article X of Articles of Agreement for Treaty between Great Britain & Ireland* (1928), 45 T. L. R. 57.

## PART I.

1 i. *Church—Religious community—Schism—Whether provided for by constitution.*—*BRENDZIJ v. HAJDIJ*, [1927] 1 D. L. R. 1051; [1927] 1 W. W. R. 301; 36 Man. L. R. 300.—CAN.

1 ii. *— — — — — What amounts to.*—*BRENDZIJ v. HAJDIJ*, [1927] 1 D. L. R. 1051; [1927] 1 W. W. R. 301; 36 Man. L. R. 300.—CAN.

1 iii. *— — — — — Effect of.*—*Members adhering to original con-*

*stitution entitled to use of church property.*—*BRENDZIJ v. HAJDIJ*, [1927] 1 D. L. R. 1051; [1927] 1 W. W. R. 301; 36 Man. L. R. 300.—CAN.

1 iv. *S. P. HENNIG v. TRAUTMAN (Alta.)*, [1926] 2 D. L. R. 280; [1926] 1 W. W. R. 912.—CAN.



1148. *Add. Annotation*:—As to (2) *Refd. R. v. North, Ex p. Oakey*, [1927] 1 K. B. 491.
1149. *Add. Annotation*:—*Consd. Re Article X of Articles of Agreement for Treaty between Great Britain & Ireland* (1928), 45 T. L. R. 57.
1171. *Add. Annotation*:—*Mentd. R. v. North, Ex p. Oakey* (1926), 43 T. L. R. 60.
- 1280a. — *Alternative remedy.*—Prohibition will issue in respect of an order of an ecclesiastical ct. made without jurisdiction, notwithstanding an appeal lie from such order to a higher ecclesiastical ct. & thence to the Privy Council.—*R. v. NORTH, Ex p. OAKEY*, [1927] 1 K. B. 491; 96 L. J. K. B. 77; 136 L. T. 387; 43 T. L. R. 60; 70 Sol. Jo. 1181, C. A.
1349. *Add. Annotation*:—*Refd. R. v. North, Ex p. Oakey* (1926), 43 T. L. R. 60.
1372. *Add. Annotation*:—As to (1) *Refd. Raeburn v. Raeburn* (1928), 138 L. T. 672.
1400. *Add. Annotation*:—*Refd. Capel St. Mary, Suffolk v. Packard*, [1927] P. 289.
1413. *Add. Annotation*:—*Mentd. Lankester v. Lankester & Cooper*, [1925] P. 114.
1503. *Add. Annotation*:—*Mentd. Engelke v. Musmann*, [1928] A. C. 433.
1504. *Add. Annotation*:—*Generally, Mentd. Tate & Lyle v. L. & N. E. Ry. & L. M. & S. Ry.* (1926), 43 T. L. R. 49.
1549. *Add. Annotation*:—*Mentd. Tate & Lyle v. L. & N. E. Ry. & L. M. & S. Ry.* (1926), 43 T. L. R. 49.
1605. *Add. Annotation*:—*Refd. Capel St. Mary, Suffolk v. Packard*, [1927] P. 289.
1641. *Add. Annotation*:—*Mentd. Salvesen (or Von Lorang) v. Austrian Property Administrator*, [1927] A. C. 641.
1721. *Add. Annotations*:—*Refd. Eshugbayi Eleko v. Nigeria Government*, [1928] A. C. 459. *Mentd. Campbell v. Pollak*, [1927] A. C. 732.
1755. *Add. Annotation*:—*Refd. Vincent v. St. Magnus the Martyr, etc.*, [1925] P. 1.
1756. *Add. Annotation*:—*Refd. Vincent v. St. Magnus the Martyr, etc.*, [1925] P. 1.
- 1768a. — — — — —.]—*Held*: a faculty ought to issue for the removal of (1) a tabernacle, (2) a sacring gong, (3) four out of six candlesticks on the retable, (4) two candlesticks on the credence which had been used ceremonially, (5) a censer which had been used ceremonially, (6) the Stations of the Cross, (7) a second Holy Table introduced after a faculty for it had been refused, (8) an image of the Blessed Virgin Mary with candles & vases, (9) a holy water stoup, (10) two brass candelabra used in a service of adoration of the Sacrament, & a hanging lamp in the chancel used to denote the presence of the reserved Sacrament; a faculty ought not to issue for the removal of (11) books & pamphlets displayed on tables in the church, (12) notices as to times when confessions could be heard, (13) notices asking for prayers for deceased persons, (14) a kneeling stool used by persons making their confessions, & (15) the rector's books of devotion on the Holy Table, but these articles were not proper subjects for a confirmatory faculty; a faculty ought not to issue for the removal of (16) a crucifix on the wall above the kneeling stool, used to assist the devotions of those making their confessions, & a confirmatory faculty till further order ought to issue in respect of it; a faculty ought not to issue for the removal of (17) a crucifix behind the Holy Table which had been proved to have been the object of veneration, the rector having undertaken not to genuflect to it or cense it, & not to allow any other officiating clergymen to do so, & a confirmatory faculty till further order ought to issue in respect of it.
- (18) Memorials purporting to be signed by parishioners, as to which no evidence is given in proof of the signatures or of the representations made to those who sign them, are inadmissible in a faculty suit.—*CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) v. PACKARD*, [1927] P. 289; *subsequent proceedings*, [1928] P. 69.
- 1775a. — — — — — “Till further order.”]—(1) Where a cause of faculty has been remitted by the Ct. of Arches to a consistory ct. to decree a faculty as directed by the Ct. of Arches, a party to the suit who is aggrieved by a condition proposed to be inserted in the faculty may appeal to the Ct. of Arches by way of the assertion of a grievance, & the Ct. of Arches may hear & determine the appeal without retaining the cause.
- (2) A condition in a confirmatory faculty “that if any of the articles included in the faculty are treated with superstitious reverence we reserve to ourselves the right to order their removal at any time hereafter upon being satisfied hereon” is an improper condition, & such a condition is not substantially similar to, but wholly different from, a condition that the faculty is granted “till further order.”
- (3) Observations upon the object & effect of granting a faculty till further order, the proceedings required by the practice of the cts. before such further order can be made, the distinction between the order of the ct. in a faculty suit & the faculty, & the matters which are proper to be included in each.—*CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) v. PACKARD*, [1928] P. 69.
1784. *Add. Annotation*:—*Refd. Capel St. Mary, Suffolk v. Packard*, [1927] P. 289.
1785. *Add. Annotation*:—*Mentd. St. Nicholas Acons, London v. L. C. C.*, [1928] P. 102.
- 1789a. Cause remitted to decree faculty—*Objection to condition proposed to be inserted in faculty—Right of aggrieved party to appeal.*—*CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) v. PACKARD*, No. 1775a, *ante*.
1792. *Add. Annotation*:—*Mentd. Bermondsey B. C. v. Mortimer*, [1926] P. 87.

PART IV. SECT. 6, SUB-SECT. 2.—D.  
1217 1. *Interpretation of statutes—*  
*Concerning spiritual matters.*]—In an

action involving the construction of  
United Church of Canada Act, 1924  
(c. 100):—*Held*: the ecclesiastical cts.

only had jurisdiction.—*STOVER*  
[1925] 4 D. L. R. 994.  
CAN.

## Part V.—Clergy.

1821. For "Who are exempt—Military Service Act, 1916 (c. 104), Sched. I. (4)—Lay member" read "Who are exempt—Military Service Act, 1916 (c. 104), Sched. I. (4)—Lay reader."
1851. *Add. Annotation*:—*Apld. Re Clerical Disabilities Act, 1870, Ex p. Cowan* (1927), 71 Sol. Jo. 272.
- 1851a. *S. P. Re CLERICAL DISABILITIES ACT, 1870, Ex p. COWAN* (1927), 137 L. T. 515; 71 Sol. Jo. 272.
1862. *Add. Annotation*:—*Mentd. Mackenzie-Kennedy v. Air Council*, [1927] 2 K. B. 517.
1896. *Add. Annotation*:—*Mentd. Weld v. Petre* (1928), 97 L. J. Ch. 399.
- 2104a. Whether vendor bound to make marketable title—Whether stamp necessary.]—*WILMOT v. WILKINSON* (1827), 6 B. & C. 506; 9 Dow. & Ry. K. B. 620; 5 L. J. O. S. K. B. 196; 108 E. R. 538.
- Annotation*:—*Reid. Doogood v. Rose* (1850), 9 C. B. 132.
- 2105a. — Non-completion of purchase—Default of vendor.]—*WEDDALL v. NIXON* (1853), 17 Beav. 160; 22 L. J. Ch. 939; 21 L. T. O. S. 147; 17 Jur. 642; 51 E. R. 994.
2437. *Add. Citation*:—2 B. R. A. 932.
2440. *Add. Citation*:—2 B. R. A. 831.
- 2443a. Grounds for approval or disapproval of scheme.]—Although it may seem desirable on grounds of economy & administration to unite two country benefices with small populations, yet a scheme for such union will not be affirmed on special reference by the Judicial Committee of the Privy Council if there is united opposition to it on the part

- of the inhabitants.—*Re GUSSEGE ALL SAINTS & GUSSEGE ST. MICHAEL, DORSET, PARISHES* (1925), 69 Sol. Jo. 493, P. C.
2491. *Add. Annotation*:—*Mentd. Re Wait*, [1927] 1 Ch. 606.
2496. *Add. Citation*:—*sub nom. CUBLEWS v. BUTTS*, 9 L. J. O. S. K. B. 69.
2509. *Add. Annotation*:—*Mentd. Paterson v. Ardrossan Harbour Co.* (1926), 19 B. W. C. C. 621.
2539. *Add. Annotation*:—*Reid. Jones v. Waring & Gillow*, [1926] A. C. 670.
2595. *Add. Annotation*:—*As to* (2) *Consd. R. v. North, Ex p. Oakey* (1926), 43 T. L. R. 60.
- 2599a. — Failure to repair chancel.]—(1) A justification in trespass, that pltf. was the rector of such a church, & that the goods were taken under a sequestration of the profits of the rectory, for the reparation of the chancel, must aver that no more was taken than was necessary to the expense of reparation. (2) But the profits of a lay-impropriation cannot be sequestered for the repair of the chancel.—*WALWYN v. AWBERRY* (1677), 1 Mod. Rep. 258; 2 Mod. Rep. 254; Freem. K. B. 230; 86 E. R. 866; *sub nom. ANON.*, 2 Vent. 35; 3 Keb. 829.
- Annotation*:—*Generally, Mentd. Harding v. Hall* (1842), 10 M. & W. 42.
2607. *Add. Annotation*:—*As to* (1) *Consd. R. v. North, Ex p. Oakey* (1926), 43 T. L. R. 60.
2617. *Add. Annotation*:—*Mentd. Mackenzie-Kennedy v. Air Council*, [1927] 2 K. B. 517.

## Part VI.—Public Worship and Church Ministrations.

2751. *Add. Annotations*:—*Generally, Reid. Capel St. Mary, Suffolk v. Packard*, [1927] P. 289. *Mentd. Re Article X of Articles of Agreement for Treaty between Great Britain and Ireland* (1928), 45 T. L. R. 57.
2762. *Add. Annotation*:—*As to* (1) *Reid. Vincent v. St. Magnus the Martyr, etc.*, [1925] P. 1.
- 2764a. — — — — —.]—*VINCENT v. ST. MAGNUS THE MARTYR, ETC. (RECTOR & CHURCHWARDENS)*, No. 2831, *post*.
2768. *Add. Annotations*:—*As to* (7) *Folld. Capel St. Mary, Suffolk v. Packard*, [1927] P. 289. *As to* (8) *Folld. Capel St. Mary, Suffolk v. Packard*, [1927] P. 289. *As to* (9) *Folld. Capel St. Mary, Suffolk v. Packard*, [1927] P. 289. *Generally, Reid. Capel St. Mary, Suffolk v. Packard*, [1928] P. 69.
2786. *Add. Annotation*:—*As to* (1) *Reid. Vincent v. St. Magnus the Martyr, etc.*, [1925] P. 1.
2797. *Add. Annotation*:—*As to* (3) *Reid. St. Margaret's, Toxteth Park* (1924), 40 T. L. R. 687.
- 2801a. — — — — —.]—*CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) v. PACKARD*, No. 1768a, *ante*.
- 2809a. — — — — —.]—*CAPEL v. ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) v. PACKARD*, No. 1768a, *ante*.
2812. *Add. Annotation*:—*As to* (3) *Folld. Capel St. Mary, Suffolk v. Packard*, [1927] P. 289.
- 2818a. — — — — — On credence table.]—*CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) v. PACKARD*, No. 1768a, *ante*.
- 2824a. — — — — —.]—*CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) v. PACKARD*, No. 1768a, *ante*.
2825. For the paragraph in the original volume substitute the following paragraph:—  
— As of course.]—*VINCENT v. ST. MAGNUS THE MARTYR, ETC. (RECTOR & CHURCHWARDENS)*, No. 2831, *post*.
2831. For the paragraph in the original volume substitute the following paragraph:—  
— — — — — Approval of decorations & fittings.]  
—On the hearing in the Consistory Ct. of London of a petition as to the furniture & fittings of the Church of St. Magnus-the-Martyr, in the City of London, a faculty was granted for, amongst other things: (1) a second Holy Table; (2) an image of the Virgin & Holy Child placed behind the second Holy Table; & (3) a crucifix fixed to a pillar at a considerable height from the floor & near the pulpit. On appeal the Ct. of Arches dismissed the appeal as to (1) & (3), but allowed it as to (2):—*Held*: (1) the law

was the same for every kind of sacred image in a church, including a crucifix or rood, & although such an image was not illegal *per se*, it could not lawfully be placed in a church without a faculty.

On an application for such a faculty, the question to be considered is whether, if the faculty be granted, there is or is not, in the particular case, a danger of the image being used for purposes of worship or adoration condemned by Article of Religion 22. After discussion of the kind of evidence proper to this inquiry:—*Held*: (2) there was a danger of the proposed image of the Virgin & Holy Child being so used; (3) an image used for purposes of worship or adoration was an ornament & was illegal, because not included amongst the ornaments of the church sanctioned by the Ornaments Rubric in the Book of Common Prayer; (4) a faculty authorising the erection of an image in a church should not be absolute, but until further order.

(5) The other matter of appeal is the second Holy Table. The church holds, or will hold, between three hundred & four hundred people, & there are a large number of celebrations every week. In those circumstances it would be a matter of course to allow a second Holy Table, but for the exceptional character of the ceremonial & services of this church. I am not, however, disposed to interfere with the exercise of the learned Chancellor's discretion in this part of the case. I think there ought to be full plans & particulars of the decorations & fittings of & surrounding the second Holy Table, & these fittings ought to be subject to the approval of the learned Chancellor & to be specifically included in the faculty (SIR LEWIS DIBDIN).—VINCENT *v.* ST. MAGNUS THE MARTYR, ETC. (RECTOR & CHURCHWARDENS), [1925] P. 1; *sub nom.* ST. MAGNUS THE MARTYR, LONDON BRIDGE, 41 T. L. R. 3.

*Annotation*:—*Generally*, *Refd.* Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289.

2842. *Add. Annotation*:—*Refd.* Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

2844. *Add. Annotation*:—*Refd.* Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

2852. *Add. Annotation*:—*Mentd.* St. Nicholas Acons, London *v.* L. O. C., [1928] P. 102.

2859. *Add. Annotation*:—*As to* (3) *Dbtd.* Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

2861. *Add. Annotation*:—*As to* (1) *Refd.* Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

2862. *Add. Annotation*:—*Refd.* Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

2871. *Add. Annotation*:—*Refd.* Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

2872. *Add. Annotation*:—*Refd.* Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

2873. For the paragraph in the original volume substitute the following paragraph:—

— Ordinary rules as to images apply.]—VINCENT *v.* ST. MAGNUS THE MARTYR, ETC. (RECTOR & CHURCHWARDENS), No. 2831, *ante*.

2874. *Add. Annotation*:—*Refd.* Vincent *v.* St. Magnus the Martyr, etc., [1895] P. 1.

2875. *Add. Annotation*:—*Refd.* Vincent *v.* St. Magnus the Martyr, etc., [1895] P. 1.

2876. *Add. Annotation*:—*Refd.* Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

2882. *Add. Annotation*:—*Refd.* Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

2883. *Add. Annotations*:—*Apld.* Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289. *Refd.* Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

2888. *Add. Annotation*:—*Refd.* Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

2889. *Add. Annotation*:—*Refd.* Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

2892. *Add. Annotation*:—*Generally*, *Refd.* Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

2893. *Add. Annotation*:—*Refd.* Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

2896. For the paragraph in the original volume substitute the following paragraph:—

—.]—VINCENT *v.* ST. MAGNUS THE MARTYR, ETC. (RECTOR & CHURCHWARDENS), No. 2831, *ante*.

2899a. — Above confessional stool—Whether permissible.]—CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) *v.* PACKARD, No. 1768a, *ante*.

2899b. — Behind Holy Table—Whether permissible.]—CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) *v.* PACKARD, No. 1768a, *ante*.

2900. *Add. Annotations*:—*As to* (2) *Consd.* Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1. *As to* (3) *Folld.* Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289. *Generally*, *Mentd.* *Re* Article X of Articles of Agreement for Treaty between Great Britain & Ireland (1928), 45 T. L. R. 57.

2903. *Add. Annotations*:—*As to* (3) *Folld.* Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289. *As to* (5) *Folld.* Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289. *As to* (6) *Folld.* Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289. *As to* (7) *Folld.* Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289. *Generally*, *Refd.* Capel St. Mary, Suffolk *v.* Packard, [1928] P. 69.

2904a. —.]—CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) *v.* PACKARD, No. 1768a, *ante*.

2906. For the paragraph in the original volume substitute the following paragraph:—

—.]—VINCENT *v.* ST. MAGNUS THE MARTYR, ETC. (RECTOR & CHURCHWARDENS), No. 2831, *ante*.

2913. *Add. Annotation*:—*Refd.* Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289.

2915a. — With candles & vases—Whether permissible.]—CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) *v.* PACKARD, No. 1768a, *ante*.

2916. For the paragraph in the original volume substitute the following paragraph:—

The Virgin & Child—Probability of veneration.]—VINCENT *v.* ST. MAGNUS THE MARTYR, ETC. (RECTOR & CHURCHWARDENS), No. 2831, *ante*.

2924a. —.]—CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) *v.* PACKARD, No. 1768a, *ante*.

(n) *Lights* (Vol. XIX., p. 449).

Add the following cross-references:—

Used in service of adoration of Sacrament.]—*See* No. 1768a, *ante*.



To denote presence of reserved Sacrament.]—  
See No. 1768a, *ante*.

2947a. Books & pamphlets displayed in church.]—  
CAPEL ST. MARY, SUFFOLK (RECTOR &  
CHURCHWARDENS) v. PACKARD, No. 1768a,  
*ante*.

2947b. Notices—Times for hearing of confessions.]  
—CAPEL ST. MARY, SUFFOLK (RECTOR &  
CHURCHWARDENS) v. PACKARD, No. 1768a,  
*ante*.

2947c. — Asking for prayers for dead.]—CAPEL  
ST. MARY, SUFFOLK (RECTOR & CHURCH-  
WARDENS) v. PACKARD, No. 1768a, *ante*.

2947d. Confessional stool.] — CAPEL ST. MARY,  
SUFFOLK (RECTOR & CHURCHWARDENS) v.  
PACKARD, No. 1768a, *ante*.

2948. Add. Annotation:—As to (1) *Folld.* Capel  
St. Mary, Suffolk v. Packard, [1927] P. 289.

2965a. Books of devotion—On Holy Table.]—  
CAPEL ST. MARY, SUFFOLK (RECTOR &  
CHURCHWARDENS) v. PACKARD, No. 1768a,  
*ante*.

2972a. — — —.]—CAPEL ST. MARY, SUFFOLK  
(RECTOR & CHURCHWARDENS) v. PACKARD,  
No. 1768a, *ante*.

2975. Add. Annotation:—*Refd.* Capel St. Mary  
Suffolk v. Packard, [1927] P. 289.

3006. Add. Annotations:—*Generally, Refd.* Capel  
St. Mary, Suffolk v. Packard, [1927] P. 289.  
*Mentd.* *Re* Article X of Articles of Agreement  
for Treaty between Great Britain & Ireland  
(1928), 45 T. L. K. 57.

3015a. Sounding sacring gong—Whether per-  
missible.] — CAPEL ST. MARY, SUFFOLK  
(RECTOR & CHURCHWARDENS) v. PACKARD,  
No. 1768a, *ante*.

## Part VII.—Property of the Church of England.

3112. Add. Annotation:—*Refd.* Vincent v. St.  
Magnus the Martyr, etc., [1925] P. 1.

3113a. Whether faculty absolute—Erection of  
image.]—VINCENT v. ST. MAGNUS THE  
MARTYR, ETC. (RECTOR & CHURCHWARDENS),  
No. 2831, *ante*.

3391a. — — — Tithable where landed.]—By  
custom, fish taken in the sea is tithable  
where landed.—ANON (1632), Cro. Car. 264;  
79 E. R. 830.

3406. Add. Annotation:—As to (1) *Refd.* Busby v.  
Avgherino, [1928] A. C. 290.

3416. Add. Annotations:—*Generally, Mentd.* R. v.  
Lincolnshire JJ., *Ex p.* Brett, [1926] 2 K. B.  
192; Palmer v. Crone, [1927] 1 K. B. 804.

3433. Add. Annotation:—*Generally, Mentd.* Under-  
wood v. Bank of Liverpool, Same v. Barclays  
Bank, [1924] 1 K. B. 775.

3449. Add. Citation:—West. Tithe Cas. 44.  
Add. Annotation:—*Refd.* Busby v. Avgherino,  
[1928] A. C. 290.

3451. Add. Annotation:—As to (1) *Refd.* Busby v.  
Avgherino, [1928] A. C. 290.

3454a. — Whether premises exempted from pre-  
scribed rate—Onus of proof.]—By the above  
Act & a decree made pursuant to it & having  
the force of a statute, the lessees of houses &  
all other hereditaments, with certain im-  
material exceptions, situated in the City of  
London, are liable to pay a tithe of 2s. 9d.  
for every rent of 20s. by the year, “& so  
above the rent of 20s. by the year by the  
rate aforesaid.” The decree contained a  
proviso that in the case of premises in respect  
of which less sums had been accustomed to  
be paid for tithes before 1545, the date of the  
above Act, the premises should be exempted  
from the prescribed rate. In an action by  
the owners of tithes against the occupiers of  
premises in the City for tithe at the rate pre-  
scribed by the Act:—*Held*: (1) the *onus* was  
on defts. to prove that the tithe paid before  
1545 in respect of the premises was less  
than the sum prescribed by the Act; (2)  
defts. had not discharged the *onus*.—BUSBY  
v. AVGHERINO, [1928] A. C. 290; 97 L. J. Ch.  
291; 139 L. T. 170; 92 J. P. 129; 44 T. L. R.  
551; 26 L. G. R. 401, H. L.

3455a. Whether payable on reserved or  
improved rent.]—A lease of premises was  
granted at the yearly rent of £102 10s. in  
consideration of the lessee expending £2,000  
in building thereon. The improved annual  
value was £250:—*Held*: tithes were payable  
upon the annual value, & not on the rent  
reserved.—VIVIAN v. COCHRANE (1855), 4  
Do G. M. & G. 818; 25 L. J. Ch. 553; 26  
L. T. O. S. 17; 19 J. P. 131; 1 Jur. N. S.  
809; 3 W. R. 254; 43 E. R. 728, L. C.

3455b. — Whether non-payment a defence.]—  
Mere non-payment of tithes under the Act  
is not an answer.—ST. PAUL'S WARDEN,  
ETC. v. KETTLE (1813), 2 Ves. & B. 1; 35  
E. R. 218, L. C.

Annotations:—*Refd.* Payne v. Esdaille (1888), 13 App. Cas.  
613; Busby v. Avgherino, [1928] A. C. 290.

3455c. — — —.]—PAYNE v. ESDAILE, No. 3451,  
*ante*.

3456. Add. Annotation:—*Refd.* Busby v.  
Avgherino, [1928] A. C. 290.

3465a. — What words operate to pass.]—A  
tithe rentcharge will not, upon a conveyance  
of land without more, pass to the purchaser  
by virtue of Conveyancing Act, 1881 (c. 41),  
s. 63. Tithe rentcharge is, like tithe, a  
hereditament separate from the land, &  
express words are necessary to pass it.—  
PUBLIC TRUSTEE v. LANCASTER DUCHY,  
[1927] 1 K. B. 516; 96 L. J. K. B. 188; 136  
L. T. 468; 43 T. L. R. 163; 71 Sol. Jo. 19, C. A.

3468. Add. Annotation:—As to (2) *Refd.* Jones v.  
Waring & Gillow, [1926] A. C. 670.

3475a. — — —.]—UNIVERSITY COLLEGE,  
OXFORD (MASTER & FELLOWS) v. GARTON  
(1847), 10 Q. B. 760; 16 L. J. Q. B. 381; 9  
L. T. O. S. 245; 11 Jur. 907; 116 E. R. 289.

Annotation:—*Refd.* R. v. England & Wales Tithe Comrs.  
(1852), 21 L. J. Q. B. 208.

3488. For “*Held*: the ct. had jurisdiction to deal  
with the costs, & they would have to be  
paid by W., the landlord seeking compulsory  
redemption” read “*Held*: (1) the ct. had  
jurisdiction to deal with the costs; (2) they  
must be paid by W., the landowner seeking  
compulsory redemption.”

Add. Annotations:—As to (1) *Apprvd.* *Re*  
Wartling Tithe Redemption, [1924] 2 Ch.

123. *As to (2) Overd. Re Wartling Tithe Redemption*, [1924] 2 Ch. 123.

3506. *Add. Annotation:—Refd. R. v. Customs & Excise Comrs.*, [1928] A. C. 402.

3513a. *Mode of payment of compensation—At election of limited owner—Whether election revocable.*—*Re WARTLING TITHE REDEMPTION*, No. 3513b, *post*.

3513b. *Cost of investment of redemption money—Compulsory redemption—Jurisdiction of court to deal with.*—By a settlement dated in 1893 certain tithe rentcharges payable out of lands situate at W. were settled, subject to certain life interests which had determined, to the use of H. for life with remainders over. The settlement contained a proviso appointing the trustees of the settlement trustees for the purposes of the Settled Land Acts, & providing that a sole trustee should be competent to act for all the purposes of the Acts, including the receipt of capital money. In 1899 H. assigned his life interest in the rentcharges to C. In 1905 C. died, having by his will devised his real & personal estate to resps. & appointed them his exors. In 1922 applt., who was the owner of the land out of which certain of the tithe rentcharges were payable, in exercise of the power given him by Tithe Act, 1918 (c. 54), s. 3, applied to the Ministry of Agriculture & Fisheries for the redemption of certain of these charges, amounting to £48 10s. 8d. & 5s. respectively, & for the determination by the Minister of the amount of the consideration money payable in respect thereof. On Sept. 20, 1922, resps., in exercise of their option under Tithe Act, 1846 (c. 73), s. 9, signed a form of consent which had been sent to them by the Ministry to the payment of the consideration money to the surviving trustee of the settlement of 1893. A month later they wrote to the Ministry revoking their consent & requesting that the money might be paid into ct. The Ministry thereupon wrote to applt. directing him to pay the money into ct., which he accordingly did. On Feb. 12, 1923, resps. took out an originating summons for an order that the fund in ct. might be invested & the income therefrom paid to resps. or the survivor of them as & when received during the life of the tenant for life:—*Held*: (1) on an application to invest money paid into ct. representing compensation paid under the Tithe Acts on the redemption of rentcharges, there was no general principle that required the ct. to direct that the person exercising the compulsory powers under the Acts should bear the burden of the costs, but the costs were, under Jud. Act, 1890 (c. 44), s. 5, in the discretion of the ct. entirely unfettered by any such general

principle; the ct. below ought to have exercised its discretion by holding that applt., who had been brought before the ct. solely for the purpose of making him liable for costs, was not so liable, & to have dismissed the application as against him with costs.

(2) *Semble*: there is no power in the Tithe Acts which enables a tithe owner who has once exercised the option given him by the Act of 1846, s. 9, to revoke or alter the exercise of it.—*Re WARTLING TITHE REDEMPTION*, [1924] 2 Ch. 123; 93 L. J. Ch. 562; 131 L. T. 185; 88 J. P. 133; 68 Sol. Jo. 518; 22 L. G. R. 349, C. A.

*Compare original volume*, p. 492, No. 3488.

3543. *Add. Citations:—*[1924] 1 K. B. 151; 93 L. J. K. B. 116; 130 L. T. 183; 88 J. P. 33; 68 Sol. Jo. 541.

3579a. — *What amounts to incumbrance affecting land.*—*WRENCH v. LORD* (1837), 3 Bing. N. C. 672; 4 Scott, 381; 6 L. J. C. P. 193; 132 E. R. 569.

3614. *Add. Citations:—*1 And. 47; 3 Dyer, 338 b; *sub nom.* BELFORD v. FOORD (1595), Cro. Eliz. 417; *sub nom.* BETFORD v. FORD, Cro. Eliz. 472; *sub nom.* FOORD'S CASE, 5 Co. Rep. 81 a.

*Annotations:—Refd. Betesworth v. St. Paul's (Dean)* (1726), Cas. temp. King 66. *Mentd.* St. Albans Corpn. v. Dobbins (1672), Freem. K. B. 36; *Mirchouse v. Rennell* (1832), 8 Bing. 490.

3615. *Add. Citations:—sub nom.* BETFORD v. FORD, Cro. Eliz. 472; *sub nom.* FOORD'S CASE, 5 Co. Rep. 81 a; *sub nom.* ANON. (1574), 1 And. 47; 3 Dyer, 338 b; Ben. 238.

*Add. Annotations:—Refd. Betesworth v. St. Paul's (Dean)* (1726), Cas. temp. King, 66. *Mentd.* St. Albans Corpn. v. Dobbins (1672), Freem. K. B. 36.

3621. *Add. Annotation:—Generally, Mentd.* Everett v. Griffiths, [1924] 1 K. B. 941.

3707. *Add. Annotation:—Generally, Mentd.* Kurrell v. Timber Operators & Contractors, [1927] 1 K. B. 298.

3798. *Add. Annotation:—Mentd.* Campbell v. Pollak, [1927] A. C. 732.

3827. *Add. Annotations:—Refd. R. v. Customs & Excise Comrs.*, [1928] A. C. 402. *Mentd.* R. v. Customs & Excise Comrs., *Ex p.* Pegler (1927), 96 L. J. K. B. 997.

3893. *Add. Annotation:—Mentd.* Fox v. Fox, [1925] P. 157.

3900. The order of the cross-references following this case should be inverted.

3916. *Add. Annotation:—Mentd.* Ormond Investment Co. v. Betts, [1928] A. C. 143.

#### PART VII. SECT. 6, SUB-SECT. 3.

3536 i. *Proceeds of sale—Application—Church of Scotland (Property & Endowments) Act*, 1925 (c. 33), s. 30.]—MILLIGAN, PETITIONER, [1927] S. C. 692.—SCOT.

#### PART VII. SECT. 7, SUB-SECT. 2.—A.

sk. *Ontario Act of 1889 simplifying sales of property held in trust for Church of England—Effect of.*—*Re ST. JOHN'S*

CHURCH, [1927] 3 D. L. R. 535; 60 O. L. R. 491.—CAN.

#### PART VII. SECT. 16, SUB-SECT. 1.

sa. *Spiritual corporation aggregate—Power to borrow.*—An ecclesiastical corpn., being a non-trading corpn., has no implied power to borrow money, unless such power is expressly or impliedly given by its constitution. Although an Act constituting such a

corpn. does not expressly give power to borrow or to erect a church, but does expressly give power to mortgage, the power to borrow for the purpose of erecting a church is implied, since the erection of a church is the principal reason for the incorporation. — *LEONARD v. ST. PATRICK'S PARISH*, [1922] 1 W. W. R. 601; 66 D. L. R. 304; 17 Alta. L. R. 262.—CAN.

## Part VIII.—Religious Bodies other than the Church of England.

3970. *Add. Annotation*:—*Mentd.* Everett v. 4034a. —.]—DOE d. SMITH v. ROE (1840), Griffiths, [1924] 1 K. B. 941. 8 Dowl. 509; *sub nom.* DOE d. SMYTHE v. ROE, 4 Jur. 388.
4027. *Add. Annotation*:—*Mentd.* Houghton v. Nothard, Lowe & Wills (1927), 44 T. L. R. 76. 4055. After this case add the following new sections:—
- 4033a. —.]—DOE d. KIRK v. ROE (1838), 2 Jur. 945. SECT. 9.—PRESBYTERIANS. See cases *infra*.
4034. *Add. Citation*:—*sub nom.* 3 Jur. 460. SECT. 10.—GREEK CHURCH. See case *infra*.

### PART VIII. SECT. 2, SUB-SECT. 1.

ti. —.]—The canon law of the Roman Catholic Church is foreign law, which must be proved accordingly.—O'CALLAGHAN v. O'SULLIVAN, [1925] 1 I. R. 90.—IR.

ai. — *Power to remove parish priest.*—Appl., a parish priest, was removed from his parish by a decree of removal issued by the bishop of the diocese in which the parish was situated. Appl. claimed a declaration that the decree was illegal & void on the grounds that (1) there was no power under the canon law to issue such a decree unless a "citation" had been first served on him, & he had an opportunity to meet the charges made against him; (2) alternatively, if the canon law did not require the service of a "citation" or the granting of a personal hearing, yet the making of the decree without notice to him was contrary to natural justice:—*Held*: the decree was not illegal on either ground.—O'CALLAGHAN v. O'SULLIVAN, [1925] 1 I. R. 90.—IR.

sb. *Corporation—Parish—Borrowing for church building.*—LEONARD v. ST. PATRICK'S PARISH, [1922] 1 W. W. R. 601; 66 D. L. R. 304; 17 Alta. L. R. 262.—CAN.

sd. *Relation to civil law—Archbishop of Edmonton—As to parishes in Calgary diocese.*—LEONARD v. ST. PATRICK'S PARISH, [1922] 1 W. W. R. 601; 66 D. L. R. 304; 17 Alta. L. R. 262.—CAN.

### PART VIII. SECT. 7.

bi. — *Irregular marriage in presence of minister followed by prayer—Minister not guilty of offence under Marriage Notice (Scotland) Act, 1878 (c. 43), s. 12.*—STRATHERN v. STUART, [1926] S. C. (J.) 114.—SCOT.

si. *Minister's stipend—Obligation to provide.*—GREENOCK (PROVOST) v. PETERS, [1893] A. C. 258.—SCOT.

### PART VIII. SECT. 9.

sk. *Plan of co-operation adopted by Presbyterian & Methodist congregations—Whether unit for voting on church union.*—Re CONN PRESBYTERIAN CHURCH (Ont.), [1926] 4 D. L. R. 385.—CAN.

sl. *Members—Who are—Name on roll.*—RODNEY CASE (Ont.), [1926] 2 D. L. R. 516.—CAN.

sm. — *Name also on roll of another church.*—Re MAPLE VALLEY PRESBYTERIAN CHURCH (Ont.), [1926] 4 D. L. R. 378.—CAN.

sn. — *Old roll.*—Re BURLINGTON PRESBYTERIAN CHURCH (Ont.), [1926] 4 D. L. R. 380.—CAN.

sp. *S. P. Re DALHOUSIE MILLS PRESBYTERIAN CHURCH (Ont.), [1926] 4 D. L. R. 383.—CAN.*

st. — *Reserve or appendix roll.*—WICK CASE (Ont.), [1926] 1 D. L. R. 829.—CAN.

sv. — *Re RICHMOND HILL PRESBYTERIAN CHURCH (Ont.), [1926] 4 D. L. R. 365.—CAN.*

sw. *Meetings—Calling—How regulated.*—CAMERON v. ST. LUKE'S SALT SPRINGS (TRUSTEES), [1927] 2 D. L. R. 760; 59 N. S. R. 272.—CAN.

sy. *Property—Statutory disposal of.*—Re UNITED CHURCH (P. E. I.), [1927] 2 D. L. R. 1169.—CAN.

### PART VIII. SECT. 10.

sz. *Selection of priests—Right of majority of members.*—DWIRNICHUK v. ZAICHUK (Sask.), [1926] 3 W. W. R. 508.—CAN.



# EDUCATION.

## Part I.—In General.

5. *Add. Annotation* :—*Reid. B v. B.*, [1924] P. 176.

## Part II.—Central and Local Education Authorities.

13. *Add. Annotation* :—*As to (2) Folld. Richardson v. Abertillery U. D. C., Thomas v. Same* (1928), 44 T. L. R. 333.

14a. ———.]—Pltfs., assistant teachers in the employ of deft. council, claimed injunctions to restrain the council from acting on resolutions to dismiss them from their employment & notices sent to them in pursuance thereof. The council were in financial difficulties, & had approached the Minister of Health with a view to obtaining a further loan. This had been refused, unless the finances were placed on a sound footing & expenses reduced. With a view to achieving this result they appointed a sub-committee with full powers to scrutinise expenditure & effect reductions & savings. This committee recommended that pltfs., who were remunerated on the Burnham scale, should have their engagements determined by notice. Acting in pursuance thereof the committee passed the resolutions complained of, & notices were

sent out determining the contracts signed by their clerk :—*Held* : (1) it was clear that it had become necessary to practise strict economy, & judicial notice could be taken of the fact that at the time pltfs. were remunerated on the highest scale of the Burnham award. The council in considering these questions were acting in pursuance of their statutory obligations, & no objection could be entertained as to the validity of the notices on the ground of motive. (2) There was power to delegate under 1921 Act, s. 4 (2), & the committee had vested in them the duty of ascertaining how best savings could be brought about. On their report the notices of dismissal had been prepared & sent to pltfs., signed by the clerk of the council. That was a sufficient ratification of what the committee had done, & pltfs.' claim failed.—*RICHARDSON v. ABERTILLERY URBAN DISTRICT COUNCIL, THOMAS v. SAME* (1928), 138 L. T. 688 ; 92 J. P. 59 ; 44 T. L. R. 333 ; 72 Sol. Jo. 226.

## Part IV.—Elementary Schools.

30. *Add. Annotation* :—*Consd. Northern Theatres Co. v. Shillito*, [1925] 2 K. B. 100.

*Corpn., Dyson v. Sheffield Corpn.*, [1924] 1 Ch. 483.

47. *Add. Annotation* :—*Reid. Sadler v. Sheffield*

PART II. SECT. 2, SUB-SECT. 1.  
5a. *School board—Election—Method of voting.*—*Re EDMONTON SCHOOL BOARD ELECTION* (Alta.), [1927] 1 D. L. R. 411.—CAN.

PART II. SECT. 2, SUB-SECT. 4.  
171. *Negligence of education authority—Defective state of playground.*—Appls. planted a number of young trees upon a portion of the playground of a school under their control, & erected wooden stakes with sharp & jagged points round each tree. These stakes were pressed into the ground & brought together at the top in the form of a pyramid. The area covered by the trees had become overgrown with grass, & in that area a hole had been dug, & the earth heaped up at the side of it, forming a mound two or three feet in height. Resp.'s daughter, a child of six years, when playing fell on one of the stakes, which pierced her eye :—*Held* : appls. had been negligent in not taking steps to obviate the danger, & were liable in damages.—*TRANSVAAL PROVINCIAL ADMINISTRATION v. COLEY*, [1925] App. D. 24.—S. AF.

o l. — *Supervision of rifle-shooting competition.*—A school board has a duty to see that the school premises are not used in a manner dangerous to the children. If it authorises or permits a shooting competition with rifles in the course of school sports on a holiday

granted for such purpose, it must provide efficient supervision, including efficient inspection of the rifles used, & a breach of that duty will subject it to damages for injury to a boy caused through his having a defective rifle.—*WALTON v. VANCOUVER BOARD OF SCHOOL TRUSTEES*, [1924] 2 D. L. R. 387 ; 2 W. W. R. 49 ; 34 B. C. R. 38.—CAN.

PART IV. SECT. 2, SUB-SECT. 2.  
26 i. *Duty to "maintain & keep efficient"*—*School transferred to local authority.*—Trustees of a voluntary Episcopal school transferred it to the local education authority, the school then being conducted as a primary school, with a supplementary course. Two years after the transfer, the education authority altered the system & began to conduct it in sequence with a neighbouring school. In an action against the education authority at the instance of the former trustees :—*Held* : under Education (Scotland) Act, 1918, s. 18 (3), defenders were bound to hold, maintain, & manage the transferred school as a public school of the same character & status as at the date of the transfer & provide similar instruction to that provided at that date.—*NORFOLK v. ABERDEENSHIRE EDUCATION AUTHORITY*, [1924] S. C. 590.—SCOT.

26 ii. — *Performance of duties—Jurisdiction of court.*—

while questions as to due fulfilment of observance by the education authority of their statutory obligations were questions of fact which fell to be determined by the Education Department under Education (Scotland) Act, 1918, s. 18 (4), where the question involved the measure of these obligations, that was a question of law, with regard to which the jurisdiction of the ct. had not been excluded.—*NORFOLK v. ABERDEENSHIRE EDUCATION AUTHORITY*, [1923] S. C. 881.—SCOT.

PART IV. SECT. 2, SUB-SECT. 3.  
5c. *Teachers—Employment of sisters of Order of Roman Catholic Church—Whether sectarian education.*—*ROGERS v. BATHURST SCHOOL DISTRICT NO. 2 (TRUSTEES)* (1896), 1 N. B. Eq. Rep. 266.—CAN.  
5d. — *Contracts with—Duty of trustees to confirm.*—*DES ROSIERS v. BALMORAL & DALHOUSIE SCHOOL DISTRICTS NO. 1* (N. B.), [1927] 3 D. L. R. 505.—CAN.

PART IV. SECT. 5.  
5a. *Contribution by one education authority to another—Parents not residing in area in which school situate.*—The B. education authority granted bursaries to a number of children of persons resident in Arran for the purpose of facilitating their secondary education. There was no secondary school in Arran, & the children attended

## Part V.—School Attendance.

62. *Add. Annotation*:—*Apld. Woodward v. Oldfield* (1927), 96 L. J. K. B. 796.
72. *Add. Annotation*:—*As to* (3) *Consd. Thomas v. Hughes* (1928), 139 L. T. 613.
78. *Add. Annotation*:—*N.F. Rednall v. Beamish* (1926), 135 L. T. 155.
- 78a. ———.]—Where an education authority has refused an application for exemption from school attendance on the ground of employment, the fact of such employment can be neither a "reasonable excuse" for non-attendance, nor an extenuating circumstance entitling the justices under Probation of Offenders Act, 1907 (c. 17), to dismiss a summons against the parent.—*THOMAS v. HUGHES* (1928), 139 L. T. 613; 92 J. P. 169; 44 T. L. R. 818; 26 L. G. R. 545, D. C.
- 79a. ———.]—Resp., a share-fisherman & the father of a boy of fourteen years of age & of six other children of school age, placed the boy out at work at 5s. 6d. a week, & applied to the local education authority to exempt the boy from school attendance. Exemption was refused, & on an information against

resp. for failing, without reasonable excuse, to cause the boy, being between five & fifteen years of age, to attend school, as required by the bye-laws of the education authority, the justices held that the fact of the boy's having obtained regular employment of a beneficial nature was a reasonable excuse, & they dismissed the information:—*Held*: the fact of the boy's employment was not a reasonable excuse, & the case must be remitted to the justices.—*REDNALL v. BEAMISH* (1926), 135 L. T. 155; 90 J. P. 153; 42 T. L. R. 538; 24 L. G. R. 391; 28 Cox, C. C. 245, D. C.

- 88a. ———.]—The words "under efficient instruction in some other manner" mean that the child is receiving the whole of its instruction in some other manner, & do not entitle a parent to withdraw a child for one hour a week for the purpose of attending private lessons in a subject not approved by the Board of Education for elementary schools.—*OSBORNE v. MARTIN* (1927), 138 L. T. 268; 91 J. P. 197; 44 T. L. R. 38; 25 L. G. R. 532, 28 Cox, C. C. 465, D. C.

## Part VI.—Blind, Deaf, Defective and Epileptic Children.

- 99a. ——— Who is "parent."—The parent, whose consent is required to be given or unreasonably withheld before a defective child can be ordered, under 1921 Act, s. 54 (1), to be sent to a special school which is not within reach of the child's residence or to a boarding school, is the parent who has *de facto* custody of the child; & where the

father of a defective child was a convict serving a term of penal servitude, & the child resided with its mother:—*Held*: the mother was the parent for the purposes of the sect.—*WOODWARD v. OLDFIELD*, [1928] 1 K. B. 204; 96 L. J. K. B. 796; 136 L. T. 731; 91 J. P. 151; 43 T. L. R. 488; 25 L. G. R. 296; 28 Cox, C. C. 363, D. C.

Ardrossan Academy, which is within the education authority. Except for two months in summer, the children left Arran for Ardrossan on Monday mornings, & they were boarded during the week with persons resident in Ardrossan, with whom they lived in family. On Saturday they returned home for the week-end, & they spent their holidays at their homes in Arran. The A. education authority claimed repayment of the cost of educating the children at Ardrossan from the B. education authority:—*Held*: pursuers were entitled to recover the cost of the children's education from defenders. Education (Scotland) Act, 1918 (c. 48), s. 10, discussed.—*AYRSHIRE EDUCATION AUTHORITY v. BUTESHIRE EDUCATION AUTHORITY*, [1926] S. C. 169.—SCOT.

## PART IV. SECT. 6.

sl. *Alteration of school section boundaries—Sufficiency of notice.*—By a township bye-law, certain land was detached from one school section & added to another. Notice of the proposed alteration had been given by the township council, by posting fourteen notices, seven in each of the sections, & publicity was given in the public press, though not by advertisement containing the formal notice. On an application for a declaration that the bye-law was invalid:—*Held*: Public Schools Act, 1920, s. 15 (1) (b), should be construed as leaving the notice to be given entirely to the dis-

cretion of the township council.—*Re HOYLAND & YORK* (1923), 55 O. L. R. 185.—CAN.

sj. *Alteration of school districts—By whom sanctioned*—7 Vict. c. 29, ss. 14, 24.—*McFEE v. DUNDAR* (1860), 10 C. P. 94.—CAN.

sk. — *Award under Public Schools Act, 1896 (c. 70) (Ont.)—Validity.*—*Re CHESTERVILLE PUBLIC SCHOOL BOARD* (1898), 29 O. R. 321.—CAN.

sm. *Union of sections*—40 Vict. c. 16 (Ont.)—*Effect of.*—*Re MINISTER OF EDUCATION PETITION* (1877), 28 C. P. 325.—CAN.

## PART V. SECT. 1, SUB-SECT. 2.

sp. *By whom taken.*—A father, charged with failure to provide efficient education for his child upon a complaint at the instance of "the person appointed by the education authority for the county of Lanark to prosecute," objected on the ground that the proper prosecutor was the school management committee for the area, or the person appointed by them:—*Held*: the power, previously vested in school boards, to prosecute for education offences was included in the powers transferred to the education authority by 1918 Act, & had not been restricted by s. 3 (2); & the education authority, or the person appointed by them, could competently prosecute.—

*HIDDLESTON v. WILSON*, [1924] S. C. (J.) 62.—SCOT.

sb. *Under Education (Scotland) Act, 1872 (c. 62), s. 70.*—The above sect. has not been impliedly repealed by Education (Scotland) Act, 1908 (c. 63), s. 8, & a prosecution under sect. 70 is competent, even though the real question at issue between the parent & the education authority is the selection of the school which the children are to attend. *Semble*: proceedings should not be taken under sect. 70 where there is a question of principle at issue between the parties.—*CALDER v. ALEXANDER*, [1926] S. C. (J.) 51.—SCOT.

## PART V. SECT. 3.

89 i. — *No school within three miles—Parent's refusal of offer of travelling facilities.*—A father was charged with failure to provide efficient education for his son aged twelve years, contrary to Education (Scotland) Act, 1908 (c. 63), s. 7 (1). The boy had passed out of the primary school, & there was no secondary school within three miles of his place of residence. The education authority offered to pay an allowance towards the cost of conveying the boy to a secondary school. The father refused the offer:—*Held*: the father had a "reasonable excuse" for failure to provide education within Education (Scotland) Act, 1883 (c. 56), s. 11.—*MACKENZIE v. SMITH*, [1927] S. C. (J.) 47.—SCOT.

## Part VII.—Higher Education.

100. *Add. Annotation*:—*Mentd. R. v. Health Minister, Ex p. Dore*, [1927] 1 K. B. 765.

## Part XII.—Reformatory and Industrial Schools.

135. *Add. Annotation*:—*Reid. L. C. C. v. Wiltshire County Council* (1927), 137 L. T. 526.

137a. ————.]—A youthful offender committed an offence while on a temporary visit to the place in W. where it was committed. Until about three weeks previously he had resided in L., but at the date of the offence had neither home nor employment in L. to which he could have returned. He was ordered to be sent to a reformatory school, & his place of residence was specified to be L.:—*Held*: as there was no proof of his actual residence in L. at the date of the offence, his place of residence should have

been specified as W., not because of his actual residence there, which was admittedly only temporary, but because the presumed residence in the place where the offence was committed provided for by the above sect. had not been successfully displaced.—*LONDON COUNTY COUNCIL v. WILTSHIRE COUNTY COUNCIL* (1927), 137 L. T. 526; 91 J. P. 122; 43 T. L. R. 563; 25 L. G. R. 384; 28 Cox, C. C. 416, D. C.

138. *Add. Citations*:—[1924] 1 K. B. 248; 93 L. J. K. B. 65; 130 L. T. 414; 27 Cox, C. C. 581.

## Part XIV.—Universities and Public Schools.

176. *Add. Annotation*:—*As to* (2) *Reid. Short v. Poole Corpn.* (1925), 42 T. L. R. 107

## Part XVII.—Schoolmasters and Teachers.

288a. ——— *Right to withhold "carry-over"—Unsatisfactory service.*]—*Pltf. was appointed*

head teacher of a non-provided school in 1904, & in 1921 the Burnham Report was

### PART VIII.

105 i. *Conveyance of children to school—Duty of school trustees—Under School Act, R. S. S., 1920 (c. 110), ss. 188, 207 (1).*]—*RIDINGS v. ELMHURST SCHOOL DISTRICT NO. 3665 BOARD OF TRUSTEES* (No. 2), [1927] 3 D. L. R. 173; [1927] 2 W. W. R. 159; 21 S. C. R. 471.—CAN.

sm. *Lease by school trustees—Validity.*]—*NIAGARA PUBLIC SCHOOL BOARD v. QUEENSTON WOMEN'S INSTITUTE*, [1926] 4 D. L. R. 13; 59 O. L. R. 213.—CAN.

### PART X.

p i. ——— *Power of trustees—Sale of old site.*]—Under School Act, R.S.A., 1922, a board of trustees has power to purchase a new site for a school & remove the school building to it, & with the Minister's approval, to sell the old site.—*OLSTREAD v. COAL VALLEY SCHOOL DISTRICT NO. 1053*, [1924] 1 W. W. R. 211.—CAN.

l (p. 574) i. ——— *Validity of bye-law prohibiting.*]—A bye-law passed by a city council under Municipal Act of Ontario, s. 399A, prohibiting in a certain district the erection of buildings except for use as private residences, is enforceable in respect of a school erected by the trustees of a separate school under their statutory powers.—*TORONTO CORPN. v. ROMAN CATHOLIC SEPARATE SCHOOLS TRUSTEES*, [1926] A. C. 81; 95 L. J. P. C. 12; 133 L. T. 779; 41 T. L. R. 658.—CAN.

### PART XI.

g i. ——— *Annexation by urban municipality—Effect of.*]—*WINDSOR v. TURNER*, [1925] 2 D. L. R. 684; [1925]

S. C. R. 413; *reversg.* 26 O. W. N. 221.—CAN.

sn. *City board—School in adjoining rural section—Equalisation of assessment.*]—An agreement was made in 1917 between the trustees of a rural school section adjoining a city & the board of education for the city for the erection & maintenance by the latter of a school house in the rural section, the pupils in the rural section to have the right to attend the school & the higher grade schools in the city, & the trustees of the rural section agreeing to pay a fixed annual sum to be raised by taxation:—*Held*: assuming the agreement was a valid one, School Law Amendment Act, 1922, s. 14, did not apply to the agreement, as it was not one for payment of any proportion of the cost of erecting & maintaining the school; & a judgment restraining the city board & arbitrators appointed to equalise the assessment in respect of the school from proceeding to do so, was affirmed.—*YORK PUBLIC SCHOOL BOARD v. TORONTO BOARD OF EDUCATION* (1923), 54 O. L. R. 210.—CAN.

### PART XII. SECT. 1.

b i. ———.]—*Re R. v. ST. PETERS* (1927), 47 Can. Crim. Cas. 204; 59 N. S. R. 198.—CAN.

### PART XIV. SECT. 2, SUB-SECT. 4.

n i. ———.]—When *pltf.* was appointed to a professorship in 1916, no definite term was fixed:—*Held*: the ordinary rule that such a contract of employment could be terminated by reasonable notice on either side would apply, unless the particular nature of the contract or the circumstances in which it was made overrode

the rule; & an appointment to a professorship without limitation of time could not be an appointment for life, subject only to good behaviour & ability to perform his duties, as such a contract must be mutual, & could be binding neither on the university nor on the professor.—*CRAIG v. UNIVERSITY OF TORONTO (GOVERNORS)* (1923), 53 O. L. R. 312.—CAN.

### PART XV. SECT. 8, SUB-SECT. 2.—A.

192 i. *Modification of scheme—Powers under Educational Endowments (Scotland) Act, 1882 (c. 59).*]—Where a scheme approved by the Education Department is submitted which is reasonable & consistent with the Act, it is not the function of the ct. to remodel or alter it.—*Re CAMPBELL ENDOWMENT TRUST, ARGYLL EDUCATION AUTHORITY v. CAMPBELTOWN CORPN.*, [1928] S. C. 171.—SCOT.

### PART XVII. SECT. 4, SUB-SECT. 1.

st. *Duty of teacher to obey order of school board to suspend pupil.*]—If a teacher knows of no reason why a pupil be suspended or expelled & has received no complaint against the pupil, he is justified in refusing to obey an order of the school board to suspend such pupil.—*LECLERC v. PERIGORD SCHOOL DISTRICT NO. 850, BOARD OF TRUSTEES*, [1925] 3 D. L. R. 578; [1925] 2 W. W. R. 312; 19 Sask. L. R. 435.—CAN.

sv. *Duty of master—Pupil guilty of "wilful opposition to authority."*]—A pupil who remains away from school because he finds certain school work uninteresting, or because he does not like the teacher's manner of teaching, is guilty of "wilful opposition to



adopted by the local education authority. The effect of the adoption of the report was that pltf. became entitled to an increase of salary, & it was agreed that the payment of the "carry-over," i.e. the difference between the salary which pltf. would have received at the date of the adoption of the report by the local education authority, if throughout pltf.'s service the Burnham scale had been in operation, & the salary which at that date pltf. was in fact receiving, should be spread over three years. The education committee refused to pay the instalment for the year ending Mar. 31, 1924, on the ground that in 1923 pltf.'s service had been unsatisfactory:—*Held*: the local education authority had no power, under the terms of the report, to withhold from a teacher any part of the "carry-over" by reason of unsatisfactory service after the date of the adoption of the report.—*WITTS v. MACKAY* (1927), 43 T. L. R. 535; 71 Sol. Jo. 666, D. C.

290. *Add. Annotations*:—As to (2) *Reid. Short v. Poole Corpn.* (1925), 42 T. L. R. 107. *Generally, Mentd. R. v. Roberts, Ex p. Scurr*, [1924] 2 K. B. 695; *Reitzes de Marienwert v. Administrator of Austrian Property*, [1924] 2 Ch. 282; *Roberts v. Hopwood*, [1925] A. C. 578; *Wigg v. A.-G. of Irish Free State* (1927), 96 L. J. P. C. 88.

293a. *Death gratuity granted to legal personal representative of deceased teacher—Devolution on death of grantee.*—A death gratuity granted by the Board of Education under the power conferred by School Teachers Superannuation Act, 1918 (c. 55), s. 3, to the legal personal representative of a deceased

teacher, who died intestate & insolvent, leaving a widow & an infant daughter, will be treated as forming part of the estate of the intestate, & be primarily applicable in payment of the intestate's debts, & ought not to be held upon trust for his next of kin.—*Re HAWKINS, HAWKINS v. DEW & SONS*, [1926] Ch. 428; 95 L. J. Ch. 402; 135 L. T. 89; 42 T. L. R. 286.

297. *Add. Annotations*:—As to (1) *Reid. Short v. Poole Corpn.* (1925), 42 T. L. R. 107; *Fennell v. East Ham Corpn.*, [1926] Ch. 641.

299. *Add. Citations*:—131 L. T. 55; 68 Sol. Jo. 403; 22 L. G. R. 138.

*Add. Annotations*:—As to (2) *Reid. Short v. Poole Corpn.* (1925), 42 T. L. R. 107; *Fennell v. East Ham Corpn.*, [1926] Ch. 641.

302. *Add. Annotation*:—As to (4) *Consd. Short v. Poole Corpn.*, [1926] Ch. 66.

302a. *Bonâ fide exercise of discretion.*

—A local education authority has power to dismiss a married woman teacher in a public elementary school on the ground that, in the *bonâ fide* exercise of their discretion, they have come to the conclusion that it is impossible for her to look after her domestic concerns & effectively & satisfactorily to act as a teacher at the same time.—*SHORT v. POOLE CORPN.*, [1926] Ch. 66; 95 L. J. Ch. 110; 134 L. T. 110; 90 J. P. 25; 42 T. L. R. 107; 70 Sol. Jo. 245; 24 L. G. R. 14, C. A.

*Annotations*:—*Apld. Fennell v. East Ham County Borough Corpn.* (1925), 89 J. P. Jo. 721. *Consd. Richardson v. Abertillery U. D. C.*, *Thomas v. Same* (1928), 138 L. T. 688.

302b. ——— *Onus of proof.*—The council of deft. borough, as the local education

authority" within School Act, R. S. A., 1922 (c. 51), s. 202, & it is not only the teacher's right, but his duty, to suspend him.—*FINLAYSON v. POWELL, TUCKER v. POWELL*, [1926] 2 D. L. R. 383; [1926] 1 W. W. R. 939; 22 Alta. L. R. 171.—CAN.

#### PART XVII. SECT. 4, SUB-SECT. 2.

*sw. General rule.*—Where a child is sent by its parent or guardian to a school, they must be held to have given an implied consent to the infliction of such reasonable punishment as may be necessary for the purpose of school discipline, & the purpose with which the parental authority is delegated to the schoolmaster must to some extent include authority over the child when it is outside the school walls; but when the school is closed for any length of time for a period of regular holidays, the child then returns to the charge of its parent or guardian & the authority of the schoolmaster ceases.—*R. v. MAUNG BA THAUNG* (1925), 1 L. R. 3 Ran. 659.—IND.

1 i. — *Moderate & reasonable.*—A schoolteacher has the right to inflict corporal punishment on a pupil for violating the rules of the school, provided the punishment is not excessive, the instrument with which it is inflicted is a proper one for the purpose & there is no malice or ill will on the part of the teacher.—*R. v. METCALFE* (Sask.), [1927] 3 W. W. R. 194.—CAN.

#### PART XVII. SECT. 5.

q i. — *Night school teacher—Liability of school board.*—A night school teacher may recover on his contract with a school board, although it is not in the prescribed form or in writing.—*LECLERC v. PERIGORD*

SCHOOL DISTRICT NO. 850, BOARD OF TRUSTEES, [1925] 3 D. L. R. 578; [1925] 2 W. W. R. 312; 19 Sask. L. R. 435.—CAN.

q ii. — *Computation of teaching period—Teacher prevented from teaching.*—Where a school board wrongfully prevents a teacher from teaching, the time during which he is thereby unable to teach will be counted in his favour in determining whether he has been teaching continuously for the four months or more required to entitle him to the benefits of School Act, R. S. S., 1920 (c. 110), s. 195 (1). Holidays under sect. 177 of the Act should not be counted as actual teaching days under sect. 195 (1).—*LECLERC v. PERIGORD SCHOOL DISTRICT NO. 850, BOARD OF TRUSTEES*, [1925] 3 D. L. R. 578; [1925] 2 W. W. R. 312; 19 Sask. L. R. 435.—CAN.

q iii. — *School arbitrarily closed.*—Where a school is closed arbitrarily by a school board, & a teacher, who is ready, willing & able to teach, is thereby prevented from teaching for the full two hundred & ten days on which, under School Act, R. S. A., 1922 (c. 51), s. 199 (1), his salary is based, he is entitled in a claim for salary to have the days during which the school was so closed credited to him as "actual teaching days."—*STEPHENS v. GEM CONSOLIDATED SCHOOL DISTRICT, NO. 60, TRUSTEES*, [1925] 1 W. W. R. 745.—CAN.

q iv. — *Scale—Head teacher in secondary school.*—As regards head teachers of secondary schools, the Craik scale is prescribed, until a defined & fixed scale of salaries is introduced.—*SMART v. PERTSHIRE EDUCATION AUTHORITY*, [1927] S. C. (H. L.) 22.—SCOT.

q v. — *School Ordinance, s. 155.*—*PORTER v. FLEMING SCHOOL DISTRICT*

(1906), 3 W. L. R. 186; 6 Terr. L. R. 348.—CAN.

*sz. Decrease of salary—Revision of scale—From what date operative.*—A revised scheme does not become operative until it has received the Education Department's approval.

The Department has no power to sanction a revised scheme retrospectively so as to affect a teacher's contractual right to his salary.—*COULL v. FIFE EDUCATION AUTHORITY*, [1925] S. C. 240.—SCOT.

290 i. *Differentiation of salaries—Graduate & non-graduate teachers—Effect of admitting non-graduate to graduate scale.*—The admission of a non-graduate master to the graduate scale of salary does not preclude an education authority from treating him as a non-graduate teacher on a revision of the scales of salaries.—*COULL v. FIFE EDUCATION AUTHORITY*, [1925] S. C. 240.—SCOT.

#### PART XVII. SECT. 6.

*sa. Right of members of teaching staff of Education Department of Western Australia to superannuation allowances.*—*WALSH v. R.*, [1927] A. C. 337; 96 L. J. P. C. 50; 136 L. T. 641.—AUS.

#### PART XVII. SECT. 7.

t i. — *Non-compliance with provisions as to termination—Teacher entitled to damages.*—*HUNT v. BRANT SCHOOL DISTRICT TRUSTEES* (Alta.), [1926] 3 D. L. R. 288; [1926] 2 W. W. R. 431.—CAN.

t ii. — *Form of contract prescribed by Minister of Education under School Act, R. S. A., 1922 (c. 51)—How far provisions for determining contract v. BLAIRMORE SCHOOL DISTRICT TRUSTEES*, [1927] 1 D. L. R. 1178; [1927] 1 W. W. R. 449; 22 Alta. L. R. —CAN.

authority, in pursuance of a recommendation of their education committee, made after exhaustive inquiries & discussion, resolved that the engagements of all married women teachers falling under certain specified categories should be terminated : &, accordingly, notice was given to each of pltfs. to terminate her engagement. Pltfs., three married women, had for several years been engaged under contracts terminable by a month's notice on either side, as assistant certificated teachers in some of depts.' schools, & were admittedly efficient teachers. It was proved that the object of the council in reducing the number of the married women teachers was to create vacancies for unemployed single women teachers whom the council trained for the teaching profession & for whom it was important in the interest of educational efficiency that teaching posts should be provided. In carrying out that policy, the council, with the view of minimising cases of hardship in the selection of married women teachers for dismissal, took into consideration the domestic circumstances & duties of the married women teachers & the earning capacity of their husbands. Pltfs. sought declarations that the notices of dismissal were invalid on the ground that the council in giving them did not act *bond fide* with the intention of discharging their statutory duties of maintaining educational efficiency, but acted with the

illegitimate object of providing employment for unmarried women without reference to educational efficiency, of obliging married women teachers to confine themselves to home duties & of preventing those whose husbands were in regular employment from increasing the income of the joint home :—*Held* : (1) pltfs. failed to discharge the *onus* which lay upon them of showing that the policy adopted by the council of reducing the number of the married women teachers for the purpose of creating vacancies for unemployed single women teachers, & the steps taken to carry it out, were in excess of their statutory powers or were adopted or taken in pursuance of some illegitimate object ; (2) the matters taken into consideration by the council were irrelevant from an educational standpoint, but were material factors in determining, not only whether the policy ought to be adopted, but the best method of applying it ; (3) as defts. had acted *bond fide* & within their statutory powers, the action ought to be dismissed.—*FENNELL v. EAST HAM CORPN.*, [1926] Ch. 641 ; 95 L. J. Ch. 119 ; 134 L. T. 276 ; 90 J. P. 36 ; 70 Sol. Jo. 324 ; 24 L. G. R. 76.

302c. ————.]—*RICHARDSON v. ABERTILLERY URBAN DISTRICT COUNCIL, THOMAS SAME, v.* No. 14a, *ante*.

336. *Add. Annotation* :—As to (3) *Consd. Short v. Poole Corpn.*, (1925) 42 T. L. R. 107.

#### PART XVIII.

n i. ————.]—Where the secretary of a school board, acting under its instructions, notifies in writing each of two or more appets. for a teacher's position that her application has been accepted, but the board enters into the formal contract prescribed by statute with only one of

them & notifies the others that their services will not be required, each of the latter has a right of action against the board as a corpn. for damages, but not against the members thereof individually or against the secretary.—*MORRISON v. CASSELL HILL SCHOOL DISTRICT TRUSTEES*, [1925] 1 W. W. R. 526.—CAN.

st. *Conviction for using words tending to impair discipline—Form of conviction.*—*R. v. THORNE*, [1926] 2 D. L. R. 587 ; 45 Can. Crim. Cas. 360 ; 58 N. S. R. 449.—CAN.

sk. *Under Schools Act, 1922 (c. 5) (N. B.).*—*KELLY v. GRIMMER* S. D. 25 (N. B.), [1927] 3 D. L. R. 704.—CAN.

## ELECTIONS.

## Part II.—Male Franchise.

92. *Add. Citation* :—13 L. T. 762.

## Part V.—Registration.

146a. — Sufficiency of—Christian name in full not necessary.]—*R. v. HARTLEPOOL CORPN.* (1851), 2 L. M. & P. 666; 21 L. J. Q. B. 71; 15 J. P. 835; 15 Jur. 1158; *sub nom.* R.

*v. HARTLEPOOL CORPN., Ex p. DOBING*, 18 L. T. O. S. 111.

*Annotations* :—*Apld.* *R. v. Avery* (1852), 18 Q. B. 576. *Refd.* *R. v. Bradley* (1861), 30 L. J. Q. B. 180; *R. v. Plenty* (1869), 38 L. J. Q. B. 205.

## Part VI.—Parliamentary Election.

*F. Incurring of Expenses by Person Other than Election Agent* (Vol. XX., p. 98).

Add the following case :—

774a. What amounts to.]—During an election at which there were three candidates, Conservative, Liberal & Labour respectively, applt., who was a Conservative in politics but disapproved of the existing Conservative Govt. on special grounds, incurred expenses on account of issuing posters, circulars & publications which were antagonistic to the Conservative candidate & advised the constituents not to vote for him, but did not

in express terms advise them to vote for the other candidates or either of them :—*Held* : applt. had acted in contravention of Representation Act, 1918, s. 34 (1).—*R. v. HAILWOOD, R. v. HAILWOOD & ACKROYD, LTD.*, [1928] 2 K. B. 277; 97 L. J. K. B. 394; 138 L. T. 495; 44 T. L. R. 343; 28 Cox, C. C. 489; 20 Cr. App. Rep. 177, C. C. A.

851. *Add. Annotation* :—*Distd.* *Everett v. Ryder* (1926), 135 L. T. 302.

859. *Add. Citation* :—*sub nom.* *JONES v. PICKERING*, 29 L. T. 210.

## PART I.

a i. — Voters in township added to city.]—*R. v. WILSON* (1888), 12 P. R. 546.—CAN.

a ii. — Persons omitted from verified copy of collector's roll—Persons omitted from collector's roll.]—*R. v. STEPHENSON* (1851), 1 C. L. Ch. 270.—CAN.

## PART II. SECT. 2, SUB-SECT. 3.—B.

sb. Gaoler—Living in county gaol rent free—Not a householder within 14 & 15 Vict. c. 109, Sched. A., No. 12.]—*Re CHARLES v. LEWIS & McMAHON* (1851), 2 C. L. Ch. 171.—CAN.

## PART V. SECT. 2, SUB-SECT. 5.

249 vii. For "1 D. L. R. 84" read "1 D. L. R. 265," & for "22 Man. L. R. 597" read "22 Man. L. R."

## PART V. SECT. 3, SUB-SECT. 5.

f i. — Non-compliance with statutory qualifications—*Election Laws Amendment Act*, 1920, s. 6 (1), (2).]—Votes cast by persons whose names were on the lists, but who had not been residents of the electoral district for three months next preceding the day of polling :—*Held* : illegal.—*MERCER v. HOMUTH* (1924), 55 O. L. R. 245.—CAN.

## PART VI. SECT. 5.

323 i. Who is a candidate.]—Where pltf. was selected as a candidate, & statements were published concerning him, & a writ in an action for libel was issued before the issue of the writ for the election, but after the vacancy had occurred :—*Held* : pltf. was a candidate for a Parliamentary constituency when the libel was published.

—*CULLEN v. STANLEY*, [1926] 1. R. 73.—IR.

sd. Deposit payable—Return of—Successful candidate entitled to return notwithstanding refusal to take prescribed oath.]—*O'DONOGHUE v. REDMOND ROCHE* (1), [1927] 1. R. 152.—IR.

## PART VI. SECT. 7.

480 i. Refusal of nomination by returning officer—Jurisdiction of court—To compel returning officer to accept nomination & grant poll.]—*Re ADDINGTON ELECTION, JOHNSTON v. McCALLUM* (1927), 61 O. L. R. 392; 33 O. W. N. 135.—CAN.

## PART VI. SECT. 9, SUB-SECT. 1.—A. (a) i.

st. To candidate—To induce withdrawal of candidature—What amounts to.]—*Re SOUTH BRUCE PROVINCIAL ELECTION, JOHNSTON v. McCALLUM* (1927), 61 O. L. R. 392; 33 O. W. N. 135.—CAN.

sk. — — — — —.]—*Re NORTH BRUCE PROVINCIAL ELECTION, FENTON v. MEWBINNEY*, [1927] 4 D. L. R. 397; 61 O. L. R. 99.—CAN.

## PART VI. SECT. 9, SUB-SECT. 1.—B. (a).

681 iv. — — — — —.]—*Speech at picnic instead of hiring hall.*—*MERCER v. HOMUTH* (1924), 55 O. L. R. 245.—CAN.

r (p. 91) i. — — — — —.]—The act of an agent in treating an elector to a drink, without the knowledge or consent of the candidate, & at the emphatic request of the elector :—*Held* : not to have been a corrupt practice.—*ADAMS v. HUCK* (No. 2), [1926] 1 W. W. R. 313; 20 Sask. L. R. 433.—CAN.

## PART VI. SECT. 9, SUB-SECT. 1.—B. (b).

695 xix. For "23 D. L. R. 573" read "26 D. L. R. 573."

695 xxv. — Entertainment & picnic—At meeting of supporters for speech by candidate—Expense of hiring hall saved.]—Payments were made by resp., through his official agent, for the services of a band & an entertainer at a picnic, a gathering of members of the party organisation supporting resp.'s candidature, & at which he made a speech :—*Held* : these payments, though they might be considered corrupt practices, were not made with corrupt intent, but with a belief in their propriety, as resp. by addressing the electors at the picnic was saved the expense of hiring halls, which would have been a legitimate expense.—*MERCER v. HOMUTH* (1924), 55 O. L. R. 245.—CAN.

## PART VI. SECT. 9, SUB-SECT. 3.

b i. Band & entertainment at picnic.]—*MERCER v. HOMUTH* (1924), 55 O. L. R. 245.—CAN.

## PART VI. SECT. 10, SUB-SECT. 7.

n i. — Presumption that duties properly carried out.]—*Re PROVINCIAL ELECTIONS ACT, SMITH v. CATHERWOOD*, [1925] 3 D. L. R. 770; [1925] 3 W. W. R. 54.—CAN.

n ii. — Breach of duties—Effect of.]—Breaches by a presiding officer of the rules of procedure prescribed for the performance of his duties do not necessarily render an election void.—*Re PROVINCIAL ELECTIONS ACT, SMITH v. CATHERWOOD*, [1925] 3 D. L. R. 770; [1925] 3 W. W. R. 54.—CAN.



## Part VII.—Municipal and Other Elections.

**1025a.** Description as commonly understood.]—A nomination paper at an election of town councillors was subscribed with the full & correct name of "Charles Arthur Burman" as an assenting burgess; but his name was erroneously entered upon the burgess roll as "Charles Burman" only:—*Held*: the defect was not such as was remedied by Municipal Corporations Act, 1882 (c. 50), s. 241, the words "commonly understood" in that sect. meaning "commonly understood by any person comparing the nomination paper & the burgess roll."—*MOORHOUSE v. LINNEY, THORPE v. LINNEY* (1885), 15 Q. B. D. 273; 53 L. T. 343; 49 J. P. 471; 33 W. R. 704; 1 T. L. R. 500, D. C.

*Annotations*:—*Distd. Bowden v. Besley* (1888), 21 Q. B. D. 309; *Gledhill v. Crowther* (1889), 23 Q. B. D. 136.

**1038a.** From election address.]—An election address not exhibited for general display, but only circularised in envelopes by post

or by hand:—*Held*: not a "bill, poster or placard" within Municipal Corrupt Practices Act, 1884 (c. 70).—*Re ELECTION OF COMMON COUNCILMEN FOR THE WARD OF FARRINGDON WITHOUT IN THE CITY OF LONDON* (1925), 161 L. T. Jo. 26, D. C.

**1038b.** False statements—Allegation that candidate is communist.]—Pltfs., six labour candidates for the office of borough councillor at a municipal election then about to be held, moved to restrain defts. from publishing statements to the effect that pltfs. were communists:—*Held*: the statements complained of were not false statements as to personal character within Municipal Elections (Corrupt & Illegal Practices) Act, 1884 (c. 70).—*BURNS v. ASSOCIATED NEWSPAPERS, LTD.* (1925), 89 J. P. 205; 42 T. L. R. 37.

**1075.** Add. Citation:—*sub nom. Re SAFFRON WALDEN ELECTION, Ex p. ROBSON*, 51 J. P. 199.

## PART VI. SECT. 11, SUB-SECT. 3.—A.

d (p. 109) i. *Counterfoil not wholly detached*.]—Ballots, from which the counterfoil has not been detached by the officer taking the ballot, should be counted on an election under Provincial Elections Act, 1920. Ballots to which only a small portion of the counterfoil remained attached, such portion furnishing no means of identifying the voter, should be counted.—*Re DEWDNEY ELECTION APPEAL, SMITH v. CATHERWOOD*, [1924] 3 W. W. R. 947.—CAN.

## counterfoil.

Where the deputy returning officer did not initial the ballots in the manner prescribed by the statute, but initialled the counterfoils, which he afterwards destroyed:—*Held*: this irregularity did not affect the election.—*MERCER v. HOMUTH* (1924), 55 O. L. R. 245.—CAN.

a (p. 110) i. — *Signed voting paper*.]—*MAPLE VALLEY CASE* (Ont.), [1926] 1 D. L. R. 808.—CAN.

c (p. 110) i. — — — — —.]—At a general provincial election a plebiscite was also taken. Of twenty election ballots of absentee voters only nine were enclosed in envelopes bearing the affidavit required of such voters with respect to the election, while the other eleven were found in plebiscite envelopes bearing plebiscite affidavits. The affidavits required of such eleven absentee voters in the election were not sent to the returning officer nor accounted for in any way, & there was no evidence to show from which envelopes the votes for the respective candidates had been taken:—*Held*: in the absence of any evidence of fraud or collusion, the above facts were not grounds for declaring the election void.—*Re PROVINCIAL ELECTIONS ACT, SMITH v. CATHERWOOD*, [1925] 3 D. L. R. 770; [1925] 3 W. W. R. 54.—CAN.

e (p. 110) ii. — — — — — *Non-compliance by presiding officer*.]—Absent voters' ballots, which have been enclosed in envelopes on which the presiding officer has failed to affix, as required by Provincial Elections Act, s. 106 (3), his official mark across the line where the envelope is closed, should be counted.—*Re DEWDNEY ELECTION APPEAL, SMITH v. CATHERWOOD*, [1924] 3 W. W. R. 947.—CAN.

**PART VI. SECT. 11, SUB-SECT. 3.—B.**  
890 v. — *Alberta Election Act*  
J.S.

1924 (c. 34), s. 82.]—The above sect. is mandatory & must be substantially complied with, & the use of the words, one, two, three, etc., instead of the figures, 1, 2, 3, etc., renders a ballot void; but if it is clear that a figure can reasonably be said to have been honestly intended for the figure 1, it is sufficient, even though it is not precisely the same form of the figure as that printed in the Act.—*Re ALBERTA ELECTION ACT, Re BOW VALLEY ELECTION* (Alta.), [1926] 4 D. L. R. 117; [1926] 3 W. W. R. 1.—CAN.

## PART VI. SECT. 12.

915 x. — *Unqualified persons allowed to vote—Illegal votes exceeding majority*.]—Resp. was returned as elected by a majority of only 15 votes. The evidence showed that 21 votes were cast by persons who had no right to vote:—*Held*: the election should be declared void, although it could not be shown in whose favour the illegal votes were cast.—*MERCER v. HOMUTH* (1924), 55 O. L. R. 245.—CAN.

915 xi. — *Ballot papers issued & accepted in excess of voters on register*.]—Where in a polling sub-division 137 ballots were found in the box & only 134 names appeared in the poll-book:—*Held*: an irregularity, which did not affect the result of the election.—*MERCER v. HOMUTH* (1924), 55 O. L. R. 245.—CAN.

## PART VI. SECT. 13.

m. For "— *Power of Supreme Court to compel* " substitute " *Recount—Power of Supreme Court to compel* ."

m i. — *Under Manitoba Election Act—Not applicable to election under proportional representation system*.]—*Re MANITOBA ELECTION ACT, Re WINNIPEG ELECTORAL DISTRICT*, [1927] 3 W. W. R. 92; 37 Man. L. R. 87.—CAN.

## PART VI. SECT. 15, SUB-SECT. 2.—B.

964 i. *Error in return—Liability of candidate to penalties—Not for accidental omission of one small item*.]—*McINNES v. BIRD*, [1926] N. Z. L. R. 638.—N.Z.

## PART VII. SECT. 1.

sl. *Place of election—Outside ward—Election void*.]—*R. v. PRESTON* (1851), 2 C. L. Ch. 178.—CAN.

## PART VII. SECT. 3.

f (p. 121) i. — — — — —.]—*R. v. JACKSON*, [1927] 2 D. L. R. 977; 60 O. L. R. 264.—CAN.

a (p. 122) i. *S. P. SMILEY v. EVANS*, [1927] 4 D. L. R. 629; 38 B. C. R. 468.—CAN.

## PART VII. SECT. 5, SUB-SECT. 1.—C.

n i. — — — *Casting vote given by lot*.]—On an election for a councillor of a municipality, the votes cast showed a tie between the two candidates. The returning officer then prepared a number of slips which were put in a hat & mixed up. The returning officer asked a voter to draw, stating he would give the casting vote to the candidate whose name first appeared. On the petition of the unsuccessful candidate:—*Held*: the election was void & a new election ordered.—*Re MUNICIPAL ELECTIONS ACT & TOMSETT*, [1924] 1 D. L. R. 921; 33 B. C. R. 377.—CAN.

n ii. — — — *Striking out vote wrongly entered*.]—New election ordered.—*R. v. RANKIN* (1861), 2 C. L. Ch. 161.—CAN.

n iii. — — — *Improperly closing poll*.]—New election ordered.—*R. v. MARCHANT* (1851), 2 C. L. Ch. 189.—CAN.

## PART VII. SECT. 5, SUB-SECT. 1.—F. (a).

sn. *Must be strictly proved*.]—*R. (GLOVER) v. LITTLE & ARMSTRONG*, [1926] 2 D. L. R. 1056; 59 O. L. R. 28.—CAN.

## PART VII. SECT. 5, SUB-SECT. 1.—G. (a).

sp. *Copy of collector's roll not furnished to returning officer*.]—*Held*: an irregularity, for which the election might be avoided.—*Re CHARLES v. LEWIS & McMAHON* (1851), 2 C. L. Ch. 171.—CAN.

ss. *Right to vote—Except to give casting vote*.]—*Ex p. TUTTLE* (1860), 4 All. 615.—CAN.

st. *Recount—Ballot not initialled by deputy returning officer must be counted—Although required to be rejected on count by returning officer*.]—*Re RURAL MUNICIPALITY ACT, Re CARROT RIVER, RURAL MUNICIPALITY, MINAKER v. SANDERSON* (Sask.), [1927] 1 W. W. R. 439.—CAN.

1089. *Add. Citation*:—*sub nom.* R. v. EXETER (MAYOR), 3 J. P. 49.

1090. For the existing paragraph substitute the following paragraph:—

*S.P.*—R. v. GLOUCESTER (MAYOR) (1838), 2 J. P. 777.

1103. After this case add "*See, now, Municipal Corporations Act, 1882 (c. 50), s. 34 (1).*"

1154a. —.]—R. v. ST. MARY NEWINGTON (GOVERNORS) (1848), 6 Dow. & L. 162; Cripps Church Cas. 117; 2 Saund. & C. 303; 17 L. J. Q. B. 220; 11 L. T. O. S. 205; 12 Jur. 918.

## Part IX.—Petitions.

1593. *Add. Annotation*:—As to (2) Consd. Cambridge County Council Petn., Fordham v. Webber, [1925] 2 K. B. 740.

1593a. **Candidate** "—**Necessity for declaration or nomination.**—An election for the office of county aldermen took place at a meeting of a county council, & voting papers were signed & personally delivered to resp., who was chairman of the county council & of the meeting, & were openly produced & read by him. Amongst the voting papers was one containing a vote for petitioner, by writing his name & address on the voting paper, as a county alderman. Forty-four voting papers contained votes for resp. as a county alderman. Neither petitioner nor resp. had before the election declared himself to be a candidate at the election of county aldermen. Resp. declared himself to be elected amongst others a county alderman, & petitioner was not elected. Petitioner,

alleging himself to have been a candidate at the election, presented a petition against the election of resp.:—*Held*: petitioner was not right in alleging himself to have been a candidate at the election for county aldermen, as he had not been elected & had not declared himself before the election as a candidate for election, & the writing by the voter of petitioner's name & address on the voting paper did not amount to a nomination of him as candidate within Municipal Corporations Act, 1882 (c. 50), s. 77, & he was not, under s. 88 of the Act, entitled to present a petition for the purpose of questioning the election of resp.—CAMBRIDGE COUNTY COUNCIL CASE, FORDHAM v. WEBBER, [1925] 2 K. B. 740; 94 L. J. K. B. 891; 89 J. P. 181; 41 T. L. R. 634; 69 Sol. Jo. 779, D. O.

1626. *Add. Citation*:—*sub nom.* Re HEREFORD MUNICIPAL ELECTION PETITION, *Ex p.* GARROLD, 5 T. L. R. 411.

## Part X.—Criminal Law, Penal Actions, and Injunctions.

1693. *Add. Annotation*:—Consd. Thomas v. Bolton (1928), 139 L. T. 397.

### PART VII. SECT. 5, SUB-SECT. 2.—C.

*sw. Secrecy of ballot — Necessity for.*—Where at an election of a mayor & aldermen the provisions of Consolidated Municipal Act, 1922, enjoining secrecy of the ballot were generally ignored:—*Held*: the non-compliance with the provisions of the Act had effected the result of the election, & a new election ordered.—R. (JACQUES) v. MITCHELL (1924), 55 O. L. R. 286.—CAN.

### PART VII. SECT. 5, SUB-SECT. 3.—O.

*sw. Secrecy of ballot — Necessity for.*—Where at an election of aldermen of a city the provisions of Consolidated Municipal Act, 1922, requiring secrecy of the ballot were generally ignored:—*Held*: the election was invalid.—R. (JACQUES) v. MITCHELL (1924), 55 O. L. R. 286.—CAN.

### PART IX. SECT. 1, SUB-SECT. 1.

*h i.* —.]—*Held*: it was not the duty of the ct. to pronounce upon the constitutional right of the executive to direct the issue of a new writ.—*Re NIPISSING DOMINION ELECTION*, KLOCK v. VARIN, 21 C. L. T. 258.—CAN.

*h ii.* —.]—*To make preliminary order.*—*Re NORTH HURON ELECTION*, [1926]

1 D. L. R. 590; 58 O. L. R. 197.—CAN.

### PART IX. SECT. 1, SUB-SECT. 2.—E.

*p i.* —.]—*Held*: Controverted Elections Act, R. S. S. 1920 (c. 5), s. 4 (c), had been complied with by a petition which alleged that resp. "was guilty of, by himself & his agents, corrupt practices within Saskatchewan Election Act, R. S. S. 1920 (c. 3), ss. 247, 249, 251 & 252, & amendments thereto."—ADAMS v. HUCK, [1925] 3 W. W. R. 546.—CAN.

*sy. Proof of identity of petitioners & execution of petition.*—The identity of petitioners & their execution of the petition should be proved by calling each petitioner to prove his own identity & status.—*Re MUNICIPAL ACT*, HEATHER v. MADDOCK, [1925] 2 W. W. R. 464.—CAN.

### PART IX. SECT. 1, SUB-SECT. 4.—B.

*m i.* —.]—*From dismissal before trial of petition for irregularity.*—*Held*: the Supreme Ct. of Canada had no jurisdiction to entertain such an appeal.—VALIANTE v. BELL, [1927] 3 D. L. R. 796; [1927] S. C. R. 341.—CAN.

### PART IX. SECT. 1, SUB-SECT. 5.—E.

*k i.* —.]—*Failure to establish—Effect.*—BUCKMASTER v. KNICKLE, [1926] 2 D. L. R. 798; 58 N. S. R. 492.—CAN.

### PART IX. SECT. 2, SUB-SECT. 1.

*p i.* —.]—*United Provinces Municipalities Act, 1916.*—There is no right of appeal against the order of a comr. on an election petition presented to him under United Provinces Municipalities Act, 1916.—ABDUR RAHMAN, SON OF ISMAIL v. ABDUR RAHMAN, SON OF ZAHURI (1925), I. L. R. 47 All. 513.—IND

*sa. Jurisdiction of judge to fix time & place of trial — Notwithstanding absence of rules.*—*Re SLOAN MUNICIPAL ELECTION* (1902), 9 B. C. R. 113.—CAN.

*sb. Whether civil action lies.*—A suit will not lie in a civil ct. for a declaration that the result of a municipal election has been wrongly declared & that pltf. is the person entitled to be declared elected.—ABDUR RAHMAN, SON OF ISMAIL v. ABDUR RAHMAN, SON OF ZAHURI (1925), I. L. R. 47 All. 513.—IND

### PART IX. SECT. 2, SUB-SECT. 2.

*sd. Joinder of parties.*—Consolidated Municipal Act, 1922, s. 172 (1) (a), does not give power to join a city corpn. as an "other person," as a party to proceedings to avoid a municipal election.—R. (JACQUES) v. MITCHELL (1924), 55 O. L. R. 286.—CAN

# ELECTRIC LIGHTING AND POWER.

## Part I.—Powers of Board of Trade and Electricity Commissioners.

1. *Add. Annotations*:—*Consd. R. v. Electricity Comrs., Ex p. Yorkshire Electric Power Co. (1927), 91 J. P. 191. Refd. R. v. Church Assembly Legislative Committee & Church Assembly, Ex p. Haynes Smith (1927), 44 T. L. R. 68.*
- 3a. — *Amendment or revocation of special order.*—The power conferred by Electricity (Supply) Act, 1919 (c. 100), s. 26, to amend

or revoke by special order any provisional order made under Electric Lighting Acts & confirmed by Parliament, does not include a power to amend or revoke a special order by another special order.—*R. v. TRANSPORT MINISTER, Ex p. LEICESTERSHIRE & WARWICKSHIRE ELECTRIC POWER CO. (1928), 139 L. T. 660; 92 J. P. 171; 44 T. L. R. 823; 26 L. G. R. 572, D. C.*

## Part II.—Powers, Duties, and Liabilities of Undertakers.

5. *Add. Annotations*:—*As to (1) Folld. A.-G. v. County of London Electric Supply Co., [1926] Ch. 542. As to (2) Refd. A.-G. v. County of London Electric Supply Co., [1926] Ch. 542. As to (3) Refd. A.-G. v. County of London Electric Supply Co., [1926] Ch. 542.*
- 6a. *Abstraction of water*—"Other source."—The King George Reservoir, belonging to the Metropolitan Water Board, is a "river, stream, canal, inland navigation or other source," within Electricity (Supply) Act, 1919 (c. 100), s. 15 (1).—*METROPOLITAN WATER BOARD v. TRANSPORT MINISTER (1925), 90 J. P. 52; 42 T. L. R. 165; 24 L. G. R. 289.*
10. *Add. Annotation*:—*Refd. A.-G. v. County of London Electric Supply Co., [1926] Ch. 542.*
12. *Add. Annotation*:—*As to (1) Consd. Caerphilly U. D. C. v. Griffin (1927), 44 T. L. R. 132.*
25. *Add. Annotations*:—*As to (1) Consd. St. Nicholas Acons, London v. L. C. C., [1928] P. 102. Refd. St. Nicholas Acons v. L. C. C., [1928] A. C. 469.*
- 39a. — *Injunction to restrain supply by another person.*—*Pltfs., a local authority empowered to supply electricity within a certain area, sought an injunction under Electric Lighting Act, 1909 (c. 34), s. 28, to restrain deft. from supplying electricity to certain consumers in the area:—Held: as the supply of electrical energy was not deft.'s primary business, the action failed.—CAERPHILLY URBAN DISTRICT*

- COUNCIL v. GRIFFIN, [1928] Ch. 171; 97 L. J. Ch. 139; 138 L. T. 516; 92 J. P. 5; 44 T. L. R. 132; 26 L. G. R. 38.
- 42a. — *Supply to premises partly outside area—Point of supply within area.*—*Defts. were authorised by the County of London (Northern Extensions) Electric Lighting Order, 1897, made under Electric Lighting Acts, 1882 (c. 56) & 1888 (c. 12), to supply electricity within an area adjoining the relators' area of supply. Sect. 6 of the Order prohibited the supply of energy by defts. beyond their area of supply, & Electric Lighting Act, 1909 (c. 34), s. 23, contains a general prohibition against supplying energy outside an authorised area. Defts. entered into a contract to supply a firm having a small part of its premises within defts.' area of supply & the remainder of the premises in the relators' area of supply. For the purpose of this contract defts. erected their apparatus on the part of the premises of the firm within their area, & the consumers' terminals, that is, the point where the electricity was passed from defts.' service lines to the lines on the firm's premises owned & controlled by them, were also on that part of the premises. The use of electricity on this part of the premises was trivial. In the circumstances the A.-G. brought an action on the relation of the relators to restrain defts. from supplying energy to the firm outside their area:—Held: the point of supply was the consumers' terminals, & as the firm's terminals were*

### PART I. SECT. 2.

- sa. *Whether under jurisdiction of Public Utilities Board of Commissioners—Not St. John Power Commissioners.*—*Ex p. NEW BRUNSWICK POWER CO. (N. B.), [1926] 1 D. L. R. 483.—CAN.*
- sb. — *Andover & Perth Electric Light Commissioners.*—*Ex p. ANDOVER & PERTH ELECTRIC LIGHT COMRS. (N. B.), [1926] 1 D. L. R. 569.—CAN.*

### PART II. SECT. 9, SUB-SECT. 2.

- gi. — *Erection of poles.*—The Hydro-Electric Power Commission of Ontario has no right, either under Power Commission Act, 1915, s. 5, or otherwise, without the consent of the municipal corpn. controlling

a highway, to place poles & wires upon the highway.—*HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO v. GREY COUNTY (1924), 55 O. L. R. 339.—CAN.*

### PART II. SECT. 9, SUB-SECT. 5.

*See case in Sect. 13, sub-sect. 2, post.*

### PART II. SECT. 11, SUB-SECT. 2.

- 1i. — *Failure by default of undertaker.*—In an action for damages for failure to supply electric power under a contract made in Nov. 1912 between the parties, it was admitted that defts. had developed enough power in Jan. 1921, when the shortage occurred, to have supplied all require-

ments of pltfs., & that they did not give them the power owing to the requirements of other customers:—*Held: defts. could not set up the requirements of other customers as modifying what on the face of the contract with pltfs. made compliance with pltfs.' demands an absolute undertaking.—HOLLINGER CONSOLIDATED GOLD MINES, LTD. v. NORTHERN CANADA POWER CO., LTD., [1923] 4 D. L. R. 1205 54 O. L. R. 508.—CAN.*

1 ii. — *Under agreement with municipality—Construction of agreement.*—*MAPLE RIDGE CORPN. v. WESTERN POWER CO. OF CANADA, [1926] 2 D. L. R. 525; 37 B. C. R. 252.—CAN.*



within defts.' area, defts. had not committed any breach of the prohibitions in their Order & the Act of 1909.—*A.-G. v. COUNTY OF LONDON ELECTRIC SUPPLY CO.*, [1926] Ch. 542; 95 L. J. Ch. 357; 135 L. T. 601; 42 T. L. R. 328; 70 Sol. Jo. 486.

47. *Add. Annotation*:—*As to* (1) *Reid. Crediton Gas Co. v. Crediton U. C.*, [1928] Ch. 447.

52. For the paragraph in the original volume substitute the following paragraph:—

— **Not incompatible with performance of statutory duties.**—By a Provisional Order of 1898 the B. Council were constituted electricity undertakers in B. with power to charge up to a certain maximum price, but with authority to make special agreements with particular consumers as to price. By a transfer deed of Dec. 31, 1901, approved by the Board of Trade, the B. Council transferred the undertaking to defts. with a provision for retransfer if defts. made default in their obligations as undertakers. By a supplemental deed of same date, made without the approval of the Board of Trade, defts. agreed with the B. Council not to charge higher prices than those charged in the adjoining borough of S. In 1911 the B. district & the contractual rights of the B. Council were transferred to pltf., the S. Corpn., but defts. still remained electricity undertakers in B. Defts. having recently begun to charge higher prices than pltf., pltf. brought an action to restrain their breach of agreement. Defts. contended that

their agreement was *ultra vires* both under Electric Lighting Act, 1882 (c. 56), s. 11, which prevented them from divesting themselves of their statutory powers without the consent of the Board of Trade, & also under the general law applicable to statutory undertakings:—*Held*: the agreement was a business transaction into which defts. might reasonably enter; it did not fetter the powers of defts. & was not incompatible with the performance by them of their statutory duties, & was not therefore *ultra vires*.—*SOUTHPORT CORPN. v. BIRKDALE DISTRICT ELECTRIC SUPPLY CO.*, [1925] Ch. 794; 94 L. J. Ch. 371; 133 L. T. 354; 89 J. P. 149; 69 Sol. Jo. 523; 23 L. G. R. 490, C. A.; *affd. sub nom. Birkdale District Electric Supply Co. v. Southport Corpn.*, [1926] A. C. 355; 95 L. J. Ch. 587; 134 L. T. 673; 90 J. P. 77; 42 T. L. R. 303; 24 L. G. R. 157, H. L.

64. *Add. Annotation*:—*Reid. Graigola Merthyr Co. v. Swansea Corpn.* (1927), 138 L. T. 465.

67. *Add. Annotation*:—*Mentd. Horton's Estate v. Beattie* (1926), 42 T. L. R. 701.

72. *Add. Annotations*:—*Consd. Noble v. Harrison*, [1926] 2 K. B. 332. *Distd. St. Anne's Well Brewery Co. v. Roberts* (1928), 92 J. P. 180. *Reid. Ilford U. C. v. Beal*, [1925] 1 K. B. 671; *Booth v. Thomas* (1926), 95 L. J. Ch. 160; *Smith v. G. W. Ry.* (1926), 135 L. T. 112; *Glanville v. Sutton* (1927), 44 T. L. R. 98; *G. W. Ry. v. S.S. Mostyn*, [1928] A. C. 57. *Mentd. Hines v. Tousley* (1926), 95 L. J. K. B. 773.

## Part IV.—Special Legislation—Power Acts.

111. *Add. Annotation*:—*Consd. Southport Corpn. v. Birkdale District Electric Supply Co.*, [1925] Ch. 794.

111a. Act authorising application by another party for power to supply energy within area of

supply—Consent of undertakers unnecessary.]

—*R. v. ELECTRICITY COMRS., Ex p. YORKSHIRE ELECTRIC POWER CO.* (1927), 138 L. T. 230; 91 J. P. 191; 44 T. L. R. 26; 25 L. G. R. 524, D. C.

### PART II. SECT. 11, SUB-SECT. 5.—B.

sk. *Whether entitled to lien*—Under *Public Utilities Act, R. S. O.*, 1914 (c. 204), s. 27.—*WELLAND CITY v. ELECTRIC STEEL & METALS CO., LTD.*, [1927] 2 D. L. R. 168; 60 O. L. R. 127.—CAN.

sl. ——— *Supply to tenants*—*Tenants evicted.*—*Held*: the only right of the undertakers was to recover damages for the refusal of the consumers to carry out their contract.—*Re McKITTRICK PROPERTIES, LTD.*, [1927] 2 D. L. R. 93; 60 O. L. R. 132.—CAN.

### PART II. SECT. 13, SUB-SECT. 2.

st. *Falling wires—Compensation.*—Damage to land or stock from falling wires, arising apart from unauthorised or negligent acts on the part of a power board for which claimants would have a remedy by action at law:—*Held*: improbable & too speculative to form a subject of compensation.—*WOOD v. TABANAKI ELECTRIC-POWER* [1927] N. Z. L. R. 392.—N.Z.

### PART II. SECT. 13, SUB-SECT. 3.

78 i. ——— *Limitation of—Statutory authority.*—The principle of *Rylands v. Fletcher*, No. 72, does not apply to persons properly exercising their statutory powers.—*HANCOCK v. MIDLAND JUNCTION MUNICIPALITY CORPN.* (1926), 28 W. A. L. R. 91.—AUS.

### PART II. SECT. 25.

sa. *Property in apparatus on premises—Transformers, switches & bulbs.*—*Held*: the words "dynamoes, poles & wires" in 3 Edw. 7, 1903, c. 45, s. 20, refer to the equipment necessary to render electricity available for the ratepayers generally, as contrasted with equipment necessary to supply any individual ratepayer. The expression "all other machinery" construed *ejusdem generis* with the words "dynamoes, poles & wires" does not include transformers, switches or electric bulbs in private houses or factories, & which would only benefit the individual ratepayers & not the general body of the ratepayers.—*Ex p. LEWIS*, [1923] 1 D. L. R. 146; 50 N. B. R. 446.—CAN.

### PART II. SECT. 27.

sb. *Whether compulsory—Agreement with provision for arbitration confirmed by statute.*—An agreement between a municipality & a co. for the supply of electric light & other services to the citizens of the municipality contained a clause for the adjustment of rates in future between the parties with provision for arbn., & an Act was passed in 1906 confirming it & declaring it binding upon the parties:—*Held*: the effect of the Act was not to turn the clause in the agreement into a statutory obligation to go to arbn. but the Act only made valid & binding what without it might have been an invalid agreement.—*RED DEER (CITY) v. WESTERN GENERAL ELECTRIC CO.*, [1924] 2 D. L. R. 317; 1 W. W. R. 1092; 20 Alta. L. R. 372.—CAN.

sd. *Authority of counsel to refer dispute to arbitration—Validity of consequent award—Power Commission Act, R. S. O.*, 1914 (c. 39), s. 16.—*BEACH v. HYDRO ELECTRIC POWER COMMISSION OF ONTARIO*, [1927] 1 D. L. R. 277; [1927] S. C. R. 251.—CAN.

## EQUITY.

## Part I.—Nature and Purpose of Equity

2. *Add. Annotation* :—*Mentd. Re Wait*, [1927] 1 Ch. 606.

## Part II.—Equitable Maxims.

30. *Add. Annotation* :—*Refd. Tallack v. Tallack & Broekema*, [1927] P. 211.
31. *Add. Annotation* :—*Mentd. Re Boundary between Canada & Newfoundland in Labrador Peninsula* (1927), 137 L. T. 187.
44. *Add. Annotation* :—*Refd. Wright v. Morgan*, [1926] A. C. 788.
59. *Add. Annotation* :—*Refd. Charles v. Cardiff Collieries* (1928), 44 T. L. R. 448.
76. *Add. Citation* :—132 L. T. 21.
101. *Add. Annotation* :—*Refd. Liggett (Liverpool) v. Barclays Bank*, [1928] 1 K. B. 48.
108. *Add. Annotation* :—*Refd. Soviet Republics Union v. Belaiew* (1925), 42 T. L. R. 21.
- 140a. *S. P. RICH v. SYDENHAM* (1671), 1 Cas. in Ch. 202; 3 Rep. Ch. 74; 21 E. R. 733.
159. *Add. Annotations* :—*As to* (1) *Consd. Re Wait*, [1927] 1 Ch. 606. *As to* (2) *Consd. Re Wait*, [1927] 1 Ch. 606.
1. *Add. Annotation* :—*Refd. Re Wait*, [1927] 1 Ch. 606.
- 193a. *Purchase pendente lite*.]—A purchase *pendente lite*, though without actual notice, & for a valuable consideration, shall be set aside.—*SORRELL v. C. W. PENTER* (1728), 2 P. Wms. 482; 24 E. R. 825, L. C.
- Annotations* :—*Consd. Bellamy v. Sabine* (1857), 1 De G. & J. 506; *Wigram v. Buckley*, [1894] 3 Ch. 483. *Refd. Metcalfe v. Pulvertott* (1813), 2 Ves. & B. 200.
- 233a. ———.]—Pltf. filed a bill to have a conveyance set aside. Deft. had conveyed the estate to mtgees. :—*Held*: they, as purchasers for valuable consideration without notice, could not be interfered with.—*BULLEY v. BULLEY* (1874), 9 Ch. App. 739; 44 L. J. Ch. 79; 30 L. T. 848; 22 W. R. 779, L. JJ.
252. *Annotations* :—For “*Refd. Stickney v. Keeble* [1915] A. C. 386” read “*Consd. Stickney v. Keeble*, [1915] A. C. 386.”
- Add Annotation* :—*Appld. Bernard v. Williams* (1928), 139 L. T. 22.
253. *Add. Annotation* :—*Refd. Bernard v. Williams* (1928), 139 L. T. 22.

## Part III.—Equitable Jurisdiction or Equitable Relief.

- 258a. *S. P. DREWRY v. BARNES* (1826), 3 Russ. 94; 5 L. J. O. S. Ch. 47; 38 E. R. 511.
- Annotations* :—*Mentd. A.-G. v. Pearson* (1846), 2 Coll. 581; *Delarue v. Church* (1851), 20 L. J. Ch. 183; *Preston v. Great Yarmouth Corpn.* (1872), 7 Ch. App. 657, n.
- 292a. ——— *Pleading*.]—*STURTON v. RICHARDSON* (1844), 13 M. & W. 17; 2 Dow. & L. 182; 13 L. J. Ex. 281; 8 Jur. 476; 153 E. R. 7; *sub nom. RICHARDSON v. STURTON*, 3 L. T. O. S. 164.
- Annotations* :—*Refd. Eason v. Henderson* (1848), 12 Q. B. 986; *Henderson v. Eason* (1851), 17 Q. B. 701.
- 293a. ——— *One tenant in common locking gate & taking away grass*.]—*Held*: the circumstances did not amount to an ouster, nor to a destruction of the common property, & the only remedy was a proceeding for an account.—*JACOBS v. SEWARD* (1872), L. R. 5 H. L. 464; 41 L. J. C. P. 221; 27 L. T. 185; 36 J. P. 771, H. L.
- Annotation* :—*Refd. Birkin v. Smith*, [1909] 2 K. B. 112.
303. *Add. Annotation* :—*Refd. Soviet Republics Union v. Belaiew* (1925), 42 T. L. R. 21.
332. *Add. Annotations* :—*Mentd. Ouellette v. Canadian Pacific Ry.*, [1925] A. C. 569. *Gilbert v. Gilbert & Bougher* (1927), 96 L. J. P. 137; *Auchteroni v. Midland Bank*, [1928] 2 K. B. 294; *Tilling-Stevens Motors v. Kent County Council & Transport Minister* (1928), 139 L. T. 265.
347. *Add. Annotation* :—*Refd. Anderson v. Equitable Assce. Soc. of the United States* (1926), 134 L. T. 557.
358. *Add. Annotation* :—*Refd. Re Barratt, National Provincial Bank v. Barratt*, [1925] Ch. 550.

PART II. SECT. 5, SUB-SECT. 1.  
97 i. *Imposition of equitable terms—As condition of relief*.]—A person who seeks equity must do equity, & therefore one who demands performance of an agreement to hold property in trust for him must be content to have the agreement equitably construed.—*Re REGAL PHONOGRAPH CO., Ex p. TRUSTEE*, [1924] 1 D. L. R. 947; 4 C. B. R. 418.—CAN.

PART II. SECT. 5, SUB-SECT. 2.  
98. *Applicable to school corporation*.]—*NIAGARA PUBLIC SCHOOL BOARD v.*

QUEENSTON WOMEN'S INSTITUTE, [1926] 4 D. L. R. 13; 59 O. L. R. 213.—CAN.

PART II. SECT. 6.  
130 vi. ———.]—*McGUIRE v. PROSSER*, [1925] 3 D. L. R. 866.—CAN.

PART III. SECT. 3, SUB-SECT. 8.—*B. (a).*

*ad. Materiality of error—Parties in fiduciary relationship*.]—The cts. will grant permission to reopen an account that has been settled for errors less considerable than usual where the parties stand in a fiduciary

relationship.—*RAHIM v. Low* (1924), 1 L. R. 3 Ran. 1.—IND.

PART III. SECT. 3, SUB-SECT. 8.—*B. (b).*

318 iv. ———.]—Where a single fraudulent error is discovered in settled accounts, the proper order for the ct. to make is for the reopening of the whole account.—*RAHIM v. Low* (1924), 1 L. R. 3 Ran. 1.—IND.

PART III. SECT. 3, SUB-SECT. 8.—*C.*

362 ii. ——— *For what mistakes*.]—Where an error of importance has been

## Part IV. Exercise of Equitable Jurisdiction by the High Court.

475. *Add. Annotation*:—*Mentd. Ideal Films v. Richards*, [1927] 1 K. B. 374.
482. *Add. Annotation*:—*Generally, Mentd. The City of Baroda* (1926), 134 L. T. 576.
484. *Add. Annotation*. —*Mentd. Purnell v. Roche*, [1927] 2 Ch. 142.
501. *Add. Annotation*:—*Reid. Hyman v. Hyman, Hughes v. Hughes* (1928), 139 L. T. 416.
504. *Add. Annotation*:—*As to (2) Reid. Re Wait*, [1927] 1 Ch. 606.
506. *Add. Annotation*:—*Reid. Re Mason* (1928), 97 L. J. Ch. 321.

## Part VI.—Priority.

511. *Add. Annotations*: —*Apld. Commonwealth Trust v. Akotey*, [1926] A. C. 72. *Reid. Jones v. Waring & Gillow*, [1926] A. C. 670.

## Part VII.—Notice.

- 649a. —.]—The doctrine of constructive notice operates adversely to a person who neglects to inquire; it does not entitle such a person to claim for his own advantage to be treated as having knowledge of the facts which inquiry would have disclosed.—*HOUGHTON & CO. v. NOTHARD, LOWE & WILLS*, [1927] 1 K. B. 246; 96 L. J. K. B. 25; 136 L. T. 140, C. A.; *affd.*, [1928] A. C. 1, H. L.
- Annotations*:—*Mentd. Kreditbank Cassel G. M. B. H. v. Schenkers*, [1927] 1 K. B. 826; *Liggett (Liverpool) v. Barclays Bank* (1927), 137 L. T. 443.
652. *Add. Annotation*:—*Mentd. Public Trustee v. Lancaster Duchy*, [1927] 1 K. B. 516.
659. *Add. Annotation*:—*Apld. Greer v. Downs Supply Co.*, [1927] 2 K. B. 28.
- a general rule the equitable doctrines of constructive notice are not to be extended to purely commercial transactions.—*GREER v. DOWNS SUPPLY CO.*, [1927] 2 K. B. 28; 96 L. J. K. B. 534; 137 L. T. 174, C. A.
687. *Add. Annotation*:—*As to (1) Reid. Kreditbank Cassel G.m.b. H. v. Schenkers*, [1926] 2 K. B. 450.
699. *Add. Annotation*:—*Reid. Torbay Hotel v. Jenkins*, [1927] 2 Ch. 225.
- 719a. —.]—*HALL v. SMITH* (1808), 14 Ves. 426; 33 E. R. 584.
- Annotations*:—*Consd. Pope v. Garland* (1841), 4 Y. & C. Ex.; *Drysdale v. Mace* (1854), 2 Sm. & G. 225; *Grosvenor v. Green* (1858), 28 L. J. Ch. 173; *Phillips v. Miller* (1875), L. R. 10 C. P. 420. *Reid. Adams v. Lambert* (1838), 2 Jur. 1078; *Carroll v. Keays, Keays v. Carroll* (1873), 22 W. R. 243.
727. *Add. Annotation*:—*Apld. Melzak v. Lilienfeld*, [1926] Ch. 480.
735. *Add. Annotation*:—*Mentd. Hardie & Lane v. Chiltern* (1927), 96 L. J. K. B. 773.
746. *Add. Annotation*:—*Reid. Re Des Reaux & Setchfield's Contract*, [1926] Ch. 178.
- 760a. Notice of mortgage—After payment of purchase-money countermanded—Countermand withdrawn.]—An owner of a house mortgaged to first, second & third mtgees. He then sold it, subject to the first two incumbrances only, to a purchaser who paid for it & took the assignment, but owing to misgivings he countermanded payment of the cheque, & then for the first time received notice of the existence of the third mtge. Being, however, threatened with a summons in bkpcy., he withdrew his countermand, & the cheque was paid:—*Held*: he was not a purchaser for value without notice.—*TILDESLEY v. LODGE* (1857), 3 Sm. & G. 543; 30 L. T. O. S. 29; 3 Jur. N. S. 1000; 65 E. R. 772.
- 760b. Notice of second mortgage—After first mortgage discharged & purchase-money paid but before assignment of term.]—*MEYNELL v. GARRAWAY* (1662), Nels. 63; 21 E. R. 790.

proved in an account stated, though such error may not be important enough to justify the opening of the settled accounts, the ct. should permit the accounts to be surcharged & falsified generally.—*RAHIM v. Low* (1924), 1 L. R. 3 Ran. 1.—IND.

362 iii. —.]—*Parties in fiduciary relationship*.]—The cts. will grant permission to surcharge & falsify an account that has been settled for errors less considerable than usual where the parties stand in a fiduciary relationship.—*RAHIM v. Low* (1924), 1 L. R. 3 Ran. 1.—IND.

366 i. Overcharge—*Acquiesced in*.]—Where an overcharge has been paid by a principal with knowledge of the overcharge & without protest, he cannot be permitted to question such payment after the accounts have been

settled.—*RAHIM v. Low* (1924), 1 L. R. 3 Ran. 1.—IND.

### PART IV. SECT. 2.

al. In Ontario—*Deprivation of right to present claim to Department of Crown Lands*.]—*JOHNSTON v. STEACY*, [1926] 4 D. L. R. 902; 59 O. L. R. 475.—CAN.

### PART VI. SECT. 2, SUB-SECT. 2.—A.

614 i. Time alone insufficient to give priority.]—A widow & administratrix had carried on the business of deceased, & appointed her son to act as manager, giving him cheques blank as to the amount, & signed on behalf of the trading co. With this money the son purchased various securities which he lodged with the bank to secure overdrafts for himself & for the co. The next of kin sought a declaration that

the securities were assets of deceased, & were held by the bank in trust for them:—*Held*: the equitable estate of the bank took precedence over the equity of the next of kin in spite of the latter's priority of time.—*SCOTT v. SCOTT* (1924), 58 I. L. T. 137.—IR.

### PART VII. SECT. 3, SUB-SECT. 1.

648 i. Nature of doctrine.]—*HENDERSON v. GRAVES* (1856), 2 E. & A. 9.—CAN.

### PART VII. SECT. 3, SUB-SECT. 2.

659 i. Commercial transactions—*Doctrine not applicable*.]—Attention drawn to *Greer v. Downs Supply Co.*, No. 661a, *supra*.—*R. v. MCPHERSON & QUIGLEY & UNION BANK OF CANADA (Alta.)*, [1927] 4 D. L. R. 937; 3 W. W. R. 416.—CAN.



## Part VIII.—Equitable Assignments.

770. *Add. Annotations*:—*Distd. Kursell v. Timber Operators & Contractors*, [1927] 1 K. B. 298.

*Consd. Re Wait*, [1927] 1 Ch 608 *Refd. Re Smith, Franklin v. Smith*, [1928] Ch. 10.

## Part IX.—Conversion and Reconversion.

808. *Add. Annotation*:—*Refd. Re Carnarvon's Chesterfield S. E., Re Carnarvon's Highclere S. E.* (1926), 70 Sol. Jo. 977.

807. *Add. Annotation*:—*Refd. Re Calow, Calow v. Calow*, [1928] Ch. 710.

815a. — *Fines & Recoveries Act, 1833 (c. 74), s. 71.*—Testator, who died in 1875, specifically devised an undivided share in freeholds to his son P. for life with remainders which never took effect & devised the residue of his real estate upon limitations which in 1878 were held by the ct. to give testator's son W. an estate tail therein. In 1877 the freeholds, the undivided share in which was devised to P. for life, were sold under Leases & Sales of Settled Estates Act, 1856 (c. 120), & the proceeds of sale representing such share were paid into ct. After the sale W., who had previously executed a disentailing deed dealing in general terms with the lands devised to him by testator's will, executed another disentailing deed dealing in terms with the undivided share & the money in ct. resulting from the sale thereof. Neither of these deeds was executed with the consent of P. as the protector of the settlement. W. died in the lifetime of P. having by his will devised his residuary real estate to applt. & bequeathed his personal estate to resps. At the death of P. in 1920 applt. petitioned for payment out of ct. of the money, claiming that it had passed to him as residuary devisee of W.:—*Held*: the money retained the character of real estate inasmuch as *Fines & Recoveries Act, 1833, s. 71*, did not convert disentailed money into personal estate for all purposes, but merely directed that it should be treated as personal estate for the purpose of the form of a disentailing deed.—*Re DICKSON'S SETTLED ESTATES*, [1921] 2 Ch. 108; 90 L. J. Ch. 453; 125 L. T. 528; 65 Sol. Jo. 532, C. A.

859. *Add. Annotations*:—*Mentd. Re Gray, Public Trustee v. Wodehouse* (1926), 70 Sol. Jo. 1112; *Re Robins, Holland v. Gillam*, [1928] Ch. 721.

915. *Add. Annotations*:—*Refd. Ormond Investment Co. v. Betts*, [1927] 2 K. B. 326. *Mentd. Ormond Investment Co. v. Betts*, [1928] A. C. 143.

937a. — *Specific devise of land subject to contract for sale.*—Testator in 1925 devised all his freehold property situate at D. to trustees upon trust to hold same or the proceeds of sale thereof for his two sons named as joint tenants, & gave & bequeathed his residuary real & personal estate to other persons. Testator possessed at the date of his will an undivided moiety in some thirty-seven acres of freehold land at D., ten & a half acres of which he had, in 1921, contracted to sell. He died in 1925, before the purchase had been completed, & owing to difficulties of title completion did not take place until Dec.

1925:—*Held*: the will having been made after the date of the contract for sale, & with full knowledge of that contract, indicated an intention, as shown by the reference to proceeds of sale, to pass whatever estate testator had in the property, though it was only part of his freehold land at D., to the specific devisees.—*Re CALOW, CALOW v. CALOW*, [1928] Ch. 710; 7 L. J. Ch. 253; 139 L. T. 235; 72 Sol. Jo. 437.

956. *Add. Annotation*:—*Appld. Re Calow, Calow v. Calow*, [1928] Ch. 710.

962. *Add. Annotation*:—*Appld. Re Calow, Calow v. Calow*, [1928] Ch. 710.

964. *Add. Annotation*:—*Appld. Re Calow, Calow v. Calow*, [1928] Ch. 710.

970. *Add. Citation*:—1 Coll. 80, n.

1034. *Add. Annotation*:—*Appld. Re Price*, [1928] Ch. 579.

1068a. — *When property is given by will on trusts for conversion & investment, & to hold the investments on trust for a tenant for life & remaindermen, with a discretionary power to the trustees to postpone the conversion, & a provision that the income until conversion is to go to the tenant for life, that provision extends to property, such as a reversionary interest, which is not producing income as well as to property of a wasting character.*

In adjusting the rights as between tenant for life & remaindermen in respect of a reversionary interest which ought to have been but has not been converted by trustees, interest should be calculated at the rate of 3 per cent.—*ROWLLS v. BEBB, Re ROWLLS, WALTERS v. TREASURY SOLICITOR*, [1900] 2 Ch. 107; 69 L. J. Ch. 562; 82 L. T. 633; 48 W. R. 562; 44 Sol. Jo. 448, C. A.

*Annotations*:—*Consd. Re Woods, Gabellini v. Woods*, [1904] 2 Ch. 4; *Re Baker, Baker v. Public Trustee*, [1924] 2 Ch. 271. *Refd. Re Hargreaves, Hargreaves v. Hargreaves* (1902), 86 L. T. 43; *Re Whiteford, Inglis v. Whiteford*, [1903] 1 Ch. 889; *Re Beech, Saint v. Beech*, [1920] 1 Ch. 40.

1268. *Add. Annotation*:—*Refd. A.-G. for Alberta v. A.-G. for Canada*, [1928] A. C. 475.

1316a. *Contingent reversionary interest—In personality.*—Testator, who was entitled in reversion expectant upon the determination of his wife's interest &, contingently upon no issue of the marriage living to attain a vested interest, to the proceeds of sale of certain real estate conveyed by him, upon his marriage in 1880, to trustees upon trust for sale, died in 1886 in his wife's lifetime, having devised the real estate, which had remained unsold, to the use of his wife for life with remainders over by way of legal limitations in strict settlement. There was no issue of the marriage. The real estate was not sold in the lifetime of the wife, who accepted the benefits under her husband's will & died in 1921:—*Held*: inasmuch as

at his death testator's interest was a contingent reversionary interest in personalty, contingent upon the event of no posthumous child being born who might attain a vested interest, & reversionary because it was expectant upon his wife's life interest, testator was not competent to effect a

reconversion by his will, because he never became entitled to an absolute interest in the property before his death, & the property passed under his will as personalty.—*Re STURT, DE BUNSEN v. HARDINGE*, [1922] 1 Ch. 416; 91 L. J. Ch. 289; 126 L. T. 460; 66 Sol. Jo. 236.

## Part X.—Election.

**1424a.** Legacy to heir-at-law—Will inoperative to pass real estate.]—C., by his will, gave all he should leave in the world to trustees to pay his debts & legacies, among which was £1,000 to A., his brother & heir, & as to the residue in trust for natural children. Testator had real estate in Nova Scotia, but, as there were no witnesses to his will, it descended to the heir-at-law:—*Held*: supposing the words of the will would have passed real estate, if attested in due form, which was doubted, A. was entitled to his legacy, & also to the real estate.—*FARQUHARSON v. COLVILLE* (LORD) (1772), Rom. 129, L. C.

**1438a.** ———.]—Where by her will a wife expressly refrained from exercising a power of appointment, which she had, but abstained from extinguishing it & confined the operation of her will to her own property, & there was nothing in the husband's will which either put the wife to her election or put her in the position of seeking at the same time to approbate & to reprobate its provisions:—*Held*: she was in no way precluded from exercising her power of appointment by a subsequent will.—*GRAY v. PERPETUAL TRUSTEE CO.*, [1928] A. C. 391; 97 L. J. P. C. 85; 139 L. T. 469; 44 T. L. R. 654, P. C.

**1439.** *Add. Annotation*:—*Mentd. Re Field, Sander-son v. Young*, [1925] Ch. 636.

**1578a.** ———.]—Where successive irrevocable appointments are made in favour of the same

person, the latter appointment will be held to be in substitution for the former, if such appears to be the intention of the donee of the power, & the person in whose favour the appointments are made will be compelled to elect between them.—*ENGLAND v. LAVERS* (1866), L. R. 3 Eq. 63; 15 W. R. 51.

*Annotations*:—*Expld. Re Tancred's Settlement*, *Somerville v. Tancred*, *Re Selby, Church v. Tancred*, [1903] 1 Ch. 715. *Refd. Re Eardley's Will*, *Simeon v. Freemanle*, [1920] 1 Ch. 397.

**1580a.** Appointment to object within extent of power—No object in fact in existence—No election.]—*BULWER v. HOARE* (1825), 3 L. J. O. S. Ch. 227.

**1581a.** Invalid delegation of power—Gifts conferred on persons entitled under appointment exercised under delegated power—No election.]—*Re STEVENS* (1912), 134 L. T. Jo. 83.

**1619a.** ——— Marriage settlement—Husband not entitled to elect against interests of other parties to marriage settlement.]—*CROKER v. MARTIN* (1827), 1 Bli. N. S. 573; 1 Dow. & Cl. 15; 4 E. R. 987, H. L.

*Annotation*:—*Consd. Anstey v. Newman* (1870), 39 L. J. Ch. 769.

**1637a.** ———.]—Testator having directed his exors. to sell whatever real estates he might die possessed of, & having given benefits to his heir-at-law, afterwards acquired other lands:—*Held*: the heir was not bound to elect.—*BACK v. KETT* (1822), Jac. 534; 37 E. R. 952.

*Annotations*:—*Consd. Churchman v. Ireland* (1831), 1 Russ. & M. 250. *Refd. Schroder v. Schroder* (1854), 3 Eq. Rep. 97; *Hance v. Truwhitt* (1862), 2 John. & H. 216.

## Part XI.—Satisfaction and Ademption.

**1753.** *Add. Annotation*:—*Folld. Re Ware, Re Rouse, Ware v. Rouse* (1926), 70 Sol. Jo. 691.

**1873.** *Add. Annotation*:—*Appld. Re Ware, Re Rouse, Ware v. Rouse* (1926), 70 Sol. Jo. 691.

**1873a.** ———.]—There is no such obligation, according to the rules of equity, on a mother

to advance or make a provision for her child, as in the case of a father; &, therefore, when a mother makes a purchase or investment in the name of her child, or in the joint names of herself & her child, that does not of itself afford the presumption of advancement; in such a case the intention to advance is a

### PART IX. SECT. 2, SUB-SECT. 3.—A.

925 iii. ———.]—M. having specifically devised certain land, entered into an agreement with the tenant of portion of the land that, in the event of the Irish Land Commission advancing £500 Guaranteed Land Stock to the tenant, the tenant would purchase, & he would sell, for that sum, & the agreement provided that the parties would execute the formal Land Commission agreement for sale on the terms of the agreement. M. died, & his exors.

entered into a formal agreement with the tenant for sale at £500, & the sale was carried out:—*Held*: the land stock passed under the residuary clause in the will as personalty as & from the date on which the Land Commission agreed to advance the purchase money.—*MILEY v. CARTY & MILEY*, [1927] 1 R. 541.—IR.

**PART X. SECT. 3, SUB-SECT. 9.**  
*sp. Widow taking different interests under will.*]—Under S.'s will his widow

took absolutely thirty-four acres devised to her worth \$1,000; she also took for life his house & lot garden worth about \$1,500, but subject to a son's & a daughter's right "to have a home" there "as long as they are single." The son took absolutely the rest of testator's land worth about \$3,500, & at the widow's death took "the house & lot & garden" also:—*Held*: the widow was not put to her election.—*Re SEXSMITH* (1925), 67 O. L. R. 283.—CAN.

question of evidence.—*BENNET v. BENNET* (1879), 10 Ch. D. 474; 40 L. T. 378; 27 W. R. 573.

*Annotation*:—*Reid. Re Orme, Evans v. Maxwell* (1883), 50 L. T. 51.

1873b. —.]—(1) No presumption arises in cases of dispositions in favour of children by a mother unless she has placed herself *in loco parentis* towards them, & evidence that such is the case must be forthcoming.

(2) Where testatrix exercised a general power of appointment by will in favour of her daughter, & subsequently on the daughter's marriage covenanted in her daughter's marriage settlement to pay a similar amount to the trustees thereof, & later by codicil recited the appointment of a certain sum by the will:—*Held*: the provision in the marriage settlement was by way of satisfaction or ademption of the powers made by the will, & the codicil was not inconsistent

with such a view.—*Re WARE, Re ROUSE, WARE v. ROUSE* (1926), 70 Sol. Jo. 691.

1918a. —.]—If a father devises to a daughter a portion equal or greater than what she is entitled to out of his land by settlement, that is a satisfaction, but the daughter may have her election.—*BRIDGES v. HALES* (1729), Mos. 108; 25 E. R. 298, L. C.

1920a. —.]—*BRIDGES v. HALES*, No. 1918a, *ante*.

2012. *Add. Annotation*:—*Mentd. Chaney v. Maclow* (1928), 97 L. J. Ch. 349.

2030a. —.]—*Re WARE, Re ROUSE, WARE v. ROUSE*, No. 1873b, *ante*.

2075a. —.]—*Re SHAFTO, FAWCETT v. SHAFTO* (1903), 48 Sol. Jo. 68, C. A.

2101. *Add. Annotation*:—*Mentd. Re Pennington & Owen*, [1925] Ch. 825.

2188a. —.]—*KEMP (LADY) v. KEMP* (1671), 2 Rep. Ch. 63; 21 E. R. 617.

## Part XIV.—Merger of Estates and Charges.

2367a. —.]—*NORFOLK v. GIFFORD* (1690), 2 Vern. 208; 23 E. R. 735.

## Part XVIII.—Equitable Defences.

2481. *Add. Annotation*:—*Mentd. Salvesen (or von Lorang) v. Austrian Property Administrator*, [1927] A. C. 641.

2483. *Add. Annotation*:—*Apld. R. v. Essex JJ., Ex p. Perkins*, [1927] 2 K. B. 475.

2490. *Citations*:—For “3 Bro. C. C. 646” read “3 Bro. C. C. 639, n.”

*Add. Annotation*:—*As to (2) Consd. Weld v. Petre* (1928), 97 L. J. Ch. 399.

2497. *Add. Annotation*:—*As to (1) Reid. Weld v. Petre* (1928), 97 L. J. Ch. 399.

2512. *Add. Annotations*:—*As to (4) Consd. Wild v. Petre* (1928), 97 L. J. Ch. 399. *Reid. Anchor Trust Co. v. Bell*, [1926] Ch. 805.

2513. *Citations*:—For “L. R. 5 C. P. 221” read “L. R. 5 P. C. 221.”

*Add. Annotations*:—*As to (2) Apld. Wild v. Petre* (1928), 97 L. J. Ch. 399. *Reid. Anchor Trust Co. v. Bell*, [1926] Ch. 805.

2527. *Add. Annotation*:—*Reid. Jones v. Waring & Gillow*, [1926] A. C. 670.

2541. *Add. Annotation*:—*Mentd. The St. George*, [1926] P. 217.

PART XI. SECT. 4, SUB-SECT. 3.—B.  
2069 i. *Addition to annuity*.—*COLE v. COLE* (1838), 5 O. S. 744.—CAN.

PART XIII. SECT. 3.  
*st. General rule*.—In order to marshal, not only must there be two creditors of the same person, but one of them must have two funds belonging to the same person to which he can resort.—*ROYAL BANK OF CANADA v.* [1921] 2 W. W. R. 929.—CAN.

PART XV.  
2424 i. *Definition*.—As a general rule the doctrine of subrogation does not apply in favour of a party who has not paid money or given something in satisfaction or extinguishment of a security, claim, or demand, or partly so, or who has not paid something by

way of getting in a security, or the like.—*COURSOLLES v. FOOKES* (1889), 10 O. R. 691.—CAN.

PART XVI. SECT. 1, SUB-SECT. 2.—C.  
*sw. Discount for prompt payment*.—*Held*: a penalty, & relief granted.—*COLGROVE v. GUNDY* (1914), 28 W. L. R. 731; 17 D. L. R. 45.—CAN.

PART XVI. SECT. 1, SUB-SECT. 2.—D.  
ii. —.]—In the case of a sale when the conditions are that the purchaser shall forfeit the money which he has paid if he makes default in any future payment, the ct. will relieve the purchaser from forfeiture where the non-payment has been the result of the deliberate misrepresentations of the vendor, in order to expose the purchaser to forfeiture.—*Re STAN-*

LEY & BUNTING, [1924] 3 D. L. R. 599; 5 C. B. R. 18.—CAN.

PART XVI. SECT. 1, SUB-SECT. 3.  
*sz. Penalty being reservation only of existing legal right—Relief not granted*.—*BOLAND v. MCCARROLL* (1876), 38 U. C. R. 487.—CAN.

PART XVIII. SECT. 4, SUB-SECT. 4.—B.

2579 i. *Rescission on ground of fraud*.—Where deft. raises a defence of fraud & misrepresentation, the ct. will not grant him relief if he has been guilty of laches. On discovering the fraud or misrepresentation it is the duty of deft. to repudiate the transaction immediately.—*MEIKLEJOHN v. Hugo*, [1924] 1 D. L. R. 272.—CAN.



## Part XIX.—Ne exeat regno.

2637a. —.]—A.-G. v. MUCKLOW (1815), 1 Price, 289 ; 145 E. R. 1405.

## Part XX.—Quia Timet Actions.

2702a. Nature of action.]—A *quia timet* action is a proceeding by which the ct. is enabled to prevent its jurisdiction from being stultified.—*Re* ANDERSON-BERRY, HARRIS v. GRIFFITH, [1928] Ch. 290 ; 97 L. J. Ch. 111, 138 L. T. 354, C. A.

2703. *Add. Annotation* :—*Reid. Re* Anderson-Berry, Harris v. Griffith, [1928] Ch. 290.

2705. *Add. Annotation* :—*Consd. Graigola Merthyr Co. v. Swansea Corpn.*, [1928] Ch. 235.

2705a. Threatened injury to property by waterworks.]—It is open to the owners of property threatened with injury by authorised

waterworks to bring a *quia timet* action to restrain the undertakers from doing an act which threatens to injure such property.—*GRAIGOLA MERTHYR CO., LTD. v. SWANSEA CORPN.*, [1928] Ch. 31 ; 97 L. J. Ch. 129 ; 43 T. L. R. 600 ; 71 Sol. Jo. 681 ; *affd.* on another point, [1928] Ch. 235, C. A.

2712. *Add. Annotation* :—*Consd. Re* Anderson-Berry, Harris v. Griffith, [1928] Ch. 290.

2713. *Add. Annotations* :—*Reid. Re* Harrington Motor Co., *Ex p.* Chaplin, [1928] Ch. 105 ; *Hood's Trustees v. Southern Union General Insee. Co. of Australasia*, [1928] Ch. 793.

# ESTATE AND OTHER DEATH DUTIES.

## Part I.—In General.

1. *Add. Annotation* :—As to (2) *Reid. A.-G. v. Belilios*, [1928] 1 K. B. 798.

## Part II.—Estate Duty.

22a. ———.] — Testator bequeathed “B. House & contents” & the stables held therewith, the leases of which would expire in 1995, to trustees upon trust to allow C. to have the use & enjoyment thereof for life, & after her death upon the like trust for the benefit of L. for life. Testator directed “the rent, outgoings, rates & taxes for the time being payable in respect of the messuage & premises, & keeping same & the contents thereof insured against fire & burglary & in a proper state of preservation, shall always be paid by my trustees out of the income of my residuary personal estate.” C. having died, was succeeded as tenant for life by L. :—*Held* : (1) on the death of C., the property which passed was the right to enjoy the benefit of the annual sum, & the case fell within 1894 Act, s. 1 ; (2) the principal value of the property should be ascertained under sect. 7 (5) (8), the special facts of the case being taken into consideration by the comrs. ; (3) the duty must be borne by L., but on equitable terms, namely, it should in the first instance be borne by residue, which should be recouped by a policy on the life of L. to be vested in the trustees which at her death would produce a sum equal to the duty, & the interest on the duty & the policy premiums should be retained & paid by the trustees in each year out of the sum which would otherwise be expended by them on B. House. —*Re CASSEL, PUBLIC TRUSTEE v. MOUNTBATTEN*, [1927] 2 Ch. 275 ; 96 L. J. Ch. 483 ; 137 L. T. 785 ; 43 T. L. R. 743 ; 71 Sol. Jo. 804.

27. *Add. Annotations* :—As to (1) *Appl. Re Cassel, Public Trustee v. Mountbatten*, [1927] 2 Ch. 275. *Reid. Parr v. A.-G.*, [1926] A. C. 239. As to (5) *Consd. Parr v. A.-G.*, [1926] A. C. 239.

39. *Add. Citation* :—132 L. T. 704.

61. *Add. Annotation* :—*Reid. Bird v. I. R. Comrs.* (1924), 12 Tax Cas. 785.

68. *Add. Annotation* :—*Generally, Mentd. Ormond Investment Co. v. Betts*, [1928] A. C. 143.

72. *Add. Annotation* :—As to (2) *Reid. Re Wilkinson, Page v. Public Trustee*, [1926] Ch. 842.

75. *Add. Citations* :—94 L. J. K. B. 139 ; 132 L. T. 717.

90a. ——— Trust established in England. By his will, made in English form, testator, who declared that the instrument was to take effect according to the law of Hong Kong where he was domiciled, devised & bequeathed his property, which was situate out of the United Kingdom, to trustees on trust to

invest a sum to produce an annuity for his wife, to pay certain legacies & to stand possessed of the residue to pay the annual income thereof to his sons or son during their or his lives or life, & on the death of the last survivor of his sons in trust for his son's children. The tenant for life, who was the only son of testator living at his death, wished to borrow money &, at the request of the lenders, he appointed, in England, four new trustees of the will, three of whom were resident in England. Between 1913 & 1922, owing to the tenant for life's dealings with the trust funds, proceedings in the Ch. Div. were instituted & orders were made in connection with the administration of the trusts of the will. In 1922 the tenant for life died, leaving him surviving his widow & two infant sons, who were domiciled in Hong Kong but had been made wards of ct. by virtue of the proceedings in the Ch. Div. & the orders made therein. The trust property was situate abroad :—*Held* : the succession of the infants to testator's residuary estate was at his death a succession by virtue of Hong Kong law & to Hong Kong property, & it had never lost that character or fallen within 1853 Act, s. 2, & the property was not liable to estate duty under 1894 Act, s. 2 (2). —*A.-G. v. BELILIOS*, [1928] 1 K. B. 798 ; 97 L. J. K. B. 139 ; 138 L. T. 294 ; 44 T. L. R. 214 ; 72 Sol. Jo. 49, C. A.

94. *Add. Annotation* :—*Appl. A.-G. v. Howe* (1925), 94 L. J. K. B. 540.

96a. ——— Shares.]—Testator, a German subject, was, at the outbreak of the European War, entitled to stocks, shares, & securities in English, South African, & American cos. The certificates were in all cases situate in London, & the securities themselves were transferable in London at the outbreak of war, & at the date of testator's death. Testator died in 1915, in Berlin, being domiciled in Germany. By his will three-fifths of his property were bequeathed to German & Austrian beneficiaries, & two-fifths to British & Polish beneficiaries. In 1915 the will was proved in Germany by the exors. named therein. In 1922, grant of administration in England was made to pltf. By virtue of Treaty of Peace Orders, the whole of the interests of the German & Austrian beneficiaries became charged with & subject to the claims of the Custodian of Enemy Property. In 1922 all the South African securities were transferred to the South African Custodian, an exor. dative was appointed in South Africa to administer

testator's South African estate, & estate duty in South Africa was paid by him in respect thereof. Some of the American securities were transferred to the American Alien Property Custodian, administration of testator's American estate was granted in America, & the securities were transferred to the American Custodian to be distributed by the American administrator among the beneficiaries. All the remaining American securities, with the exception of a small balance, were released to pltf. by the English Custodian. In May, 1924, pltf. filed a corrective affidavit, including therein those of the American securities which had been released to him at that date, & he paid estate duty & interest in respect thereof:—*Held*: (1) all the shares were locally situate in England & the administrator was bound to include them as property of which testator was competent to dispose, & was accountable to the extent of the assets he had received for the estate duty in respect thereof; (2) the basis of valuation of such shares was the price similar shares would fetch in the open market at the date of testator's death.—*Re ASCHROTT, CLIFTON v. STRAUSS*, [1927] 1 Ch. 313; 96 L. J. Ch. 205.

99. *Add. Annotation*:—As to (4) *Reid. Re Bateman*, [1925] 2 K. B. 429.

107a. ———.—By settlements made in 1906 & 1911, a lady, in consideration of £5,100 which was paid over to her by her son, conveyed certain furniture upon trust for herself for life with remainder to her son absolutely. At her death in 1918 the furniture was sold for £45,000, & the Crown claimed succession duty & estate duty upon the difference between the two sums from the trustee of the settlements:—*Held*: (1) the transaction was a *bond fide* sale between mother & son, & no succession duty was payable; (2) as to the claim for estate duty, there had been a "purchase for partial consideration" within 1894 Act, s. 3 (2), the consideration paid represented four-fifths of the value of the property at the date of such purchase, & estate duty was payable only

upon one-fifth of the value as at the date of the death of the tenant for life; (3) "partial consideration," in sect. 3 (2), meant something less than the full & fair value as between buyer & seller.—*Re BATEMAN (BARONESS)*, [1925] 2 K. B. 429; 95 L. J. K. B. 199; *sub nom. Re BATEMAN (BARONESS), A.-G. v. WREFORD-BROWN*, 134 L. T. 153.

121. *Add. Annotation*:—As to (2) *Reid. Re Sarson, Public Trustee v. Sarson*, [1925] Ch. 31.

128. *Add. Annotations*:—*Reid. Re Exmouth's Annuity*, [1925] Ch. 280; *Re Drake, Drake v. Wilson*, [1926] Ch. 559.

128a. "Land & chattels"—What are "chattels."—By an Act of 54 Geo. 3 an annuity of £2,000 was inalienably settled on Lord E. & his successors in title. In 1892 the redemption of the annuity for a sum of £55,890 was agreed upon, & that amount was paid into ct. & invested in the purchase of Consols. The fifth Viscount E. died in Aug. 1922, & the sixth Viscount in Feb. 1923. Questions having arisen as to the payment of estate duty, the ct. was asked whether estate duty became payable (a) upon the capital of the sum of Consols, or (b) upon the value of the interest of the successor to the title in such sum of Consols, & if estate duty became so payable, then whether, for the purpose of determining the rate of estate duty, such sum of Consols ought (a) to be aggregated with the other property, or (b) to be treated as an estate by itself:—*Held*: "chattels" in collocation with settled lands in 1894 Act, s. 5 (5), did not suggest personality generally, but those particular items of it which were usually settled upon trusts that followed the devolution of the settled land, & the sum of Consols was not "chattels" within the sub-sect., & must be aggregated with the other property for the purpose of paying estate duty.—*Re EXMOUTH'S ANNUITY*, [1925] Ch. 280; 94 L. J. Ch. 208; 133 L. T. 39; 69 Sol. Jo. 411.

129a. ———.—Where duty commuted—Not aggregated with unsettled property.]—Where estate duty has been commuted under 1894

## PART II. SECT. 4, SUB-SECT. 1.

si. *S. P. HOLMES v. STAMP DUTIES COMR.*, [1927] N. Z. L. R. 753.—N. Z.

s ii. ———.—*Discharge by son of legitim.*—A father granted a bond for £30,000 in implement of an undertaking by him in his second son's marriage contract, in contemplation of the son's marriage, & in consideration of a conveyance executed by the son's intended wife for behoof of the spouses. In the marriage contract the son accepted the obligations therein contracted by his father as in full satisfaction in any event of all legal claims for legitim or otherwise he might have upon his father's estate. At the date of the marriage contract & of the bond the only claim to legitim possible to the son was in the event of his elder brother predeceasing his father. That event happened, & at the father's death the amount of legitim to which the second son would have had a claim, had he not discharged it, was £25,000:—*Held*: the bond could not be regarded as a debt incurred by the father for full consideration in money or money's worth wholly for deceased's own use & benefit in the sense of 1894 Act, s. 7 (1), & did not form a proper deduction in determining the value of his estate for the purposes of estate duty.—*LORD ADVOCATE v.*

*WARRENDER'S TRUSTEES* (1906), 8 F. (Ct. of Sess.) 371.—SCOT.

## PART II. SECT. 4, SUB-SECT. 2.

sa. "Interest in business"—What is—1914 Act, s. 15.]—A father & two of his sons carried on business in partnership. By a re-arrangement of the partnership relations the father accepted £124,646 in full of his whole rights in the old firm & its assets, & agreed to allow this sum to remain as a loan to the new firm at 4 per cent. interest, on condition that, if called up by him, or in any event on his death, it was to be repaid by ten yearly instalments. The father contributed no capital to the new firm apart from the loan, but had an interest in the profits to the extent of a one-tenth share. He died in 1922, leaving a will by which he bequeathed the residue of his estate, including the loan, to his family, & estate duty was duly paid thereon. The two sons came to an arrangement with their father's exors., under which the sons agreed to repay the loan at once in return for a certain discount; & in settling with the exors., they retained in the business the respective shares of the loan falling to them, by crediting themselves with the amounts in the books of the firm. Within two years of the father's death one of the sons died, & estate duty

became payable on his estate. His exor. having claimed a reduction, under the above sect., of the estate duty payable on the sum credited to the son in the firm's books in respect of his share of his father's loan:—*Held*: the father's right to repayment of the loan was not an "interest in the business" within the sect., & the sum standing in the son's name in the books of the firm was an interest in the assets of the firm, & was not identical with his father's interest in the *jus credit* of the loan.—*GLEN v. INLAND REVENUE*, [1926] S. C. 44.—SCOT.

## PART II. SECT. 4, SUB-SECT. 4.

d. For "Charitable purposes—In Australia & abroad," read "Charitable purposes—In Australia—& abroad."

d i. ———.—By Estate Duty Assessment Act, 1914, s. 8 (5), estate duty is not to be assessed upon so much of the estate as is bequeathed "for religious, scientific, charitable or public educational purposes":—*Held*: as no contrary intention appeared, the word "charitable" was to be construed in its legal & not its popular sense.—*CHESTERMAN v. FEDERAL COMR. OF TAXATION*, [1926] A. C. 128; 95 L. J. P. C. 39; 134 L. T. 360; 42 T. L. R. 121.—AUS.



Act, s. 12, the property in respect of which the commutation has been made is not property on which "estate duty is leviable" within s. 4 of that Act & is not to be aggregated with other property of the same person on which estate duty is leviable.—*A.-G. v. HOWE (EARL)* (1925), 94 L. J. K. B. 540; 133 L. T. 801; 41 T. L. R. 610; 69 Sol. Jo. 791, C. A.

131. *Add. Citations*:—*affd. sub nom. PARR v. A.-G.*, [1926] A. C. 239; 95 L. J. K. B. 417; 134 L. T. 321; 42 T. L. R. 217, H. L.

136a. — *Shares*.]—*Re ASCHROTT, CLIFTON v. STRAUSS*, No. 96a, *ante*.

136b. — *How ascertained*—*Special facts to be considered*.]—*Re CASSEL, PUBLIC TRUSTEE v. MOUNTBATTEN*, No. 22a, *ante*.

155. *Add. Annotations*:—*As to* (1) *Expld. Re Portman* (No. 2), [1925] Ch. 294; *Distd. Re Drake, Drake v. Wilson*, [1926] Ch. 559.

161. *Add. Annotations*:—*Folld. Re Portman* (No. 2), [1925] Ch. 294. *Distd. Re Drake, Drake v. Wilson*, [1926] Ch. 559.

161a. —.]—A rentcharge of £50,000 *per annum* charged on L. settled estates was limited to the use of deft., the fourth Viscount P., for life with remainder to the use of his eldest son during his life, to commence from their respective successions to the title & to be paid without any deduction except for death duties, & a similar rentcharge was limited in remainder, in the event of any other issue of the fourth Viscount succeeding to the title, to the use of the sons of such eldest son & other sons of the fourth Viscount in tail male. Subject to such rentcharge, the L. settled estates were limited to the use of pltf. for life with remainder to the use of his eldest son for life with remainders over. By a deed poll dated Oct. 15, 1913, provision was made for the abatement of the £50,000 rentcharge in certain events. The third Viscount, who was tenant for life of the estates in question, had died in 1923, while nine of the sixteen half-yearly instalments of estate duty payable in respect of the death of the second Viscount, who had died in 1919, remained unpaid. One of the questions for the decision of the ct. at the original hearing of the summons (*Re Portman (Viscount)*, No. 249, *post*) was as to what proportion of the balance remaining unpaid at the death of the third Viscount of the estate duty, which became assessable on the death of the second Viscount in respect of the L. estates, should be borne by the yearly rentcharge of £50,000, & it was admitted in argument that there was no difference in principle in respect of that unpaid balance between that duty & that which was assessable upon the death of the third Viscount. After judgment had been delivered & before the minutes had been finally drawn up, leave was given to withdraw the admission made in argument

as aforesaid, & it was directed that the question with regard to the liability of the rentcharge in respect of the unpaid instalments of estate duty assessable on the death of the second Viscount should be argued:—*Held*: the effect of 1894 Act, s. 14 (1), was to throw the incidence of the duty ratably & in proper proportions upon all persons becoming beneficially interested in the property upon which the duty was constituted a first charge by force of sect. 9 (1) of the Act; the rentcharge, or the abated rentcharge, must be dealt with, as regards these unpaid instalments, in the manner indicated in the original judgment; & the order would be in the terms of the minutes prepared in accordance with that judgment.—*Re PORTMAN (VISCOUNT)* (No. 2), [1925] Ch. 294; 94 L. J. Ch. 329; 133 L. T. 389.

209a. *Effect of Law of Property Act, 1925 (c. 20), s. 16 (5)*.]—The above sub-sect. preserves the liability of real estate to pay its own duties.—*Re MORRIS, SKINNER v. SANDERS* (1927), 71 Sol. Jo. 472.

220. *Add. Annotation*:—*Generally, Consd. Re Cassel, Public Trustee v. Mountbatten*, [1927] 2 Ch. 275.

226. *Add. Annotation*:—*As to* (1) *Refd. Re Sarson, Public Trustee v. Sarson*, [1925] Ch. 31.

229. *Add. Annotation*:—*As to* (1) *Refd. Re Sarson, Public Trustee v. Sarson*, [1925] Ch. 31.

233. *Add. Annotation*:—*As to* (1) *Refd. Re Sarson, Public Trustee v. Sarson*, [1925] Ch. 31.

234. *Add. Annotation*:—*Refd. Re Sarson, Public Trustee v. Sarson*, [1925] Ch. 31.

238. *Add. Annotations*:—*Appld. Re Forder, Forder v. Forder* (1927), 137 L. T. 538. *Refd. Re Sarson, Public Trustee v. Sarson*, [1925] Ch. 31.

238a. —.]—*Re JONES, LAMBERT v. COLBOURN*, [1928] W. N. 227.

239. *Add. Citations*:—94 L. J. Ch. 155; 132 L. T. 339.

244a. —.]—An assignee for value of a sum of £10,000 to be paid "absolutely & free from incumbrances," being part of a portions fund of £15,000 charged on settled land:—*Held*: in the absence of a special contract in that behalf, not to be liable to pay a ratable proportion of the estate duty borne & payable by the portions fund upon the death of the tenant for life of the settled land.

Sect. 14 (1) of the above Act provides for a ratable recoupment between the person who has paid estate duty in respect of property passing on death, & the person entitled to a sum charged on that property. It does not go on to provide for further recoupment by persons entitled derivatively to various parts of the sum so charged, but leaves their rights to be determined by their contractual arrangements.—*Re DRAKE, DRAKE v. WIL-*

## PART II. SECT. 9, SUB-SECT. 1.—B.

a 1. —.]—By his will testator directed that all his debts & funeral & testamentary expenses should be paid as conveniently as might be after his decease, & thereafter proceeded by his will to devise & bequeath all his real & personal property not otherwise disposed of:—*Held*: (1) estate duty was under the direction payable actually out of the residuary estate; (2) in the event of the residuary estate being

insufficient to pay the estate duty, the life interests were not liable for a portion of the deficiency, but the annuitants & specific devisees of real estate should jointly contribute to the deficiency.—*CALDWELL, ETC. v. FLEMING*, [1927] N. Z. L. R. 145.—N.Z.

## PART II. SECT. 9, SUB-SECT. 3.

ad. *Aggregation of settled funds*—*Whole estate subject to duty at higher rate*.]—Decedent made a settlement of property on her marriage, & on her

death left a will. The rate at which duty was assessed was 6½ per cent., & if the value of the settled property had not been included in the final balance, the rate would have been 4½ per cent. The exors. claimed that the trustees of the settlement were liable to bear the difference:—*Held*: the incidence of the duty was governed by Death Duties Act, 1909, s. 31 (4), & the exors.' claim could not be sustained.—*BROWN v. BROWN*, [1924] N. Z. L. R. 427.—N.Z.

- SON, [1926] Ch. 559; 95 L. J. Ch. 386; 134 L. T. 362, C. A.
246. *Add. Annotation*:—*Reid. Re Portman* (No. 2), [1925] Ch. 294.
249. *Add. Citation*:—132 L. T. 440.
- 254a. *Beneficiary & residue—Equitable terms.*—*Re CASSEL, PUBLIC TRUSTEE v. MOUNT-BATTEN*, No. 22a, *ante*.
261. *Add. Annotation*:—*As to* (2) *Reid. Re Abergavenny S. E., Abergavenny v. Nevill*, [1926] Ch. 465.
262. *Add. Annotation*:—*Consd. Re Drake, Drake v. Wilson*, [1926] Ch. 559.
264. *Add. Annotations*:—*As to* (1) *Reid. Re Drake, Drake v. Wilson*, [1926] Ch. 559; *Re Reeves, Reeves v. Pawson*, [1928] Ch. 351. *Generally, Mentd. Re Hardyman, Teesdale v. McClintock*, [1925] Ch. 287.
- 271a. — By devisee—Estate duty on undivided moiety of land paid out of residuary estate.]—*Re WHEELER, JAMESON v. COTTER*, [1928] W. N. 225.
- 274a. Out of corpus—Estate settled by Act of Parliament—Whether duty unpaid.]—Where the formal assessment of estate duty on an inalienable estate settled by Act of Parliament is not made until after the passing of Finance Act, 1922 (c. 17), although sufficient money has before the passing of the Act been paid over to the Inland Revenue, the duty is still unpaid within sect. 44 of the Act &, at the option of the tenant in tail in possession, may be raised & paid out of the corpus of the settled estate. A person entitled to a rentcharge on such an estate under a private Act of Parliament which gives the owner for the time being of the estate the right to create a rentcharge is not entitled to exercise a similar option. The estate duty is payable out of the rentcharge itself.—*Re ABERGAVENNY SETTLED ESTATES, ABERGAVENNY (MARQUIS) v. NEVILL*, [1926] Ch. 465; 95 L. J. Ch. 289; 134 L. T. 662; 70 Sol. Jo. 634.
- 277a. — Deduction of income tax.]—In accordance with 1896 Act, s. 18 (1), trustees paid to the Crown certain sums of interest on unpaid estate duty without deduction of income tax:—*Held*: for the purposes of assessment to income tax under Income Tax Act, 1918 (c. 40), sched. D, Case III., in respect of untaxed interest received by the trustees, they were not entitled to any deduction therefrom in respect of the interest on estate duty paid by them.—*INVERCLYDE'S (LORD) TRUSTEES v. MILLAR*, [1924] A. C. 580; 9 Tax Cas. 14; *sub nom. INVERCLYDE'S (LORD) TRUSTEES v. INLAND REVENUE COMRS.*, 93 L. J. P. C. 266; 131 L. T. 739, H. L.

### Part III.—Settlement Estate Duty.

287. *Add. Annotation*:—*Reid. Ormond Investment Co. v. Betts*, [1928] A. C. 143.
288. *Add. Annotations*:—*Reid. Re Ryder & Steadman's Contract*, [1927] 2 Ch. 62; *Ormond Investment Co. v. Betts*, [1928] A. C. 143.
292. *Add. Annotation*:—*As to* (1) *Consd. Re Alington & L. C. C.'s Contract*, [1927] 2 Ch. 253.
- Mentd. Dewhurst v. Salford Grdns.*, [1925] Ch. 655.

### Part IV.—Legacy Duty.

345. *Add. Annotation*:—*Reid. Jones v. Wright* (1927), 44 T. L. R. 128.
349. *Add. Annotation*:—*Reid. Jones v. Wright* [1928] A. C. 143.
359. *Add. Annotation*:—*As to* (1) *Reid. Ormond Investment Co. v. Betts*, [1928] A. C. 143.
405. *Add. Annotation*:—*Reid. Fleming v. Horniman* (1928), 138 L. T. 669.
413. *Add. Annotation*:—*Appld. A.-G. v. Belilios*, [1928] 1 K. B. 798.
414. *Add. Annotations*:—*As to* (2) *Consd. A.-G. for Alberta v. Cook*, [1926] A. C. 444. *Generally, Mentd. Salvesen (or von Lorang) v. Austrian Property Administrator*, [1927] A. C. 641.
448. *Add. Annotation*:—*Appld. A.-G. v. Rudge*, [1928] 2 K. B. 515.
- 462a. *Settled articles not yielding income.*]—For the purposes of legacy duty the value of such articles is to be taken as at the time when they vest absolutely, & not as at the death of testator.—*A.-G. v. RUDGE*, [1928] 2 K. B. 515; 97 L. J. K. B. 710; 44 T. L. R. 708; 72 Sol. Jo. 487.

### Part V.—Succession Duty.

591. *Add. Annotation*:—*As to* (3) *Reid. Jackson's Trustees v. Lord Advocate* (1926), 10 Tax Cas. 460.
602. *Add. Annotation*:—*As to* (1) *Consd. A.-G. Belilios*, [1928] 1 K. B. 798.

PART V. SECT. 2, SUB-SECT. 1.  
599 "Property—Transfer of stock, etc., to wife—Dividends paid to husband.]—*Held*: deceased retained an interest in the gift to his wife to the

extent of the dividends to be derived therefrom, & the stock, etc., were subject to succession duty.—*POWKES v. MINISTER OF FINANCE*, [1927] 2 D. L. R. 717; 38 B. C. R. 395.—CAN.

PART V. SECT. 2, SUB-SECT. 2.—A.  
g 1. —.]—*Re LITTRIDGE (B. C.)*, [1927] 3 D. L. R. 250.—CAN.

622. *Add. Annotation*:—Generally, *Refd. Parr v. A.-G.*, [1926] A. C. 239.
632. *Add. Annotation*:—As to (2) *Refd. Tilling-Stevens Motors v. Kent County Council & Transport Minister* (1928), 97 L. J. Ch. 371.
660. *Add. Annotation*:—As to (5) *Refd. A.-G. v. Belilios*, [1928] 1 K. B. 798.
662. *Add. Annotation*:—*Refd. Parr v. A.-G.*, [1926] A. C. 239.
666. *Add. Citation*:—132 L. T. 699.
694. *Add. Annotation*:—As to (8) *Refd. Parr v. A.-G.*, [1926] A. C. 239.
714. *Add. Annotation*:—*Dlst. A.-G. v. Belilios*, [1928] 1 K. B. 798.
718. *Add. Annotation*:—*Dlst. A.-G. v. Belilios*, [1928] 1 K. B. 798.
719. *Add. Annotation*:—*Dlst. A.-G. v. Belilios*, [1928] 1 K. B. 798.
724. *Add. Annotation*:—*Consd. A.-G. v. Belilios*, [1928] 1 K. B. 798.
725. *Add. Annotation*:—*Refd. A.-G. v. Belilios*, [1928] 1 K. B. 798.
726. *Add. Annotation*:—*Consd. A.-G. v. Belilios*, [1928] 1 K. B. 798.
732. *Add. Annotation*:—*Dlst. . v. Belilios*, [1928] 1 K. B. 798.
- 755a. .—*Re BATEMAN (BARONESS)*, No. 107a, ante.
765. *Add. Annotation*:—*Consd. Re Bateman*, [1925] 2 K. B. 429.

PART V. SECT. 2, SUB-SECT. 2.—B.

624 i. *When succession accrues.*—*STAMP DUTIES COMR. (QUEENSLAND) v. DONALDSON* (1927), 39 C. L. R. 539.—AUS.

PART V. SECT. 2, SUB-SECT. 4.

h i. — *Person entitled after death of successor before property paid over.*—Where a share in a residuary estate was not paid to the residuary devisee during her lifetime but passed under her will, her death occurring eighteen months after that of testator:—*Held*: the Crown was entitled to succession duty thereon, although succession duty had been paid by the exors. under the first will on the residuary estate.—*Re LUNN ESTATE (B. C.)*, [1925] 2 W. W. R. 608.—CAN.

h ii. — *Residuary gift in trust for Presbyterian Church of New Zealand.—For purpose of assisting foreign missionary work.*—*Held*: the Presbyterian church was a "successor" under Death Duties Act, 1921, s. 16.—*PERPETUAL TRUSTEES, ESTATE & AGENCY CO., LTD., OF NEW ZEALAND v. STAMP DUTIES COMR.*, [1927] N. Z. L. R. 714.—N. Z.

PART V. SECT. 2, SUB-SECT. 5.—A.

670 iv. — *Donor of trust fund.—Succession Duties Act, R. S. A., 1922 (c. 28), s. 6.*—*A.-G. OF ALBERTA v. COWAN*, [1926] 1 D. L. R. 29; [1926] S. C. R. 142.—CAN.

PART V. SECT. 2, SUB-SECT. 5.—B. (b).

si. *Succession Duty Act, 1915 (c. 27) (N. B.).—Absolute power of appointment.*—*PROVINCIAL SECRETARY-TREASURER v. SCHOFIELD (N. B.)*, [1923] 2 D. L. R. 1144.—CAN.

PART V. SECT. 2, SUB-SECT. 7.—B.

718 i. *Realty outside province.—Devised under trust for sale.—Testator domiciled in province.*—Where by the will of testator, who died domiciled in British Columbia, land outside the province is devised to a trustee under direction to convert it into money, it is not, while at least it is yet unsold, subject to duty under Succession Duty Act, R. S. B. C., 1924 (c. 244).—*ALEXANDER v. A.-G.*, [1927] 1 D. L. R. 602; [1927] 1 W. W. R. 143; 38 B. C. R. 28.—CAN.

q i. — *Agreement for sale.*—V., resident & domiciled in U.S.A., agreed by writing under seal to sell land owned by him in the province of Alberta, the purchaser going into possession. The purchase-money was to be paid, with interest, in U.S.A. At V.'s death in U.S.A., there was a balance owing him under the agreement:—*Held*: V., at his death, was the owner of property situated in Alberta or of an interest in the land, liable to duty in Alberta under Succession Duties Act, 1914 (c. 5), the question not being determined by the locality of the debt, but by the nature

of the interest held by deceased in the Alberta land.—*VAUGHN v. A.-G. FOR ALBERTA*, [1924] 3 D. L. R. 467; 2 W. W. R. 821; 20 Alta. L. R. 424.—CAN.

sk. *Mortgages on land outside province.—Owner domiciled within province.*—*Held*: subject to duty under Succession Duty Act, R. S. B. C., 1924 (c. 244).—*Re PARKER*, [1926] 1 D. L. R. 783; [1926] 1 W. W. R. 1105; 60 B. C. R.—CAN.

PART V. SECT. 2, SUB-SECT. 7.—C.

k i. — .—*Held*: subject to duty under Succession Duty Act, R. S. B. C., 1924 (c. 244).—*Re SUCCESSION DUTY ACT, A.-G. FOR BRITISH COLUMBIA v. WILSON (B. C.)*, [1926] 4 D. L. R. 139; [1927] 1 W. W. R. 266.—CAN.

k ii. — .—*Testator, whose domicile was in Ontario, possessed securities, which were in a safety deposit box in a bank in Michigan:—Held*: the securities were subject to duty under Succession Duty Act, R. S. O., 1914 (c. 24).—*A.-G. FOR ONTARIO v. BABY*, [1927] 1 D. L. R. 1105; 60 O. L. R. 1.—CAN.

k iii. — .—*Debenture stock of a city in Nova Scotia, transferable & redeemable at the office of the city treasurer, & money in a bank at the same city, belonging to testator domiciled in New Brunswick:—Held*: not liable to duty under Succession Duty Act, C. S., 1903 (c. 17).—*RECEIVER GENERAL OF NEW BRUNSWICK v. ROSBOROUGH* (1915), 43 N. B. R. 258.—CAN.

n i. — *Specialty debt.*—A mtgdebt due in New Brunswick at the time of the foreign creditor's death is property of the creditor's estate which may be liable to duty under Succession Duty Act, 1915.—*ROYAL TRUST CO. v. PROVINCIAL SECRETARY, TREASURER OF NEW BRUNSWICK*, [1925] 2 D. L. R. 49; [1925] S. C. R. 94; *revg.* 52 N. B. R. 21.—CAN.

n ii. — .—*Specialty debts secured by bond & mtge. of real estate situate in Nova Scotia, the bonds & mtges. being in the possession of testator in New Brunswick at the time of his death:—Held*: liable to duty under Succession Duty Act, C. S., 1903 (c. 17).—*RECEIVER GENERAL OF NEW BRUNSWICK v. ROSBOROUGH* (1915), 43 N. B. R. 258.—CAN.

o i. — *Registered outside province.*—A banking co., with a head office at Montreal in the Province of Quebec, had power by statute to maintain in any province a registry office at which alone shares held by residents in that province were to be registered & could validly be transferred. A. resided at Halifax in the Province of Nova Scotia, & died there, owning shares registered at an office of the co. at Halifax under the above statutory power. Under Succession Duty Act (Que.), 1909, art. 1376, duty was imposed upon "property actually situate

within the province, whether the transmission takes place within or without the province:—*Held*: as the ownership of the shares could be effectively dealt with only in Nova Scotia, they were not property situate in Quebec, & the claim could not be maintained.—*BRASSARD v. SMITH*, [1925] A. C. 371; 94 L. J. P. C. 81; 132 L. T. 647; 41 T. L. R. 203.—CAN.

p. For the paragraph in the original volume substitute the following paragraph:—

— *Owner not domiciled within province.—Recognition of status of "wives."*—If a person domiciled in a country whose laws permit polygamous marriages is married there to two wives, & dies while still domiciled there though temporarily residing in British Columbia, the status of the wives will be recognised by the cts. of British Columbia for the purpose of fixing the succession duty payable on property in British Columbia going under deceased's will to each of the wives.—*YEW v. A.-G. FOR BRITISH COLUMBIA*, [1924] 1 D. L. R. 1166; 1 W. W. R. 753; 33 B. C. R. 109; *revg.* S. C. sub nom. *Re LEE CHEONG*, [1923] 1 W. W. R. 867.—CAN.

PART V. SECT. 3, SUB-SECT 1.

sl. *Declaration of trust several years before death.*—Ten years before his death an owner of debentures executed a declaration of trust whereby he declared that he held them in trust for his children & deposited the debentures & the declaration in a bank where they remained until his death. He never received any benefit from the debentures, & there was no evidence of any scheme or reservation whereby he retained any beneficial interest. No part of the income was paid to the beneficiaries, but the trustee invested it in trust or placed it to the credit of a trust account in the same bank where it accumulated until he died:—*Held*: the fund was not liable to succession duties under Succession Duties Act, R. S. A. 1922 (c. 28).—*COWAN v. A.-G.*, [1925] 2 D. L. R. 647; [1925] 1 W. W. R. 993; 21 Alta. L. R. 241; *revid.*, [1926] 1 D. L. R. 29.—CAN.

PART V. SECT. 3, SUB-SECT. 7.

o i. — *Validity.*—Succession Duty Act, 1923 (c. 13), s. 17 (9), overrides a direction in a will that legacies be paid free from all succession duty payable under any Act of Saskatchewan.—*Re ANDERSON ESTATE, CANADIAN PERMANENT TRUST CO. v. MCADAM (Sask.)*, [1928] 1 D. L. R. 182; [1927] 3 W. W. R. 773.—CAN.

PART V. SECT. 4.

sm. *Provincial duty.—Assets in province forming part of larger estate.—Deceased domiciled outside province.*—Deceased, domiciled outside British Columbia, left personal property of \$1,000,000 of which \$10,000 was in



796. *Add. Annotations*:—*Consd. A.-G. v. Bedford*, [1926] 2 K. B. 184. *Refd. A.-G. v. Belilios*, [1928] 1 K. B. 798.

796a. ——— *Finance Act, 1925 (c. 36), s. 24.*—Circumstances (*see* No. 90a, *ante*) in which:—*Held*: succession duty was not payable, since the above sect. was not retrospective.—*A.-G. v. BELILIOS* [1927] 2 K. B. 439; 43 T. L. R. 669; *reversd.* without affecting this point, [1928] 1 K. B. 798, C. A.

799a. ———.]—Where a person, who has succeeded to the life interest in leasehold property, subsequently receives the rack rents from the property when the leases fall in, the

increased value of the succession for the purpose of succession duty is to be calculated by reference to the age of the successor at the expiration of the leases & to the value of the property as at that date, less the ground rents, & not to the value of the property when the succession first arose, less the ground rents.—*A.-G. v. BEDFORD (DUKE)*, [1926] 2 K. B. 184; 95 L. J. K. B. 517; 135 L. T. 541; 42 T. L. R. 346; 70 Sol. Jo. 465.

824. *Add. Annotation*:—*Refd. Ormond Investment Co. v. Betts*, [1928] A. C. 143.

853. *Add. Annotation*:—*Refd. Re Drake, Drake v. Wilson*, [1926] Ch. 559.

## Part VI.—Probate Duty.

899. *Add. Annotation*:—*Generally, Mentd. Ormond Investment Co. v. Betts*, [1928] A. C. 143.

914. *Add. Annotations*:—*Apprvd. Brassard v. Smith*, [1925] A. C. 371. *Apld. Baelz v. Public Trustee*, [1926] Ch. 863; *Pass v. British Tobacco Co. (Australia)* (1926), 42 T. L. R. 771. *Refd. A.-G. v. Sudeley*, [1896] 1 Q. B. 354; *A.-G. v. New York Breweries Co.*, [1898] 1 Q. B. 205; *Re Aschrott, Clifton v. Strauss*, [1927] 1 Ch. 313; *London & South American Investment Trust v. British Tobacco Co.*

(Australia), [1927] 1 Ch. 107. *Mentd. In the Goods of Ewing* (1881), 6 P. D. 19.

917. *Add. Annotations*:—*As to* (1) *Consd. Baker v. Archer-Shee*, [1927] A. C. 844. *Refd. Herbert v. I. R. Comrs., I. R. Comrs. v. Herbert* (1925), 9 Tax Cas. 593; *A.-G. v. Belilios*, [1928] 1 K. B. 798. *Generally, Mentd. Brassard v. Smith*, [1925] A. C. 371.

919. *Add. Citation*:—*Subsequent proceedings* (1883), S. B. & Ad. 78.

943. *Add. Annotation*:—*Mentd. Re Bower Williams, Ex p. Trustee*, [1927] 1 Ch. 441.

British Columbia:—*Held*: under R. S. B. C., Acts 1911 (c. 217) & 1921 (c. 58), the duty payable on the net amount should be 1½ per cent. on the first \$100,000, 2½ per cent. on the second \$100,000 & 5 per cent. on the balance; of the sum thus ascertained the \$10,000 within the province was charged with its proportion which was taken by the province.—*Re SUCCESSION DUTY ACT, Re HECHT*, [1924] 1 W. W. R. 1153; 33 B. C. R. 154.—CAN.

### PART V. SECT. 5, SUB-SECT. 1.

h i. ———.]—Although exors., when applying for ancillary letters patent in British Columbia, had placed a value on the estate in the province for the purpose of succession duty & being accepted by the Crown, had given a bond to secure payment of the duty, they are not bound by such valuation & its acceptance by the Crown; but they have still the right to present a petition under Succession Duty Act, s. 43, to a judge of the Supreme Ct. of the province who has jurisdiction to determine what property of the estate is liable to duty & the amount due.—*BLACKMAN v. R.*, [1924] 4 D. L. R. 123; [1924] S. C. R. 406.—CAN.

h ii. ———.]—In an action on a bond to secure payment of duties under Succession Duties Act, R. S. A., 1922 (c. 28), wherein the defence was that the true value of the estate did not exceed \$5,000 & no duty was payable:—*Held*: the question of value was concluded by the values sworn to in the affidavits filed for the purpose of obtaining the letters probate, which values had been accepted as satisfactory by the Crown.—*R. v. LONDON & LANCAIRE GUARANTEE & ACCIDENT*

*Co. (Alta.)*, [1926] 4 D. L. R. 874; [1926] 3 W. W. R. 461.—CAN.

*sp. Aggregate value—Succession Duty Act, C. S., 1903 (c. 17).*—*RECEIVER GENERAL OF NEW BRUNSWICK v. ROSBOROUGH* (1915), 43 N. B. R. 258.—CAN.

### PART V. SECT. 5, SUB-SECT. 2.

*st. "Net value"—Mode of calculation—Aggregate value including life insurance money.*—*R. v. MEIBACH*, [1927] 2 D. L. R. 1020; [1927] 1 W. W. R. 981; 22 Alta. L. R. 482.—CAN.

### PART V. SECT. 6, SUB-SECT. 1.

*sw. Valuation of estate & acceptance by Crown of surety bond—Right of executor to distribute estate—Succession Duty Act, R. S. B. C., 1911 (c. 217).*—*MINISTER OF FINANCE v. CALEDONIAN INSURANCE CO., Re LAND REGISTRY ACT & HIGGINSON*, [1923] 4 D. L. R. 439; [1923] 3 W. W. R. 925.—CAN.

### PART V. SECT. 6, SUB-SECT. 2.

*sa. Postponement—Disputed claim against estate.*—Where deceased's estate is subject to a claim, not admitted, on notes made as surety for another, while it is right to postpone the final settlement of the exor.'s liability for succession duty as to the sum represented by such alleged indebtedness, an order dealing with the matter should postpone the date of payment to a time certain, & should contain a term directing payment of duty upon the sum should it be determined that the estate is not liable for the claim, & a further term that, if the estate is liable, the exor. should pay duty upon his claim against the principal debtor.

—*Re SUCCESSION DUTY ACT & SPROULE*, [1924] 2 W. W. R. 1087; 34 B. C. R. 110.—CAN.

### PART V. SECT. 6, SUB-SECT. 3.—A.

*sb. "Sister" of deceased—Succession Duty Act Amendment Act, 1899, s. 2 (4)—Includes half-sister.*—*Re OLIVER* (1901), 8 B. C. R. 91.—CAN.

### PART V. SECT. 8, SUB-SECT. 1.

*sd. From what date payable—Succession Duty Act, R. S. B. C., 1924 (c. 244).*—*Re OLDFIELD ESTATE, Re SUCCESSION DUTY ACT (B. C.)*, [1927] 4 D. L. R. 711; [1927] 3 W. W. R. 361.—CAN.

*sf. Extension of date from which interest runs—Application for—Time for making.*—*Held*: such an application might be made after the expiration of the six months during which, if payment were then made, no interest was chargeable.—*Re FARMER*, [1926] 1 D. L. R. 894; [1926] 1 W. W. R. 366; 36 B. C. R. 334.—CAN.

### PART V. SECT. 8, SUB-SECT. 3.

*sj. Hearing of summons under Succession Duty Act, R. S. B. C. 1924 (c. 244), s. 34—Must be before judge who issued summons.*—*Re OLAPHAM, MINISTER OF FINANCE v. BURKE-ROCHE (B. C.)*, [1925] 4 D. L. R. 325; *on appeal sub nom. R. v. BURKE-ROCHE* (1926), 37 B. C. R. 313.—CAN.

### PART VI. SECT. 2, SUB-SECT. 1.—B.

*886 i. Not liable to duty—Under Probate Duty Act, R. S. B. C., 1924 (c. 202).*—*BOWMAN v. A.-G. (B. C.)*, [1926] 4 D. L. R. 834.—CAN.

## ESTOPPEL.

## Part I.—Nature and Classification.

5. *Add. Annotation*:—As to (3) *Refd. H. v. H.*, [1928] P. 206.
7. *Add. Annotation*:—*Refd. H. v. H.*, [1928] P. 206.
8. *Add. Annotations*:—*Refd. Hyman v. Hyman, Hughes v. Hughes* (1928), 139 L. T. 416. *Mentd. Statham v. Statham* (1928), 45 T. L. R. 127.
9. *Add. Annotation*:—*Refd. H. v. H.*, [1928] P. 206.
10. *Add. Annotations*:—*Mentd. The Jupiter* (No. 2), [1925] P. 69; *Employers' Liability Assce. Corpn. v. Sedgwick, Collins*, [1927] A. C. 95; *The Jupiter* (No. 2) (1927), 137 L. T. 333.
- 10a. —.]—Estoppel is a rule of evidence, & not a bar to the jurisdiction.—*H. v. H.*, [1928] P. 206; 97 L. J. P. 116; 139 L. T. 412; 44 T. L. R. 711; 72 Sol. Jo. 598.
11. *Add. Annotation*:—*Refd. H. v. H.*, [1928] P. 206.
28. *Add. Annotation*:—*Refd. Anderson v. Equitable Assce. Soc. of the United States* (1926), 134 L. T. 557.

## Part II.—Estoppel by Matter of Record.

52. *Add. Annotation*:—*Mentd. Freeborn v. Leeming*, [1926] 1 K. B. 160.
63. *Add. Annotation*:—*Consd. Selby v. Atkins* (1926), 135 L. T. 45.
96. *Add. Annotation*:—*Distd. Hoystead v. Taxation Comr.*, [1926] A. C. 155.
- 103a. —.]—Money-lenders Act, 1900 (c. 51), s. 1 (1), does not empower a judge to re-open a money-lending transaction where the money-lender has brought an action in respect of that transaction, & deft. borrower has consented to judgment, although the judgment may never have been drawn up & entered. The agreement to pay has become merged in the judgment, which is *res judicata* & not an agreement within the sect.—*COHEN v. JONESCO*, [1926] 1 K. B. 119; 95 L. J. K. B. 100; 90 J. P. 18; 42 T. L. R. 41; 70 Sol. Jo. 138; *reversd.* on other grounds, [1926] 2 K. B. 1; 95 L. J. K. B. 467; 134 L. T. 690; 90 J. P. 74; 70 Sol. Jo. 386; 42 T. L. R. 294, C. A.
122. *Add. Annotation*:—*Refd. King v. Sunday Pictorial Newspapers* (1920), Ltd. (1924), 133 L. T. 397.
141. *Add. Annotation*:—*Mentd. Re A Debtor*, [1927] 1 Ch. 410.
148. *Add. Annotation*:—*Consd. Conquer v. Boot*, [1928] 2 K. B. 336.
151. After this case add “Decree for restitution of conjugal rights.”—*See HUSBAND & WIFE*, No. 4767a.”
190. After this case add “———.”—*See, also, INSURANCE*, Vol. XXIX., pp. 122, 182–184, Nos. 752, 1404–6, 1408, 1409, 1420, 1422.”
- 204a. —For deduction of costs—Not *res judicata*.]—Pltf., who had been negotiating for the

PART II. SECT. 2, SUB-SECT. 1.—  
B. (a) ii.

sa. *Irregularities in procedure*.]—The dismissal of prior motions for irregularities in procedure does not prevent an adjudication on a subsequent proper & regular motion.—*Re DOTY & MARKS*, [1925] 4 D. L. R. 740.—CAN.

sb. *Action on immoral contract*.]—On the trial of an action the judge came to the conclusion that the evidence disclosed an illegal contract under which defts. were to receive part of the money obtained by pltf. while engaged in prostitution, & that the action was of an indecent character & unfit to be dealt with, & he dismissed it, the formal judgment stating that “this ct. does of its own motion & without adjudicating as between pltf. & defts. on the matters in dispute between them, order that this action be dismissed out of this ct., with costs.”—*Held*: the order precluded pltf. from again suing in respect of any of the causes of action included in the statement of claim.—*GUILBAULT v. BROTHIER* (1904), 24 C. L. T. 342; 10 B. C. R. 449.—CAN.

PART II. SECT. 2, SUB-SECT. 1.—  
B. (a) iv.

104 i. —.]—Where an order was made at chambers by consent of the parties, & an appeal was subsequently taken by the solr. for one of the parties that at the time of the making of the order he was under a misapprehension as to the effect of two judgments of the Supreme Ct.:—*Held*: the consent order operated as an estoppel.—*Re KLINE*, [1924] 1 D. L. R. 295; 56 N. S. R. 389.—CAN.

PART II. SECT. 2, SUB-SECT. 1.—  
B. (c).

201 i. *In administration suit—Originating summons against administrator—Subsequent probate action by administrator*.]—D.’s father was believed to have died intestate, & D. took out a grant of letters of administration *de bonis non*. Subsequently a sister of D. issued an originating summons, an order for administration was made, & also an order that four payments should be made to four sisters of D. out of the funds in ct. to the credit of the matter. D. was represented by counsel at the hearing of the summons upon which this last

order was made. Subsequently D. was advised by his solr. that a will which he knew his father had made, & which had been burned by his father’s directions, was not legally revoked, & D. instituted an action to revoke the grant of letters of administration *de bonis non* to himself, & to prove the will in solemn form:—*Held*: being an originating summons by a next-of-kin for administration against D. as administrator, it was not open to D. to challenge in those proceedings the fact that he was an administrator, & D. was not estopped by the above orders.—*DOOLEY v. DOOLEY*, [1927] 1 R. 190.—IR.

204 i. —.]—An interlocutory judgment, which definitely decides a question of law, & from which no appeal is taken, may be *res judicata* when the question is raised between the same parties, even in the same action.—*DIAMOND v. WESTERN REALTY CO.*, [1924] 2 D. L. R. 922; [1924] S. C. R. 308.—CAN.

st. *Order striking out guardian ad litem’s name from record*.]—*Held*: not to operate as *res judicata*.—*KUMAR GANGANAND SINGH v. MAHARAJAH SRI RAMESHWAR SINGH BAHADUR* (1927), 1 L. R. 6 Pat. 388.—IND.

purchase of a house, handed to deft., as his agent, the amount of the deposit & the balance of £490 payable to the vendor on completion & instructed deft. to pay this balance to the vendor when completion took place. Completion did not take place, & pltf. demanded the above balance from deft. & brought an action against him to recover it. The vendor claimed that pltf. was liable to him for £100 damages & directed deft. not to pay over that sum to pltf. Deft. thereupon issued an interpleader summons in respect of the £100, & the master directed an issue, & ordered that deft. should pay into ct. the £100 less his costs. On the trial of the issue the vendor's claim was dismissed. Pltf. then obtained leave to sign judgment for £390, for which deft. admitted liability. Pltf. now claimed the additional £100 in full without any deduction of deft.'s costs. Deft. contended that the master's order allowing deft. to deduct his costs was final:—*Held*: the master's order allowing the deduction of costs was not *res judicata*, but merely relieved deft. from paying the full £100 until the decision of the interpleader issue & the result of the action, & pltf. was entitled to recover the full £100.—*ALLNUTT v. MILLS* (1925), 42 T. L. R. 68.

209. To the cross-reference following this case add "In proceedings before Railway & Canal Commission—Under Mines (Working Facilities & Support) Act, 1923 (c. 20)."—See *MINES*, Vol. XXXIV., pp. 635, 636, No. 325."

213. *Add. Annotations*:—As to (4) *Refd.* Jacobson v. Frachon (1927), 138 L. T. 386. *Generally*, *Mentd.* Salvesen (or von Lorang) v. Austrian Property Administrator, [1927] A. C. 641.

214a. —.]—A previous decision on a matter in dispute between parties does not create an estoppel unless (1) the decision was given by a competent tribunal, & (2) the matter was raised & controverted before that tribunal & was clearly & finally decided by it.—*EASTWOOD & HOLT v. STUDER* (1926), 31 Com. Cas. 251.

215. *Add. Annotation*:—As to (2) *Refd.* Eastwood & Holt v. Studer (1926), 31 Com. Cas. 251.

222a. —.]—In July & Aug. 1920, the shareholders of a co. carrying on the business of whiskey distilling passed resolutions for its voluntary winding up. With a view to selling the distillery as a going concern the liquidator continued distilling up to Mar. 31, 1921, but not after, & pending the sale of the business he sold the co.'s stocks of whiskey as opportunity offered. Such sales of whiskey extended over a period of more than two years. An assessment to income tax was

made upon the co. for the year 1921-22 in respect of the profits of its business on the footing that the liquidator was carrying on the trade in that year. This assessment was discharged by the Special Comrs. on appeal on the ground that an assessment on the co. for the preceding year had been discharged by the recorder on appeal to him from the determination of the Special Comrs., & that they were bound to follow his decision:—*Held*: the Special Comrs. were not bound by the decision of the recorder regarding the 1920-21 appeal to discharge the 1921-22 assessment.—*EDWARDS v. "OLD BUSHMILLS" DISTILLERY CO., LTD. (IN LIQUIDATION)* (1926), 10 Tax Cas. 285, H. L.

232. *Add. Annotation*:—*Refd.* Hoystead v. Taxation Comr., [1926] A. C. 155.

256a. —.]—Applts.' mine was worked during the years 1919, 1920, & 1921 during two hundred & five days only owing to strikes & the low price obtainable for ore, though maintenance was continued during the whole period:—*Held*: the question of average annual value was not *res judicata* by a decision of the High Ct. of Australia between the parties as to the valuation for a previous year.—*BROKEN HILL PROPRIETARY CO. v. BROKEN HILL MUNICIPAL COUNCIL*, [1926] A. C. 94; 95 L. J. P. C. 33; 134 L. T. 335, P. C.

257. *Add. Annotation*:—*Distd.* Hoystead v. Taxation Comr., [1926] A. C. 155.

265a. *Decision that patent valid—Subsequent action for infringement—Whether defendant estopped from disputing validity of patent.*—In an action for infringement of a patent deft. denied infringement & pleaded that the patent was invalid by reason of lack of novelty & lack of subject-matter owing to common general knowledge & prior publication, want of utility, insufficiency & false suggestion in the specification, & he counter-claimed for revocation of the patent. In a previous action the patent had been attacked only on the ground of prior publication of two specifications, G. & V., & the issue of infringement had not been contested. In that action the patent had been held to be valid. It was contended by deft. that the ct. was bound by the prior decision only as to construction of the specification & not as to subject-matter, that the additional documents relied on showed features claimed in the specification not disclosed by G. or V., & that, owing to the issue of infringement not having been contested it had been unnecessary for the ct. to define the ambit of the claims:—*Held*: the ct. was not strictly bound by a prior decision as to anticipation,

PART II. SECT. 3, SUB-SECT. 1.—A.  
213 x. —.]—*VILLAGE OF HAGERSVILLE v. HAMBLETON*, [1927] 4 D. L. R. 1044; 61 O. L. R. 327.—CAN.

PART II. SECT. 3, SUB-SECT. 1.—  
B. (b).

*sk. Agency.*—Where a judgment for indemnity has been pronounced between two parties, on the ground that one was the principal & the other the agent, the judgment is conclusive as to that fact.—*PLUMB v. MACDONALD (W. C.) REGISTERED, LATIMER v. FOSTER TOBACCO CO., LTD.*, [1926] 1 D. L. R. 899; 58 O. L. R. 322.—CAN.

PART II. SECT. 3, SUB-SECT. 1.—  
B. (c).

225 i. *General rule.*—Where the

cause of action is different from what it was in the first action, the matter is not *res judicata*.—*BRANIGAN v. SABA*, [1924] N. Z. L. R. 481.—N.Z.

PART II. SECT. 3, SUB-SECT. 1.—  
B. (d).

230 xvii. —.]—Resp. claimed to deduct \$1,000 in computing the profits for the year ending Mar. 31, 1921, & the recorder allowed the deduction claimed. The question came again before the Special Comrs. by way of an appeal from an assessment for 1922-23:—*Held*: the recorder's decision on the assessment for 1921-22 was binding, & the question was *res judicata*.—*ALYMER v. MAHAFFEY*, [1925] N. 167; 16 Tax. Cas. 594.—IR.

230 xviii. —.]—*WILSON v. CAMERON* (1842), 1 Kerr, 542.—CAN.

230 xix. —.]—*CHAMBERS v. DOLLAR & STEVENSON* (1870), 29 U. C. R. 599.—CAN.

230 xx. —.]—*JONES v. CITY OF ST. JOHN* (1901), 31 S. C. R. 320.—CAN.

230 xxi. —.]—*FOSTER v. REAUME*, [1926] 1 D. L. R. 1024; 60 O. L. R. 63.—CAN.

PART II. SECT. 3, SUB-SECT.

254 xi. —.]—*CHAMBERS v.* (1875), 25 C. P. 180.—CAN.



was open to deft. to prove anticipation by documents not before the ct. in the previous action.—**HIGGINSON & ARUNDEL v. PYMAN, SAME v. SAME** (1926), 43 R. P. C. 291, C. A.

—**Mentd.** *Re* Higginson & Arundel's Patent R. P. C. 430.

276. **Add. Annotations:**—As to (3) **Apprvd.** *Hoystead v. Taxation Comr.*, [1926] A. C. 155. **Refd.** *Pickford v. Quirke, Pickford v. I. R. Comrs.* (1927), 44 T. L. R. 15.

291. **Add. Annotation:**—**Generally**, **Refd.** *Conquer v. Boot*, [1928] 2 K. B. 336.

294. **Add. Annotation:**—**Refd.** *Hoystead v. Taxation Comr.*, [1926] A. C. 155.

296a. **Admission.**—Under a will the annual income from an estate in Australia was divisible by the trustees between testator's daughters. The trustees objected to an assessment for the financial year 1918–1919 under Land Tax Assessment Act, 1910–1916, of Australia; they claimed under sect. 38 (7) of the Act a deduction of £5,000 in respect of the share of each daughter, & a case was stated for the opinion of the Full Ct. of the High Ct. upon the questions: (1) whether the shares of the joint owners, or of any & which of them, in the land were original shares within sect. 38; (2) how many deductions of £5,000 resp. should make. The Full Ct. answered these questions as follows: (1) the shares of the six children surviving at the date of the assessment; (2) six. Upon the assessment for 1919–1920 the comr. allowed only one deduction of £5,000, contending that the beneficiaries were not joint owners within the Act. Upon a case stated the Full Ct. upheld that view, & held that the comr. was not estopped by the previous decision:—**Held**: the comr. was estopped, since although in the previous litigation no express decision had been given whether the beneficiaries were joint owners, it being assumed & admitted that they were, the matter so admitted was fundamental to the decision then given.—**HOYSTEAD v. TAXATION COMR.**, [1926] A. C. 155; 94 L. J. P. C. 79; 134 L. T. 354; 42 T. L. R. 207, P. C.

**Annotation:**—**Consd.** *Pickford v. Quirke, Pickford v. I. R. Comrs.* (1927), 44 T. L. R. 15.

## PART II. SECT. 3, SUB-SECT. 1.— B. (f).

274 ix. —.—.]—**Re** *GLOBE WINE CO.* (Sask.), [1926] 1 D. L. R. 213.—CAN.

274 x. —.—.]—**CASSIDY v. INGOLDSBY** (1875), 36 U. C. R. 339.—CAN.

## PART II. SECT. 3, SUB-SECT. 1.— B. (g).

276 ii. —.—.]—An action was brought by a co. to remove two of its trustees for refusing to obey an order of the ct. made in a previous action directing them to join with the other trustee in assessing certain shares:—**Held**: deft. trustees were estopped by the judgment in the previous action from objecting to the status of directors who had ordered the assessment of the stock, as that was a question which should have been raised in that action.—**FRASER RIVER MINING CO. v. GALLAGHER** (1896), 5 D. C. R. 82.—CAN.

276 iii. —.—.]—**FORSYTH v. BURY** (1887–8), 15 S. C. R. 643.—CAN.

## PART II. SECT. 3, SUB-SECT. 1.— B. (i).

303 i. **General rule.**—**CARPENTER v.**

**COMMERCIAL BANK OF CANADA** (1862), 2 E. & A. 111.—CAN.

## PART II. SECT. 3, SUB-SECT. 1.— C. (a) i.

329 xxvii. —.—.]—**Co-defendants.**—If the relief given to pltf. does not require or involve a decision of any case between co-defts., they will not be bound as between each other by any proceeding which may be necessary only to the decree pltf. obtains.—**MA PAN NYUN v. MAUNG SIT PHAUNG** (1928), 1 L. R. 6 Ran. 575.—IND.

## PART II. SECT. 3, SUB-SECT. 1.— C.

346 ii. —.—.]—**Exception on covenant of indemnity.**—An action on a covenant of indemnity is an exception to the general rule that an estoppel is binding only on privies.—**LONDON GUARANTEE & ACCIDENT CO. v. DAVIDSON**, [1926] 1 D. L. R. 66; [1926] 1 W. W. R. 148; 36 B. C. R. 301.—CAN.

## PART II. SECT. 3, SUB-SECT. 1.— C. (d).

374 ii. —.—.]—**SONACHALAM PILLAI v. KUMARAVELU CHETTIAR** (1927),

384. **Add. Annotation:**—**Refd.** *Hoystead v. Taxation Comr.*, [1926] A. C. 155.

366. **Add. Annotation:**—**Refd.** *Mackenzie-Kennedy v. Air Council*, [1927] 2 K. B. 517.

381. **Add. Annotation:**—**Mentd.** *More v. Weaver*, [1928] 2 K. B. 520.

385a. —.—.]—Circumstances (*see* **CONFLICT OF LAWS**, No. 1135a, *ante*) in which:—**Held**: as pltf. were not parties to the Turkish proceedings the doctrine of *res judicata* could not apply to the question of breach of contract.—**ELLERMAN LINES, LTD. v. READ** (1927), 44 T. L. R. 7; *reversd.* on other points (1928), 44 T. L. R. 285, C. A.

405. **Add. Annotation:**—**Refd.** *Wilson v. Maple Mill* (1925), 95 L. J. K. B. 666.

417. **Add. Annotation:**—**Mentd.** *A.-G. v. Hornsey B. C.* (1926), 43 T. L. R. 92.

422. **Add. Annotations:**—**Refd.** *Ingenohl v. Wing On (Shanghai)* (1927), 44 R. P. C. 343; *Salvesen (or von Lorang) v. Austrian Property Administrator*, [1927] A. C. 641. **Mentd.** *The Goulandris*, [1927] P. 182.

432. **Add. Annotation:**—**Refd.** *A.-G. v. Denby*, [1925] Ch. 596.

447a. —.—.]—To sustain a second action on the same contract or the same facts there must be a distinct cause of action, not merely different damages.—**CONQUER v. BOOT, [1928] 2 K. B. 336; 97 L. J. K. B. 452; 139 L. T. 18; 44 T. L. R. 486, D. C.**

457. **Add. Annotation:**—**Consd.** *Conquer v. Boot*, [1928] 2 K. B. 336.

460. **Add. Annotation:**—**Mentd.** *The Goulandris*, [1927] P. 182.

461. **Add. Annotation:**—**Mentd.** *Burrell v. Leven* (1926), 42 T. L. R. 407.

478. **Add. Annotation:**—**Refd.** *Mackenzie-Kennedy v. Air Council*, [1927] 2 K. B. 517.

477. **Add. Annotation:**—**Mentd.** *The Goulandris*, [1927] P. 182.

480. **Add. Annotations:**—**Consd.** *Conquer v. Boot*, [1928] 2 K. B. 336. **Refd.** *Debenham v. Perkins* (1925), 133 L. T. 252.

482. **Add. Annotation:**—**Refd.** *Palmer v. Crone*, [1927] 1 K. B. 804.

483. **Add. Annotation:**—**Refd.** *Conquer v. Boot*, [1928] 2 K. B. 336.

1 L. R. 51 Mad. 128.—IND.

## PART II. SECT. 3, SUB-SECT. 2.— B. (a) ii.

465 i. **Lease—Unsuccessful action for breach of covenant against subletting—Action for ejectment on conviction under licensing laws.**—Applt., lessee from resp. & licensee of an hotel, was convicted of an offence under Liquor Act, 1912 (N. S. W.). After the conviction, by a writ issued on the same day, resp. brought an action for ejectment against applt. claiming to be entitled to possession on the ground of a breach by applt. of his covenant not to assign or sublet without resp.'s leave, & judgment was entered for applt. By a writ issued about a year after the issue of the writ in the first action, resp. brought another action for ejectment against applt., claiming to be entitled to possession on the ground of the conviction:—**Held**: resp. was not debarred from relying on the conviction by reason of the fact that in the first action he might have asserted the right of re-entry which it gave him.—**COHEN v. LAPIN** (1924), 35 C. L. R. 347; 25 S. R. N. (S. W. 291; 42 N. S. W. W. N. 7.—AUS.

492. *Add. Annotation*:—As to (1) *Reid. Eastwood & Holt v. Studer* (1926), 31 Com. Cas. 251.

—.]—*Held*: a statement of claim should be struck out, & the action dismissed, on the ground that the matter was *res judicata* by a previous decision.

The ct. has inherent jurisdiction to strike out as frivolous or vexatious a claim or defence, which has either been already decided in previous proceedings, against the party raising it, or might have been raised in a previous proceeding in which the facts necessary to raise it have been decided against the person who desires to raise them (SCRUTTON, L.J.).—MACKENZIE-KENNEDY v. AIR COUNCIL, [1927] 2 K. B. 517; 96 L. J. K. B. 1145; 43 T. L. R. 733; 71 Sol. Jo. 633, C. A.

508a. —.] — MACKENZIE-KENNEDY v. AIR COUNCIL, No. 498a, *ante*.

510. *Add. Annotation*:—*Reid. Conquer v. Boot*, [1928] 2 K. B. 336.

511. *Add. Annotation*:—As to (2) *Consd. Conquer v. Boot*, [1928] 2 K. B. 336.

528. *Add. Annotation*:—*Mentd. Fishwick v. Gyani*, [1925] 1 K. B. 617.

538. *Add. Annotations*:—As to (1) *Reid. Firm of R. M. K. R. M. v. Firm of M. R. M. V. L., R. M. K. R. M. Somasundaram Chetty v. M. R. M. V. L. Supramanian Chetty* (1926), 95 L. J. P. C. 197; *Pirie v. Richardson* (1926), 70 Sol. Jo. 1023; *Cumberland v. Lanarkshire Tram Co.* (1927), 20 B. W. C. C. 780. *Generally, Reid. Jenkins v. Jenkins*, [1928] 2 K. B. 501.

540. *Add. Annotations*:—*Apld. Pirie v. Richardson*, [1927] 1 K. B. 448. *Reid. Re Pennington & Owen*, [1925] Ch. 825; *Bennett v. Whitehead* (1926), 96 L. J. K. B. 268; *Hardie & Lane v. Chiltern* (1927), 96 L. J. K. B. 773.

546. *Add. Annotation*:—*Reid. Pirie v. Richardson*, [1927] 1 K. B. 448.

550. In the last line for "case of the law" read "case out of the law."

*Add. Annotations*:—*Reid. Pirie v. Richardson*, [1927] 1 K. B. 448; *Cumberland v.*

*Lanarkshire Tram. Co.* (1927), 20 B. W. C. C. 780.

After this case add "*Compare Contract*, No. 163a."

b. *Add. Annotation*:—*Generally, Reid. Cumberland v. Lanarkshire Tram. Co.* (1927), 20 B. W. C. C. 780.

559. *Add. Annotations*:—As to (1) *Apld. Brooke v. Bool*, [1928] 2 K. B. 578. *Reid. Debenham v. Perkins* (1925), 133 L. T. 252.

573. *Add. Annotation*:—As to (2) *Reid. Firm of R. M. K. R. M. v. Firm of M. R. M. V. L.*, [1926] A. C. 761.

575a. ————— *Power to set aside judgment.*

—A judgment in Penang against deft., described in the writ by the group of letters under which a money-lending firm there carries on business followed by the name of the firm's local representative, is a judgment against the local representative personally, whether he is a partner in, or merely an agent for, the firm. A subsequent suit for the same debt against the firm itself is barred. The ct., including the appellate ct., has no jurisdiction on motion to set aside the earlier judgment on the ground that pltf. was ignorant of its effect in law.—*FIRM OF R. M. K. R. M. v. FIRM OF M. R. M. V. L.*, [1926] A. C. 761; 135 L. T. 645; *sub nom. FIRM OF R. M. K. R. M. v. FIRM OF M. R. M. V. L., R. M. K. R. M. SOMASUNDARAM CHETTY v. M. R. M. V. L. SUPRAMANIAN CHETTY*, 95 L. J. P. C. 197; 42 T. L. R. 686, P. C.

577. *Add. Annotations*:—*Consd. Bennett v. Whitehead*, [1926] 2 K. B. 380. *Reid. Anderson v. Equitable Assce. Soc. of United States* (1926), 134 L. T. 557.

577a. *Action against partner—Subsequent action against firm.*—*FIRM OF R. M. K. R. M. v. FIRM OF M. R. M. V. L.*, No. 575a, *ante*.

579. *Add. Annotations*:—As to (2) *Reid. Debenham v. Perkins* (1925), 133 L. T. 252; *Bennett v. Whitehead*, [1926] 2 K. B. 380; *Firm of R. M. K. R. M. v. Firm of M. R. M. V. L., R. M. K. R. M. Somasundaram Chetty v. M. R. M. V. L. Supramanian Chetty* (1926), 95 L. J. P. C. 197.

## PART II. SECT. 3, SUB-SECT. 2.— B. (b).

496 iii. —.]—WILLIAMS & SEARS v. RICHARDS (1918), 25 B. C. R. 19.—CAN.

## PART II. SECT. 3, SUB-SECT. 2.— B. (d).

507 vi. —.]—Where a cause of action is shown & the claim is defended, tried & decided, or where the real issue between the parties, although not set out in the statement of claim, is tried & decided, it is not open to pltf., by a subsequent action relating to the same matters involved in the earlier proceedings, to put forward a claim or plea which he had an opportunity of putting forward in the earlier proceedings but which he either omitted or chose not to put forward at that time. Such claim or plea is *res judicata*.—WAHL v. NUGENT, [1924] 3 D. L. R. 679; [1924] 2 W. W. R. 1138; 18 Sask. L. R. 592; *revg.*, [1924] 2 D. L. R. 97; [1924] 1 W. W. R. 939.—CAN.

507 vii. —.]—A suit is not barred by *res judicata* where, though the matter which forms the ground of attack might have been made a ground

of attack in the former suit, pltf. were not bound to do so.—ABID-UD-DIN v. BISHARAT, ALI, ETC., RAOF-UN-DIN, ETC. (1927), 1 L. R. 8 Lah. 308.—IND.

507 viii. —.]—SOKOLOSKI v. WINISKI, [1927] 2 D. L. R. 1029; [1927] 1 W. W. R. 972; 21 Sask. L. R. 455.—CAN.

## PART II. SECT. 3, SUB-SECT. 2.— B. (f).

d i. *Award of damages for delay—Subsequent proceedings for compensation for further delay.*—Where there was only one cause of action, & it was pltf.'s right to have his damages assessed once for all:—*Held*: the finding that pltf. could recover no damages after commencement of a subsequent action was binding upon both parties & was not, though erroneous, open to dispute. The judgment had not been appealed from & the question was *res judicata* between the parties.—MCINTOSH v. PARENT, [1924] 4 D. L. R. 420; 55 O. L. R. 552.—CAN.

## PART II. SECT. 3, SUB-SECT. 2.— C. (c)

572 i. *Unsatisfied judgment.*—The

fact that a decree has been obtained against one of a number of joint & several obligants does not preclude a fresh action being brought against the others, if satisfaction has not been got under the decree already obtained.—STEVEN v. BROADY NORMAN & Co., [1928] S. C. 351.—SCOT.

## PART II. SECT. 3, SUB-SECT. 2.— C. (d) i.

n i. —.]—Where it had not been established that in contracting to pay a commission, deft. had been acting as the agent of H. & that pltf. had elected to look to H. for payment:—*Held*: a judgment by default recovered by pltf. against H. did not render pltf.'s claim against deft. *res judicata*, since the cause of action against deft., which it was admitted pltf. had before he sued H., did not exist against the latter & was not affected by the judgment.—WILLIAMS v. RODGERS, [1921] 2 W. W. R. 185; 56 D. L. R. 691; 60 S. C. R. 664.—CAN.

## PART II. SECT. 3, SUB-SECT. 2.— C. (e).

586 iv. —.]—ABDUR RAHIM v. MAHOMED BARKAT ALI (1927), 55 L. R. Ind. App. 96.—IND.

580. *Add. Annotation*:—*Distd. Debenham v. Perkins* (1925), 133 L. T. 252.

581a. ———— Judgment for debt incurred after separation.]—Where an action for goods sold is brought against a wife on a bill containing a number of items, & judgment is recovered against her on all items purchased after a certain date, on the ground that since that date she has been acting as principal by reason of her having separated from her husband on that date, proceedings may subsequently be taken against the husband as agent for the items purchased prior to that date, since there are two distinct causes of action, & there has been no election by suing of the wife to judgment on the whole or part

of one undivided debt.—*DEBENHAM'S, LTD. v. PERKINS* (1925), 133 L. T. 252, D. C.

593. *Add. Annotations*:—*Apld. Dexters v. Hill Crest Oil Co. (Bradford)*, [1926] 1 K. B. 348. *Refd. Anderson v. Equitable Assce. Soc. of the United States* (1926), 134 L. T. 557.

610. *Add. Annotation*:—*Generally, Mentd. R. v. Hertfordshire JJ., Ex p. Larsen*, [1926] 1 K. B. 191.

647. *Add. Annotation*:—*As to (1) Consd. Pirie v. Richardson*, [1927] 1 K. B. 448.

659. *Add. Annotation*:—*As to (2) Apld. The Point Breeze*, [1928] P. 135.

After this case add “*See, also, ADMIRALTY, No. 706b.*”

### Part III.—Estoppel Quasi of Record.

677. *Add. Annotation*:—*Mentd. Saklat v. Bella* (1925), 42 T. L. R. 25.

686. *Add. Annotation*:—*Distd. Re Stollery, Weir v. Treasury Solicitor*, [1926] Ch. 284.

687. *Add. Annotation*:—*Refd. York Glass Co. v. Jubb* (1925), 134 L. T. 36.

692. *Add. Annotation*:—*Mentd. Browning v. Crumlin Valley Collieries*, [1926] 1 K. B. 522.

### Part V.—Estoppel by Deed.

701. *Add. Annotations*:—*Mentd. Palmolive Co. (of England) v. Freedman* (1927), 44 T. L. R. 86; *English Hop Growers v. Dering*, [1928] 2 K. B. 174.

734. *Add. Annotation*:—*Refd. Torbay Hotel v. Jenkins*, [1927] 2 Ch. 225.

776. *Add. Annotation*:—*As to (1) Refd. Parr v. A.-G.*, [1926] A. C. 239.

786a. ————.]—The recital, in a deed, of a former deed between the same parties, proves, as between the parties, so much of the former deed as is recited, but no more.—*GILLETT v. ABBOTT* (1838), 7 Ad. & El. 783; 3 Nev. & P. K. B. 24; 1 Will. Woll. & H. 91; 7 L. J. Q. B. 61; 2 Jur. 300; 112 E. R. 665.

*Annotation*:—*Refd. Fishmongers Mystery Wardens &*

*Commonalty v. Robertson & Staines* (1848), 18 L. J. C. P.

916. *Add. Citation*:—94 L. J. Ch. 159.

*Add. Annotation*:—*Mentd. Birkdale District Electric Supply Co. v. Southport Corpn.*, [1926] A. C. 355.

993a. *S. P. SEABOURNE v. POWEL* (1686), 2 Vern. 11; 23 E. R. 619.

*Annotation*:—*Refd. Smith v. Osborne* (1857), 6 H. L. Cas. 375.

993b. ————.]—*CLAYTON v. NEWCASTLE (DUKE)* (1682), 2 Cas. in Ch. 112; 22 E. R. 871, L. C.

*Annotation*:—*Refd. Morse v. Faulkner* (1792), 3 Swan. 429, n.

#### PART II. SECT. 4, SUB-SECT. 3.

623 i. *General rule.*]—Lack of jurisdiction in the ct. deprives a judgment of any effect whether by estoppel or otherwise, even though the party alleged to be estopped sought the assistance of the ct. whose jurisdiction is impugned.—*McINTOSH v. PARENT*, [1924] 4 D. L. R. 420; 55 O. L. R. 552.—CAN.

#### PART II. SECT. 5, SUB-SECT. 1.

638 x. ————.]—*JOURNAY v. RAILWAY PASSENGERS ASSURANCE CO.*, [1924] 1 D. L. R. 808; 50 N. B. R. 501.—CAN.

#### PART II. SECT. 5, SUB-SECT. 2.

st. *Should not be pleaded in statement of claim.*]—*VICTORIA LUMBER & MANUFACTURING CO., LTD. v. THOMSEN & CLARK (B. C.)*, [1926] 4 D. L. R. 971; [1926] 3 W. W. R. 459.—CAN.

ss. *Should not be pleaded in counter-claim.*]—*VICTORIA LUMBER & MANUFACTURING CO., LTD. v. THOMSEN & CLARK (B. C.)*, [1926] 4 D. L. R. 971; [1926] 3 W. W. R. 459.—CAN.

#### PART V. SECT. 2, SUB-SECT. 2.

709 i. *General rule.*]—T., to whom a

patent of land issued, by deed poll made prior thereto, sold the land to L.:—*Held*: in obtaining the patent T. was estopped by the deed from setting up title in himself under the patent.—*ROBERTSON v. DALEY* (1886), 11 O. R. 352.—CAN.

#### PART V. SECT. 8, SUB-SECT. 3.—C.

993 vii. ————.]—*DOE d. TIFFANY v. McEWAN* (1837), 5 O. S. 598.—CAN.

#### PART V. SECT. 9.

*See cases in Part II., Sect. 5, sub-sect. 2, ante.*



## Part VI.—Estoppel in Pais.

1021. *Add. Annotations*:—As to (2) *Reid. Jones v. Waring & Gillow*, [1926] A. C. 670. *Generally, Reid. Commonwealth Trust v. Akotey* (1925), 94 L. J. P. C. 167.
1036. *Add. Annotation*:—*Reid. Lloyds Bank v. Chartered Bank of India, Australia & China* (1928), 97 L. J. K. B. 609.
- 1036a. —. —.]—If a man misrepresents a fact, to that fact he is bound, if any other person misled by such misrepresentation acts upon it, & thereby suffers damage.—*BEATTIE v. EBURY (LORD)* (1874), L. R. 7 H. L. 102; 44 L. J. Ch. 20; 30 L. T. 581; 38 J. P. 564; 22 W. R. 897, H. L.; *affg.* (1872), 7 Ch. App. 777, L. J.
- Annotations*:—*Mentd. Weeks v. Propert* (1873), L. R. 8 C. P. 427; *McCollin v. Gilpin* (1880), 5 Q. B. D. 390; *Yorkshire Ry. Waggon Co. v. Maclure & Cornwall Minerals Ry.* (1881), 45 L. T. 747; *West London Commercial Bank v. Kitson* (1884), 13 Q. B. D. 360; *Robertson v. Harris*, [1900] 2 Q. B. 117; *Halbot v. Lens*, [1901] 1 Ch. 344; *Oliver v. Bank of England*, [1901] 1 Ch. 652; *Rainford v. Keith & Blackman Co.*, [1905] 1 Ch. 296.
1038. *Add. Citation*:—132 L. T. 22.
1040. *Add. Annotation*:—*Appld. Huddersfield Fine Worsteds v. Todd* (1925), 134 L. T. 82.
1043. *Add. Annotation*:—*Reid. Houghton v. Nothard, Lowe & Wills* (1927), 44 T. L. R. 76.
1065. In the twelfth line on p. 297, after the word "agreement," insert "defts. pleaded that the agreement."
1066. *Add. Annotations*:—*Consd. Kreditbank Cassel G. m. b. H. v. Schenkers*, [1926] 2 K. B. 450. *Distd. Liggett (Liverpool) v. Barclays Bank* (1927), 137 L. T. 443. *Reid. Houghton v. Nothard, Lowe & Wills*, [1927] 1 K. B. 246.
1068. *Add. Annotations*:—*Reid. Houghton v. Nothard, Lowe & Wills*, [1927] 1 K. B. 246; *Liggett (Liverpool) v. Barclays Bank* (1927), 137 L. T. 443.
1108. *Add. Annotation*:—*Reid. Evans v. Webster* (1928), 45 T. L. R. 136.
1111. *Add. Annotations*:—*Distd. Reckitt v. Barnett, Pembroke & Slater* (1927), 44 T. L. R. 63. *Reid. Jones v. Waring & Gillow*, [1926] A. C. 670; *British & North European Bank v. Zalstein*, [1927] 2 K. B. 92; *Home & Colonial Insee. v. London Guarantee & Accident Co.* (1928), 45 T. L. R. 134.
1130. *Add. Annotation*:—*Mentd. Re Wait*, [1927] 1 Ch. 606.
1147. *Add. Annotation*:—*Reid. Laurie & Morewood v. Dudin*, [1926] 1 K. B. 223.
- 1148a. —. —.]—Defts., warehousemen & wharfingers, held 600 quarters of maize belonging to A., who sold 200 quarters thereof to W. & Co., who sold them to plffs., giving to the latter a delivery note, which they lodged with defts. Defts. did not acknowledge it or object to it, but some days later, no weighing out or appropriation of the 200 quarters having taken place, A. stopped delivery. It was contended that on the sale to W. & Co. the latter became tenants in common with A. of the 600 quarters, with the right in W. & Co. to assign their interest therein to plffs., although no appropriation of the 200 quarters had taken place:—*Held*: (1) plffs. had no claim to the maize; (2) defts. & A. were not estopped from denying that plffs. were the owners of the 200 quarters of maize.
- No doubt property can be acquired by estoppel. In one aspect estoppel does not create a title but merely enables plff. to rely upon the doctrine & to treat the property as if it had been transferred (*SANKEY, J.*).—*LAURIE & MOREWOOD v. DUDIN (JOHN) & SONS*, [1925] 2 K. B. 383; 94 L. J. K. B. 928; 30 Com. Cas. 280; *affd.*, [1926] 1 K. B. 223; 95 L. J. K. B. 191; 134 L. T. 309; 42 T. L. R. 149; 31 Com. Cas. 96, C. A.
- Annotation*:—As to (1) *Appld. Re Wait*, [1927] 1 Ch. 606.
1154. *Add. Annotation*:—*Mentd. Jones v. Waring & Gillow*, [1926] A. C. 670.

### PART VI. SECT. 3, SUB-SECT. 1.—A.

1032 i. *How estoppel arises.*—Estoppel arises where a man is precluded from denying the truth of anything which he has represented to be a fact, though it is not a fact.—*Re MONTGOMERY v. DIAMOND, DIAMOND v. MONTGOMERY*, [1925] 4 D. L. R. 736.—CAN.

1040 i. *Where all parties know the truth—No representation.*—A tenant after the expiry of his original lease received from his landlord notice to quit at the end of the following month. In reply, he wrote a letter which contained (*inter alia*) an admission that he was a monthly tenant. At the hearing of a suit in ejectment the tenant contended that his original lease being for manufacturing purposes he had a tenancy from year to year, & was entitled to six months' notice:—*Held*: he was not estopped from so contending as the facts affecting the tenancy were within the knowledge of both parties.—*JACKS & Co. v. JOOSAB MAHOMED* (1923), 1 L. R. 48 Bom. 38.—IND.

### PART VI. SECT. 3, SUB-SECT. 1.—B. (a).

1041 xiv. —. —.]—In 1894 applt. granted a lease of land "from year to year" to resps. In 1903 resps. wished to build a house on the land & applt. wrote that the lease was a permanent

one, though the rent was liable to enhancement. Resps. built a house & applt. received a bonus in respect of it. In 1916 applt. sought to eject resps.:—*Held*: whether the lease was a permanent one under the agreement, applt.'s statement in the letter that it was so was a representation of fact & not an expression of opinion, & he was estopped from denying it.—*FORBES v. RAJLI* (1925), L. R. 52 Ind. App. 178.—IND.

1044 i. —. —.]—In order to found an estoppel a representation must be of an existing fact, not of a mere intention, & a promise which is a mere statement of an intention to do something in the future is not sufficient.—*RAZANSOFF v. BROUNSTEIN*, [1924] 2 D. L. R. 1170; 2 W. W. R. 500.—CAN.

1044 ii. *S. P. ONTARIO EQUITABLE LAW & ACCIDENT INSURANCE CO. v. BAKER*, [1926] 2 D. L. R. 289; [1926] S. O. R. 297.—CAN.

### PART VI. SECT. 3, SUB-SECT. 1.—B. (g) ii.

1096 xviii. —. —.]—If a person sets up estoppel he must show that he has altered his position to his prejudice owing to the conduct of the other party whom he claims is estopped.—*ST. JOHN COUNTY HOSPITAL v. PROX*, [1924] 2 D. L. R. 163; 51 N. B. R. 324.—CAN.

[1924] 2 D. L. R. 163; 51 N. B. R. 324.—CAN.

1096 xix. —. —.]—A tenant in reply to a month's notice to quit wrote a letter containing (*inter alia*) an admission that he was a monthly tenant. At the hearing of a suit in ejectment, he contended that he was entitled to six months' notice:—*Held*: he was not estopped from so contending, as the landlord having already given notice to quit had not shown that he had altered his position by reason of the admission.—*JACKS & Co. v. JOOSAB MAHOMED* (1923), 1 L. R. 48 Bom. 38.—IND.

1096 xx. —. —.]—In order to create an estoppel *in pais* it must be shown that he who desires to take advantage of it has acted upon the untrue representation as true, not knowing it to be untrue, thereby altering his position to his prejudice.—*HUFFMAN v. ROSS* (1925), 57 O. L. R. 329.—CAN.

### PART VI. SECT. 3, SUB-SECT. 2.—A.

*sd. As to fault for accident.*—The fact that plff., the driver of a vehicle which came into collision with a motor car, stated immediately after the accident that he misjudged the distance of the motor car:—*Held*: not to raise any estoppel.—*HUNT v. MORGAN (Alta.)*, [1926] 3 W. W. R. 804; [1927] 1 D. L. R. 267.—CAN.

1209. *Add. Annotation*:—*Mentd.* Brown v. Harrison (1927), 96 L. J. K. B. 1025.
1213. *Add. Annotation*:—*As to* (2) *Reid.* Anderson v. Equitable Assce. Soc. of the United States (1926), 134 L. T. 557.
1219. *Add. Citation*:—1 B. R. A. 210.  
*Add. Annotation*:—*As to* (1) *Expld. & Distd.* Gateshead Union Assmt. Com. v. Redheugh Colliery, [1925] A. C. 309.
1223. *Add. Annotation*:—*Mentd.* London Holeproof Hosiery Co. v. Padmore (1928), 44 T. L. R. 499.
1227. *Add. Annotation*:—*Consd.* Houghton v. Nothard, Lowe & Wills (1927), 44 T. L. R. 76.
- 1228a. *As to performance of statutory duty or exercise of statutory discretion.*—Performance of a statutory duty, or exercise of a statutory discretion, by a corporate local authority is not prejudiced by any prior action which that authority may have taken without aid from the statutes. No estoppel can arise in such a case.—*SUNDERLAND CORPN. v. PRIESTMAN*, [1927] 2 Ch. 107; 96 L. J. Ch. 441; 137 L. T. 688; 26 L. G. R. 64.
1238. *Add. Annotation*—*Consd.* Hyman v. Hyman, Hughes v. Hughes (1928), L. T. 416.
1247. *Add. Citations*:—94 L. J. P. C. 93; 132 L. T. 511.
1257. *Add. Annotations*:—*Consd.* Huddersfield Fine Worsteds v. Todd (1925), 42 T. L. R. 52. *Mentd.* *Re Ellis*, [1925] Ch. 564.
1259. *Add. Citation*:—132 L. T. 99.  
*Add. Annotations*:—*Mentd.* The Jupiter (No. 2), [1925] P. 69; Employers' Liability Assce. Corpn. v. Sedgwick, Collins, [1927] A. C. 95.
1265. *Add. Annotations*:—*Reid.* A.-G. v. Denby, [1925] Ch. 593. *Mentd.* The Jupiter (No. 3) (1927), 137 L. T. 333.
1294. *Add. Annotations*:—*Reid.* Jones v. Waring & Gillow, [1926] A. C. 670; British & North European Bank v. Zalzein, [1927] 2 K. B. 92.
- 1297a. *Preparation of deed by solicitor.*—A conveyance was made by L. to his son for the purpose of giving the latter a colorable qualification to kill game:—*Held*: the solr, who prepared & attested the deed, knowing the purpose for which it was to be used & himself actively furthering the object of the parties, could not afterwards, in trover by the son for the deed, contend that nothing passed to him under it.—*LORD v. WARDLE* (1837), 3 Bing. N. C. 386; 4 Scott, 402; 1 Jur. 382; 132 E. R. 572.
- Add. Annotation*:—*Mentd.* Riversdale Mill Co. v. Hart (1926), 43 T. L. R. 73.
- 1318a. *Payment of rent not due.*—The predecessors in title of defts. were owners in fee simple of land including both the surface & the strata below the surface. They conveyed the land to pltfs.' predecessors by a deed which contained an exception & reservation of all mines & veins of coal in or under the land. Defts. & their predecessors worked the coal mines under the land & made an underground road which was not confined to the seams of coal, but was cut also through the adjacent strata. Along this road they carried coal obtained from mines beyond the limits of the land conveyed to pltfs.' predecessors. Defts. & their predecessors had for some years paid rent to pltfs. in the belief that they were bound to do so under

PART VI. SECT. 3, SUB-SECT. 2.—  
B. (a).

q i. —  
*Held*: the sellers were not estopped from proving their ownership of the safe.—*WALKER v. HYMAN* (1877), 1 A. R. 345.—CAN.

q ii. —  
*Held*: there was evidence of an estoppel.—*WEST v. O'LEARY* (1894), 32 N. B. R. 286.—CAN.

PART VI. SECT. 3, SUB-SECT. 3.—A.

1221 i. (*General rule.*)—*DEMINGS v. BEDELL*, [1925] 3 D. L. R. 1063.—CAN.

1221 ii. —.—*PATTERSON v. SMITH* (1877), 42 U. C. R. 1.—CAN.

1221 iii. —.—*Where* pltf. induced the ct. to grant him a judgment recognising deft.'s right to timber:—*Held*: he was estopped from afterwards contending that deft. had no right to dispose of timber.—*MANLEY v. O'BRIEN, Re MACKINTOSH* (1901), 22 C. L. T. 74; 8 B. C. R. 280.—CAN.

1221 iv. —.—*BAKER v. BAKER* (1904), 40 N. S. R. 470.—CAN.

1225 i. *As to position of party estopped.*—A party is not disabled by law from explaining a matter of evidence, only because his explanation consists of circumstances which include wrongdoing on his part.—*PRESS v. MATHERS*, [1927] V. L. R. 326; 48 A. L. T. 183; [1927] Argus. L. R. 197.—AUS.

PART VI. SECT. 3, SUB-SECT. 3.—B.

1233 ii. —.—*The fact that a person, who has recovered a judgment, takes part in a reference directed thereby, does not bring him within the rule that a person, who after recovering a judgment puts it into effect & accepts benefits under it, is estopped from appealing therefrom.*—*MAINFROID* [MAINFROID (Alta.)

[1926] 4 D. L. R. 1060; [1926] 3, W. W. R. 817.—CAN.

a i. *Acceptance of credit from unauthorised agent.*—A co., knowing a vendor of goods was giving it credit in a case where the person buying on its behalf has no proper authority so to do, is estopped afterwards from disputing liability on the ground of want of authority.—*GREAT WEST SADDLERY CO. v. CANADIAN INGOT IRON CO.*, [1924] 4 D. L. R. 881.—CAN.

PART VI. SECT. 3, SUB-SECT. 3.—  
C. (a).

1260 iv. —.—*Estoppel by acquiescence* connotes that the person estopped has represented to the person who is infringing his right that he is not entitled to complain, & that the other party relying upon this representation has altered his position to his detriment.—*GOBINDA RAMANUJ DAS MOHANTA v. RAM CHARAN DAS* (1925), 1 L. R. 52 Calc. 748.—IND.

1260 v. —.—*In order that the protection of the equitable doctrine of acquiescence may be successfully claimed, the following circumstances must subsist. The party claiming the benefit of the doctrine must have made a mistake as to his legal rights & must have expended some money or done some act on the faith of his mistaken belief; & the possessor of the legal right must have known of the existence of his own right which is inconsistent with the right claimed by the other party, he must have known of the other party's mistaken belief in his own rights, & he must have encouraged the other party in his expenditure of money, or in the other acts which he has done, either directly or by abstaining from asserting his legal right.*—*JAI NARAIN v. JAFAR BEG* (1 L. R. 48 All.

1260 vi. —.—*CROCKER v. HUTCHINSON* (1861), 10 N. B. R. (5) 139.—CAN.

1260 vii. —.—*NAUGLER v. JENKINS* (1899), 32 N. S. R. 333.—CAN.

1268 ii. —.—*Or ultra vires.*—*Acquiescence cannot rehabilitate or render valid a transaction which is ultra vires or illegal.*—*GOBINDA RAMANUJ DAS MOHANTA v. RAM CHARAN DAS* (1925), 1 L. R. 53 Calc. 748.—IND.

PART VI. SECT. 3, SUB-SECT. 3.—  
C. (b) i.

1270 vi. —.—*Where under a contract between pltfs., U.S. citizens, & defts., a Canadian co., payments had been made in different currencies at different times:—Held*: as under the contract payments should be in Canadian currency, payments made in U.S. currency could not operate as an estoppel, as they were made under misapprehension of rights.—*MYERS v. UNION NATURAL GAS CO.* (1922), O. L. R. 88.—CAN.

PART VI. SECT. 3, SUB-SECT. 3.—  
C.

sm. *Assent to sale of goods—Acquiescence in condition of goods.*—In an action to recover for work & labour in pressing a quantity of straw, evidence showed that deft. was of opinion that the straw was not in a fit condition to be pressed, & that he only consented to have the work done on pltf. offering to buy the straw, & that pltf. subsequently made a sale of the straw which was delivered at his request:—*Held*: pltf. was precluded from setting up the unmerchantable condition of the straw in answer to deft.'s counterclaim for the price agreed to be paid.—*PEPPARD v. WOOD, PEPPARD v. CAMERON* (1924), 57 N. S. R. 222.—CAN.



a licence from pltf. :—*Held* : (1) by virtue of the exception, the property in the strata below the surface remained in defts. sufficiently to entitle them to construct roads therein & use them in any way they pleased ; (2) the payment being voluntary & made under a supposed legal liability created in law no obligation at all, & defts. were not thereby estopped from setting up their title under the conveyance.—**BATTEN POOLL v. KENNEDY**, [1907] 1 Ch. 256 ; 76 L. J. Ch. 162.

**1319a. Objections to account stated not pressed.]—BURROUGH'S ADDING MACHINE, LTD. v. ASPINALL** (1925), 41 T. L. R. 276, C. A.

**1326. Add. Annotations :—Consd. Weld v. Petre** (1928), 97 L. J. Ch. 399. *Reid. Anchor Trust Co. v. Bell*, [1926] Ch. 805.

**1330. Add. Annotation :—Mentd. Bow's Emporium v. Brett** (1927), 44 T. L. R. 194.

**1347. Add. Annotation :—Mentd. Inche Noriah Binte Mohamed Tahir v. Shaik Allie Bin Omar Bin Abdullah Bahashuan** (1928), 45 T. L. R. 1.

**1380. Add. Annotation :—Reid. Bennett v. Whitehead**, [1926] 2 K. B. 380.

**1395. Add. Annotation :—As to (2) Reid. Australian Bank of Commerce v. Perel**, [1926] A. C. 737.

**1402. Add. Annotations :—Distd. Reckitt v. Barnett, Pembroke & Slater** (1928), 45 T. L. R. 36. *Reid. Lloyds Bank v. Chartered Bank of India, Australia & China* (1928), 97 L. J. K. B. 609.

**1435a. —.]—LAURIE & MOREWOOD v. DUDIN (JOHN) & SONS**, No. 1148a, ante.

**1439. Add. Annotation :—Reid. Re Wait**, [1927] 1 Ch. 606.

**1507. Add. Annotation :—Mentd. Lowther v. Harris**, [1927] 1 K. B. 393.

**PART VI. SECT. 3, SUB-SECT. 3.—E. (a).**

*m i. —.]—MILLER v. R.*, [1927] Exch. C. R. 52.—CAN.

*sn. Application of doctrine—Guarantee induced by fraud—Delay in repudiation.]—A. was induced to guarantee a debt by fraud of debtor. On learning of the fraud from the creditor he did not repudiate the guarantee :—Held : it was afterwards too late to set a defence based on the fraud.—MANTLE LAMP CO. OF AMERICA v. NIXON*, [1924] 3 D. L. R. 1073.—CAN.

**PART VI. SECT. 3, SUB-SECT. 3.—E. (b) ii.**

*so. Delay in taking security—Creditor estopped from relying on agreement by debtor to give security.]—Re MCINTYRE, TRUSTEE v. CANADA METAL CO.*, [1925] 2 D. L. R. 889 ; 5 C. B. R. 629.—CAN.

**PART VI. SECT. 3, SUB-SECT. 3.—F. (c).**

*h i. —.]—Re KEARNEY'S ESTATE, WHITEHURST, APPELLANT* (1927), 27 S. R. N. S. W. 386 ; 44 N. S. W. W. N. 117.—AUS.

*h ii. —.]—Where a vendor, on default of payment of an instalment of the purchase price of land, takes out an order nisi for foreclosure, he cannot afterwards proceed by way of execution against the purchaser.—STANDARD TRUST CO. v. LITTLE* (1915), 31 W. L. R. 769.—CAN.

**PART VI. SECT. 3, SUB-SECT. 3.—G. (b).**

*sp. Nationality of party.]—Where*

*pltf. was ignorant when he made a contract that deft. was a person of enemy origin & that under War Legislation & Statute Law Amendment Act, 1918, s. 6, the contract was illegal :—Held : in an action for breach of contract, deft. would be estopped from alleging that the contract was void on account of his enemy origin since the deft. well knew that fact.—BRANIGAN v. SABA*, [1924] N. Z. L. R. 481.—N.Z.

**PART VI. SECT. 3, SUB-SECT. 3.—G. (c).**

*h i. —.]—WELLS v. WALKER (Man.)* (1911), 16 W. L. R. 408.—CAN.

**PART VI. SECT. 3, SUB-SECT. 3.—H. (a.)**

*1438 i. A form of acquiescence.]—GOBINDA RAMANUJ DAS MOHANTA v. RAM CHARAN DAS* (1925), 1 L. R. 52 Calc. 748.—IND.

*t i. —.]—HUTCHINSON BROTHERS & CO., LTD. v. PERKINS (B. C.)* (1908), 8 W. L. R. 16.—CAN.

**PART VI. SECT. 3, SUB-SECT. 3.—H. (b).**

*b i. —.]—The equitable principle prohibiting a party from lying by & reaping the benefit of the expenditure of another's money on his property, applied.—PUBLIC PROPERTY TRUSTEES v. GILLIS* (1881), 14 N. S. R. (2 R. & G.) 262.—CAN.

**PART VI. SECT. 3, SUB-SECT. 3.—I. (b) iii.**

*1 i. — To nature of goods delivered.] the purchasers were estopped*

*1537. Add. Annotation :—Reid. R. v. Essex J.J., Ex p. Perkins*, [1927] 2 K. B. 475.

*1540. Add. Annotation :—Mentd. Grant v. Derwent*, [1928] Ch. 902.

*1542. Add. Annotation :—Mentd. Benton v. Campbell, Parker*, [1925] 2 K. B. 410.

*1549. Add. Annotation :—Reid. Bernard v. Williams* (1928), 139 L. T. 22.

*1550. Add. Annotation :—Reid. Huddersfield Fine Worsteds v. Todd* (1925), 42 T. L. R. 52.

*1556. Add. Annotation :—Reid. Sowerby v. Lindsay* (1928), 44 T. L. R. 501.

*1557. Add. Annotation :—Reid. Macaura v. Northern Assce.*, [1925] A. C. 619.

*1559. Add. Annotation :—Mentd. Tarn v. Scanlan, Neilsen, Andersen v. Collins, Muller (London) v. Lethem, Muller (London) v. I. R. Comrs.* (1927) 44 T. L. R. 53.

*1561. Add. Annotation :—Reid. Albemarle Supply Co. v. Hind*, [1928] 1 K. B. 307.

*1601. Add. Annotations :—Mentd. Ouellette v. Canadian Pacific Ry.*, [1925] A. C. 569 ; *Gilbert v. Gilbert & Bougher* (1927), 96 L. J. P. 137 ; *Auchteroni v. Midland Bank*, [1928] 2 K. B. 294 ; *Tilling-Stevens Motors v. Kent County Council & Transport Minister* (1928), 139 L. T. 265.

*1602. Add. Annotation :—Reid. Guildford Trust v. Goss* (1927), 136 L. T. 725.

*1604. Add. Annotations :—Reid. Australian Bank of Commerce v. Perel*, [1926] A. C. 737 ; *Jones v. Waring & Gillow*, [1926] A. C. 670. *Mentd. Lloyds Bank v. Chartered Bank of India, Australia & China* (1928), 97 L. J. K. B. 609 ; *Reckitt v. Barnett, Pembroke & Slater*, [1928] 2 K. B. 244.

*1605. Add. Annotation :—Reid. Lloyds Bank v. Chartered Bank of India, Australia & China* [1928] 97 L. J. K. B. 609.

from alleging that the goods were not as contracted for.—*J. I. CASE THRESHING MACHINE CO. v. MITTEN* (Sask.), [1919] 3 W. W. R. 601 ; 49 D. L. R. 30.—CAN.

**PART VI. SECT. 3, SUB-SECT. 4.—A.**

*1596 x. —.]—Deft. wished to purchase a piece of land & approached S. for a loan of the amount which he required to make up the price S., without the knowledge of deft., obtained from pltf. the money which deft. needed, & presented a mtge. in pltf.'s favour to deft. to sign. Deft. never read the mtge., but understood from the representations of S. that the writing which he signed was merely an acknowledgment of the receipt of the money from S. who, he thought, was advancing it :—Held : the mtge. was not the deed of deft. & he was not estopped from alleging that it was not.—COOIL v. CLARKSON*, [1925] 2 D. L. R. 493 ; [1925] 1 W. W. R. 1094 ; 35 B. C. R. 308.—CAN.

*1605 vi. —.]—Where taxes were paid to a municipal employee who had no authority to receive them :—Held : the fact that the municipality kept its tax-receipt books, cashier's stamp & tax roll in such a manner that the employee was enabled to get possession of the books, etc., & give a receipt for the taxes, did not estop the municipality from showing his lack of authority, even if it amounted to negligence, since such negligence did not occur in the transaction itself & was not the proximate cause of the taxpayer's payment of his taxes to the employee.—RICHES v. CITY OF MOOSE JAW*, [1925] 3 D. L. R. 1176 ; [1925] 3 W. W. R. 127.—CAN.



1610a. ——.]—Defts. received a consignment of wheat & issued a delivery order for it, which came into the hands of B. Upon this delivery order B. obtained advances from pltfs. Shortly afterwards defts. issued a second delivery order in respect of the same consignment of wheat. The two delivery orders were different, & such as might reasonably be supposed to relate to distinct consignments of wheat. Upon this second delivery order B. obtained further advances from pltfs., who were under the belief that the delivery orders related to distinct con-

signments of wheat. B. having afterwards become insolvent:—*Held*: defts. having been guilty of culpable negligence, & such negligence having been the proximate cause of pltfs. loss, were estopped from alleging that the two delivery orders related to the same consignment of wheat, & were liable to compensate pltfs. for the loss sustained by them through the advances to B.—*COVENTRY v. GREAT EASTERN RY. CO.* (1883), 11 Q. B. D. 776; 52 L. J. Q. B. 694; 49 L. T. 641, C. A.

*Annotation*:—*Apld.* *Seton v. Lafone* (1887), 19 Q. B. D. 68.

PART VI. SECT. 5.

1619 xii. ——.]—The facts relied

upon to establish an estoppel of any kind should be pleaded in any case in which it is intended to rely upon it.—

*HUGHES v. J. H. WATKINS & Co.*, [1927] 3 D. L. R. 302; 60 O. L. R. 448.—CAN.

## EXECUTION.

## Part II.—Matters Common to all Modes of Execution.

22. *Add. Annotation*:—*Reid. Weld v. Petre* (1928), 97 L. J. Ch. 399.
60. *Add. Annotation*:—*Reid. Capron v. Capron*, [1927] P. 243.
61. *Add. Annotation*:—*Reid. Kayley v. Hother-sall*, [1925] 1 K. B. 607.
63. *Add. Citation*:—[1925] 1 K. B. 607.
- 88a. *Against co-surety—Judgment debt paid by surety.*—Where a surety has paid a judgment debt & has obtained an assignment of the judgment under Mercantile Law Amendment Act, 1856 (c. 97), s. 5, he must obtain the leave of the ct. under R. S. O., Ord. 42, r. 23, before he can issue execution against his co-surety to enforce contribution to the judgment debt.—*KAYLEY v. HOTHERSALL*, [1925] 1 K. B. 607; 94 L. J. K. B. 348; 132 L. T. 468; 69 Sol. Jo. 310, C. A.
- 146a. ——— *Omission to claim costs.*—Where, at the trial, the judge grants a certificate for speedy execution under 1 Will. 4, c. 7, s. 2, pltf. should issue one writ of execution for the amount of the damages & costs. Where deft. had been arrested under a *ca. sa.* for the damages only, & had paid them, & been discharged out of custody, the ct. refused to allow pltf. to issue another *ca. sa.* for the costs.—*SMITH v. DICKINSON* (1844), 5 Q. B. 602; *Dav. & Mer.* 468; 13 L. J. Q. B. 151; 2 L. T. O. S. 368; 8 Jur. 128; 114 E. R. 1376.
260. *Add. Annotation*:—*Reid. Re A Debtor* (1928), 45 T. L. R. 10.
313. *Add. Annotation*:—*Reid. Martin v. Benson*, [1927] 1 K. B. 771.
318. *Add. Annotation*:—*Reid. Macaulay v. Guaranty Trust Co. of New York* (1927), 44 T. L. R. 99.
380. *Add. Citation*:—*sub nom. WALTER v. DAVIES, Ex p. GLAMORGAN (FORMER SHERIFF)*, 31 L. T. O. S. 169.
- 417a. *Service of writ—On clerk in court.*—*Held*: not good.—*ELLISON v. PICKERING* (1803), 8 Ves. 319; 32 E. R. 377.
- Annotation*:—*Reid. Ward v. Arch* (1839), 8 L. J. Ch. 255.
- 417b. *Sheriff's officer remaining in house—Until money paid.*—*MOORE v. BEAMONT* (1795), 6 Term Rep. 137; 101 E. R. 476.

## Part III.—Particular Forms of Execution.

512. *Add. Annotation*:—*Generally, Reid. The Point Breeze*, [1928] P. 135.
- 556a. ———.]—*HODGES v. MARKS* (1618), Cro. Jac. 485; 79 E. R. 414.
- Annotations*:—*Mentd. Layton v. Grindall* (1709), 2 Salk. 643; *Hooper v. Lane* (1857), 6 H. L. Cas. 443.
- 574a. ———.]—*ANON.* (1704), 6 Mod. Rep. 105; 87 E. R. 864.
- 574b. ———.]—*BURDETT v. ABBOT* (1811), 14 East, 1; 104 E. R. 501; *affd. sub nom.* *BURDETT v. ABBOT, BURDETT v. COLMAN* (1817), 5 Dow. 165, H. L.
- Annotations*:—*Consd. Harvey v. Harvey* (1884), 26 Ch. D. 644. *Mentd. Launock v. Brown* (1819), 2 B. & Ald. 592; *R. v. Hobhouse* (1820), 2 Chit. 207; *Bedreechund v. Elphinstone* (1831), 2 State Tr. N. S. 379; *Wellesley v. Beaufort, Long Wellesley's Case* (1831), 2 Russ. & M. 639; *Beaumont v. Barrett* (1836), 1 Moo. P. C. C. 59; *Stockdale v. Hansard* (1839), 9 Ad. & El. 1; *Middlesex Sheriff's Case* (1840), 11 Ad. & El. 273; *Re Clarke* (1842), 2 Q. B. 619; *Kielley v. Carson* (1843), 4 Moo. P. C. C. 63; *Howard v. Gosset* (1845), 10 Q. B. 359; *Re Martin, Ex p. Van Sandau* (1845), 4 L. T. O. S. 369; *Howard v. Gossett*, *sheriff—To justify seizure.*—*JOHNSON v. BUCHANAN* (1896), 29 N. S. R. (17 R. & G.) 27.—CAN.

## PART II. SECT. 8.

17 iii. ———.]—*CULLEN v. CULLEN* (1866), 2 Ch. Ch. 94.—CAN.

17 iv. ———.]—*Re MCLELAN* (B. C.), [1926] 1 W. W. R. 198.—CAN.

sb. *Judgment on promissory note taken for "cash" payment on agreement for sale of land—Issue of execution on note before sale of land—Valid.*—*COTTON v. DEMPSTER* (Alta.), [1925] 1 W. W. R. 954.—CAN.

## PART II. SECT. 8, SUB-SECT. 2.

sd. *Affidavit in support—Attachment of property of absconding debtor—Contents.*—*Re LONG, Ex p. MOORE* (1883), 23 N. B. R. 229.—CAN.

## PART II. SECT. 11.

sf. *Prior proceedings under Absconding Debtors Act.*—*Held*: a subsequent execution was defeated.—*KERR v. SCOVIL* (1870), 13 N. B. R. (2 Han.) 16.—CAN.

## PART II. SECT. 15, SUB-SECT. 5.

sj. *Protection of successful party's interests.*—Upon motion by defts. for stay pending appeal:—*Held*: the ct.

had inherent jurisdiction to stay proceedings, but a stay should not be granted unless defts. could devise a scheme by which pltf. would be adequately protected.—*BATTLE CREEK TOASTED CORN FLAKE CO. v. KELLOGG TOASTED CORN FLAKE CO.* (1924), 55 O. L. R. 127.—CAN.

## PART II. SECT. 20, SUB-SECT. 1.—

A. (a).

386 ii. ———.]—*McDONALD v. MITCHELL* (1878), 12 N. S. R. (3 R. & C.) 274.—CAN.

## PART II. SECT. 20, SUB-SECT. 4.—

A. (a).

459 i. ——— *In action by third party.*—Where a third party brings an action against the sheriff for seizure of goods under an execution & establishes a *prima facie* case of title as against the execution debtor, the sheriff must prove a judgment as well as an execution.—*KIRCHHOFFER v. CLEMENT* (1897), 11 Man. L. R. 460.—CAN.

## PART II. SECT. 20, SUB-SECT. 4.—

B. (a).

q i. ——— *Onus of proof on*

## PART II. SECT. 21.

494 i. *When ordered.*—*HART v. RUTTAN* (1874), 23 O. P. 613.—CAN.

## PART III. SECT. 1, SUB-SECT. 1.

506 i. *In respect of what judgment or order—Judgment for instalments of purchase money.*—*WORTH v. DAVIE*, [1917] 1 W. W. R. 615; 11 Alta. L. R. 461.—CAN.

## PART III. SECT. 1, SUB-SECT. 4.—

B. (b).

532 iii a. *S. P. HOWARD v. HIGH RIVER TRADING CO.* (1899), 4 Terr. L. R. 109.—CAN.

532 v. ———.]—*SNARR v. WADDELL* (1864), 24 U. C. R. 165.—CAN.

## PART III. SECT. 1, SUB-SECT. 4.—

E. (b).

11. *S. P. HINCKES v. SOWERBY* (1879), A. R. 113.—CAN.

Gossett v. Howard (1847), 6 State Tr. N. S. 319; Fenton v. Hampton (1858), 11 Moo. P. C. C. 347; *Re Fernandes* (1861), 6 H. & N. 717; *Ex v. Fernandez* (1861), 10 C. B. N. S. 3; *Dill v. Murphy* (1864), 1 Moo. P. C. C. N. S. 487; *A.-G. of New South Wales v. Macpherson* (1870), L. R. 3 P. C. 268; *R. v. Carden* (1879), 5 Q. B. D. 1; *Bradlaugh v. Erskine* (1883), 47 L. T. 618; *Bradlaugh v. Gossett* (1884), 12 Q. B. D. 271; *Barton v. Taylor* (1886), 2 T. L. R. 382; *Fielding v. Thomas*, [1896] A. C. 600; *Heddon v. Evans* (1919), 35 T. L. R. 642; *Pitchers v. Surrey County Council*, [1923] 2 K. B. 57.

614. *Add. Annotation:—Refd. English Hop Growers v. Dering*, [1928] 2 K. B. 174.

615. *Add. Annotation:—Refd. English Hop Growers v. Dering*, [1928] 2 K. B. 174.

680. *Add. Citation:—sub nom. DICKINSON v. KITCHEN*, 8 E. & B. 789; 120 E. R. 293.

PART III. SECT. 1, SUB-SECT. 4.—  
E. (e) ii.

*sl. Not last cow.*—*MCLEAN v. WATSON* (1858), 2 Thom. 406.—CAN.

PART III. SECT. 1, SUB-SECT. 4.—  
E. (e) iii.

*sn. Seisin in fee.*—*Held: not saleable under an execution against goods.*—*DOE d. KEOGH v. CALHOUN* (1843), 1 U. C. R. 157.—CAN.

*sp. Interest of assignee of leasehold property in lease.*—*Held: not saleable under an execution against goods.*—*DOE d. SIMPSON v. PRIVAT* (1848), 5 U. C. R. 215.—CAN.

*st. Interest in land charged for maintenance.*—*Held: saleable under execution.*—*RATHBUN v. CULBERTSON* (1875), 22 Gr. 465.—CAN.

PART III. SECT. 1, SUB-SECT. 4.—  
E. (e) iv.

607 i. *General rule.*—*DOE d. AUSMAN v. MINTHORNE* (1846), 3 U. C. R. 423.—CAN.

*sv. Purchaser's interest in land under agreement to buy.*—A purchaser's interest in land which he has agreed to buy is not bound by an execution against him, unless he has become the registered owner.—*HUDSON'S BAY CO. v. BULLOCK FARMS, LTD.*, [1925] 2 W. W. R. 559.—CAN.

PART III. SECT. 1, SUB-SECT. 4.—  
E. (e) v.

*homestead transferred to wife.*—Where a husband transfers his homestead to his wife, who becomes the real manager of the farming operations with him as her assistant, the crops grown by her are not exigible under an execution, even though she admits that the farm has been managed in such way because of the existence of the execution.—*STANDARD TRUSTS CO. v. BRIGGS*, [1926] 2 D. L. R. 379; [1926] 1 W. W. R. 832; 22 Alta. L. R. 113.—CAN.

*o ii. — On wife's farm worked by debtor.*—*Held: in the circumstances the crop belonged to the husband & could be seized in execution.*—*PARENTEAU v. HARRIS* (1884), 5 Man. L. R. 329.—CAN.

*o iii. S. P. SLINGERLAND v. MANUFACTURING CO.* (1894), 10 Man. L. R. 21.—CAN.

PART III. SECT. 1, SUB-SECT. 4.—  
E. (e)

*o i. — Interest in*  
*v. GILFOY*, [1925] 1 W. W. 992.—CAN.

*o ii. — Interest of vendor of land.*  
A vendor who has retained the legal title as security for payment of his purchase money, has, until full payment has been made, a beneficial interest in the land which, coupled with the legal title, may be seized & sold under execution.—*WEIDMAN v. MCCLARY*, [1917] 2 W. W. R. 210; 33 D. L. R. 672.—CAN.

PART III. SECT. 1, SUB-SECT. 4.—  
E. (e) x.

*n i. — Paid to debtor's solicitor—For payment of costs of action.*—*Held: not liable to attachment.*—*Re FORT FRANCES PULP & PAPER CO. v. TELEGRAM PRINTING CO., PHILIPPS & SCARTH v. LONDON GUARANTEE & ACCIDENT CO., LTD.*, [1925] 4 D. L. R. 204.—CAN.

*ii. — In name of wife & son.*—*ROBERT DOLLAR CO. v. WALKER* (1926), 36 B. C. R. 405.—CAN.

PART III. SECT. 1, SUB-SECT. 4.—  
E. (e) xiii.

*i i. —*—*KASSOP v. EVANS* (1900), 8 Nfld. L. R. 396.—NFLD.

*i ii. — Not ship sold under Admiralty judgment.*—*VANEVERY v. GRANT* (1862), 21 U. C. R. 542.—CAN.

PART III. SECT. 1, SUB-SECT. 4.—  
E. (e) xv.

*q i. —*—In order to be entitled to an exemption from execution with respect to the tools or implements of his trade, debtor must have been actually following the trade at the time of the seizure.—*MCLEOD v. GIRVIN CENTRAL TELEPHONE ASSOCN. (Sask.)*, [1926] 1 D. L. R. 216; [1926] 1 W. W. R. 38.—CAN.

PART III. SECT. 1, SUB-SECT. 4.—  
E. (e) xvi.

*c (p. 493) i. — Part of proceeds consisting of mortgage.*—*Held: not exempt.*—*MASSEY-HARRIS CO. v. SCHRAM* (1902), 5 Terr. L. R. 338.—CAN.

*c (p. 493) ii. — Whether proceeds exempt.*—*PURDY v. COLTON* (1908), 1 Sask. L. R. 288; 7 W. L. R. 820.—CAN.

*d (p. 493) i. S. P. BOZ v. SPILLER* (1905), 6 Terr. L. R. 225; 1 W. L. R. 366; 2 W. L. R. 280.—CAN.

*ii. —*—When debtor is in actual residence on certain property belonging to him, such property is *prima facie* exempt under Exemptions Act, R. S. S., 1920, & the fact that the wife of debtor happens to own a house that had been previously used as the family home cannot deprive debtor of the right to claim the exemption.—*SALTER & ARNOLD, LTD. v. DILLMAN*, [1924] 2 W. W. R. 1225.—CAN.

*q i. — Exemptions Act, Alta.—Not applicable against Crown.*—*R. v. O'BRIEN*, [1924] 1 D. L. R. 222; 1 W. W. R. 104.—CAN.

*q ii. — Rents & profits of.*—The exemption of a homestead from seizure under execution does not extend to the rents & profits thereof, beyond the personal property specified.—*WILKINS v. MINER (Alta.)*, [1927] 1 D. L. R. 286 [1926] 3 W. W. R. 778.—CAN.

*k (p. 494) i. —*—*BYERS v.* (1893), 3 Terr. L. R. 169.—CAN.

PART III. SECT. 1, SUB-SECT. 4.—  
E. (f) i.

710 iii. — *Re BANK OF MONT-*

*Add. Annotations:—Refd. The Feronia* (1868), L. R. 2 A. & E. 65; *Keith v. Burrows* (1876), 1 C. P. D. 722.

718a. *Debtor's goods sold by public auction—Debtor remaining in possession—Execution creditor present at sale.*—*Held: the goods could not be taken in execution by such execution creditor.*—*WOODERMAN v. BALDOCK* (1819), 8 Taunt. 676; 3 Moore, C. P. 11; 129 E. R. 547.

*Annotations:—Refd. Aldred v. Constable* (1844), 3 L. T. O. S. 299; *Hickman v. Cox* (1857), 30 L. T. O. S. 279; *Barker v. Furlong*, [1891] 2 Ch. 172.

783a. — *FURBER v. STURMEY* (1859), 32 L. T. O. S. 259; 23 J. P. 88; 5 Jur. N. S. 45; 7 W. R. 162.

*REAL v. TANNAS, TANNAS v. BANK OF MONTREAL*, [1925] 3 D. L. R. 1079.—CAN.

PART III. SECT. 1, SUB-SECT. 4.—  
E. (f) ii.

*p i. — Sale—No change of possession.*—Judgment in favour of the execution creditor affirmed.—*PERRIGREW v. THOMAS* (1885), 12 A. R. 577.—CAN.

*p ii. — Of land.*—Where an agreement for the sale of land provides that in case the vendor becomes entitled to cancel the contract, he shall have the right to enter into & possess any improvements on the land, & to apply the net receipts therefrom upon the contract, the taking possession by the vendor will prevent the goods so possessed from being exigible under writs of execution against the purchaser.—*Re CANADIAN PACIFIC RY. CO., CROWN LUMBER CO. v. MCKENZIE* (1916), 10 W. W. R. 1370.—CAN.

PART III. SECT. 1, SUB-SECT. 4.—  
E. (f) x.

*g i. S. P. KILBRIDE v. CAMERON* (1867), 17 C. P. 373.—CAN.

*g ii. S. P. MASSEY-HARRIS v. MOORE* (1905), 6 Terr. L. R. 75.—CAN.

*k i. Transfer of property to trustee—In fraud of creditors—Attachment sustained.*—*THOMPSON v. ELLIS* (1883), 16 N. S. R. (4 R. & G.) 307.—CAN.

PART III. SECT. 1, SUB-SECT. 4.—  
E. (f) xii.

*xx. Execution against hirer—Equitable interest of third party in goods.*—Circumstances in which such interest was preferred to the execution creditor's claim to the proceeds of the goods.—*BLACK v. DROUILLARD* (1877), 28 C. P. 107.—CAN.

PART III. SECT. 1, SUB-SECT. 4.—  
E. (f) xiv.

*m i. — Fixtures affixed to mortgaged freehold.*—*CARSON v. SIMPSON* (1894), 25 O. R. 385.—CAN.

*n i. —*—*FERRIE v. CLEGHORN* (1860), 19 U. C. R. 241.—CAN.

*n ii. — C. S. U. C. c. 45, s. 3—Effect of.*—*ROSS v. SIMPSON* (1870), 23 Gr. 552.—CAN.

*n iii. —*—*SMITH, LTD. v. VAN- COUVER CREMATION SOCIETY* (1914), 29 W. L. R. 150; 20 D. L. R. 214.—CAN.

PART III. SECT. 1, SUB-SECT. 4.—  
E. (f) xv.

*p i. —*—*GURNEY v. JAMES* (1860) 10 U. C. R. 156.—CAN.

PART III. SECT. 1, SUB-SECT. 4.—  
E. (f) xvi.

*Assets in futuro.*—An execution on a judgment of assets in futuro is invalid if issued without leave after application made under r. 461.—*Re SMITH'S ESTATE, CANADIAN GUARANTEE TRUST CO. v. LE*, [1924] 4 D. L. R. 1288; 3 W. W. R. 815.—CAN.



804. *Add. Annotation*:—*Reid*. Bosworthick v. Bosworthick (1926), 136 L. T. 211.

817a. ———.]—*TOCOCK v. HONYMAN* (1602), *Yelv.* 6; 80 E. R. 5.

*Annotations*:—*Reid*. Meriton v. Stevens (1741), *Willes*, 271; *Giles v. Grover* (1832), 9 *Bing.* 128.

835. For “——— & finally” read “——— Not finally.”

881a. May be compelled to sell.]—*ANON.* (1702), 7 *Mod. Rep.* 118; 87 E. R. 1135.

883a. ———.]—*BOTTOMLEY v. HEYWARD* (1862), 7 H. & N. 562; 31 L. J. Ex. 500; 7 L. T. 44; 158 E. R. 595; *sub nom.* *BOTHAMLEY v. HEYWARD*, 8 *Jur. N. S.* 1156.

924. *Add. Annotation*:—*Mentd.* Lowther v. Harris, [1927] 1 K. B. 393.

954. *Add. Annotations*:—*As to* (3) *Reid*. British American Continental Bank v. British Bank for Foreign Trade, [1926] 1 K. B. 328. *Generally, Mentd.* Jones v. Waring & Gillow, [1926] A. C. 670.

PART III. SECT. 1, SUB-SECT. 4.—  
E. (g) ii

*sy. Attachment under Absconding Debtors Act.*]—*STARR v. MUNCEY* (1845), 3 N. S. R. (2 *Thom.*) 244.—*CAN.*

PART III. SECT. 1, SUB-SECT. 4.—  
F. (a).

i. ———.]—*RAPELJE (SHERIFF) v. FINCH* (1856), 14 U. C. R. 249.—*CAN.*

PART III. SECT. 1, SUB-SECT. 4.—  
F. (c).

i. ———.]—Where execution has been levied upon goods, the sheriff is not bound to leave an officer continuously in possession, & the absence of such officer, if satisfactorily explained, does not amount to such an abandonment of possession as will entitle other persons claiming the goods to take possession of them.—*Re MURPHY* (1927), 27 S. R. N. S. W. 503; 44 N. S. W. W. N. 189.—*AUS.*

PART III. SECT. 1, SUB-SECT. 4.—  
H. (a).

*sz. Place of sale.*]—A sheriff cannot lawfully sell goods on debt's premises without his permission, & any person going on the premises to purchase may be treated as a trespasser.—*McMASTER v. McPHERSON* (1839), 6 O. S. 16.—*CAN.*

*sa. Payment—What amounts to.*]—*CARRALL v. MONTREAL BANK* (1861), 21 U. C. R. 18.—*CAN.*

*sb. Setting aside sale—After confirmation.*]—In the absence of fraud or collusion, a sale in execution, which has once been confirmed, cannot be set aside because the decree under which it was held was at first incorrectly drawn up, & has since been amended.—*AGHA HUSAIN v. QASIM ALI* (1925), 1 L. R. 48 All. 94.—*IND.*

PART III. SECT. 1, SUB-SECT. 4.—  
H. (b).

*sd. Notwithstanding notice of alleged defect in execution.*]—*McPHAIL v. MCKINNON* (1868), 7 N. S. R. 168.—*CAN.*

PART III. SECT. 1, SUB-SECT. 4.—  
H. (i) ii.

*sl. Purchaser estopped from claiming goods as his own.*]—*RUTTAN v. WELLER* (1855), 14 U. C. R. 44.—*CAN.*

PART III. SECT. 1, SUB-SECT. 4.—  
H. (j).

940 iv. ———.]—*MACFIE v. HUNTER* (1882), 9 P. R. 149.—*CAN.*

*sj. Proceeds not exceeding amount of landlord's claim.*]—Where the sheriff sells goods for a sum not exceeding the landlord's claim, & the execution

creditor claims the money, it is a sufficient answer to show that the landlord has a good claim to the money, although it has not been paid over to him.—*LAMBERT v. CLEMENT* (1897), 11 *Man. L. R.* 519.—*CAN.*

*sk. Payment of preference claim for wages—When wage-earner entitled to preference.*]—*CAMPBELL v. CLEUGH* (1920), 28 B. C. R. 352.—*CAN.*

PART III. SECT. 1, SUB-SECT. 5.—A.

o i. ———.]—*STREET v. GLASS* (1840), 3 N. B. R. (1 *Kerr*) 165.—*CAN.*

965 ii. ———.]—*HART v. REYNOLDS* (1863), 13 C. P. 501.—*CAN.*

967 i. *In respect of what goods—Not property seized under Absconding Debtors Act.*]—*STANTON v. JOHNSTON* (1858), 9 N. B. R. (4 *All.*) 54.—*CAN.*

967 ii. ——— *Not goods of third party.*]—*ROBINSON v. MCINTOSH* (1899), 4 *Terr. L. R.* 102.—*CAN.*

a i. ——— *Right of sheriff to inquire into claim.*]—Where a landlord makes a claim for rent to be deducted out of the proceeds of an execution, the sheriff is entitled to a reasonable time to inquire into the demand; & where the tenant had denied that any rent was due, & the landlord refused to allow the sheriff time to make the inquiry, the ct. refused the cost of an application to compel the sheriff to pay the rent.—*NOWLIN v. ANDERSON* (1849), 6 N. B. R. (1 *All.*) 497.—*CAN.*

PART III. SECT. 1, SUB-SECT. 7.

q i. ———.]—*MAHON v. CROWE* (1896), 28 N. S. R. (16 R. & G.) 250.—*CAN.*

*sl. Assignee—Assignment not filed.*]—*Held*: the execution prevailed.—*CARSCALLEN v. MOODIE* (1856), 15 U. C. R. 92.—*CAN.*

*sm. ——— Want of notice of writ—Onus of proof.*]—*ROSS v. CREIGHTON* (1890), 40 N. S. R. 131.—*CAN.*

PART III. SECT. 1, SUB-SECT. 9.

*sp. Creditors' Relief Act, R. S. A., 1922 (c. 88), s. 30, not applicable.*]—*TERMINAL GRAIN CO. v. SODERBERG*, [1925] 1 D. L. R. 313; [1925] 1 W. W. R. 9.—*CAN.*

PART III. SECT. 1, SUB-SECT. 10.—A.

1020 i. *Return as evidence—Conclusive against sureties.*]—*SHUTER v. GRAHAM* (1848), 2 U. C. R. 164.—*CAN.*

*sr. Indorsement of writ.*]—It is a condition precedent to an action under Cos. Act, s. 55, that an execution against a co. is returned unsatisfied in whole or in part; & to enable the action to be brought, even where the co. has become bkpt., a return is not sufficient unless it is indorsed on the

1043. *Add. Annotation*:—*Distd.* *Re Fredericke & Whitworth, Ex p. Hibbard*, [1927] 1 Ch. 253.

1069. *Add. Annotation*:—*Reid.* *Re Forder, Forder v. Forder*, [1927] 2 Ch. 291.

1231a. ——— *What amounts to.*]—Where, under process of execution from a county ct., some goods of a stranger had been taken, the mere fact that the execution creditor told the bailiff that goods would be claimed by a third party, but that such claim was not to be regarded:—*Held*: not to amount to a direction to take all the goods, or any which were not liable to be seized, so as to make the execution creditor personally liable.—*CRONSHAW v. CHAPMAN* (1862), 7 H. & N. 911; 31 L. J. Ex. 277; 6 L. T. 54; 10 W. R. 323; 158 E. R. 738.

1243. *Add. Annotation*:—*Reid.* *Robinson v. Midland Bank* (1925), 41 T. L. R. 402.

1281a. Sale without order of court—Sale not con-

writ as required by r. 629, & a certificate is filed as required by r. 632.—*CROWDER v. COLEMAN*, [1924] 1 D. L. R. 849; 1 W. W. R. 374; 20 *Alta. L. R.* 1.—*CAN.*

PART III. SECT. 1, SUB-SECT. 11.

d i. ——— *Conflicting claims.*]—The ct. will not grant a rule nisi to compel a sheriff to pay over money collected under execution where there are conflicting claims to the fund, but will leave the parties to their remedy by action.—*SCOTT v. ANGUS* (1854), 2 N. S. R. (James) 183.—*CAN.*

e i. ——— *For money realised by bailiff—Onus of proof.*]—A sheriff is responsible for all money realised by a bailiff in executing a *fl. fa.*, where the bailiff was appointed by & paid by the sheriff, & in an action against a sheriff for money realised on a *fl. fa.* by his bailiff & not accounted for, the burden is on the sheriff to prove that the bailiff was appointed by the Lieutenant-Governor in Council.—*ROSS v. FISKE* [1926] 3 D. L. R. 289; [1926] W. W. R. 422; 20 *Sask. L. R.* 553.—*CAN.*

e ii. ——— *Time for bringing—Public Officers Protection Act, 1923 (c. 19).*]—*HOLDEN v. MILBURN* (*Sask.*), [1927] 1 D. L. R. 271; [1926] 3 W. W. R. 701.—*CAN.*

PART III. SECT. 1, SUB-SECT. 12.—C.

r i. ———.]—*MAY v. HOWLAND, FITCH & WEBB* (1859), 19 U. C. R. 66.—*CAN.*

1230 v. ———.]—A., after delivering an execution to a constable, took him down upon land owned by B., showed him hay owned by B., & said it was the property of C. The constable having seized the hay under an execution in a suit to which B. was not a party:—*Held*: A. was answerable for the consequence of what the constable did in obeying his instructions.—*GRAVES v. SPRAGUE* (N. B.) (1920), 53 D. L. R. 337.—*CAN.*

1243 i. *Ratification by creditor—Whether giving rise to liability—Wrongful seizure.*]—Where a sheriff acting under a valid writ, by the command, & as the servant, of the ct., seizes the wrong person's goods, a subsequent declaration by the execution creditor ratifying & approving the taking cannot alter its character & make it a wrongful taking by the creditor.—*BALLANTYNE v. McCULLOCH & Co. & SIMS* (B. C.), [1927] 4 D. L. R. 525; [1927] 3 W. W. R. 148.—*CAN.*

PART III. SECT. 1, SUB-SECT. 13.—A.

o i. ——— *After receipt of attachment.*]—*Held*: the sale could not be upheld, & the attachment must prevail.—*RILEY v. NIAGARA DISTRICT BANK*, (1866), 26 U. C. R. 21.—*CAN.*

firm.]—*R. v. BLUNT* (1828), 2 Y. & J. 120 ; 148 E. R. 857.

1358. *Add. Annotation* :—*Mentd. British-American Tobacco Co. v. Jones* (1925), 134 L. T. 405.

1405. *Add. Annotation* :—*Mentd. Paterson v.*

*Ardrossan Harbour Co.* (1926), 19 B. W. C. C. 621.

1506. *Add. Annotation* :—*Reid. Campbell v. Pollak* (1927), 43 T. L. R. 495.

1524. *Add. Annotation* :—*Mentd. Re Quintin Dick, Cloncurry v. Fenton*, [1926] Ch. 992.

**PART III. SECT. 2, SUB-SECT. 2.**

*st. Not after debt treated by creditor as satisfied.*—*BANK OF UPPER CANADA v. MURPHY* (1850), 7 U. C. R. 328.—CAN.

**PART III. SECT. 2, SUB-SECT. 3.**

*sv. Delivery of writ.—Land bound from time of delivery.*—*DOE d. NESMITH v. WILLISTON* (1844), 4 N. B. R. (2 Kerr) 459.—CAN.

*sw. — Proof of.*—The sheriff's deed is *prima facie* evidence that the writ was delivered to the sheriff & the land seized & sold under it.—*MITCHELL v. GREENWOOD* (1854), 3 C. P. 465.—CAN.

**PART III. SECT. 2, SUB-SECT. 4.—C.**

1340 i. *False return.*—*YOUNG v. BABY (SHERIFF)* (1855), 4 C. P. 537.—CAN.

**PART III. SECT. 2, SUB-SECT. 5.—A.**

*gi. — — — — —*—*RUSSELL v. RUSSELL* (1881), 28 Gr. 419.—CAN.

*g ii. — — — — —*—*PARKE v. RILEY*, 3 E. & A. 215.—CAN.

*g iii. — By heir or devisee.—Before execution issued.*—*Held*: a bona fide purchaser for value would have a good title as against creditors.—*REID v. MILLER* (1865), 24 U. C. R. 610.—CAN.

*sz. Land registered in name of debtor.—Ownership vested in third party.*—*Held*: not executable.—*UNION GOVERNMENT (MINISTER OF JUSTICE) v. BOLAM*, [1927] App. D. 467.—S. AF.

**PART III. SECT. 2, SUB-SECT. 5.—C.**

*g i. — — — — —*—After a mtge. in fee has become forfeited by non-payment of the mtge. money, the mtgee.'s interest in the premises cannot be sold under an execution against land.—*DOE d. CAMPBELL v. THOMPSON* (1843), 2 Ont. Dig. 2640.—CAN.

*k i. Interest of unpaid vendor.*—The interest of an unpaid vendor of land made exigible under an execution against him by Land Titles Act, R. S. A., 1922, s. 112, includes the legal estate as affected by the contract together with the rights of the vendor under the contract; & it is that estate & those rights which are bound by the writ & may be sold by the sheriff.—*MORTON & COWELL v. HOFFERT*, [1924] 3 D. L. R. 16; 2 W. W. R. 529.—CAN.

*k ii. Assignee of purchaser under contract of sale.*—The equitable interest of an assignee from the purchaser of a contract for the sale of land is exigible under a writ of *fi. fa.* against the land of such assignee.—*WARD v. ARCHER* (1894), 24 O. R. 650.—CAN.

**PART III. SECT. 2, SUB-SECT. 5.—G.**

*sy. Timber.*—Where the owner of land sells the timber after a writ against his land is placed in the sheriff's hands, & the purchaser cuts down & removes the timber before an injunction is obtained, he is accountable to the execution creditor for such timber.—*BROWN v. SAGE* (1865), 11 Gr. 239.—CAN.

**PART III. SECT. 2, SUB-SECT. 7.**

*a i. — Effect as against assignment for benefit of creditors.*—*MCINTYRE v. SHAW* (1866), 12 Gr. 295.—CAN.

*a ii. — Effect as against unrecorded deed.*—*GRINDLEY v. BLAKIE* (1886), 19 N. S. R. (7 R. & G.) 27; 7 C. L. T. 50.—CAN.

*o i. — Effect on judgment mortgage.*—*Held*: a judgment mtge. did not obtain priority over a judgment registered under 3 & 4 Vict. c. 105, but not re-registered within five years next before the registration of the judgment mtge.—*REID v. MILLER*, [1928] N. I. 151.—IR.

*o i. — Judgment for* Where, at the time a judgment for alimony is registered against the husband's interest in certain land held by him under an uncompleted agreement for sale, he is in a position to compel specific performance of the agreement, the judgment is a charge on the husband's interest; & if, subsequently to the registration of the judgment, & with knowledge of it, the vendor accepts from the husband a quitclaim deed of all of the latter's estate & interest in the land, the vendor holds that interest subject to the charge until the charge is extinguished.—*BRIGGS v. CARSON*, [1924] 4 D. L. R. 774; [1924] 3 W. W. R. 465; 19 Sask. L. R. 59.—CAN.

*o ii. — How far binding.—Defendant mere conduit pipe to convey title from vendor to third party.*—*OWEN v. LYNCH* (1877), 11 N. S. R. (2 R. & C.) 406.—CAN.

*o iii. — — — — —*—*J R. S. c. 84, s. 21.—Effect of.*—*LOISBURG LAND CO. v. TUTTY* (1884), 16 N. S. R. (4 R. & G.) 401.—CAN.

*sz. Judgment not registered.—Priority of mortgage.*—*MINERAL PRODUCTS CO. v. CONTINENTAL TRUST CO.* (1906), 37 S. C. R. 517.—CAN.

*s (p. 571) i. — — — — —*—As between the execution creditors of a vendor, & the assignee of his interest under an agreement of sale, whose assignment was acquired subsequently to registration of the executions:—*Held*: the instalment of purchase-money paid into ct. should belong to the execution creditors, but as the money had been obtained under execution, it should be treated as money realised from the sale of the vendor's interest, & being in the sheriff's hands should be subject to distribution under Creditors' Relief Act.—*MORTON & COWELL v. HOFFERT*, [1924] 3 D. L. R. 16; 2 W. W. R. 529.—CAN.

**PART III. SECT. 2, SUB-SECT. 10.—A.**

*h (p. 576) i. — — — — —*—*JONES v. JONES* (1868), 15 Gr. 40.—CAN.

*bb (p. 576) i. — — — — —*—*Proof of.—In ejectment on sheriff's deed.*—*MORAN v. PATTON* (1853), 10 U. C. R. 610.—CAN.

*bb (p. 576) ii. — — — — —*—*DELISLE v. DEWITT* (1859), 18 U. C. R. 155.—CAN.

*bb (p. 576) iii. — — — — —*—*Low v. HICKS* (1870), 21 C. P. 113.—CAN.

*bb (p. 576) iv. — Relation back.*—The title conveyed by a sheriff's deed to land, sold under an execution issued upon a judgment recovered in an action brought on a former judgment in the same ct., does not relate back to the time of signing the first judgment, so as to defeat a conveyance made between the times of signing the first & second judgments.—*DOE d. PEABODY v. MCKNIGHT* (1838), 2 N. B. R. (Ber.) 567.—CAN.

*bb (p. 576) v. — — — — —*—*To day of sale.*—Although a sheriff's deed relates back to the day of sale, for the purpose of defeating intermediate conveyances, the vendee cannot bring ejectment until the execution thereof.—*GAUVILLER v. BEATON* (1862), 12 C. P. 519.—CAN.

*cc (p. 576) i. — To growing crops on land sold.*—Crops growing at the time of the confirmation of a sheriff's sale of the land under an execution pass with the land to the purchaser.—*ANDERSON v. STASIUK* [1926] 1 D. L. R. 347; [1926] 1 W. W. R. 107; 20 Sask. L. R. 269.—CAN.

*g (p. 577) i. — — — — —*—*Land held adversely by third party.*—A sheriff selling under execution is not within the class of cases which apply to a person selling land held adversely by another.—*DOULL v. KEEFE* (1901), 34 N. S. R. 15.—CAN.

*h (p. 577) i. — — — — —*—*Error in judgment.*—*Held*: the sheriff's deed could give no title.—*VAREY v. MUIRHEAD* (1831), Dra. 486.—CAN.

*h (p. 577) ii. — — — — —*—*Too much sold.*—*Held*: no ground for invalidating the sale.—*DOE d. HAGERMAN v. STRONG* (1848), 4 U. C. R. 510.—CAN.

*h (p. 577) iii. — — — — —*—*Sale in separate lots.*—*Held*: permissible.—*DOE d. ROBERTS v. WATSON* (1850), 6 N. B. R. (1 All.) 675.—CAN.

*h (p. 577) iv. — — — — —*—*Part only sold.—Duty of sheriff to designate portion offered for sale.*—*KNAGGS v. LEDYARD* (1866), 12 Gr. 320.—CAN.

*h (p. 577) v. — — — — —*—*Sale of undivided interest in township lots.*—*RATHBUN v. CULBERTSON* (1875), 22 Gr. 465.—CAN.

*h (p. 577) vi. — — — — —*—*Time of sale.*—the sheriff might sell at any time between the hours named in 27 Geo. 3, c. 12.—*DOE d. ROBERTS v. WATSON* (1850), 6 N. B. R. (1 All.) 675.—CAN.

*h (p. 577) vii. — — — — —*—*Sheriff disregarding judgment creditor's instructions.—Bidding at once full amount instead of bidding gradually.*—*Held*: the judgment creditor had no ground of action against the sheriff.—*MARKLE v. THOMAS (SHERIFF)* (1856), 13 U. C. R. 321.—CAN.

*h (p. 577) viii. — — — — —*—*Proof of.*—*ROE v. MCNEIL* (1863), 13 C. P. 189.—CAN.

*h (p. 577) ix. — — — — —*—*FIELDS v. LIVINGSTON & WIGHTMAN* (1866), 17 C. P. 15.—CAN.

*h (p. 577) x. — — — — —*—*Purchaser stopped from disputing validity.*—*FERGUSON v. FERGUSON* (1869), 16 Gr. 309.—CAN.

*h (p. 577) xi. — — — — —*—*Effect of.—Sale of equity of redemption.—Purchase by c from execution creditor.—Sub-conveyance to debtor.*—*CHITTICK* (1903), 21 C. L. T. 15; 6 O. L. R. 547; 2 O. W. R. 957.—CAN.

*h (p. 577) xii. — — — — —*—*Covenants.*—The implied covenants between vendor & purchaser, including those implied by Land Titles Act, R. S. S., 1920 (c. 67), s. 64 (2), do not come into existence where land is sold by the sheriff under execution.—*ANDERSON v. STASIUK* (No. 3), [1927] 1 D. L. R. 529; [1927] 1 W. W. R. 49; 21 Sask. L. R. 276.—CAN.

*sa. Confirmation of sale.—Right of appeal.*—A local master, in confirming a sale of land sold under execution, is not acting in a matter or an action in ct. but as *persona* under Land Titles Act, R. S. c. 67, & the only appeal is t of Appeal.—*ETHIER v. NOLL* 1 W. W. R. 493.—CAN.

*sb. Distribution of proceeds of sale.*—The proceeds of a sale of land under



1552a. **Equitable interest—Amendment—Costs.**—KIDD v. TALLENTIRE, [1877] W. N. 21.

1564a. **Issue into county palatine—Indorsement for less than £50.**—BROWN v. M'MILLAN (1840), 7 M. & W. 196; 10 L. J. Ex. 147; 151 E. R. 736; *sub nom.* BROWN v. MACMILLAN, SAME v. MACPHERSON, 8 Dowl. 852; H. & W. 46; 4 Jur. 1090.

1576a. **When completed.**—OWEN v. OWEN (1831), 2 B. & Ad. 805; 109 E. R. 1341.

1577a. **Whether defendant discharged.**—HODGSON v. TOWNING (1837), Will. Woll. & Dav 53; *sub nom.* ANON., 1 Jur. 84.

**Annotation:**—*Consd.* Aga Kurboolie Mahomed v. R. (1843), 4 Moo. P. C. C. 239.

1578a. **Right to break outer doors.**—MALEVERER v. SPINKE (1537), 1 Dyer, 35 b; 73 E. R. 79.

**Annotations:**—*Mentd.* Russel v. Gulwel (1599), Cro. Eliz. 657; Lasington's Case (1600), Cro. Eliz. 750; Mouse's Case (1608), 12 Co. Rep. 63; Case of Parliament in Ireland (1613), 12 Co. Rep. 110; Liford's Case (1614), 11 Co. Rep. 46 b; Secheverel v. Dale (1626), Poph. 193; Simmons v. Norton (1831), 9 L. J. O. S. C. P. 185; Cope v. Sharpe, [1910] 1 K. B. 168; Cope v. Sharpe (No. 2), [1912] 1 K. B. 496.

1578b. **After escape of prisoner.**—ANON. (1774), Lofft. 390; 98 E. R. 709.

1578c. **—**—HOPKINS v. NIGHTINGALE (1794), 1 Esp. 99; 170 E. R. 292, N. P.

1579a. **Opening of door obtained by trick.**—*Held:* an unlawful entry.—PARKE & PERCIVAL v. EVANS (1615), Hob. 62; 80 E. R. 211.

**Annotations:**—*Refd.* Lee v. Gansel (1774), 1 Cowp. 1; Sandon v. Jervis (1859), E. B. & E. 942.

1579b. **—**—ANON. (1695), 12 Mod. Rep. 73; 88 E. R. 1172.

1580a. **What is outer door—Whether hole in wall.**—Where it was proved that a hole in the outer wall of a house was not intended to have either a door or window put into it, but was to remain open, so that the place should be used as a conservatory:—*Held:* if the hole in the wall had been intended to have had a door or window put into it, it must be considered that the outer fence of the house was left open, but if the hole was always intended to be left open, the staircase window must be considered as the outer fence of the house.—WHALLEY v. WILLIAMSON (1836), 7 C. & P. 294; 173 E. R. 130.

1581a. **—**—RING v. HYDE (1850), 14 L. T. O. S. 377.

1584a. **—**—*Held:* valid.—ANON. (1702), 7 Mod. Rep. 8; 87 E. R. 1060.

**Annotation:**—*Appld.* Sandon v. Jervis (1858), E. B. & E. 935.

1584b. **Window broken to take into custody.**—*Held:* valid.—LLOYD v. SANDILANDS (1818), 8 Taunt. 250; 2 Moore, C. P. 207; 129 E. R. 379.

execution when paid over to the registrar of the ct. are distributable by him as if they were money in the hands of the sheriff distributable under Creditors' Relief Act. An appeal lies to a judge from the registrar's scheme of distribution.—CAUDWELL v. GEORGE, [1925] 2 D. L. R. 229; [1925] 1 W. W. R. 579; 35 B. C. R. 134.—CAN.

PART III. SECT 2, SUB-SECT. 11.

15571. **Order of court—When court will set aside sale—On equitable grounds.**—

WOOD v. LEEMING (1827), Tay. 463.—CAN.

1557 ii. **—**—*—*—CAMPBELL v. SMITH (1863), 10 Gr. 206.—CAN.

1557 iii. **—**—*Notice of motion not given to purchaser.*—*Held:* the ct. would not interfere.—MCGILLIS v. McDONALD (1839), 2 Ont. Dig. 2662.—CAN.

PART III. SECT. 3, SUB-SECT. 3.—A.

*sd.* Proceedings after surrender—*Set*

1615. **Add. Annotation:**—*Mentd.* Cumberland v. Lanarkshire Tram. Co. (1927), 20 B. W. C. C. 780.

1658a. **More than amount of rent due—Redelivery of surplus.**—Several crops having been taken under an *habere facias possessionem* issued on an ejectment brought against a tenant for holding over, the ct. refused a rule for the lessors of pltf. to pay over the value of them to deft. after deducting the amount of rent due.—DOE d. UPTON v. WITHERWICK (1825), 3 Bing. 11; 10 Moore, C. P. 267; 3 L. J. O. S. C. P. 126; 130 E. R. 417.

**Annotation:**—*Refd.* Kelly v. Webber (1860), 3 L. T. 124.

1704. **Add. Annotation:**—*Folld.* Employers' Liability Assce. Corpn. v. Sedgwick, Collins, [1927] A. C. 95.

1706a. **Payment of rent—How rent calculated.**—Upon a motion to set aside an ejectment & restore possession upon payment of the rent due & costs, the rent must be calculated only to the last rent day, not to the day of computing.—DOE d. HARCOURT v. ROE (1813), 4 Taunt. 883; 128 E. R. 579.

1720. **Add. Annotation:**—*Refd.* Capron v. Capron, [1927] P. 243.

1753. **Add. Annotation:**—*Refd.* Capron v. Capron, [1927] P. 243.

1754. **Add. Annotation:**—*Refd.* Capron v. Capron, [1927] P. 243.

1754a. **—**—*Semble:* arrears of alimony accrued due come within the scope of R. S. C., Ord. 43, as constituting disobedience to an order not merely to pay money, but to do so within a limited time.—CAPRON v. CAPRON, [1927], P. 243; 96 L. J. P. 151; 137 L. T. 568; 43 T. L. R. 667; 71 Sol. Jo. 711.

1758. **Add. Annotation:**—*Refd.* *Re* Nelson, Norris v. Nelson, [1928] Ch. 920, n.

1769. **Add. Annotation:**—*Refd.* Engelke v. Musmann, [1928] A. C. 433.

1847. **Add. Annotation:**—*Refd.* Capron v. Capron, [1927] P. 243.

1855. **Add. Annotation:**—*Refd.* Capron v. Capron, [1927] P. 243.

1882a. *S. P.* *Re* RUSH (1870), L. R. 10 Eq. 442; 39 L. J. Ch. 759.

1900. **Add. Annotation:**—*Mentd.* *Re* Lloyd's Furniture Palace, Evans v. Lloyd's Furniture Palace, [1925] Ch. 853.

1912. **Add. Annotation:**—*Refd.* Capron v. Capron, [1927] P. 243.

1944. **Add. Citations:**—*sub nom.* KIRLEW v. BUTTS, 2 B. & Ad. 736, n.; 109 E. R. 1318.

**Add. Annotations:**—*Appld.* Britten v. Wait (1832), 3 B. & Ad. 915. *Refd.* Newland v. Watkin (1832), 2 Moo. & S. 174; Colebrooke v. Layton (1833), 1 Nev. & M. K. B. 374.

—WARD v. STOCKING (1825), Tay. 216.—CAN.

PART III. SECT 3, SUB-SECT. 5.—A.  
s i. **By mistake—Second writ refused.**—BRADBURY v. LONEY (1842), 6 O. S. 291.—CAN.

PART III. SECT. 5, SUB-SECT. 3.  
s i. **By whom signed & issued—By clerk of court & not by judge.**—ALLENACH v. DESBRISAY (1868), N. B.



## Part V.—Analogous Proceedings.

2046. In the cross-reference before this case, for "METROPOLIS" read "MAYOR'S & CITY OF LONDON COURT."

2081. *Add. Annotation*:—*Mentd. Akt. Ocean v. Harding*, [1928] 2 K. B. 371.

2084a. *Person out of jurisdiction.*—R. S. C., Ord. 45, r. 1, contemplates both a garnishee & a debt recoverable within the jurisdiction.

A judgment debtor had a balance in an English bank with foreign branches where foreign currency was in use. It was claimed that a garnishee order obtained in England against the bank should extend to possible balances to the credit of the judgment debtor at its foreign branches:—*Held*: the foreign

balances, not constituting a debt recoverable within the jurisdiction, could not be attached by a garnishee order.—*RICHARDSON v. RICHARDSON*, [1927] P. 228; 96 L. J. P. 125; 137 L. T. 492; 43 T. L. R. 631; 71 Sol. Jo. 695.

2086a. ]—*FASSNIDGE v. FLINT & SON* (1892), 8 T. L. R. 213.

2108. *Add. Annotation*:—*Expld. Re Clark, Clark v. Clark*, [1926] Ch. 333.

. *Add. Annotation*:—*Reid. Richardson v. Richardson*, [1927] P. 228.

2124a. *Must be recoverable within jurisdiction.*—*RICHARDSON v. RICHARDSON*, No. 2084a, *ante*

## PART V. SECT. 1, SUB-SECT. 2.—A.

*sl. Magistrate's order for maintenance of deserted wife—Affirmed by county court.*—*Held*: a judgment enforceable by the attachment of a debt due to the husband.—*BROWN v. BROWN*, [1927] 4 D. L. R. 314; [1927] 3 W. W. R. 172; 38 B. C. R. 473.—CAN.

## PART V. SECT. 1, SUB-SECT. 2.—B.

*n i. — Making assignment in bankruptcy.*—Where after recovering a judgment the judgment creditor makes an assignment in bkpcy., & there has been no re-assignment of the judgment to him, a garnishee summons issued by him, on an affidavit which states that the judgment debtor is indebted to him in respect of such judgment, is a nullity & cannot be cured by acquiescence, particularly in the absence of knowledge on the part of the garnishee.—*LANIN v. ZAWISLAK & DEMOSKY* (Sask.), [1927] 2 W. W. R. 71.—CAN.

## PART V. SECT. 1, SUB-SECT. 2.—C.

2077 ii. —.—.—*An application to set aside a garnishee summons, on the ground that the money attached is trust money & does not belong to appt., will not be entertained.*—*THOMPSON v. FRASER* (Sask.), [1926] 3 W. W. R. 251.—CAN.

*k. Read now "2084a i. Person out of jurisdiction."*

*l. Read now "2084a ii."*

*m. Read now "2084a iii."*

*n. Read now "2084a iv."*

*o. Read now "2084a v."*

## PART V. SECT. 1, SUB-SECT. 3.—A.

*r (p. 621) i. —.—.—*—Money paid into ct. cannot be attached by garnishing the clerk of the ct.—*ROYAL BANK OF CANADA v. VAN BUREN & MCKAY* (Alta.), [1927] 1 W. W. R. 268.—CAN.

*r (p. 621) ii. —.—.—*—Money paid into ct. as compensation due to the dependants of a deceased workman under Workmen's Compensation Act, 1925 (c. 84), is not subject to arrestment.—*WILLIAM BAIRD & Co. v. CAMPBELL*, [1928] S. C. 314.—SCOT.

*r (p. 621) iii. — Money deposited with returning officer.*—*Held*: not attachable.—*CREAGH v. SUTHERLAND & READE* (1895), 3 Terr. L. R. 303.—CAN.

*k (p. 622) i. —.—.—*—*For destruction of exempt property.*—Where a claim for damages for the destruction of exempt property has been converted into a debt, the amount thereof is not exempt from garnishment.—*ROSS v. ROGERS & CANADIAN NATIONAL RYS.* (Sask.), [1927] 3 W. W. R. 169.—CAN.

*m (p. 624). Revad., [1924] 1 D. L. R. 1154; 1 W. W. R. 707; 18 Sask. R. 158.*

*m (p. 624) i. —.—.—*—The balance of purchase-money or under an agreement of sale of

though all overdue, & assuming that the vendor is able & willing to convey & that the contract contains the usual provisions as to transfer, free from encumbrances on payment of the purchase-money, but where no transfer has been given or tendered, is not attachable by garnishment, as the debt is not a perfected & unconditional one.—*REED v. RENTON & PETTINGER*, [1924] 2 W. W. R. 223.—CAN.

*m (p. 624) ii. — Balance of payment to mortgagee under policy taken out by mortgagor.*—A hail-insurance policy taken out by a mtgor. on a crop growing on the mortgaged land provided that all loss thereunder should be payable to the mtgees., "as their interests may appear" & that the policy was held as collateral security to the mtge. On a loss occurring, the amount thereof was paid by the insurance co. to the mtgees., who applied part of it in payment of arrears then due on the mtge. & entered the surplus in their books "to the credit of the mtge. account." On being served with a garnishee order the mtgees. paid the amount claimed into ct.:—*Held*: the money in ct. should be paid to the garnishing creditor.—*ROYAL BANK OF CANADA v. KENWARD*, [1925] 4 D. L. R. 905; [1925] 3 W. W. R. 549.—CAN.

*m (p. 624) iii. — Purchase-money deposited in escrow.*—The purchase price of land deposited in escrow pending the showing of proper title & delivery of the conveyance:—*Held*: garnishable, where there was no suggestion that there was any defect of title, or that there would be any obstacle to the execution & delivery of the conveyance.—*HANKEY & Co., LTD. v. VERNON*, [1926] 1 D. L. R. 684; [1926] 1 W. W. R. 375; 36 B. C. R. 401.—CAN.

## PART V. SECT. 1, SUB-SECT. 3.—B.

*sl. Must be at time of issue of summons.*—*THORESON v. BLAIRMORE SCHOOL DISTRICT TRUSTEES* (Alta.), [1927] 3 D. L. R. 641; [1927] 2 W. W. R. 439.—CAN.

*sk. Claim by dismissed servant.*—Where the debt alleged to be due from the garnishee to debt. was based on an oral agreement of service for one year, & debt. had been dismissed by the garnishee & had retained a solr., who wrote stating that debt. intended to hold the garnishee to his contract & threatening legal proceedings, but no writ had been issued at the time of the service of the garnishee summons:—*Held*: there was no debt due or accruing due from the garnishee to debt.—*MASON v. MCLEOD & FOSTER*, [1926] 1 D. L. R. 752; [1925] 1 W. W. R. 165; 19 Sask. L. R. 221.—CAN.

## PART V. SECT. 1, SUB-SECT. 3.—E.

2124 ii. —.—.—*PARKER v. MCILWAIN* (1896), 17 P. R. 84.—CAN.

## PART V. SECT. 1, SUB-SECT. 3.—F.

*t i. Debt due to judgment debtor in hands of co-defendant.*—*Held*: not attachable.—*GILCHRIST v. WILEY* (1881), 28 Gr. 425.—CAN.

*sl. Debt due from one partnership to debtor of another partnership—One partner common to both firms.*—*McCORMICK v. PARK* (1859), 9 C. P. 330.—CAN.

## PART V. SECT. 1, SUB-SECT. 3.—H.

*p i. Assignment of earnings of farm implement.*—An assignment of 25 per cent. of the earnings of a farm implement in favour of the vendor takes priority over a garnishee order attaching such earnings, even though the notice required to be given by the vendor was not served until after the service of the garnishee order.—*TURNER v. WATERLOO MANUFACTURING Co.*, [1926] 2 D. L. R. 706; [1926] 1 W. W. R. 949; 35 Man. L. R. 472.—CAN.

## PART V. SECT. 1, SUB-SECT. 3.—J.

*c (p. 633) i. — Amount of exemption—Not affected by payments made on account.*—*CONTINENTAL GUARANTY CORPN. OF CANADA, LTD. v. HORODYSKE & CANMORE COAL CO., LTD.* (Alta.), [1927] 1 W. W. R. 401.—CAN.

*d (p. 633) i. — Deputy sheriff & gaoler.*—*Ex p. BOWES* (1896), 34 N. B. R. 76.—CAN.

*r (p. 634) i. —.—.—*—The rule, whereby the remuneration of the holders of public offices is exempt from arrestment, applies to the wages of an ordinary workman in the employment of a Govt. Department.—*MULVENNA v. THE ADMIRALTY*, [1926] S. C. 842.—SCOT.

*t (p. 634) i. —.—.—*—Under School Act, R. S. A., 1922 (c. 51), a teacher's salary is not a debt accruing due from day to day.—*THORESON v. BLAIRMORE SCHOOL DISTRICT TRUSTEES* (Alta.), [1927] 3 D. L. R. 641; [1927] 2 W. W. R. 439.—CAN.

*f (p. 634) i. — Army surgeon.*—The pay of an assistant-surgeon, attached to a British regiment serving in India, is not liable to attachment in execution of a decree of a civil ct.—*BROWNE v. PEARCE* (1925), 1 L. R. 48 All. 73.—IND.

## PART V. SECT. 1, SUB-SECT. 4.

*sn. To what court—Court of division where garnishee resides.*—*Re SAVORD v. DESJARDINS*, [1927] 1 D. L. R. 541; 59 O. L. R. 645.—CAN.

*s. Revad., 17 Alta. L. R. 109.*

*d (p. 637) i. —.—.—*—In an affidavit in support of a garnishee summons, deponent must swear positively to the indebtedness & the amount thereof, & if his affirmation as to the amount is upon information & belief only his previous positiveness

- 2169. Add. Annotations:—** *Refd. Employers' Liability Assce. Corpn. v. Sedgwick, Collins, [1927] A. C. 95; Richardson v. Richardson, [1927] P. 228.*

- 2170. Add. Annotations :—**Folld. Employers' Liability Assce. Corpn. v. Sedgwick, Collins, [1927] A. C. 95. **Refd.** Richardson v. Richardson, [1927] P. 228.

- 2170a. —————.]—Pltfs. had brought an action & had signed a judgment against a Russian co. in default of appearance. Service of the writ had been effected by leaving a true copy of the writ of summons with one C., who was the person authorised by registration in England to accept service on behalf of deft. co. under Companies (Consolidation) Act, 1908 (c. 69), s. 274. The co. had been liquidated in Russia but this liquidation took no account of debts due to the co. by English debtors or by the co. to English creditors, & an order had since been made to wind up the co. in England. The English liquidator decided not to attack the judgment. C. had endeavoured without success to have his name removed from the register:—*Held*: the judgment creditors were entitled to a garnishee order attaching money due to the Russian co. from a debtor of that co. in this country.—*SEDGWICK COLLINS & Co. v. ROSSIA INSURANCE CO. OF PETROGRAD*, [1926] 1 K. B. 1; 95 L. J. K. B. 7; 133 L. T. 808; 41 T. L. R. 663, C. A.; *affd. sub nom. EMPLOYERS' LIABILITY ASSURANCE CORPN. v. SEDGWICK, COLLINS & Co.*, [1927] A. C. 95; *sub nom. SEDGWICK, COLLINS*

as to the indebtedness is thereby qualified; & as to a judgment debt the affidavit must show not only the existing indebtedness, but also the amount for which judgment was recovered.—**FROST v. ROCHON & VERHELST, [1924] 3 W. W. R. 422.—CAN.**

d (p. 637) ii. ———.] — An affidavit in support of a garnishee summons with respect to a judgment debt. need not state the original amount of the judgment, but only the amount still due thereon.—PONTIUS v. SMITH & CONNAUGHTY, [1925] 3 D. L. R. 513; [1925] 2 W. W. R. 293; 19 Sask. L. R. 497.—CAN.

d (p. 637) iii. ———.]—An affidavit for a garnishee order is not sufficient, unless it states that it is founded upon information & belief, or that deponent has knowledge of the facts.—TILlicum ATHLETIC CLUB v. BURICK, [1925] 3 W. W. R. 368.—CAN.

d (p. 637) iv. .]—Where the affidavit in support of a garnishing order states that the garnishee is a certain named bank, it describes the garnishee sufficiently.—**VAN WASENAER v. ADAMS**, [1927] 3 D. L. R. 180; [1927] 2 W. W. R. 287; 38 B. C. R. 275.—**CAN.**

h (p. 637) 1. — *Time for swearing.*  
—The fact that the affidavit in support of a garnishee summons was sworn before the action was begun, although on the same day on which the statement of claim was issued, is ground for setting the garnishee summons aside.—*MCPARLAND v. SEYMOUR*, [1925] 4 D. L. R. 944; [1925] 3 W. W. R. 666; *revers.*, [1925] 4 D. L. R. 325; [1925] 3 W. W. R. 256.—CAN.

**PART V. SECT. 1, SUB-SECT. 5.—B.**

**q i. —. ]—Service of a garnishee summons set aside, the copy served not having been a true copy.—LIVERGANT v. CAPITAL JOBBERS, LTD., 1925] 3 W. W. R. 719.—CAN.**

**& Co., LTD. v. ROSSIA INSURANCE Co. OF  
PETROGRAD, 136 L. T. 72, H. L.**

**Annotations:—***Reid. The Jupiter* (No. 8) (1927), 137 L. T. 338; *Sabatier v. Trading Co.*, [1927] 1 Ch. 495; *First Russian Insee. v. London & Lancashire Insee.*, [1928] Ch. 922.

- 2188. Add. Annotation:—***Reid. Richardson v. Richardson*, [1927] P. 228.

- 2210a. — Not necessary to make judgment debtor a party.]—LEVENE v. MATON (1907), 51 Sol. Jo. 532.**

- 2279. Add. Annotation :—***Reid. C. L. v. C. F. W.*,  
[1928] P. 223.

- 2280.** *Add. Annotation :—Reid. C. L. v. C. F. W.,*  
[1928] P. 223.

2350. After the word "*Held*" add "(ERLE, J.,  
*diss.*)"

**Annotations :—**For the annotations in the original volume substitute as follows :—

**Annotations:—***Dbtd.* *Beavan v. Oxford* (1856), 6 De G. M. & G. 507. I prefer the opinion of *ERLE, J.*, to that of the other three judges (*TURNER, L.J.*). *N.F.* *Kinderley v. Jervis* (1856), 22 Beav. 1; *Scott v. Hastings* (1858), 4 K. & J. 633. *Consd.* *Nicholls v. Rosewarne* (1859), 6 C. B. N. S. 480. *N.F.* *Benham v. Keane* (1861), 1 John. & H. 685. *Dbtd.* *Pickering v. Ilfracombe Ry.* (1868), L. R. 3 C. P. 235; *Robinson v. Nesbitt* (1868), L. R. 3 C. P. 264. The opinion of the majority of the ct. in that case is no longer law (*BOVILL, C.J.*). *N.F.* *Gill v. Continental Union Gas Co.* (1873), L. R. 7 Exch. 332. *Dbtd.* *Punchard v. Tomkins* (1882), 31 W. R. 286. The case of *Watts v. Porter* is itself unsound law, but *ERLE, J.*'s construction of Judgments Act, 1838 (c. 110), is now held to be the law (*CHITTY, J.*). *N.F.* *Re General Horticultural Co., Ex p. Whitehouse* (1886), 32 Ch. D. 512; *Re Leavesley*, [1891] 2 Ch. 1; *Vacuum Oil Co. v. Ellis*, [1914] 1 K. B. 693. *Refd.* *Hirsch v. Coates* (1856), 18 C. B. 757; *Croft v. Lumley* (1858), 6 H. L. Cas. 672; *Baker v. Tynte* (1860), 2 E. & E. 897. *Mentd.* *Whistler v. Forster* (1863), 14 C. B. N. S. 248.

**t ii.** — *Creditors Relief Act, R. S. B. C., 1924 (c. 59).*—**VERNON HARDWARE CO. v. REID & REINHARD (B. C.), [1927] 2 W. W. R. 117.—CAN.**

**PART V. SECT. 1, SUB-SECT. 8.**

**2242 ii.** ————.]—**BRETHOUR v. TAYLOR & BANK OF MONTREAL (B. C.), [1927] 3 W. W. R. 166.—CAN.**

**sa.** — *By judgment debtor--To sheriff.*—*Held:* payment by the judgment debtor to the sheriff of the amount of the execution did not entitle him to have the garnishees discharged.—**KOLEGA v. GENSER (Man.) (1912), 22 W. L. R. 197 ; 6 D. L. R. 188.—CAN.**

**i i.** ——— *Distribution—Under Creditors Relief Act.*—WARD (ROBERT) & CO., LTD. v. WILSON (1907), 7 W. L. R. 37; 13 B. C. R. 273.—CAN.

**PART V. SECT. 2, SUB-SECT. 5.—A.**

2289 i. *Fund in court—Paid under garnishee proceedings.*—PRAT v. HITCHCOCK, JONAH v. HITCHCOCK, [1925] 3 D. L. R. 1142.—CAN.

**PART V. SECT. 3, SUB-SECT. 2.—D.**

**2393 1. Right of assignor to fund.]—**  
**Re DAVIDSON & SMITH, Ex p. LONDON**  
**GUARANTEE & ACCIDENT Co., [1925]**  
**2 D. L. R. 433.—CAN.**

**PART V. SECT. 5. SUB-SECT. 1.**

**2448 1. Not execution but equitable relief.]**—Equitable execution is a means of freeing exigible assets from impediments in the way of execution & reaching them when such impediments prevent them from being taken in the ordinary course; it will not be awarded unless it is reasonably clear that benefit will be derived from the appointment of a receiver.—**STRANG v. BEAL, [1923] 3 D. L. R. 1141; 52 O. L. R. 208.—CAN.**

**PART V. SECT. 5, SUB-SECT. 2.**

so. Of master.]—The master of the High Ct. has no jurisdiction to make an order appointing a receiver

2454. *Add. Annotation:—Refd. Ideal Films v. Richards*, [1927] 1 K. B. 374.
2463. *Add. Annotation:—Refd. Re Bueb*, [1927] W. N. 299.
2465. *Add. Annotation:—Refd. Re Bueb*, [1927] W. N. 299.
2502. *Add. Annotation:—Refd. Ideal Films v. Richards*, [1927] 1 K. B. 374.
2526. *Add. Annotation:—Refd. Guatemala (Republica de) v. Nunez* (1926), 95 L. J. K. B. 955.

## Part VI.—Discovery in Aid of Execution.

2547a. — On foreign debtor—Temporarily within jurisdiction—Form of order.]—PRACTICE NOTE, [1928] W. N. 209.

by way of equitable execution.—*BAIRD v. MURPHY*, [1928] 1 R. 125.—IR.

*ss. Effect of County Courts Act, R. S. M., 1913, s. 57.*—Under the above sect. county ct. judges in Manitoba have no jurisdiction to make an order for the appointment of a receiver if the order is, in effect, an injunction against debt, restraining him from receiving the moneys therein referred to.—*McFARLANE v. FRANKLIN*, [1924] 3 D. L. R. 605; 2 W. W. R. 1036; 34 Man. L. R. 293.—CAN.

### PART V. SECT. 5, SUB-SECT. 3.—A. (a).

2453 v. —.]—A pltf. who holds a judgment on which he is entitled to issue a writ of execution against goods only, & who seeks the appointment of a receiver to take possession of the goods, must show (*inter alia*) that he is entitled to have the goods seized, but that it is impossible, owing to some impediment in law of debt's interest.—*LANGSTAFF v. SQUIRRELL*, [1924] 2 D. L. R. 930; 1 W. W. R. 1265; 18 Sask. L. R. 250.—CAN.

2453 vi. —.]—The appointment of a receiver by way of equitable execution will not as a general rule be made, unless there exists some special difficulty or legal impediment to obtaining execution in the ordinary course by garnishment of the debt due to the execution debtor.—*ROYAL TRUST Co. v. KRITZWISER*, [1924] 3 D. L. R. 596; 2 W. W. R. 760.—CAN.

2453 vii. —.]—Before a receiver by way of equitable execution can be appointed, there must be a legal right in the creditor to be paid out of the particular asset, which he cannot reach unless aided by the ct.; but the creditor cannot by this process reach a kind of asset not exigible under legal execution.—*EATON v.*

*BRANT* (1924), 55 O. L. R. 346.—CAN. 2453 viii. —.]—*THOMSON v. CUSHING* (1889), 30 O. R. 123.—CAN.

2453 ix. —.]—*NOVA SCOTIA MINING Co. v. GREENER* (1898), 31 N. S. R. (19 R. & G.) 189.—CAN.

sk. *Whether granted as of right.*—It is erroneous to assume that because property of a judgment debtor is not liable to the ordinary processes of execution, the judgment creditor must be able successfully to invoke the equitable jurisdiction of the ct. to obtain realisation of the property.—*MATTHEWSON v. STREDICKE*, [1924] 3 D. L. R. 1085; 2 W. W. R. 1099.—CAN.

### PART V. SECT. 5, SUB-SECT. 3.—C.

ni. *Legal estate in remainder.*—A vested interest in land subject to another person's life estate does not constitute a sufficient present interest in land to justify the appointment of a receiver with a view to realisation.—*MATTHEWSON v. STREDICKE*, [1924] 3 D. L. R. 1085; 2 W. W. R. 1099.—CAN.

qi. —.]—*BARNES v. SHARPE*, [1924] 2 D. L. R. 1119; 2 W. W. R. 462.—CAN.

### PART VI.

si. —.]—*Mortgagor—Although execution stayed.*—*FRANCO-BELGIUM INVESTMENT Co. v. MCNAMARA* (Alta.), [1918] 2 W. W. R. 929.—CAN.

ai. —.]—Order made for examination, where it was disclosed that judgment debtor had purchased & put in his wife's name certain land & had paid out money on account of the purchase price & for interest & taxes.—*BEAU MONDE LADIES' TAILORING Co. v. GARRETT*, [1925] 3 D. L. R. 957; 57 O. L. R. 256.—CAN.

aii. —.]—*Mother-in-law of judgment debtor.*—Order made for examination, where it was disclosed that judgment

debtor had made payments to his mother-in-law of sums which it was alleged she had lent him.—*BEAU MONDE LADIES' TAILORING Co. v. GARRETT*, [1925] 3 D. L. R. 957; 57 O. L. R. 256.—CAN.

2552 i. *Nature of examination.*—The questions should be limited to the scope of the order for examination.—*FLANAGAN v. ENGLAND*, [1926] 3 D. L. R. 360; [1926] 2 W. W. R. 428; 20 Sask. L. R. 579.—CAN.

2552 ii. —.]—*Judgment on contract readjusting earlier contracts.*—On examination for discovery in aid of execution on a judgment recovered on a contract, debtor may be required to answer questions relating to his property & his dealings with it prior to the date of the contract sued on, where it is shown, even by evidence adduced on an application to a judge to compel debtor to answer the questions, that the contract had replaced earlier contracts between the same parties & was merely a readjustment of a liability incurred prior to its date.—*STANDARD TRUST Co. v. WALTER*, [1926] 1 D. L. R. 86; [1926] 1 W. W. R. 16; 22 Alta. L. R. 176.—CAN.

st. *Refusal to attend.*—K. B. Rules (Sask.), Ord. 33, contains no provision for compelling the attendance of a person ordered to attend for examination other than that contained in r. 480.—*SASKATOON HARDWARE Co. v. MCMANUS*, [1924] 3 D. L. R. 344; 2 W. W. R. 809.—CAN.

sz. —.]—*Non-attendance on previous day waived.*—Where non-attendance on the day fixed by an order for debt's attendance for examination as a judgment debtor is waived by pltf., debt. cannot be committed for failure to attend upon a subsequent day, the effect of the order being spent.—*HYATT v. OWENS*, [1927] 3 D. L. R. 563; 60 O. L. R. 489.—CAN.



## EVIDENCE.

## Part I.—General Principles.

2. *Add. Annotation*:—Generally, *Mentd. Lake v. Simmons* (1926), 95 L. J. K. B. 586.
4. *Add. Annotation*:—*Mentd. The Sheaf Brook*, [1926] P. 61.
30. *Add. Annotation*:—*Mentd. British Oxygen Co. v. Liquid Air*, [1925] Ch. 383.
- 31a. *Interview—Dictaphone record.*—The dictaphone record of an interview may be accepted in evidence.—*Buxton v. Cumming* (1927), 71 Sol. Jo. 232.
- 55a. ———.]—At the close of pltf.'s case, deft. applied for a nonsuit, on the ground that there was no evidence given of such negligence as to render deft. liable. The judge refused to stop the case, but reserved leave to move for a nonsuit. The jury having found for pltf.:—*Held*: (1) when at the close of pltf.'s case there was no evidence upon which the jury could reasonably & properly find a verdict, the judge ought to have directed a nonsuit; (2) in every case before evidence is left to the jury there is a preliminary question for the judge, not whether there is literally any evidence, but whether there is any evidence upon which a jury can properly proceed to find a verdict for the party producing it, upon whom the *onus* of proof is imposed.—*GIBLIN v. McMullen* (1869), L. R. 2 P. C. 317; 5 Moo. P. C. C. N. S. 434; 38 L. J. P. C. 25; 21 L. T. 214; 17 W. R. 445; 16 E. R. 578, P. C.
- Annotations*:—Generally, *Mentd. Re United Service Co., Johnston's Claim* (1871), 6 Ch. App. 212; *Leese v. Martin* (1873), L. R. 17 Eq. 224; *Lagunas Nitrate Co. v. Lagunas Syndicate*, [1899] 2 Ch. 392; *Re National Bank of Wales*, [1899] 2 Ch. 629; *Bullen v. Swan Electric Engraving Co.* (1906), 22 T. L. R. 275; *Banbury v. Bank of Montreal*, [1917] 1 K. B. 409.
- 55b. ———.]—Where pltf. has closed his evidence, & the judge who tries the case is of opinion that there is no case to go to the jury, he ought to direct accordingly.—*DANIEL v. METROPOLITAN RY. CO.* (1871), L. R. 5 H. L. 45; 40 L. J. C. P. 121; 24 L. T. 815; 35 J. P. 708; 20 W. R. 37, H. L.
- Annotations*:—*Reid. Williams v. G. W. Ry.* (1874), L. R. 9 Exch. 157. *Mentd. The Secret* (1872), 26 L. T. 670; *The Maid of the Mist* (1873), 21 W. R. 310; *Simson v. London General Omnibus Co.* (1873), 21 W. R. 595; *Wright v. Mid. Ry.* (1873), 42 L. J. Ex. 89; *Cohen v. Met. Ry.* (1890), 6 T. L. R. 146; *Pounder v. N. E. Ry.*, [1892] 1 Q. B. 385.
- 55c. ——— *Power of judge to change ruling.*—In an action for personal injuries the judge refused to nonsuit on the ground of there being no evidence of negligence, & the jury, having heard the whole case, disagreed:—*Held*: the judge was entitled to enter judgment for deft.—*PETERS v. PERRY & CO.* (1894), 10 T. L. R. 366.
- Annotation*:—*Consd. Skeate v. Slaters*, [1914] 2 K. B. 429.
- 55d. ———.]—*SHEARS v. MENDELOFF* (1914), 30 T. L. R. 342.
- 55e. ———.]—In an action tried with a jury the judge was asked at the conclusion of pltf.'s case to withdraw the case from the jury on the ground that pltf. had failed to make any case against defts. The judge refused to do so. Witnesses were then called for the defence. The jury disagreed. Subsequently an application was made to the judge to enter judgment for defts. upon the above ground & also upon the ground that upon all the evidence in the case the jury could not reasonably have found a verdict for pltf. The judge having refused to enter judgment for defts.:—*Held*: (1) a judge at the trial had power to enter judgment for deft. if upon the case as a whole the evidence of pltf. was so weak that a verdict in his favour would have been set aside as unreasonable.
- (2) A judge who at the conclusion of pltf.'s case has ruled that there is some evidence for the jury, is entitled at the conclusion of the whole case to reconsider his ruling & to enter judgment for deft., if he is then of opinion that pltf.'s evidence fails to disclose any cause of action against deft.—*SKEATE v. SLATERS, LTD.*, [1914] 2 K. B. 429; 83 L. J. K. B. 670; 110 L. T. 604; 30 T. L. R. 290, C. A.
- Annotations*:—As to (1) *Consd. Winterbotham, Gurney v. Sibthorp & Cox*, [1918] 1 K. B. 625. *Reid. Everett v. Griffiths*, [1921] 1 A. C. 631. As to (2) *Reid. Cooke v. Wilson* (1915), 85 L. J. K. B. 838. *Generally, Reid. Gascoigne v. Gascoigne* (1917), 87 L. J. K. B. 333.
- 59a. ———.]—*GIBLIN v. McMullen*, No. 55a, ante.
70. *Add. Annotation*:—*Mentd. Akt. Reidar v. Arcos* (1926), 42 T. L. R. 737.
101. *Add. Annotation*:—*Folld. Isaacs v. Cook*, [1925] 2 K. B. 391.
116. *Add. Annotation*:—*Reid. Australia (Owners) v. Nautilus (Owners), The Australia* (1926), 95 L. J. P. 145.
117. *Add. Annotation*:—*Reid. Australia (Owners) v. Nautilus (Owners), The Australia* (1926), 95 L. J. P. 145.
118. *Add. Annotation*:—*Mentd. Hale v. Coombes*, (1925), 42 R. P. C. 328.

## PART I. SECT. 1.

1 i. *Civil & criminal trials distinguished.*—Where the question to be determined in a civil action is whether or not a criminal offence has been committed, but this question does not arise directly upon the pleadings, the ct., in deciding whether or not an offence has been committed, should apply the ordinary civil rule as to the sufficiency of proof, & not the rule which prevails in a ct. of

criminal jurisdiction that the ct. must be satisfied beyond reasonable doubt that the crime alleged has been committed.—*MOTCHALL v. MASSOUD*, [1926] V. L. R. 273; [1926] *Argus* L. R. 271.—AUS.

## PART I. SECT. 3, SUB-SECT. 1.

5 iv. ———.]—*CONSOLIDATED WAFER CO., LTD. v. INTERNATIONAL CONE CO., LTD.*, [1926] 4 D. L. R. 74; 59 O. L. R. 205.—CAN.

## PART I. SECT. 4, SUB-SECT. 2.

55 ix. ———.]—*ROBINSON v. ASSINI-ROIA TOWN*, [1927] 3 D. L. R. 514; [1927] 2 W. W. R. 499; 21 Sask. L. R. 658.—CAN.

n i. ———.]—*DOE d. PETIT v. RENARD* (1850), 6 U. C. R. 501.—CAN.

n ii. ———.]—*MONTREAL TRUST CO. v. CANADIAN PACIFIC RY. CO.*, [1927] 4 D. L. R. 373 61 O. L. R. 137.—CAN.

- i. *Add. Annotation*:—*Mentd. Crediton Gas Co. v. Crediton U. C.*, [1928] Ch. 447.
155. *Add. Annotation*:—*Mentd. Sharpe v. South-*
167. *Add. Annotations*:—*Mentd. Re Annesley, Davidson v. Annesley*, [1926] Ch. 692; *Buerger v. New York Life Assce.* (1927), 96 L. J. K. B. 930.

## Part II.—Admissibility of Evidence.

- 301a. *Effect of letter written by plaintiff's solicitor.*  
—A letter written by pltf.'s attorney, demanding payment of an inclosed bill, does not confine pltf. from going into evidence of other matters not included in the bill so inclosed.—*SHORT v. EDWARDS* (1795), 1 Esp. 373; 170 E. R. 390, N. P.
312. For "Letters from agent—Forming part of contract" substitute "— Letters from agent—Forming part of contract."  
In the cross-reference following this case, for "— After contract complete" substitute "— — After contract complete."
370. *Add. Annotation*:—*Refd. Short v. Poole Corpn.* (1925), 42 T. L. R. 107.
374. *Add. Annotation*:—*Mentd. Baines v. National Provincial Bank* (1927), 96 L. J. K. B. 801.
397. *Add. Annotation*:—*As to* (1) *Refd. Koskas v. Standard Marine Insce.* (1926), 42 T. L. R. 692.
417. *Add. Citation*:—132 L. T. 229.
418. *Add. Annotation*:—*Mentd. Re Clayton's Petn.* (1927), 43 T. L. R. 659.
419. *Add. Annotations*:—*Mentd. Holland v. Holland*, [1925] P. 101; *Warren v. Warren*; [1925] P. 107; *Mart v. Mart*, [1926] P. 24; *Selby v. Atkins* (1926), 135 L. T. 45; *S. v. S. & P.* (1927), 44 T. L. R. 52.
- 421a. —.]—*SMITH v. WILKINS* (1833), 6 C. & P. 180; 172 E. R. 1198, N. P.
525. *Add. Annotation*:—*Mentd. Sharp & Dohme Inc. v. Boots Pure Drug Co.* (1928), 45 R. P. C. 153.
- 535a. *Admissions "without prejudice."*—At the trial of an action, pltf. proposed to put in evidence the examination, taken on commission, of a representative of pltf. as to admissions alleged to have been made by a representative of defts. Defts. contended that the alleged admissions had been made at interviews which, although they had not been expressed to be "without prejudice," were such that they would be regarded as having been made "without prejudice," & that the examination was inadmissible:—*Held*: the examination was inadmissible.—*SCOTT PAPER CO. v. DRAYTON PAPER WORKS, LTD.* (1927), 44 R. P. C. 151; *on appeal*, 44 R. P. C. 529, C. A.
537. *Add. Annotation*:—*Consd. Falcon v. Famous Players Film Co.* (1925), 42 T. L. R. 91.
544. *Add. Annotation*:—*Consd. Falcon v. Famous Players Film Co.* (1925), 42 T. L. R. 91.
- 580a. *Admission by author—As to copyright.*—*FALCON v. FAMOUS PLAYERS FILM CO., LTD.*, No. 624a, *post*.
595. *Add. Annotation*:—*Refd. Warren v. Warren*, [1925] P. 107.
- 624a. *Agent of predecessor in title—Licensee of copyright.*—(1) By an agreement in writing dated June 30, 1898, one G., the author & sole proprietor of the right to perform a certain play, granted to pltf. the sole & exclusive right to perform, or have performed, the play in Great Britain & Ireland. On Sept. 22, 1898, G.'s agent wrote to pltf. stating that the play had been first performed in Great Britain on a certain date & at a

PART I. SECT. 6, SUB-SECT. 1.—A  
119 xxv. — *Payment.*—*BRONDSON v. NORTHGRAVES* (Sask.), [1925] 3 W. W. R. 456.—CAN.

PART I. SECT. 7, SUB-SECT. 1.  
266 ii. —.]—Where there was no unfairness to accused in admitting as evidence only a portion of a statement:—*Held*: the judge was not bound to admit the whole statement.—*R. v. SCHWARZ*, [1923] S. A. S. R. 347.—AUS.

PART II. SECT. 1.  
sm. *By consent—Evidence otherwise inadmissible.*—Evidence not otherwise admissible, or which would have been liable to rejection if any objection were taken to it, may be perfectly good evidence if admitted by the consent of the parties.—*RADHA KISHAN v. KEDAR NATH* (1924), 1 L. R. 46 All. 815.—IND.

PART II. SECT. 3, SUB-SECT. 2.—A.  
306 i. — *Circumstances of case.*—A promissory note was discounted with private funds advanced by a bank manager as agent for the lender. In an action against the original maker & another party, who signed the note as a maker, at the request of the manager, before its maturity, but several months after it was discounted, & while it was in the bank for collection:—*Held*: evidence of the con-

versation between the manager & such party at the time the latter signed was admissible on his defence of want of consideration as part of the *res gestæ*.—*ROGERS v. WEIR* (Alta.), [1927] 4 D. L. R. 445; [1927] 3 W. W. R. 177.—CAN.

oi. — *Telephone conversation—Proof of authority of agent.*—*Held*: a telephone conversation was admissible, where evidence existed from which it could be inferred that the telephone conversation took place with a person authorised to engage in such a conversation.—*Re DREYFUS (LOUIS) & SOUTH AUSTRALIAN MILLING & TRADING CO.*, [1923] S. A. S. R. 75.—AUS.

PART II. SECT. 3, SUB-SECT. 2.—  
D. (b).

sn. *Report by agent to principal.*—*Held*: a telegram & a letter dispatched shortly after a sale of goods by the seller's agent to his employers recording his version of the transaction may competently be referred to for the purpose of testing his credibility.—*GIBSON v. NATIONAL CASH REGISTER CO.*, [1925] S. C. 500.—SCOT.

PART II. SECT. 3, SUB-SECT. 5.—C.  
ri. — *Of defendant.*—In an action under Customs Act to recover unpaid customs duties & penalties:—*Held*: evidence of a conversation between

deft. & a customs official subsequent to the transactions in issue was admissible, since it tended to show that deft. was again proposing to defraud the customs in practically the same manner in which he was alleged to have done so in the case at bar.—*R. v. ZIZU NATANSON* (No. 1), [1927] 3 D. L. R. 591; [1927] 2 W. W. R. 139; 48 Can. Crim. Cas. 194; 21 Sask. L. R. 518.—CAN.

PART II. SECT. 3, SUB-SECT. 8.—A.  
n i. —.]—*EDWARDS v. OTTAWA RIVER NAVIGATION CO.* (1876), 39 U. C. R. 264.—CAN.

so. *Sparks from engine causing fire—Previous fires caused by engine.*—*Held*: admissible.—*CANADA CENTRAL RY. CO. v. McLAREN* (1883), 8 A. R. 564.—CAN.

PART II. SECT. 4, SUB-SECT. 1.—C.  
ni. —.]—*DEVERER v. ROOP* (1876), 16 N. B. R. (3 Pug.) 295.—CAN.

PART II. SECT. 4, SUB-SECT. 2.—A.  
485 ii. —.]—Admissions in civil cases should be considered, made use of, & interpreted in the same way as confessions in criminal cases.—*ROGERS v. WEIR* (Alta.), [1927] 4 D. L. R. 445; [1927] 3 W. W. R. 177.—CAN.

496 ii. —.]—*LARGE v. PERKINS* (1823), Tay. 62.—CAN.

certain place:—*Held*: a copy of the letter of Sept. 22, 1898, the original having been lost, was admissible as evidence in a copy-right action between pltf. & third parties, who claimed a right to produce cinematograph films of the play under an agreement for value with G., dated Sept. 6, 1919, to prove that the first performance of the play took place in this country as stated in the letter since (a) being written by G.'s agent, it constituted an admission by G., a person who, although not named on the record, had a substantial interest in the result; & (b) it constituted an admission by defts.' predecessors in title.

(2) An entry in the register of first performances of dramatic productions at Stationers' Hall is admissible in evidence as a public register. If such an entry is incorrect, the party producing a certified copy of it may be precluded from relying on it as *prima facie* proof of a right to produce or reproduce the play to which it relates, but it can be regarded by the ct. as corroboration of other evidence of title.—*FALCON v. FAMOUS PLAYERS FILM Co., LTD.* [1926] 1 K. B. 393; 95 L. J. K. B. 148; 134 L. T. 246; 42 T. L. R. 91; *affd.*, [1926] 2 K. B. 474; 96 L. J. K. B. 88; 135 L. T. 650; 42 T. L. R. 666; 70 Sol. Jo. 756, C. A.

*Annotations*:—*Generally*, *Mentd.* *Message v. British Broadcasting Co.*, [1927] 2 K. B. 543; *English Hop Growers v. Doring*, [1928] 2 K. B. 174.

633. *Add. Annotations*:—*Mentd.* *Auchteroni v. Midland Bank*, [1928] 2 K. B. 294; *Reckitt v. Barnett, Pembroke & Slater*, [1928] 2 K. B. 244.

653. *Add. Annotation*:—*Refd.* *Bonham v. Maycock* (1928), 138 L. T. 736.

669. *Add. Annotation*:—*Generally*, *Mentd.* *Rye v. Purcell*, [1926] 1 K. B. 446.

725. *Add. Annotation*:—*Generally*, *Refd.* *R. v. Moscovitch* (1927), 138 L. T. 183. *Mentd.* *Buerger v. New York Life Assce.* (1927), 96 L. J. K. B. 930.

745. *Add. Annotation*:—*Folld.* *Republica de Guatemala v. Nunez* (1926), 135 L. T. 436.

775. *Add. Annotation*:—*Refd.* *Republica de Guatemala v. Nunez* (1926), 135 L. T. 436.

816. *Add. Annotation*:—*Refd.* *Jones v. Cory* (1926), 20 B. W. C. C. 251.

871. *Add. Annotation*:—*Refd.* *Jones v. Cory* (1926), 20 B. W. C. C. 251.

968. *Add. Annotation*:—*Generally*, *Refd.* *R. v. Copestake, Ex p. Wilkinson* (1926), 90 J. P. 191.

969. *Add. Annotation*:—*Refd.* *R. v. Copestake, Ex p. Wilkinson* (1926), 90 J. P. 191.

1004. *Add. Annotation*:—*Refd.* *Stoney v. Eastbourne R. C. & Devonshire* (1926), 95 L. J. Ch. 312.

1024. *Add. Annotations*:—*Consd.* *Stoney v. Eastbourne R. C. & Devonshire* (1926), 95 L. J. Ch. 312. *Mentd.* *Moser v. Ambleside U. D. C.* (1925), 89 J. P. 118.

1026. *Add. Annotation*:—*Refd.* *Stoney v. Eastbourne R. C. & Devonshire* (1926), 95 L. J. K. B. 312.

1033. *Add. Annotation*:—*Mentd.* *Muscroft v. Stewarts & Lloyds* (1928), 21 B. W. C. C. 274.

1034. *Add. Annotation*:—*Mentd.* *Re Chemische Fabrik auf Actien (Vorm E. Schering) Patent Appln.* (1928), 45 R. P. C. 403.

1086. *Add. Annotation*:—*Mentd.* *Jebara v. Ottoman Bank*, [1927] 2 K. B. 254.

## Part III.—Modes of Proof and Weight of Evidence.

1088. *Add. Annotation*:—*Mentd.* *Muscroft v. Stewarts & Lloyds* (1928), 21 B. W. C. C. 274.

1114. *Add. Annotation*:—*Mentd.* *Ilyman v. Ilyman, Hughes v. Hughes* (1928), 139 L. T. 416.

1200a. ———.]—All statutes which concern the King are general laws, of which the judges will take notice without pleading.—*CROMWELL'S (LORD) CASE* (1578), 4 Co. Rep. 12, b.; 76 E. R. 877.

*Annotations*:—*Mentd.* *Birchley's Case* (1585), 4 Co. Rep. 16a. *Davis v. Gardiner* (1593), 4 Co. Rep. 16b.; *Shrewsbury v. Stanhop* (1594), Poph. 66; *Brittridge's Case* (1602), 4 Co. Rep. 18b.; *Frost v. Eyre* (1616), 3 Bulst. 265; *Wright v. Gerrard* (1618), Hob. 306; *Say & Seal v. Stephens* (1628), Cro. Car. 135; *Traverse v. Daws* (1673),

*Freem.* K. B. 324; *Barnardiston v. Soamo* (1674), 6 State Tr. 1063; *Shaftsbury v. Digby* (1676), *Freem.* K. B. 429; *Townsend v. Hughes* (1676), *Freem.* K. B. 222; *How v. Prin* (1702), 7 Mod. Rep. 107; *Oldroyd v. Crampton* (1837), 7 L. J. C. P. 57; *Edsall v. Russell* (1842), 4 Man. & G. 1090; *Bremridge v. Latimer* (1864), 4 New Rep. 285.

1209. *Add. Annotation*:—*Mentd.* *South Staffordshire Mines Drainage Comrs. v. Elwell* (1927), 91 J. P. 153.

1229. *Add. Annotation*:—*Mentd.* *More v. Weaver*, [1928] 2 K. B. 520.

1260. *Add. Annotations*:—*Refd.* *Hain S.S. Co. v. Board of Trade*, [1928] 2 K. B. 534. *Mentd.* *Cayzer, Irvine v. Board of Trade*, [1927] 1 K. B. 269; *Clan Line Steamers v. Board of Trade*, [1928] 2 K. B. 557.

### PART II. SECT. 5, SUB-SECT. 1.

684 i. *As corroborative evidence.*—Statements made by deceased after the execution of her will are admissible to corroborate a witness who has deposed to the execution with all the prescribed formalities.—*HOWITH v. McFARLANE*, [1925] 2 D. L. R. 395; 56 O. L. R. 375.—CAN.

*sp. Must be statement of fact.*—Evidence of a statement made by deceased who died as the result of a blow, struck by accused, that he hoped

accused would not get into any trouble with the police over it as it was not his fault:—*Held*: inadmissible, as the words only amounted to an expression of hope & opinion.—*R. v. SCHWARZ*, [1923] S. A. S. R. 347.—AUS.

### PART II. SECT. 5, SUB-SECT. 2.—E. (b).

752 ii. ———.]—In so far as words used by deceased were statements of facts:—*Held*: they were inadmissible, as there was nothing to show that

deceased knew them to be contrary to his pecuniary or proprietary interests when he made them; & in so far as they related to opinion on what was in accused's mind they were not admissible, as they were not statements of fact.—*R. v. SCHWARZ*, [1923] S. A. S. R. 347.—AUS.

### PART II. SECT. 10, SUB-SECT. 1.

*mi. ———.]—COURT v. HOLLAND, Ex p. HOLLAND & WALSH* (1879), 8 P. R. 219.—CAN.



**1264a.** .]—It is the settled practice of the ct. to take judicial notice of the status of any foreign Govt., & for that purpose, in any case of uncertainty, to seek information from a Secretary of State, & the information so received is conclusive.—*DUFF DEVELOPMENT CO. v. KELANTAN GOVERNMENT*, [1924] A. C. 797; 98 L. J. Ch. 343; 131 L. T. 676; 40 T. L. R. 566; 68 Sol. Jo. 559, H. L.

*Annotation*:—*Apld. Engelke v. Musmann*, [1928] A. C. 433.

**1267.** *Add. Annotations*:—*As to* (1) *Consd.* The Jupiter (No. 3) (1927), 137 L. T. 333. *Generally, Mentd.* *Musmann v. Engelke* (1927), 43 T. L. R. 685.

**1269.** *Add. Annotation*:—*Refd.* The Fagernes, [1927] P. 311.

**1270.** *Add. Annotation*:—*Consd.* *Musmann v. Engelke* (1927), 96 L. J. K. B. 824.

**1273.** *Add. Annotation*:—*Mentd.* The Jupiter (No. 2), [1925] P. 69.

**1282.** *Add. Annotation*:—*Mentd.* Manchester Corp'n. v. Audenshaw & Denton U. D. Councils (1928), 139 L. T. 509.

**1301.** *Add. Annotation*:—*Refd.* *Brown v. Leech* (1924), 94 L. J. K. B. 48.

**1319.** *Add. Annotation*:—*Refd.* *Lawrence v. Matthews* (1924), Ltd. (1928), 97 L. J. K. B. 758.

**1338.** *Add. Citations*:—[1925] 1 K. B. 399; 94 L. J. K. B. 497; 132 L. T. 267; 17 B. W. C. C. 221.

*Add. Annotations*:—*Refd.* *Welsh Navigation Steam Coal Co. v. Evans*, [1927] A. C. 834.

*Mentd.* *Young v. Londonderry Collieries* (1924), 17 B. W. C. C. 215; *Kennedy v. Horden Collieries*, *Bamford v. Charlaw & Sacriston Collieries*, *Bevan v. Joicey*, [1925] 2 K. B. 438.

**1382a.** ———.]—*HALIFAX'S (LORD) CASE* (undated), cited in Bull. N. P. at p. 298a.

*Annotation*:—*Consd.* *Williams v. East India Co.* (1802). 3 East, 192.

**1402.** *Add. Annotation*:—*Expld.* *Lal Chand Marwari v. Mahant Ramrup Gir* (1925), 42 T. L. R. 159.

**PART III. SECT. 5, SUB-SECT. 7.—D.**

*h i. Bar-room—Place where liquor kept.*—On the description of a room as a bar-room of licensed premises, judicial notice is to be taken that this is a room where alcoholic liquor is kept.—*FRANCE v. HUMPHREYS*, [1926] S. A. S. R. 214.—AUS.

**PART III. SECT. 5, SUB-SECT. 7.—G.**

*q i. S.P.—R. v. McPHERSON* (1915), 33 W. L. R. 21; 9 W. W. R. 613; 8 Sask. L. R. 412.—CAN.

*q ii. Home-brew—Intoxicating liquor.*—The ct. will not take judicial notice of the fact that home-brew is an intoxicating liquor.—*R. v. MARSHALL*, [1925] 1 D. L. R. 1132; 43 Can. Crim. Cas. 253; [1924] 3 W. W. R. 865.—CAN.

*s i. Mode of conducting traffic—Stopping-places for trams.*—*Held*: the ct. could take judicial notice of the mode of conducting traffic on an established system of tramways in a city & its suburbs, including the fact that there were recognised stopping-places for trams.—*Re BYE-LAW MADE BY PROSPECT DISTRICT COUNCIL, Ex p. HILL*, S. A. S. R. 326.—AUS.

**PART III. SECT. 6, SUB-SECT. 6.—B.**

**1410 xviii.** ———.]—*Re JELFS*, [1925] 1 W. W. R. 735.—CAN.

**1410 xix.** ———.]—*Re DE MILLE*

(Alta.), [1926] 3 D. L. R. 140; [1926] 2 W. W. R. 148.—CAN.

**1413 v.** ———.]—*Re TOMES* (Man.), [1927] 2 D. L. R. 864; [1927] 1 W. W. R. 429.—CAN.

**1413 vi.** ———.]—*Strong incentive to disappear—Death not presumed.*—*O'DONNELL v. NORTH AMERICAN LIFE ASSURANCE CO.*, [1927] 3 D. L. R. 412; 60 O. L. R. 502.—CAN.

**PART III. SECT. 6, SUB-SECT. 6.—C. (a).**

**1423 ii.** ———.]—Under Indian Evidence Act, 1872, s. 108, when the ct. has to determine the date of the death of a person who has not been heard of for a period of more than seven years, there is no presumption that he died at the end of the first seven years, or at any particular date.—*LAL CHAND MARWARI v. RAMRUP GIR* (1925), 53 L. R. Ind. App. 24.—IND.

**PART III. SECT. 6, SUB-SECT. 6.—D.**

*t i.* ———.]—*Re FORSYTH* (N. S.), [1927] 2 D. L. R. 72.—CAN.

**PART III. SECT. 6, SUB-SECT. 6.—F.**

**1497 i.** *Whether presumption exists.*—Although death will, in a proper case, be presumed, there is no presumption that the person died without issue.—*Re SAUNDERS, PARK v. AUSTIN*, [1928] N. Z. L. R. 391.—N. Z.

**1418a.** ———.]—*In the Goods of SERGEANT* (1872), 26 L. T. 669; 36 J. P. 696; *sub nom. In the Goods of SERJEANT*, 20 W. R. 872.

**1421a.** .]—(1) If a person has not been heard of for a term of not less than seven years, there is a presumption of law that he is dead. (2) The *onus* of proving the death of the person at any particular date must rest with the person to whose title that fact is essential.—*LAL CHAND MARWARI v. MAHANT RAMRUP GIR* (1925), 42 T. L. R. 159, P. C.

**1445a.** *On party to whose title fact essential.*—*LAL CHAND MARWARI v. MAHANT RAMRUP GIR*, No. 1421a, *ante*.

**1459a.** ———.]—*DOE d. FRANCE v. ANDREWS* (1850), 15 Q. B. 756; 117 E. R. 644.

*Annotations*:—*Consd.* *Prudential Assce. v. Edmonds* (1877), 2 App. Cas. 487; *Lyell v. Kennedy* (1887), 56 L. T. 647; *Re Stollery, Weir v. Treasury S. Collector*, [1926] Ch. 284.

**1489a.** ———.]—There is no presumption of law as to survivorship among persons whose death is occasioned by one & the same cause. The question is one of fact, & if the evidence does not establish the survivorship, the law will treat it as a matter incapable of being determined.—*Re NIGHTINGALE, HARGREAVES v. SHUTTLEWORTH* (1927), 71 Sol. Jo. 542.

**1505.** *Add. Annotations*:—*Refd.* *Re Deloitte, Griffiths v. Deloitte*, [1926] Ch. 56; *I. R. Comrs. v. Bone* (1927), 13 Tax Cas. 20.

**1526a.** ———.]—*HALIFAX'S (LORD) CASE* (undated), cited in Bull. N. P. at p. 298a.

*Annotation*:—*Consd.* *Williams v. East India Co.* (1802), 3 East, 192.

**1531.** *Add. Annotation*:—*Refd.* *Busby v. Avgherino*, [1928] A. C. 290.

**1581.** *Add. Annotation*:—*Mentd.* *Jones & Attwood v. National Radiator Co.* (1928), 45 R. P. C. 71.

**1584.** *Add. Annotation*:—*Mentd.* *Smith's Potato Crisps v. Paige's Potato Crisps* (1928), 45 R. P. C. 132.

**1586.** *Add. Annotation*:—*Apld.* *Re Davis's Trade Marks, Davis v. Sussex Rubber Co.*, [1927] 2 Ch. 345.

**PART III. SECT. 6, SUB-SECT. 7.**

*fi.* ———.]—*MACRAE v. WALSH* (1927), 27 S. R. N. S. W. 290; 44 N. S. W. W. N. 71.—AUS.

**PART III. SECT. 6, SUB-SECT. 8.**

**1526 ii.** ———.]—*R. v. O'HARA* (N. B.) (1927), 48 Can. Crim. Cas. 231.—CAN.

*f (p. 178) i. As to delivery of package by common carrier to consignee.*—Where a package is delivered to a railway or express co., or other similar common carrier, for transportation to a named consignee, & the consignee receives a package answering the description of that sent by the consignor, it will be held, in the absence of proof to the contrary, that the package sent was identical with that received; & where a package has been so delivered to such a common carrier for transportation, it will be held that it was received by the consignee in due course, unless there is proof to the contrary.—*R. v. PINNO*, [1925] 1 W. W. R. 737.—CAN.

*f (p. 179) i. As to party being administrator.*—*SMITH v. McLEAN* (1868), 7 N. S. R. (1 G. & O.) 310.—CAN.

**PART III. SECT. 7, SUB-SECT. 1.**

*t i.* ———.]—*REILY v. LONDON CORPN.* (1891), 14 P. R. 171.—CAN.

*t ii.* ———.]—*CLOUSE v. COLEMAN* (1895), 16 P. R. 541.—CAN.

**PART III. SECT. 8.**

**1593 x.** ———.]—*Nature & application of*—The principle that the evidence

## Part IV Documentary Evidence.

- 1633a. Entry in marriage register.]—ROCHFORD (1837), 1 Jur. 592, N. P.
- 1664a. ———.]—R. v. MCCARTNEY & HANSEN (1928), 20 Cr. App. Rep. 179, C. C. A.
1708. Add. Annotation:—Mentd. Wing Lee v. Lew, [1925] A. G. 819.
- 1829a. ———.]—Where an order is given verbally for goods, & the person to whom it is given puts down the terms of it in writing, as a memorandum, but it is not signed by the person ordering the goods, the terms of the order may be given in evidence, without producing the written memorandum.—DALISON v. STARK (1802), 4 Esp. 163; 170 E. R. 677, N. P.
- Annotation:—Reid. R. v. Wrangle (1835), 1 Har. & W. 41.
1894. Add. Annotation:—Mentd. Berners v. Fleming, [1925] Ch. 264.
1895. Add. Annotation:—Mentd. Macaulay v. Guaranty Trust Co. of New York (1927), 44 T. L. R. 99.
- 1933a. ———.]—Where pltf's. called defts.' solr.:—Held: he could state whether he had a lease in his possession, but as he knew nothing about it except as attorney for defts., he could not be called upon to give any evidence about it.—ROUPELL v. HAWS (1863), 3 F. & F. 784, N. P.
2048. Add. Annotation:—Mentd. Lala Indar Prasad v. Lala Jagmohan Das (1927), 43 T. L. R. 536.
- 2129a. ———.]—Copies cannot be put in of letters of which notice to produce ought to be given.—R. v. MORGAN, [1925] 1 K. B. 752; 94 L. J. K. B. 672; 133 L. T. 94; 89 J. P. 135; 28 Cox, C. C. 1; 18 Cr. App. Rep. 180, C. C. A.
2304. Add. Annotations:—Mentd. Rodwell v. Wade (1924), 23 L. G. R. 174; Keeling v. Wirral R. D. C. (1925), 23 L. G. R. 201.
- 2345a. ———.]—DORRETT v. MEUX (1854), 15 C. B. 142; 2 C. L. R. 807; 23 L. J. C. P. 221; 23 L. T. O. S. 144; 2 W. R. 480; 139 E. R. 374.
- 2475a. ———.]—DOE d. ST. JOHN v. HORE (1799), 2 Esp. 724; 170 E. R. 510, N. P.
- 2476a. ———.]—WALLISS v. BROADBENT (1836), 4 Ad. & El. 877; 2 Har. & W. 40; 6 L. J. K. B. 269; 111 E. R. 1014.
- v. 2477a. ———.]—CHEVELEY v. FULLER (1853), 13 C. B. 122; 1 W. R. 152; 138 E. R. 1143; sub nom. FULLER v. CHEVELEY, Saund. & M. 101; 20 L. T. O. S. 278; 17 J. P. 105; 17 Jur. 736
- 2480a. ———.]—HARRIS v. CHAPMAN (1868), 17 L. T. 517, N. P.
- 2486a. ———. Though receipt for penalty erased.]—APOTHECARIES' CO. v. FERNYHOUGH (1826), 2 C. & P. 438; 172 E. R. 199, N. P.
- Annotation:—Reid. R. v. Preston (1834), 3 Nev. & M. K. B. 31.
- 2513a. To prove amount originally claimed.]—WICKES v. TANNER (1848), 10 L. T. O. S. 504, N. P.
2533. Add. Annotations:—Mentd. Ellesmere v. Wallace (1928), 44 T. L. R. 798; Kennedy v. Thomassen (1928), 45 T. L. R. 122; Weddle, Beck v. Hackett (1928), 45 T. L. R. 67.
- 2544a. ———.]—One paper containing two different contracts for the purchase of different lots by different persons, one stamp affixed on that part of the paper which contained the contract of sale with deft., & to which the stamp officer's receipt for one penalty referred:—Held: sufficient to legalise the evidence of such contract.—POWELL v. EDMUNDS (1810), 12 East, 6; 104 E. R. 3.
- Annotations:—Reid. Ogilvie v. Foljambe (1817), 3 Mer. 53; Bradshaw v. Bennett (1831), 5 C. & P. 48; Shelton v. Livius (1832), 2 Cr. & J. 411; Bartlett v. Pernell (1836), 2 Har. & W. 16; Evans v. Pratt (1842), 3 Man. & G. 759; Eden v. Blake (1845), 13 M. & W. 614; Brett v. Clowser (1880), 5 C. P. D. 376.
2570. Add. Annotations:—Reid. Nagoremull v. Triton Insce. (1924), 41 T. L. R. 168; Re National Benefit Assce. (1927), 71 Sol. Jo. 880.
- 2583a. ———. Objection doubtful.]—An objection that a document requires a stamp will not be given effect to if the point is doubtful.—WESTLAKE v. ADAMS (1858), 1 F. & F. 183, N. P.
2587. Add. Annotation:—Reid. Nagoremull v. Triton Insce. (1924), 41 T. L. R. 168.
2603. Add. Annotation:—Reid. Koechlin v. Kestenbaum, [1927] 1 K. B. 889.
2614. Add. Annotation:—Mentd. Gregg v. Richards, [1926] Ch. 521.
2639. Add. Annotations:—Reid. R. v. Lincolnshire JJ., Ex p. Brett, [1926] 2 K. B. 192. Mentd. Palmer v. Crone, [1927] 1 K. B. 804.

of a witness who testifies affirmatively that a conversation took place is more valuable than the evidence of one equally trustworthy who denies the conversation, is not a rule of law, & should only be used with a due regard to the circumstances of each case & should not be resorted to until other means of testing credibility have failed; & it should not be applied in a case wherein the conversation in question constitutes the particular matter at issue between the parties.—MONARCH LUMBER CO., LTD. v. PERRY (Sask.), [1927] 3 D. L. R. 861; [1927] 3 W. W. R. 71.—CAN.

1. ———. Telephone conversation overheard by bystander.]—Held: the nature of the testimony, the possibility of dishonesty & the connection of the witness with the matter, were circumstances to determine the weight of testimony, but were not valid grounds for rejecting the evidence so long as it was not hearsay.—WARREN GZOWSKI & Co. v. FORST & Co. (1912), 23

O. W. R. 311; 46 S. C. R. 642.—CAN.

### PART IV. SECT. 5, SUB-SECT. 3.—A.

b i. ———.]—SMITH v. NEV (1859), 18 U. C. R. 473.—CAN.

b ii. ———.]—GLEN BAIN RURAL MUNICIPALITY v. HALEY (Sask.), [1927] 3 D. L. R. 474.—CAN.

### PART IV. SECT. 5, SUB-SECT. 4.—C.

1941 i. Duplicate originals.]—Deft. let land to pltf., & a lease having been written, A. affixed seals & signed their names to it. It was then agreed that A. should make a copy of the lease & execute it for them in the same manner; he did so, & afterwards, in the presence of both parties, delivered one copy to pltf. & the other to deft.:—Held: they were duplicate originals, & either of them was primary evidence.—LEONARD v. YOUNG (1858), 4 All. 111.—CAN.

### PART IV. SECT. 5, SUB-SECT. 5. A.

o i. ———.]—GOUGH v.

(1860), 10 C. P. 106.—CAN.

### PART IV. SECT. 9, SUB-SECT. 3.—A.

st. Of power of attorney.—Proof of contents of original only.]—Where an office copy of a power of attorney, purporting to have been executed, was put in evidence:—Held: Conveyancing & Law of Property Act, 1881, s. 48 (4), merely obviates the necessity for production of an original instrument by enacting that an office copy of an instrument deposited as therein provided shall, without further proof, be sufficient evidence of its contents, but the sect. does not make such copy evidence either of the truth of the contents or of the identity of the person by whom the original was made.—O'KANE v. MULLAN, [1926] N. I. IR.

### PART IV. SECT. 9, SUB-SECT. 4

f. Reved. on other grounds, 18 A. 135.

2683. *Add. Annotation*:—*Mentd. A.-G. v. Hornsey B. C.* (1926), 43 T. L. R. 92.
2685. *Add. Annotations*:—*Mentd. A.-G. v. Hornsey B. C.* (1926), 43 T. L. R. 92; *Reigate Corp'n. v. Surrey County Council*, [1928] Ch. 359.
- 2707a. ———.]—*DAVIES v. LOWNDES* (1835), 1 Bing. N. C. 597; 1 Hodg. 125; 2 Scott, 71; 4 L. J. C. P. 214; 131 E. R. 1247; *on appeal* (1838), 4 Bing. N. C. 478, Ex. Ch.  
*Annotations*:—*Mentd. Cowley v. Cowley*, [1901] A. C. 450; *Re Greenwood, Goodhart v. Woodhead*, [1902] 2 Ch. 198.
2709. *Add. Annotation*:—*Folld. Little v. Little*, [1927] P. 224.  
After this case add, "See, also, HUSBAND & WIFE, No. 2763a."
2722. *Add. Annotation*:—*Consd. Partington v. Partington & Atkinson*, [1925] P. 34.
2723. *Add. Annotation*:—*Consd. Partington v. Partington & Atkinson*, [1925] P. 34.
2733. *Add. Annotation*:—*Generally, Mentd. Marsland v. Taggart*, [1928] 2 K. B. 447.
- 2757a. ———.]—In a suit for restitution of conjugal rights, the validity of the marriage in Jamaica having been proved in a previous suit of a similar nature between same parties, further proof of its validity was not required.—*VERNEY v. VERNEY* (1920), 36 T. L. R. 203.
2825. *Add. Annotations*:—*Mentd. Auchteroni v. Midland Bank*, [1928] 2 K. B. 294; *Reckitt v. Barnett, Pembroke & Slater*, [1928] 2 K. B. 244.
2971. *Add. Annotation*:—*Mentd. Gilbey v. Gilbey*, [1927] P. 197.
3036. *Add. Annotation*:—*Refd. Selby v. Atkins* (1926), 135 L. T. 45.
- 3122a. ———.]—In proceedings in the cts. of this country by or against the ruler of a colonial State whose status is disputed a written statement by the Secretary of State for the Colonies that the ruler is an independent foreign sovereign is equivalent to a communication from the Crown &, therefore, conclusive, & the ct. will accept it without considering whether it is borne out by documents which are appended to it.—*DUFF DEVELOPMENT CO. v. KELANTAN GOVERNMENT*, [1923] 1 Ch. 385; 92 L. J. Ch. 273; 129 L. T. 290; 39 T. L. R. 187; 67 Sol. Jo. 260, C. A.  
*Annotation*:—*Apld. Engelke v. Musmann*, [1928] A. C. 433.
- 3122b. ———.]—*DUFF DEVELOPMENT CO. v. KELANTAN GOVERNMENT*, No. 1264a, *ante*.
3125. *Add. Annotation*:—*Consd. Musmann v. Engelke* (1927), 96 L. J. K. B. 824.
3157. *Add. Annotation*:—*Consd. Re Stollery, Weir v. Treasury Solicitor*, [1926] Ch. 284.
3158. *Add. Annotation*:—*Overd. Re Stollery, Weir v. Treasury Solicitor*, [1926] Ch. 284.
3159. *Add. Annotation*:—*Folld. Re Stollery, Weir v. Treasury Solicitor*, [1926] Ch. 284.
3168. *Add. Annotation*:—*Folld. Re Stollery, Weir v. Treasury Solicitor*, [1926] Ch. 284.
3164. *Add. Annotation*:—*Folld. Re Stollery, Weir v. Treasury Solicitor*, [1926] Ch. 284.
- 3165a. ——— *Marriage of parents.*]—In an action brought by pl'tfs., who claimed to be two of the next of kin of an intestate, for administration of her estate, the usual order for inquiries as to the next of kin & heir-at-law of the intestate was made. In taking those inquiries before the master it became necessary to prove the lawful marriage of the parents of the intestate before her birth &, as no record of the marriage could be found, a summons was taken out by pl'tfs. for the determination of the question whether three certificates of birth of three of the children, including the intestate, of those parents & a certificate of death of one of those children were *prima facie* or any evidence of the lawful marriage of the parents:—*Hela*. the certificates were admissible, but not alone sufficient, because taken by themselves they did not identify the persons therein mentioned. It would be for the master at the inquiry to determine whether the certificates, taken in conjunction with the other evidence adduced before him, were sufficient to establish the fact of marriage between the parents in question. *Re Wintle*, No. 3158, *overd.*—*Re STOLLERY, WEIR v. TREASURY SOLICITOR*, [1926] Ch. 284; 95 L. J. Ch. 259; 134 L. T. 430; 90 J. P. 90; 42 T. L. R. 253; 70 Sol. Jo. 385; 24 L. G. R. 173, C. A.
- 3177a. ——— *Marriage of parents of deceased.*]—*Re STOLLERY, WEIR v. TREASURY SOLICITOR*, No. 3165a, *ante*.
3179. *Add. Annotation*:—*Dlstd. Re Stollery, Weir v. Treasury Solicitor*, [1926] Ch. 284.
3287. *Annotations*:—*Apprvd. Hendon Paper Works Co. v. Sunderland Assmt. Com.*, [1915] 1 K. B. 763. *Folld. Fowler (Leeds) v. Hunslet Assmt. Com.*, [1917] 1 K. B. 720. *Expld. & Dlstd. Gateshead Union Assmt. Com. v. Redheugh Colliery*, [1925] A. C. 309.
3288. *Add. Citation*:—1 B. R. A. 210.  
*Add. Annotations*:—*Folld. Fowler (Leeds) v. Hunslet Assmt. Com.*, [1917] 1 K. B. 720. *Expld. & Dlstd. Gateshead Union Assmt. Com. v. Redheugh Colliery*, [1925] A. C. 309. *Refd. Davis v. Pontypridd Union Assmt. Com., Rhondda Overseers & Rhondda U. C.* (1916), 85 L. J. K. B. 1545.
3289. *Add. Citation*:—2 B. R. A. 592.  
*Add. Annotation*:—*Expld. & Dlstd. Gateshead Union Assmt. Com. v. Redheugh Colliery*, [1925] A. C. 309.
3349. *Add. Annotation*:—*Consd. Busby v. Avgherino*, [1927] 2 Ch. 33.

## PART IV. SECT. 11, SUB-SECT. 4.—A.

2667 i. ——— *Res inter alios acta*—*Conviction for murder.*]—On an application by a husband, who has killed his wife, or his attorney for a grant of administration a certified copy of the conviction is admissible, not merely as proof of the conviction, but also as presumptive proof of the commission of the crime.—*Re NOBLE* (Sask.), [1927] 1 W. W. R. 938.—CAN.

## PART IV. SECT. 11, SUB-SECT. 4.—C.

2690 i. *Evidence of commission of Presumptive evidence.*]—*Re* No. 2667 i.

## PART IV. SECT. 11, SUB-SECT. 6.—A. (a).

2739 i. *No opportunity to cross-examine.*]—*Held*: the evidence was inadmissible.—*JOHNSON v. R.* (Ont.) (1911), 13 Exch. C. R. 389.—CAN.

## PART IV. SECT. 11, SUB-SECT. 15.—A.

*sv. Proof—Writ of execution.*] *STUART v. ANDREWS* (1827), N. B. 332.—CAN.

*sv. ———.*]—*DOE d. STOCKING v. WATTS* (1842), 2 Ont. Dig. 2665.—CAN.

## PART IV. SECT. 12, SUB-SECT. 10.—A. (d).

*sv. Certificate of professor of anatomy.*]—A certificate from the professor of anatomy at the Grant Medical College, Bombay, as to certain bones submitted to him for examination, is not *per se* admissible in evidence, but must be proved by calling the professor as a witness.—*R. v. AHILYA* (1922), 1 L. R. 47 Bom. 74.—IND.

## PART IV. SECT. 12, SUB-SECT. 15.—A. (a).

11. ——— *Value as evidence.*]—*HEATH v. PORTAGE LA PRAIRIE CORPN.* (1909), 18 Man. L. R. 693.—CAN.



3371. *Add. Annotation* :—*Refd. Re Stollery, Weir v. Treasury Solicitor*, [1926] Ch. 284.
3376. *Add. Annotation* :—*Mentd. Warren v. Warren*, [1925] P. 107.
3377. *Add. Annotation* :—*Consd. Re Stollery, Weir v. Treasury Solicitor*, [1926] Ch. 284.
3388. *Add. Annotation* :—*Consd. Re Stollery, Weir v. Treasury Solicitor*, [1926] Ch. 284.
3389. *Add. Annotation* :—*Consd. Re Stollery, Weir v. Treasury Solicitor*, [1926] Ch. 284.
- 3419a. *S. P. MONEY v. MONEY & TURNER* (1927), 71 Sol. Jo. 666.
- 3422a. ———. ———. ———.]—As Jersey is in the diocese of Winchester, it is unnecessary to call a Jersey lawyer to prove a marriage celebrated in a church in Jersey.—*PRITCHARD v. PRITCHARD* (1920), 37 T. L. R. 104.
- 3437a. ———. ———. ———.]—*L. (OTHERWISE B.) v. L.* (1919), 36 T. L. R. 148 ; 64 Sol. Jo. 225.
3466. *Add. Annotation* :—*Refd. R. v. Moscovitch* (1927), 138 L. T. 183.
- 3483a. ———. ———.]—*Held* : the production of the register from the custom house was conclusive evidence of ownership.—*MARSH v. ROBINSON* (1802), 4 Esp. 98 ; 170 E. R. 655, N. P.
- 3513a. *Stationers' Hall register—Of first performances of dramatic productions.*—*FALCON v. FAMOUS PLAYERS FILM CO., LTD.*, No. 624a, *ante*.
3543. *Add. Annotations* :—*As to* (2) *Consd. Falcon v. Famous Players Film Co.* (1926), 135 L. T. 650. *Appld. Re Stollery, Weir v. Treasury Solicitor*, [1926] Ch. 284.
3547. *Add. Annotation* :—*Refd. Stoney v. Eastbourne R. D. C.*, [1927] 1 Ch. 367.
3572. *Add. Annotation* :—*Refd. Busby v. Avgherino*, [1928] A. C. 290.
3580. *Add. Annotation* :—*Refd. Busby v. Avgherino*, [1928] A. C. 290.
3584. *Add. Annotation* :—*Refd. Stoney v. Eastbourne R. C. & Devonshire* (1926), 135 L. T. 281.
3589. *Add. Annotation* :—*Refd. Busby v. Avgherino*, [1928] A. C. 290.
3686. *Add. Annotation* :—*As to* (2) *Consd. Busby v. Avgherino*, [1927] 2 Ch. 33.
3784. *Add. Citation* :—2 B. R. A. 582.
3790. *Add. Annotation* :—*Mentd. Lord Strathcona S.S. Co. v. Dominion Coal Co.*, [1926] A. C. 108.
- 3802a. ———.]—*HAYNES v. HAYTON* (1828), 6 L. J. O. S. K. B. 231.
- Annotations* :—*Consd. Bessey v. Windham* (1844), 6 Q. B. 166 ; *White v. Morris* (1852), 11 C. B. 1015.
3837. *Add. Annotation* :—*Mentd. Bernard v. Williams* (1928), 139 L. T. 22.
- 3850a. ———. *Following letters.*]—Letters following a letter written "without prejudice" should be treated as being also inadmissible, unless there is a clear break in the chain of correspondence to indicate that the ensuing letters are open.—*INDIA RUBBER, GUTTA PERCHA & TELEGRAPH WORKS CO., LTD. v. CHAPMAN* (1926), 20 B. W. C. C. 184, C. A.
3860. *Add. Annotation* :—*Mentd. Wing Lee v. Lew*, [1925] A. C. 819.
3902. *Add. Annotation* :—*Refd. Layzell v. Thompson* (1927), 137 L. T. 106.
3907. *Add. Annotation* :—*As to* (3) *Refd. Moser v. Ambleside U. D. C.* (1925), 89 J. P. 118.
3911. *Add. Annotations* :—*Consd. Stoney v. Eastbourne R. C. & Devonshire* (1926), 95 L. J. Ch. 312. *Mentd. Moser v. Ambleside U. D. C.* (1924), 89 J. P. 118.
3914. After this case add "See, also, HIGHWAYS, Nos. 355a, 355b."
- 3919a. ———. *To prove state of premises.*]—*DOE d. FENTON v. BUTCHER* (1847), 9 L. T. O. S. 82.
3946. *Add. Annotations* :—*Refd. Re Article X of Articles of Agreement for Treaty between Great Britain & Ireland* (1928), 45 T. L. R. 57. *Mentd. Capel St. Mary, Suffolk v. Packard*, [1927] P. 289.
3947. *Add. Annotations* :—*Refd. Re Article X of Articles of Agreement for Treaty between Great Britain & Ireland* (1928), 45 T. L. R. 57. *Mentd. Capel St. Mary, Suffolk v. Packard*, [1927] P. 289.
3959. *Add. Citation* :—130 L. T. 445.

PART IV. SECT. 12, SUB-SECT. 19.—C. (d) iii.

*sy. Certificate of baptism—Admissible.*]—*SUTHERLAND v. YOUNG* (1884), 1 Man. L. R. 38.—CAN.

PART IV. SECT. 12, SUB-SECT. 19.—G.

*sz. Register of titles to land kept under Local Registration of Title (Ireland) Act, 1891 (c. 66).*]—The above register is a public register & the documents kept in the office for registration of titles are public documents.—*Re FITZGERALD*, [1925] 1 I. R. 42.—IR.

PART IV. SECT. 12, SUB-SECT. 21.

*s i. — How proved.*]—The contents of a statute of any province within the King's dominions may be proved by the production of a copy purporting to be printed under the authority of the Legislature of that province.—*NORTHERN TRUSTS CO. v. MCLEAN*, [1926] 3 D. L. R. 93 ; 58 O. L. R. 683.—CAN.

PART IV. SECT. 13, SUB-SECT. 2.—B.

*sa. To prove to whom credit given.*]—

*WHITE v. MILLER* (1888), 27 N. B. R. 143.—CAN.

PART IV. SECT. 13, SUB-SECT. 4.

*so. Books of railway companies—Repair book.*]—*CANADA CENTRAL RY. CO. v. McLAREN* (1883), 8 A. R. 564.—CAN.

PART IV. SECT. 13, SUB-SECT. 5.

*di. — — —.*]—A book maintained by members of a family of hereditary bards, containing entries of domestic events occurring in the family to which they rendered service, the events recorded being such as are usually known to a family bard in connection with his calling:—*Held* : admissible as evidence concerning the relationship of the members of the family, whose history was entered therein.—*ANANDI v. NAND LAL* (1924), 1 L. R. 46 All. 665.—IND.

PART IV. SECT. 13, SUB-SECT. 7.—B.

3843 ii. *S. P. MERRY v. MACHIN* (1926), 47 N. L. R. 236.—S. AF.

PART IV. SECT. 13, SUB-SECT. 11.

3870 i. *Admissibility.*]—*Held* : a telegram received by plff. from deceased was not admissible in evidence without proof that deceased had sent a telegram in those terms, & that the original telegram, signed by deceased, had been destroyed or lost.—*ADAMSON v. VACHON* (Sask.) (1912), 22 W. L. R. 494.—CAN.

PART IV. SECT. 18, SUB-SECT. 2.

3958 i. *Surveyor's report.*]—*Held* : not admissible to prove the extent of the lands he was employed to survey.—*R. v. PRICE BROTHERS & Co.*, [1925] 3 D. L. R. 595 ; *revers.*, [1924] 3 D. L. R. 817.—CAN.

PART IV. SECT. 20.

*so. Certificate of weighmaster.*]—*Held* : *prima facie* evidence only of weight at the time of weighing.—*TENOLD & TANNAS v. CANADIAN PACIFIC RY. CO.*, [1927] 3 D. L. R. 695 ; [1927] 2 W. W. R. 491 ; 53 Can. Ry. Cas. 86 ; 21 Sask. L. R. 665.—CAN.

## Part V.—Witnesses.

- 3975a. —.]—A judge cannot exclude a child-witness from the box on the ground that the case is unfit for him or her to be concerned in; his power is limited to the usual inquiry about the child's understanding of an oath or of the duty of telling the truth.—*R. v. MOSCOVITCH* (1924), 18 Cr. App. Rep. 37, C. C. A.
4027. *Add. Annotation*: —*Refd.* *Isaacs v. Cook*, [1925] 2 K. B. 391.
4029. *Add. Annotation*: —*Appld.* *Isaacs v. Cook*, [1925] 2 K. B. 391.
4053. *Add. Annotation*: —*Mentd.* *R. v. Central Criminal Court JJ.*, *Ex p. L. C. C.*, [1925] 2 K. B. 43.
4077. *Add. Annotation*: —*Apprvd. & Appld.* *Re Paget*, *Ex p. Official Receiver*, [1927] 2 Ch. 85.
4130. *Add. Annotation*: —*Refd.* *R. v. Bath Compensation Authority*, [1925] 1 K. B. 685.
- 4161a. — *Acting for partner.*—A., a solr., being engaged in negotiations for the sale of an estate of his own, devolved the conduct of the business with regard to it on his partner, & made certain statements to him:—*Held*: the relation of solr. & client existed between them, & the communications were privileged.—*BEAMISH v. OWENS* (1846), 7 L. T. O. S. 66.
- 4228a. — — — — —.]—Pltf., who had been employed by deft. to take care of his house, but who had subsequently left it, brought an action against him for breach of promise of marriage. Deft. had threatened to proceed criminally against her on a charge of taking away some of his property from the house. The ct. refused to compel pltf.'s attorney to disclose her place of residence, as deft. knew who she was, & had avowed that he sought the information with the view of effecting her arrest on the criminal charge.—*HARRIS v. HOLLER* (1849), 19 L. J. Q. B. 62.
- Annotation*: —*Refd.* *Cox v. Bockett* (1865), 18 C. B. N. S. 239.
4286. The first line of the text of the paragraph should read "Where at law the party calls."
4299. *Add. Annotation*: —*Mentd.* *Salvesen (or von*
- Lorang) *v. Austrian Property Administrator*, [1927] A. C. 641.
- 4428a. — *Application to set aside—Whether "in" action.*—*Held*: an application by a person, who had been served by one of the parties to an action with a *subpoena duces tecum*, to set the subpoena aside was an application "in" the action within R. S. C., Ord. 52, r. 2, although appct. was not a party to the action, & the application could not be heard.—*R. v. INVESTORS' REVIEW, LTD.*, *Ex p. WHEELER*, [1928] 2 K. B. 644; 97 L. J. K. B. 802; 44 T. L. R. 724; 72 Sol. Jo. 570, D. C.
4455. *Add. Annotation*: —*Mentd.* *Busby v. Avgherino*, [1927] 2 Ch. 33.
- 4461a. —.]—The possession of a solr. is, for the purpose of a *subpoena duces tecum*, the possession of the client.—*JORDAN v. ROBERTS* (1862), 7 L. T. 68.
- 4472a. — *Court not entitled to impound.*—*Re TILL, Ex p. PARSONS* (1871), 19 W. R. 325.
4477. *Add. Annotations*: —*Refd.* *Re Cameron's Coalbrook, etc. Ry.* (1859), 25 Beav. 1; *Lockett v. Cary* (1864), 3 New Rep. 405; *Fowler v. Fowler* (1881), 29 W. R. 800; *Re Hawkes, Ackerman v. Lockhart*, [1898] 2 Ch. 1.
- 4521a. — *Put in witness-box but not examined.*—*Held*: his costs of travelling & attending the trial ought to be allowed.—*FLOWER v. GARDNER* (1857), 3 C. B. N. S. 185; 27 L. J. C. P. 56; 30 L. T. O. S. 135; 140 E. R. 710.
4581. *Add. Annotation*: —*Mentd.* *Earle v. Hems-worth R. D. C.* (1928), 44 T. L. R. 758.
4586. *Add. Annotation*: —*Refd.* *The Massilia*, [1926] P. 180.
- 4594a. — *Witness not called.*—Where a charge for the attendance of such witness was allowed, because counsel in advising on evidence thought that the witness was necessary:—*Held*: that was a dangerous ground on which to proceed, & one upon which an allowance or disallowance ought not to be founded.—*THE LORD STRATHCONA* (No. 3), [1926] W. N. 270, C. A.
- PART V. SECT. 1, SUB-SECT. 1.—A. (a).
- 3976 ii. —.]—A child of ten said, "I know I have got to tell the truth, I know where you go when you don't tell the truth, to gaol":—*Held*: this answer was not inconsistent with an understanding of the nature & quality of an oath, although showing no appreciation of reward & punishment in a future state.—*SPOONER v. TAYLOR*, [1926] S. A. S. R. 396.—AUS.
- 3979 iv. — *Canada Evidence Act*, s. 16.—*SANKEY v. R.*, [1927] 4 D. L. R. 245; [1927] S. C. R. 436; 48 Can. Crim. Cas. 97.—CAN.
- PART V. SECT. 1, SUB-SECT. 1.—B.
- 4001 i. — *Solicitor.*—A solr. is a competent witness for his client, & when he is not also acting as an advocate, there is nothing reprehensible in his being a witness. While an advocate can testify for a party whose cause he is conducting, the practice is highly objectionable.—*PARRY v. PARRY*, [1926] 3 D. L. R. 95; [1926] 2 W. W. R. 185; 20 Sask. L. R. 474.—CAN.
- PART V. SECT. 2, SUB-SECT. 4.—B. (a).
- 4060 xxi. —.]—Under Canada Temperance Act, 1878, s. 123, accused is not bound to criminate himself.—*R. v. HALPIN* (1886), 12 O. R. 330.—CAN.
- 4060 xxii. —.]—The refusal "to answer any question touching the case" in Liquor License Act, s. 115, means any question which may be lawfully put, which the witness is otherwise bound to answer.—*Re ASKWITH* (1899), 31 O. R. 150.—CAN.
- PART V. SECT. 2, SUB-SECT. 4.—C.
- 4105 i. *Who may take objection—Not counsel.*—The claim for protection against incriminating questions is a personal one & must be made by the party himself & under oath. The objection of his counsel will not do.—*R. v. MCINTYRE* (1909), 7 E. L. R. 50.—CAN.
- PART V. SECT. 3, SUB-SECT. 3.—B. (d).
- sa. *Notes made by police officer.*—Notes made by a police officer for the purpose of making a report to his superior officer are confidential, & their production cannot be insisted on by accused.—*HINSHELWOOD v. AULD*, [1926] S. C. (J.) 4.—SCOT.
- PART V. SECT. 3, SUB-SECT. 5.—A.
- 4493 iii. — *Expert witness.*—*Held*: a medical witness could not refuse to give evidence because his fees had not been paid.—*R. v. HUBLEY* (N. S.), [1925] 1 D. L. R. 494; 43 Can. Crim. Cas. 208.—CAN.
- PART V. SECT. 3, SUB-SECT. 7.—A. (c) i.
- 4645 i. *General rule—Clear case must be made out.*—*DESROCHERS v. QUEBEC LIQUOR COMMISSION & SIMARD* (1922), 37 Can. Crim. Cas. 17; 23 Q. P. R. 427.—CAN.
- 4649 iv. —.]—A witness, summoned by the High Ct. to give evidence, left the jurisdiction without being discharged as a witness & without the permission of the ct., in order to avoid giving evidence:—*Held*: such conduct amounted to contempt, & the High Ct. had inherent jurisdiction to punish for that contempt.—*EBRAHIM MAMOOJEE PAREKH v. R.* (1926), 1 L. R. 4 Ran. 257.—IND.

**4729a. Whether obligations of oath understood—**  
When witness may be asked.]—A judge is entitled to question a witness at any stage of his evidence with a view to ascertaining whether he recognises the obligations of an oath.—*R. v. WILSON* (1924), 18 Cr. App. Rep. 108, C. C. A.

**4734. Add. Annotation:—**Consd. *Lala Indar Prasad v. Lala Jagmohan Das* (1927), 43 T. L. R. 536.

**4816. Add. Annotation:—**Consd. *More v. Weaver*, [1928] 2 K. B. 520.

**4829. Add. Annotation:—**Mentd. *Buerger v. New York Life Assce.* (1927), 96 L. J. K. B. 930.

**4848. Add. Annotation:—**Mentd. *Smith's Potato Crisps v. Paige's Potato Crisps* (1928), 45 R. P. C. 132.

**4849. Add. Annotation:—**Mentd. *La Radio-technique v. Weinbaum* (1927), 137 L. T. 638.

**4859. Add. Annotation:—**Consd. *Grinham v. Davies* (1928), 139 L. T. 379.

**4875. Add. Annotation:—**Distd. *R. v. Harris*, [1927] 2 K. B. 587.

**4974. Add. Annotation:—**Mentd. *Royal Exchange Assce. v. Hope*, [1928] Ch. 170.

**4997. Add. Annotations:—**Refd. *Jacobson v.*

*Frachon* (1927), 138 L. T. 386. Mentd. *Salvesen (or von Lorang) v. Austrian Property Administrator*, [1927] A. C. 641.

**5027. Add. Annotation:—**Refd. *R. v. Copestake, Ex p. Wilkinson* (1926), 90 J. P. 191.

**5027. Add. Annotation:—**Consd. *R. v. Copestake, Ex p. Wilkinson* (1926), 90 J. P. 191.

**5045. Add. Annotation:—**Generally, Mentd. *Mellor v. Beardmore* (1927), 44 R. P. C. 175.

**5048. Add. Annotations:—**Mentd. *Dotzauer v. Dotzauer* (1925), 41 T. L. R. 289; *Lankester v. Lankester & Cooper*, [1925] P. 114; *Preger (otherwise Prager) v. Preger (otherwise Prager)* (1926), 134 L. T. 670.

**5087. Add. Annotation:—**Mentd. *Roberts v. Hopwood*, [1925] A. C. 578.

**5092. Add. Annotation:—**Mentd. *Farr, Smith v. Messers*, [1928] 1 K. B. 397.

**5099. Add. Annotations:—**Refd. *R. v. Liddle* (1928), 21 Cr. App. Rep. 3. Mentd. *R. v. Harris*, [1927] 2 K. B. 587.

**5107. The second line of this paragraph should read "out to be unfavourable to the party calling him is not."**

**5112. Add. Annotation:—**Refd. *R. v. Harris* (1927), 20 Cr. App. Rep. 144.

#### PART V. SECT. 5, SUB-SECT. 2.

**4759 ii. ——— Two plaintiffs witnesses.]—***Semble*: when there are two plts. & both are witnesses, deft. has not the right to insist that while one of them is giving his testimony the other shall be excluded.—*McINTYRE v. McIntyre*, [1925] 2 W. W. R. 581.—CAN.

#### PART V. SECT. 6, SUB-SECT. 1.—A.

**sh. Evidence of foreign witness—**  
*When interpreter allowed.]—*While it is desirable that a foreigner should not be allowed to give his testimony through an interpreter if he really understands English, yet where a witness persists in stating his ignorance of English & that he does not understand the questions put to him, & there is no evidence that he is not speaking the truth, he should not be forced to testify in English, especially where the result is a mass of unintelligible evidence.—*PONOMOROFF v. Ponomoroff*, [1925] 3 W. W. R. 673.—CAN.

*In criminal trials.]—See CRIMINAL LAW, Vol. XIV., p. 264.*

#### PART V. SECT. 6, SUB-SECT. 2.—B.

**4830 i. ——— Other defendant & his witnesses.]—**On the trial of a civil action, other than for divorce, against more than one deft., when defts. have pleaded separately, but there is no substantial difference in their interests, the judge may refuse to allow separate cross-examination of co-deft.'s witnesses; in other circumstances separate counsel may be allowed to be heard, with the consequential right to cross-examine co-deft. or his witnesses.—*MILLAR v. B. C. RAPID TRANSIT CO., LTD.*, [1926] 1 D. L. R. 1171; [1926] 1 W. W. R. 543; 36 B. C. R. 345.—CAN.

#### PART V. SECT. 6, SUB-SECT. 4.

**4874 iii. ———.]—***Re HAYES WILLIAMS* (1926), 26 S. R. N. S. W. 383; 43 N. S. W. W. N. 101.—AUS.

#### PART V. SECT. 6, SUB-SECT. 7.—D.

**4955 iii. ——— Although inadmissible—**  
*Because produced too late.]—**JEWAN LAI DAGA v. NILMANI CHAUDHURI* (1927), L. R. 55 Ind. App. 107.—IND.

#### PART V. SECT. 6, SUB-SECT. 7.—E.

**si. ———.]—**Before a witness is allowed to refresh his memory of a

statement made by another by reference to a memorandum of it made at the time, he must be able to state that such statement was truly & correctly entered in the memorandum, & where a copy of the memorandum is sought to be used the witness must be able to show that while the entry was fresh in his mind he compared the copy with the original entry, & that he found the copy correct.—*R. v. ELDER*, [1925] 3 D. L. R. 447; [1925] 2 W. W. R. 545; 44 Can. Crim. Cas. 75; 35 Man. L. R. 161.—CAN.

#### PART V. SECT. 6, SUB-SECT. 7.—G.

**5012 i. ——— By jury.]—***O'BRIEN v. O'BRIEN* (1888), Cout. Dig. 554, 992; Can. Cas. 282.—CAN.

**so. Whether document admissible as evidence.]—**The fact that a witness is allowed to refresh his memory, by referring to a memorandum made by him, does not make such memorandum admissible as evidence in corroboration of his testimony.—*YOUNG v. DENTON*, [1927] 1 D. L. R. 426; [1927] 1 W. W. R. 75; 21 Sask. L. R. 319.—CAN.

#### PART V. SECT. 6, SUB-SECT. 8.

**5020 i. Refusal to answer questions—**  
*Penalties—Punishment for contempt—*  
*Power of magistrate.]—**Re AYOTTE* (1905), 15 Man. L. R. 156.—CAN.

**ii. ———.]—**Deft. was committed for contempt of ct., for not answering a question asked by the magistrate.—*Held*: the magistrate had power to commit deft.—*R. v. ENDLER* (1909), 7 E. L. R. 150, 151, 152.—CAN.

#### PART V. SECT. 7, SUB-SECT. 3.—A.

**5054 ii. ———.]—***STERLING TRUSTS CORPN. v. MELNECHUK* (Sask.), [1927] 4 D. L. R. 521; [1927] 3 W. W. R. 131.—CAN.

**5059 i. Whether party entitled to split evidence into two parts—As part of his case—& partly as evidence in reply.]—**Pltf. is not allowed in presenting evidence to divide his case, either by omitting to give evidence originally upon a material point & offering such evidence in reply, or by giving some evidence upon a particular point in his original case & offering other evidence upon the same point in reply.—*HARVEY v. CANADIAN PACIFIC RY. CO.* (1885), 3 Man. L. R. 266.—CAN.

#### PART V. SECT. 8, SUB-SECT. 1.—A.

**5082 ii. ———.]—**The duty of determining whether a witness may be treated as adverse or hostile is one peculiarly within the discretion of the trial judge.—*MAYFIELD RURAL MUNICIPALITY, No. 406 v. LONDON & LANCASHIRE GUARANTY & ACCIDENT CO. OF CANADA*, [1927] 1 D. L. R. 403; [1927] 1 W. W. R. 67; 21 Sask. L. R. 283.—CAN.

#### PART V. SECT. 8, SUB-SECT. 1.—C. (b)

**sd. Statement made on examination for discovery.]—***Held*: a "previous" or "former" statement within Saskatchewan Evidence Act, R. S. S., 1920 (c. 44), ss. 32-34.—*MAYFIELD RURAL MUNICIPALITY, No. 406 v. LONDON & LANCASHIRE GUARANTY & ACCIDENT CO. OF CANADA*, [1927] 1 D. L. R. 403; [1927] 1 W. W. R. 67; 21 Sask. L. R. 283.—CAN.

#### PART V. SECT. 8, SUB-SECT. 2.—C. (b).

**5168 i. Letter written by witness.]—**Where a telegram & a letter were dispatched shortly after a sale of goods by the sellers' agent to his employers recording his version of the transaction.—*Held*: not corroboration of the agent's oral testimony, although they might competently be referred to for the purpose of testing his credibility.—*GIBSON v. NATIONAL CASH REGISTER CO.*, [1925] S. C. 500.—SCOT.

#### PART V. SECT. 9, SUB-SECT. 1.

**5209 i. Whether necessary.]—***McNAB v. COWARD*, [1925] 4 D. L. R. 712; affg., [1925] 1 D. L. R. 741.—CAN.

**so. What constitutes corroboration—**  
*Whether letter written by witness—*  
*About time of event in question.]—**Held*: a telegram & a letter dispatched shortly after a sale of goods by the sellers' agent to his employers recording his version of the transaction were not corroboration of the agent's oral testimony.—*GIBSON v. NATIONAL CASH REGISTER CO.*, [1925] S. C. 500.—SCOT.

**si. Of telephone conversation.]—**A person who hears a telephone conversation may give evidence to corroborate the person whom he was with & who was the actual speaker.—



## Part VI.—Expert Evidence.

**5403a. Limitation of volume of evidence.]**—In cases involving expert evidence the expert advisers of the parties, whether legal or scientific, are under a special duty to the ct. to limit in every possible way the contentious matters of fact to be dealt with at the hearing (TOMLIN, J.).—*GRAIGOLA MERTHYR Co., LTD. v. SWANSEA CORPN.*, [1928] Ch. 31; 97 L. J. Ch. 129; 48 T. L. R. 600; *previous proceedings* (1926), 71 Sol. Jo. 142.

**5403b. S. P. A.-G. v. RINGWOOD RURAL DISTRICT COUNCIL** (1928), 92 J. P. 65; 26 L. G. R. 174.

**5403c. Limitation of number of expert witnesses.]**—In cases involving expert evidence only two experts are to be heard on each side, unless the judge is satisfied that by reason of special circumstances justice cannot be done without hearing further expert evidence. This rule does not exclude either side from calling any

one to speak to matters he has seen, even though an expert, but in such a case the examination must be confined to matters of fact, & such person must not be treated as an expert witness.—*GRAIGOLA MERTHYR Co., LTD. v. SWANSEA CORPN.* (1926), 71 Sol. Jo. 142; *subsequent proceedings*, [1928] Ch. 31.

**5407a. — Only medical witnesses—Not research student in toxicology.]**—*NIGHTINGALE v. BIFFEN, HEWITT v. BIFFEN* (1925), 18 B. W. C. C. 358, C. A.

**5433. Add. Annotation :—Reid. Australia (Owners) v. Nautilus (Owners), The Australia** (1926), 95 L. J. P. 145.

**5476. Add. Annotation :—Mentd. Re Clayton's Petn.** (1927), 43 T. L. P. 959.

**5479. Add. Annotations :—Consd. Buerger v. New York Life Assce.** (1927), 96 L. J. K. B. 930. *Reid. R. v. Moscovitch* (1927), 138 L. T. 183.

## Part VII.—Evidence by Affidavit.

**5493. Add. Citations :—**94 L. J. Ch. 73; 132 L. T. 540.

*Add. Annotation :—Mentd. Re Drage, Palmer & Roberts v. Knight* (1926), 134 L. T. 765.

**5523a. — Proceedings on which affidavit made no longer pending.]**—*CATHOLIC PUBLISHING & BOOKSELLING Co., LTD. v. WYMAN* (1863), 1 New Rep. 468; 7 L. T. 849; 11 W. R. 399.

**5573. Add. Annotation :—Mentd. Re Reddaway's Appln.**, [1925] Ch. 693.

**5676a. —.]**—*Ex p. STEPHENS* (1848), 11 L. T. O. S. 152.

**5873a. —.]**—The *jurat* of an affidavit of the due taking of an acknowledgment had an interlineation in the body of it, & an erasure in the *jurat*. The ct. refused to allow it to be filed, & refused to enlarge the time for returning the commission, in order to get the defects remedied, the time for the return

having expired.—*Re TIERNEY* (1855), 15 C. B. 761; 24 L. T. O. S. 260; 139 E. R. 625.

**5880a. —.]**—*Re TIERNEY*, No. 5873a, ante.

**5951a. — In material part of affidavit—Proof of time of erasure.]**—The ct. allowed a certificate of acknowledgment & affidavit of verification, taken in New South Wales, to be received & filed, notwithstanding an erasure in a material part of the affidavit, there being satisfactory evidence, by affidavit, that the erasure was made before the acknowledgment & affidavit were taken & sworn.—*Re BINGLE* (1854), 15 C. B. 449; 2 C. L. R. 1793; 23 L. T. O. S. 177; 139 E. R. 500.

**6015. Add. Annotation :—Mentd. Moser v. Amble-side U. D. C.** (1925), 89 J. P. 118.

*HANSON v. GLEANER, LTD.*, [1925] 3 D. L. R. 189.—CAN.

### PART V. SECT. 9, SUB-SECT. 4.

*a* (p. 494) i. —.]—The rule, that claims against the estate of a deceased person require to be corroborated by other evidence than that of pltf., is a rule of practice rather than of law, & is only applied where the *onus* of proof rests upon pltf., & has no application where the *onus* of proof of the facts which determine the issue or issues involved rests upon the representative of the deceased person.—*TAMARA TE ANGIANGI v. TREADWELL*, [1926] N. Z. L. R. 693.—N.Z.

*a* (p. 494) ii. —.]—*PIEPER v. ZINKANN* (1927), 60 O. L. R. 443.—CAN.

### PART V. SECT. 10, SUB-SECT. 2.—

*i. i.* —.]—*OUVILLIER v. THIBODO* (1849), 5 U. C. R. 328.—CAN.

### PART VI. SECT. 1.

*m.* Read now "5403c i."

*n.* Read now "5403c ii."

*o.* Read now "5403c iii."

*5403c iv.* —

*Act,*

*UDRELL*, [1925] 3 L. R. 45; 57 O. L. R. 97.—CAN.

*s.* For "Conflict of opinion as to value" read "Conflict of opinion—Duty of court—Conflict of opinion as to value."

*si.* —.]—*HAY v. BAIN*, [1925] 2 D. L. R. 948.—CAN.

*s ii.* —.]—Where a case is complicated by the introduction of opinion evidence, particular where the testimony is that men, it is the duty of the

*67 O. L. R. 233.*—CAN.

*sh. Weight of*

*Co.* (1896), 26 S. C.

*—.]*—*GUELPH WORSTED SPIN-*

*73; 5 O. W. N. 761.*—

### PART VI. SECT. 2, SUB-SECT. 1

*5406 i. What witnesses may be*

*—Nurse.]*—A nurse's evidence, as to the physical condition of a child, & her opinion as to its sufferings:—*Held*: admissible as an expert up to a certain point.—*HEPENSTAL v. MERRITT* (1895), 33 N. B. R. 91.—CAN.

*s i.* — *Distance at which gun held.]*—*R. v. PREEPER* (1890), 22 S. R. 174.—CAN.

### PART VII. SECT. 1.

*sk. As proof of settlement of action.]*—The question whether or not an action has been settled should not be disposed of on affidavits, where the evidence is conflicting.—*PULKRABEK v. PULKRABEK* (Alta.), [1927] 4 D. L. R. 635; [1927] 3 W. W. R. 239.—CAN.

### PART VII. SECT. 4, SUB-SECT. 1.

*ri.* — *County Courts Act, R. S. M., 1913 (c. 44), s. 138—Effect of.]*—*R. v. GUYOT*, [1927] 1 D. L. R. 191; 36 Man. L. R. 178; [1926] 3 W. W. R. 584.—CAN.

### PART VII. SECT. 12, SUB-SECT. 1.—B.

*6022 iii.* —.]—Affidavits sworn before an attorney, who is a partner of counsel engaged in the cause, but not otherwise connected therewith, may be read.—*WILDE v. CROW* (1861), 10 C. P. 406.—CAN.

- 6052a. — .]—ANON. (1839), No. 6108a, *post*.  
 6053a. — No commissioner available.]—*Re* GROOM, No. 6066a, *post*.  
 6056. *Add. Annotation*:—*Folld. Re Eastern United Assce. Corpn.* (1928), 72 Sol. Jo. 353.  
 6066a. Notary public—No commissioner available.]—The ct. allowed a certificate of acknowledgment under Fines & Recoveries Act, 1833 (c. 74), s. 84, to be filed under s. 85 where the affidavit verifying the certificate was sworn before a notary public in the Hebrides, as the affidavit on which the application was made deposed that there was no comr. of the ct. in the Hebrides or nearer than the mainland.—*Re GROOM* (1869), 17 W. R. 589.  
 6081a. .]—*Re STREET* (1845), 2 C. B. 364; 135 E. R. 987.  
 6081b. —.]—*Ex p. STEPHENS* (1848), 11 L. T. O. S. 152.  
 6083. *Add. Annotation*:—*Folld. Re Eastern United Assce. Corpn.* (1928), 72 Sol. Jo. 353.  
 6083a. *S. P. Re EASTERN UNITED ASSURANCE CORPN.* (1928), 72 Sol. Jo. 353.  
 6092a. — —.]—*Re CRAWFORD* (1847), 4 C. B. 626; 136 E. R. 653.  
 6096a. Italy—British minister.]—The ct. refused to direct the proper officer under Fines & Recoveries Act, 1833 (c. 74), to receive & file an acknowledgment, where the affidavit of verification was sworn before the British minister at Florence, it not appearing that there was any difficulty in getting it sworn before some properly constituted authority at that place.—*Re DUNSANY* (1849), 7 C. B. 119; 137 E. R. 49.  
 6108a. — — —.]—The ct. refused to file the certificate of the acknowledgment of a deed by a married woman resident in America, verified by an affidavit made before a notary public, without an affidavit that notaries public are the proper officers for taking affidavits in America, & also as to the identity of the comrs.—ANON. (1839), 3 Jur. 125.  
 6143. *Add. Annotation*:—*Mentd. Charles v. Cardiff Collieries* (1923), 44 T. L. R. 448.  
 6153. *Add. Annotation*:—*Mentd. Hunter v. Stadtische Hochseefischerei Gesellschaft*, [1925] 2 K. B. 493.

## Part VIII.—Evidence out of Court.

6239. *Add. Annotation*:—*Mentd. Re Southerden, Adams v. Southerden*, [1925] P. 177.  
 6561a. —.]—*Re TIERNEY*, No. 5873a, *ante*.  
 6604. *Add. Annotation*:—*Mentd. Re City Equitable Fire Insce.*, [1925] Ch. 407

## Part XI.—Colonial and Foreign Law.

6851. *Add. Annotation*:—*Mentd. Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669.  
 6859. *Add. Annotation*:—*Mentd. Tallack v. Tallack & Broekema*, [1927] P. 211.

PART VIII. SECT. 1, SUB-SECT. 1.  
 6176 x. —.]—*KOURI v. NEMEROVSKY*, [1927] 4 D. L. R. 928; [1927] 3 W. W. R. 357; 37 Man. L. R. 9.—CAN.

PART VIII. SECT. 1, SUB-SECT. 5.—F.  
 m i. —.]—*WILLIAMS & WILLIAMS v. FRASER* (1925), 35 B. C. R. 481.—CAN.

a i. —.]—*Re WEINGARDEN*, [1925] 2 D. L. R. 1036; 5 C. B. R. 606.—CAN.

PART VIII. SECT. 1, SUB-SECT. 5.—G.  
 e i. —.]—*BURROUGHS v. INTER-COLONIAL GOLD MIN. CORPN. (N. S.)*, [1927] 3 D. L. R. 371.—CAN.

PART VIII. SECT. 1, SUB-SECT. 5.—H.  
 6338 iv. — — — *Party*.]—*PHANINDA KRISHNA DOTT v. PRAMATHA NATH MALIA* (1927), 1 L. R. 55 Calc. 748.—IND.

i i. — *Illness of plaintiff*.]—Under Supreme Ct. Ord. 37, r. 5 (B. C.), plff. may, on the grounds of serious illness, obtain leave to issue a writ of commission to have his evidence taken for use on the trial before the time for appearance has elapsed.—*KELLY v. KELLY*, [1925] 1 W. W. R. 332.—CAN.

PART VIII. SECT. 1, SUB-SECT. 6.—B. (a).

r i. —.]—The *onus* of establishing that an examination on commission

of a party outside the jurisdiction is "necessary for the purposes of justice" is on the party applying for the order.—*STAPLES v. MILOFF (Man.)* 927] 2 D. L. R. 847; [1927] 1 W. R. 435.—CAN.

PART VIII. SECT. 2, SUB-SECT. 1.—C.  
 6523 i. *What must be included—Names of witnesses*.]—There is no rigid rule that such names must be given in the order for the commission.—*WATKINS (J. R.) Co. v. CAFFERRY*, [1925] 3 D. L. R. 805; [1925] 2 W. W. R. 588.—CAN.

PART VIII. SECT. 2, SUB-SECT. 1.—D.

6540 i. *What must be inserted—Names of witnesses*.]—There is no rigid rule that such names must be given in the commission.—*WATKINS (J. R.) Co. v. CAFFERRY*, [1925] 3 D. L. R. 805; [1925] 2 W. W. R. 588.—CAN.

PART VIII. SECT. 3, SUB-SECT. 2.—A.  
 sm. *May be put in by other side*.]—*GAINERS v. CANADIAN NORTHERN RY. CO.*, [1925] 3 D. L. R. 369.—CAN.

PART VIII. SECT. 4.

m i. *For use of foreign court*.]—Under Foreign Tribunals Evidence Act, 1856, the ct. is empowered to order the examination of witnesses within its

jurisdiction, whose examination is applied for by a ct. of competent jurisdiction in a foreign country.—*LORD ADVOCATE, THE PETITIONER*, [1925] S. C. 568.—SCOT.

PART IX. SECT. 2.

so. *To prove testamentary capacity—Will made before testator found insane*.]—A suit will lie at the instance of an insane testator in his lifetime, to perpetuate testimony as to his testamentary capacity at the time of his will, made before he was found insane.—*RANKEN v. PEARCE* (1927), 27 S. R. N. S. W. 410; 44 N. S. W. W. N. 123—AUS.

PART XI. SECT. 1.

sq. *Jurisdiction to order*.]—*Held*: even if it was within the power of the ct. to examine foreign written law so as to ascertain what that law was, it was always competent, if the ct. considered it necessary, to order a proof of foreign law, whether written or unwritten.—*HIGGINS v. EWING'S TRUSTEES*, [1925] S. C. 440.—SCOT.

PART XI. SECT. 2.

n i. — — —.]—The Supreme Ct. of Canada is bound to take judicial notice of the laws of all the provinces of the Dominion.—*CANADIAN PACIFIC RY. CO. v. PARENT* (1917), 86 L. J. P. C. 123.—CAN.

6864. *Add. Annotation*:—**Apld.** *R. v. Moscovitch* (1927), 44 T. L. R. 4.
6865. *Add. Annotation*:—**Apld.** *R. v. Moscovitch* (1927), 44 T. L. R. 4.
6866. *Add. Annotation*:—**Refd.** *Buerger v. New York Life Assce.* (1927), 96 L. J. K. B. 930.
6867. *Add. Annotation*:—**Refd.** *Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669.
6872. *Add. Annotations*:—**Refd.** *Re Annesley, Davidson v. Annesley*, [1926] Ch. 692; *Buerger v. New York Life Assce.* (1927), 96 L. J. K. B. 930.
6874. *Add. Annotation*:—**Consd.** *Buerger v. New York Life Assce.* (1927), 96 L. J. K. B. 930.
- 6876a. ———.]—Pltf. divorced her husband in France & made a verbal agreement with him pending the divorce proceedings that she would not ask for alimony if he would promise to assist her when he should be in a position to do so, unless in the meantime she had married a wealthy man or had ceased to live a chaste life:—**Held**: (1) the validity in French law of such an agreement could not be presumed by the judge when the expert witnesses as to French law had given no evidence on the point; (2) the French witnesses having returned to France after having given their testimony, it would not be just to allow the pleadings to be amended so as to allow further proof of the French law.—*DENNISTOUN v. DENNISTOUN* (1925), 69 Sol. Jo. 476.
6887. *Add. Annotation*:—**Mentd.** *Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669.
6890. *Add. Annotation*:—**Mentd.** *N. V. Kwik Hoo Tong Handel Maatschappij v. Finlay*, [1927] A. C. 604.
6894. *Add. Annotation*:—**Mentd.** *Jebara v. Ottoman Bank*, [1927] 2 K. B. 254.
6896. *Add. Annotations*:—**Refd.** *Buerger v. New York Life Assce.* (1927), 96 L. J. K. B. 930. **Mentd.** *N. V. Kwik Hoo Tong Handel Maatschappij v. Finlay*, [1927] A. C. 604.
6900. *Add. Annotation*:—**Apld.** *R. v. Moscovitch* (1927), 44 T. L. R. 4.
6901. *Add. Annotation*:—**Refd.** *R. v. Moscovitch* (1927), 138 L. T. 183.
6907. *Add. Annotations*:—**Refd.** *Re Visser, Holland v. Drukker*, [1928] Ch. 877. **Mentd.** *Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669.
6916. *Add. Annotation*:—**Cor.** *Buerger v. New York Life Assce.* (1927), 96 L. J. K. B. 930.
6918. *Add. Annotations*:—**As to** (1) **Refd.** *R. v. Moscovitch* (1927), 138 L. T. 183. **As to** (2) **Consd.** *Buerger v. New York Life Assce.* (1927), 96 L. J. K. B. 930.
6923. *Add. Annotations*:—**Refd.** *Buerger v. New York Life Assce.* (1927), 96 L. J. K. B. 930. **Mentd.** *N. V. Kwik Hoo Tong Handel Maatschappij v. Finlay*, [1927] A. C. 604.
6928. *Add. Annotation*:—**Refd.** *Buerger v. New York Life Assce.* (1927), 96 L. J. K. B. 930.
6951. *Add. Annotation*:—**Mentd.** *Macaulay v. Guaranty Trust Co. of New York* (1927), 44 T. L. R. 99.

PART XI. SECT. 3.

6869 vi. ———.]—The canon law of the Roman Catholic Church is foreign law, which must be proved as a fact & by the testimony of expert witnesses according to the well-settled

rules as to proof of foreign law. The foreign law applicable to a case must be taken from the statement of the expert witness as to what the law is, & not from text-books or codes referred to by him.—*O'CALLAGHAN*

*v. O'SULLIVAN*, [1925] 1 I. R. 90.—**IR.**

PART XI. SECT. 8, SUB-SECT. 1.

6939 xi. ———.]—*TILTON v. MCKAY* (1874), 24 C. P. 94.—**CAN.**



## EXECUTORS AND ADMINISTRATORS.

## Part I.—The Office of Executor or Administrator.

54a. *S. P. In the Goods of COLES* (1871), L. R. 2 P. & D. 362; 41 L. J. P. & M. 21; 25 L. T. 852; 36 J. P. 120; 20 W. R. 214.  
*Annotation*:—*Refd. Foundling Hospital v. Crane* (1911), 105 L. T. 187.

WAY,  
 [1901] P. 345; 71 L. J. P. 13; 85 L. T. 643;  
 17 T. L. R. 758.

150. *Add. Annotation*:—*Refd. Jenkins v. Jenkins*, [1928] 2 K. B. 501.

151. *Add. Annotation*:—*Refd. Jenkins v. Jenkins*, [1928] 2 K. B. 501.

152. *Add. Annotation*:—*Refd. Jenkins v. Jenkins*, [1928] 2 K. B. 501.

153. *Add. Annotation*:—*Generally, Refd. Jenkins v. Jenkins*, [1928] 2 K. B. 501.

154a. — *Appointment of one of several makers of promissory note.*—During the lifetime of testator the exor. named in his will & three other persons made a joint & several promissory note payable to him. After the death of testator & probate of the will the exor. brought an action on the promissory note against one of the other makers thereof:—*Held*: the action was not maintainable,

inasmuch as the effect of plff.'s appointment as exor. was (1) at common law that the debt was discharged by release at the date of the death of testator, & (2) in equity that it was discharged by payment at the date of probate, so that in either case the debt had ceased to exist before the action was brought.—*JENKINS v. JENKINS*, [1928] 2 K. B. 501; 97 L. J. K. B. 400; 139 L. T. 119; 44 T. L. R. 483; 72 Sol. Jo. 319, D. C.

165a. — *Appointment of wife of debtor.*—*Re PRICE, PRICE v. PRICE* (1879), 11 Ch. D. 163; 48 L. J. Ch. 478; 40 L. T. 668; 27 W. R. 698, C. A.

165b. — *JENKINS v. JENKINS*, No. 154a, ante.

209a. *S. P. ANON.* (1806), 12 Ves. 4; 33 E. R. 2.  
*Annotation*:—*Refd. Browell v. Reid* (1842), 11 L. J. Ch. 272.

258. *Add. Annotation*:—*As to* (1) *Refd. Jenkins v. Jenkins*, [1928] 2 K. B. 501.

296. *Add. Annotation*:—*Refd. Re City Equitable Fire Insce.*, [1925] Ch. 407.

427. *Add. Citations*:—*Moore*, K. B. 146; *sub nom. RUSSEL v. PRAT*, 1 And. 177; *on appeal* (1589), 1 Leon. 193, Ex. Ch.

## Part II.—Probate and Letters of Administration.

734a. — *In the Goods of SERGEANT* (1872), 26 L. T. 669; 36 J. P. 696; *sub nom. In the Goods of SERJEANT*, 20 W. R. 872.

774a. *S. P. In the Goods of BARBER* (1886), 11 P. D. 78; 56 L. T. 894; 35 W. R. 80.

784. *Add. Annotation*:—*Refd. Lal Chand Marwari*

## PART I. SECT. 1.

sa. *Nature of office.*—The office of exor. is an administrative appointment, not a benefit, & a widow who has been appointed extrix. under her husband's will is not bound to elect between accepting the office & claiming her legal rights.—*SMART v. SMART*, [1926] S. C. 392.—SCOT.

## PART I. SECT. 2, SUB-SECT. 1.

sb. *Public Trustee.*—Testator, domiciled in the Irish Free State, appointed the Public Trustee to be his exor. & trustee:—*Held*: neither the Irish Public Trustee nor the English Public Trustee could accept the appointment.—*In the Goods of LEESON*, [1928] I. R. 168.—IR.

## PART I. SECT. 3, SUB-SECT. 2.—A. (a).

47 i. *S. P. Re MAURAT ESTATE* (Sask.), [1927] 3 W. W. R. 18.—CAN.

## PART I. SECT. 3, SUB-SECT. 2.—A. (b).

sc. *Universal legatee—Trust to divide between legatee & others.*—A will reading, "I bequeath all my estate to Mrs. S. to be divided equally among Mrs. S. & her brothers & sister":—*Held*: not to constitute Mrs. S. an extrix. according to the tenor of the will.—*Re McMILLAN*, [1925] 3 W. W. R. 584.—CAN.

## PART I. SECT. 9.

202 i. *Jurisdiction to release—Surrogate court.*—A surrogate ct. judge has no power to make an order releasing exors. "from their exorship."—*Re*

DENTON ESTATE (Sask.), [1926] 3 W. W. R. 186.—CAN.

o i. — *Under the discretionary power given him by Trustee Act, R. S. S., 1920 (c. 75), s. 71, the judge appointed a judicial trustee in place of an extrix.*—*SMALL v. PACKARD*, [1925] 1 W. W. R. 897.—CAN.

sd. *Contested motion—Costs of.*—The costs of a contested motion, for the removal of an administrator & the appointment of another in his place, should not be taxed as between solr. & client.—*Re GAMMON ESTATE, PAYNE v. GAMMON*, [1927] 2 D. L. R. 605; [1927] 1 W. W. R. 506; 38 B. C. R. 153.—CAN.

## PART I. SECT. 10, SUB-SECT. 1.—C.

274 ia. *S. P. PUBLIC TRUSTEE v. REGISTRAR-GENERAL OF LAND*, [1927] N. Z. L. R. 839.—N. Z.

## PART I. SECT. 13, SUB-SECT. 2.

n i. — *The exor. named in a will represents the estate of deceased for all purposes, even before probate of the will is taken out. The taking out of probate establishes the will from the date of the death of testator, & thereby all intermediate acts of the exor. in connection with the estate are validated.*—*MEGHRAJ v. KRISHNA CHANDRA BHATTACHARJI* (1923), I. L. R. 46 All. 286.—IND.

## PART I. SECT. 13, SUB-SECT. 3.—B.

471 i. *General rule.*—Although an exor., who elects to act, may be sued before probate, the ct. has no jurisdiction over a person as exor., who has obtained a grant of probate in a foreign

country, unless there were assets of testator within the jurisdiction at the time of his death, in respect of which the ct. may reasonably assume that the exor. will clothe himself in due course with the necessary representative character by an application for probate or the resealing of the foreign probate.—*NAGEL v. HOUGH* (1927), 27 S. R. N. S. W. 418; 44 N. S. W. W. N. 121.—AUS.

## PART I. SECT. 15, SUB-SECT. 2.

g i. — *Held*: the sale of the reversion in a term of years, under a *fi. fa.* on a judgment against an exor. *de son tort*, was a valid sale as against the rightful administrator.—*BAIN v. MCINTYRE* (1867), 17 C. P. 500.—CAN.

sf. *On whom binding—Third party—Estoppel.*—Where a buyer of goods under a conditional sale agreement induces a buyer of the same goods from him under a similar agreement to deliver up the goods to the exor. *de son tort* of the original seller in settlement of his, the first buyer's claim, he will not be allowed, in an action against such second buyer, to deny the authority of the exor. *de son tort* to take over the goods.—*LARSON v. COATES* (Sask.), [1926] 4 D. L. R. 561; [1926] 3 W. W. R. 397.—CAN.

## PART II. SECT. 1, SUB-SECT. 1.—A. (a).

697 i. *Construction of documents—Only for purposes of admission to probate.*—*NANDKISHORE LAL v. PASUPATI NATH SAHU* (1928), I. L. R. 7 Pat. 396.—IND.

*v. Mahant Ramrup Gir* (1925), 42 T. L. R. 159.

858. *Citations*:—For “ 34 Ch. D. 177 ” read “ 24 Ch. D. 177.”

909. *Add. Annotation*:—*Mentd. Jenkins v. Jenkins*, [1928] 2 K. B. 501.

911a. — Who is—Holder of office appointed executor.]—Where the holder of an office has been appointed exor., the person entitled to probate is the holder of that office, not at the time when the will was executed, but at the date of testator's death.—*In the Estate of JONES* (1927), 43 T. L. R. 324.

924a. —.]—Ct. of Probate Act, 1857 (c. 77), s. 73, confers wide powers on the ct. Under it an exor., not willing or competent to take probate, may be replaced by an administrator to be appointed by the ct., if it shall appear to be necessary or convenient by reason of special circumstances. Misfeasance on the part of an exor. with regard to the estate of his testator is a ground for proceeding under the sect., even after the exor. has inter-meddled.

Exors. had intermeddled & neglected to prove the will, & had made an agreement with the universal legatee that the will should not be proved. In passing them over the ct. ordered that a grant of administration should be made to a third person to be agreed upon by the exors. & the legatee, or in default to be appointed by the ct.—*In the Estate of POTTICARY*, [1927] P. 202; 96 L. J. P. 94; 137 L. T. 256.

931. *Add. Citation*:—*sub nom. In the Goods of HERR*, 6 Jur. 350.

931a. — Failure to prove will.]—*In the Estate of POTTICARY*, No. 924a, ante.

931b. —.]—Where property was left to an exor. in trust for a minor the ct. passed over the exor. without citation, on proof that his interest was adverse, that he had delayed obtaining probate & that he was unfit, although he resided in England & apparently was competent & not unwilling to act.—*In the Goods of RAY* (1926), 96 L. J. P. 37; 136 L. T. 640.

*Annotation*:—*Reid. In the Estate of Potticary*, [1927] P. 202.

938a. —.]—(1) No rule of the common law as to evidence is contravened by the admission of secondary evidence as to the contents of a lost document, & when the due execution of a no longer existing testamentary paper is established, & its contents are shown to have included a clause revoking previous papers, those papers are no longer testamentary from the moment of such execution.

PART II. SECT. 6, SUB-SECT. 1.—A.

n i. —.]—Probate may be granted to an extrix., even though at the date of testator's death & of the application she was resident out of the jurisdiction of the ct.—*Re WALLER*, [1926] N. Z. L. R. 729.—N.Z.

PART II. SECT. 6, SUB-SECT. 1.—C.

r i. — Allegation of undue influence.]—An allegation that the appointment of a person as exor. under a will is invalid & of no effect because such person caused or procured the will to be written, is insufficient to sustain a claim to set aside the appointment.—*SMITH v. BIRD* (1924), N. L. R. 381.—S. AF.

PART II. SECT. 6, SUB-SECT. 3.—G.

1002 i. *Testator deaf & dumb.*]

Circumstances in which probate of an alleged will of a deaf & dumb person was refused.—*Re EWEN (DECEASED)*, [1927] N. Z. L. R. 881.—N. Z.

PART II. SECT. 6, SUB-SECT. 5.—B.

1035 i. *Proof of contents—Need of stringent proof.*]

—*Re PERRY*, [1925] 1 D. L. R. 930; 56 O. L. R. 278.—CAN.

PART II. SECT. 6, SUB-SECT. 8.—B.

1053 i. — Wherever ground for suspicion.]—*HOWIE v. CHATTERTON*, [1926] N. Z. L. R. 595.—N.Z.

PART II. SECT. 6, SUB-SECT. 9.—A.

s j. *Non-compliance with Wills Act, R. S., 1923 (c. 146), s. 15.*]

—Application refused.—*Re COX*, [1927] 1 D. L. R. 441; 59 N. S. R. 103.—CAN.

(2) Declarations of testator made after execution of the will are not admissible as to the fact of execution itself, as tending to contravene the statutory requirements as to execution; but they are admissible to prove the contents of a paper otherwise shown to have been properly executed, & no longer in existence.—*BARKWELL v. BARKWELL*, [1928] P. 91; 44 T. L. R. 207; 72 Sol. Jo. 69; *sub nom. In the Estate of BARKWELL*, *BARKWELL v. BARKWELL*, 97 L. J. P. 53; 138 L. T. 526.

970. *Add. Annotation*:—*Consd. In the Estate of Musgrove, Davis v. Mayhew*, [1927] P. 264.

991. *Add. Annotation*:—*Reid. In the Estate of Musgrove, Davis v. Mayhew*, [1927] P. 264.

992. *Add. Annotation*:—*Reid. In the Estate of Musgrove, Davis v. Mayhew*, [1927] P. 264.

1016. *Add. Annotation*:—*Reid. Barkwell v. Barkwell*, [1928] P. 91.

1017. *Add. Annotation*:—*Reid. In the Estate of Musgrove, Davis v. Mayhew*, [1927] P. 264.

1018. *Add. Annotation*:—*As to (1) Reid. Barkwell v. Barkwell*, [1928] P. 91.

1019. *Add. Annotations*:—*As to (1) Reid. Barkwell v. Barkwell*, [1928] P. 91. *Generally, Reid. In the Estate of Jessop* (1924), 132 L. T. 31.

1022a. —.]—*BARKWELL v. BARKWELL*, No. 938a, ante.

1044. *Add. Annotations*:—*As to (1) Apld. In the Estate of Musgrove, Davis v. Mayhew*, [1927] P. 264. *As to (2) Apld. In the Estate of Musgrove, Davis v. Mayhew*, [1927] P. 264.

1164. *Add. Annotation*:—*Consd. In the Estate of Plant, Wild v. Plant*, [1926] P. 139.

1191. *Add. Annotation*:—*Generally, Reid. Robins v. National Trust Co.*, [1927] A. C. 515.

1271. *Add. Annotation*:—*Reid. Robins v. National Trust Co.*, [1927] A. C. 515.

1294. *Add. Annotations*:—*Reid. In the Estate of Musgrove, Davis v. Mayhew*, [1927] P. 264; *Robins v. National Trust Co.*, [1927] A. C. 515.

1304. *Add. Annotations*:—*Consd. In the Estate of Musgrove, Davis v. Mayhew*, [1927] P. 264. *Reid. Robins v. National Trust Co.*, [1927] A. C. 515.

1317. *Add. Annotation*:—*As to (3) Reid. In the Estate of Musgrove, Davis v. Mayhew*, [1927] P. 264.

1318. *Add. Annotation*:—*Reid. In the Estate of Musgrove, Davis v. Mayhew*, [1927] P. 264.

1367. *Add. Annotation*:—*Distd. In the Estate of Caie, In the Estate of Davis* (1927), 71 Sol. Jo. 898.

PART II. SECT. 8.

1238 i. *Double grants—Discouraged.*]

—When a will appoints one exor. for general purposes & another one for limited purposes, only one grant should be made, & the respective powers of the two exors. should be distinguished therein. The ct. should discourage double grants, & upon the application for probate made by either exor., the other one should be cited.—*Re MAURAT ESTATE (Sask.)*, [1927] 3 W. W. R. 18.—CAN.

PART II. SECT. 9, SUB-SECT. 5.—A.

1244 i. *Exercise of influence must be proved.*]

—*MURRAY v. HAYLOW*, [1927] 3 D. L. R. 1036; 60 O. J. R. 629.—CAN.

- 1371a. —.]—*In the Estate of CAIE* (1927), 43 T. L. R. 697; *sub nom. In the Estate of CAIE, In the Estate of DAVIS*, 71 Sol. Jo. 898.
- 1375a. **Settlement—Identical bequests.**]—Where a will contained bequests identical with the trusts of a marriage settlement the ct. did not require the whole of the marriage settlement to be set out in the probate, but only such extracts as were necessary to explain the bequests.—*In the Goods of GARBET* (1869), 33 J. P. 792; 21 L. T. 366.
1383. **Add. Annotation:—Consd. In the Estate of Todd**, [1926] P. 173.
- 1388a. —.]—*In the Estate of TODD*, No. 1398a, *post*.
- 1398a. — **Wills not independent.**]—If testamentary papers are independent, one dealing exclusively with property within the jurisdiction & the other with property outside it, there is no obligation on a party propounding the first to obtain probate of the second. The question is whether the papers are independent or interdependent.
- Testator left two wills, one English, the other American; the latter dealt exclusively with property outside the English jurisdiction, but the two documents were interdependent with regard to the residue, which was liable for English estate duty. The exors. of the two wills were different persons. Testator had expressly directed that the American will should be "probated" in America:—*Held*: (1) the two wills & a codicil to the English will should all be proved in England; (2) the document to be retained in the English Probate Registry as evidence of the testamentary act of making the American will should be an examined & sealed copy of that will, & after probate the original American will should be handed out to the exors. named therein for probate in America.—*In the Estate of TODD*, [1926] P. 173; 95 L. J. P. 105; 135 L. T. 381; 42 T. L. R. 545; 70 Sol. Jo. 671.
- 1410a. —.]—*In the Estate of TODD*, No. 1398a, *ante*.
- 1431a. **Where minority interest.**]—*Re HERBERT*, No. 1883a, *post*.
- 1431b. —.]—Under Jud. (Consolidation) Act, 1925 (c. 49), ss. 160 (1) & 162 (1), the ct. cannot make a grant of administration to less than two individuals, when it is aware that there is a minority interest.—*Re WHITE*, [1928] P. 75; 96 L. J. P. 157; 138 L. T. 68; 43 T. L. R. 729; 71 Sol. Jo. 603, C. A.
1474. **Add. Annotation:—Refd. Re Bower Williams, Ex p. Trustee**, [1927] 1 Ch. 441.
1485. **Add. Annotation:—Refd. Ormond Investment Co. v. Betts**, [1928] A. C. 143.
1502. **Add. Annotation:—Mentd. Salvesen (or von Lorang) v. Austrian Property Administrator**, [1927] A. C. 641.
1508. **Add. Annotation:—Refd. A.-G. for Alberta v. Cook**, [1926] A. C. 444.
1509. **Add. Annotation:—Refd. A.-G. for Alberta v. Cook**, [1926] A. C. 444.
1510. **For "— Protection order under Summary Jurisdiction (Married Women) Act, 1895 (c. 39)—Whether citation of husband necessary"** read "— Separation order under Summary Jurisdiction (Married Women) Act, 1895 (c. 39)—Whether citation of husband necessary."
1566. **Add. Annotation:—Refd. A.-G. for Alberta v. Cook**, [1926] A. C. 444.
1653. **Add. Annotation:—As to (2) Consd. Re Mason** (1928), 97 L. J. Ch. 321.
1656. **Add. Annotation:—Refd. A.-G. for Ontario v. McLean Gold Mines**, [1927] A. C. 185.
- 1772a. **Remainderman—Settlement determined on death of life tenant.**]—Where a woman died intestate without known next of kin & was, at the time of her death, the life tenant of an estate previously settled upon her by will, the settlement was determined on her death, & the legal estate vested in the personal representative of the life tenant. The ct. made a general grant of administration to the remainderman under the settlement, following the non-appearance of persons interested in the life tenant's estate who had been cited.—*In the Estates of BORDASS* (1928), 45 T. L. R. 52; 72 Sol. Jo. 826.
1774. **Add. Annotation:—Refd. Re White**, [1928] P. 75.
1785. **Add. Annotation:—Refd. In the Estate of Potticary**, [1927] P. 202.
- 1883a. — **During minority.**]—Jud. (Consolidation Act, 1925 (c. 49), s. 160 (1), directs that either a trust corpn., with or without an individual, or not less than two individuals, shall take a grant of administration in the case of an interest in the estate during minority of the party interested; but this provision must be read subject to the modification of sect. 162 (1), namely, that the ct. in the case of insolvency is to have a discretion to grant administration to some person other than those interested in the residue. Under the latter sect. it is competent for the ct., even during a minority, to appoint a creditor to be a single administrator, as it could formerly have done under Ct. of Probate Act, 1857 (c. 77), s. 73.—*Re HERBERT*, [1926] P. 109; *sub nom. In the Goods of HERBERT*, 95 L. J. P. 53; 135 L. T. 123; 42 T. L. R. 469.
- Annotations:—Consd. Re White** (1927), 43 T. L. R. 720. **Dtd. Re White**, [1928] P. 75.
- 2056a. —.]—Testator made his will leaving all his money to A. There was no appointment of

PART II. SECT. 10, SUB-SECT. 4.—B.

1369 i. **Objectionable matter—Unconnected with testamentary dispositions—Scandalous or defamatory matter.**]—The Supreme Ct. has jurisdiction, to be exercised with great care, to order that words in a will, which are scandalous or defamatory & in no way germane to the dispositions of the will, be omitted from the probate.

Testator stated: "I make no provision for my wife on account of her intemperate habits & other misconduct." The ct. refused to order those words be omitted from the probate.—*Re O'REILLY'S WILL*, [1927]

V. L. R. 533; [1927] Argus L. R. 396 —AUS.

PART II. SECT. 11, SUB-SECT. 4.—B. sk. **To attorney of executors.**]—*Re BULLEN (DECEASED)* (1926), 37 B. C. R. 240.—CAN.

PART II. SECT. 11, SUB-SECT. 4.—C. 1447 ii. —.]—In the absence of special circumstances, a sole administrator should be appointed to the estate of deceased, rather than joint administrators, even when the claimants are equal in degree of kindred to deceased.—*STONE V. STONEY* (1923), 1 L. R. 2 Pat. 508.—IND.

PART II. SECT. 11, SUB-SECT. 4.—M. sm. **Ex-convict.**]—A person who has been convicted of felony, & has served his sentence, is in the same position as if pardoned, & can be appointed administrator.—*In the Goods of COLMAN*, [1926] I. R. 327.—IR.

PART II. SECT. 11, SUB-SECT. 5.—D. (c).

1834 i. **Conviction for killing intestator.**]—A husband, who has been convicted of killing his wife, who died intestate, has no claim to her estate, & neither he nor his attorney is entitled to administer it.—*Re NOBLE*, (Sask.), [1927] 1 W. W. R. 938.—CAN.



an exor. A. moved for administration with the will annexed. The parties interested in intestacy resisted the application:—*Held*: in the circumstances the application failed, the persons entitled in intestacy taking the grant in priority to a legatee or devisee under Non-contentious Rules, r. 119, operating since Jan. 1, 1926, in the case of an estate not wholly disposed of.—*In the Goods of GATES*, [1928] P. 128; 97 L. J. P. 76; 138 L. T. 714; 44 T. L. R. 353; 72 Sol. Jo. 172; *varied*, [1928] P. 178, C. A.

2436. *Add. Annotation*:—*Reid. Re Achilopoulos, Johnson v. Mavromichali*, [1928] Ch. 433.

2440. *Add. Annotation*:—*Reid. Re Achilopoulos, Johnson v. Mavromichali*, [1928] Ch. 433.

2441a. —.]—Where administration is taken out in this country by the attorney of a foreign principal in respect of English assets belonging to a foreign testator, & the foreign principal is not by the law of the domicile an exor., but by virtue of his interest under the foreign will is charged by the law of the domicile with the duties which under English law are imposed on an exor., the ct. will authorise such administrator, after satisfying all English liabilities & all foreign liabilities of which he has notice, to hand over the surplus in his hands to the foreign principal, whose receipt will be a good & sufficient discharge. In such a case the administrator need not issue any foreign advertisements or take any active steps abroad to ascertain the position with regard to debts, as the foreign principal, who by the law of the domicile is in the position of an exor., is in such a case directly responsible for the payment of foreign debts.—*Re ACHILLOPOULOS, JOHNSON v. MAVROMICHALI*, [1928] Ch. 433; 97 L. J. Ch. 246; 139 L. T. 62.

2585a. Trust estate vested in tenant for life—Settled Land Act, 1925 (c. 18).]—Where testator, dying in 1897, appointed his wife A. sole extrix. & devised to her for life all his real estate with remainder to B. in fee simple absolutely, & A. died in Feb. 1926, intestate & a widow, leaving no statutory next of kin & no trustees for the purposes of the above Act were ever appointed:—*Held*: B. was entitled under Jud. (Consolidation) Act,

1925 (c. 49), s. 155 (1), to a grant of limited administration in respect of such real estate.—*Re DALLEY* (1926), 136 L. T. 223; 70 Sol. Jo. 839.

2585b. Property subject to life tenancy—Settled Land Act, 1925 (c. 18), s. 20 (1)—Law of Property Act, 1925 (c. 20), Sched. I., Part II., para. 6 (c).]—*In the Estate of JAMES* (1926), 162 L. T. Jo. 498.

2585c. Settled land.]—Grants of probate to special exors. are not to be confined to those persons whose qualifications fall within Settled Land Act, 1925 (c. 18), s. 30 (1), & the effect of that Act is not to limit the operation of Administration of Estates Act, 1925 (c. 23), ss. 1, 13 & 22.—*In the Estate of GIBBINGS*, [1928] P. 28; 97 L. J. P. 4; 138 L. T. 272; 44 T. L. R. 230; 71 Sol. Jo. 911.

2744a. Threatened breach—S. v. rety entitled to apply to court—For relief by way of indemnity against liability under bond.]—*Re ANDERSON-BERRY, HARRIS v. GRIFFITH*, [1928] Ch. 290; 97 L. J. Ch. 111; 138 L. T. 354, C. A.

2838. *Add. Annotation*:—*Mentd. In the Goods of Gates*, [1928] P. 128.

2877. *Add. Annotations*:—*Reid. Ormond Investment Co. v. Betts*, [1927] 2 K. B. 326. *Mentd. Ormond Investment Co. v. Betts*, [1928] A. C. 143.

2911. *Add. Annotation*:—*Reid. Hoystead v. Taxation Comr.*, [1926] A. C. 155.

2979a. —. Twenty years after death of testator.]—Administration revoked.—*In the Estate of MUSGROVE, DAVIS v. MAYHEW*, [1927] P. 264; 96 L. J. P. 140; 137 L. T. 612; 43 T. L. R. 648; 71 Sol. Jo. 542, C. A.

3074. *Add. Annotation*:—*Reid. Akt. Ocean v. Harding*, [1928] 2 K. B. 371.

3111. *Add. Annotation*:—*Appld. Re Howden & Hyslop's Contract*, [1928] Ch. 479.

3111a. —. —. Sale of English real estate.]—Scottish exors. with a confirmation resealed under Jud. (Consolidation) Act, 1925 (c. 49), s. 168, can make a good title to English real estate without the necessity of any separate grant in respect thereof.—*Re HOWDEN & HYSLOP'S CONTRACT*, [1928] Ch. 479; 97 L. J. Ch. 313; 139 L. T. 309; 72 Sol. Jo. 400.

PART II. SECT. 12, SUB-SECT. 1.—B. (h).

2155 i. Where estate insolvent—Assets assigned before death to executrix—*Executrix neither proving nor renouncing*.]—*Held*: letters of administration with a copy of the will annexed should be granted to a duly appointed syndic of the creditor, who might be one of its officers.—*Re RANDALL*, [1927] V. L. R. 535; 49 A. L. T. 89; [1927] Argus L. R. 395.—AUS.

PART II. SECT. 15, SUB-SECT. 2.—B. (c).

n i. —.]—Probate is conclusive proof of the due execution of the will by testator.—*CHANDRESHWAR PRASAD NARAIN SINGH v. BISHESHWAR PRATAP NARAIN SINGH* (1926), I. L. R. 5 Pat. 777.—IND.

PART II. SECT. 15, SUB-SECT. 2.—B. (c).

p. *Revsd.* on other grounds, 37 O. L. R. 498.

PART II. SECT. 15, SUB-SECT. 4.—C.

st. *As to title to land*.]—*Held*: probate was not sufficient.—*SUTHERLAND v. YOUNG* (1884), 1 Man. L. R. 38.—CAN.

J.S.

PART II. SECT. 16, SUB-SECT. 2.—C.

sb. *As to person entitled—Advocate consenting without instructions*.]—Where an advocate for one of the parties under a misapprehension consented to the other party being granted the letters:—*Held*: if such consent was given by the advocate without instructions, the client might withdraw the consent at any time prior to the actual issue of letters.—*KYONE HOE TSEE v. KYON SOON SUN* (1925), I. L. R. 3 Ran. 261.—IND.

PART II. SECT. 16, SUB-SECT. 2.—J.

sd. *Validity of will not proved*.]—*ODYNAK v. FESCHUK* (Alta.), [1927] 3 D. L. R. 842; [1927] 3 W. W. R. 64.—CAN.

PART II. SECT. 16, SUB-SECT. 3.—H.

3055 iii. —. —.]—On an application to revoke a grant of probate on the grounds that persons who ought to have been cited were not cited, & that the will was a forgery, if the first ground is established the *onus* is upon the opposite party to prove that the will is genuine.—*RAMAUNDI KUER v. KALAWATI KUER* (1927), 55 L. R. Ind. App. 18.—IND.

PART II. SECT. 18, SUB-SECT. 3.

sf. *Grounds for granting or refusing application for resealing*.]—The ct. has the right, on an application under Alberta Rules, r. 945 (24), for resealing, to inquire as to the original appointment of the administrator, & should refuse the application, where the exors. have the right & duty to apply in Alberta for probate.—*Re BLAGBURN ESTATE*, [1927] 1 W. W. R. 716; *affd.*, [1927] 2 W. W. R. 206.—CAN.

PART II. SECT.

c i. —.]—An extrix., to whom probate of a will had been granted in England, appointed appct. as attorney under power in Victoria to procure the resealing of the probate in Victoria:—*Held*: appct. was authorised to produce the probate & obtain the sealing thereof under Administration & Probate Act, 1915, s. 51, that being the proper procedure for him to adopt in order to procure himself to be constituted the legal representative of testator in Victoria.—*Re FARRER'S WILL*, [1927] V. L. R. 580 [1927] Argus L. R. 462.—AUS.

*Duty of registrar—Supreme Court*

39

3125. *Add. Annotation*:—*Consd. In the Estate of Plant, Wild v. Plant*, [1926] P. 139.
3126. *Add. Annotation*:—*Appl. In the Estate of Plant, Wild v. Plant*, [1926] P. 139.
3127. *Add. Annotations*:—*Consd. In the Estate of Plant, Wild v. Plant*, [1926] P. 139. *Reid. Thomas v. Jones*, [1928] P. 162.
- 3127a. —.]—The proviso to R. S. C., Ord. 65, r. 1, that nothing in that rule contained shall deprive an exor. who has not unreasonably instituted or carried on or resisted any proceedings, of any right to costs out of a particular estate or fund to which he would be entitled according to the rules theretofore acted upon in the Chancery Div., governs the case of bare exors. who reasonably propound a will & codicil, even if, though the will is pronounced for, the codicil is pronounced against. The position of such exors. differs from that of persons named as exors. in a testamentary paper which they unsuccessfully propound. Having established the validity of the will, & made good their position as testator's exors., they are entitled to their costs of the litigation out of the estate as between solr. & client, & can be deprived of that right, which rests substantially upon contract, only if they have acted culpably or unreasonably. Until that has been established, their costs are not in the discretion of the ct., & notwithstanding Jud. Act, 1873 (c. 66), s. 49, repealed & re-enacted by Jud. (Consolidation) Act, 1925 (c. 49), s. 31 (1) (h), an appeal lies without leave from an order condemning them in costs or depriving them of costs out of the estate.—*In the Estate of PLANT, WILD v. PLANT*, [1926] P. 139; *sub nom. Re PLANT, WILD v. PLANT*, 95 L. J. P. 87; 135 L. T. 238; 42 T. L. R. 443; 70 Sol. Jo. 605, C. A. *Annotation*:—*Reid. Thomas v. Jones*, [1928] P. 162.
- 3127b. —.]—The principle of the decision in *In the Estate of Plant, Wild v. Plant*, No. 3127a, *ante*, that exors. who have established the validity of their will are entitled to their whole costs of the litigation, although they fail in establishing a codicil, does not extend in all cases to costs incurred by them by

reason of their insisting upon probate not only of clauses in a will expressing the testamentary mind of their testator, but also of a clause which is found not to be his testamentary act. If a residuary gift is excluded from probate on the ground of want of capacity the question still arises whether the costs so incurred by the exors. are due to their "violation or culpable neglect of duty." If the ct. finds on this issue that an exor. is a wrongdoer, his *prima facie* right to receive out of the estate costs not otherwise provided for is displaced.—*THOMAS v. JONES*, [1928] P. 162; 139 L. T. 214; 44 T. L. R. 467; 72 Sol. Jo. 255; *sub nom. In the Estate of JONES, THOMAS v. JONES*, 97 L. J. P. 81.

3163. *Add. Annotation*:—*Appl. In the Estate of Plant, Wild v. Plant*, [1926] P. 139.
3164. *Add. Annotation*:—*Appl. In the Estate of Plant, Wild v. Plant*, [1926] P. 139.
- 3171a. —.]—There is no authority for allowing costs out of the estate in a probate action to an unsuccessful party who merely seeks to prove, in the case of a will executed by testator of sound disposing mind, that testator had a domicile under the law of which that party would take a large part of testator's estate in opposition to his wishes. The costs should follow the event in such a case.—*FLEMING v. HORNIMAN* (1928), 138 L. T. 669; 44 T. L. R. 315.
3175. *Add. Annotation*:—*Appl. In the Estate of Plant, Wild v. Plant*, [1926] P. 139.
3181. *Add. Annotation*:—*Reid. In the Estate of Southerden, Adams v. Southerden*, [1925] P. 177.
3303. *Add. Annotation*:—*Reid. In the Estate of Plant, Wild v. Plant*, [1926] P. 139.
3312. *Add. Annotation*:—*Consd. In the Estate of Plant, Wild v. Plant*, [1926] P. 139.
3315. *Add. Annotation*:—*Distd. In the Estate of Plant, Wild v. Plant*, [1926] P. 139.
3384. *Add. Annotation*:—*Mentd. Mansfield v. Robinson*, [1928] 2 K. B. 353.
3487. *Add. Annotation*:—*Reid. Capron v. Capron*, [1927] P. 243.

## Part III.—Interest of Representative in Deceased's Property.

3509. *Add. Annotation*:—*Reid. Toates v. Toates*, [1926] 2 K. B. 30.
- 3517a. *Right of selection under will*.]—Testator bequeathed to his wife such articles as she should within two months select from the articles in certain rooms in a house. Five

days after his death his wife died without having made any selection:—*Held*: the right of selection did not pass to the wife's exors.—*Re MADGE, PRIDIE v. BELLAMY* (1928), 44 T. L. R. 372; *sub nom. Re MADGE, PUDEE v. BELLAMY*, 72 Sol. Jo. 284.

*of New Zealand*.]—Where letters of administration have been duly granted in England & are produced to the registrar of the Supreme Ct. of New Zealand, & a copy thereof left with him, the registrar is bound under Administration Act, 1908, s. 43, to reseal letters of administration, & there is no need of an application to the ct., for the ct. has no discretion in the matter. In the absence of fraud in the will or by the administrator the ct. has no power to set aside such resealing.—*Re WILCOX*, [1925] N. Z. L. R. 525.—N.Z.

old, executed a will, & probate was opposed on the grounds of want of testamentary capacity & undue influence. The ct. pronounced in favour of the will, but only after much consideration. Much of the evidence was not available to the caveators, & the ct. considered they were amply justified in opposing the will:—*Held*: the caveators should be relieved of the Public Trustee's costs, but should not be granted costs out of the estate.—*Re PATERSON (DECEASED)*, [1924] N. Z. L. R. 441.—N.Z.

D. L. R. 648; 59 N. S. R. 58.—CAN.

PART II. SECT. 21, SUB-SECT. 10. *sk. Jurisdiction of court*.—To alter previous order.]—In addition to its powers under Succession Act, s. 234, & Probate & Administration Act, s. 50, the ct. has power in review to alter its previous order in contested proceedings for the grant of probate or letters of administration.—*KYONG HOE TSEE v. KYON SOON SUN* (1925), 1 L. R. 3 Ran. 261.—I

*sl. Duty to sell—& pay share of proceeds*.]—*Re MO LUMBERS v. MONTGOMERY* (1912), 22 W. L. R. 634; 22 Man. L. R. 736. CAN.

PART II. SECT. 20, SUB-SECT. 3.—A. (b). 3187 iv. —.]—Testator, 87 years

PART II. SECT. 20, SUB-SECT. 4.—B. *sl. Taxation*.]—*Re MOREN*, [1927] 1

**3518a. Loan posted to but not received by deceased.]**  
—On the receipt of a signed promissory note a money-lender forwarded an agreed sum to the borrower through the post. The borrower, the secretary to a co., died between the times of the posting & delivery of the letter. The joint acting secretary of the co. having notice of the secretary's death, opened the money-lender's letter & retained possession of the enclosed money until such time as he could hand it over to the personal representatives of the borrower. In an action by the money-lender to recover the sum lent from the joint acting secretary:—*Held*: debt. received the money on behalf of deceased's estate, & the proper course for the money-lender was to litigate with the borrower's representatives.—**MICHAELSON v. CRISP** (1927), 71 Sol. Jo. 982.

**3543. Add. Annotation:—As to (2) Refd. Re Mathieson, [1927] 1 Ch. 283.**

**3572a. ———.]—NOBLE v. CASS** (1828), 2 Sim. 343; 57 E. R. 817.

*Annotations:—Refd. Richards v. A.-G. of Jamaica* (1848), 6 Moo. P. C. C. 381; *Re Francis, Barrett v. Fisher* (1905), 74 L. J. Ch. 198; *Re Lacon's Settlement, Lacon v. Lacon*, [1911] 2 Ch. 17.

**3575. Add. Annotation:—Mentd. Torbay Hotel v. Jenkins, [1927] 2 Ch. 225.**

**3611. Add. Annotation:—Mentd. Savil v. Roberts** (1698), 1 Salk. 13.

**3636. Add. Annotation:—Mentd. Clarke v. Epsom R. D. C.** (1928), 45 T. L. R. 106.

**3655. Add. Annotation:—Refd. Re Portman** (No. 2), [1925] Ch. 294.

**3658. Add. Annotations:—Refd. Price v. Corpn. d'Energie de Montmagny, [1927] A. C. 363. Mentd. Lord Strathcona S.S. Co. v. Dominion Coal Co.** (1925), 42 T. L. R. 86.

**3687a. ———.]—APPLETON v. DOILY** (1609), Yelv. 135; 80 E. R. 91.

*Annotations:—Refd. Shuttleworth v. Garnett* (1688), Carth. 90; *Hudson v. Jones* (1706), 1 Salk. 90.

**3691. Add. Annotation:—Refd. Roe v. Russell, [1928] 2 K. B. 117.**

**3692. Add. Annotation:—As to (1) Refd. Roe v. Russell, [1928] 2 K. B. 117.**

**3699. Add. Annotation:—Refd. Re Bower Williams, Ex p. Trustee, [1927] 1 Ch. 441.**

**3702. Add. Annotation:—Folld. Re Bower Williams, Ex p. Trustee, [1927] 1 Ch. 441.**

**3732a. ———.]—BATHO v. FULTON** (1824), 2 L. J. O. S. Ch. 196.

**3766a. ———.]—CURLING v. AUSTIN** (1862), 2 Drew. & Sm. 129; 10 W. R. 682; 62 E. R. 570.

*Annotations:—Refd. Lawrie v. Lees* (1881), 7 App. Cas. 19. *Mentd. Upperton v. Nickolson* (1871), 6 Ch. App. 436; *McGrory v. Alderdale Estate Co.*, [1918] A. C. 503.

**3818a. ———.]—The effect of "and Transfer Act, 1897 (c. 65), ss. 1 & 2, is to impose an "express trust" within Jud. Act, 1873 (c. 66), s. 25 (2), on the personal representatives of deceased in respect of real estate, & so to prevent Real Property Limitation Act, 1874 (c. 57), from running in their favour.—TOATES v. TOATES, [1926] 2 K. B. 30; 95 L. J. K. B. 526; 135 L. T. 25; 90 J. P. 103, D. C.**

SUB-SECT. 4.—IN CASE OF PERSONS DYING  
SINCE 1925 (Vol. XXIII., p. 317).

Add the following case:—

**3819a. Settled land—Termination of settlement on death of tenant for life.]—Administration of Estates Act, 1925 (c. 23), s. 22 (1), does not apply where the settlement comes to an end on the death of the tenant for life, & his exor. when constituted can sell, & he is not deemed to have appointed the sole surviving trustee of the settlement as his special exor. pursuant to such sect.—Re BRIDGETT & HAYES' CONTRACT, [1928] Ch. 163; 97 L. J. Ch. 33; 138 L. T. 106; 44 T. L. R. 222; 71 Sol. Jo. 910.**

## Part IV.—Duties of Representative.

**3899. Add. Annotation:—As to (2) Consd. Re City Equitable Fire Insee., [1925] Ch. 407.**

**3999a. ———.]—HUDSON v. MARTIN** (1726), 2 Eq. Cas. Abr. 461; 22 E. R. 393.

**4021. Add. Annotation:—As to (2) Refd. Re Mathieson, [1927] 1 Ch. 283.**

**4154a. Solicitor entitled to payment of testamentary charges not paid by deceased**

### IV. SECT. 1, SUB-SECT. 3.—A.

**3891 i. Duty to get in debts—Liability for neglect.]—Re JOHNSTON, JOHNSTON v. HOGG** (1877), 25 Gr. 261.—CAN.

### PART IV. SECT. 1, SUB-SECT. 3.—B. (e).

**n i. ———.]—Where a will directs that the proceeds of sales of property of the estate shall be deposited in a chartered bank, such proceeds cannot be otherwise invested except by consent of all persons interested.—Re WALTERS, [1925] 2 W. W. R. 557.—CAN.**

### PART IV. SECT. 2, SUB-SECT. 2.—C. (b)

**Under 5 Geo. 2, c. 1.]—New: land was assets in the hands of exors. for the payment of**

damages in an action of covenant.—**SICKLES v. ASSELSTINE** (1853), 10 U. C. R. 203.—CAN.

### PART IV. SECT. 2, SUB-SECT. 3.—A.

**p i. ——— Preferred to mortgagee of property devised beneficially to executor.]—Re SCULTHORPE** (Ont.), [1926] 2 D. L. R. 739; 7 C. B. R. 505.—CAN.

### PART IV. SECT. 2, SUB-SECT. 3.—B.

**4162 i. Simple contract debt due to the Crown—Priority over specialty & simple contract debts due to subject.]—A debt incurred by the purchase of wheat from the Minister of Agriculture, under Wheat Marketing Acts, is a Crown debt, & should be paid in priority to all other debts of intestate.—Re McMAHON, LAWSON v. INTESTATE**

**executor.]—TANNER v. CARTER** (1856), 25 L. J. Ch. 664; 27 L. T. O. S. 195; 2 Jur. N. S. 413; 4 W. R. 533.

**4210a. ———.]—A judgment was signed in 1854, but was not registered till after the death of the judgment debtor in 1862:—Held: the judgment had no preference over simple contract debts against the estate of the judgment debtor.—KEMP v. WADDING-**

**ESTATES CURATOR, [1921] V. L. R. 549.—AUS.**

### PART IV. SECT. 2, SUB-SECT. 3.—C. (a).

**i. Priority over specialty & simple contract debts.]—In the administration of assets, a judgment obtained against deceased is entitled to priority over simple contract & specialty creditors, but it is essential to the judgment that it should have been docketed.—FRONTENAC LOAN Co. v. MORICE** (1886), 3 Man. L. R. 462.—CAN.

### PART IV. SECT. 2, SUB-SECT. 3.—C. (c).

**4206 i. Against deceased.]—FRONTENAC LOAN Co. v. MORICE, No. 4167 i., ante.—CAN.**



HAM (1866), L. R. 1 Q. B. 355; 7 B. & S. 301; 35 L. J. Q. B. 114; 13 L. T. 709; 14 W. R. 390.

4225. Delete the cross-reference immediately preceding this case.

4546. *Add. Annotation:—Generally, Mentd. Re Wait*, [1927] 1 Ch. 606.

4591. *Add. Annotation:—Consd. Re Quintin Dick, Cloncurry v. Fenton*, [1926] Ch. 992.

4630. *Add. Annotation:—Consd. Re City Equitable Fire Insee.*, [1925] Ch. 407.

4658. *Add. Annotations:—Refd. Herbert v. I. R. Comrs., I. R. Comrs. v. Herbert* (1925), 9 Tax Cas. 593. *Mentd. I. R. Comrs. v. Hawley*, [1928] 1 K. B. 578.

4687a. — *Advances by co-legatees barred by Statute of Limitations—Not interest on such advances.*—*POOLE v. POOLE* (1871), 7 Ch. App. 17; 25 L. T. 771; 20 W. R. 133, L. JJ.

*Annotations:—Consd. Re Rees, Rees v. George* (1881), 17 Ch. D. 701. *Refd. Re Milnes, Milnes v. Sherwin* (1885), 53 L. T. 534.

4712a. — *—*—*FRYER v. BUTTAR* (1837), 8 Sim. 442; 59 E. R. 175.

*Annotations:—Consd. Re Parry, Scott. v. Leak* (1889), 42 Ch. D. 570. *Refd. Harbin v. Masterman* [1896] 1 Ch. 351.

PART IV. SECT. 2, SUB-SECT. 4.—  
A. (c) i.

d i. *S. P. WATKINS v. WASHBURN* (1846), 2 U. C. R. 291.—CAN.

sp. *By executor de son tort.*—An exor. *de son tort* cannot give a new starting point to Stat. Limitations as against the rightful administrator, or the parties beneficially interested in the estate.—*GRANT v. McDONALD* (1860), 8 Gr. 468.—CAN.

PART IV. SECT. 3, SUB-SECT. 1.

sr. *Future liability contingent—Rights of executor to distribute residue.*—The father of a pauper lunatic daughter, who had become chargeable to the parish council, admitted his liability to aliment her, & died intestate. The son, as exor., divided the estate, which was movable, equally between himself & his sister. At the date of division the daughter's share had not been exhausted by the cost of her maintenance since his death:—*Held*: as any claim there might be against the rest of the estate for aliment was merely contingent, the exor. was not bound to retain the remaining share of the estate to meet that claim.—*EDINBURGH PARISH COUNCIL v. COUPER*, [1924] S. C. 139.—SCOT.

PART IV. SECT. 5, SUB-SECT. 1.—B.

4548 i. *What are—Bequest of stock—Testator possessing no such stock at death.*—*Re MILLAR*, [1927] 3 D. L. R. 270; 60 O. L. R. 434.—CAN.

PART IV. SECT. 5, SUB-SECT. 4.—C.

n i. — *No power to impose terms as condition precedent to immediate payment.*—*BEDDY v. SMITH* (1845), 1 L. T. O. S. 390.—IR.

st. *Discretion given by will.*—A will contained a bequest (para. 5) to pltf. of \$300 per annum during his life-time, "to be paid as soon as the finances of my estate will permit my exors. to do so." By para. 7 testatrix directed that "it shall not be incumbent to pay any bequest until three years after my decease, & my husband, & any other exors. after his death, shall decide when the amounts shall be paid & in what amounts from time to time." By para. 12 testatrix authorised her exors. "at any time to withhold any payment of legacy or bequest until such time as they may consider

it advisable to make same":—*Held*: nothing in paras. 5 & 7 authorised deft. to withhold payment of pltf.'s legacy; & the discretion given by para. 12 did not put deft. in a position to violate deliberately the terms of the will. The discretion was one to be reasonably exercised.—*SEYMOUR v. PRATT* (1925), 57 O. L. R. 278.—CAN.

sv. *Before letters of administration—Legacy very small.*—*ROSS v. ROSS* (1872), 4 Ch. Ch. 27.—CAN.

PART IV. SECT. 5, SUB-SECT. 4.—D.

4683 i. *Out of what funds payable.*—Testator by his will directed his exors. "to pay to the legatees mentioned in the will of my late wife amounting in all to \$20,000, which sum is represented by bonds in a 'certain bank' in a parcel separate from my own securities":—*Held*: the legacies were to be treated as legacies from testator, payable out of that portion of his estate earmarked in the way indicated.—*Re LASHAM* (1924), 56 O. L. R. 137.—CAN.

PART IV. SECT. 5, SUB-SECT. 4.—  
E. (b).

sw. *Annuity charged on land—Duty of representative on transferring land to devisees—Land Titles Act.*—*Re CREST ESTATE* (1914), 7 W. W. R. 614; 19 D. L. R. 190.—CAN.

PART IV. SECT. 5, SUB-SECT. 5.—  
B. (a).

4765 vii. — *—*—*Re DALY*, [1926] 1 D. L. R. 822; 58 O. L. R. 301.—CAN.

4765 viii. — *—*—*Testator died in 1888, & legacies became payable in 1890. His estate was heavily insolvent, & the last of the debts was not finally discharged until 1919. From that date the trustees accumulated funds until 1924, when they brought an action of multiplepounding & exoneration for distribution of the estate:—Held*: (1) while as a general rule interest was allowed upon legacies from the death of testator or from the prescribed date of payment, there was no absolute rule compelling the ct. in all cases to allow such interest, the general rule being displaced if circumstances showed it to be inapplicable; (2) the general legatees were not entitled to interest on their legacies from 1890 to 1919, in respect that, owing to the insolvency

of the estate during that period, there was no asset realisable to meet the legacies nor any interest-bearing subject; (3) there was no absolute rule to the effect that the rate of legal interest should be 5 per cent., the rate of interest being in every case for the discretion of the ct. in the particular circumstances.—*WADDELL'S TRUSTEES v. CRAWFORD*, [1926] S. C. 654.—SCOT.

4763a. — *—*—*Re LYMAN'S TRUST & TRUSTEE RELIEF AMENDMENT ACT, 1860* (1860), 2 L. T. 662.

4869a. — *—*—*The ct. has power where realisation has been postponed for the benefit of the residuary legatees to direct that a legatee should be paid, not £4 per cent. under R. S. C., Ord. 65, r. 64, but £5 per cent. as from one year from the death of testator upon the legacy moneys.—Re BRINTON, BRINTON v. PREEN* (1923), 67 Sol. Jo. 704.

4910. *Add. Annotation:—Refd. Jones v. Wright* (1927), 139 L. T. 43.

4953. *Add. Annotation:—Refd. Re Whitrod, Burrows v. Base*, [1926] Ch. 118.

5065. *Add. Annotation:—Refd. Jenkins v. Jenkins*, [1928] 2 K. B. 501.

5072. *Add. Annotation:—As to (1) Refd. Re Pennington & Owen*, [1925] Ch. 825.

5079. *Add. Annotation:—Distd. Re Pennington & Owen*, [1925] Ch. 825.

PART IV. SECT. 5, SUB-SECT. 5.—  
B. (d).

4827 iii. — *—*—*In determining the right of legatees to interest upon legacies the payment of which is postponed for a definite period by the will, the mere direction of such postponement will not of itself alter the date from which interest is to run, & testator's reasons for such postponement may be taken into consideration. If payment was delayed in order thereby to benefit a residuary legatee, then, in the absence of a direction to the contrary, no interest upon such postponed legacies would be payable before the expiration of the prescribed period. But where the postponement was intended primarily to enable the exors. to collect & realise the assets, the postponed legacies would carry interest from such a time after the end of the "exors." year as the exors. had in hand realised assets which could rightfully be applied to the payment of such legacies.—MORPETH v. WILLIAMSON*, [1926] N. Z. L. R. 39.—

PART IV. SECT. 5, SUB-SECT. 5.—

4868 i. *When more than 4 per cent. allowed—Special circumstances.*—*WADDELL'S TRUSTEES v. CRAWFORD*, No. 4765 viii, ante.—SCOT.

PART IV. SECT. 5, SUB-SECT. 6.—D.

4961 ii. — *—*—*BOYD v. BOYD*, [1928] N. I. 14.—IR.

PART IV. SECT. 5, SUB-SECT. 8.

sa *Judgment for balance of legacy—Priority over creditors.*—*HARPER v. HARPER* (1890), 2 B. C. R. 15.—CAN.

PART IV. SECT. 5, SUB-SECT. 13.—  
A. (a).

5111 v. — *Appointment by codicil of new executors—Provision in codicil for remuneration of executors.*—*Held*: the exors. were entitled only to the

5139. *Add. Annotation*:—**Mentd.** *Re Villar*, Public Trustee v. Villar, [1928] Ch. 471.
5202. *Add. Annotation*:—**Refd.** *Re Griffiths*, Jones v. Jenkins, [1926] Ch. 1007.
5206. After this case add "See, also, CONFLICT OF LAWS, No. 548a, ante."
- 5240a. ———.]—Testator bequeathed sums of stock to his grandchildren, to be paid to them on attaining twenty-one, with benefit of survivorship to those attaining that age, but in case they should all die under twenty-one, then he willed the interest arising from such sums to their father for life, with remainder over:—**Held**: the grandchildren were entitled during their minority to have the interest arising from their legacies applied towards their maintenance.—**BODDY v. DAWES** (1836), 1 Keen, 362; 6 L. J. Ch. 145; 48 E. R. 346.
- Annotations*:—**Refd.** *Festing v. Allen* (1844), 5 Hare, 573; *Dundas v. Wolfe Murray* (1863), 1 Hem. & M. 425; *Re Judkin's Trusts* (1884), 50 L. T. 200.
5273. *Add. Annotation*:—**Folld.** *Re Stokes*, Bowen v. Davidson, [1928] Ch. 716.
- 5273a. ———.]—Where a legacy given to an infant is clearly indicated by the will to be intended for the support of the infant, interest on such legacy will run from the death of testator, as the support of the infant must begin immediately upon such death; & where such legacy is one of two or more legacies all in the same category & all given in the same group to the trustees of the will, no distinction being made between any of the legacies, the other legacy or legacies will likewise carry interest from the date of testator's death.—**Re STOKES, BOWEN v. DAVIDSON**, [1928] Ch. 716; 97 L. J. Ch. 273; 139 L. T. 331; 72 Sol. Jo. 384.
- 5273b. **Whether infant entitled to whole of income.**]—Testator, standing in loco parentis, gave to trustees a legacy of £4,000, on trust to pay it to A., on his attaining twenty-one. He authorised them to raise it by mige. of his real estates, & out of the money thereby bequeathed, to raise such sum, not exceeding the interest at 4 per cent. of the expectant portion, as to them should seem sufficient for maintenance:—**Held**: the legatee, during minority, was entitled to maintenance only, & not to the whole amount of interest on the legacy.—**RUDGE v. WINNALL** (1849), 12 Beav. 357; 18 L. J. Ch. 469; 14 L. T. O. S. 325; 13 Jur. 737; 50 E. R. 1098.
- Annotations*:—**Refd.** *Re Rouse's Estate* (1852), 9 Hare, 649 **Mentd.** *Re Roose*, Evans v. Williamson (1880), 17 Ch. D. 696.
5320. *Add. Annotation*:—**Refd.** *Re King*, Public Trustee v. Aldridge, [1928] Ch. 330.
5322. *Add. Annotation*:—**Apld.** *Re Maber*, Ward v. Maber, [1928] Ch. 88.
5331. *Add. Annotation*:—**Refd.** *Re Whitrod*, Burrows v. Base, [1926] Ch. 118.
5334. *Add. Annotation*:—**Refd.** *Re Whitrod*, Burrows v. Base, [1926] Ch. 118.
5335. *Add. Annotation*:—**Apld.** *Re Whitrod*, Burrows v. Bax (1925), 70 Sol. Jo. 209.
5337. *Add. Annotation*:—**Refd.** *Re Whitrod*, Burrows v. Base, [1926] Ch. 118.
- 5340a. ———.]—Testator left his property on trust for sale & realisation, & thereafter gave & bequeathed one-tenth part to A., two-tenth parts to C.'s children, & the rest in tenth & twentieth parts to specific objects in a similar manner, & "to K. £30, to L. £40, to Nonconformist Ministers of D. the residue in equal shares":—**Held**: the will must be read as though after disposing of nine-tenths of his residuary estate he directed the remaining tenth, charged with the two sums as therein provided, to be divided among the ministers, & there was a intestacy as to the undivided aliquot shares of persons who predeceased testator.—**Re WHITROD, BURROWS v. BASE**, [1926] Ch. 118; 95 L. J. Ch. 205; 134 L. T. 627; 70 Sol. Jo. 209.
5341. *Add. Annotation*:—**Refd.** *Re Whitrod*, Burrows v. Base, [1926] Ch. 118.
5354. *Add. Annotations*:—**Consd.** *Baker v. Archer-Shee*, [1927] A. C. 844. **Refd.** *Herbert v. I. R. Comrs.*, I. R. Comrs. v. Herbert (1925), 9 Tax Cas. 593; A.-G. v. Belilios, [1928] 1 K. B. 798.
5358. *Add. Annotation*:—**Refd.** *Re Oldham*, Oldham v. Myles (1927), 71 Sol. Jo. 491.
- 5363a. ——— **Gross or net amount.**]—In applying the rule in *Allhusen v. Whittell*, No. 5358, ante, the income of the estate should be calculated, not on the basis of the gross amount received, but at the net amount after deduction of tax.—**Re OLDHAM, OLDHAM v. MYLES** (1927), 71 Sol. Jo. 491.
5373. *Add. Annotations*:—**Consd.** *Re Barratt* National Provincial Bank v. Barratt, [1925] Ch. 550; *Re Corelli* (1925), 69 Sol. Jo. 525. **Apld.** *Re Trollope's Will Trusts*, Public Trustee v. Trollope, [1927] 1 Ch. 596. **N.F.** *Re Brooker*, Brooker v. Brooker (1926), 70 Sol. Jo. 526.
- For the cross-reference following this case substitute "———."]—*See, further*, SETTLEMENTS, Vol. XL., pp. 672-674; WILLS."
5407. *Add. Annotation*:—**Apld.** I. R. Comrs. v. Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. v. Medical Charitable Soc. for West Riding of Yorkshire (1926), 136 L. T. 60.
5411. *Add. Annotation*:—**Refd.** *Re Jones*, Johnson v. A.-G. (1925), 133 L. T. 601.
- 5423a. ———.]—By his will dated Jan. 27, 1913, testator appointed his wife M. & pltf. J. to be his exors., & after directing them to pay his debts & funeral & testamentary expenses, bequeathed all his estate & effects, real & personal, which he might die possessed of, to

commission mentioned in the codicil, notwithstanding a provision in the codicil that the will should be construed as if the names of the exors. were inserted throughout in place of those of the original exors.—**Re BOSSI** (1897), 5 B. C. R. 446.—**CAN.**

**PART IV. SECT. 5, SUB-SECT. 14.—C.**

5189 i. ——— *Parent.*]—An exor. cannot discharge himself by paying a legacy given to an infant to the father, or mother, as guardian, unless the

ct. allows it in special circumstances.—**Re NAKAUCHI ESTATE**, [1927] 3 D. L. R. 1087; [1927] 2 W. W. R. 607; 21 Sask. L. R. 673.—**CAN.**

**PART IV. SECT. 6, SUB-SECT. 1.—A.**

**sk. Law-agent's business books.**]—A law-agent directed his exors. to convey the residue of his estate to a residuary legatee. The exors. conveyed the residue, with the exception of deceased's business books, which they retained on the ground that it

would be a breach of confidentiality towards deceased's clients if they were to hand them over. In an action by the residuary legatee for delivery of the books:—**Held**: pursuer was entitled to delivery.—**ROBERTSON v. ROBERTSON'S EXECUTORS**, [1925] S. C. 606.—**SCOT.**

**PART IV. SECT. 6, SUB-SECT. 1.—B.**

**sm. Mistake as to value of assets—New distribution ordered.**]—**CLARKE v.** (1865), 11 Gr. 527.—**CAN.**



his wife M. absolutely. M. predeceased testator & died on Aug. 14, 1919. Testator died on Dec. 30, 1920, leaving real & personal property, but no heir-at-law or next of kin:—*Held*: there was in the will an obvious indication of an intention by testator that the exor. was not to take beneficially. He was in the position of a trustee, & on failure of a *cestui que trust* the beneficial interest in the personal estate vested in the Crown as *bona vacantia*.—*Re JONES, JOHNSON v. A.-G.*, [1925] Ch. 340; 94 L. J. Ch. 341; 133 L. T. 601; 69 Sol. Jo. 460.

**5440. Add. Annotation :—***Mentd. Re Cassel, Public Trustee v. Mountbatten*, [1926] Ch. 358.

**5466. Add. Annotation:—***Consd. Re Forder, Forder v. Forder* (1927), 137 L. T. 538.

5540. Add MELLERSH v. BRIDGER, SMITH v.  
BRIDGER (1853), 17 Jur. 908.

**5556. Add. Annotations:—Appl. *Re* Reeves, Reeves v. Pawson, [1928] Ch. 351. Mentd. *Re* Hardyman, Teesdale v. McClintock, [1925] Ch. 287.**

**5594. Add. Annotation :—Apld. Re Fegan, Fegan v. Fegan, [1928] Ch. 45.**

5594a. Direction in will for payment of "money secured on mortgage" out of residue—Balance of unpaid purchase-money.]—Testator, who at the date of his will in 1912 was the owner of several freehold properties, one of which was subject to a mtge. & of leasehold & other personal estate, gave & bequeathed all the freehold & leasehold properties of which he might die possessed upon trusts in favour of certain of his grandchildren & great-grandchildren, & the residue of his estate upon trust for sale & conversion; he then directed that his trustees should out of the money thereby produced pay (*inter alia*) his debts & legacies, & should out of the residue of such money pay & discharge "any sum of money secured on mtge. of any of my freehold properties," & should stand possessed of the residue of such money in trust to divide same as therein mentioned. After the date of his will testator paid off the mtge. & took a reconveyance of the mortgaged property. Shortly before his death, in June & Oct. 1917, testator contracted to purchase certain freehold properties in respect of which he paid deposits, leaving balances of the purchase-money owing to the respective vendors. On Dec. 23, 1917, testator made a final codicil, by which, after revoking the

appointment of one of his exors. & bequeathing a legacy, he confirmed his will in all other respects. Testator died on Dec. 26, 1917, without having completed the purchases or paid the balances of the purchase-money, & shortly after his death his exors. completed the purchases & paid the balances of the purchase-money; whereupon the question arose whether, as between the persons claiming under testator's will, those balances ought to be borne by the freehold properties of testator in respect of which same were payable, or ought to be satisfied out of his residuary estate:—*Held*: (1) inasmuch as a vendor's lien for unpaid purchase-money differs essentially from a mtge., even in the modern & wider sense of that term, upon the true construction of the will in the absence of any context enlarging the meaning of the term "mtge.," the balances of the unpaid purchase-money owing at testator's death were not "sums of money secured on mtge.," & no contrary intention was signified by the direction in the will to pay & discharge such sums out of testator's residuary estate, so as to exclude the operation of 1854 Act, which by virtue of 1867 Act, s. 2, extends to a vendor's lien for unpaid purchase-money; with the result that the balances in question ought to be borne by & satisfied out of the freehold properties in respect of which same were payable, & the devisees thereof were not entitled to have those balances discharged out of testator's residuary estate; (2) the confirmation of the will by the last codicil thereto, although executed after the mtge. on testator's freehold property had been paid off & after the vendor's lien had arisen, had not the effect of extending the meaning of the words "any sums of money secured on mtge. of any of my freehold & leasehold properties," so as to include the balances of unpaid purchase-money in question.—*Re BEIRNSTEIN, BARNETT v. BEIRNSTEIN*, [1925] Ch. 12; 94 L. J. Ch. 62; 132 L. T. 251; *sub nom. Re BERNSTEIN, BARNETT v. BERNSTEIN*, 69 Sol. Jo. 88.

(c) *After 1925* (Vol. XXIII., p. 495).  
Add the following case :—

**5620a. Special fund for payment of debts—**  
**“ Contrary or other intention ”—Administration of Estates Act, 1925 (c. 23), s. 35.]—**The provision by testator in his will of a special fund, not being any of the funds mentioned in sect. 35 (2) of the above Act, for payment of his debts operates as the expression of a

**PART IV. SECT. 7, SUB-SECT. 1.—**  
**A. (a).**

5425 v. ———.]—P. by his will directed that his real property, not specifically devised, should be sold & all the remainder of his property realised. He also directed that his debts, funeral & testamentary expenses should be paid, an annuity provided for his sister, & that certain legacies, all charitable save one, should be paid:—*Held*: testator not having directed that the proceeds of sale of his realty & personalty should form a mixed fund, the primary fund out of which the debts, funeral & testamentary expenses, the annuity, & the legacies should be paid was the pure personalty, & the realty was only charged in aid of the pure personalty in so far as it proved insufficient for the payment of all charges, except the charitable legacies which lapsed as far as the pure personalty proved in-

sufficient. PATTON, CAUGHEY v.  
[1925] N. 206.—IR.

**PART IV. SECT. 7, SUB-SECT. 1.—**  
**A. (b).**

**5462 i. Specific legacy.**—Of incumbered chattel.]—As between a specific legatee of an incumbered chattel & other specific legatees & devisees, the former must bear the burden of the incumbrance, & a general direction that debts shall be paid will not alter this.—*Re SIMPSON*, [1927] 2 D. L. R. 1043; 60 O. L. R. 310.—CAN.

**PART IV. SECT. 7, SUB-SECT. 1.—**  
A (a) ii.

5511 i. *Whether mixed fund primarily*  
*role.*—Where testator has devised  
 his real & personal estates to his exors.,  
 to sell or convert same into money &  
 out of the proceeds to pay his debts &  
 legacies, he has created a mixed fund  
 for the purpose.—GRAYSON v.

[1926] 1 D. L. R. 206; [1926] 1  
W. W. R. 125; 20 Sask. L. R. 288.—  
CAN.

**PART IV. SECT. 7, SUB-SECT. 1.—**  
**C. (a).**

5540 vi. ———.]—RICKER v. RICKER  
(1868), 14 Gr. 264.—CAN.

5540 vii. —.—.]—SCOTT v. SUPPLE  
(1893), 23 O. R. 393.—CAN.

5548 1. *Personal estate in*  
LAPP v. LAPP (1869), 13 Gr.

**PART IV. SECT. 7, SUB-SECT.**

5581 ii. ———.)—Where land is devised which testator held as a purchaser subject to a vendor's lien, unless a contrary intention appears, it is primarily liable for the unpaid pur-

012: 21 Sask. L. R. 397.—CAN.



"contrary or other intention" within the sect., so as to exonerate, as between the different persons claiming through testator, a personalty fund which at testator's death was subject to a mtge. from the primary liability to discharge it; but the fund is only exonerated to the extent that the special fund is available for discharging the mtge. debt, & in so far as it is inadequate, the mortgaged property remains primarily liable.—*Re FEGAN, FEGAN v. FEGAN*, [1928] 1 Ch. 45; 97 L. J. Ch. 36; 138 L. T. 265; 71 Sol. Jo. 866.

5641a. ———.]—*MARCH (LADY) v. FOWKE* (1679), *Cas. temp. Finch*, 414; 23 E. R. 226, L. C.

5692. *Add. Annotation*:—*Mentd. Re Porter, Porter v. Porter*, [1925] Ch. 746.

5723a. ———.]—Testatrix, who had power, under her brother's will, to appoint real & personal estate, gave the real estate to trustees to raise £1,000, & pay the amount as legacies to various persons & subject thereto

for P. & his heirs. She then gave several legacies, payable out of her own personal estate, & other legacies payable out of an unappointed moiety of her brother's personal estate, after the decease of his widow, & she directed the duty on all the foregoing legacies to be paid out of her personal estate, & if deficient for full payment either of duty or legacies, such deficiency was to be made good out of the real estate, on which she charged same. By two codicils, testatrix left other legacies, & directed that the sums bequeathed out of her brother's estate should be paid, with the other legacies, immediately after her decease:—*Held*: the legacies given by the codicils were charged on the real estate.—*WILLIAMS v. HUGHES* (1857), 24 Beav. 474; 27 L. J. Ch. 218; 30 L. T. O. S. 215; 4 Jur. N. S. 42; 6 V. R. 94; 53 E. R. 441.

5864a. ———.]—*WATERHOUSE v. CLOUT, Ex p. BOOKER* (1871), 41 L. J. Ch. 223; 20 W. R. 277.

## Part V.—Powers and Rights of Representative.

6053a. *Effect of Administration of Estates Act, 1925 (c. 23), s. 39.*—*Re TROLLOPE'S WILL TRUSTS, PUBLIC TRUSTEE v. TROLLOPE*, [1927] 1 Ch. 596; 96 L. J. Ch. 340; 137 L. T. 375; 71 Sol. Jo. 310.

6062. *Add. Annotation*:—*Appld. Johnson v. Clarke*, [1928] Ch. 847.

6074a. ——— To pay specialty debt—Mortgage valid

as against bond—Executor without notice of bond.]—*WATERLOO INSURANCE CO. v. HIND* (1862), 1 New Rep. 64.

6138a. *Effect of Administration of Estates Act, 1926 (c. 23), s. 39.*—*Re TROLLOPE'S WILL TRUSTS, PUBLIC TRUSTEE v. TROLLOPE*, [1927] 1 Ch. 596; 96 L. J. Ch. 340; 137 L. T. 375; 71 Sol. Jo. 310.

### PART IV. SECT. 7, SUB-SECT. 2.— O. (c) i.

r i. ——— *Balance of proceeds of sale of land sold by mortgagee treated as land.*—*ARMSON v. THOMPSON* (1877), 25 Gr. 138.—CAN.

### PART V. SECT. 2, SUB-SECT. 1.

so. *Before death duties paid—Where security for payment given.*—*R. v. CALEDONIAN INSURANCE CO.*, [1924] 2 D. L. R. 649; [1924] S. C. R. 207.—CAN.

### PART V. SECT. 2, SUB-SECT. 3.— B. (a) i.

r (p. 577) i. ———.]—Where testator charged his debts on his land:—*Held*: the mere failure of testator to enumerate all his land did not detract from the conclusion that all the land was so charged, & the direction that his debts should be paid by his exors. conferred an implied power of sale upon them for the purpose of paying the debts out of the proceeds.—*YOST v. ADAMS* (1886), 13 A. R. 129.—CAN.

t (p. 578) i. ———.]—Where testator directed his trustees to hold property for twenty-one years, & then sell it:—*Held*: there was no power to sell contrary to the express provisions of the will, except perhaps in a case of emergency.—*DOBDEL v. LOUDOUN*, [1920] N. Z. L. R. 131.—N. Z.

h (p. 578) i. ———.]—*Under Devolution of Estates Act.*—*Re LOGAN*, [1927] 4 D. L. R. 1074; 61 O. L. R. 323.—CAN.

(p. 578) i. ———.]—*Interference by court will restrain executor from selling.*—*SAMUELSON v.* [1927] 8 D. L. R. 56; R. 620; 21 Sask. L.

### PART V. SECT. 2, SUB-SECT. 3.— B. (a) ii.

1 i. *S. P. McCURDY v. MCDANIEL* (1868), 7 N. S. R. (1 G. & O.) 267.—CAN.

### PART V. SECT. 2, SUB-SECT. 3.— B. (b).

6145 ii. ———.]—*Held*: although there was no express devise of realty to the exors., a devise was implied by the terms of the will, & there being a general charge of debts, the exors. had full power to give a mtge.—*BANQUE PROVINCIALE DU CANADA v. CAPITAL TRUST CORPN.*, [1927] 3 D. L. R. 199; 60 O. L. R. 452.—CAN.

### PART V. SECT. 2, SUB-SECT. 3.— C. (a).

h i. *Sale under licence of Probate Court—Whether licence conclusive—Licence obtained improperly.*—*DOE v. THOMPSON* (1860), 9 N. B. R. (4 All.) 483.—CAN.

h ii. ———.]—*Sufficient personal property for payment of debts.*—*DOE d. SULLIVAN v. CURREY* (1872), 14 N. B. R. (1 Pug.) 175.—CAN.

st. *Conveyance inoperative.*—*TRAHON v. LEAMEY* (1861), 21 U. C. R. 216.—CAN.

### PART V. SECT. 3, SUB-SECT. 1.

sa. *Power to reduce debt—& execute quit-claim deed.*—Where testator had agreed to sell land to K., & the exors. reduced the purchase price in order to keep K. on the land, & later gave T., from whom testator had bought the land, a quit-claim deed of all their interest in the land:—*Held*: (1) the action of the exors. in reducing the price payable by K. was reasonable & proper; (2) they should not have executed the quit-claim deed without applying, under Trustee Act, R. S. S., 1920 (c. 75), s. 64, to a judge of the

King's Bench for advice, but, since they had acted honestly & in what they considered to be the best interests of the estate, their failure to do so should be excused under sect. 44.—*LEMCKE v. NEWLOVE* (Sask.), [1926] 4 D. L. R. 293; [1926] 2 W. W. R. 830; *varied* [1927] 2 D. L. R. 1049; S. C. R. 389.—CAN.

### V. SECT. 6, SUB-SECT. 1.

1 (p. 601) i. ———.]—*Under Trustee Act, R. S. B. C., 1924 (c. 262), s. 80—Amount limited to 5 per cent. of gross value of estate.*—*Re BECKMAN'S ESTATE* (1925), 37 B. C. R. 41.—CAN.

t (p. 601) i. ———.]—*Re BUSCH*, [1927] 2 D. L. R. 344; 59 N. S. R. 254.—CAN.

g (p. 602) i. ———.]—*Not after estate properly administered & accounts passed.*—*Re OXENHAM*, [1925] 2 D. L. R. 662.—CAN.

### PART V. SECT. 7, SUB-SECT. 1.

ni. ———.]—*STORY v. DUNLOP* (1867), 13 Gr. 375.—CAN.

ni. ———.]—*Re WILLIAMS* (1895), 22 A. R. 196.—CAN.

### PART V. SECT. 7, SUB-SECT. 2.—A.

ri. ———.]—*In respect of guarantee—Distribution of estate in ignorance of guarantee.*—*SAUDRY v. HAMPTON*, [1927] N. Z. L. R. 673.—N. Z.

### PART V. SECT. 8.

st. *To receive payment of lump sum for which pension commuted by deceased.*—*R. v. MCCORRISTON*, [1926] 4 D. L. R. 1086.—CAN.

sj. *To bring action—To set aside tax sale of land belonging to estate.*—*RODGER v. MORAN* (1896), 28 O. R. —CAN.

6341. *Add. Annotations*:—**Consd.** *Jones v. Wright* (1927), 44 T. L. R. 128. **Refd.** *Jones v. Wright* (1927), 139 L. T. 43.

6341a. ——— **Charges for work in execution of statutory trusts.**—By his will testator directed that his trustees should stand possessed of certain hereditaments upon certain trusts, & declared that any exor. or trustee of his will, who was a solr. or a person engaged in any profession or business, might individually, or through his firm, act in the course of his profession or business on behalf of the exors. & trustees, & charge for so doing:—**Held**: as the land was vested in the trustees upon the statutory trusts, any exor. or trustee of the will, who was a solr. or a person engaged in a profession or

business, was entitled, under the will, to charge for work or business done in the execution of the statutory trusts, because such work or business would be done on behalf of the exors. & trustees.—**Re** *PEDLEY, WALLACE v. WALLACE*, [1927] 2 Ch. 168; 96 L. J. Ch. 438; 137 L. T. 636; 71 Sol. Jo. 583.

6370. *Add. Annotation*:—**Refd.** *Re Anderson-Berry, Harris v. Griffith*, [1928] Ch. 290.

6388a. ———.]—Leasehold property belonging to testator, who was original lessee, having been directed to be sold & the proceeds divided:—**Held**: the exors. were entitled to be indemnified out of the proceeds.—*SMITH v. SMITH* (1854), 2 Eq. Rep. 727.

## Part VI. — Liability of Representative.

6446a. **Sale of goodwill of business—Solicitation of customers.**—The rule in *Trego v. Hunt*, [1896] A. C. 7, extends to a vendor's exor. completing a contract for the sale of the goodwill of a business, & the exor. will be restrained at the suit of the purchaser from soliciting customers of the business.—*BOORNE v. WICKER*, [1927] 1 Ch. 667; 96 L. J. Ch. 361; 137 L. T. 409; *sub nom.* *BORNE v. WICKER*, 71 Sol. Jo. 310.

*Annotation*:—**Refd.** *Farey v. Cooper*, [1927] 2 K. B. 384.

6505. *Add. Annotation*:—**Mentd.** *Burrell v. Leven* (1926), 42 T. L. R. 407.

6526. *Add. Annotations*:—**Mentd.** *Rawlinson v. Ames*, [1925] Ch. 96; *Houghton v. Nothard, Lowe & Wills*, [1928] A. C. 1.

6544. *Add. Annotation*:—**Mentd.** *Richmond v. Savill*, [1926] 2 K. B. 530.

6547. *Add. Annotation*:—**Generally, Mentd.** *Pontypridd Grdns. v. Drew*, [1926] 1 K. B. 567.

6600. *Add. Annotation*:—**Folld.** *Firman v. Royal*, [1925] 1 K. B. 681.

6602. *Add. Annotation*:—**Generally, Mentd.** *Brocklebank v. R.*, [1925] 1 K. B. 52.

6610. *Add. Annotation*:—**Generally, Refd.** *Re Field, Sanderson v. Young*, [1925] Ch. 636.

6667a. ——— **Non-repair by representative.**—In debt for rent against an administrator, as assignee of the intestate, deft. pleaded, in discharge of his liability otherwise than as administrator, that the intestate underlet,

for an unexpired term, to a tenant who had become insolvent & unable to pay rent; that the premises were of less value than the rent, viz. of the value of a certain sum, part of which deft. had paid to pltf., & part towards the expense of a party-wall; that, before the rent became due, deft. offered to surrender all his interest in the premises to pltf., who refused to accept them; & that he had fully administered, etc. Replication; that the premises were of more value than the sum mentioned in the plea, viz. of the value of the rent; & that deft. did not offer to surrender, etc. Issue thereon:—**Held**: (1) the real value of the premises, as against deft., must be taken to be that which it would have been if he had not himself committed a breach of a covenant to repair in the original lease; (2) the value, as between pltf. & deft., was not affected by the insolvency of the under-tenant, whose lease also contained a covenant to repair with a proviso of re-entry for breach & for non-payment of rent.—*HORNIDGE v. WILSON* (1840), 11 Ad. & El. 645; 3 Per. & Dav. 641; 9 L. J. Q. B. 72; 113 E. R. 559.

*Annotations*:—As to (1) **Consd.** *Re Bowes, Strathmore v. Vane, Norcliffe's Claim* (1887), 37 Ch. D. 128. **Refd.** *Rendall v. Andrew* (1892), 61 L. J. Q. B. 630. **Generally, Mentd.** *Hopwood v. Whaley* (1848), 6 C. B. 744.

6723. *Add. Annotation*:—**Consd.** *Firman v. Royal*, [1925] 1 K. B. 681.

6762. *Add. Annotation*:—**Refd.** *Re Field, Sanderson v. Young*, [1925] Ch. 636.

### PART V. SECT. 9.

6426 i. ——— **Power of executor to bind—Co-executor.**—**Held**: a settlement made by an exor. precluded the co-exor. & cestuis que trust from opening up the estate so settled.—*Re BATH'S ESTATE* (1879), 12 N. S. R. (3 R. & C.), 604.—CAN.

### PART V. SECT. 10.

6438 iii. ———.]—**Re** *HEWETT v. JERMYN* (1898), 29 O. R. 383.—CAN.

### PART VI. SECT. 2, SUB-SECT. 10.—D.

6595 i. ——— **Matrimonial causes—Order for costs against husband.**—A wife, whose husband had died after a decree nisi for divorce & before the date when it could have been made absolute:—**Held**: not entitled, there being no funds in ct., to costs against his estate.—*JARVIS v. JARVIS*, [1925] 8 D. L. R. 415; [1925] 1 W. W. R. 247.—CAN.

### PART VI. SECT. 3, SUB-SECT. 1.

6726 i. **General rule—Representatives not liable.**—*CONNOLLY v. SHIVES* (1879), 18 N. B. R. 606.—CAN.

6726 ii. ———.]—**LESLIE v. CALVIN (1885), 9 O. R. 207.—CAN.**

ri. ——— **To negligence in management of ship.**—*CAMERON v. MILLOY* (1872), 22 C. P. 331.—CAN.

### PART VI. SECT. 4, SUB-SECT. 2.—A.

ci. ———.]—A contract made by an exor. or administrator on behalf of the estate, but not relating to an obligation incurred by testator or intestate, renders him personally liable, even though it is expressed to be made "as exor." or "as administrator."—*VALCH v. NORDQUIST*, [1926] 4 D. L. R. 126; [1926] 2 W. W. R. 854; 36 Man. L. R. 46.—CAN.

di. ——— **Administrator guilty of**

*fraud.*—*DOE d. DOBIE v. VANDERLIP* (1836), 5 O. S. 85.—CAN.

### PART VI. SECT. 6, SUB-SECT. 2. B. (b).

sm. **Not where administration granted on application of party interested adversely to executor.**—*HARRISON v. MCGILASHAN* (1859), 7 Gr. 531.—CAN.

### PART VI. SECT. 6, SUB-SECT. 5.—B.

sn. **Counsel's fee—For general work & advice—Not allowed.**—*Re DODGE ESTATE*, [1925] 1 D. L. R. 1140; [1925] 1 W. W. R. 776.—CAN.

sp. ——— **Unless estate difficult to manage or solicitor required to render services by way of business management.**—*Re ROEMER* (Sask.), [1927] 3 W. W. R. 603.—CAN.

6835. *Add. Annotation*:—*Refd.* Hardie & Lane v. Chilton, [1928] 2 K. B. 306.
6840. *Add. Annotation*:—*Refd.* Royal Exchange Assce. v. Hope, [1928] Ch. 179.
- 6861a. ———.]—*BEAUMONT v. GROVER* (1701), 1 Eq. Cas. Abr. 8; 21 E. R. 833.
- 6861b. ———.]—*KEMISH v. BETSON* (1732), Kel. W. 74; 25 E. R. 497.
6911. *Add. Annotation*:—*Apld.* *Re* Munton, Munton v. West, [1927] 1 Ch. 262.
6922. *Add. Annotation*:—*Consd.* *Re* City Equitable Fire Insce., [1925] Ch. 407.
7059. *Add. Annotation*:—*Refd.* *Re* Munton, Munton v. West, [1927] 1 Ch. 262.
7163. *Add. Annotation*:—*Consd.* Manley v. Sartori, [1927] 1 Ch. 157.
- 7169a. ———.]—*FLOCKTON v. BUNNING* (1868), 8 Ch. App. 323, n.
- 7190a. ———.]—Exors. must be allowed a reasonable time for breaking up testator's domestic establishment & discharging his servants. Two months:—*Held*: not to be an unreasonable delay, having regard to the circumstances.—*FIELD v. PECKETT* (No. 3) (1861), 29 Beav. 576; 9 W. R. 525; 54 E. R. 751.
- 7190b. ———.]—*BROWNE v. COLLINS*, No. 6308, ante.
7219. *Add. Annotation*:—*Consd.* *Re* Mason (1928), 97 L. J. Ch. 321.
- 7225a. *Assets improperly obtained.*]—Where two

exors. obtained part of the assets improperly, by signing joint receipts in favour of each other, while they had large balances in their hands respectively, the ct. gave interest on those sums at five per cent. against both exors.—*BICK v. MOTLEY* (1835), 2 My. & K. 312; 39 E. R. 962; *sub nom.* *BECK v. MOTLEY* 4 L. J. Ch. 63.

- 7250a. ———.]—Where there is a direction in the will to accumulate a residue, with which the exor. does not comply, he must pay interest from the expiration of one year after testator's decease up to the date of filing the answer.—*AMISS v. HALL* (1857), 3 Jur. N. S. 584.
- Annotation*:—*Dtd.* *Re* Emmet's Estate, Emmet v. Emmet (1881), 17 Ch. D. 142.
- 7256a. ———.]—Exor. charged with interest on dividends of stock received by him, & kept at his banker's with his own money for a number of years, instead of being invested to accumulate.—*GOODCHILD v. FENTON* (1829), 3 Y. & J. 481; 148 E. R. 1269, Ex. Ch.
- 7273a. ———.]—*GILROY v. STEPHENS*, No. 7268, ante.
- 7311a. *Who may re-open.*]—A., entitled to a share of a residue, made a settlement of the balance appearing upon a settlement of accounts with the exors. upon himself & afterwards on C., a volunteer:—*Held*: C. could not, against the will of A., open the settlement of accounts with the exors.—*PARKER v. BLOXAM* (1855), 20 Beav. 295; 52 E. R. 616.

## Part VII.—Actions by and against Representative.

- 7439a. *In whose name—Deceased's property assigned to assignees before death.*]—The property of an intestate was assigned to assignees previous to his death; pltf. administered, & applied to deft. for payment for goods sold him by the intestate, in the name of the assignees, & afterwards brought an action in his character of administrator:—*Held*: such action was well brought.—*BRANDT v. HEATIG* (1818), 2 Moore, C. P. 184.
- 7492a. *Suit for account of testator's estate.*]—

Lapse of time will not of itself bar an exor. of an exor. of his right to have an account of his exor.'s testator's estate taken, with a view to ascertain such exor.'s liabilities as an accounting party.—*SMITH v. O'GRADY* (1870), L. R. 3 P. C. 311; 7 Moo. P. C. C. N. S. 106; 39 L. J. P. C. 63; 23 L. T. 476; 19 W. R. 22; 17 E. R. 41, P. C.

7584. *Add. Annotation*:—*Refd.* *Re* Forder, Forder v. Forder, [1927] 2 Ch. 291.

### PART VI. SECT. 6, SUB-SECT. 5.—C. (a).

7200 i. *Under special circumstances.*]—Where the circumstances of the case render it reasonable that they should do so exors. are entitled to employ the services of such agents as may be necessary.—*Re LEVEL ESTATE*, [1927] 1 D. L. R. 900; [1927] 1 W. W. R. 1000; 38 B. C. R. 211.—CAN.

### PART VI. SECT. 6, SUB-SECT. 7.—A.

*sr. Jurisdiction of registrar—Should not pass upon his own accounts.*]—*Re BENT*, [1927] 1 D. L. R. 692; 59 N. S. R. 107.—CAN.

7296 i. *Passing accounts—Costs—Form of order.*]—*Re HASLETT, MCKENNA v. HASLETT*, [1927] V. L. R. 21; 48 A. L. J. T. 125; [1927] Argus L. R. 12.—

### PART VII. SECT. 1, SUB-SECT. 7.

1 i. ———.]—*Evidence of opposite or interested party.*]—*TAYLOR v. REGIS* (1895), 26 O. R. 483.—CAN.

### PART VII. SECT. 1, SUB-SECT. 9.—A.

*st. General rule.*]—In litigating with third persons, exors. are, with respect to costs, in the same position as parties

who litigate in their own right.—*GREAT WESTERN RY. CO. v. JONES* (1867), 13 Gr. 355.—CAN.

*sv. Liability on failure of appeal—Appeal without merit or substance.*]—The costs of an appeal without merit or substance taken by a personal representative:—*Held*: to be payable by such representative in his individual capacity.—*STRELIOFF v. FIRST NATIONAL BANK OF JOLIET*, [1925] 2 W. W. R. 501.—CAN.

### PART VII. SECT. 2, SUB-SECT. 5.—B. (a).

*sw. Appointment by foreign court.*]—An exor. or administrator cannot, as a general rule, be sued as such in the ct. of any State or country other than that in which he received his appointment.—*GOODBUN v. MITCHELL*, [1926] 2 D. L. R. 540; [1926] 2 W. W. R. 67; 35 Man. L. R. 569.—CAN.

### PART VII. SECT. 2, SUB-SECT. 6.—A.

*p i. ———.]—Claim for deceased's board during lifetime.*]—*Re THOMPSON* (1926), 58 N. S. R. 489.—CAN.

### PART VII. SECT. 2, SUB-SECT. 8.—A.

*a i. ———.]—The proper*

form of judgment against exors. or administrators in respect of a liability of deceased is for payment in due course of administration, unless there is on their part a distinct affirmative admission of assets sufficient to pay all creditors; upon a judgment for the amount recovered to be paid in due course of administration it is improper to issue execution.—*Re HEXTALL ESTATE*, [1921] 1 W. W. R. 118; 56 D. L. R. 710.—CAN.

### PART VII. SECT. 2, SUB-SECT. 8.—C.

*fi. ———.]—Contribution from devisees.*]—*EMERSON v. CANNIFF* (1878), 26 Gr. 149.—CAN.

### PART VII. SECT. 2, SUB-SECT. 9.—A.

*si. ———.]—Widow's costs of application for relief under Devolution of Estates Act, R. S. S., 1920 (c. 73), s. 24.*]—*Re MOWCHENKO*, [1926] 1 D. L. R. 265; [1926] 1 W. W. R. 139; 20 Sask. L. R. 279.—CAN.

*ii. ———.]—Litigation caused by legatee.*]—*O'SULLIVAN v. HARTY* (1885), 11 S. O. R. 322.—CAN.

### PART VII. SECT. 2, SUB-SECT. 10.—A.

7763 i. *Garnishee proceedings—Decree in administration suit—Damages re-*



## Part VIII.—Administration by Court.

7987. *Add. Annotation*:—*Mentd. Weld v. Petre* (1928), 97 L. J. Ch. 399.

7993. *Add. Annotation*:—*Refd. Haskell v. Marlow*, [1928] 2 K. B. 45.

8018. *Add. Annotation*:—*Refd. Hunter v. Stadtische Hochseefischerei Gessellschaft*, [1925] 2 K. B. 493.

8228. *Add. Annotation*:—*Mentd. Grant v. Boos*, [1926] A. C. 781.

8270a. — Separate sets of trustees of settled shares.]—*Re SCOTT, SCOTT v. SCOTT* (1926), 71 Sol. Jo. 430.

8358. *Add. Annotation*:—*Mentd. English Insce. v. National Benefit Assce.* (1928), 44 T. L. R. 801.

8371. *Add. Annotation*:—*Refd. Re Anderson-Berry, Harris v. Griffith*, [1928] Ch. 290.

8484a. — Valuation of annuity payable under payment included.]—In order to qualify an annuitant, to whom a person who died in 1922 was liable under a judgment by consent to pay the annuity, to prove for the value thereof in the administration by the ct. of

the deceased person's estate, it is sufficient for the annuitant to prove, as a fact, that if the annuity continues for the period normally to be expected, the estate will not suffice to meet the debts & the annuity in full.—*Re PINK, ELVIN v. NIGHTINGALE*, [1927] 1 Ch. 237; 96 L. J. Ch. 202; 136 L. T. 399; 70 Sol. Jo. 1090.

8494. *Add. Annotation*:—*Mentd. Re City Life Assce.* (1925), 42 T. L. R. 45.

8750. *Add. Annotation*:—*Mentd. Re Hardyman, Teesdale v. McClintock*, [1925] Ch. 287.

8793. *Add. Annotation*:—*Generally, Mentd. Re Beirnsstein, Barnett v. Beirnsstein*, [1925] Ch. 12.

8802. *Add. Annotation*:—*As to (2) Refd. In the Estate of Plant, Wild v. Plant*, [1926] P. 139.

8866. *Add. Annotation*:—*Refd. Re Porter, Porter v. Porter*, [1925] Ch. 746.

8891. *Add. Annotation*:—*Consd. In the Estate of Plant, Wild v. Plant*, [1926] P. 139.

9014. *Add. Annotation*:—*As to (4) Refd. In the Estate of Plant, Wild v. Plant*, [1926] P. 139.

covered by administratrix under *Fatal Accidents Act*—*Garnishee summons set aside.*]—*McEWAN v. SPECKT* (N. W. T.) (1906), 4 W. L. R. 325.—CAN.

PART VII. SECT. 2, SUB SECT. 10.—  
B. (a).

*sy. Priority of execution—Over purchaser from executor.*]—*HENRY v. SHARP* (1871), 18 Gr. 16.—CAN.

PART VII. SECT. 2, SUB-SECT. 10.—  
B. (b).

& tenements, held in fee simple by debtor at the time of his decease, might be taken in execution on a judgment against his exor. or administrator.—*FORSYTH & RICHARDSON v. HALL* (1830), Dra. 304.—CAN.

*sz. Judgment by default—Notwithstanding insufficient personal assets.*]—*Held*: the exor. was not entitled to an injunction against proceedings on the judgment.—*DONER v. ROSS* (1872), 12 Gr. 229.—CAN.

PART VIII. SECT. 1, SUB-SECT. 4.

*b i.* — Cannot entertain claim for balance on mortgage by executors to pay debts & legacies.]—*Re RICHARDSON'S ESTATE* (1890), 22 N. S. R. 416.—CAN.

PART VIII. SECT. 2, SUB-SECT. 1.

*sa. Share of next of kin—Mortgagee of.*]—*Held*: entitled to bring proceedings.—*SWEENEY v. GALLAGHER* (1888), 22 I. L. T. 82.—IR.

*sb.* — Assignee of.]—*Held*: entitled to bring proceedings.—*TEVLIN v. GILSENAN* (1901), 36 I. L. T. 35.—IR.

PART VIII. SECT. 3, SUB-SECT. 2.—  
B. *sd.* Not question whether property part of estate.]—*Re COLLINS*, [1927] 4 D. L. R. 770; 61 O. L. R. 225.—CAN.

PART VIII. SECT. 5, SUB-SECT. 1.  
*n i.* —.]—*GILBERT v. JARVIS* (1869), 16 Gr. 265.—CAN.

PART VIII. SECT. 5, SUB-SECT. 3.—  
H. (b).

*h i.* — Balance on bond—After foreclosure & sale by mortgagee.]—*Re CHANDLER'S ESTATE* (1884), 5 R. & G. 78.—CAN.

*h ii.* — Not debt arising out of illegal transaction.]—*Re GHEE, Ex p. LOWE KING, PUBLIC TRUSTEE v. LOWE KING*, [1928] N. Z. L. R. 266.—N.Z.

8228 *i.* — Mortgage debt—Purchase of land by deceased—Payment of mortgage as part of purchase price.]—*Held*: the mtgee. was entitled to prove for the balance of the mtgc. debt against the general estate of the purchaser.—*Re COZIER, PARKER v. GLOVER* (1877), 24 Gr. 537.—CAN.

PART VIII. SECT. 5, SUB-SECT. 3.—  
H. (d).

*sf. Parol evidence.*]—*Held*: the master had properly received parol evidence to establish the widow's claim in question.—*ROSS v. MASON* (1862), 9 Gr. 568.—CAN.

PART VIII. SECT. 5, SUB-SECT. 4.—C.

*n i.* — Disposal of assets.]—Where a creditor or one of the next of kin institutes an administration suit against

an exor. the institution of the action or the obtaining of a decree will not bring the doctrine of *lis pendens* into operation, & does not deprive the exor. of the power to dispose of assets, unless ptff. has obtained an order appointing a receiver or an injunction restraining the exor. from exercising the powers vested in him.—*LEE LIM MA HOCK v. SAW MA HONE* (1923), 1. L. R. 2 Ran. 4.—IND.

PART VIII. SECT. 7, SUB-SECT. 2.—  
B. (b).

*sy. Insurance policy—Protected for payment of debts—Under Life Insurance Act, 1908, s. 65.*]—Where an insolvent estate includes the proceeds of an insurance policy protected for deceased's debts by the above Act, the policy moneys are liable for all testamentary expenses arising in the administration & realisation thereof; funeral & the other testamentary expenses are borne by the protected policy moneys & the remainder of the estate in proportion to their value.—*MARTLAND v. PUBLIC TRUSTEE*, [1924] N. Z. L. R. 840.—N.Z.

PART VIII. SECT. 7, SUB-SECT. 2.—  
B. (c).

*sz. Overpayment—Liability of executor.*]—*TAYLOR v. BRODIE* (1874), 21 Gr. 607.—CAN.

PART VIII. SECT. 8, SUB-SECT. 1.—A.

8559 *ii.* — Costs of mortgagee's action to realise security & for administration.]—*LEONARD v. KELLET* (1891), 27 L. R. Ir. 418.—IR.

# EXTRADITION AND FUGITIVE OFFENDERS.

## Part I.—Extradition to Foreign Countries.

87. *Add. Annotations*:—As to (1) *Reid. R. v. Beebe* (1925), 133 L. T. 736. *Generally, Mentd. Statham v. Statham* (1928), 45 T. L. R. 127. 126. *Add. Annotation*:—As to (1) *Reid. R. v. Brixton Prison, Ex p. Shure*, [1926] 1 K. B. 127. 127. *Add. Annotation*:—*Consd. R. v. Brixton Prison, Ex p. Shure*, [1926] 1 K. B. 127.

## Part III. Surrender between British Dominions inter se and the United Kingdom.

148. *Add. Annotation*:—As to (1) *Apprvd. Sobhuza II. v. Miller*, [1926] A. C. 518. 160. *Add. Annotation*:—*Reid. Campbell v. Pollak*, [1927] A. C. 732. 159. *Add. Annotation*:—*Apld. Re Paget, Ex p. Official Receiver*, [1927] 2 Ch. 85.

### PART I. SECT. 2, SUB-SECT. 2.—B.

sa. *Obtaining by false pretences—Extraditable offence.*—*Re MARTIN* (No. 2) (1897), 2 Terr. L. R. 304.—CAN.

### PART I. SECT. 3, SUB-SECT. 3.—C. (a) ii.

88 iv. —.]—While the imputed offence must be shown to be a crime under the law of the demanding State, yet, in determining whether there is such evidence of criminality as according to Canadian law would justify a commitment if the crime had been committed in Canada, regard is to be had to the essence of the act charged, & extradition is permitted if there

exists the elements of the imputed offence according to Canadian law.—*WASHINGTON STATE v. FLETCHER*, [1926] 3 D. L. R. 426; [1926] 2 W. W. R. 508; 46 Can. Crim. Cas. 226; 20 Sask. L. R. 675.—CAN.

sl. *Foreign law—Mode of proof.*—*UTAH STATE v. JONES* (1925), 44 Can. Crim. Cas. 355; [1925] 3 W. W. R. 750.—CAN.

### PART I. SECT. 3, SUB-SECT. 3.—E. b i. —.]—*Re MARTIN* (No. 2) (1897), 2 Terr. L. R. 304.—CAN.

### PART III. SECT. 1, SUB-SECT. 3. sk. *Not absconding from jail.*—

*JAIPAL BHAGAT v. R.* (1921), I. L. R. 1 Pat. 57.—IND.

### PART III. SECT. 2, SUB-SECT. 1.

st. *Cancellation of warrant—Jurisdiction of High Court.*—Although Extradition Act, 1903, s. 15, empowers the Govt. of India & the local Govt. to stay proceedings taken under chap. III of the Act & to direct any warrant to be cancelled & accused released, this does not oust the jurisdiction of the High Ct. to interfere where action has not been taken under a valid warrant.—*JAIPAL BHAGAT v. R.* (1921), I. L. R. 1 Pat. 57.—IND.

## FACTORIES AND SHOPS.

### Part I.—Classification and Definitions.

29. *Add. Annotation*:—**Refd.** *Skinner v. Breach*, [1927] 2 K. B. 220. 40. *Add. Annotation*:—**Refd.** *Skinner v. Breach*, [1927] 2 K. B. 220.

### Part III.—Accidents.

62. *Add. Annotation*:—**Refd.** *Dew v. United British S.S. Co.* (1928), 139 L. T. 628.
68. *Add. Annotation*:—**Generally**, **Refd.** *Atkinson v. L. & N. E. Ry.* (1925), 42 T. L. R. 79.
- 68a. ———.]—**Resps.**, the occupiers of a factory, provided adequate guards for securely fencing the mill-gearing, & exhibited a notice prohibiting workmen from removing any guard without special instructions. The workmen removed nine guards for the purpose of setting the rollers, & having replaced only eight of the guards, started the rollers. Owing to their neglect, one workman, who slipped & fell, was dragged into the coupling gear & was killed. An information against resps. under 1901 Act, s. 136, for neglecting to observe the provision of sect. 10 (1) (c) that the mill-gearing must be securely fenced, was dismissed, on the grounds that resps. had taken all adequate precautions by providing the necessary guards, & that it was the fault of the workmen that caused the accident:—**Held**: under sect. 10 it was the duty of resps. not merely to provide guards, but to fence the machinery securely, & as they had not performed this duty, the justices ought to have convicted them.—**THOMAS v. BOLTON (THOMAS) & SON, LTD.** (1928), 139 L. T. 397; 92 J. P. 147; 44 T. L. R. 640; 26 L. G. R. 459, D. C.
71. *Add. Annotation*:—**Refd.** *Atkinson v. L. & N. E. Ry.* (1925), 42 T. L. R. 79.
- 76a. ——— **Machinery equally safe fenced or unfenced—Overhead shaft.**]—**Resps.** were the occupiers of a factory in which was a machine driven by a pulley fixed on a horizontal shaft, which formed part of the mill gearing. The driving belt slipped off the pulley & an employee of resps. attempted to put it back while the shaft was running & sustained injuries. The shaft & pulley were about thirteen feet from the floor & they were not fenced or guarded. In attempting to put on the belt the workman stood on a beam about seven feet from the floor, & was acting contrary to resps.' instructions. Resps. were summoned for not having the shaft fenced, but the justices, being of opinion that any fence would have been useless owing to the shaft being thirteen feet above the ground, dismissed the case:—**Held**: the finding of the justices was not equivalent to a finding that the shaft was "in such position or of such construction as to be equally safe to every person employed or working in the factory as it would be if it were securely fenced," which was the requirement of 1901 Act, s. 10 (1) (c), & there would have been no evidence to support the latter finding.—**ATKINSON v. LONDON & NORTH EASTERN RY. Co.**, [1926] 1 K. B. 313; 95 L. J. K. B. 266; 134 L. T. 217; 90 J. P. 17; 42 T. L. R. 79; 23 L. G. R. 702; 28 Cox, C. C. 112, D. C.
80. *Add. Annotations*:—**As to** (1) **Consd.** *Dew v. United British S.S. Co.* (1928), 139 L. T. 628. **Generally**, **Mentd.** *Scammell v. Attlee* (1928), 45 T. L. R. 75.

**PART I. SECT. 1, SUB-SECT. 1.**  
*sa. Flour mill.*]—**Held**: a "factory" within Factories Act, 1894.—**SEIBY v. BANNIGAN** (1901), 3 S. A. L. R. 21.—**AUS.**

*m i.* ———.]—**Held**: a drying yard, situate about five or six yards from a factory, was part of the factory.—**RAMANATHAM v. R.** (1926), 1 L. R. 50 Mad. 834.—**IND.**

**PART III. SECT. 1, SUB-SECT. 1.—A.**

70 iii. ———.]—A co. was charged under 1901 Act, s. 10 (1) (c), with failing to keep its factory in conformity with that Act, in respect that a dangerous part of the machinery, the cutter of a horizontal milling machine, was not either securely fenced, or in such a position or of such construction as to be equally safe to every person

employed or working in the factory as it would have been if it had been securely fenced:—**Held**: (1) the question whether a part of the machinery was "dangerous" within the Act was one of degree, & the risk involved in the use of the cutter did not reach a degree sufficient to justify that part being classified as "dangerous"; (2) in any event, to secure a conviction, facts must be established to support the second branch of the complaint, & on the facts, the charge was not proven.—**LAUDER v. BARR & STROUD**, [1927] S. C. (J.) 21.—**SCOT.**

81 iii. ———.]—In an action by the widow of a deceased employee against his employer. pltf. alleged that deft. in contravention of Factories & Shops Act, 1912 (N.S.W.), neglected & omitted securely or at all

to fence the dangerous parts of a machine whereby deceased was injured & died. The jury returned a general verdict for deft.:—**Held**: in the particular circumstances there should be a new trial, there having been a misdirection on the question of contributory negligence upon which the jury might have acted.—**COFIELD v. WATERLOO CASE CO., LTD.** (1924), 34 C. L. R. 363.—**AUS.**

81 iv. ———.]—Contributory negligence is not a defence to an action to recover damages for personal injury, caused by a breach of an absolute statutory duty imposed for the benefit of a class of persons, of which pltf. is a member.—**BOURKE v. BUTTERFIELD & LEWIS, LTD.** (1927), 38 C. L. R. 354; 27 S. R. N. S. W. 339; [1927] Argus L. R. 3.—**AUS.**



## Part IV.—Dangerous and Unhealthy Industries.

118. *Add. Annotations:—Refd.* Hamilton v. Shelton Iron, Steel & Coal Co., Leigh v. Same, Timmins v. Same (1926), 96 L. J. K. B. 295; Lewis v. Guest, Keen & Nettlefolds, Watkins v. Same, Tucker v. Same, Ingram v. Crawshay (1927), 96 L. J. K. B. 664; Bevan v. Nixon's Navigation Co. (1928), 130 L. T. 647.
129. *Add. Annotation:—Generally, Mentd.* Bennett v. Whitehead, [1926] 2 K. B. 380.
153. *Add. Annotation:—Refd.* Stroud v. Bath Gas Light & Coke Co. (1927), 137 L. T. 623.

## Part V.—Conditions as to Employment and Wages.

192. *Add. Annotation:—As to (1) Consd.* Rutherford v. Trust Houses, [1926] 1 K. B. 321.
193. *Add. Annotation:—As to (2) Distd.* Rutherford v. Trust Houses (1925), 89 J. P. Jo. 682.
- 206a. ——— **Shops Act, 1913 (c. 24), s. 1.**  
Where the occupier of premises for the sale of refreshments, whether licensed for the sale of intoxicating liquor or not, elects under sect. 1 (1) of the above Act that instead of the provisions of Shops Act, 1912 (c. 3), s. 1, with regard to holidays, the provisions of sect. 1 (1) (a), (b), (c) & (d) of the above Act shall apply to shop assistants employed on the premises wholly or mainly in connection with the sale of intoxicating liquors or refreshments for consumption on the premises, he must be taken to elect to adopt the extended definition of shop assistant in sect. 1 (5) of the above Act, namely, that "shop assistant" includes "all persons wholly or mainly employed in any capacity at the premises in connection with the business there carried on," & he cannot afterwards be heard to say that any person so employed is not a shop assistant.—RUTHERFORD v. TRUST HOUSES, LTD., [1926] 1 K. B. 321; 95 L. J. K. B. 371; 134 L. T. 630; 90 J. P. 62; 42 T. L. R. 148; 24 L. G. R. 245; 28 Cox, C. C. 161, D. C.
236. *Add. Annotation:—Refd.* Pritchard v. James Clay (Wellington) (1925), 42 T. L. R. 139.
261. *Add. Annotation:—Refd.* Riversdale Mill Co. v. Hart (1926), 43 T. L. R. 73.
263. *Add. Annotations:—Apld.* Jones v. Harris (1926), 43 T. L. R. 1. **Consd.** Hart v. Riversdale Mill Co., [1928] 1 K. B. 176.
- 264a. ———.]—Applt. was employed by resps. as a moulder of iron pipes upon piece work under an agreement by which applt. was to be paid 5½d. for a complete pipe free from defects, & other & smaller agreed prices for pipes defective in specified ways, e.g., 5½d. for a pipe that was bent. These agreed prices were fixed at the time of applt.'s employment. No notices containing the terms of the agreement were kept by resps. as required by Truck Act, 1896 (c. 44), & no particulars in writing were supplied to applt. as required by that Act:—*Held*: the agreement was a clear attempt to evade the above Act. The workman was employed to make pipes of full length & free from defects, & in paying the smaller prices for defective pipes resps. were making deductions "for or in respect of bad or negligent work or injury to the materials or other property of the employer."—PRITCHARD v. JAMES CLAY (WELLINGTON), LTD., [1926] 1 K. B. 238; 95 L. J. K. B. 107; 134 L. T. 244; 90 J. P. 15; 42 T. L. R. 139; 70 Sol. Jo. 266; 28 Cox, C. C. 122, D. C.
- Annotation:—Distd.* Riversdale Mill Co. v. Hart, [1927] 1 K. B. 624.
- 264b. ———.]—By order dated Mar. 3, 1897, the Secretary of State exempted from the provisions of Truck Act, 1896 (c. 44), persons engaged in the weaving of cotton in the county of Lancashire. Resp., a weaver of cotton in Lancashire employed by appls., was negligent in performing certain work &, in accordance with a custom which had long existed in the Lancashire trade, the employers deducted a reasonable sum from the "standard list" rates of wages which had been agreed between the employers' & workers' organisations, as the remuneration for good, merchantable cloth, & paid her the balance as her wages:—*Held*: this deduction was not illegal as being in contravention of the Truck Acts.—HART v. RIVERSDALE MILL CO., [1928] 1 K. B. 176; 96 L. J. K. B. 691; 137 L. T. 364; 91 J. P. 135; 43 T. L. R. 396; 71 Sol. Jo. 407, C. A.; *affg.* S. C. *sub nom.* RIVERSDALE MILL CO. v. HART, [1927] 1 K. B. 624, D. C.
276. *Add. Annotation:—Apld.* Hart v. Riversdale Mill Co., [1928] 1 K. B. 176.
277. *Add. Annotation:—Consd.* Hart v. Riversdale Mill Co., [1928] 1 K. B. 176.

## Part VI.—Administration and Penalties.

299. *Add. Annotation:—Refd.* Atkinson v. L. & N. E. Ry. (1925), 42 T. L. R. 79.

**PART V. SECT. 3, SUB-SECT. 1.**  
**ek. Meal-times—Interval for meals—**  
**Whether part of hours of employment—**  
**Shops Act, 1912 (c. 3), s. 1 (3) & Sched. I.]**  
—Two employees in a shop began work at 7 a.m. & stopped work at

6.45 p.m. One of them was allowed away for dinner from 10.45 a.m. until 11.45 a.m., the other from 2 p.m. to 3 p.m., approximately:—*Held*: although each of the employees was away during part of the period 11.30 to 2.30, their hours of employ-

ment included those hours, & their employer had contravened the above Act by not allowing them an interval of three-quarters of an hour between those hours.—HUTCHISON v. CUMMING, [1926] S. C. (J.) 110.—SCOT.

## FAMILY ARRANGEMENTS.

### Part II.—Validity and Effect.

58. *Add. Annotation* :—Mentd. *Jagger v. Jagger*, [1926] P. 93. 164. *Add. Annotation* :—Reid. *Parr v. A.-G.*, [1926] A. C. 239.
114. *Add. Annotation* :—Mentd. *Re Barratt*, National Provincial Bank *v. Barratt*, [1925] Ch. 550. 165. *Add. Annotation* :—Consd. *Re Carnarvon's Chesterfield S. E.*, *Re Carnarvon's Highclere S. E.*, [1927] 1 Ch. 138.

#### PART II. SECT. 1.

n i. .]—SIDH GOPAL *v.* BIHARI LAL (1927), I. L. R. 50 All. 284.—IND.

## FERRIES.

### Part I.—Definition and Nature of Ferries.

8. For the paragraph in the original volume substitute the following paragraph :—  
 .]—Defts., under a statute of 1791, built a toll-bridge in place of an ancient ferry on a public highway, & also approaches which by the Act were to be considered as part & parcel of the bridge. Pltfs., the county council, owned land adjoining one of the approaches & built a school on it. Defts. denied pltfs.' right to free access to the school over the approach :—*Held* : as the old highway consisted of the approaches to the ferry plus the passage across the river, & the substituted highway consisted of the approaches to the bridge plus the bridge, & as the old approaches were highways to which owners would be entitled to access, the substituted approaches were highways by which adjoining owners had similar rights of access, & defts.' claim was ill founded.—*YORKSHIRE, EAST RIDING, COUNTY COUNCIL v. SELBY BRIDGE CO. OF PROPRIETORS*, [1925] Ch. 841 ; 95 L. J. Ch. 86 ; 133 L. T. 628 ; 41 T. L. R. 602 ; 69 Sol. Jo. 775 ; 23 L. G. R. 547.
- 13a. ——— Persons able to cross on foot at low water.]—(1) *Held* : a franchise ferry between South Benfleet & Canvey Island had been granted to pltfs.' predecessors in title. (2) The case is unique in one respect because at low water the tidal creek can be traversed on foot (*ROMER, J.*).—*LAYZELL v. THOMPSON* (1926), 91 J. P. 89 ; 43 T. L. R. 58 ; *affd.* (1927), 96 L. J. Ch. 332, C. A.

### Part II.—Creation and Transfer of Ferries.

34. *Add. Annotation* :—As to (3) *Refd.* *Layzell v. Thompson* (1926), 43 T. L. R. 58.
35. *Add. Annotation* :—*Refd.* *Layzell v. Thompson* (1926), 43 T. L. R. 58.
- 35a. ———.]—*LAYZELL v. THOMPSON*, No. 13a, *ante.*
51. *Add. Annotation* :—As to (2) *Refd.* *Layzell v. Thompson* (1926), 43 T. L. R. 58.

### Part III.—Rights, Duties and Liabilities of Ferry Owner.

65. *Add. Annotation* :—*Refd.* *Layzell v. Thompson* (1926), 43 T. L. R. 58.
66. *Add. Annotations* :—*Generally, Refd.* *Winsford Entertainments v. Winsford U. D. C.* (1924), 23 L. G. R. 254 ; *Yorkshire East Riding County Council v. Selby Bridge Co.*, [1925] Ch. 841. *Mentd.* *Jaeger v. Jaeger Co.* (1927), 44 R. P. C. 437.

### Part IV.—Disturbance of Ferries and Remedies Therefor.

150. *Add. Annotations* :—As to (1) *Refd.* *Metcalf v. Boyce*, [1927] 1 K. B. 758. *Generally, Refd.* *Layzell v. Thompson* (1926), 43 T. L. R. 58.
- 151a. ———.]—*LAYZELL v. THOMPSON*, No. 13a, *ante.*

#### PART IV. SECT. 2, SUB-SECT. 3.—B.

*sb. Proof of acquisition of termini sufficient—Proof of origin unnecessary.*]  
 —In an action by a railway co. to interdict defender from conveying passengers for hire across a ferry :—*Held* : conveyances from the owners of the lands on either side of the ferry of their whole rights gave pursuers,

in the absence of any rival title in favour of defender, a *prima facie* title to sue, without the necessity of averring on what their author's titles were founded.—*LONDON, MIDLAND & SCOTTISH RY. CO. v. M'DONALD*, [1924] S. C. 835.—*SCOT.*

#### PART IV. SECT. 2, SUB-SECT. 4.

*sd. Right of ferry exercised by*

*others.*—In an action by a railway co. to interdict defender from conveying passengers for hire across a ferry :—*Held* : a defence that pursuers had not exercised an exclusive right of ferry, in respect that other persons had, without protest, ferried passengers for hire, was irrelevant.—*LONDON, MIDLAND & SCOTTISH RY. CO. v. M'DONALD*, [1924] S. C. 835.—*SCOT.*



## FISHERIES.

## Part II.—Public Fisheries.

9. *Add. Annotation*:—*Generally, Mentd. The Fagernes*, [1927] P. 311.
29. *Add. Annotation*:—*As to (2) Refd. The Fagernes*, [1926] P. 185.
50. *Add. Annotation*:—*Refd. The Harkaway*, [1928] P. 199.
57. *Add. Annotation*:—*Refd. South Staffordshire Mines Drainage Comrs. v. Elwell* (1927), 91 J. P. 153.

## Part III.—Private Fisheries.

176. *Add. Annotations*:—*Refd. Abrahams v. MacFisheries*, [1925] 2 K. B. 18; *Roe v. Russell*, [1928] 2 K. B. 117.

## Part IV.—Fisheries in relation to Navigation.

356. *Add. Annotations*:—*As to (2) Refd. The Carlgarth, The Otarama*, [1927] P. 93. *Generally, Mentd. Lagan Navigation Co. v. Lampog Bleaching, Dyeing & Finishing Co.*, [1927] A. C. 226.
366. *Add. Annotation*:—*Refd. The Carlgarth, The Otarama*, [1927] P. 93.
368. *Add. Annotation*:—*As to (2) Refd. The Carlgarth, The Otarama*, [1927] P. 93.

## Part VI.—Statutory Enactments relating to Salt Water Fisheries and Sea Fishing.

485. *Add. Annotation*:—*Refd. Everton v. Walker* (1927), 137 L. T. 594.

## PART III. SECT. 1, SUB-SECT. 5.

130 i. *Inland non-tidal lake—Land vested in Crown—Rights of owner or lessee of land extending to lake.*—*McDONALD v. LINTON* (N. B.), [1926] 3 D. L. R. 779.—CAN.

## PART V. SECT. 5, SUB-SECT. 1.—D. (a).

sk. *Within two hundred yards of weir—Weir used for supplying water to mills, factories, or for navigation—Fisheries (Ir.) Act, 1850 (c. 88), s. 37.*—*IRELAND v. QUIRKE*, [1928] I. R. 231.—IR.

## PART V. SECT. 5, SUB-SECT. 3.

n i. ———.]—The owners of a bag-net fishery duly removed the leaders of their bag-nets during the weekly close time. In spite of this, they caught 165 salmon during eleven successive weekly close times:—*Held*: the owners were guilty of a contravention of Salmon Fisheries (Scotland) Act, 1868 (c. 123), s. 15 (2), in respect that compliance with bye-laws did not avoid the duty of observing the statutory prohibition against fishing for or taking salmon during the weekly close time.—*ABERDEEN HARBOUR COMRS. v. STOTT*, [1927] S. C. (J.) 35.—SCOT.

## PART VI. SECT. 4, SUB-SECT. 4.

sp. *Bounty—Time of service on ship—Regulations of December 10, 1897.*—*SNOW v. R.* (1907), 11 Exch. C. R. 164.—CAN.

## PART VII. SECT. 2.

b i. ——— *Division of proceeds—Shipwrecked sailors on board sealer.*—*CONNELL v. FORKE* (1859), 4 Nfld. L. R. 394.—NFLD.

## PART VIII. SECT. 5.

526 i. *General rule—Jurisdiction ousted.*—*R. (MOORE) v. O'HANRAHAN*, [1927] I. R. 406.—IR.

## FOOD AND DRUGS.

### Part II.—Adulteration and Impoverishment.

76. *Add. Annotation*:—**Folld.** Bowker v. Woodroffe, Bowker v. Premier Drug Co. (1927), 96 L. J. K. B. 750.
78. *Add. Annotation*:—*As to* (2) **Apld.** Bowker v. Woodroffe, Bowker v. Premier Drug Co. (1927), 96 L. J. K. B. 750.
- 78a. ———.]—(1) Where a person is charged with selling to the prejudice of a purchaser an article of food which is not of the nature, substance & quality demanded, & the article is one for which there is no recognised standard of quality, it is the duty of the ct. to fix a standard, in the sense of having regard to a minimum below which the article must be regarded as deficient.  
(2) Where an analyst expresses in a certificate an opinion as to the quality or genuineness of an article, the ct. must accept it, if uncontradicted.  
(3) A wholesale merchant cannot be convicted of aiding & abetting a retailer, if the wholesaler was not present when the retail sale complained of took place, nor if there is no evidence that he knew the composition of the article.—**BOWKER v. WOODROFFE, BOWKER v. PREMIER DRUG CO.**, [1928] 1 K. B. 217; 96 L. J. K. B. 750; 137 L. T. 347; 91 J. P. 118; 43 T. L. R. 516; 25 L. G. R. 306; 28 Cox, C. C. 397, D. C.
- 98a. **Liability of wholesaler—Sale by retailer.**]—**BOWKER v. WOODROFFE, BOWKER v. PREMIER DRUG CO.**, No. 78a, *ante*.
135. *Add. Citations*:—23 L. G. R. 15; 27 Cox, C. C. 672.
140. *Add. Citations*:—23 L. G. R. 22; 27 Cox, C. C. 678, D. C.  
*Add. Annotation*:—*As to* (2) **Refd.** Preston v. Grant (1924), 94 L. J. K. B. 125.
147. *Add. Annotation*:—*As to* (1) **Refd.** Bowker v. Woodroffe, Bowker v. Premier Drug Co. (1927), 96 L. J. K. B. 750.
148. *Add. Annotation*:—**Refd.** Bowker v. Woodroffe, Bowker v. Premier Drug Co. (1927), 96 L. J. K. B. 750.
150. *Add. Annotation*:—*As to* (1) **Consd.** Bowker v. Woodroffe, Bowker v. Premier Drug Co. (1927), 96 L. J. K. B. 750.
- 150a. ——— **Absence of recognised standard.**]—**BOWKER v. WOODROFFE, BOWKER v. PREMIER DRUG CO.**, No. 78a, *ante*.
174. *Add. Annotation*:—**Folld.** Bridges v. Griffin, [1925] 2 K. B. 233.
187. After this case insert “**Addition of colouring matter to milk.**”—*See* No. 218a, *post*.”
- 218a. ——— **Milk adulterated with colouring matter.**]—The defence that he purchased the milk with a written warranty is not available to a vendor of milk adulterated by the addition of colouring matter contrary to Milk & Dairies (Amendment) Act, 1922 (c. 54), s. 4, which neither includes such a defence nor contains any provision that it is to be read with any Act containing such a defence.—**REEMAN v. KNAPP** (1925), 134 L. T. 224; 90 J. P. 7; 42 T. L. R. 131; 24 L. G. R. 42; 28 Cox, C. C. 117, D. C.
- 243a. **What amounts to.**]—Applts., who manufactured an article called “R.’s rum & butter toffee,” supplied it to a confectioner with a warranty, & on analysis it was found to contain rum & butter, & coconut fat. On a summons against applts. for giving a false warranty there was evidence that toffee made partly with coconut fat had been sold for years as “rum & butter toffee.” The justices convicted applts.:—**Held**: the description “butter toffee” implied that no fat, except butter, was used in the manufacture, & the conviction must be affirmed.—**RILEY BROTHERS HALIFAX, LTD. v. HALLIMOND** (1927), 44 T. L. R. 238, D. C.
283. *Add. Annotation*:—*As to* (3) **Refd.** Conn v. Turnbull (1925), 89 J. P. Jo. 300.

### Part III.—Sale of Unwholesome Food.

358. *Add. Annotation*:—**Refd.** Frome United Breweries Co. v. Bath JJ., [1926] A. C. 586.

**PART II. SECT. 3, SUB-SECT. 3.—**  
**C. (a).**

110 iii. ——— *Whether property passed*  
—*Food & Drugs Act, 1908, ss. 5, 22.*]—**WALTERS v. MITTON**, [1926] S. A. S. R. 261.—**AUS.**

**PART II. SECT. 3, SUB-SECT. 3.—**  
**C. (b) iv.**

142 i. ——— *Notice not seen by purchaser—Onus of proof.*]—Where an

article of food exposed for sale bears a label indicating that it does not conform to the statutory standard of genuineness:—**Held**: the seller must prove that the contents of the label were brought to the notice of the purchaser.—**PATTERSON v. FINDLAY**, [1925] S. C. (J.) 53.—**SCOT.**

**PART II. SECT. 3, SUB-SECT. 3.—**  
**D. (b).**

*sd. Coffee.*]—K. having asked accused

for coffee, received a mixture containing at least 67 per cent. of chicory. When he asked for coffee K. expected to get an addition of chicory according to commercial usage:—**Held**: what K. got was substantially chicory containing an addition of some coffee, & the commodity was not of the nature, substance & quality demanded.—**MOODLEY v. R.** (1927), 48 N. L. R.

## Part V.—Particular Articles of Food.

- 414a. *Exposure for sale—What amounts to.*—A baker was delivering bread from an open car; after completing his round, while he was on his way back to the bakehouse, he was stopped by an inspector, who weighed the remaining loaves & found a deficiency:—*Held*: there was both an offering & an exposure for sale of the bread left in the car, since, when the journey started, it was uncertain which, if any, loaves would remain unsold, & they were taken for the purpose of being sold if customers required them.—*KEATING v. HORWOOD* (1926), 135 L. T. 29; 90 J. P. 141; 42 T. L. R. 472; 24 L. G. R. 362; 28 Cox, C. C. 198, D. C.
447. *Add. Annotation*:—*Reid*. *Preston v. Grant*, [1925] 1 K. B. 177.
465. *Add. Citation*:—27 Cox, C. C. 637.
475. *Add. Annotation*:—*Distd.* *Burrows v. Rapson* (1927), 25 L. G. R. 397.
- 475a. ——— *Grocer occasionally selling bottled milk.*—Appl. carried on business as a general grocer. He purchased for resale sterilised milk in sealed bottles, & resold about three dozen bottles a week in the condition in which the milk was received from the factory. He was not registered as a dairyman or purveyor of milk:—*Held*: there was evidence to support a conviction of applt. for carrying on the trade of a dairyman or purveyor of milk without being registered.—*BURROWS v. RAPSON* (1927), 25 L. G. R. 397, D. C.
495. *Add. Annotation*:—*Reid*. *Bridges v. Griffin*, [1925] 2 K. B. 233.
508. *Add. Citation*:—28 Cox, C. C. 7.

## Part VI.—Control in Wartime.

519. *Add. Annotation*:—*Folld.* *Brocklebank v. R.*, [1925] 1 K. B. 52.
555. *Add. Annotation*:—*Generally*, *Mentd.* *France Fenwick v. R.*, [1927] 1 K. B. 458.
558. *Add. Annotation*:—*Generally*, *Mentd.* *Inglewood Pulp & Paper Co. v. New Brunswick Electric Power Commission*, [1928] A. C. 492.
- 558a. ————*]*—The Food Controller, acting under powers conferred by Defence of the Realm Regulations, reg. 2B; requisitioned all the bacon landed on or before a certain specified date, & at the same time, acting under powers conferred by reg. 2F. requisitioned all bacon landed after such date:—*Held*: in assessing the compensation to be paid for the bacon requisitioned under reg. 2F. the arbitrator was entitled to take into consideration the fact that the Food Controller was already in possession of large stocks of bacon requisitioned under reg. 2B.—*SWIFT & CO. v. BOARD OF TRADE*, [1926] 2 K. B. 131; 95 L. J. K. B. 834; 135 L. T. 391; 42 T. L. R. 461, C. A.; *previous proceedings*, [1925] A. C. 520, H. L.
572. *Add. Annotation*:—*Reid*. *R. v. Maidstone Prison, Ex p. Maguire* (1925), 133 L. T. 710.

## PART V. SECT. 3, SUB-SECT. 4.—B.

s. i. ——— *Words descriptive of article sold.*—Where margarine was sold in a wrapper which bore, in large type, the words "Charmo Margarine," below which, in smaller type, were the words "containing a small quantity of butter," & the name "Charmo" was a duly approved addition to the word "margarine," & the seller, convicted under Butter & Margarine Act, 1907, s. 8, appealed:—*Held*: the words "containing a small quantity of butter," were merely descriptive of the article sold, & did not form part of a fancy or descriptive name which had not been approved; & conviction

quashed.—*SOMERVILLE & BARR, LTD. v. CHALMERS*, [1925] S. C. (J.) 70.—SCOT.

## PART V. SECT. 4, SUB-SECT. 3.

508 iii. ————*]*—A dairyman was convicted of selling sweet milk which was not genuine, in respect that it contained less than 3 per cent. of milk fat. The alleged deficiency in fat was established, but it was also proved that the milk had not been tampered with in any way, the deficiency being due to the milk having stood for some time in the can, & to the sample having been drawn

from a tap at the bottom after the cream had risen. No evidence was led as to the possibility or impossibility of redistributing the constituents of the milk in the can by stirring or otherwise:—*Held*: accused had failed to rebut the statutory presumption that the milk was not genuine, & the conviction was right.—*M'CALLUM v. BROOKS*, [1926] S. C. (J.) 39.—SCOT.

## PART V. SECT. 6.

s. i. *Flour—Sale in unmarked barrels—Seller not liable—Manufacturer or packer liable.*—*R. v. BEEKMAN* (1844), 2 U. C. R. 57.—CAN.



# FRAUDULENT AND VOIDABLE CONVEYANCES.

## Part I.—Conveyances Impeachable by Creditors under Statute.

126. *Add. Annotation* :—*Apld. Re Wethered, Ex p. Salaman*, [1926] Ch. 167.
133. *Add. Annotation* :—*As to (4) Consd. Re Lloyd's Furniture Palace, Evans v. The Co.*, [1925] Ch. 853.
145. *Add. Annotation* :—*Mentd. Re Debtor* (1928), 72 Sol. Jo. 860.
252. *Add. Annotation* :—*Reid. Re Lloyd's Furniture Palace, Evans v. The Co.*, [1925] Ch. 853.
293. *Add. Annotation* :—*Mentd. In the Estate of Plant, Wild v. Plant*, [1926] P. 139.
- 339a. ——— Subsequent sale to third party—*Purchaser from sheriff entitled to recover.*—
- KIDD v. RAWLINSON (1800), 2 Bos. & P. 59; 126 E. R. 1155.
- Annotations* :—*Consd. Arundell v. Phipps & Taunton* (1804), 10 Ves. 139. *Apld. Watkins v. Birch* (1813), 4 Taunt. 823; *Latimer v. Batson* (1825), 7 Dow. & Ry. K. B. 106. *Consd. Cook v. Walker* (1855), 25 L. T. O. S. 51. *Reid. Joseph v. Ingram* (1817), 1 Moore, C. P. 189; *Cromack v. Heathcote* (1820), 4 Moore, C. P. 357; *Steward v. Lombe* (1820), 1 Brod. & Bing, 506.
377. *Add. Annotation* :—*Reid. Re Lloyd's Furniture Palace, Evans v. The Co.*, [1925] Ch. 853.
395. *Add. Annotation* :—*Consd. Jagger v. Jagger*, [1926] P. 93.
396. *Add. Annotation* :—*Consd. Jagger v. Jagger*, [1926] P. 93.

### PART I. SECT. 2, SUB-SECT. 1.

a i. ———.]—Deft. provided a house for her father in which to live rent free for the rest of his life, in consideration of which he transferred a business block to her with the object of securing her for the rental value of the house & the cost of upkeep. Execution creditors of the father attacked the transfer under 13 Eliz. c. 5, & Fraudulent Preferences Act, R. S. S., 1920 (c. 204) :—*Held*: deft. held the title to the business block as trustee for her father, subject to a charge in her favour for the rent & upkeep of the house, & subject to deft.'s lien for such amount on her father's equity, the property should be available for his creditors.—*COLONIAL INVESTMENT & LOAN CO. v. HUGH*, [1925] 4 D. L. R. 108; [1925] 3 W. W. R. 157.—CAN.

d i. ———.]—*KERNLEYSIDE v. PARTRIDGE*, [1925] 3 D. L. R. 961.—CAN.

n i. ——— *Saskatchewan*.]—13 Eliz. c. 5, is in force in Saskatchewan.—*BANK OF MONTREAL v. REIS*, [1925] 3 D. L. R. 125; [1925] 2 W. W. R. 169; 19 Sask. L. R. 423.—CAN.

### PART I. SECT. 3, SUB-SECT. 1.

sa. *Assignment to cover money taken from trust account.*]—*Held*: it could not be attacked by a creditor of the assignor.—*BANK OF HAMILTON v. BLACK* (1918), 37 D. L. R. 801; 24 B. C. R. 394.—CAN.

### PART I. SECT. 3, SUB-SECT. 2.—C.

135 ii. ———.]—Circumstances in which the purchaser was estopped from setting up consideration.—*MCCARTY v. MCMURRAY* (1871), 18 Gr. 604.—CAN.

### PART I. SECT. 3, SUB-SECT. 3.—B.

157 ii. ———.]—*MULHOLLAND v. WILLIAMSON* (1868), 14 Gr.

### PART I. SECT. 3, SUB-SECT. 3.—C. (b) i.

177 i. *Exceptions to general rule—Settlement supported by other consideration—Agreement to separate—Followed by immediate separation.*]—*HILL v. HILL* (Man.), [1926] 4 D. L. R. 588.—CAN.

### PART I. SECT. 4, SUB-SECT. 1.

209 xix. ———.]—*HALIFAX BANKING CO. v. MATTHEW* (1888), 16 S. C. R. 721.—CAN.

so. *Plan to bring property into*

*COTT* (Alta.), [1927] 4 D. L. R. 1051; [1927] 3 W. W. R. 693.—CAN.

### PART I. SECT. 4, SUB-SECT. 2.—A.

224 ii. ———.]—*DOE d. STEEL v. MCGILL* (1842), 2 Ont. Dig. 2918.—CAN.

### PART I. SECT. 4, SUB-SECT. 2.—C.

t i. ———.]—The transfer of his homestead from a husband to his wife, when he was insolvent & in order to prevent his creditors from satisfying their claims therefrom :—*Held*: fraudulent.—*BARRETT v. BARON*, [1925] 1 D. L. R. 474; [1925] 1 W. W. R. 87; 19 Sask. L. R. 207; 5 C. B. R. 448.—CAN.

t ii. ———.]—The transfer by a husband to his wife of his homestead, which is exempt from seizure under execution, cannot be set aside for the benefit of the husband's creditors.—*RUSSIAN MERCANTILE CO., LTD. v. SLOBODA & SLOBODA* (Alta.), [1927] 4 D. L. R. 931; [1927] 3 W. W. R. 451.—CAN.

a i. ——— *Husband trustee for wife of property conveyed.*]—*GRAY v. FORD*, [1925] 1 W. W. R. 943; 34 B. C. R. 517.—CAN.

### PART I. SECT. 4, SUB-SECT. 5.—A.

264 iii. ———.]—*GALIBERT v. SOCIETE D'ADMINISTRATION GENERALE & BANQUE NATIONALE & CIE. GENERAL D'ENTREPRISES PUBLIQUES*, [1925] 3 D. L. R. 1206; [1925] S. C. R. 683.—CAN.

264 iv. ———.]—*CUMMINGS & ELLIS v. O'FLYNN* (1924), 34 B. C. R. 275.—CAN.

264 v. ———.]—A sale by a son to his father, made when the son was in insolvent circumstances & with the common intent & effect of giving a preference :—*Held*: void.—*HUNTER v. LAWRIE*, [1925] 1 D. L. R. 658; [1925] 1 W. W. R. 411; 35 Man. L. R. 126.—CAN.

264 vi. ———.]—*ENFIELD REALTY CO. v. PETERSON* (Sask.), [1926] 2 D. L. R. 1005.—CAN.

264 vii. ———.]—*CANADIAN OIL CO., LTD. v. JAMIESON* (Sask.), [1926] 2 D. L. R. 1046.—CAN.

### PART I. SECT. 4, SUB-SECT. 5.—C.

sd. *Under guarantee—Voluntary conveyance set aside.*]—*ONTARIO WIND ENGINE & PUMP CO. v. BOBO* (Alta.), [1926] 1 D. L. R. 57; [1926] 1 W. W. R. 45.—CAN.

### PART I. SECT. 4, SUB-SECT. 6.—A.

se. *Under sale by parol.*]—*Held*: the sale was void as against subsequent creditors.—*WILLIAMS v. RAPELJE* (1880), 8 C. P. 186.—CAN.

### PART I. SECT. 4, SUB-SECT. 7.

st. *Conveyance to wife—Onus of proof—Discharge of onus.*]—If land is transferred by a husband to his wife, who *bond fide* works the land on her own account, a person alleging that the whole transaction, including the working of the land, is colourable only must satisfy the ct. by showing facts & circumstances which go beyond raising a mere suspicion.—*JOHNSTONE LUMBER CO. v. HAGER*, [1924] 1 D. L. R. 693; 1 W. W. R. 389; 20 Alta. L. R. 286.—CAN.

### PART I. SECT. 4, SUB-SECT. 11.

418 i a. ———.]—The assignment of a lease by the lessee to a trustee, for a *bond fide* creditor of the assignor, with the intention of thereby evading the creditors of the lessee, is not a fraudulent assignment.—*DOE d. BIGGARD v. MILLARD* (1839), 1 Ont. Dig. 480.—CAN.

418 xiii. ———.]—*SHAVER v. GOLDHAR*, [1925] 2 D. L. R. 1216.—CAN.

sj. *Mortgage to obtain loan to pay creditor—Presumption that mortgage* *ILLER v. OSIER*, [1925] 4 D. L. R. 692.—CAN.

sk. *What constitutes preference—Security given to creditor—Debtor insolvent.*]—W., secretary-treasurer of pltf. municipality, misappropriated funds. At his request deft. sent him a cheque to pay off a mtge., & in repayment sent deft. his own cheque, which was refused by the bank. He also received from deft. a cheque to purchase an interest in land, which he deposited to the credit of the municipality. He notified deft. & assigned him securities to cover the two cheques. Within sixty days of the assignments pltf. began action to set them aside as preferential :—*Held*: under Assignments Act, R. S. S. 1909, then in force, the assignments to deft. were void as against pltf. & should be set aside.—*MOUNT HOPE RURAL MUNICIPALITY v. FINDLAY* (1922), 66 D. L. R. 660; 15 Sask. L. R. 40; [1921] 3 W. W. R. 658.—CAN.

sl. *Who is a "creditor"—Agent making advance out of funds of principal—No pressure by principal for security.*]—*MOUNT HOPE RURAL MUNICIPALITY v. FINDLAY* (1922), 66 D. L. R. 660; 15 Sask. L. R. 40; [1921] 3 W. W. R. —CAN.

422a. —.].—*Re LLOYD'S FURNITURE PALACE, LTD., EVANS v. THE CO., No. 428a, post.*

428a. — Issue of debentures to one creditor— Issue postponed for benefit of company.]— Where a co. agrees to issue debentures to a creditor as security for past & future loans, but delays issuing them for a considerable time in order to retain its credit with its other creditors, the debentures are not voidable under 13 Eliz. c. 5, when the co. goes into liquidation.

If, as appears to be established by the

authorities, a present fraudulent intention to prefer one creditor over the others is not sufficient under the statute to avoid a conveyance to that creditor, unless the debtor is himself in some way benefited by the conveyance, I am unable to see how the conveyance is avoided merely because the debtor always had the intention to prefer the creditor at some time or another (*ROMER, J.*).—*Re LLOYD'S FURNITURE PALACE, LTD., EVANS v. THE CO., [1925] Ch. 853; 95 L. J. Ch. 140; 134 L. T. 241; [1926] B. & C. R. 29.*

## Part II. Conveyances Impeachable by Subsequent Purchasers under Statute.

547. *Add. Annotation:—Mentd. Cayzer, Irvine v. Board of Trade, [1927] 1 K. B. 269.*

561. *Add. Annotation:—Mentd. Jones v. Waring & Gillow, [1926] A. C. 670.*

594. *Add. Annotation:—As to (1) Reid. Bird v. I. R. Comrs. (1924), 12 Tax Cas. 785.*

604a. *Settlement with uses in remainder.]—Held fraudulent against a purchaser.—ANON (1606), Lane, 22; 145 E. R. 267.*

619a. —.].—*HEISLER v. CLARKE (1709), 2 Eq. Cas. Abr. 46; 22 E. R. 41, L. C.*

### PART I. SECT. 5, SUB-SECT. 1.

o. Delete this case.

i. —.].—*On crops raised by vendee.*—If land is transferred by a husband to his wife, who *bona fide* works the land on her own account, even if the transfer is one that as against creditors can be set aside, the wife is entitled to the crops raised under her operations.—*JOHNSTONE LUMBER CO. v. HAGER, [1924] 1 D. L. R. 693; 1 W. W. R. 389; 20 Alta. L. R. 286.—CAN.*

ii. —.].—The fact that a sale of land is found to be fraudulent & voidable as against execution creditors of the vendor, does not entitle them to seize crops grown thereon by the vendee, although the rule is otherwise if the transaction is shown to be a mere sham.—*BANQUE CANADIENNE NATIONALE v. TENCHA, [1927] 4 D. L. R. 665.—CAN.*

### PART I. SECT. 5, SUB-SECT. 2.—A.

sn. *Not receiver of company.—Alleged fraudulent preference made before receiver appointed.*—*FOX v. NIPissing RY. Co., GOODERHAM v. NIPissing RY. Co. (1881), 29 Gr. 11.—CAN.*

### PART I. SECT. 5, SUB-SECT. 2.—D. (a).

sp. *Secured creditor.*—If the security of a secured creditor is sufficient to satisfy his claim in full he cannot bring action under Fraudulent Preferences Act, R. S. S., 1920 (c. 204).—*BARRETT v. BARON, [1925] 1 D. L. R. 474; [1925] 1 W. W. R. 87; 19 Sask. L. R. 207; 5 C. B. R. 448.—CAN.*

sq. *S. P. McLEAN v. RATEKIN (Sask.), [1926] 4 D. L. R. 174; [1926] 2 W. W. R. 671.—CAN.*

st. *Not creditor advising conveyance.*—*BLACKLEY v. KENNY (1889), 16 A. R. 522.—CAN.*

### PART I. SECT. 5, SUB-SECT. 2.—D. (c).

m i. —.].—Pltf. suing for a tort, such as slander or malicious prosecution, is not a creditor of debt. until he has recovered judgment in the action, & has no status to impeach a conveyance as fraudulent against him, even though it was made because of the threatened action.—*FISHER v. KOWSLOWSKI (1913), 25 W. L. R. 417; 5 W. W. R. 91; 13 D. L. R. 785; 23 Man. L. R. 769.—CAN.*

m ii. —.].—A judgment creditor may in his own name maintain an action to set aside a conveyance as fraudulent & void, without having a lien by virtue of an execution in the hands of the sheriff.—*BROWN v. WEIL, [1927] 4 D. L. R. 218; 61 O. L. R. 55.—CAN.*

sw. *Judgment for alimony.*—Where a wife, having obtained a judgment for permanent alimony, brought an action to have a release executed by the husband set aside & the transaction declared preferential, fraudulent, & void, under Fraudulent Conveyances Act, R. S. O., 1914 (c. 105):—*Held: even if pltf. was not her husband's creditor she could nevertheless bring an action, for under sect. 3 "creditors & others" were protected.—SHEPARD v. SHEPARD, [1925] 2 D. L. R. 897; 56 O. L. R. 555; affg., [1924] 3 D. L. R. 566.—CAN.*

### PART I. SECT. 6, SUB-SECT. 2.—B.

d (p. 220) i. —.].—*Unless execution creditor.*—An execution creditor, who sues to set aside a transfer by his debtor on the ground that it is fraudulent against creditors, is not obliged to sue on behalf of all other creditors of debtor as well as himself. Origin of

the distinction in this respect between execution creditors & simple contract creditors reviewed.—*ST. GREGOR MERT CANTILE CO. v. HALBACH & BANK OF MONTREAL, [1927] 1 D. L. R. 761; [1927] 1 W. W. R. 247; 21 Sask. L. R. 315.—CAN.*

### PART I. SECT. 6, SUB-SECT. 2.—D.

h i. —.].—*Semble: in an action under Fraudulent Preferences Act, R. S. S., 1920 (c. 204), the onus is always on pltf. of proving debtor's insolvency.—MCLEAN v. RATEKIN (Sask.), [1927] 4 D. L. R. 739; [1927] 3 W. W. R. 444.—CAN.*

o (p. 223) i. —.].—In an action to set aside as fraudulent against creditors a transfer between sisters:—*Held: the corroborative evidence necessary to meet the prima facie case which pltf. established by showing a transfer between near relatives in circumstances of suspicion, had been supplied.—LUNDQUIST v. PULS, [1925] 3 D. L. R. 84; [1925] 1 W. W. R. 834.—CAN.*

o (p. 223) ii. —.].—*KUSHNER v. YASINKA (Sask.), [1927] 4 D. L. R. 697; [1927] 3 W. W. R. 328.—CAN.*

s (p. 223) i. —.].—*KNOX v. SHAW, [1927] 3 D. L. R. 1185; [1927] 2 W. W. R. 494; 31 Sask. L. R. 593.—CAN.*

s (p. 223) ii. —.].—*BROWN v. WEIL, [1927] 4 D. L. R. 218; 61 O. L. R. 55.—CAN.*

s (p. 223) iii. —.].—*KUSHNER v. YASINKA (Sask.), [1927] 4 D. L. R. 697; [1927] 3 W. W. R. 328.—CAN.*

### PART II. SECT. 3, SUB-SECT. 2.—B. (a).

572 i. *Necessity for valuable consideration.*—*DON PROUDFOOT v. MCCRAE (1842), 6 O. S. 502.—CAN.*

## Part III. Conveyances Impeachable from Position of Parties.

**807a.** —.].—A conveyance by a weak man for a small consideration set aside.—*CLARKSON v. HANWAY* (1723), 2 P. Wms. 203; 24 E. R. 700, L. C.

*Annotations* :—*Consd.* *Cray v. Mansfield* (1750), 1 Ves. Sen. 379. *Refd.* *Hawes v. Wyatt* (1700), 2 Cox, Eq. Cas. 263; *Blachford v. Christian* (1829), 1 Knapp. 73.

**831a. Deed not fully explained to donor.]—***PHILLIPSON v. KERRY* (1863), 32 Beav. 628; 9 L. T. 40; 11 W. R. 1034; 55 E. R. 247.

*Annotation* :—*Apld.* *Ellis v. Ellis* (1909), 26 T. L. R. 166.

**834a.** —.].—A voluntary gift will be set aside when the relations between the donor & the donee have at, or shortly before, the execution of the gift been such as to raise a presumption that the donee had influence over the donor, unless the donee discharges the *onus* of proving that the gift was the spontaneous act of the donor, acting under circumstances which enabled the exercise of an independent will. Independent legal advice is not the only way in which the presumption can be rebutted; & the presumption may be rebutted even if the advice, when given, was not taken.—*INCHE NORIAH BINTE MOHAMED TAHIR v. SHAIK ALLIE BIN OMAR BIN ABDULLAH BAHASHUAN* (1928), 45 T. L. R. 1, P. C.

**844. Add. Annotation** :—*Consd.* *Inche Noriah Binte Mohamed Tahir v. Shaik Allie Bin Omar Bin Abdullah Bahashuan* (1928), 45 T. L. R. 1.

**844a.** —.].—*GREENLAW v. KING* (1841), 10 L. J. Ch. 129; 5 Jur. 18, L. C.

*Annotations* :—*Refd.* *Llewellyn v. Badeley* (1842), 1 Hare, 527; *Walsingham v. Goodricke* (1843), 3 Hare, 122; *Beaden v. King* (1852), 9 Hare, 499; *Boyd v. Barker* (1859), 28 L. J. Ch. 445; *Guest v. Smythe* (1870), 5 Ch. App. 553, n.; *Fenner v. L. & S. E. Ry.* (1872), L. R. 7 Q. B. 767.

**845. Add. Annotation** :—*Consd.* *Inche Noriah Binte Mohamed Tahir v. Shaik Allie Bin Omar Bin Abdullah Bahashuan* (1928), 45 T. L. R. 1.

**895a.** —.].—If a legatee agrees to sell to the exor. of the will his legacy for an annuity, the burden will lie on the exor. to show that there was no unfairness in the transaction.—*Re BIEL'S ESTATE, GRAY v. WARNER* (1873), L. R. 16 Eq. 577; 42 L. J. Ch. 556; 28 L. T. 835; 21 W. R. 808.

*Annotation* :—*Refd.* *Harloe v. Harloe* (1875), 44 L. J. Ch. 512.

**909a.** —.].—*DEANE v. RASTRON* (1792), 1 Anst. 64; 145 E. R. 801.

### PART III. SECT. 1.

**i.** —.].—*Grantor without business experience.*—*Held*: the instruments were void in equity.—*EDINBURGH LIFE ASSURANCE CO. v. ALLEN* (1871), 18 Gr. 425.—*CAN.*

**p i.** —.].—*Grant in consideration of maintenance for life.*—A woman, 69 years old, transferred land to defts. in consideration of her maintenance for life, which transfer the Supreme Ct. of Tasmania on her death set aside as procured by undue influence.—*Held*: the transaction was properly set aside.—*WATKINS v. COOMBES* (1922), 30 C. L. R. 180.—*AUS.*

**p ii.** —.].—*& illiterate.*—Conveyances set aside on grounds of improvidence, & want of proper professional advice.—*SHANAGAN v. SHANAGAN* (1884), 7 O. R. 209.—*CAN.*

### PART III. SECT. 2, SUB-SECT. 1.

**e (p. 259) i.** —.].—*PLAETZER v. RAYMOND* (Ont.), [1927] 2 D. L. R. 389; 8 C. B. R. 181.—*CAN.*

### PART III. SECT. 2, SUB-SECT. 2.—M.

**sz. Fiancée & fiancé's father.**—Where shortly after the death of assured the beneficiary, his fiancée, assigned to his father, without consideration, all her interest in the policy & the benefits thereof.—*Held*: in the circumstances she should be declared entitled to the insurance money.—*REDMOND v. BOUEY* (Man.), [1927] 1 D. L. R. 1057; [1927] 1 W. W. R. 386.—*CAN.*

### PART III. SECT. 3, SUB-SECT. 1.

**ri.** —.].—Pltf. purchased land from

deft. Subsequently pltf.'s husband having been convicted of a crime & sentenced to imprisonment, deft. induced pltf. to retransfer the land to him.—*Held*: pltf. having been imposed on, & having conveyed the land for less than the real value thereof & without independent advice, the transfer should be set aside.—*COLP v. HUNTER* (1911), 1 W. W. R. 314.—*CAN.*

### PART III. SECT. 3, SUB-SECT. 2.—A.

**935 i. Principles of relief—Presumption of incapacity.**—Expectant heirs & reversioners need to be protected against the consequences of their own improvidence in dealing with designing men.—*MORLEY v. TOTTEN* (1857), 6 Gr. 176.—*CAN.*



## FRIENDLY SOCIETIES.

### Part III.—Unregistered Societies.

17. . *Annotation* :—*As to (S) Reid. Greenberg v. Cooperstein*, [1926] Ch. 657.

### Part IV.—Collecting Societies.

85. *Add. Annotation* :—*Apld. Bell v. Harker* (1927), 91 J. P. 189.

—.]—Industrial Assurance Act, 1923 (c. 8), s. 26 (1), applies whether the transaction involves transfer of the whole membership or interest of the assured, or of only one

policy out of several, & whether the transferee is or is not already a member of, or a person assured with, the new society.—*BELL v. HARKER*, [1928] 1 K. B. 368; 97 L. J. K. B. 155; 138 L. T. 226; 91 J. P. 189; 44 T. L. R. 33; 25 L. G. R. 505; 28 Cox C. C. 451, D. C.

### Part XII.—Officers.

- 109a. *Agent—Termination of employment—Under amended rules.*—Pltf. was appointed an agent of defts., a friendly society, whose rules, though subject to alteration, provided at that time for the retention of agents in office so long as their conduct was satisfactory. After pltf. reached the age of sixty-five defts. altered their rules, by providing that agents

should be compulsorily retired at the age of sixty-five, & defts. terminated pltf.'s employment :—*Held* : as the rules, on the face of them, were alterable, pltf. was not entitled to a declaration that defts. were not entitled to terminate his employment.—*PAGE v. LIVERPOOL VICTORIA FRIENDLY SOCIETY* (1927), 43 T. L. R. 712, C. A.

### Part XIII.—Membership.

133. *Add. Annotation* :—*Apld. R. v. Lancashire JJ., Ex p. Tyrer* [1925] 1 K. B. 200.

- 175a. *Insurance of child for more than statutory amount.*—*Resps.*, an industrial assurance co., issued three policies of insurance in respect of the life of a child, for sums which aggregated more than the statutory maximum, though each was for a sum less than that maximum. Each policy contained a provision that no payment would be made which either alone or in conjunction with other such payments exceeded the statutory maximum. On a charge of having committed an offence within Industrial Assurance Act, 1923 (c. 8), s. 39 (2) :—*Held* : (1) the words in sect. 4 (1) "relating to payments on the death of children" were merely descriptive of the group of sects. in the 1896 Act headed "Payments on death of children," & did not limit

those sects. in their application to industrial assurance cos. to payment only, but included the provisions as to insurance; (2) the above provision in each policy had no legal effect at all, & it could not be contended that in fact the co. did not insure for more than the statutory amount; (3) the proceedings were in time because, for this purpose, the insurance co. did not insure from the time only when the policies were taken out, but (*LORD HEWART, C.J.*) either insured on every occasion when a premium was paid, or (*AVORY, J.*) continued to insure during the time that the assured was not in default & the policies were in force.—*HARKER v. BRITANNIC ASSURANCE CO., LTD.*, [1928] 1 K. B. 766; 97 L. J. K. B. 359; 138 L. T. 395; 91 J. P. 51; 44 T. L. R. 243; 72 Sol. Jo. 121; 26 L. G. R. 136; 28 Cox, C. C. 475, D. C.

### Part XVIII.—Disputes.

277. *Add. Annotation* :—*Meptd. Palmer v. Crone*, [1927] 1 K. B. 804.

PART XIII. SECT. 4, SUB-SECT. 2.—C.  
sa.

under Charitable Associations Act, R. S. M., 1913 (c. 27)—*Validity of bye-law as to nomination.*—*TREGBALD*

*v. WINNIPEG MUSICIANS ASSOCN.*, [1927] 1 D. L. R. 57; 36 Man. L. 163; [1926] 3 W. W. R. 337.—CAN.

## Part XIX.—Offences, Penalties and Proceedings.

322. *Add. Annotation* :—*Consd. Fishwick v. Gyani*, [1925] 1 K. B. 617.

## Part XXII.—Dissolution.

430. *Add. Annotations* :—*As to* (1) *Reid. I. R. Comrs. v. Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. v. Medical*

*Charitable Soc. for West Riding of Yorkshire* (1926), 42 T. L. R. 612; *I. R. Comrs. v. Yorkshire Agricultural Soc.*, [1928] 1 K. B. 611.

### PART XX. SECT. 3.

*so. Right to secede.*—In the absence of statutory provisions there is no power in a branch lodge of a friendly society to secede from the order to which it belongs, unless the power is expressly conferred by the rules of the society. *Semble*: even if the rules give a right to secede, there is no practical method of doing so, unless machinery is provided for the purpose.

—*INDEPENDENT ORDER OF ODDFELLOWS v. INDEPENDENT ORDER OF ODDFELLOWS BON ACCORD LODGE No. 11*, [1901–3] S. A. L. R. 62.—AUS.

*ad. Effect of secession—On property & funds.*—A mere right to secede does not confer a power in the seceding

lodge to take away the funds constituted under the rules of the order. A rule of a friendly society providing that a lodge which is expelled shall forfeit its property to the ruling authority of the society is not *ultra vires*.—*INDEPENDENT ORDER OF ODDFELLOWS v. INDEPENDENT ORDER OF ODDFELLOWS BON ACCORD LODGE No. 11*, [1901–3] S. A. L. R. 62.—AUS.

*st. Secession by Scottish branch of English society—Refusal to grant certificate of secession—Jurisdiction of Scottish courts.*—The Scottish branch of a friendly society, whose registered office was in England but whose rules had been recorded in Scotland, resolved

to secede from the parent body, & applied to the secretary of the society for a certificate of secession in order that the branch might be registered as a separate society in Scotland. The certificate having been refused, the branch brought a petition, under Ct. of Session (Scotland) Act, 1868 (c. 100), s. 91, for an order on the society to grant a certificate:—*Held*: the ct. had jurisdiction to entertain the petition, & procedure by way of a summary petition under sect. 91 was a convenient & practical method of invoking the aid of the ct.—*SONS OF TEMPERANCE FRIENDLY SOCIETY*, [1926] S. C. 418.—SCOT.

## GAME.

### Part IV.—Persons having Rights over Game.

76. *Add. Annotation* :—**Reid.** Swayne *v.* Howells (1926), 43 T. L. R. 14.

### Part VII.—Gamekeepers.

354. *Add. Annotation* :—**Reid.** Barnard *v.* Evans, [1925] 2 K. B. 794.

### Part VIII.—Licences.

387. *Add. Annotation* :—**Reid.** Clark *v.* Westaway, [1927] 2 K. B. 597.



# GAMING AND WAGERING.

## Part I.—Gaming and Wagering Contracts Generally.

1. *Add. Citation* :—69 Sol. Jo. 824.
  2. *Add. Annotations* :—*Consd. Ellesmere v. Wallace* (1928), 44 T. L. R. 798. *Apld. Weddle, Beck v. Hackett* (1928), 45 T. L. R. 67. *Refd. Kennedy v. Thomassen* (1928), 45 T. L. R. 122.
  13. *Add. Annotations* :—*Folld. Barnett v. Sanker* (1925), 41 T. L. R. 660. *Consd. Ironmonger v. Dyne* (1928), 44 T. L. R. 497. *Refd. Cooper v. Stubbs*, [1925] 2 K. B. 753. *Weddle, Beck v. Hackett* (1928), 45 T. L. R. 67.
  - 15a. *Agreement to refer betting disputes to arbitration.*—Where an agreement to refer betting disputes to a particular arbitrator is an integral part of the bargain by which the bets are made, the agreement to refer is itself a contract by way of gaming or wagering & is unenforceable.—*JOE LEE, LTD. v. DALMENY (LORD), SAME v. TATTERSALL'S COMMITTEE*, [1927] 1 Ch. 300; 96 L. J. Ch. 174; 136 L. T. 375; 43 T. L. R. 119; 71 Sol. Jo. 20.
  - 15b. *Contract between Jockey Club & racehorse owner.*—A contract between the Jockey Club & a racehorse owner that he will pay an entrance fee for the privilege of running a horse in a race for a money prize, & that if the horse does not run, he will forfeit the entrance fee or part of it, is a contract by way of wagering, & is unenforceable by reason of Gaming Act, 1845 (c. 109), s. 18.—*ELLESMERE (LORD) v. WALLACE* (1928), 44 T. L. R. 798; 72 Sol. Jo. 629; *revsd.* (1929), 167 L. T. Jo. 114, C. A.
  - 15c. *Transactions in foreign currencies.*—*IRON-MONGER & CO. v. DYNE* (1928), 44 T. L. R. 497, C. A.
- Annotation* :—*Consd. Weddle, Beck v. Hackett* (1928), 45 T. L. R. 67.
26. *Add. Annotation* :—*Mentd. James v. British General Insce.*, [1927] 2 K. B. 311.
  52. *Add. Annotation* :—*Refd. Ellesmere v. Wallace* (1928), 44 T. L. R. 798.
  53. *Add. Annotation* :—*Refd. Ellesmere v. Wallace* (1928), 44 T. L. R. 798.
  55. *Add. Annotation* :—*Distd. Burrell v. Leven* (1926), 42 T. L. R. 407.
  58. *Add. Annotations* :—*Distd. Burrell v. Leven* (1926), 42 T. L. R. 407. *Refd. Richardson v. Moncrieffe* (1926), 43 T. L. R. 32.
  - 62a. ———.—[An agreement by debtor to pay a debt resulting from a betting transaction :—*Held* : to be enforceable, although obtained under the threat that, notwithstanding ct. proceedings were pending, he would be reported to Tattersall's.—*BUXTON v. CUMMING* (1927), 71 Sol. Jo. 232.
  64. *Add. Annotation* :—*Distd. Hyde v. Tyler* (1926), 42 T. L. R. 442.
  - 64a. ———.—[Pltf. backed a horse with debt. for £10 & the horse won the race. There was subsequently a dispute as to whether the result of the betting was payable at 100 to 1 or at 33 to 1. The parties agreed to refer the question to Tattersall's Committee. The Committee decided that the amount payable was £1,000, & that it was to be paid within seven days. In an action to recover the £1,000 pltf. alleged that debt. had agreed to abide by the decision of the Committee :—*Held* : as the parties only referred to Tattersall's Committee the question whether the bet was at 100 to 1 or at 33 to 1, & as there was no further agreement by debt. for good consideration to pay such sum as the Committee might find to be payable, the action failed.—*HYDE v. TYLER* (1926), 42 T. L. R. 652; 70 Sol. Jo. 856, C. A.
  70. *Add. Annotation* :—*Apld. Hyde v. Tyler* (1926), 42 T. L. R. 442.
  - 70a. ———.—*Agreement to compromise action.*—A mere agreement to compromise an action brought for a gaming debt is not sufficient consideration on which to found an action on the agreement.—*BURRELL & SON v. LEVEN* (1926), 42 T. L. R. 407.
  130. *Add. Annotation* :—*Mentd. Campbell v. Pollak*, [1927] A. C. 732.
  131. *Add. Annotation* :—*Mentd. Campbell v. Pollak*, [1927] A. C. 732.
  171. *Add. Annotation* :—*Mentd. Cayzer, Irvine v. Board of Trade*, [1927] 1 K. B. 269.

### PART I. SECT. 1.

1 i. *Distinguished from speculative transactions.*—The mere fact that a transaction is speculative does not make it a wagering one.—*KANWAR BHAN-SUKHA NAND v. GANPAT RAI-RAM JIWAN* (1926), 1 L. L. R. 7 Lah. 442.—IND.

10 i. *Severable contract.*—Pltf. & debt. entered into an agreement whereby pltf. was to train debt.'s horses for trotting, & debt. was to pay £2 per week for each horse, give pltf. one-fourth of stakes won, & further, when a horse was in a race & had a reasonable chance of winning, debt. was to put £5 on the totalisator & pay to pltf. any dividend received :—*Held* : (1) an agreement by an owner to pay to his trainer one-fourth of the stakes won was valid & enforceable; (2) the term of the contract whereby investment was to be made on the totalisator by debt. in pltf.'s interest was unlawful; (3) the whole contract was not rendered

unlawful thereby, the promises being independent, & the lawful promises being capable of enforcement.—*WILSON v. HOGARTH*, [1927] N. Z. L. R. 332.—N. Z.

—*WILSON v. HOGARTH*, No. 10 i, ante.—N. Z.

sa. *Agreement for payment of differences—Arising out of wagering contract.*—Where a forward contract for the purchase & sale of goods is void on the ground of wagering under Contract Act, s. 30, a subsequent cross contract, as a result of which the differences payable under the original wagering contract are settled, is void under Bombay Act III. 1865, s. 1.—*JIVANCHAND GAMBHIRMAL, ETC. v. LAXMINARAYAN GANESHRAM* (1925), 1 L. R. 49 Bom. 689.—IND.

sb. *Agreement by racehorse owner to pay trainer share of stakes won.*—*WILSON v. HOGARTH*, No. 10 i, ante.—N. Z.

### PART I. SECT. 4, SUB-SECT. 2.

h i. ———.—[Where debt. sold for pltf. horses won by pltf. at a raffle, & received the purchase money :—*Held* : he could not refuse to pay it over, on the ground that pltf. had obtained the horses by gambling.—*JAMIESON v. SHERWOOD* (1856), 14 U. C. R. 282.—CAN.

### PART I. SECT. 6, SUB-SECT. 1.

181 iii. ———.—[Where during a game of dice cheques are given by one player to another player for money advanced to enable the former to continue the game, such cheques will be deemed to have been given for an illegal consideration.

If in an action brought on such cheques the evidence discloses the illegal consideration the trial judge should dismiss the action, even though the illegality has not been pleaded.—*GOGGINS v. MORRISON*, [1925] 2 D. L. R. 1203; [1925] 2 W. W. R. 75.—CAN.

189. *Add. Annotation*:—*Refd.* Hill v. Fox (1858), 31 L. T. O. S. 118.
- 205a. ———.]—Pltf. & other players of chemin de fer took it in turn to be croupier or banker. Deft., one of the players, bought counters to stake, & at the end of the game, having lost £500, he gave a cheque for that amount to pltf. in payment of what he had lost to pltf. &/or other persons. In an action on the cheque:—*Held*: a payment to a winner at gaming, or to a person who accepted payment for winners, in the form of a cheque was void & unenforceable, & the action failed.—*RICHARDSON v. MONCRIEFFE* (1926), 43 T. L. R. 32.
224. *Add. Annotation*:—*As to* (1) *Refd.* *Re* Wilson, *Ex p.* Salaman v. Keith, Prowse (1925), 133 L. T. 814.
226. *Add. Annotation*:—*Refd.* Falcon v. Famous Players Film Co. (1925), 42 T. L. R. 91.
229. *Add. Annotation*:—*Refd.* Falcon v. Famous Players Film Co. (1925), 42 T. L. R. 91.
239. *Add. Annotation*:—*Folld.* Soc. Anon. des Grands Etablissements de Touquet Paris-Plage v. Baumgart (1927), 96 L. J. K. B. 789.
240. *Add. Annotation*:—*Refd.* Soc. Anon. des Grands Etablissements de Touquet Paris-Plage v. Baumgart (1927), 96 L. J. K. B. 789.
243. *Add. Annotation*:—*Folld.* Soc. Anon. des Grands Etablissements de Touquet Paris-Plage v. Baumgart (1927), 96 L. J. K. B. 789.
245. *Add. Annotation*:—*Folld.* Soc. Anon. des Grands Etablissements de Touquet Paris-Plage v. Baumgart (1927), 96 L. J. K. B. 789.
- 245a. ———.]—Where money is lent in a foreign country for the purposes of gaming & gaming in that country is not illegal, & cheques payable in England are given for the money lent, pltf. can ignore the security & sue as for money lent to deft.—*SOCIÉTÉ ANONYME DES GRANDS ÉTABLISSEMENTS DE TOUQUET PARIS-PLAGE v. BAUMGART* (1927), 96 L. J. K. B. 789; 136 L. T. 799; 43 T. L. R. 278.

## Part II.—Games, Gaming and Gaming Houses.

254. *Add. Annotation*:—*As to* (2) *Consd.* R. v. Kirby, Parker & Patrick (1927), 20 Cr. App. Rep. 12.
- 255a. ———.]—The questions whether a house is used for unlawful gaming within sect. 4 of the above Act, & whether a game is unlawful within Betting Act, 1853 (c. 119), s. 3, are for the judge, & not the jury.—*R. v. KIRBY, PARKER & PATRICK* (1927), 20 Cr. App. Rep. 12, C. C. A.
260. *Add. Annotations*:—*As to* (4) *Refd.* Richardson v. Moncrieffe (1926), 43 T. L. R. 32.
- Generally, *Refd.* R. v. Berg, Britt, Carré & Lummies (1927), 20 Cr. App. Rep. 38.
261. *Add. Annotation*:—*Refd.* Richardson v. Moncrieffe (1926), 43 T. L. R. 32.
275. *Add. Annotation*:—*Folld.* Bennett v. Ewens, [1928] 2 K. B. 510.
278. *Add. Annotations*:—*As to* (1) *Folld.* Bennett v. Ewens, [1928] 2 K. B. 510. *As to* (2) *Consd.* R. v. Kirby, Parker & Patrick (1927), 20 Cr. App. Rep. 12.
286. *Add. Annotation*:—*Appld.* R. v. Berg, Britt, Carré & Lummies (1927), 20 Cr. App. Rep. 38.

### PART II. SECT. 1, SUB-SECT. 1.

252 i. ———.]—*Prizes provided out of admission money.*—A person hired a hall for one night, & another hall for two nights, & advertised that whist drives, open to the public on payment of one shilling for admission, would be held in the halls on those nights. A large number of people attended, & prizes were awarded to the successful players. The purchase of the prizes was defrayed out of the admission money, any balance over being retained by the promoter:—*Held*: (1) the playing of progressive whist was gaming, in view of the facts that the element of chance predominated in the game, & that the prizes were derived from the admission money, & it was immaterial whether the proceedings were or were not detrimental to the morals of the community; (2) accused had managed, conducted, or carried on gaming in the premises, although his operations had been restricted to three isolated occasions.—*BUNTON v. MILLER*, [1926] S. C. (J.) 120.—*SCOT*.

### PART II. SECT. 1, SUB-SECT. 2.—E.

b i. ———.]—*R. v. ARNOLD*, [1927] 4 D. L. R. 206; 48 Can. Crim. Cas. 101; 60 O. L. R. 582.—*CAN.*

f i. ———.]—*Held*: a machine known as the "Caille Victory Vendor" was one to which the prohibition in Gaming Machines (Scotland) Act, 1917 (c. 23), s. 1 (1), applied.—*ULRVI v. MILLER*, [1927] S. C. (J.) 87.—*SCOT*.

### PART II. SECT. 2, SUB-SECT. 1.

sd. *General rule.*—Where a game as played on premises encourages an

indulgence in all classes of the community of the propensity to gamble, & is injurious to public morals & a common law nuisance, the premises are a common gaming house.—*DAWSON v. SINCLAIR*, [1926] N. Z. L. R. 721.—*N.Z.*

284 i. *Proprietary club*—*Need not be open to public.*—A common gaming house is one in which a large number of persons are invited habitually to congregate for the purpose of gaming, & it makes no difference that its use is restricted to subscribers & members of a club, & it is not open to all persons desirous of using it.—*Re CHINNIAH* (1923), 1 L. L. R. 47 Mad. 426.—*IND.*

284 ii. ———.]—*In which poker played.*—An incorporated co., the proprietor of a "club" in which membership was secured by payment of a periodical fee, & where stud poker was played, the players being required to buy cards from the "club" & gum, fruit, candy or soft drinks being supplied on each sale of cards:—*Held*: to have been properly convicted for keeping a common gaming house.—*R. v. TRAINMEN'S CLUB* (1926), 45 Can. Crim. Cas. 231; 20 Sask. L. R. 461; [1926] 1 W. W. R. 830.—*CAN.*

g i. ———.]—On a prosecution for keeping a common gaming house:—*Held*: premises on which were found cards, poker chips, dice, a round cloth-covered table & a "punch board," were "provided with any means or contrivance for unlawful betting or gaming" within Criminal Code, s. 986.—*R. v. COV*, [1925] 3 W. W. R. 538; 44 Can. Crim. Cas. 119.—*CAN.*

keeping of a "multiseller" for gain:—*Held*: to render the place in which it was kept & where it was "played" by persons resorting thereto, a common gaming house.—*R. v. ELASZ* (1926), 45 Can. Crim. Cas. 257; 20 Sask. L. R. 605; [1926] 2 W. W. R. 368.—*CAN.*

sf. *Under Gaming Act, 1908, s. 4.*—*WEATHERED v. FITZGIBBON*, [1925] N. Z. L. R. 331.—*N.Z.*

### PART II. SECT. 2, SUB-SECT. 2.

h i. ———.]—*Acting as "banker" but not residing in common gaming house.*—*Held*: not to justify a conviction as keeper of the house.—*R. v. MARK* (1924), 43 Can. Crim. Cas. 368.—*CAN.*

h ii. ———.]—*Under Gaming Act, 1908, s. 4.*—*WEATHERED v. FITZGIBBON*, [1925] N. Z. L. R. 331.—*N.Z.*

### PART II. SECT. 2, SUB-SECT. 3.

g i. ———.]—Conviction for allowing gambling on premises for which there was a retail liquor licence quashed, the holder of the licence not having knowledge of the gambling.—*R. v. WHELAN* (1908), 9 W. L. R. 424.—*CAN.*

### PART II. SECT. 2, SUB-SECT. 4.

a i. ———.]—*Invalid—Effect.*—A conviction for keeping a common gaming house may be sustained, even though the search warrant, under which entry was made, was defective.—*R. v. PIDGEON* (1926), 45 Can. Crim. Cas. 233; 37 B. C. R. 309; [1926] 3 W. W. R. 765.—*CAN.*

## Part III.—Betting and Betting Houses.

310. After this case add "Agreement to collect betting debts—Contrary to public policy."—See ACTION, p. 9, No. 599a, ante."

326. Add. Annotation:—Reid. *Everton v. Walker* (1927), 137 L. T. 594.

330. Add. Annotation:—Consd. *Everton v. Walker* (1927), 137 L. T. 594.

358. Add. Annotations:—As to (4) Reid. *Clark v. Westaway*, [1927] 2 K. B. 597. As to (5) Reid. *Clark v. Westaway*, [1927] 2 K. B. 597. Generally, Reid. *Schneiders v. Abrahams*, [1925] 1 K. B. 301.

401a. Holding whist drive.]—Whist drives, where an entrance fee is charged & prizes offered, are illegal under Betting Act, 1853 (c. 119), s. 1.—BENNETT v. EWENS, [1928] 2 K. B. 510; 97 L. J. K. B. 801; 139 L. T. 335; 92 J. P. 120; 44 T. L. R. 545; 72 Sol. Jo. 354; 26 L. G. R. 396, D. C.

415a. ———.]—Appls. were the responsible proprietors of a four-page weekly newspaper, which was sold at 6d. a copy, & which had in winter a weekly circulation of over 32,000 copies. The newspaper contained what was called a "Free Football Competition" with a coupon giving particulars of future football matches & a column for the competitors to fill in their forecast of the results, a prize of £150 being offered for a correct forecast of all the results & a prize of £100 for a correct forecast of nine results, but no money was to be sent with the coupons. Appls. were summoned for unlawfully publishing a coupon of a ready-money football betting business contrary to sect. 1 of the above Act. The

justices found that the majority of the persons who bought the newspaper did so for the sake of the coupon, & that appls. had circulated coupons of a ready-money football betting business, & they convicted appls.:—Held: the case was typical of the mischief aimed at by the Act, & the justices' decision must be affirmed.—SUTTLE v. CRESSWELL, [1926] 1 K. B. 264; 95 L. J. K. B. 367; 134 L. T. 144; 90 J. P. 3; 42 T. L. R. 75; 23 L. G. R. 695; 28 Cox, C. C. 94, D. C.

—Appld. *Turf Publishers v. Davies*, [1927] W. N. 190. Expld. *Leng (Sheffield Telegraph) v. Sillitoe* (1928), 45 T. L. R. 94.

415b. ———.]—TURF PUBLISHERS, LTD. v. DAVIES, [1927] W. N. 190, D. C.

Annotation:—Appld. *Leng (Sheffield Telegraph) v. Sillitoe* (1928), 45 T. L. R. 94.

415c. ———.]—Where a daily newspaper contained as one among its various features coupons in which the names of football teams were set out, & the public were invited to forecast the winners of matches in which the teams were shortly to be engaged, the person who most nearly got the correct results receiving a prize:—Held: the proprietors & publishers of the newspaper were guilty of an offence under sect. 1 of the above Act, although the evidence only showed that some, & not the majority, of the purchasers of the newspaper bought it, wholly or partly, for the sake of the coupon, & although no competitor was allowed to send in more than one coupon from one & the same issue of the newspaper.—SIR W. C. LENG & CO. (SHEFFIELD TELEGRAPH), LTD. v. SILLITOE (1928), 45 T. L. R. 94; 72 Sol. Jo. 810, D. C.

### PART III. SECT. 1.

310 i. Betting or betting business—Not illegal *ipso facto*.]—Neither in India nor in England has the legislature gone so far as to enact in express terms that betting transactions are illegal, but it is clear that in both countries the legislature regards it as undesirable in the public interest that any assistance should be afforded by cts. of law to enforce obligations which have been created in connection with betting or wagering transactions.—MITCHELL v. TENNENT (1925), 1 L. L. R. 52 Calc. 677.—IND.

### PART III. SECT. 2, SUB-SECT. 1.

sk. Pathway—Sole access to three houses.]—A pathway leading from public land to three separate dwelling-houses, to which it provided the only means of access, was entered from the lane through a gate which was never locked:—Held: the pathway was a "public passage," & a "street" within Street Betting Act, 1906 (c. 43), s. 1.—MACKIE v. CROMBIE, [1926] S. C. (J.) 29.—SCOT.

### PART III. SECT. 4, SUB-SECT. 1.—A.

k (p. 439) i. S. P. MUHAMMAD KHAN v. R. (1927), 1 L. L. R. 9 Lah. 255.—IND.  
t (p. 440) i. ———.]—Where certain persons rented an enclosure, part of a larger enclosure abutting on a public road, & invited others to come there & make bets:—Held: any person found betting there was rightly convicted of gambling in a public place.—R. v. TULSHI DAS (1924), 1 L. L. R. 46 All. 787.—IND.

### PART III. SECT. 4, SUB-SECT. 1.—B.

g i. ———.]—Deft. assocn. was incorporated as a co. by letters patent, which were amended by adding certain objects & purposes, viz., to encourage horse-racing, to construct, maintain, & operate race-courses, & other like objects & purposes. The co. established a race-course & held race-meetings, at which betting on the races was permitted, & was convicted under Criminal Code, ss. 228, 235, of the offences of keeping a common betting house, & recording & registering bets, etc.:—Held: the co. was not protected by sect. 235 (2).—R. v. LONG BRANCH RACING ASSOCN., [1925] 2 D. L. R. 46; 43 Can. Crim. Cas. 283; 56 O. L. R. 303.—CAN.

### PART III. SECT. 4, SUB-SECT. 2.—A.

363 i. What persons liable to penalties—Persons "keeping"—Servant in sole charge.]—Any person, whether servant or agent, or on his own account, who has for the time being the exclusive charge of premises, & who uses those premises for the purpose of betting, is guilty of keeping or using the premises as a common gaming house under Gaming Act, 1908, s. 4, even though he is not the owner, & the owner is ignorant of the use to which the premises were put, & though the premises so used are only part of the premises of the owner.—DAVIS v. NUTTALL, [1924] N. Z. L. R. 65.—N.Z.

### PART III. SECT. 6.

415 i. "Printing or knowingly cir-

culating coupons"—Construction of Football Betting Act, 1920 (c. 52), ss. 1, 2.]—Commission agents issued a printed publication containing coupons for use in predicting results of football matches & offering money prizes. Apart from the coupons & matters connected therewith the paper contained very little reading matter, & the majority of purchasers bought it for the sake of the coupons. The commission agents were convicted of knowingly printing & circulating circulars or coupons of a ready-money football betting business:—Held: the paper was a circular or coupon of the business of appls., & conviction sustained.—JAMESON v. SINCLAIR, [1925] S. C. (J.) 1.—SCOT.

sn. "Ready-money football betting business"—Newsagents settling with publishers monthly.]—Commission agents issued a printed publication containing coupons for use in predicting results of football matches & offering money prizes. It was issued to wholesale newsagents, & distributed by them to retail newsagents, who sold it to the public. The wholesale & retail newsagents settled their accounts weekly; the wholesale newsagents ran monthly accounts with the commission agents, who paid the prizewinners. The prize money was paid, although the monthly accounts had not been settled:—Held: there was evidence on which the magistrates might hold that appls.' business was a ready-money football betting business.—JAMESON v. SINCLAIR, [1925] S. C. (J.) 1.—SCOT.



423. *Add. Annotation*:—As to (1) *Refd. Pointon v. Cox* (1926), 136 L. T. 506.

424a. — Information under Licensing Consolidation Act, 1910 (c. 24)—Form of conviction.]—An information was preferred against applt. under sect. 79 (1) (b) of the above Act for that he, being the holder of a justices' licence, suffered his premises to be used in contravention of Betting Act, 1853 (c. 119). Applt. was convicted, & appealed to quarter sessions, who allowed the appeal, on the

ground that the conviction was bad on the face of it because it did not specify what contravention of Betting Act, 1853 (c. 119), was alleged:—*Held*: applt. was entitled to the precise information to which he would have been entitled if he had been prosecuted under Betting Act, 1853 (c. 119), & the decision of quarter sessions was right.—*POINTON v. COX* (1926), 136 L. T. 506; 91 J. P. 33; 43 T. L. R. 175; 25 L. G. R. 101+ 28 Cox, C. C. 308, D. C.

## Part IV.—Lotteries.

434. *Add. Annotation*:—*Refd. Kerslake v. Knight* (1925), 133 L. T. 606.

443. *Add. Annotation*:—*Refd. Kerslake v. Knight* (1925), 133 L. T. 606.

449. *Add. Citations*:—94 L. J. K. B. 919; 133 L. T. 606; 89 J. P. 142; 23 L. G. R. 574; 28 Cox, C. C. 27.

464. *Add. Annotation*:—*Apld. Ranson v. Burgess* (1927), 137 L. T. 530.

464a. — — — — —.]—A printer printed & sold to a purchaser a set of tickets adapted for use in a lottery, but no lottery was then in existence.

The purpose was that the purchaser should institute & carry on a lottery by means of the tickets, by reselling them singly & providing out of the proceeds a prize for the holder of the winning ticket. The printer took no further interest, financial or otherwise, in the matter, beyond the original purchase price for the sale of the tickets as a set:—*Held*: the printer was properly convicted of publishing a proposal or scheme for the sale of tickets or chances in a lottery contrary to the above sect.—*RANSON v. BURGESS* (1927), 137 L. T. 530; 91 J. P. 133; 43 T. L. R. 561; 25 L. G. R. 378; 28 Cox, C. C. 425, D. C.

## Part V.—Races and Racecourses.

472. *Add. Annotation*:—*Refd. Weddle, Beck v. Hackett* (1928), 45 T. L. R. 67.

479. *Add. Annotation*:—*Refd. Ellesmere v. Wallace* (1928), 44 T. L. R. 798.

### PART III. SECT. 7.

b i. — *Lottery & Gaming Act Amendment Act, 1921, s. 14.*—*HOLMES v. ALLCHURCH*, [1926] S. A. S. R. 255.—AUS.

b ii. — — — — —.]—*LAMPARD v. WEST*, [1926] S. A. S. R. 293.—AUS.

b iii. — *Similar transactions on other days—Admissible.*—*PINCHBECK v. GLEESON*, [1926] S. A. S. R. 379.—AUS.

c i. — — — — —.]—*PATERSON v. MACPHERSON*, [1924] S. C. (J.) 38.—SCOT.

c ii. — — — — — *Right to open closed envelopes.*—*Held*: the special warrant under Betting Act, 1853, s. 11, entitled the police to open postal or other communications found on the premises, although contained in closed envelopes, for the purpose of ascertaining whether they contained documents relating to betting.—*STRATHERN v. BENSON*, [1925] S. C. (J.) 40.—SCOT.

h i. — *Joint complaint—One defendant calling no evidence, but wishing to give evidence for co-defendant—*

*Mode of trial.*—*HOLMES v. ALLCHURCH*, [1926] S. A. S. R. 255.—AUS.

sp. *Appeal—Principles on which court acts.*—*R. v. SMITH* (1926), 37 B. C. R. 248.—CAN.

### PART IV. SECT. 1.

d i. — — — — —.]—*POWER v. CANNIFT* (1859), 18 U. C. R. 403.—CAN.

d ii. — — — — —.]—*LLOYD v. CLARK* (1862), 12 C. P. 320.—CAN.

b (p. 454) i. — *Conducting "sui clubs."*—*Held*: a violation of Criminal Code, s. 236 (c) (d).—*R. v. A. D. MURRAY TAILORING, LTD.*, [1925] 3 W. W. R. 483; 44 Can. Crim. Cas. 346.—CAN.

b (p. 454) ii. — *Club distributing "chances" for prizes with membership cards.*—*Held*: a violation of Criminal Code, s. 236.—*R. v. GRATTON* (Ont.) (1926), 46 Can. Crim. Cas. 41.—CAN.

b (p. 454) iii. — *Giving purchasers of goods tickets for club—Club distributing prizes.*—*Held*: a violation of Criminal Code, s. 236.—*R. v. RODERICK*

(Ont.) (1926), 46 Can. Crim. Cas. 110.—CAN.

b (p. 454) iv. — — — — —.]—*R. v. UNITED PROFIT SHARING SYSTEM, LTD.* (Ont.), [1927] 4 D. L. R. 619; 48 Can. Crim. Cas. 154.—CAN.

### PART IV. SECT. 3.

st. *Art unions—Whether exempt under Criminal Code, s. 236.*—*R. v. LEBLANC* (Ont.) (1926), 46 Can. Crim. Cas. 38.—CAN.

### PART IV. SECT. 5, SUB-SECT. 1.

sw. *Sale of gambling device.*—A violation of Criminal Code, s. 236 (b), may be proved, although there is no evidence that at the time of the sale of the device in question, e.g., a punch board, there was a conscious arrangement between the buyer & seller that some property would be disposed of by chance by means of the device. The essential inquiry is, what is the purpose or known intended use of the device.—*R. v. HEISE*, [1926] 1 D. L. R. 60; [1925] 3 W. W. R. 724.—CAN.

## Part VI.—Competitions.

496. *Add. Annotation* :—**Distd.** Suttle v. Cresswell (1925), 42 T. L. R. 75.
497. *Add. Annotation* :—**Refd.** Suttle v. Cresswell (1925), 42 T. L. R. 75.
498. *Add. Annotation* :—**Apld.** Suttle v. Cresswell (1925), 42 T. L. R. 75.
501. *Add. Annotation* :—**Refd.** Suttle v. Cresswell (1925), 42 T. L. R. 75.
502. *Add. Annotation* :—*As to (3)* **Refd.** Greenberg v. Cooperstein, [1926] Ch. 657.

268. *Add. Annotation* :—*Reid. Jenkins v. Jenkins*, [1928] 2 K. B. 501.

269. *Add. Annotation* :—*Reid. Jenkins v. Jenkins*, [1928] 2 K. B. 501.

## Part V.—Gifts mortis causâ.

292. *Add. Annotation* :—*As to (1) Consd. Re Swinburne, Sutton v. Featherley* (1925), 70 Sol. Jo. 64.

327. *Add. Annotation* :—*Reid. Re Swinburne, Sutton v. Featherley* (1925), 70 Sol. Jo. 64.

330a. ———.]—*Re WHILE, WILFORD v. WHILE*, [1928] W. N. 182.

331. *Add. Annotation* :—*Reid. Re Swinburne, Sutton v. Featherley* (1925), 70 Sol. Jo. 64.

337a. ———.]—Where testator, in his last illness, said he wanted to leave something to C., &

then directed her father to get mtge. deeds out of a box in his room, & said he should give the deeds for C., & handed them over to her father:—*Held*: the gift was a good *donatio mortis causâ*, & the donee was entitled to the money secured by the deeds.—*Re PATTERSON, MITCHELL v. SMITH* (1864), 10 L. T. 520; 10 Jur. N. S. 578; *on appeal*, 4 De G. J. & Sm. 422.

347. *Add. Citations* :—95 L. J. Ch. 204; 133 L. T. 465.

372. *Add. Annotation* :—*Reid. Re Swinburne, Sutton v. Featherley*, [1926] Ch. 38.

PART IV. SECT. 2, SUB-SECT. 3.  
c i. ———.]—*Re JENKINS & BRASH v. VULCAN IRON WORKS, BRAY v. VULCAN IRON WORKS (B.C.)*, [1927] 1 D. L. R. 1099.—CAN.

PART V. SECT. 2, SUB-SECT. 2.—  
B. (b).

311 xxiii. ———.]—A *donatio mortis causâ* may be made by the donor placing money upon deposit receipt

in the joint names of himself & the donee. The handing of the deposit receipt to the donee is sufficient delivery, & a direction by the donor to the donee to make certain payments out of the money does not invalidate the gift.—*FAYNE v. MARTIN* (1924), 59 L. L. T. 14.—IR.

PART V. SECT. 3, SUB-SECT. 3.—B.  
374 v. ———.]—The delivery by

a person *in extremis* of the keys of his safe, accompanied by the words, "They lead to everything I have got, everything I have got is yours":—*Held*: to operate as a *donatio mortis causâ* of the things in the safe other than the money in a bank represented by a pass book found in the safe.—*CUSACK v. DAY*, [1925] 3 D. L. R. 1028; [1925] 2 W. W. R. 715.—CAN.



# GUARANTEE AND INDEMNITY.

## Part I.—Characteristics of Guarantee.

13. *Add. Annotation* :—Generally, *Mentd. Re Harrington Motor Co.* (1927), 44 T. L. R. 58.

## Part II.—Requisites of Guarantee.

41. *Add. Annotation* :—*Distd. Hardie & Lane v. Chilton*, [1928] 2 K. B. 306.
121. *Add. Annotation* :—*Refd. Hardie & Lane v. Chilton*, [1928] 2 K. B. 306.
134. *Add. Annotation* :—*Refd. Hall v. I. R. Comrs.* (1926), 135 L. T. 759.

## Part III.—Proof of Guarantee.

185. *Add. Annotation* :—*Mentd. Houghton v. Not-hard, Lowe & Wills* (1927), 44 T. L. R. 76.
257. *Add. Annotation* :—*Refd. Royal Exchange Assee. v. Hope*, [1928] Ch. 179.
295. *Add. Annotation* :—*Apld. Farr, Smith v. Messers* (1927), 44 T. L. R. 48.
323. *Add. Annotation* :—*Refd. Franco-British Ship Store Co. v. Compagnie des Chargeurs Francaise* (1926), 42 T. L. R. 735.
345. *Add. Annotations* :—*Distd. Reckitt v. Barnett, Pembroke & Slater* (1928), 45 T. L. R. 36. *Refd. Iloyds Bank v. Chartered Bank of India, Australia & China* (1928), 97 L. J. K. B. 609.

## Part IV.—Interpretation.

368. *Add. Annotation* :—*Mentd. Royal Exchange Assee. v. Hope*, [1928] Ch. 179.
407. *Add. Annotation* :—*Mentd. Kimber Coal Co. v. Stone & Rolfe*, [1926] A. C. 414.
421. *Add. Annotation* :—*Refd. Allen v. Royal Bank of Canada* (1925), 95 L. J. P. C. 17.

## Part V.—Liability of the Surety.

479. *Add. Annotation* :—*Refd. Smith v. Wood* (1928), 139 L. T. 250.
571. *Add. Annotation* :—*As to (3) Refd. Royal Exchange Assee. v. Hope*, [1928] Ch. 179.

### PART I.

*z i.* ——— *Original distinguished from collateral contract.*—*Re THOMSON*, [1927] 2 D. L. R. 254; 60 O. L. R. 165.

*sa.* *Distinguished from direction to furnish goods on credit of principal.*—*GRASSETT v. HUTCHINSON* (1860), 10 C. P. 265.—CAN.

### PART II. SECT. 1.

*so.* *Fidelity guarantee—Primary obligation of principal.*—*R. v. BLACK* (Ont.) (1899), 8 Exch. C. R. 236.—CAN.

### PART II. SECT. 3, SUB-SECT. 2.

44 ii. ——— *For benefit of third party.*—Where a married woman signs an instrument at the request of her husband, not for his benefit, but for the accommodation of a friend or relative of his, the evidence necessary to prove that undue influence was exercised by the husband must be much stronger than would be necessary had the signature been obtained for the husband's benefit.—*WATKINS (J. R.) Co. v. NOBERT (Alta.)*, [1926] 1 D. L. R. 526; [1926] 1 W. W. R. 156.—CAN.

——— *For benefit of husband.*—See *HUSBAND & WIFE*, Nos. 1370 i, 1370 ii, *post*.

J.S.

### PART II. SECT. 4, SUB-SECT. 1.

55 vi. ———.]—*CAMPBELL v. MCISAAC* (1873), 9 N. S. R. (3 G. & O.) 287.—CAN.

### PART II. SECT. 4, SUB-SECT. 3.—A.

*sd.* *Agreement by bailee to deliver goods to purchaser—Promise by vendor to indemnify bailee against loss if goods not according to contract.*—*Held*: the agreement to deliver, & not the delivery itself, formed the consideration for the promise to indemnify.—*CUNNARD v. PLUMMER* (1844), 4 N. B. R. (2 Kerr.) 418.—CAN.

### PART III. SECT. 1, SUB-SECT. 1.—A.

*se.* *Verbal agreement of guarantee or suretyship.*—*Held*: unenforceable because of Stat. Frauds.—*DOYLE v. MCKINNON*, [1925] 3 D. L. R. 334; 57 O. L. R. 104.—CAN.

### PART III. SECT. 1, SUB-SECT. 1.—B.

*sf.* *Promise to guarantee dividend & stock.*—*Held*: not a guarantee to which Stat. Frauds, R. S. O., 1914 (c. 102), s. 6, applied.—*QUANCE v. BROWN*, [1926] 2 D. L. R. 824; 58 O. L. R. 578.—CAN.

### PART III. SECT. 1, SUB-SECT. 2.—A.

196 iii. ———.]—*TUPPER v. CROWE*

(1862), 15 N. S. R. (3 R. & G.) 261.—CAN.

*sh.* *Representations within C. S. U. C., c. 46, s. 10—As to solvency of trader—Necessity for writing.*—*MCLEAN v. DUN* (1877), 1 A. R. 153.—CAN.

### PART IV. SECT. 2, SUB-SECT. 1.

*sj.* *To supply name of principal debtor—Not admissible.*—*IMPERIAL BANK OF CANADA v. NIXON*, [1926] 4 D. L. R. 1052; 59 O. L. R. 538.—CAN.

### PART V. SECT. 3, SUB-SECT. 1.

*sk.* *Under guarantee for payment of compensation for land compulsorily acquired.*—*MURRAY v. THOMPSON*, 3 Ont. Dig. 5953-4.—CAN.

*sl.* *Under guarantee for price of goods.*—*OGILVIE v. MCLEOD* 1862, 11 C. P. 348.—CAN.

*sm.* ———.]—*HENEY CO., LTD. v. BIRMINGHAM* (1909), 7 E. L. R. 163.—CAN.

*sn.* *Under guarantee for delivery of goods.*—*GEORGE v. BRAYLEY* (1873), N. B. Dig. 397-8.—CAN.

*sp.* ———.]—*HIGBY v. CUMMINGS* (1853), 10 U. C. R. 222.—CAN.

*sq.* *Under guarantee for payment of demurrage.*—*WARREN v. NAT'L SURETY Co.*, [1927] 1 D. L. R. 554.—CAN.

574. *Add. Citation*:—11 Exch. 623.

587. After this case add “— **Sufficiency of consideration.**”—See LANDLORD & TENANT, No. 4142a.”

679. *Add. Annotations*:—**Refd.** *Reckitt v. Barnett, Pembroke & Slater*, [1928] 2 K. B. 244. **Mentd.** *Kreditbank Cassel G. m. b. H. v. Schenkers*, [1927] 1 K. B. 826.

## Part VI.—Surety's Rights against Creditor.

782a. ———. ———.]—**BECKETT v. BOOTH** (1708), 2 Eq. Cas. Abr. 595; 22 E. R. 500, L. C.

809. *Add. Annotation*:—**Refd.** *Smith v. Wood* (1928), 139 L. T. 250.

815. *Add. Annotation*:—**As to** (2) **Appld.** *Smith v. Wood* (1928), 139 L. T. 250.

824. *Add. Annotation*:—**As to** (2) **Refd.** *Smith v. Wood* (1928), 139 L. T. 250.

## Part VII.—Surety's Rights against Principal Debtor.

876. *Add. Annotation*:—**Mentd.** *Akt. Dampsikis Steinstad v. Pearson* (1927), 137 L. T. 533.

898. *Add. Annotation*:—**Refd.** *Re Anderson-Berry, Harris v. Griffith*, [1928] Ch. 290.

902. *Add. Annotation*:—**Generally, Refd.** *Re Anderson-Berry, Harris v. Griffith*, [1928] Ch. 290.

907. *Add. Annotation*:—**As to** (1) **Refd.** *Re Anderson-Berry, Harris v. Griffith*, [1928] Ch. 290.

913. *Add. Annotation*:—**Refd.** *Re Anderson-Berry, Harris v. Griffith*, [1928] Ch. 290.

947. *Add. Annotation*:—**Refd.** *Liggett (Liverpool) v. Barclays Bank* (1927), 137 L. T. 443.

996. *Add. Annotation*:—**Mentd.** *Biddulph & District Agricultural Soc. v. Agricultural Wholesale Soc.* (1926), 95 L. J. Ch. 576.

## Part IX.—Determination of the Guarantee.

1149. *Add. Annotation*:—**Refd.** *Albemarle Supply Co. v. Hind*, [1928] 1 K. B. 307.

1186. *Add. Annotation*:—**As to** (3) **Consd.** *Smith v. Wood* (1928), 139 L. T. 250.

**PART V. SECT. 3, SUB-SECT. 2.—A.**  
**sr.** *Money received by sheriff.*—**SUMMERS v. HAMILTON** (1840), 6 O. S. 113.—CAN.

**st.** ——— *Money received by de facto sheriff colore officii.*—**KENT v. MERCER** (1862), 12 C. P. 30.—CAN.

**PART V. SECT. 4, SUB-SECT. 2.**  
**sv.** *Inspector—Default of deputy inspector.*—**Held**: the surety was liable, & the fact of there being a remedy also on the deputy inspector's bond was no answer.—**VERRATT v. MCAULAY** (1884), 5 O. R. 313.—CAN.

**PART V. SECT. 7, SUB-SECT. 1.**  
**sx.** *After judgment by default—Whether amendment allowed.*—**SCOTT v. McDONALD** (1841), 6 O. S. 238.—CAN.

**PART V. SECT. 7, SUB-SECT. 6.**  
**728 ii.** ———.]—**Re THOMSON**, [1926] 4 D. L. R. 755; 59 O. L. R. 449.—CAN.

**PART VI. SECT. 3, SUB-SECT. 3.**  
**775 ii.** ———.]—**REVILLON WHOLESALE, LTD. v. NEMIRSKY**, [1926] 2 D. L. R. 374; [1926] 2 W. W. R. 166; 7 C. B. R. 583.—CAN.

**PART VI. SECT. 4, SUB-SECT. 2.—A.**  
**782 iv.** ———.]—**Against assignee of interest in security.**—**GARRETT v. JOHNSTONE** (1867), 13 Gr. 36.—CAN.

**782 v.** ———.]—**Rights of mortgagee of surety.**—**QUAY v. SCULTHORPE** (1869), 16 Gr. 449.—CAN.

**782 vi.** ———.]—**Further advance by creditor to debtor.**—**Re HAMILTON TRUSTS** (1895), 10 Man. L. R. 573.—CAN.

### PART VII. SECT. 1.

**sz.** *Where land transferred as security.*—**SCHULTZ v. CAN. SURETY CO. (Alta.)**, [1927] 2 D. L. R. 580.—CAN.

**PART VII. SECT. 3, SUB-SECT. 2.—A.**  
**g.** ———.]—**SUTTON v. HINCH** (1910), 19 Man. L. R. 705.—CAN.

**PART VII. SECT. 4, SUB-SECT. 3.**  
**937 iv.** ———.]—**READ v. MCLEAN**, [1925] 3 D. L. R. 716.—CAN.

**PART VIII. SECT. 2, SUB-SECT. 2.—B. (a).**

**1058 iv.** ———.]—**The fact that a settlement made by some of a number of co-sureties with their creditor has not been agreed to by all the co-sureties or fixed by judgment does not prevent those who have made the settlement & paid thereunder from enforcing contribution from the others, if the latter, although notified of & invited to take part in the negotiations for settlement, did nothing & made no protest with respect thereto.**—**STEWART v. BRAUN**, [1925] 2 D. L. R. 423; [1925] 1 W. W. R. 871.—CAN.

**1058 v.** ———.]—**MCNEILL v. SHORT (Alta.)**, [1926] 4 D. L. R. 951.—CAN.

**1058 vi.** ———.]—**CADWELL v. CAMPEAU** (1912), 21 O. W. R. 263; 3 O. W. N. 616; 3 D. L. R. 555.—CAN.

**1058 vii.** ———.]—**TUCKER v. BENNETT**, [1927] 2 D. L. R. 42; 60 O. L. R. 118.—CAN.

**PART VIII. SECT. 2, SUB-SECT. 2.—B. (b).**

**1068 i.** *Reved.*, 35 C. L. R. 48.

**PART VIII. SECT. 2, SUB-SECT. 4.—B.**

**1116 i.** *Application of Mercantile Laws Amendment Act, 1850 (c. 97), s. 5—Assignment of judgment—Necessity for leave to issue execution.*—**Where a creditor takes judgment against two or more sureties & issues execution against each, & one of them pays the judgment, the surety so paying is entitled to stand in the place of the**

**creditor & carry on, in his own name, any proceedings already taken to enforce the judgment against the other surety until he receives the amount of the other's contributive share, & he is not required to obtain leave to issue execution in his own name.**—**FAST v. ZARCHEKOFF**, [1926] 4 D. L. R. 355; [1926] 2 W. W. R. 577; 20 Sask. L. R. 596.—CAN.

**PART IX. SECT. 2, SUB-SECT. 1.—A.**  
**1179 vii.** ———.]—**NASH-SIMINGTON CO., LTD. v. THOMAS (Sask.)**, [1926] 2 D. L. R. 462.—CAN.

**a i.** ———.]—**Held**: the surety was not released from his guarantee.—**DUNN v. THICKETT (Man.)**, [1925] 3 W. W. R. 736.—CAN.

**a ii.** ———.]—**WINSLOW v. VERNER** (1890), 30 N. B. R. 150.—CAN.

**PART IX. SECT. 2, SUB-SECT. 1.—C. (h).**

**sf.** *Surrender of some chattels bought under lien note—No detriment to value of chattels.*—**Held**: the surety who signed the note was not released.—**TOOVEY v. BROCK & BROCK** (1916), 34 W. L. R. 973.—CAN.

**sk.** *Sale of goods exceeding stipulated amount.*—**Held**: the sureties were not liable.—**TEXAS CO. (S. A.), LTD. v. WEBB & TOMLINSON** (1927), 48 N. L. R. 24.—S.

**PART IX. SECT. 2, SUB-SECT. 1.—C. (i).**

**sm.** *Making principal debtor bankrupt.*—**Where a surety contended that, by making debtor bkpt., the creditor had so prejudiced the surety as to discharge him from liability:—Held**: no duty was owed by a creditor to a surety either to put debtor into bkpcy. or to refrain from doing so.—**IMPERIAL BANK OF CANADA v. ALLEY**, [1926] 3 D. L. R. 86; 59 O. L. R. 1.—CAN.

1216. *Add. Annotations*:—As to (1) *Appld. Smith v. Wood* [1928], 139 L. T. 250. As to (2) *Consd. Re Darwen & Pearce, Associated Paper Mills v. Barnes* (1926), 95 L. J. Ch. 487.

1217. *Citations*:—Delete 9 Bing. 746; 3 Moo. & S. 191; 131 E. R. 794.

1222. *Add. Annotations*:—*Appld. Re Darwen & Pearce, Associated Paper Mills v. Barnes* (1926), 95 L. J. Ch. 487; *Smith v. Wood* (1928), 139 L. T. 250. *Refd. Sassoon v. International Banking Corp'n*, [1927] A. C. 711.

1223. *Add. Annotation*:—As to (1) *Appld. Smith v. Wood* (1928), 139 L. T. 250.

1223a. *Charge by several persons of properties—Release of deeds deposited by one.*—By a joint & several memorandum of charge twelve persons, including six resps., deposited deeds with applt. as security to relieve applt. from the entire burden of a guarantee given by him to a bank for the overdraft of S. & Co., & they thereby respectively charged the hereditaments to which the deeds related with repayment of all money to become due from S. & Co. Applt., at the request of C., one of the twelve persons, allowed her to take the deeds deposited by her away for the purpose of raising a loan. S. & Co. having gone into liquidation, the bank called upon applt. to make good his guarantee. Thereupon resps. brought an action claiming that they were entitled to have all the deeds deposited by them under the terms of the charge discharged from the debt to which they were made liable to contribute under the charge, on the ground that, by applt. allowing C. to withdraw the deeds deposited by her, their risk had been increased:—*Held*: (1) there had been an alteration made in the position of those whose properties remained deposited as securities under the charge by reason of applt. allowing the withdrawal by C. of the deeds deposited by her,

& they not having consented to the alteration, their properties, the deeds of which they had deposited, were discharged from all claims under the charge; their right of marshalling had been affected by the withdrawal of the deeds of one of the parties, & the materiality of the alteration was a question to be decided by them; (2) the same reasoning was applicable, whether what was contributed were securities or personal liability.—*SMITH v. WOOD* (1928), 139 L. T. 250; 72 Sol. Jo. 517, C. A.

1224a. *Guarantee of call on shares—Forfeiture of shares—Discharge of surety.*—The forfeiture by a co. of the shares of a principal debtor constitutes an interference with the rights of a surety who has guaranteed payment of instalments owing upon such shares, in that it substitutes a fresh & more onerous liability upon the surety than the liability under the original contract, & deprives him of his equitable right of lien upon the shares. A surety is, therefore, discharged by such forfeiture from his contract of suretyship.—*Re DARWEN & PEARCE*, [1927] 1 Ch. 176; 95 L. J. Ch. 487; 136 L. T. 124; 70 Sol. Jo. 965; [1926] B. & C. R. 65.

1329. *Add. Annotation*:—As to (1) *Consd. Smith v. Wood* (1928), 139 L. T. 250.

1342. *Add. Annotations*:—*Refd. Re Darwen & Pearce*, [1927] 1 Ch. 176; *Smith v. Wood* (1928), 139 L. T. 250.

1506. *Add. Annotation*:—*Mentd. A.-G. v. Pritchard* (1928), 97 L. J. K. B. 561.

1520. *Add. Annotation*:—*Mentd. Re Lister, Ex p. Bradford Overseers & Bradford Corp'n*, [1926] Ch. 149.

1523. *Add. Annotation*:—*Refd. Morris v. Harris*, [1927] A. C. 252.

1561. *Add. Annotation*:—*Refd. Jenkins v. Jenkins*, [1928] 2 K. B. 501.

1570. *Add. Annotations*:—*Refd. Firm of R. M.*

sn. *Retaking possession of chattels under conditional sale agreement.*—*Held*: the contract constituted a relationship of mtgor. & mtgee. between vendor & purchaser, & the surety continued to be liable under the guarantee.—*STEPHEN v. BLACK* (1902), Cout. 217.—CAN.

PART IX. SECT. 2, SUB-SECT. 4.—A. (a).

e i. —.—*Held*: it was not necessary to show that the surety was prejudiced by the giving time.—*DARLING v. McLEON* (1861), 20 U. C. R. 372.—CAN.

PART IX. SECT. 2, SUB-SECT. 4.—A. (c).

1322 iii. —.—*CORRIGAL v. BOULTON* (1898), 17 U. C. R. 131.—CAN.

PART IX. SECT. 2, SUB-SECT. 4.—B. (d).

sp. *Alteration in number of instalments.*—*Held*: not made on a basis of extension of time, so as to release the surety from liability.—*MALKIN (W. H.) Co., LTD. v. SHERMAN* (1925), 35 B. C. R. 445.—CAN.

PART IX. SECT. 2, SUB-SECT. 4.—C. (a).

1864 xv. —.—*BURNARD v. LYSNOR*, [1927] N. Z. L. R. 757.—N.Z.

PART IX. SECT. 2, SUB-SECT. 7.—C.

1448 iii. —.—*Held*: There must be

some positive act done by the employer to the surety's prejudice, or such degree of negligence as to imply connivance & amount to fraud.—*LONDON GUARANTEE & ACCIDENT CO., LTD. v. CITY OF HALIFAX*, [1927] 1 D. L. R. 1129; [1927] S. C. R. 165.—CAN.

1451 i. *Fraud of employee—Neglect of employer to supervise conduct—Neglect must be gross.*—Circumstances in which:—*Held*: gross negligence in checking accounts discharged the surety.—*FRAHER v. WATERFORD COUNTY COUNCIL*, [1926] I. R. 505.—IR.

1455 i. —.—*Checking accounts.*—*FRAHER v. WATERFORD COUNTY COUNCIL*, [1926] I. R. 505.—IR.

PART IX. SECT. 2, SUB-SECT. 8.—A.

st. *General rule.*—If it is an express or implied condition of, or collateral to, the arrangement for a guarantee, that an existing security, whether inchoate or complete, should be made or kept effective by the creditor for the benefit of the parties as a counter-security, failure to observe that condition discharges the surety absolutely, inasmuch as he has not got the contract he bargained for.

If there is, in fact, in the possession of the creditor such a counter-security, it is the duty of the creditor, whether its existence is known to the surety or not, to exercise reasonable care in maintaining it for the benefit of the surety, so as to be available, unimpaired by reason of any negligence,

on the discharge of the debt. If he fails in this duty, the surety is entitled to credit against his liability for the damages suffered by such breach of duty by the creditor.—*NORTHERN BANKING CO., LTD. v. NEWMAN & CALTON*, [1927] I. R. 520.—IR.

PART IX. SECT. 2, SUB-SECT. 8.—B.

1480 i. *Release of mortgage debt.*—*Held*: the surety was not liable under the guarantee.—*ORCHISTON v. SCHLAEPFER*, [1924] N. Z. L. R. 1170.—N.Z.

PART IX. SECT. 2, SUB-SECT. 9.—A.

1499 i. *When surety discharged—Release of debtor.*—*MILNE v. YORKSHIRE GUARANTEE & SECURITIES CORPN.* (1906), 37 S. C. R. 331.—CAN.

PART IX. SECT. 2, SUB-SECT. 9.—B. (a).

sv. *Sale of debtor's equity of redemption.*—*Held*: not a release of debtor, nor of his surety.—*STEWART v. CLARK* (1863), 13 C. P. 203.—CAN.

PART IX. SECT. 2, SUB-SECT. 9.—B. (c).

sw. *Release of co-lessee—Surety discharged.*—*ISMAN v. WIDEN* (Sask.), [1926] 1 D. L. R. 247.—CAN.

PART IX. SECT. 2, SUB-SECT. 9.—C. (b).

1561 iv. —.—*HOLLIDAY v. HOGAN* (1893), 20 A. R. 298.—CAN.



K. R. M. v. Firm of M. R. M. V. L. (1926), 95 L. J. P. C. 197; Pirie v. Richardson (1926), 70 Sol. Jo. 1023; Cumberland v. Lanarkshire Tram Co. (1927), 20 B. W. C. C. 780; Jenkins v. Jenkins, [1928] 2 K. B. 501.

1571. *Add. Annotations*:—*Mentd.* Bennett v. Whitehead, [1926] 2 K. B. 380; Firm of R. M. K. R. M. v. Firm of M. R. M. V. L., [1926] A. C. 761; Pirie v. Richardson (1926), 70 Sol. Jo. 1023; Hardie & Lane v. Chiltern (1927), 96 L. J. K. B. 773.

1576. *Add. Annotation*:—*Refd.* Jenkins v. Jenkins, [1928] 2 K. B. 501.

1577. *Add. Annotation*:—*Refd.* Jenkins v. Jenkins, [1928] 2 K. B. 501.

1582. *Add. Annotation*:—*As to* (2) *Consd.* Smith v. Wood (1928), 139 L. T. 250.

1608. *Add. Annotation*:—*Refd.* *Re* Darwen & Pearce, Associated Paper Mills v. Barnes (1926), 95 L. J. Ch. 487.

## Part X.—Avoidance of the Guarantee.

1739. *Add. Annotation*:—*Mentd.* Hong Kong & Shanghai Bank v. Lo Lee Shi, [1928] A. C. 181.

## Part XII.—Indemnity.

1745. *Add. Annotation*:—*Refd.* Wiggins v. Lavy (1928), 44 T. L. R. 721.

1784. *Add. Annotation*:—*Mentd.* H. v. H., [1928] P. 206.

1787. *Add. Annotation*:—*Refd.* Pontypridd Grdns. v. Drew, [1926] 1 K. B. 567.

1789. *Add. Annotation*:—*Refd.* Pontypridd Grdns. v. Drew (1926), 95 L. J. K. B. 1030.

1790. *Add. Annotation*:—*Overd.* Pontypridd Grdns. v. Drew (1926), 95 L. J. K. B. 1030.

1790a. ————.]—Guardians who supply goods to a pauper by way of ordinary poor relief have no right to recover from the pauper the reasonable value of the goods so supplied. *Birkenhead Union Guardians v. Brookes*, No. 1790, *overd.*—*PONTYPRIDD UNION v. DREW*, [1927] 1 K. B. 214; 95 L. J. K. B. 1030; 136 L. T. 83; 90 J. P. 169; 42 T. L. R. 677; 70 Sol. Jo. 795; 24 L. G. R. 405, C. A.

*See, further, POOR LAW.*

1800. *Add. Annotation*:—*Consd.* *Re* Harrington Motor Co., *Ex p.* Chaplin, [1928] Ch. 105.

1826a. *Limited to claims by third parties.*]—Pltfs. took a lease of premises from deft. railway co., & by an agreement supplemental to the lease, defts. gave pltfs. permission to use a portable gangway, which could be moved over certain of defts.' railway lines. One of the terms was that pltfs. "agree & undertake to indemnify the co. against all claims & demands or liability whatsoever, whether in respect of damage to person or property, arising out of or in connection with the existence or user of the gangway." When pltfs. were using the gangway some trucks were shunted down the line, & the gangway was destroyed. In an action for damages for negligence &/or breach of duty defts. denied liability & pleaded the above term of the supplemental agreement:—*Held*: the undertaking was only one to hold defts. harmless against claims by third parties.—*GREAT*

### PART X. SECT. 4, SUB-SECT. 2.—C.

1685 i. *Character.*]—An offer, by an employer, who has knowledge of dishonesty on the part of his employee, amounts to a representation to one from whom he seeks or obtains, without disclosure, a fidelity guaranty, that, so far as he is aware, the employee whose fidelity is to be guaranteed is not dishonest. If that representation is untrue, it matters not that the employer's failure to disclose the true situation was not wilful, intentional, or with a view to advantage himself.—*EBY-BLAIN, LTD. v. MATTHEWS*, [1925] 2 D. L. R. 382; 56 O. L. R. 383.—*CAN.*

1685 ii. ———.]—Where an employee is required to furnish a fidelity bond, & his employer knows that he has been dishonest in the office or service to which the bond is to apply, but fails to disclose such knowledge to the surety who gives the bond in ignorance of the former dishonesty of appet., such non-disclosure releases the surety.—*RURAL MUNICIPALITY OF CHURCH-BRIDGE NO. 211 v. LONDON GUARANTEE & ACCIDENT CO., LTD.*, [1925] 3 D. L. R. 341; [1925] 2 W. W. R. 334; 19 Sask. L. R. 450.—*CAN.*

1685 iii. *S. P. MAYFIELD RURAL*

*MUNICIPALITY, No. 406 v. LONDON & LANCASHIRE GUARANTEE & ACCIDENT CO. OF CANADA*, [1927] 1 D. L. R. 403; [1927] 1 W. W. R. 67; 21 Sask. L. R. 283.—*CAN.*

gi. ——— *Statement made in ignorance & without fraud.*]—For the purpose of a renewal of a fidelity policy, pltfs. certified to defts. that the employee "is not at present in arrears or default." The employee was in fact in arrears & default at the time, but the certificate was made without knowledge of this & without fraud:—*Held*: pltfs. could not recover under the policy.—*DOMINION OF CANADA GUARANTEE & ACCIDENT CO., LTD. v. HOUSING COMMISSION OF CITY OF HALIFAX*, [1927] 4 D. L. R. 161; [1927] S. C. R. 492.—*CAN.*

### PART X. SECT. 4, SUB-SECT. 3.—C.

1713 i. *As to nature of transaction.*]—It is a good defence to an action on a guarantee that it was executed by the surety in the belief, induced by the fraudulent misrepresentations of debtor, that it is a document of another nature.—*WATKINS (J. R.) CO. v. HANNAH (Sask.)*, [1926] 4 D. L. R. 93; [1926] 2 W. W. R. 800.—*CAN.*

### PART X. SECT. 5, SUB-SECT. 2.

1730 ii. ———.]—*Held*: the influence exerted by the husband was not undue influence, & the wife executed the guarantee as the result of her own considered judgment of the consequences thereof.—*CANADIAN BANK OF COMMERCE v. FOREMAN*, [1927] 2 D. L. R. 530; [1927] 1 W. W. R. 783; 22 Alta. L. R. 443.—*CAN.*

### PART XII. SECT. 1.

1744 iii. ——— *Person indemnified*.]—Where a person entitled to be indemnified is insolvent:—*Semble*: the contract to indemnify him has the same effect as if it were a guarantee to the principal creditor of payment of the debt.—*Re WINDING-UP ACT & FRANCO-CANADIAN MORTGAGE CO., LTD., Re BANK OF MONTREAL (Alta.)*, [1927] 1 W. W. R. 403; 8 C. B. R. 176.—*CAN.*

### PART XII. SECT. 6, SUB-SECT. 1.—A.

1825 ii. ———.]—*RUTHERFORD v. STOVEL* (1861), 12 C. P. 9.—*CAN.*

1825 iii. ———.]—*GRAND TRUNK PACIFIC COAST S.S. CO. v. VICTORIA-PACIFIC STEVEDORING CO.* (1919), 43 D. L. R. 231.—*CAN.*

WESTERN RY. CO. *v.* DURNFORD (JAMES) & SONS, LTD. (1928), 139 L. T. 145; 44 T. L. R. 415; 33 Com. Cas. 251, H. L.; *affg.*, S. C. *sub nom.* DURNFORD (JAMES) & SONS, LTD. *v.* GREAT WESTERN RY. CO. (1927), 138 L. T. 137, C. A.

*Annotation:—Mentd.* Bottomley *v.* Hurst & Blackett & Houston (1928), 44 T. L. R. 451.

1830. *Add. Annotation:—As to (2) Refd.* Stoney *v.* Eastbourne R. D. C., [1927] 1 Ch. 367.

1867. *Add. Annotations:—Refd.* *Re* Harrington Motor Co. (1927), 44 T. L. R. 58; Hoods' Trustees *v.* Southern Union General Insee. of Australasia, [1928] Ch. 793.

1877. *Add. Annotation:—Refd.* Admiralty Comrs. *v.* S.S. Susquehanna, [1926] A. C. 655.

1889. *Add. Annotation:—As to (2) Refd.* Hyman *v.* Hyman, Hughes *v.* Hughes (1928), L. T. 416.

## HIGHWAYS, STREETS AND BRIDGES.

## Part I.—Definitions and Characteristics.

65. To the existing paragraph add as follows :—  
 (3) The words "annual payment towards the cost of the maintenance & repair" in Local Government Act, 1888 (c. 41), s. 11 (2), mean a payment to be made annually in respect of the expenditure of the particular year, not a fixed sum to be arrived at by taking the average expenditure over a series of years.

*Annotations:—As to (1) Consd. Manchester Corpn. v. Auden-*

- shaw U. C. & Denton U. C., [1928] Ch. 763. Apld. Reigate Corpn. v. Surrey County Council, [1928] Ch. 359.*  
 66. *Add. Annotation:—As to (1) Consd. Reigate Corpn. v. Surrey County Council, [1928] Ch. 359.*  
 79. *Add. Annotation:—Refd. Howard-Flanders v. Maldon Corpn. (1926), 135 L. T. 6.*  
 96. *Add. Annotation:—Generally, Mentd. Thurrock Grays & Tilbury Joint Sewerage Board v. Thames Land Co. (1925), 90 J. P. 1.*

## Part III.—Origin and Proof of Highways.

178. *Add. Annotation:—As to (2) Refd. Stoney v. Eastbourne R. D. C. & Devonshire (1925), 90 J. P. 133.*  
 187. *Add. Annotation:—Refd. Stoney v. Eastbourne R. D. C. & Devonshire (1925), 90 J. P. 57.*  
 189. *Add. Annotation:—As to (1) Consd. A.-G. v. Tasker (1928), 92 J. P. 157.*  
 196. *Add. Annotation:—As to (2) Refd. Layzell v. Thompson (1926), 43 T. L. R. 58.*  
 216. *Add. Annotation:—Consd. Stoney v. Eastbourne R. D. C. & Devonshire (1925), 90 J. P. 133.*  
 219. *Add. Annotation:—As to (1) Refd. Stoney v. Eastbourne R. C. & Devonshire (1926), 95 L. J. Ch. 312.*  
 225. *Add. Annotation:—Mentd. Birkdale District Electric Supply Co. v. Southport Corpn., [1926] A. C. 355.*  
 226. *Add. Annotation:—Mentd. Birkdale District Electric Supply Co. v. Southport Corpn., [1926] A. C. 355.*  
 227. *Add. Annotation:—Mentd. Birkdale District Electric Supply Co. v. Southport Corpn., [1926] A. C. 355.*  
 236. *Add. Annotation:—Generally, Mentd. Birkdale District Electric Supply Co. v. Southport Corpn., [1926] A. C. 355.*  
 241. *Add. Annotation:—Mentd. Birkdale District Electric Supply Co. v. Southport Corpn., [1926] A. C. 355.*  
 251. *Citations:—For "L. R. 3 Exch. 316" read "L. R. 2 Exch. 316."*  
*Add. Annotations:—As to (1) Consd. Stoney v. Eastbourne R. D. C. & Devonshire (1925), 90 J. P. 133. As to (2) Refd. Dee Conservancy Board v. McConnell, [1928] 2 K. B. 159. Generally, Refd. Stoney v. Eastbourne R. D. C. & Devonshire (1925), 90 J. P. 57.*  
 285. *Add. Annotation:—As to (1) Refd. Stoney v. Eastbourne R. C. & Devonshire (1926), 95 L. J. Ch. 312.*

298. *Add. Annotation:—Generally, Refd. Boulton v. Paignton U. D. C. (1928), 92 J. P. 98.*

322a. **User by sufferance.**—Deft. council claimed that there was a public footpath over pltf.'s park. On a plan attached to an inclosure award of 1816 no such public footpath was set out, & since that time down to 1901 the park had been in settlement with no one capable of dedicating a right of way to the public. The alleged footpath led from the public road over part of the carriage drive to the hall, & then turned off through the park, leading to only three farms & three or four cottages, & by its use a distance of about sixty-four yards was saved. There was no evidence of dedication, & the evidence of user was by the occupants of the farms & cottages & their friends:—*Held*: the proof of uninterrupted user was no more than evidence from which the ct. could infer that at some time the owner of the soil had dedicated the path to the public of which there was no evidence, & the evidence of user was user by sufferance only since 1816, before which no such public footpath was shown to exist.—*FENWICK v. HUNTINGDON RURAL DISTRICT COUNCIL* (1928), 92 J. P. 41.

- 355a. ———.]—The purchaser of land sold "subject to rights of way," after an unsuspected right of way had been established on behalf of the public, brought an action against the vendor for breach of the implied covenants expressed by his having conveyed as "beneficial owner." The vendor's covenant being qualified, the question turned upon whether there had been dedication of the right subsequently to 1782, the date of the last purchase for value by those through whom the vendor claimed. Pltf. produced two tithe maps, made respectively in 1802 & 1840, in neither of which was the right of way marked:—*Held*: the tithe maps were made for a special purpose, & not for the purpose of showing public or private rights other

## PART I. SECT. 6, SUB-SECT. 2.

*sa. By Government survey—Prevails against previous possession.*—*MOUNT. JOY v. R.* (1861), 1 E. & A. 429.—*CAN.*

## PART III. SECT. 1.

*r i.* *POINT ABINO TOWNSHIP.* [1927] *ASS'N. v. BERTIE* 4 D. L. R. 503; 61 O. L. R. 120.—*CAN.*

PART III. SECT. 2, SUB-SECT. 4.—  
B. (c).

*sd. Lane less than prescribed minimum width of private streets—No dedication inferred.*—*CARPET IMPORT CO., LTD. v. BEATH & CO., LTD.*, [1927] N. Z. L. R. 37.—*N.Z.*



than as regards tithe; they were not, therefore, *prima facie* evidence enabling pltf. to contend that the dedication was at a subsequent date, so as to shift upon deft. the onus of proving that the dedication was prior to 1782.—*STONE v. EASTBOURNE RURAL COUNCIL*, [1927] 1 Ch. 367; 95 L. J. Ch. 312; 135 L. T. 281; 90 J. P. 173; 70 Sol. Jo. 690; 24 L. G. R. 333, C. A.

355b. — — —.]—A tithe map & award produced from the proper custody may, in cases in which the question is whether a highway was dedicated to the public before or after

Mar. 20, 1836, be used in conjunction with evidence of uninterrupted public user throughout living memory as evidence, (1) that there was at the date of the award a carriage-way along the line shown on the map, & (2) of reputation that the way so shown had by the date of the award been dedicated to the public.—*A.-G. (FEVERSHAM'S (EARL) TRUSTEES) v. STOKESLEY RURAL DISTRICT COUNCIL* (1928), 26 L. G. R. 440.

356. *Add. Annotation*:—*Reid. Layzell v. Thompson* (1927), 137 L. T. 106.

## Part V.—Rights in Connection with Highways.

546. *Add. Annotation*:—*Mentd. Foster v. Lyons* (1926), 70 Sol. Jo. 1182.

607. *Add. Annotation*:—*Reid. Noble v. Harrison*, [1926] 2 K. B. 332.

618. *Add. Annotation*:—*Appld. A.-G. v. Hornsey B. C.* (1926), 43 T. L. R. 92.

634. *Add. Annotation*:—*Mentd. Montreal City v. Montreal Harbour Comrs., Tetreault v. Montreal Harbour Comrs.*, [1926] A. C. 299.

651. *Add. Annotation*:—*As to* (1) *Reid. Howard-*

*Flanders v. Maldon Corpn.* (1926), 135 L. T. 6.

657. *Add. Annotation*:—*As to* (2) *Consd. Howard-Flanders v. Maldon Corpn.* (1926), 135 L. T. 6.

661. *Add. Annotation*:—*Dbtd. Witham Outfall Board v. Boston Corpn.* (1926), 136 L. T. 756.

664. *Add. Annotation*:—*Generally, Mentd. Light v. West*, [1926] 2 K. B. 238.

676. After this case add “ — — — Grant void for uncertainty.”—*See CONSTITUTIONAL LAW*, Vol. XI., p. 564, No. 637.”

## Part VI.—Repair of Highways.

786a. — — — Increased burden of traffic.]—

A road was constructed by pltf. corp. under powers conferred by a private Act of 1875, which enacted that the road should be constructed according to a certain specification & that it should thereafter be maintained at pltf.'s expense. The road was completed in 1878 as a waterbound macadamised road in accordance with the statutory requirements, & was fully maintained by them for many years, but ultimately it deteriorated owing to the increase of traffic of a kind unknown in 1878, & unless resort was had to tar-spraying, or to some similar modern expedient, the existing traffic would rapidly destroy the road:—*Held*: (1) pltf. were liable to maintain the road in the condition in which it was completed in 1878, & that liability still continued, notwithstanding the change of circumstances brought about by the increase

of traffic; (2) the obligation to maintain the road rested on pltf. alone.—*MANCHESTER CORPN. v. AUDENSHAW URBAN COUNCIL & DENTON URBAN COUNCIL*, [1928] Ch. 763; 97 L. J. Ch. 276; 139 L. T. 509; 92 J. P. 163; 44 T. L. R. 628; 72 Sol. Jo. 452; 26 L. G. R. 343, C. A.

797. *Add. Annotation*:—*As to* (1) *Consd. Reigate Corp. v. Surrey County Council*, [1928] Ch. 359.

819. *Add. Annotation*:—*As to* (1) *Reid. Palmer v. Crone*, [1927] 1 K. B. 804.

892. *Add. Annotations*:—*As to* (1) *Appld. A.-G. v. Hornsey B. C.* (1926), 43 T. L. R. 92. *Reid. Reigate Corp. v. Surrey County Council*, [1928] Ch. 359.

945. *Add. Annotation*:—*Consd. Garnett v. Pratt*, [1926] Ch. 897.

### PART III. SECT. 2, SUB-SECT. 7.

404 i. *Non-user by public.*]—*BRITISH COLUMBIA HOP CO., LTD. v. DISTRICT OF KENT*, [1925] 3 D. L. R. 171; [1925] 2 W. W. R. 31.—CAN.

### PART III. SECT. 3.

434 i. *Compliance with statutory requirements—Failure of commissioners to file return of laying out—Laying out not invalidated.*]—*BROWN v. McKEEL* (1841), 1 Kerr. 311.—CAN.

### PART V. SECT. 1, SUB-SECT. 2.

sl. — — —.]—*HASAN v. ZAMAN* (1924), 41 T. L. R. 88.—IND.

### PART V. SECT. 5, SUB-SECT. 1.

sl. *Power of International Bridge Company—To regulate*

*CANADA SOUTHERN RY. CO. v. INTERNATIONAL BRIDGE CO.* (1883), 8 App. Cas. 723.—CAN.

### PART VI. SECT. 1.

789 i. *Revsd.*, 26 A. R. 43.

789 ii. — — — *Every portion of road.*]—A municipality is liable in damages for an accident resulting from the breach of its duty to keep every portion of a road in repair, that is, in a fit condition to be travelled upon.—*RRA v. MUNICIPALITY OF MINTO*, [1925] 3 D. L. R. 523; [1925] 2 W. W. R. 657; 35 Man. L. R. 190.—CAN.

789 iii. — — —.]—Although every portion of a public road must be kept in repair by the municipality in which the road lies, the driver of a

very heavy vehicle is not entitled to drive it to the extreme edge of a raised road built of earth in absolute reliance that it will not crumble.—*BLACKIE v. MUNICIPALITY OF MINNIOTA*, [1925] 4 D. L. R. 1054; [1925] 3 W. W. R. 561.—CAN.

### PART VI. SECT. 5, SUB-SECT. 1.

sg. *Liability of village—Village Act, R. S. A. 1922 (c. 109), s. 88.*]—Before a village can be held liable for damage resulting from a defect in a road, it must be shown that the road is within one of the classes of roads specified in the above sect.—*GREENAWAY v. CANADIAN PACIFIC RY. CO.*, [1925] 1 D. L. R. 992; [1925] 1 W. W. R. 667; 21 Alta. L. R. 331; *varying*, [1924] 4 D. L. R. 977; [1924] 3 W. W. R. 498.—CAN.

997. *Add. Annotation*:—*Refd. A.-G. v. Hornsey B. C. (1926), 43 T. L. R. 92.*

1002a. *Walls & roof of tunnel.*]—In 1823 a road was constructed as a private road by S., on, through, & under his own land. In order to make the road S. tunnelled under an existing footpath. In 1923 the road became a main road, *pltf.*, S.'s successors in title to the soil through which the tunnel was driven, being the road authority. In 1924 it became necessary to repair the walls & roof of the tunnel:—*Held*: (1) the walls & roof of the tunnel either formed part of the highway or were necessary for its maintenance, & the

costs of their repair were costs within Local Govt. Act, 1888 (c. 41), s. 11 (2), towards which *defts.* were bound to make an annual payment; (2) even if S., having in 1823 tunnelled under an existing highway, became liable *ratione nocumenti* to repair the part of the tunnelled road under the highway, that liability did not descend to *pltf.*s. under Local Govt. Act, 1888, s. 97, because *pltf.*s. were not only S.'s successors in title but also a highway authority.—*REIGATE CORPN. v. SURREY COUNTY COUNCIL*, [1928] Ch. 359; 97 L. J. Ch. 168; 138 L. T. 691; 92 J. P. 46; 44 T. L. R. 308; 72 Sol. Jo. 154; 26 L. G. R. 278.

## Part VII.—Enforcement of Duty to Repair.

1053. *Add. Annotation*:—*Refd. A.-G. v. Hornsey B. C. (1926), 43 T. L. R. 92.*

## Part VIII. Powers, Duties and Liabilities of Highway Authorities.

1146a. *Removal of footway.*]—A municipal *corpn.* in exercise of its powers as highway authority under Public Health Act, 1875 (c. 55), s. 149, widened a narrow street in the town by entirely removing a raised & kerbed footway on one side, & throwing its site into the carriage-way without any notice to or consent of the owner of the adjoining house & premises, who was also owner of one-half of the soil of the road. The owner brought an action in the county ct. for a mandatory order to restore the footway, & for damages for injury to his property. It was proved that the access to & egress from the property through doors in a garden wall was rendered inconvenient & dangerous by the removal of the footway, & the county ct. judge granted a mandatory injunction to *defts.* to restore the footway to a width of 1 ft. less than before:—*Held*: the county ct. judge had rightly directed himself in law, & there was evidence upon which he was entitled to find that the action of *defts.* in removing the footway was unreasonable & arbitrary, & it was

not sufficient for the action to be *bond fide*; & the order was properly made.—*HOWARD-FLANDERS v. MALDON CORPN. (1926), 135 L. T. 6; 90 J. P. 97; 70 Sol. Jo. 544; 24 L. G. R. 224, C. A.*

1164a. *Duty to inspect trees—On private ground adjoining highway—Patent danger.*]—*MACKIE v. DUMBARTONSHIRE COUNTY COUNCIL, WESTERN DISTRICT COMMITTEE (1927), 71 Sol. Jo. 710; 91 J. P. Jo. 634, H. L.*

— *Obstruction during construction of new road.*]—A *corpn.*, in making a new road connecting two existing roads in the same straight line with a bridge across a ravine dividing them, pulled down an old wall which closed a *cul de sac* in which one of the roads terminated, partly constructed the new road & erected a wooden fence at the end, beyond which was the ravine. *Pltf.* drove his car after dark down a public road leading straight into the new road under construction, & not seeing the fence in time, which had no red lamp or other warning of danger upon it, &

### PART VII. SECT. 1.

1006 ii. —. ]—*Re R. v. LAMPTON (Ont.) (1926), 46 Can. Crim. Cas. 13.—CAN.*

### PART VII. SECT. 2, SUB-SECT. 1.

*sk. Not suspended by provision of statutory remedy.*]—*R. v. TOWN OF PARIS (1862), 12 C. P. 445.—CAN.*

### PART VII. SECT. 2, SUB-SECT. 8.—B.

1107 i. *Neglect to repair after conviction—Writ de nocumento amovendo.*]—*R. v. PORTAGE LA PRAIRIE RURAL MUNICIPALITY (1905), 2 W. L. R. 141; 10 Can. Crim. Cas. 125.—CAN.*

### PART VIII. SECT. 1, SUB-SECT. 1.

b i. —. ]—*STRONG v. ARRAN. (1913), 28 O. L. R. 106; 4 O. W. N. 765; 12 D. L. R. 44.—CAN.*

*sm. No power to alienate part of old road.*]—*CHAPPUS v. LA SALLE, [1927]*

3 D. L. R. 764; 60 O. L. R. 564.—*CAN.*

### PART VIII. SECT. 1, SUB-SECT. 4.

1164a i. *Duty to inspect trees.*]—A tree planted in a city highway fell upon a motor car. The tree had long been in a decaying condition:—*Held*: the city *corpn.*, having by bye-law assumed the duty of caring for the trees planted upon the highway, were liable for discharging that duty negligently.—*HUESTIS v. CITY OF TORONTO, [1926] 3 D. L. R. 142; 58 O. L. R. 648.—CAN.*

### PART VIII. SECT. 1, SUB-SECT. 5.

c i. *S. P. PHEASEY v. EDMONTON (Alta.), [1927] 2 W. W. R. 445.—CAN.*

r (p. 389) i. —. ]—*Pltf.* slipped & fell when walking upon a granolithic sidewalk & was injured. For five or six days before this occurrence, the sidewalk at the point where she fell was covered with glare ice & was consequently in a slippery & dangerous

condition. *Pltf.*'s injury was not attributable to any lack of care on her part. The city authorities had knowledge of the dangerous condition for five or six days before the accident & made no attempt to remove the danger:—*Held*: the city *corpn.* were guilty of gross negligence within Consolidated Municipal Act, 1922, s. 460 (3), & were liable.—*COKERS v. BELLEVILLE, [1925] 2 D. L. R. 250; 56 O. L. R. 451; revsg., [1924] 2 D. L. R. 333.—CAN.*

r (p. 389) ii. —. *Dangerous condition known to pedestrian.*]—Where a person, who knows that a sidewalk is in a dangerous condition because of a pile of slippery snow thereon, deliberately makes use of it, instead of walking on the road as he has previously done, & thereby sustains injuries, the maxim *volenti non fit injuria* is applicable.—*ROBINSON v. ASSINIBOIA TOWN, [1927] 3 D. L. R. 514; [1927] 2 W. W. R. 499; 21 Sask. L. R. 658.—CAN.*

was not watched, drove through it & fell with his car into the ravine, sustaining serious personal injury & damage to the car:—*Held*: the corpn. being in occupation of the land under construction as a new road, pltf. was not a trespasser upon private property, but an invitee, to whom they owed a duty to warn of any hidden danger; the unlighted fence was in the circumstances a concealed trap, & pltf. not being guilty of contributory negligence, defts. were liable to him in damages for negligence.—*OLDHAM v. SHEFFIELD CORPN.* (1927), 136 L. T. 681; 91 J. P. 69; 43 T. L. R. 222; 25 L. G. R. 94, C. A.

*Annotation*:—*Consd. Coleshill v. Manchester Corpn.*, [1928] 1 K. B. 776.

— **Trench dug in unfinished road.**—*Defts.* in execution of a housing scheme were laying out a new road running eastwards from a certain highway & closed at its eastern end by a quickset hedge. Footpaths had already been laid out & edged with kerbstones; houses were being built on the northern side & heaps of earth & building materials made the footpath on this side impassable; the footpath on the south side was still unfinished, but was traversable; it was bounded by a fence of wooden posts & bars; the middle of the road was levelled but not metalled; across it, for laying an electric cable, defts. had cut a trench which they left unfenced & by night unlighted. They did not prevent persons, whether intending occupiers of houses or others, from walking down the new road. Pltf. on a

Sept. evening, while there was still daylight, walked with a companion down the highway & into the new road along the southern footpath. Through a gap in the fence they went across other land occupied by defts. to a golf course. They returned somewhat hurriedly when it was growing dark, & pltf. fell into the trench & was injured:—*Held*: the trench being apparent to all, there was nothing in the nature of a concealed danger or trap, & defts. were not liable to pltf., who was a mere licensee.—*COLESHILL v. MANCHESTER CORPN.*, [1928] 1 K. B. 776; 97 L. J. K. B. 229; 138 L. T. 537; 92 J. P. 37; 44 T. L. R. 258; 26 L. G. R. 124, C. A.

1197. *Add. Annotation*:—*Refd. Oldham v. Sheffield Corpn.* (1927), 136 L. T. 681.

1216. *Add. Annotation*:—*Appld. Manchester Corpn. v. Audenshaw U. C. & De on U. C.*, [1928] Ch. 127.

1228a. **Amount of payment—How calculated—Local Government Act, 1888 (c. 41), s. 11 (2).**—*SANDGATE URBAN DISTRICT COUNCIL v. KENT COUNTY COUNCIL*, No. 65, *ante*.

1268. *Add. Annotation*:—*Refd. Oldham v. Sheffield Corpn.* (1927), 136 L. T. 681.

1272. *Add. Annotation*:—*Generally, Mentd. R. v. Copestake, Ex p. Wilkinson* (1926), 90 J. P. 191.

1278. *Add. Annotation*:—*Refd. Oldham v. Sheffield Corpn.* (1927), 136 L. T. 681.

1280. *Add. Annotation*:—*Refd. Oldham v. Sheffield Corpn.* (1927), 136 L. T. 681.

#### PART VIII. SECT. 1, SUB-SECT. 9.

**sd. Street railway track adjacent to highway.**—Pltfs. in a motor car attempted to cross the tracks of a street railway, which were at that point not laid upon the travelled highway but upon land owned by the city corpn. adjacent to the travelled highway. The place of crossing was in a dangerous condition, by reason of the tracks not being ballasted but simply resting upon exposed sleepers. The car was imprisoned there & run into by a street car, & pltfs. were injured & the car damaged:—*Held*: the city corpn. were liable since, although no obligation to repair existed, there was a trap or concealed danger.—*JAMES v. TORONTO* (1925), 57 O. L. R. 322; *affg.* 27 O. W. N. 233.—*CAN.*

#### PART VIII. SECT. 1, SUB-SECT. 11.—A.

1190 i. **Liability for failure to light—Statutory duty to light.**—A motor car driven at night came into collision with a tramway island, & was damaged. In an action against defenders, as the local authority charged, under Edinburgh Municipal & Police Act, 1879, with the lighting of the streets, it was proved that a red lamp situated on the island was not lit at the time of the accident. It was also established that defenders had not failed in their duty with respect either to the construction & condition of the lamp, or to the precautions taken to ensure that it should remain alight during the hours of darkness:—*Held*: the standard of performance could not be absolute, but must be relative to the best available means of achieving exact performance, & in the absence of evidence of any failure on the part of defenders to take every reasonable means of carrying out their statutory obligations, they fell to be absolved.—

*KEOGH v. EDINBURGH MAGISTRATES*, [1926] S. C. 814.—*SCOT.*

**r i.** —.—A corpn. planted trees along one of its streets, & resp. sustained injuries through his motor car colliding with one of the trees on a dark night. There was a street-lamp in the vicinity, but it had gone out:—*Held*: the corpn. having caused a dangerous obstruction on the street, it was its duty to light & keep lighted the obstruction, so as to make it visible to persons using the street.—*OAMARU (MAYOR) v. CLARKE*, [1927] N. Z. L. R. 464.—*N.Z.*

#### PART VIII. SECT. 1, SUB-SECT. 11.—D.

1210 i. **Liability of driver—Accidental injury.**—*Held*: the driver of a horse van, which was capsized against a lamp-post by a gust of wind, was not liable in damages under General Police & Improvement (Scotland) Act, 1862 (c. 101), s. 128, in respect that the breaking of the lamp was not his act.—*HOGG v. MACPHERSON*, [1928] S. C. (J.) 15.—*SCOT.*

#### PART VIII. SECT. 5, SUB-SECT. 1.—A.

1260 xxii. —.—*GREER v. MULMUR TOWNSHIP*, [1926] 4 D. L. R. 132; 59 O. L. R. 259.—*CAN.*

1260 xxiii. —.—*LINGRELL v. STOCKS No. 363 MUNICIPAL DISTRICT (Alta.)*, [1927] 3 D. L. R. 478; [1927] 2 W. W. R. 313.—*CAN.*

**g (p. 403) i.** —.—*Ditch without guards or railings.*—*WALTON v. YORK COUNTY CORPN.* (1881), 6 A. R. 181.—*CAN.*

**k (p. 404) i.** —.—*Failure of traveller to see.*—Where a traveller fails to see an obstruction which a person using ordinary care would have avoided, the statutory liability does not arise.—*KING v. RILEY*, [1925] 2 D. L. R. 218.—*CAN.*

**k (p. 404) ii.** —.—*Imbedded wire.*—

Pltf. was injured by tripping over a wire imbedded in a street:—*Held*: defts. had not discharged the onus of removing the presumption that they had failed in their duty.—*WOODCOCK v. VANCOUVER (B. C.)*, [1927] 3 W. W. R. 759.—*CAN.*

**cc i.** —.—Where an accident results from lack of repair of a road, a presumption arises, without evidence that the municipality responsible for the road had notice of its condition, that the statutory duty to repair has been neglected.—*REA v. MUNICIPALITY OF MINTO*, [1925] 3 D. L. R. 523; [1925] W. W. R. 657; 35 Man. L. R. 190.—*CAN.*

#### PART VIII. SECT. 5, SUB-SECT. 1.—B. (a).

1289 i. —.—**Damage to adjoining owners—Construction of road causing flood.**—*Municipality*:—*Held*: liable.—*MEIER v. FRANKLIN, LIMPRECHT v. FRANKLIN, STREICH v. FRANKLIN (Man.)*, [1926] 3 D. L. R. 433; [1926] 2 W. W. R. 330.—*CAN.*

1289 ii. —.—**Negligent construction of ditches causing flood.**—*STADNICK v. BIFROST MUNICIPALITY*, [1927] 4 D. L. R. 61; [1927] 3 W. W. R. 49; 37 Man. L. R. 26.—*CAN.*

1289 iii. —.—**Road materials carried into racway by violent storm.**—*Held*: defts. were not liable.—*SNOOK v. BRANTFORD TOWN COUNCIL*, (1856), 14 U. C. R. 255.—*CAN.*

**sk. Road under repair by Minister of Highways.**—*Held*: as long as the work of construction or repair is being carried on, the highway is removed from the direction, control & management of the municipality, which is not liable to travellers for damages resulting from its state of repair until the highway is again under its control & management.—*HORSFIELD v. CANA RURAL MUNICIPALITY No. 214*, [1925] 2 D. L. R. 874; [1925] 1 W. W. R. 1067; 19 Sask. L. R. 378.—*CAN.*



## Part IX.—Nuisances and Remedies.

**1330a.** ——— **Enclosing highway.]—R. v. OGDEN** (1702), Fortes Rep. 251; 7 Mod. Rep. 45; 92 E. R. 839.

**1369a. Fireplug — Projection above pavement—Liability of water company.]—A** fireplug had been lawfully fixed in a footpath by defts. Originally the top of the fireplug had been level with the pavement, but in consequence of the ordinary wearing away of the footpath the fireplug projected half an inch above the level of the pavement. The fireplug itself was in perfect repair. Pltf., whilst passing along the footpath, fell over the fireplug & was hurt:—**Held:** as the fireplug was in good repair, & had been lawfully fixed in the footpath, no action by pltf. would lie against defts.—**MOORE v. LAMBETH WATERWORKS Co.** (1886), 17 Q. B. D. 462; 55 L. J. Q. B. 304; 55 L. T. 309; 50 J. P. 756; 34 W. R. 559; 2 T. L. R. 587, C. A.

**Annotations:—Apld.** Thompson v. Brighton Corpn., Oliver v. Horsham L. B., [1894] 1 Q. B. 332. **Consd.** Hartley v. Rochdale Corpn., [1908] 2 K. B. 594. **Apld.** G. C. Ry. v. Hewlett, [1916] 2 A. C. 511. **Refd.** R. v. Poole Corpn. (1887), 19 Q. B. D. 602; Steel v. Dartford L. B. (1891), 60 L. J. Q. B. 256; Dawson v. Bingley U. D. C. (1910), 75 J. P. 17; Papworth v. Battersea B. C. (1914), 79 J. P. 105.

**1372a. Liability of water company.]—A** water co., at the request & expense of the owner of a house, laid down a service pipe leading from their main under the street into the house, in which they placed a stop-cock for the purpose of regulating the supply of water. This stop-cock was protected by a cover or guard-box let into the pavement, which was provided with a lid or flap. Owing to the hinge of the lid or flap being out of repair, it projected above the pavement, & pltf. while passing along the street tripped over it & sustained injury. The apparatus could not be repaired without being removed, or removed without breaking up the pavement. The jury found that there was negligence on the part of those who were liable for the repair of the hinge:—**Held:** the co., who alone had power to break up the street for the purpose of repairing the guard-box, were responsible for its repair, & liable in respect of the injuries sustained by pltf.—**CHAPMAN v. FYLDE WATERWORKS Co.**, [1894] 2 Q. B. 599; 64 L. J. Q. B. 15; 71 L. T. 539; 59 J. P. 5; 43 W. R. 1; 10 T. L. R. 580; 38 Sol. Jo. 629; 9 R. 582, C. A.

**Annotations:—Consd.** Colne Valley Water Co. v. Hall (1907), 96 L. T. 395. **Distd.** Stacey v. Gas Light & Coke Co., Metropolitan Water Board & West End Tailoring Co. (1910), 9 L. G. R. 174. **Consd.** Batt v. Metropolitan Water Board, [1911] 2 K. B. 965. **Refd.** Grand Junction Waterworks Co. v. Rodocanachi, [1904] 2 K. B. 230.

**1381a.** ———.]—A person placing a dangerous obstruction in a highway, or in a private road over which persons have a right of way, is

bound to take all necessary precautions to protect persons exercising their right of way; & if he neglects to do so, is liable for the consequences.—**CLARK v. CHAMBERS** (1878), 3 Q. B. D. 327; 47 L. J. Q. B. 427; 38 L. T. 454; 42 J. P. 438; 26 W. R. 613.

**Annotations:—Consd.** Bull v. Shoreditch Corpn. (1902), 67 J. P. 37; Ruoff v. Long, [1910] 1 K. B. 148; **Apld.** Glasgow City Corpn. v. Taylor, [1922] 1 A. C. 44. **Refd.** A.-G. v. Tod-Heatly & Brownrigg (1879), 76 L. T. 174; Tolhausen v. Davies (1888), 59 L. T. 436; McDowall v. G. W. Ry., [1902] 1 K. B. 618; Latham v. Johnson & Nephew, [1913] 1 K. B. 398. **Mentd.** The Bernina (2) (1887), 12 P. D. 58; Coldrick v. Partridge, Jones (1909), 78 L. J. K. B. 452; Cory v. France, Fenwick, [1911] 1 K. B. 114; Weld-Blundell v. Stephens, [1920] A. C. 956; The San Onofre, [1922] P. 243.

**1391. Add. Annotation:—Refd.** Williams v. Larsen (1928), 21 B. W. C. C. 339.

**1397. Add. Annotation:—Mentd.** S.S. Singleton Abbey v. S.S. Paludina, [1927] A. C. 16.

**1399. Add. Annotation:—Distd.** Oldham v. Sheffield Corpn. (1927), 136 L. T. 681.

**1447. Add. Annotation:—Mentd.** Lowe v. Bentley (1928), 41 T. L. R. 388.

**1465.** After this case add “ See, also, AGRICULTURE, Nos. 970a, 970b.”

**1509. Add. Citation:—95 L. J. K. B. 81.**

**1514. Add. Annotation:—Generally, Refd.** Britannia Hygienic Laundry Co. v. Thornycroft (1926), 135 L. T. 83.

**1519. Add. Annotations:—Distd.** Noble v. Harrison, [1926] 2 K. B. 332. **Consd.** Reigate Corpn. v. Surrey County Council, [1928] Ch. 359.

**1546a. Heap of refuse—Horse frightened.]—Pltf.’s** horse shied at a heap of road-scrapings placed by defts. by the side of a public highway on land belonging to them, & personal injuries were, in consequence sustained by pltf.’s wife. Upon the trial of an action brought in respect of such injuries, evidence that other horses had shied at the same heap, on the same day, was rejected:—**Held:** such evidence was admissible, for if the heap was of such a nature as to be likely to cause horses to shy, it was a public nuisance, & whatever showed it to be likely to cause horses to shy was evidence for pltf.s.—**BROWN v. EASTERN & MIDLANDS RY. Co.** (1889), 22 Q. B. D. 391; 58 L. J. Q. B. 212; 5 T. L. R. 284, C. A.

**Annotation:—Refd.** Heath’s Garage v. Hodges (1915), 14 L. G. R. 195.

**1592. Add. Annotation:—Refd.** Layzell v. Thompson (1926), 91 J. P. 89.

**1616. Add. Annotation:—Refd.** Reigate Corpn. v. Surrey County Council, [1928] Ch. 359.

**1623. Add. Annotation:—Refd.** Oldham v. Sheffield Corpn. (1927), 136 L. T. 681.

### PART IX. SECT. 1, SUB-SECT. 1.—A.

**k i.** ——— **Obstruction on part not used by public.]—R. v. BENNETT** (1825), N. B. Dig. 400.—CAN.

**sn.** **Obstruction permitted—Duty of person causing obstruction to provide lights at night.]—HERVEY v. FRENCH** (1839), 4 Ont. Dig. 7433.—CAN.

### PART IX. SECT. 1, SUB-SECT. 1.—N.

**sp.** **Prickly bush protruding through fence.]—Where** deft. permitted a gorse bush growing on his land to project over a street, & pltf. was injured by a thorn of the bush penetrating one of his eyes:—**Held:** deft. was liable.—**CULL v. GREEN** (1924), 27 W. A. L. R. 62.—AUS.

### PART IX. SECT. 1, SUB-SECT. 14.

**k i.** **Broken-down motor car—Not left on highway for unreasonable time—Owner not liable.]—PEDERSON v. PATERSON** (1916), 31 D. L. R. 368.—CAN.

**st.** **House left in street at night—Street blocked—Person moving house liable.]—SCOTT v. CALGARY & RIDDOCK**, [1927] 2 D. L. R. 263; [1927] 1 W. W. R. 524; 22 Alta L. R. 407.—CAN.

627. *Add. Annotation*:—*Mentd.* R. v. Cory, [1927] 1 K. B. 810.

639. *Add. Annotation*:—*Mentd.* Lagan Navigation Co. v. Lambeg Bleaching, Dyeing & Finishing Co., [1927] A. C. 226.

652. *Add. Annotation*:—*Generally*, *Refd.* Salisbury & Fordingbridge District Drainage

Board v. Southern Tanning Co. (1920), Ltd., [1927] 2 K. B. 566.

1709. *Add. Annotation*:—*As to* (2) *Refd.* Howard-Flanders v. Maldon Corpn. (1926), 135 L. T. 6.

1711. *Add. Annotation*:—*Distd.* Howard-Flanders v. Maldon Corpn. (1926), 135 L. T. 6.

1747. After this case add “*Compare* MAGISTRATES, Nos. 503a, 503b.”

## Part X.—Interference with Highways under Statutory Powers.

1761a. *Duty of local authority*—On request to exercise statutory powers.]—A local authority, requested to carry out in a “street laid out but not dedicated” constructive works under its statutory powers, need not necessarily inquire into the title of those making the request. But it must, in considering whether compliance with the request will be a lawful exercise of the powers, have regard primarily to the physical conditions

obtaining in the area of the proposed operations; & those physical conditions will be one of the principal factors in determining whether relevant statutory definitions are complied with. This applies to powers conferred by either public general or private local statutes.—*DAVIES v. RIPON CORPN.*, [1928] Ch. 884; 97 L. J. Ch. 479; 139 L. T. 636; 92 J. P. 153; 26 L. G. R. 530.

## Part XI.—Excessive Weight and Extraordinary Traffic.

1841. After this case add “*See, also*, No. 1852, *post.*”

1844. To the existing paragraph add as follows:—

The surveyor of a highway gave a certificate under the above sect. to the effect that extraordinary expenses had been incurred by reason of extraordinary traffic caused by resp. in repairing roads in four separate townships. Six months later he gave another certificate which referred to extraordinary expenses incurred partly before & partly after the date of the first certificate on a single road in one of the townships:—*Held*: the first certificate was good, & with regard to

expenses incurred before it was made, the period of six months limited by Summary Jurisdiction Act, 1848 (c. 43), s. 11, for recovering the amount began to run from the date of the first certificate.

1852. After this case add “*See, also*, No. 1841, *ante.*”

1852a. — Where more than one certificate given.]—*WIRRAL HIGHWAY BOARD v. NEWELL*, No. 1844, *ante.*

1858a. — Where several contracts.]—*EPSOM URBAN COUNCIL v. LONDON COUNTY COUNCIL*, No. 1818, *ante.*

## Part XII.—Stopping-up or Diversion of Highways.

1897. *Add. Annotation*:—*Refd.* Oldham v. Sheffield Corpn. (1927), 130 L. T. 681.

1922. *Add. Annotation*:—*Appld.* R. v. Postmaster-General, *Ex p.* Carmichael (1927), 96 L. J. K. B. 347.

1958. *Add. Annotation*:—*Refd.* Brown v. Harrison, Hourani v. Same (1927), 137 L. T. 549.

1979a. — Not costs of preparing for appeal—Order abandoned.]—*R. v. WING* (1825), 4 B. & C. 184; 6 Dow. & Ry. K. B. 323; 3 Dow. & Ry. M. C. 184; 3 L. J. O. S. K. B. 201; 107 E. R. 1028.

### PART IX. SECT. 3, SUB-SECT. 3.—A.

q i. —.]—The owner of an automobile is not entitled to maintain an action against a municipality for damages for non-repair of a highway, if he has not taken out a licence to permit him to operate his car.—*SAMPSON v. ROBERTSON*, [1925] 1 D. L. R. 824; 57 N. S. R. 498.—CAN.

q ii. — *Notice of claim.*]—The absence of the notice required by City Act, R. S. S. 1920 (c. 86), s. 542, to be given the municipality is a bar to an action for damages for injuries

caused by snow or ice on a sidewalk.—*HICKMAN v. MOOSE JAW CITY*, [1925] 1 D. L. R. 115; [1924] 3 W. W. R. 839.—CAN.

### PART XI. SECT. 4, SUB-SECT. 5.

1872 i. *General rule.*]—It is not the total sum actually spent on repair that is recoverable by the road authority, whether that repair involves reconstruction or not. Regard must be had to all the circumstances of the case; the state of the roads when the extraordinary traffic commenced, its

general character & suitability for the traffic reasonably to be expected thereon, the amount of ordinary traffic whether of debt. or other persons, & the extent & nature of the repairs reasonably required. Deductions should also be made if roads when repaired are in a better condition than before extraordinary traffic commenced.—*DOWN COUNTY COUNCIL v. STEWART*, [1927] N. 49.—IR.

1881 i. *Deductions & allowances—Improvement of road due to repair.*]—*DOWN COUNTY COUNCIL v. STEWART*, No. 1872 i, *ante.*—IR.

## Part XIII.—Streets.

1997. *Add. Annotations*:—**Consd.** Howard-Flanders v. Maldon Corpn. (1926), 135 L. T. 6. **Mentd.** Graigola Merthyr Co. v. Swansea Corpn., [1928] Ch. 235.
2032. *Add. Annotation*:—*As to* (2) **Consd.** A.-G. v. Hornsey B. C. (1926), 43 T. L. R. 92.
2202. *Add. Annotation*:—**Mentd.** Hutton v. A.-G., [1927] 1 Ch. 427.
2203. *Add. Annotation*:—**Apld.** Ashby-de-la-Zouch Grdns. v. Summers, [1928] 2 K. B. 397.
- 2204a. — **Recovery of expenses of repairing dangerous structure**—**London Building Act, 1894, s. 116**—**Summary Jurisdiction Act, 1848 (c. 43), s. 11.**—A building in the metropolis having been certified to be dangerous, the county council did the work necessary to make it safe, & on Sept. 15, 1924, demanded from the owner the amount of the expenses. The amount not having been paid, the council on Jan. 1, 1926, applied to a magistrate under sect. 116(1) of the above Act of 1894 to fix the amount of the expenses & to make an order that no part of the structure should be let for occupation until after payment thereof. The magistrate dismissed the complaint on the ground that more than the period of six months limited by sect. 11 of the above Act of 1848 had elapsed between the time when the matter of the complaint arose & the date when the complaint was made:—*Held*: the six months' limitation of time applied to proceedings under sect. 116 (1) of the Act of 1894, & the time ran from the date of the demand, & the magistrate's decision must be affirmed.—**LONDON COUNTY COUNCIL v. OWNER OF 14, LEE-STREET STEPNEY** (1926), 135 L. T. 182; 90 J. P. 145; 42 T. L. R. 543; 24 L. G. R. 386, D. C.
- 2229a. **Part of premises fronting another street.**—Deft. in 1903 purchased a house which fronted on G. road. In 1907 she bought a strip of land which she used to form a carriage drive to the house. In 1904 her husband became the tenant of a field to the south of & adjoining the house & land. The field fronted on E. road. In 1907 deft. purchased the field, but entered into a tenancy agreement letting it to her husband, & from that time the field & the house & land had been separately assessed by the local authority though in fact the tenancy agreement between deft. & her husband ceased to exist about 1918. In 1920 E. road was made up, the usual course being followed under Public Health Act, 1875 (c. 55), ss. 150 & 257, with the result that pl'tfs. claimed a charge, for the admitted proportion due from deft. of the expenses incurred in making up E. road, on the whole of deft.'s property, including her house & grounds as well as the field, as fronting, adjoining or abutting on E. road.—*Held*: the house & grounds & the field must be considered as being one close, & as such the whole was liable to a charge for making up E. road as fronting, adjoining or abutting thereon.—**ALTRINCHAM URBAN DISTRICT COUNCIL v. O'BRIEN** (1927), 91 J. P. 149; 25 L. G. R. 369.
- 2244a. — — —.]—(1) A notice given to a frontager to make up the portion of the street opposite to his premises under Public Health Act, 1875 (c. 55), s. 150, is not rendered inoperative because all the frontagers on the street are not served, but he will be liable only for his proportion of the sum expended in making up those portions of the street which abut on the premises of such of the frontagers as are served with the notice, no change of ownership occurring during the course of the proceedings.
- (2) The words "the same" contained in the form of notice given in the above Act refer to that portion only of the street abutting on the premises of the owner on whom such notice is served, & not to the whole street.
- (3) Two winter months given as the time within which to execute works under a notice given under the above sect. is sufficient.—**SUNDERLAND CORPN. v. GRAY**, [1928] Ch. 756; 97 L. J. Ch. 411; 136 L. T. 405; 91 J. P. 52; 25 L. G. R. 139.
- 2252a. — — — "The same."—**SUNDERLAND CORPN. v. GRAY**, No. 2244a, *ante*.
- 2254a. — — —.]—**SUNDERLAND CORPN. v. GRAY**, No. 2244a, *ante*.
2268. *Add. Annotation*:—*As to* (2) **N.F.** Sunderland Corpn. v. Gray (1926), 136 L. T. 405.
- 2282a. — **Two streets repaired at same time.**—A local authority which has executed repairs to streets under Public Health Acts Amendment Act, 1907 (c. 53), s. 19, is not entitled to include two streets in the same account & apportion the combined expenses among the frontagers of both streets. Nor have the justices, before whom the local authority seek to recover such expenses, any jurisdiction to investigate the accounts & separate the expenses of the two streets for the purpose of making a proper apportionment.—**NASH v. GILES** (1926), 96 L. J. K. B. 216; 136 L. T. 352; 91 J. P. 19; 43 T. L. R. 121; 25 L. G. R. 66, D. C.
- 2285a. **Effect of agreement between frontagers**—**Frontager not to be liable for maintenance of road until taken to by local authority**—**Frontager not entitled to repayment of apportioned share of cost of making up road.**—**MOORE v. TODD** (1903), 68 J. P. 43; 19 T. L. R. 642; 2 L. G. R. 376, C. A.
2340. *Add. Annotation*:—**Refd.** Crediton Gas Co. v. Crediton U. C., [1928] Ch. 447.
2351. After this case add the following new subsection:—
- vi. *Other Cases.*
- 2351a. **Action to recover expenses**—**Form of writ**—**Names & addresses of owners not known.**—Pl'tfs., being entitled under Public Health Acts to recover the expenses of making up a road from the owners of the lands abutting on the roadway & being unable to discover who some of those owners were, issued a



writ against A., a known owner of some of the land, "& the owners of certain lands adjoining" the road "more particularly described in the indorsement" on the writ "whose names & addresses are not known to pltfs." Upon the summons for directions pltfs. desired to amend the writ by adding after the word "owners" the words "at the time of the completion of the works referred to in the indorsement hereon," & they also asked for leave to effect substituted service on defts. so described by affixing copies of the writ on the respective premises:—*Held*: the writ, in not giving the names & addresses of defts. other than A., did not comply with the form of writ which had the basis of statutory authority & was prescribed by R. S. C., Ord. 2, r. 3, & Appendix A, Part 1; the writ, whether as originally issued or as proposed to be amended, was bad as against the persons so sought to be made defts., & the words following A.'s name must be struck out.—*FRIERN BARNET URBAN COUNCIL v. ADAMS*, [1927] 2 Ch. 25; 96 L. J. Ch. 145; 136 L. T. 649; 91 J. P. 60; 25 L. G. R. 75, C. A.

2353. *Add. Annotation*:—*As to* (1) *Refd.* *Sunderland Corpn. v. Priestman*, [1927] 2 Ch. 107.

2357. *Add. Annotations*:—*Apld.* *Bristol Corpn. v. Virgin*, [1928] 2 K. B. 622. *Refd.* *Paddington B. C. v. Finucane*, [1928] Ch. 567.

2360. *Add. Annotation*:—*Mentd.* *Re Jauncey, Bird v. Arnold* (1926), 134 L. T. 728.

2364. *Add. Annotations*:—*Apld.* *Paddington B. C. v. Finucane*, [1928] Ch. 567. *Refd.* *Bristol Corpn. v. Virgin*, [1928] 2 K. B. 622.

2366. *Add. Annotation*:—*Refd.* *Friern Barnet U. C. v. Adams*, [1927] 2 Ch. 25.

2367a. — *Before expiry of time for summary proceedings.*—The two remedies conferred by Public Health Act, 1875 (c. 55), s. 257, are concurrent, & a local authority need not wait till the six months, during which the summary remedy is available, have expired before commencing proceedings to enforce the charge created by the sect.—*SUNDERLAND CORPN. v. PRIESTMAN*, [1927] 2 Ch. 107; 96 L. J. Ch. 441; 137 L. T. 688; 26 L. G. R. 64.

2405a. *Burial ground "attached" to place of worship.*—The exemption from liability for the expenses of private street works given by Private Street Works Act, 1892 (c. 57), s. 16, to a burial ground "attached" to a "place appropriated to public religious worship, which is for the time being by law exempt from rates for the relief of the poor," extends only to a burial ground in physical attachment or contiguity to the building, & does not include a burial ground at a distance, "attached" to the place of worship in the functional sense that it is owned & maintained by the congregation of the place of worship for their members.—*HOLY LAW SOUTH BROUGHTON BURIAL BOARD v. FAILSWORTH URBAN DISTRICT COUNCIL*, [1928] 1 K. B. 231; 96 L. J. K. B. 713; 137 L. T. 483; 91 J. P. 104; 43 T. L. R. 519; 25 L. G. R. 324, D. C.

2409. *Add. Annotation*:—*Refd.* *Faulkner v. Hythe Corpn.* (1926), 43 T. L. R. 55.

2430a. *After completion of works.*—When an objection is lodged to proposed works under Private Street Works Act, 1892 (c. 57), s. 7, the local authority must apply under sect. 8 to the justices to determine the objection before the works are executed. After the works are completed, the justices have no jurisdiction to determine an objection under sect. 7.—*FAULKNER v. HYTHE CORPN.*, [1927] 1 K. B. 532; 96 L. J. K. B. 167; 136 L. T. 329; 91 J. P. 22; 43 T. L. R. 55; 71 Sol. Jo. 20; 25 L. G. R. 60, D. C.

2432. *Add. Annotation*:—*Refd.* *Faulkner v. Hythe Corpn.* (1926), 43 T. L. R. 55.

2443. *Add. Annotation*:—*Refd.* *Faulkner v. Hythe Corpn.* (1926), 43 T. L. R. 55.

2466a. — *Powers of magistra'* ]—B. Corpn. proposed to execute certain private street works under Birmingham Corpn. (Consolidation) Act, 1883, ss. 46–50, which were substantially identical with Private Street Works Act, 1892 (c. 57). The corpn. duly complied with the formalities required & made a provisional apportionment on resps., the frontagers on the street, according to their respective frontages. Resps. objected that the works were unnecessary. On the hearing of this objection resps. called no evidence. The stipendiary magistrate held that some works were necessary, but was of opinion that the estimated expenses were too heavy. He reduced the estimate & ordered that one resp. should pay one-half & each other resp. two-thirds of the respective sums named in the provisional apportionment:—*Held*: inasmuch as the corpn. had not resolved that the apportionment should be on any basis other than frontage, the stipendiary magistrate could not direct an apportionment on any other basis. Subject to that limitation, he must consider & determine, upon evidence, whether the proposed works were in any, & what, respect unnecessary, & must have regard to any alternative proposals, if resps. made any & supported them by evidence, & to the cost thereof.—*BIRMINGHAM CORPN. v. MOTHER-GENERAL OF CONVENT OF SISTERS OF CHARITY OF ST. PAUL* (1927), 91 J. P. 186; 44 T. L. R. 31; 25 L. G. R. 517, D. C.

2470a. — *Not mortgagee of pews & vaults in & under church.*—*CHORLTON UPON MEDLOCK (CONSTABLES & BURGESSES) v. WALKER* (1842), 10 M. & W. 742; 12 L. J. Ex. 88; 7 J. P. 162; 152 E. R. 671.

2523. *Add. Annotation*:—*As to* (1) *Consd.* *Salisbury & Fordingbridge District Drainage Board v. Southern Tanning Co. (1920), Ltd.*, [1927] 2 K. B. 566.

2591a. *Meaning of "new building"—Reconstructed building not included.*—*BALLARD v. HORTON'S ESTATE, LTD.* (1926), 24 L. G. R. 499, D. C.

2592a. *Meaning of "erections" & "obstructions"—Includes petrol pumps.*—*MACKENZIE v. ABBOTT* (1926), 24 L. G. R. 444, D. C.

2596. *Add. Annotation*:—*Generally, Refd.* *Salisbury & Fordingbridge District Drainage Board v. Southern Tanning Co. (1920), Ltd.*, [1927] 2 K. B. 566.

## Part XV.—Bridges and Approaches thereto.

2680. *Add. Citation* :—95 L. J. Ch. 86.

2650. *Add. Annotation* :—*Refd.* A.-G. v. Hornsey B. C. (1926), 43 T. L. R. 92.

2705. *Add. Annotation* :—*Refd.* Manchester Corpn. v. Audenshaw & Denton U. D. Councils (1928), 139 L. T. 509.

2712. *Add. Annotation* :—*Refd.* Manchester Corpn. v. Audenshaw & Denton U. D. Councils (1928), 139 L. T. 509.

2716. *Add. Annotation* :—*Appld.* Manchester Corpn. v. Audenshaw U. C. & Denton U. C., [1928] Ch. 763.

2717. *Add. Annotation* :—*Appld.* Manchester Corpn. v. Audenshaw U. C. & Denton U. C., [1928] Ch. 763.

2719a. ——— *Damage by locomotive passing over bridge—Locomotive Act, 1861 (c. 70), s. 7.*—In respect of actual damage to a bridge, as distinguished from consequential loss, the liability to repair is imposed upon the owner of the locomotive if he has the charge of it at the material time, but if some person other than the owner has the charge of it, the liability is upon that person. The above sect. does not make the owner & such other person jointly & severally liable for that

damage.—*Southern Ry. Co. v. Gosport Corpn.*, [1926] 2 K. B. 89; 95 L. J. K. B. 545; 90 J. P. 161; 70 Sol. Jo. 651; *varied*, [1927] 1 K. B. 331, C. A.

2750. *Add. Annotation* :—*Mentd.* Republica de Guatemala v. Nunez (1926), 135 L. T. 436.

2768a. *Liability of borough council—Bridge built since 1835—Public Health Act, 1875 (c. 55), s. 4.*—In 1882 seven streets were, in the course of the development of an estate, carried across a river on iron girder bridges. These streets subsequently became highways repairable by the inhabitants at large. An action was commenced by the A.-G. against the local authority for a declaration that they were liable to repair & keep in repair these seven bridges :—*Held* : having regard to the fact that the word "street," as defined by the above sect., includes, if this is not inconsistent with the context, any bridge, not being a county bridge, *pltf.* was entitled to the declaration.—*A.-G. v. Hornsey Borough Council*, [1927] 1 Ch. 331; 96 L. J. Ch. 164; 136 L. T. 502; 91 J. P. 61; 43 T. L. R. 92; 70 Sol. Jo. 1197; 25 L. G. R. 260.

2787. *Add. Annotation* :—*As to (3)* *Refd.* A.-G. v. Hornsey B. C. (1926), 43 T. L. R. 92.

PART XV. SECT. 2, SUB-SECT. 1.—  
A. (a).

d i. ———.] — *Re* SANDUSK CREEK BRIDGE (Ont.), [1926] 3 D. L. R. 353.—CAN.

PART XV. SECT. 2, SUB-SECT. 2.—  
B. (c).

o i. ——— *Transfer of area to municipality.*—A railway co. constructed & maintained a bridge & approaches by which a road was carried across their railway. The area in which the bridge was situated was subsequently annexed to a burgh, & the burgh authorities called upon the co., as frontagers to a private street, to construct a paved footway along one side

of the road :—*Held* : assuming that the co. were frontagers to a private street, Burgh Police (Scotland) Act, 1903 (c. 33), s. 16, had not, either expressly or by implication, altered or extended these obligations.—*MAGISTRATES OF LEVEN v. LONDON & NORTH EASTERN RY. CO.*, [1926] S. C. 528.—SCOT.

PART XV. SECT. 3.

k i. ——— *Apportionment of cost—Bridge across railway.*—*PUBLIC HIGHWAYS DEPT., ONTARIO v. CANADIAN PACIFIC RY. CO. (CLAPPISON BRIDGE CASE)* (1924), 30 Can. Ry. Cas. 5.—CAN.

k ii. ——— *Bridge over boundary river.*—In order to give jurisdiction

to the Municipal Comr. to apportion the costs of building a bridge over a river or stream forming the boundary between two municipalities, the latter must previously have agreed to construct the bridge.

The power of a municipality to contract with another municipality to build by joint action such a bridge must be exercised by bye-law.—*RURAL MUNICIPALITY OF PORTAGE LA PRAIRIE v. RURAL MUNICIPALITY OF CARTIER*, [1925] 4 D. L. R. 1035; [1925] S. C. R. 691; *affg.*, [1924] 4 D. L. R. 601; [1924] 3 W. W. R. 244; 34 Man. L. R. 405; *revsq.*, [1924] 1 D. L. R. 775; [1924] 1 W. W. R. 225.—CAN.

# HUSBAND AND WIFE.

## Part I.—Contracts to Marry.

20. *Add. Annotation*:—*Refd.* Skipp v. Kelly (1926), 42 T. L. R. 258.
26. *Add. Annotation*:—*Refd.* Cohen v. Sellar, [1926] 1 K. B. 536.
30. *Add. Annotation*:—*Refd.* Cohen v. Sellar, [1926] 1 K. B. 536.
36. *Add. Annotation*:—*Mentd.* Never-Stop Ry. (Wembley) v. British Empire Exhibition (1924) Incorporated, [1926] Ch. 877.
39. *Add. Annotation*:—*Refd.* Cohen v. Sellar, [1926] 1 K. B. 536.
81. *Add. Annotation*:—*As to* (3) *Refd.* Cohen v. Sellar, [1926] 1 K. B. 536.
87. *Add. Annotation*:—*Refd.* Cohen v. Sellar, [1926] 1 K. B. 536.
114. *Add. Annotation*:—*Refa.* Cohen v. Sellar, [1926] 1 K. B. 536.

## Part II.—Marriage.

127. *Add. Annotations*:—*As to* (2) *Refd.* Republica de Guatemala v. Nunez, [1927] 1 K. B. 669. *Generally, Refd.* Sloggett v. Sloggett, [1928] P. 148.
510. *Add. Annotation*:—*Refd.* Skipp v. Kelly (1926), 42 T. L. R. 258.

## Part III. Personal Rights and Obligations arising from Marriage.

595a. ——— *Bankruptcy of husband.*—The bkpcy. of a husband who has entered into a separation deed is an answer to any claim for the payment of agreed sums under the deed, but does not convert his wife's agreement to live apart with an allowance into

an agreement to live apart without maintenance. Her right to that maintenance is not in contract but is an incident of matrimonial status at common law. An agreement under a separation deed to receive an allowance merely suspends, but does not

PART I. SECT. 6, SUB-SECT. 1.—A. 30 ii. ———.]—MUNN v. HAAHTI (1926), 37 B. C. R. 71.—CAN.

PART I. SECT. 7, SUB-SECT. 1. *sa.* *Not facts discovered subsequent to breach.*—SWYRIPA v. VACULCHIK (Alta.), [1926] 3 W. W. R. 795.—CAN.

PART II. SECT. 3, SUB-SECT. 3. 142 i. *General rule.*—KAWALUK v. KAWALUK (Sask.), [1927] 3 D. L. R. 493.—CAN.

PART II. SECT. 9. *so.* *Marriage in foreign State—Celebration by person with power to do so.*—MELLEN v. DOBKNO, [1927] 4 D. L. R. 1128; 61 O. L. R. 340.—CAN.

PART II. SECT. 10. b i. *Marriage Act, R. S. A. 1922 (c. 213), s. 20.*—The above sect. cannot apply to an alleged marriage of which there was no solemnisation whatever, other than the purchase of two wedding rings from an issuer of marriage licences & the placing of one of them on a finger of each of the parties, who did not belong to any sect or nationality which recognises this proceeding as a valid marriage ceremony.—PERSOHL v. BUCHI (Alta.), [1926] 4 D. L. R. 1185; [1926] 3 W. W. R. 598.—CAN.

PART II. SECT. 11, SUB-SECT. 1. i. ———.]—The doctrine, that a person who goes through a form of

marriage must be presumed to have acted innocently & legally & that, until this presumption is rebutted, it must prevail over the presumption that a first husband or wife whose death was not proved, but who had not been heard of for over seven years before the second marriage, was alive at the time thereof, can have no application where it is found that the person relying on such doctrine did not act in innocent good faith in going through the form of a second marriage.—IRWIN v. IRWIN (Man.), [1926] 2 D. L. R. 791; [1926] 1 W. W. R. 849.—CAN.

ii. ——— *Compliance with Marriage Act, s. 21 (b).*—MCGINN v. ELLERTON, ELLERTON v. ELLERTON, [1925] 2 D. L. R. 1136; [1925] 1 W. W. R. 962.—CAN.

PART II. SECT. 11, SUB-SECT. 2.—B. (a).

478 i. *Many years.*—P., a Natal native, from about 1897 until just before her death in 1916 cohabited continuously with A., a half-caste woman. When the cohabitation began A. had a husband, who was still living. There was evidence to show that P. & A. had both said before 1902 that they were not married, & there was no evidence of any registration of a marriage between P. & A. There was some evidence that P. & A. were reputed to be man & wife since the birth of their five children, all of whom had been brought up & educated by P.'s brother C., who had treated them as his nephews & nieces:—*Held*:

the evidence adduced was not strong enough to rebut the presumption of marriage arising from the lengthy cohabitation of P. & A.—NYOKANA v. NYOKANA (1925), 46 N. L. R. 227.—S. AF.

PART II. SECT. 11, SUB-SECT. 2.—B. (c).

521 iv. ———.]—R. v. PROUD, [1926] 3 D. L. R. 664; [1926] S. C. R. 599.—CAN.

PART II. SECT. 11, SUB-SECT. 2.—E. 553 ii. ———.]—DAHLBERG v. SWANSON, [1927] 3 D. L. R. 669; [1927] 1 W. W. R. 617; 21 Sask. L. R. 388.—CAN.

PART III. SECT. 1, SUB-SECT. 1.

m (p. 77) i. ———.]—*Invalidity of marriage.*—*Held*: pltf. was not entitled to succeed on an alternative claim for a quantum meruit for her services as deft.'s housekeeper.—HOLMES v. HOLMES (Alta.), [1927] 2 D. L. R. 979; [1927] 2 W. W. R. 253.—CAN.

hh i. ———.]—*Husband purposely denuding himself of his property.*—LIGHTEART v. LIGHTEART, [1927] 1 D. L. R. 386; [1927] 1 W. W. R. 393.—CAN.

hh ii. ———.]—*Alimony provided for in prior separation agreement—Power of court to increase.*—KAWIN v. KAWIN, [1927] 3 D. L. R. 383; [1927] 1 W. W. R. 690; 21 Sask. L. R. 415.—CAN.



annul, that right, which revives as soon as the agreement is terminated by bkpcy., notwithstanding the receipt of a dividend. The dividend is not a transaction between husband & wife, but an incident in the bkpcy., & its receipt does not operate as a new bargain with the husband compounding the common law right of the wife. The separation agreement thus put an end to does not debar the wife from alleging the wilful

neglect of the husband to provide reasonable maintenance for her within Summary Jurisdiction (Separation & Maintenance) Acts, 1895 to 1925.—*DEWE v. DEWE*, *SNOWDON v. SNOWDON*, [1928] P. 113; 97 L. J. P. 65; 138 L. T. 552; 92 J. P. 32; 44 T. L. R. 274; 72 Sol. Jo. 69; 26 L. G. R. 191.

647. *Add. Annotation*:—*Refd. Re Wilkinson*, Page v. Public Trustee, [1926] Ch. 842.

## Part IV.—Effect of Marriage with Regard to Wife's Property.

656. *Add. Annotation*:—*As to* (1) *Consd. Re Bower Williams*, *Ex p. Trustee*, [1927] 1 Ch. 441.

## Part V. Effect of Divorce or Separation with Regard to Wife's Property.

757a. Husband entitled to income of trust fund during separation.]—*DUNCAN v. CAMPBELL* (1842), 12 Sim. 616; 6 Jur. 677; 59 E. R. 1269.

*Annotation*:—*Apld. Re Barnard*, *Barnard v. White* (1887), 56 L. T. 9.

786. *Add. Annotation*:—*Refd. A.-G. for Alberta v. Cook*, [1926] A. C. 444.

787. *Add. Annotation*:—*Refd. A.-G. for Alberta v. Cook*, [1926] A. C. 444.

## Part VI.—Disposition of Property.

809. *Add. Annotation*:—*Mentd. Parr v. A.-G.*, [1926] A. C. 239.

906. *Add. Citations*:—*revsd. sub nom. PUBLIC TRUSTEE v. WOLF*, [1923] A. C. 544; 92 L. J. Ch. 520; 129 L. T. 738; 39 T. L. R. 553; 67 Sol. Jo. 637, H. L.

*Add. Annotation*:—*Mentd. Parr v. A.-G.*, [1926] A. C. 239.

986. *Add. Annotation*:—*Generally, Refd. Capron v. Capron*, [1927] P. 243.

1007. *Add. Annotation*:—*Refd. Bosworthick v. Bosworthick*, [1926] P. 159.

1036. *Add. Annotation*:—*Refd. Re Alington & L. C. C.'s Contract*, [1927] 2 Ch. 253.

1106. *Add. Annotation*:—*Apld. Re Mathieson*, [1927] 1 Ch. 283.

1118. *Add. Annotation*:—*Mentd. Re Bold, Banks v. Hartland* (1926), 95 L. J. Ch. 201.

1203. *Add. Citation*:—8 W. R. 333.

### PART IV. SECT. 1.

n i. — *Acquired & disposed of through husband—Belong to husband.*]—A number of hogs, either the progeny of two hogs acquired by a wife as compensation for services performed by her for a neighbour or bought with the proceeds of sale of such progeny, were raised, acquired & disposed of through the efforts & the expense of her husband:—*Held*: they did not belong to the wife as against the husband's creditors.—*JOHN DEERE PLOW CO. v. BOWEN*, [1925] 1 D. L. R. 769; [1925] 1 W. W. R. 357.—CAN.

### PART IV. SECT. 2.

sd. *Reversionary interest.*]—*STANDARD BANK v. BOULTON* (1878), 3 A. R. 93.—CAN.

### PART IV. SECT. 6, SUB-SECT. 2.

so. *Not business carried on in partnership with husband.*]—*COHN v. CANARY* (B. C.), [1925] 4 D. L. R. 431; [1925] 3 W. W. R. 357; *revsg.*, [1925] 3 D. L. R. 223; [1925] 2 W. W. R. 563.—CAN.

sf. *Crops grown by wife—On husband's land—Strict proof necessary.*]—*ANDERSON v. JOHN DEERE PLOW CO., LTD.* (Sask.), [1926] 4 D. L. R. 255; [1926] 2 W. W. R. 667.—CAN.

sg. — *On wife's land—Burden of*

*proof*]—*BANQUE CANADIENNE NATIONALE v. TENCHA* (Can.), [1927] 4 D. L. R. 665.—CAN.

### PART VI. SECT. 1, SUB-SECT. 5.—B. (a) i.

911 i. *Assignment inoperative—Transfer to pay husband's debts.*]—*RODRIGUE v. DOSTIE & VACHON*, [1927] 4 D. L. R. 1139; [1927] S. C. R. 563.—CAN.

### PART VI. SECT. 1, SUB-SECT. 5.—O. (a).

951 v. — — — — — *UNION BANK v. BENEDICT*, [1925] 4 D. L. R. 1057.—CAN.

### PART VI. SECT. 3, SUB-SECT. 1.

d i. — — — — — *Not on conveyance of equitable estate.*]—*ADAMS v. LOOMIS* (1875), 22 Gr. 99.—CAN.

k i. — — — — — *ELLIOTT v. BROWN* (1884), 11 A. R. 228.—CAN.

k ii. — *Sale as spinster—Conveyance not impeachable on ground of non-compliance with statutory formalities.*]—*GRAHAM v. MENCILLY* (1869), 16 Gr. 661.—CAN.

### PART VI. SECT. 6, SUB-SECT. 1.

c i. *Conveyance by husband alone—Effect.*]—*WALLIS v. BURTON* (1855), 5 Gr. 352.—CAN.

c ii. — — — — — *Held*: an effectual transfer of his marital rights in the

land conveyed.—*ALLAN v. CONTE* (1857), 15 U. C. R. 9.—CAN.

sj. *Property used & maintained by husband—No presumption of gift by wife.*]—*CALHOUN v. REID* (Sask.), [1927] 4 D. L. R. 808; [1927] 3 W. W. R. 429.—CAN.

l i. — — — — — *SEMPLE v. SHARP*, [1927] 1 W. W. R. 965; 21 Sask. L. R. 435.—CAN.

l ii. — — — — — *Wife not examined—Certificate of examination fraudulently signed.*]—Title set aside, subject to the rights of an innocent purchaser from the transferee to obtain the land on the terms of his agreement with the transferee.—*FROSTAD v. LIBEK*, [1927] 3 D. L. R. 916; [1927] 2 W. W. R. 550; 21 Sask. L. R. 603.—CAN.

n i. — — — — — *Residence condition precedent.*]—*PENDLETON v. PENDLETON*, [1927] 2 W. W. R. 720; 21 Sask. L. R. 579.—CAN.

### PART VI. SECT. 8, SUB-SECT. 2.—A.

o i. — *Separate estate.*]—The interest of a wife in a policy effected by her husband on his own life, & which has been declared by him to be for her benefit, is her separate estate, & may, in her husband's lifetime, be assigned by her.—*GRAHAM v. CANADA LIFE ASSURANCE CO., PROCTOR v. GRAHAM* (1894), 24 O. R. 607.—CAN.

1220. *Add. Annotation*:—*Refd.* Royal Exchange Assce. v. Hope, [1928] Ch. 179.

1225. *Add. Annotation*:—*Apld.* *Re* Fleetwood's Policy, [1926] Ch. 48.

1226. *Add. Annotations*:—*Refd.* Royal Exchange Assce. v. Hope, [1928] Ch. 179. *Mentd.* James v. British General Insce., [1927] 2 K. B. 311.

1226a. ——— If living at his death—Cash value of policy sought to be taken by insured during life.]—A husband took out an insurance policy for £500 on his life, & by the terms of the policy the co. agreed to pay that sum to insured's wife, if she were living at his death, or in the event of her prior death to pay it to insured's exors., administrators & assigns. The policy contained a proviso that, if at the end of twenty years insured was still living, he should have the right to exercise any of six specified options. Insured being then still living, he exercised an option to receive

the entire cash value of the policy with its share of accumulated profits & to discontinue the policy. A sum of £288 thus became payable. The co. were unwilling to pay over this sum except on the joint receipt of the husband & wife, & ultimately paid it into ct.:—*Held*: (1) the policy came within sect. 11 of the above Act, & created a trust in favour of the wife in certain events; (2) insured must be taken to have exercised the option for the benefit of the trust; (3) unless the husband & wife came to an agreement, the fund must be accumulated in ct. until it could be ascertained by the death of either party who was entitled to it.—*Re* FLEETWOOD'S POLICY, [1926] Ch. 48; 95 L. J. Ch. 195; 135 L. T. 374.

1228. *Add. Citation*:—95 L. J. Ch. 24.

1234. *Add. Annotations*:—*Refd.* Royal Exchange Assce. v. Hope, [1928] Ch. 179; Smith v. Wood (1928), 139 L. T. 250.

## Part VIII.—Contracts of Wife during Coverture.

1498. *Add. Annotations*:—*Refd.* Selby v. Atkins (1926), 135 L. T. 45. *Mentd.* Dewe v. Dewe, Snowden v. Snowden, [1928] P 113.

1527. *Add. Annotations*:—*Mentd.* Bennett v. Whitehead, [1926] 2 K. B. 380; Firm of R. M. K. R. M. v. Firm of M. R. M. V. L.,

### PART VI. SECT. 8, SUB-SECT. 2.—B.

*ni.* ——— *Bankruptcy of husband.*]—S. effected an insurance on his own life in favour of his wife under Married Women's Policies of Assurance (Scotland) Act, 1880. S.'s estates were afterwards sequestrated:—*Held*: the policy vested in bkpt. as trustee for his wife, & it formed no part of his estate & was not liable to the diligence of his creditors.—*STEWART v. HODGE* (1901), 8 S. L. T. 436.—*SCOT.*

*nii.* ——— *Whether assignable.*]—A policy of assurance was effected by a husband for the benefit of his wife under Married Women's Policies of Assurance (Scotland) Act, 1880. There was competition between the widow & an assignee claiming under an assignation which bore to have been executed with the consent & concurrence of the wife:—*Held*: the wife had no power to discharge the trust in her favour created by the policy, & the insurance co. ought to have known that the deed was one which the spouses were disabled from granting.—*SCOTTISH LIFE CO. v. DONALD* (1901), 9 S. L. T. 200.—*SCOT.*

### PART VI. SECT. 9, SUB-SECT. 1.—A.

*i.* ———.]—*WHITEHEAD v. WHITEHEAD* (1887), 14 O. R. 621.—*CAN.*

### PART VI. SECT. 9, SUB-SECT. 2.—A. (a).

1302 v. ———.]—Pltf., deit.'s husband, became entitled to a conveyance of certain land vested in a solr. By pltf.'s direction the solr. conveyed the land to deit. The conveyance was dated Apr. 9, 1920, & was not registered until the following Dec. Until registration the deed had not been delivered, & deit. had been told nothing about it:—*Held*: though the presumption of advancement may be rebutted by evidence of actual intention, there was cogent evidence of pltf. having ultimately made up his mind that his wife should have the property.—*HARRINGTON v. HARRINGTON*, [1925] 2 D. L. R. 849; 56 O. L. R. 568.—*CAN.*

*sk.* *Grain & stock on land conveyed to wife.*]—A husband conveyed to his

wife half of a quarter section of land. Husband & wife lived together on, & farmed, the quarter section, & the husband worked on the farm after the transfer in the same way as before:—*Held*: the husband was the owner of grain grown on, & animals situate on, the quarter section.—*NATIONAL TRUST CO. v. HOLOWAYCHUK*, [1925] 3 W. W. R. 382.—*CAN.*

*sm.* *Purchase in husband's name—Subsequent transfer to wife—Failure of consideration.*]—Husband & wife purchased a house in Oct. 1920. The house was in pltf.'s name until Jan. 1922, when it was transferred to the wife. In Jan. 1924, the husband was ejected from the house, & he brought action against the wife for a declaration that his wife held the house as trustee for him. On the trial the husband stated that when he made the conveyance to his wife he did so on her undertaking that the members of her family would vacate the house, & this was never carried out:—*Held*: pltf. could not succeed, as the only claim he could set up would be that he had made a conveyance for a consideration that had failed, & his action would be either for specific performance or damages.—*BODY v. BODY* (1924), 34 B. C. R. 315.—*CAN.*

### PART VI. SECT. 9, SUB-SECT. 2.—A. (b).

1337 iii. ———.]—The deposit by a Hindu of his own money in a bank in the joint names of himself & wife, & on the terms that it is to be payable to either or the survivor, does not on his death constitute a gift by him to his wife, there being in India no presumption of an intended advancement in favour of a wife.—*GURAN DITTA v. RAM DITTA* (1928), 55 L. R. Ind. App. 235.—*IND.*

*m i.* ———.]—*Held*: to raise a presumption of joint tenancy.—*MATHEWS v. NATIONAL TRUST CO. (Ont.)*, [1925] 4 D. L. R. 774.—*CAN.*

*sp.* *Banking account in joint names.*]—A wife & husband opened a joint account in a bank, & both signed a direction to the bank: "All money which may be deposited by us or either of us to the account is our joint property, but such money may be with-

drawn by either one of us, or the survivor of us." The money was all the husband's, & was deposited to pay the expenses of the wife & her child, during the husband's absence, & to make payments in connection with his property:—*Held*: the wife was not entitled to half the money to the credit of the account.—*SOUTHEY v. SOUTHEY* (1917), 40 O. L. R. 429; 38 D. L. R. 700.—*CAN.*

*of wife as survivor.*]—*See* Nos. 1335–1338.

### PART VI. SECT. 9, SUB-SECT. 3.—A. (a).

1370 i. *Wife not independently advised—Guarantee for husband.*]—Want of independent advice standing alone is insufficient to justify relief, but where there has been undue influence by the husband & knowledge of its exercise or facts from which such knowledge should be inferred, & the transaction is contrary to the wife's interests, a sufficient case has been made out for the granting of relief.—*CANADIAN BANK OF COMMERCE v. FOREMAN (Alta.)*, [1926] 4 D. L. R. 844; [1926] 3 W. W. R. 486; *revid.* on the facts, [1927] 2 D. L. R. 530; [1927] 1 W. W. R. 783; 22 Alta. L. R. 413.—*CAN.*

1370 ii. ———.]—*BRADLEY v. IMPERIAL BANK OF CANADA*, [1926] 3 D. L. R. 38; 58 O. L. R. 650.—*CAN.*

1370 iii. ———.]—*Promissory note.*]—*FRYERS & CO., LTD. v. STEEVES (N. B.)*, [1927] 4 D. L. R. 1077.—*CAN.*

### PART VI. SECT. 9, SUB-SECT. 4.

*d i.* ———.]—*Property purchased with man's money—Woman realising property & appropriating proceeds ordered to account.*]—*ST. ELOI v. ENO* (1925), 36 B. C. R. 153.—*CAN.*

### PART VIII. SECT. 1, SUB-SECT. 1.

*st.* *Wife carrying on separate business—Signatures by wife at request of husband—Liability of wife.*]—Where a married woman, in carrying on a business with the assistance of her husband, signs everything that he asks her to sign & asks no questions, she should be held responsible for her signature, in the absence of clear proof of undue influence, whether it turns out to be in

- R. M. K. R. M. Somasundaram Chetty v. M. R. M. V. L. Supramanian Chetty (1926), 95 L. J. P. C. 197.
1656. *Add. Annotation*:—*Refd.* Dewe v. Dewe, Snowdon v. Snowdon, [1928] P. 113.
1665. *Add. Annotation*:—*Refd.* Dewe v. Dewe, Snowdon v. Snowdon, [1928] P. 113.
1669. *Add. Annotation*:—*Refd.* Dewe v. Dewe, Snowdon v. Snowdon, [1928] P. 113.
1680. *Add. Annotation*:—*Refd.* Dewe v. Dewe, Snowdon v. Snowdon, [1928] P. 113.
1717. *Add. Annotations*:—*Refd.* Selby v. Atkins (1926), 135 L. T. 45; Dewe v. Dewe, Snowdon v. Snowdon, [1928] P. 113.
1732. *Add. Annotations*:—*Refd.* Selby v. Atkins (1926), 135 L. T. 45; Dewe v. Dewe, Snowdon v. Snowdon, [1928] P. 113.
1739. *Add. Annotation*:—*Refd.* Dewe v. Dewe, Snowdon v. Snowdon, [1928] P. 113.
1741. *Add. Citation*:—2 C. & P. 25, n.
1748. *Add. Annotation*:—*Refd.* Dewe v. Dewe, Snowdon v. Snowdon, [1928] P. 113.
1750. *Add. Annotation*:—*Refd.* Welton v. Welton, [1927] P. 162.
1753. *Add. Annotation*:—*Refd.* Welton v. Welton, [1927] P. 162.
1755. *Add. Annotation*:—*Consd.* Selby v. Atkins (1926), 135 L. T. 45.
- 1792a. — — — *Proceedings instituted against wife.*—At common law a wife has no authority to pledge her husband's credit so as to render him liable for her solr.'s costs in divorce proceedings in which he has obtained a decree, & in which her solr. has not obtained from the Divorce Ct. an order for security for costs.—ARNOLD & WEAVER v. AMARI, [1928] 1 K. B. 584; 97 L. J. K. B. 238; 138 L. T. 591; 44 T. L. R. 221; 72 Sol. Jo. 138.
1800. *Add. Annotations*:—*Refd.* Welton v. Welton, [1927] P. 162; Arnold & Weaver v. Amari, [1928] 1 K. B. 584.
1833. *Add. Annotation*:—*Refd.* Re Mason (1928), 97 L. J. Ch. 321.

## Part XI.—Contracts for Separation.

1920. *Add. Annotation*:—*Generally, Refd.* Hyman v. Hyman, Hughes v. Hughes (1928), 139 L. T. 416.
1934. *Add. Annotation*:—*Refd.* Hyman v. Hyman, Hughes v. Hughes (1928), 139 L. T. 416.
1935. *Add. Annotation*:—*Refd.* Hyman v. Hyman, Hughes v. Hughes (1928), 139 L. T. 416.
1939. *Add. Annotation*:—*Refd.* Hyman v. Hyman, Hughes v. Hughes (1928), 139 L. T. 416.
1941. *Add. Annotation*:—*Refd.* Hyman v. Hyman, Hughes v. Hughes (1928), 139 L. T. 416.
1943. *Add. Annotation*:—*Refd.* Hyman v. Hyman, Hughes v. Hughes (1928), 139 L. T. 416.
1965. *Add. Annotation*:—*Refd.* Dewe v. Dewe, Snowdon v. Snowdon, [1928] P. 113.
1969. *Add. Annotation*:—*Refd.* Hyman v. Hyman, Hughes v. Hughes (1928), 139 L. T. 416.
1989. *Add. Annotation*:—*Refd.* Hyman v. Hyman, Hughes v. Hughes (1928), 139 L. T. 416.
2019. *Add. Annotations*:—*As to* (1) *Refd.* Hyman v. Hyman, Hughes v. Hughes (1928), 139 L. T. 416. *As to* (7) *Refd.* Hyman v. Hyman, Hughes v. Hughes (1928), 139 L. T. 416.
2038. *Add. Annotation*:—*Consd.* Hyman v. Hyman, Hughes v. Hughes (1928), 139 L. T. 416.
2039. *Add. Annotation*:—*Apld.* Hyman v. Hyman, Hughes v. Hughes (1928), 139 L. T. 416.
- 2040a. — *Bankruptcy of husband.*—DEWE v. DEWE, SNOWDON v. SNOWDON, No. 595a, ante.
2049. *Add. Annotation*:—*Refd.* Willis v. Willis (1927), 96 L. J. P. 177.
- 2061a. — — — *Refusal of nominee to undertake custody—Effect on deed.*—Where the parties to a matrimonial suit had agreed to settle it, & a deed of separation had been approved to give effect to such settlement:—*Held*: the refusal of the husband's brother to undertake the custody of one of the children, as nominee of the husband, which custody had been agreed on between the husband & wife as one of the terms of the deed, was not a failure of such a vital term as to prevent the settlement from being carried into effect.—WILLIS v. WILLIS, [1928] P. 10; 96 L. J. P. 177; 137 L. T. 621; 43 T. L. R. 657, C. A.

her interest or otherwise.—WATKINS (J. R.) Co. v. NOBERT (Alta.), [1926] 1 D. L. R. 526; [1926] 1 W. W. R. 156.—CAN.

*sv. Lease taken by wife—Liability of wife—For breach of lease.*—*Held*: the husband was not liable, although he lived in the premises for about two months prior to the time he & his family vacated it & twice paid the rent during that period.—NATIONAL SECURITIES, LTD. v. DARLING (Alta.), [1927] 1 W. W. R. 413.—CAN.

### PART VIII. SECT. 3, SUB-SECT. 1.—B. (b).

1642 i. *Jewellery.*—A ring supplied to a working miner's wife:—*Held*: not a necessary.—PIANTA v. MACROW & SONS PTY., LTD. (1925), 27 W. A. L. R. 99.—AUS.

*sw. Fur coat.*—The question whether a fur coat is a necessary is one of fact depending on the circumstances of each case.—GEBRIE & FORREST v.

[1927] 3 D. L. R. 156; [1927] 2 W. W. R. 166; 21 Sask. L. R. 489.—CAN.

### PART VIII. SECT. 3, SUB-SECT. 2.—D. (a).

1691 ii. *Revd.*, 9 O. R. 198.

### PART VIII. SECT. 3, SUB-SECT. 2.—G.

1774 i. For "A husband is liable" read "A husband is not liable."

### PART X. SECT. 2, SUB-SECT. 1.

made jointly liable with his wife for her torts, notwithstanding Married Women's Property Act, R. S. M., 1913 (c. 123).—DENOVICH v. HUCAL (Man.), [1927] 1 D. L. R. 879; [1927] 1 W. W. R. 179.—CAN.

### PART XI. SECT. 1, SUB-SECT. 3.—A.

1928 ii. *S. P. Woods v. Woods*, [1927] 3 D. L. R. 321; 60 O. L. R. CAN.

### PART XI. SECT. 3, SUB-SECT. 2.

n i. —.—Where a wife understood the agreement, had independent advice, & was not misled or influenced by her husband in regard to her legal rights or the meaning & effect of the document:—*Held*: it could not be set aside for fraudulent misrepresentation & duress.—THOMSON v. THOMSON, [1927] 1 D. L. R. 653; 59 O. L. R. 661.—CAN.

### PART XI. SECT. 6, SUB-SECT. 7.

i i. —.—Where a separation agreement was not invalid on the ground that the father had therein waived his rights to the control & guardianship of the children:—*Held*: before the wife could ask for maintenance for them, she must show that she had failed to perform those duties to them amounting to guardianship which she had assumed under the agreement.—HOLOWACHUK v. HOLOWACHUK (Man.), [1927] 2 W. W. R. 470.—CAN.



2083. *Add. Annotation*:—*Distd. Hyman v. Hyman, Hughes v. Hughes* (1928), 139 L. T. 416.
2084. *Add. Annotation*:—*Apld. Hyman v. Hyman, Hughes v. Hughes* (1928), 139 L. T. 416.
2085. *Add. Annotation*:—*Folld. Hyman v. Hyman, Hughes v. Hughes* (1928), 139 L. T. 416.
- 2085a. ———.]—A woman who, in a deed of separation, covenants in consideration of certain benefits not to claim from her husband in the future maintenance or alimony, & is afterwards granted a decree absolute of divorce, is not debarred from petitioning for maintenance after the dissolution of marriage, notwithstanding that the deed contained no provision for its termination on the marriage being dissolved.—*HYMAN v. HYMAN, HUGHES v. HUGHES*, [1929] P. 1; 139 L. T. 416; 44 T. L. R. 664; 72 Sol. Jo. 435; 26 L. G. R. 471, C. A.
2090. *Add. Annotations*:—*As to* (1) *Refd. Hyman v. Hyman, Hughes v. Hughes* (1928), 139 L. T. 416. *As to* (3) *Refd. Hyman v. Hyman, Hughes v. Hughes* (1928), 139 L. T. 416.
2106. *Add. Annotation*:—*As to* (1) *Consd. Hyman v. Hyman, Hughes v. Hughes* (1928), 139 L. T. 416.
2111. *Add. Annotation*:—*Refd. H. v. H.*, [1928] P. 206.
2144. *Add. Annotation*:—*Refd. Hyman v. Hyman, Hughes v. Hughes* (1928), 139 L. T. 416.
2174. *Add. Annotations*:—*Refd. Bosworthick v. Bosworthick*, [1927] P. 64; *Hyman v. Hyman, Hughes v. Hughes* (1928), 139 L. T. 416.
2176. *Add. Annotations*:—*Refd. Bosworthick v. Bosworthick*, [1927] P. 64; *Hyman v. Hyman, Hughes v. Hughes* (1928), 139 L. T. 416.
2177. *Add. Annotations*:—*Consd. Bosworthick v. Bosworthick* (1926), 136 T. 211. *Refd. Hyman v. Hyman, Hughes v. Hughes* (1928), 139 L. T. 416.
2179. *Add. Annotation*:—*Apld. Hyman v. Hyman, Hughes v. Hughes* (1928), 139 L. T. 416.

## Part XII.—Legal Proceedings.

- 2189a. ———.] — PRACTICE NOTE, [1926] W. N. 8.
2210. *Add. Annotation*:—*Consd. Smith v. Schilling*, [1928] 1 K. B. 429.

## Part XIII.—Matrimonial Causes.

2213. *Add. Annotation*:—*Consd. Smith v. Schilling*, [1928] 1 K. B. 429.
2317. *Add. Annotation*:—*As to* (2) *Apld. Cavendish v. Cavendish*, [1926] P. 10.
2321. *Add. Annotations*:—*Consd. H. v. H.*, [1928] P. 206. *Refd. A.-G. for Alberta v. Cook*, [1926] A. C. 444; *Raeburn v. Raeburn* (1928), 138 L. T. 672.

### PART XI. SECT. 6, SUB-SECT. 11.

2073 ii. ———.]—A separation agreement, which provided for the payment of a specific sum by instalments to be secured by a mtge., & which did not contain a *dum casta* clause:—*Held*: enforceable by the wife, although there had been subsequent adultery by her & she had been divorced & had married again.—*RUST v. RUST*, [1927] 2 D. L. R. 248; [1927] 1 W. W. R. 491; 22 Alta. L. R. 430.—CAN.

### PART XI. SECT. 6, SUB-SECT. 12.

2086 i. *Covenant by wife not to claim further maintenance—Subsequent judicial separation.*—Where a petition for a decree of judicial separation on the ground of the husband's adultery was brought so that a petition for alimony might be founded:—*Held*: the petition must be dismissed.—*K. v. K.*, [1925] 3 D. L. R. 872; [1925] 2 W. W. R. 641.—CAN.

### PART XI. SECT. 7, SUB-SECT. 2.—B.

xx. *Jurisdiction of court—King's Bench Act, s. 22.*—*DAVIS v. DAVIS*, [1926] 1 W. W. R. 942; 20 Sask. L. R. 543.—CAN.

2102 ii. ———.]—*Breach of condition—As to access to child—Reply alleging husband's bad character.*—A separation agreement provided that the wife should be given the custody of the son, but that his father should be allowed to see him with reasonable frequency & should be consulted as to, & satisfied with, his up-bringing. To an action by the wife under the agreement for overdue instalments breach of the condition as to the son was pleaded:—

*Held*: a reply alleging the husband's bad character was no excuse for a breach of the condition.—*MCLENNAN v. MCLENNAN*, [1925] 3 D. L. R. 281; [1925] S. C. R. 279; *affo.*, [1925] 1 D. L. R. 277; 57 N. S. R. 480.—CAN.

### PART XI. SECT. 8.

2165 iii. ———.]—A separation agreement may have as a secondary object the effecting of a permanent settlement of property, but unless a separation agreement clearly indicates such purpose the general rule, that the agreement is no longer enforceable after resumption of cohabitation, should be applied.—*NATIONAL TRUST CO., LTD. v. BELL*, [1925] 4 D. L. R. 1029; [1925] 3 W. W. R. 712.—CAN.

xx. *Agreement for—Failure of consideration.*—*WAKARUK v. WAKARUK* (Alta.), [1926] 1 D. L. R. 493.—CAN.

### PART XII. SECT. 1, SUB-SECT. 1.—A.

e (p. 249) i. ———.]—In an action by a purchaser for specific performance of an agreement for the sale of land, a motion by deft.'s wife to be added as pftt. on the ground that, under Dower Act, R. S. A. 1922 (c. 135), she had an interest in the property, was refused.—*SAMPSON v. THOMAS*, [1925] 1 W. W. R. 1018.—CAN.

### PART XII. SECT. 1, SUB-SECT. 1.—F. (a).

2221 ii. ———.]—Under K. B. Rule 755 an order for payment may be obtained by a judgment creditor against a married woman.—*BISHOP v. BLACK*, [1925] 3 W. W. R. 679.—CAN.

### PART XII. SECT. 1, SUB-SECT. 1.—I.

sz. *Liability of husband—Participating in litigation.*—In an action by a married woman against a third party:—*Held*: notwithstanding Married Women's Property (Scotland) Act, 1920 (c. 64), s. 3 (1), pursuer's husband, in respect that he had actively participated in the litigation, fell to be made jointly & severally liable in expenses along with his wife.—*M'MILLAN v. MACKINLAY*, [1926] S. C. 673.—SCOT.

### PART XIII. SECT. 1, SUB-SECT. 1.

m i. ———.]—A judge of the Supreme Ct., sitting in his ordinary capacity, has no jurisdiction to interfere with decrees pronounced by the ct. as a ct. for divorce & matrimonial causes under Matrimonial Causes Act, 1857 (c. 85).—*CLAMAN v. CLAMAN* (1925), 35 B. C. R. 137.—CAN.

ai. ———.]—*High Court—Bombay—To hear matrimonial suits between Jews.*—The High Ct. of Bombay has jurisdiction to entertain a suit arising out of matrimonial disputes between Jews, & in deciding such disputes, the Jewish law must be applied "with such adaptations to the circumstances of the case as justice may require."—*BENJAMIN v. BENJAMIN* (1925), 1 L. R. 50 Boin. 369.—IND.

### PART XIII. SECT. 1, SUB-SECT. 3.

2320 i. *Practice of Ecclesiastical Courts followed—Proceedings in forma pauperis in Manitoba.*—*COLERIDGE v. COLERIDGE* (Man.), [1926] 2 D. L. R. 896; [1926] 1 W. W. R. 857.—CAN.

2334. *Add. Annotation*:—**Refd.** Salvesen (or von Lorang) v. Austrian Property Administrator, [1927] A. C. 641.
2490. *Add. Annotation*:—**Consd.** Hyman v. Hyman, Hughes v. Hughes (1928), 139 L. T. 416.
2492. *Add. Annotation*:—**Refd.** Hyman v. Hyman, Hughes v. Hughes (1928), 139 L. T. 416.
2498. *Add. Annotation*:—**Refd.** Hyman v. Hyman, Hughes v. Hughes (1928), 139 L. T. 416.
2501. *Add. Annotation*:—**Refd.** Hyman v. Hyman, Hughes v. Hughes (1928), 139 L. T. 416.
2511. *Add. Annotation*:—**Refd.** Dewe v. Dewe, Snowdon v. Snowdon, [1928] P. 113.
- 2533a. ———.]—**STATHAM v. STATHAM**, No. 4370a, *post*.
2554. *Add. Annotation*:—**Generally, Refd.** Raeburn v. Raeburn (1928), 138 L. T. 672.
2661. *Add. Annotations*:—**Mentd.** Welton v. Welton, [1927] P. 162; **Statham v. Statham** (1928), 45 T. L. R. 127.
- 2718a. ———.]—An infection of resp. with “crabs” is, in the absence of prior misconduct or infection of petitioner, *prima facie* evidence that resp. has committed adultery.—**STEAD v. STEAD** (1927), 71 Sol. Jo. 391.
- 2733a. ———.]—**Hotel evidence.**—On the trial of an undefended petition for divorce, on the ground of adultery with a woman unknown, the ct. declared its intention of refusing to sanction the practice of resorting to hotels to establish a *prima facie* case for dissolution of marriage, & dismissed the petition.—**AYLWARD v. AYLWARD** (1928), 44 T. L. R. 456.
2743. *Add. Annotations*:—**Distd.** Mart v. Mart, [1926] P. 24. **Refd.** Selby v. Atkins (1926), 135 L. T. 45; **S. v. S. & P.** (1927), 44 T. L. R. 52; **Re A. B.’s Petn.**, [1928] P. 25.
2746. *Add. Annotation*:—**Refd.** Mart v. Mart, [1926] P. 24.

**PART XIII. SECT. 3, SUB-SECT. 2.—E.**  
2397 i. *Sufficiency of.*—**Hate v. Hate**, [1927] 3 D. L. R. 481; [1927] 2 W. W. R. 366; 22 Alta. L. R. 565—CAN.

**PART XIII. SECT. 5, SUB-SECT. 1.—E.**  
2452 ii. ———.]—On a petition for restitution of conjugal rights petitioner must satisfy the ct. that he or she has a sincere desire for a real restitution of those rights & a corresponding willingness to render them to the other spouse.—**WOODLANDS v. WOODLANDS** (1924), 35 C. L. R. 446.—AUS.

**PART XIII. SECT. 5, SUB-SECT. 2.—B. (a).**

2521 i. *Question of fact & degree.*—Cruelty is a matter of degree.—**A. v. A.**, [1925] 2 D. L. R. 1195; [1925] 2 W. W. R. 154; 19 Sask. L. R. 346.—CAN.

2534 i. *Cumulative effect of acts not cruelty per se.*—The acts constituting cruelty may be treated as cumulative.—**A. v. A.**, [1925] 2 D. L. R. 1195; [1925] 2 W. W. R. 154; 19 Sask. L. R. 346.—CAN.

**PART XIII. SECT. 5, SUB-SECT. 2.—B. (c).**

2560 ix. ———.]—A course of conduct calculated to break the spirit of the sufferer & continued until health breaks down, or is likely to break down, under the strain, is cruelty.—**KAUFELD v. KAUFELD** (Sask.), [1926] 1 W. W. R. 159.—CAN.

**PART XIII. SECT. 5, SUB-SECT. 2.—B. (b).**

sa. *Spending earnings on mistress—Telling wife of preference for mistress.*—Where the conduct of a husband, in obliging his wife to earn her own living while he spends his earnings on a mistress for whom he openly indicates his preference, so preys on the wife’s mind that, to his knowledge, it undermines her health, it constitutes cruelty.—**JONES v. JONES**, [1925] 2 D. L. R. 1144; [1925] 1 W. W. R. 449; 19 Sask. L. R. 262.—CAN.

**PART XIII. SECT. 5, SUB-SECT. 2.—B. (l).**

sl. *Husband describing himself on enlistment as widower—Deserting wife during pregnancy.*—A husband deserted his wife on two occasions, on one of which she had a baby three months old, & on the other when she was about to be confined. On joining the army in 1916 the husband stated that he was a widower, & thereby the wife was caused considerable pain & anxiety, & with difficulty obtained an allowance out of his pay as his wife:—**Held**: the husband’s conduct amounted to cruelty.—**STUART v. STUART** (1926), 1 L. R. 53 Calc. 436.—IND.

**PART XIII. SECT. 5, SUB-SECT. 2.—E.**

2683 iii. ———.]—Action by a wife for judicial separation on the ground of cruelty dismissed, where the violence complained of did not injure her health or give her cause to fear injury thereto, & was the result of her conduct with another man which she continued

2747. *Add. Citations*:—[1926] P. 24; 95 L. J. P. 29; 134 L. T. 446.

2753. *Add. Annotation*:—**Refd.** Sloggett v. Sloggett, [1928] P. 148.

2762. *Add. Annotation*:—**Folld.** Little v. Little, [1927] P. 224.

2763a. ———.]—The adultery of a husband in his wife’s suit for dissolution of marriage is sufficiently established, subject to identification, by the production of the decree in a former suit, upon which it appears that damages have been assessed against him as co-resp. in respect of the same adultery, & that he has been ordered to pay such damages, without the decree in question containing any express & separate finding that he committed the adultery in question.—**LITTLE v. LITTLE**, [1927] P. 224; 96 L. J. P. 131; 137 L. T. 495; 71 Sol. Jo. 493.

2765a. *Conviction for perjury—In action in which immorality alleged.*—A conviction for perjury committed during a slander action, for falsely swearing that sexual intercourse with a certain woman had not occurred, is equivalent to a finding that there had been such intercourse, & the certificate of conviction is admissible as *prima facie* evidence of the intercourse in a subsequent suit for dissolution of marriage in which the man convicted is resp.—**O’TOOLE v. O’TOOLE** (1926), 134 L. T. 542; 42 T. L. R. 245.

*F. Remedies* (Vol. XXVII., p. 304).

Add the following case:—

2813a. *Petition for judicial separation—Whether petition brought only for collateral purpose.*—A wife petitioned for judicial separation from her husband, on the ground of his adultery. She needed no protection against interference from her husband, but she required orders for permanent maintenance & for custody. The judge, following his usual custom, asked

knowing that it provoked deft.—**CONNOLLEY v. CONNOLLEY**, [1925] 2 W. W. R. 426.—CAN.

**PART XIII. SECT. 5, SUB-SECT. 3.—B. (b).**

sj. *Failure to deny evidence given by other side.*—**Held**: a strong circumstance to be taken into account.—**STACEY v. STACEY** (Alta.), [1927] 2 D. L. R. 854; [1927] 1 W. W. R. 821.—CAN.

**PART XIII. SECT. 5, SUB-SECT. 3.—B. (c).**

2743 i. *Proof of non-access—Evidence of either spouse.*—The rule of **Russell v. Russell**, No. 2743, does not apply so as to exclude evidence of non-access, where there is no possibility of bastardising a child.—**ROBERTS v. ROBERTS** (Alta.), [1928] 1 D. L. R. 227; [1927] 3 W. W. R. 625.—CAN.

2755 i. *Statement by wife—As to illegitimacy of child—Admissible to establish fact of wife’s adultery.*—**BLEEKER v. BLEEKER** (1927), 48 N. L. R. 133.—S. AF.

**PART XIII. SECT. 5, SUB-SECT. 3.—E. (a).**

2802 i. *Acts other than those charged in petition—Subsequent acts of adultery.*—Evidence of acts of adultery subsequent to the date of the petition can only be admitted where preceded by some evidence upon which the jury, without more, might find a charge of adultery, as alleged in the petition, to have been proved.—**ELLIOTT v. ELLIOTT**, [1927] N. Z. L. R. 338.—N. Z.

petitioner why she prayed for judicial separation & not dissolution of the marriage. Petitioner stated that she did not wish her husband to marry the woman who had ruined her home :—*Held* : permanent maintenance & custody being, at any rate, a part of the purpose for which the suit was brought, petitioner had a right to a decree of judicial separation. The ct. had a discretion to refuse such a decree, but not an unlimited discretion, & that discretion must be exercised upon some legal ground, such as the absolute & discretionary bars & the ground that the suit was not brought *bond fide*, but only for some collateral purpose. It was not such a legal ground that the ct. thought it would be better that the relief to be granted should be dissolution, & not judicial separation.—*BLANCHARD v. BLANCHARD* (1928), 138 L. T. 176 ; 44 T. L. R. 313 ; 72 Sol. Jo. 138.

**2830. Add. Annotation:—***Refd.* *Statham v. Statham* (1928), 45 T. L. R. 127.

**2940. Add. Annotation :—***Refd. Diggins v. Diggins*  
(1926), 43 T. L. R. 37.

**2960. Add. Annotations:—**Consd. *Statham v. Statham* (1928), 45 T. L. R. 127. Refd. *Welton v. Welton*, [1927] P. 162.

**2995. Add. Annotations :—***As to* (1) **Consd. Hyman v. Hyman**, *Hughes v. Hughes* (1928), 139 L. T. 416. **Refd.** *Statham v. Statham* (1928), 45 T. L. R. 127.

**3024.** *Add. Citations* :—“ *affg.*, [1892] P. 222 ; 61 L. J. P. 115.”

**3042.** *Add. Annotation:—***Refd.** *Hyman v. Hyman, Hughes v. Hughes* (1928), 139 L. T. 416.

**3044. Add. Annotation:—***Consd. Hyman v. Hyman, Hughes v. Hughes* (1928), 139 L. T. 416.

**3047. Add. Annotation:—***Refd. Hyman v. Hyman, Hughes v. Hughes* (1928), 139 L. T. 416.

**PART XIII. SECT. 5, SUB-SECT. 8.—**  
**B. (a).**

2844 ii. —. ]—In order to establish desertion, proof of a refusal to acknowledge the obligations of the married state may suffice.

**Scemle**: the bringing of a prior suit, which was abandoned, for divorce can be relied on as constituting desertion.—**BRUCE v. BRUCE** (Alta.), [1926] 4 D. L. R. 1117; [1926] 3 W. W. R. 605.—**CAN.**

**PART XIII. SECT. 5, SUB-SECT. 8.—**  
**B. (b).**

**2880 i. What amounts to cohabitation—Parties living under same roof—Husband not recognising or treating wife as such.]—Held:** the husband was living apart from his wife without sufficient excuse in circumstances entitling her to restitution of conjugal rights.—**LINKHART v. LINKHART, [1925] 2 D. L. R. 1180.—CAN.**

**PART XIII. SECT. 5, SUB-SECT. 8. —**  
**B. (e) ii.**

n i. —.]—Malicious denial of carnal intercourse persisted in for four years may constitute desertion, but the standard of proof, both of the denial itself & of the absence of consent by the offended spouse, must be exacting.—GOULD v. GOULD, [1927] S. C. 177.—SCOT.

**PART XIII. SECT. 5, SUB-SECT. 8.—**  
**B. (f).**

2933 ii. ———.—]—LEE v.  
LEE, [1927] 1 D. L. R. 94; 59 O. L. R.  
561.—CAN.

**PART XIII. SECT. 5, SUB-SECT. 8.—**  
**B. (g).**

2940 il. —.—A divorce refused.

on the ground that a separation agreement prevented a finding of desertion.

In an action for divorce the existence of a separation agreement is not to be disregarded by the ct. merely because deft. does not set it up as a bar.—**WALSH v. WALSH & KIRKLAND**, [1925] 2 D. L. R. 794; [1925] 1 W. W. R. 951; 19 Sask. L. R. 509.—CAN.

2941 ii. — *Deed not acted upon.*]— Proposition, that, when a deed of separation is treated as a nullity or set at naught, & the spouse who repudiates it persists in leaving the other as if deserted, the former is from that time guilty of desertion, doubted. — *HOGGETT v. HOGGETT*, [1926] V. L. R. 505; 48 A. L. J. T. 62; [1926] Argus L. R. 330.—**AUS.**

**PART XIII. SECT. 5, SUB-SECT. 8.—E.**

2975 i. *During imprisonment—Manifest intention to desert.*)]—A husband, who was married in July, 1916, lived with his wife for six weeks, & thereafter did not live with her again for over three years. In Nov. 1919, he met her accidentally & lived with her for a few days, & then he went abroad to take up an appointment. On the voyage out he wrote informing her that the appointment had been cancelled. Thereafter he never lived with his wife or communicated with her again. From Apr. 1920 till June 1923 he was in prison, & in Oct. 1923 he was again imprisoned. In Oct. 1925, after his release, he wrote to his wife's father stating that he was about to go abroad, & offering to supply material for divorce :—*Held* : pursuer had relevantly averred desertion commencing in Nov. 1919 & including the periods of defender's incarceration, in respect that, when liberated from

**3064. Add. Annotation :—As to (1) Dists. Preger v. Preger (1926), 134 L. T. 670.**

**3066. Add. Annotation :—***Dlstd. Preger v. Preger*  
(1928), 134 L. T. 670.

**3068. Add. Annotation :—Distd. Preger v. Preger**  
(1926), 134 L. T. 670.

**3069. Add. Annotation:—***Distd. Preger v. Preger*  
(1926), 134 L. T. 670.

3092a. — Agreement between husband & co-respondent as to damages.]—Petitioner filed a petition for divorce on the ground of his wife's adultery with co-resp., & it was disclosed to the ct. that petitioner & co-resp. had agreed that co-resp. should pay petitioner £2,500 damages, of which £1,750 was to be paid down, & the rest later, & that petitioner should claim no further damages from co-resp. & should put no obstacles in the way of a decree *nisi* being made absolute. The petition was dismissed on the ground that the suit was collusive. After the dismissal resp. & co-resp. continued to live in adultery, & petitioner, who had received the £1,750, presented a second petition against them, complaining of the adultery since the date of the former petition:—*Held*: petitioner had by the agreement prevented himself from complaining of any adultery whether past or future, & he had connived at the adultery of which in his second petition he complained, & the second petition must be dismissed.—GIFFORD v. GIFFORD & FREEMAN (1926), 43 T. L. R. 141.

**3093. Add. Annotation :—Distd.** Preger v. Preger (1926), 134 L. T. 670.

**3094. Add. Annotation :—Dist.** Preger v. Preger (1926), 134 L. T. 670.

**3122. Add. Citation :—**134 L. T. 670.

prison, defender had shown no disposition to alter his intention to persist in his desertion.—**PARKER v. PARKER**, [1926] S. C. 574.—**SCOT.**

**PART XIII. SECT. 5, SUB-SECT. 8.—**  
**G. (g).**

3003 i. *What is "reasonable cause"—Conduct falling short of matrimonial offence.—Not mere frailty of temper & habits.]—Mere infirmity of temper accompanied by the free use of a vulgar & abusive tongue, an occasional resort to physical violence not directed against the person of her husband & futile threats of bodily harm to him, are not sufficient to justify a husband's desertion of his wife.—CLARKE v. CLARKE (Alta.), [1927] 3 W. W. R. 728.—CAN.*

**PART XIII. SECT. 7, SUB-SECT. 3.—**  
**A. (a).**

**3026** 1. *Dissolution suit—Previous suit.*—A former suit for divorce brought by pltf. was dismissed on the ground that by his wilful neglect of his wife he had conduced to her adultery. In a subsequent suit for divorce he proved that his wife & co-resp. had, since the former suit, left the province & were living as man & wife in California :—*Held* : the dismissal of the former suit was not a bar to the subsequent suit.—**KESLERING v. KESLERING (OTHERWISE NEVERKA) & NEVERKA (Sask.), [1927] 4 D. L. R. 767 ; [1927] 3 W. W. R. 273.—CAN.**

**PART XIII. SECT. 7, SUB-SECT. 3.—**  
**B. (b) iij.**

3081 i. *Invitation to commit adultery.*  
—MCEWEN v. MCEWEN (Man.), [1926]  
3 D. L. R. 430.—CAN.



3143. *Add. Annotation* :—*Refd.* Hyman v. Hyman, Hughes v. Hughes (1928), 139 L. T. 416.
3166. *Add. Annotation* :—*As to* (1) *Refd.* Sneyd v. Sneyd & Burgess, [1926] P. 27.
- 3179a. —.]— (1) Condonation has been defined as "the complete forgiveness & blotting out of a conjugal offence followed by cohabitation, the whole being done with knowledge of all the circumstances of the particular offence forgiven."
- (2) Petitioner alleged, but in the opinion of the ct. failed to prove, that he was induced to resume cohabitation by his belief, brought about by the fraudulent representation of his wife, that she was innocent :—*Semble* : such a belief would not be material if proved.—*SNEYD v. SNEYD & BURGESS*, [1926] P. 27; 95 L. J. P. 22; 135 L. T. 124; 42 T. L. R. 247.
- 3182a. —.]—*SNEYD v. SNEYD & BURGESS*, No. 3179a, *ante*.
- 3183a. Agreement for temporary separation after confession of adultery—Parties continuing to live apart for several years.]—*Held* : in the circumstances there had been no condonation.—*LETBE v. LETBE & WHITEHEAD* (1928), 45 T. L. R. 6; 72 Sol. Jo. 745.
3196. *Add. Annotation* :—*Refd.* M. v. M., [1928] P. 123.
3213. *Add. Annotation* :—*As to* (1) *Refd.* Sneyd v. Sneyd & Burgess, [1926] P. 27.
3223. *Add. Citations* :—[1926] P. 27; 95 L. J. P. 22; 135 L. T. 124; 42 T. L. R. 247.
3234. *Add. Annotation* :—*Refd.* Statham v. Statham (1928), 45 T. L. R. 127.
3395. *Add. Annotation* :—*Mentd.* Blanchard v. Blanchard (1928), 138 L. T. 716.
3433. *Add. Annotation* :—*Refd.* Welton v. Welton, [1927] P. 162.
- 3436a. —.]—*Plows v. Plows* (1928), 44 T. L. R. 263.
- 3449a. —.]—*GRAYSON v. GRAYSON* (1927), 43 T. L. R. 225.
3470. *Add. Annotation* :—*Refd.* Hyman v. Hyman, Hughes v. Hughes (1928), 139 L. T. 416.
3486. For "Coupled with discretion" read "Coupled with desertion."
3533. *Add. Annotation* :—*Refd.* Sloggett v. Sloggett, [1928] P. 148.
3537. *Add. Annotation* :—*As to* (1) *Appld.* O'Toole v. O'Toole (1926), 134 L. T. 542.
3539. *Add. Annotations* :—*As to* (2) *Refd.* Arnold & Weaver v. Amari, [1928] 1 K. B. 584. Generally, *Refd.* Welton v. Welton, [1927] P. 162.
3540. *Add. Annotation* :—*Refd.* Welton v. Welton, [1927] P. 162.
3559. *Add. Annotation* :—*Refd.* Welton v. Welton, [1927] P. 162.
3560. *Add. Annotation* :—*Refd.* Welton v. Welton, [1927] P. 162.
3569. *Add. Annotation* :—*As to* (1) *Refd.* Porter v. Porter (1928), 72 Sol. Jo. 826.
- B. Indorsement of Notice to Appear*  
(Vol. XXVII., p. 375).
- Add the following case :—
- 3635a. Form—Woman charged with adultery named in petition.]—(1) On a wife's petition for dissolution of marriage, which was undefended, a woman named in the petition as having committed adultery with the husband was ordered to pay costs.
- (2) As the prayer in the petition contained a claim for costs against the woman named, in accordance with an instruction of the senior registrar, dated June 4, 1927, the notice indorsed on the copy of the petition served on the woman was in the form set out.

PART XIII. SECT. 7, SUB-SECT. 3.—  
C. (b) ii.

3138 iii. —.]—The fact that a husband's suit for divorce has been brought at the request of a man, with whom deft. has been living for a number of years, & who has promised pltf. to pay all the costs in order that deft. may be made free to marry him, does not constitute collusion.—*CHRISTMANSON v. CHRISTMANSON* (Alta.), [1927] 1 D. L. R. 651; [1927] 1 W. W. R. 149.—CAN.

PART XIII. SECT. 7, SUB-SECT. 3.—  
C. (b) v.

3159 i. Respondent assisting in identification.]—The fact that deft. to a divorce action admitted to pltf.'s solr. before the trial that she had been guilty of adultery with co-resp., & supplied the solr. with her photograph to be used for the purpose of identification, is not proof of collusion, where there is no evidence that pltf. ever had any arrangement with deft. that she should provide him with grounds for divorce.—*PARRY v. PARRY*, [1926] 8 D. L. R. 95; [1926] 2 W. W. R. 185; 20 Sask. L. R. 474.—CAN.

PART XIII. SECT. 7, SUB-SECT. 3.—  
D. (a).

*sm.* Is defence to suit for divorce on ground of bestiality.]—*A. v. A.*, [1925] 2 D. L. R. 1195; [1925] 2 W. W. R. 154; 19 Sask. L. R. 346.—CAN.

PART XIII. SECT. 7, SUB-SECT. 3.—  
D. (b) i.

3169 iii. —.]—*PREMCHAND HIRA v. BAI GALAL* (1927), 1 L. R. 51 Bom. 1026.—IND.

PART XIII. SECT. 7, SUB-SECT. 3.—  
D. (h) iii.

3255 iii. —.]—Any matrimonial offence which in itself is ground for divorce but which has been condoned may be revived by the subsequent recognition of any other legally recognised matrimonial offence, e.g., cruelty.—*A. v. A.*, [1925] 2 D. L. R. 1195; [1925] 2 W. W. R. 154; 19 Sask. L. R. 346.—CAN.

PART XIII. SECT. 7, SUB-SECT. 3.—  
D. (h) iv.

3274 i. By desertion.—For two years without reasonable excuse.]—Condoned adultery revived.—*SPRING v. SPRING* (Alta.), [1926] 2 D. L. R. 893; [1926] 2 W. W. R. 78.—CAN.

i. For "i. By desertion" read "3274 ii. —."

PART XIII. SECT. 7, SUB-SECT. 4.—  
B. (d) i.

3838 i. General rule.]—*LACHANCE v. ROCHON* (Que.), [1927] 1 D. L. R. 1190.—CAN.

PART XIII. SECT. 7, SUB-SECT. 4.—  
C. (a) i.

3397 iii. —.]—*M McNALLY v. McNALLY*, [1927] 2 D. L. R. 604; 59 N. S. R. 268.—CAN.

PART XIII. SECT. 7, SUB-SECT. 4.—  
D. (a) ii.

3448 i. Factors governing exercise of.]—When it is admitted by petitioner that he has been guilty of adultery, the ct. will exercise its discretion in his favour in a case that comes clearly within the principles laid down in *Wilson v.*

*Wilson*, No. 3448.—*LAIRD v. LAIRD* (1927), 38 B. O. R. 297.—CAN.

PART XIII. SECT. 7, SUB-SECT. 4.—  
D. (a) v.

3468 i. Whether conclusive in favour of petitioner.]—On a petition for dissolution of marriage under Divorce & Matrimonial Causes Amendment Act, 1920, s. 4, as amended by 1921-22 Act, s. 2 (1), where resp. proves to the ct.'s satisfaction that the separation was due to petitioner's adultery, resp. is entitled to rely on that adultery as a bar to petitioner's claim for relief, notwithstanding such adultery was condoned.—*CHAPMAN v. CHAPMAN*, [1926] N. Z. L. R. 291.—N.Z.

PART XIII. SECT. 7, SUB-SECT. 4.—  
D. (a) vi.

3505 i. Desertion by respondent.—No excuse for petitioner's adultery.—*Bigamous marriage.*]—Bigamous adultery by a husband, in wholly inexcusable circumstances :—*Held* : a bar to a decree nisi, even though the adultery did not occur until three years after the wife's desertion, & could not be regarded as conducing to or excusing that desertion.—*THOMAS v. THOMAS* (No. 2), [1926] V. L. R. 206; 47 A. L. T. 158; [1926] Argus L. R. 186.—AUS.

3508 i. —. Petitioner destitute.]—A wife was deserted by her husband for four years & was forced by necessity & circumstances to become unchaste :—*Held* : her petition for divorce should be granted.—*REBERIO v. REBERIO* (1926), 1 L. R. 54 Calo. 80.—IND.

in Matrimonial Causes Rules, 1924, Appendix 1, in accordance with r. 2 of those rules, & the woman's name formed part of the title of the suit as resp.—**DAVIS v. DAVIS & HELBING** (1928), 138 L. T. 623.

3667. *Add. Annotation*:—**Refd. Hyman v. Hyman, Hughes v. Hughes** (1928), 139 L. T. 416.

3775. *Add. Annotation*:—**Mentd. Blanchard v. Blanchard** (1928), 138 L. T. 716.

3783a. *Wife's petition—Woman charged with adultery added as respondent with husband.*—**PEPPER v. PEPPER & BAKER**, No. 4848a, *post*.

3825a. — *When granted.*—**GLEED v. GLEED** (1927), 43 T. L. R. 678; 71 Sol. Jo. 729.

3859. *Add. Annotation*:—**Refd. McCausland v. McCausland** (1927), 43 T. L. R. 592.

3859a. — *Where resp. is a minor, personal service of the petition on resp. is good service, & the appointment of a guardian ad litem is not necessary.*—**MCCAUSLAND v. McCAUSLAND** (1927), 96 L. J. P. 149; 137 L. T. 653; 43 T. L. R. 592; 71 Sol. Jo. 472.

3866. *Add. Annotation*:—**Mentd. Raeburn v. Raeburn** (1928), 138 L. T. 672.

3867. *Add. Annotation*:—**Mentd. Raeburn v. Raeburn** (1928), 138 L. T. 672.

4022. *Add. Annotation*:—**Mentd. La Radiotechnique v. Weinbaum** (1927), 137 L. T. 638.

4063a. *Under Judicature (Consolidation) Act, 1925 (c. 49), s. 190 (3).*—**Held**: (1) the effect of the above sub-sect. was not to confine the power of the ct. to make interim orders to cases in which the facts were such as would warrant the ct. in making an order in proceedings for judicial separation, but to confer on the ct. a general power to make interim orders of the same nature & class as could be made in properly instituted proceedings for judicial separation; (2) a wife found guilty of adultery in a suit for divorce brought by her husband, whose petition had been dismissed because by his conduct he conduced to her adultery, was a competent suitor for dissolution of marriage on the ground of her husband's adultery, & if she presented a petition for divorce, the ct. had jurisdiction

under the above sub-sect., in its discretion, to award her alimony *pendente lite*; (3) as the means of the wife were insufficient to support herself & her two children, she was entitled to alimony *pendente lite*, although the husband had contributed nothing towards her maintenance for seven years before the institution of the suit, & she had been able in some precarious fashion to maintain herself.—**WELTON v. WELTON**, [1927] P. 162; 96 L. J. P. 75; 136 L. T. 675; 43 T. L. R. 174; 71 Sol. Jo. 121, C. A.

4097. *Add. Annotation*:—**Distd. Welton v. Welton**, [1927] P. 162.

4098. *Add. Annotation*:—**Distd. Welton v. Welton**, [1927] P. 162.

4098a. — *—*—**WELTON v. WELTON**, No. 4063a, *ante*.

4111. *Add. Annotation*:—**Generally, Refd. Gilbey v. Gilbey**, [1927] P. 197.

4131. *Add. Annotation*:—**Refd. Capron v. Capron**, [1927] P. 243.

4156. *Add. Annotation*:—**Consd. M. v. M.**, [1928] P. 123.

4158. *Add. Annotation*:—**Refd. Welton v. Welton** (1926), 43 T. L. R. 161.

4189a. *In suit for judicial separation—Before decree nisi.*—The provision of alimony *pendente lite* is a privilege of the wife for her subsistence during the litigation; & a wife who has obtained a decree of judicial separation is not entitled to an allotment of alimony *pendente lite*, unless she has obtained an order for it before the decree, although she may have commenced proceedings earlier in the suit to obtain it.—**M. v. M.**, [1928] P. 123; 97 L. J. P. 101; 138 L. T. 648; 44 T. L. R. 299; 72 Sol. Jo. 155.

4280a. — *—*—*On a husband's petitioning for divorce on the ground of his wife's alleged adultery with a named co- resp., the paternity of a child being in dispute, the wife by her answer admitted the birth of the child, & she did not allege that petitioner was the father, but she denied adultery with co- resp. It was urged on behalf of petitioner that the pleadings showed that the wife had not a good*

PART XIII. SECT. 8, SUB-SECT. 1.—D. *sn. How suit commenced—Necessity for writ of summons.*—**CALLANDER v. CALLANDER** (Sask.), [1927] 3 W. W. R. 449.—CAN.

PART XIII. SECT. 8, SUB-SECT. 1.—F. (a).

11. — *Alternative claim for judicial separation.*—In a suit by a wife for divorce it is not necessary, or indeed proper, to ask to have a separation agreement between the parties set aside, or to include an alternative claim for judicial separation.—**CAMRUD v. CAMRUD** (Sask.), [1927] 4 D. L. R. 385; [1927] 2 W. W. R. 759.—CAN.

PART XIII. SECT. 8, SUB-SECT. 4.—D.

*sp. Leave to sue in forma pauperis—When granted.*—**COLBRIDGE v. COLBRIDGE** (Man.), [1926] 2 D. L. R. 806; [1926] 1 W. W. R. 857.—CAN.

PART XIII. SECT. 8, SUB-SECT. 4.—F. (a).

3836 i. *Position of intervener.*—**Held**: a "party" within K. B. Rule 951.—**BUSSELL v. BUSSELL & McKENNA** (No. 3), [1927] 3 W. W. R. 800.—CAN.

PART XIII. SECT. 8, SUB-SECT. 5.—B.

3858 ii. — *—*—*Substitutional ser-*

*vice in a divorce action effected in accordance with an order therefor regularly made is equivalent to personal service, & it is not necessary that actual notice of the proceedings should reach deft.*—**PARTINGTON v. PARTINGTON**, [1925] 3 D. L. R. 1085; [1925] 2 W. W. R. 723; *reversg.* 19 Sask. L. R. 402; [1925] 1 W. W. R. 1039.—CAN.

PART XIII. SECT. 8, SUB-SECT. 5.—F.

3917 ii. — *Sworn in England before commissioner for oaths—Admissibility.*—An affidavit, purporting to be sworn in England before a person describing himself as a comr. for oaths, may be received in evidence of the facts deposed to therein in proof of service of the petition & citation in a divorce suit.—**THOMAS v. THOMAS**, [1926] V. L. R. 188; 47 A. L. T. 157; [1926] Argus L. R. 137.—AUS.

PART XIII. SECT. 8, SUB-SECT. 8.—B.

*st. Further & better particulars—When ordered.*—Petitioner for divorce ordered, on motion of co- resp., to deliver further & better particulars of the dates & places when & where the acts of adultery mentioned in the petition were committed.—**GUSHOWATY v. GUSHOWATY & JONES**, [1925] 3

D. L. R. 436; [1925] 2 W. W. R. 238; 35 Man. L. R. 134.—CAN.

PART XIII. SECT. 9, SUB-SECT. 1.—A.

*sw. Not local master.*—In an action for judicial separation & alimony applications for *interim* alimony must be made to a judge in chambers; a local master has no jurisdiction to entertain them.

Where an order for *interim* alimony has been made by a local master, such order is a nullity, but a judge in chambers has no jurisdiction to set it aside where the application to him is not by way of appeal.—**VOLHOFFER v. VOLHOFFER**, [1925] 3 D. L. R. 552; [1925] 2 W. W. R. 304; 19 Sask. L. R. 442.—CAN.

PART XIII. SECT. 9, SUB-SECT. 1.—B. (c).

*iv. —*—*An order for payment by deft. to pltf. in an action for alimony of interim alimony & disbursements was set aside, pltf. having means of her own ample for the purpose of maintaining herself & bringing the action to trial.*—**GIBBS v. GIBBS**, [1925] 2 D. L. R. 880; 56 O. L. R. 614.—CAN.

ground for her defence so as to justify an order against her husband to secure her costs. In accordance with an offer made by petitioner an order was made for security to be given without payment into ct.—*S. v. S. & P.* (1927), 97 L. J. P. 37; 138 L. T. 302; 44 T. L. R. 52; 72 Sol. Jo. 31; *sub nom. Re A. B.s' PETITION*, [1928] P. 25.

4296. *Add. Annotations*:—*Refd. Welton v. Welton* [1927] P. 162; *Arnold & Weaver v. Amari*, [1928] 1 K. B. 584.

4305. *Add. Annotation*:—*As to* (3) *Refd. Arnold & Weaver v. Amari*, [1928] 1 K. B. 584.

4306. *Add. Annotation*:—*Refd. Fanshawe v. Fanshawe*, [1927] P. 238.

4307. *Add. Annotation*:—*As to* (1) *Refd. Baldwin Raper v. Baldwin Raper & Metz* (1926), 42 T. L. R. 619.

4313. *Add. Citations*:—95 L. J. P. 18; 134 L. T. 414.

4354a. — “Discretion cases”—*Adultery by petitioner—Insertion in defended list necessary.*—*HOWELL v. HOWELL & DAVIDSON* (1926), 42 T. L. R. 497.

4354b. — *Application to expedite trial—Grounds for refusing.*—The ct., on the ground of public policy, refused an application by a wife, petitioning for a divorce on the ground of her husband's adultery, that the trial of the suit in the undefended list might be expedited so that the decree might be made absolute, & resp. might marry the woman named in the petition, before the birth of a child expected to be born as the result of resp.'s relations with that woman.—*P. v. P.* (1927), 44 T. L. R. 114; 71 Sol. Jo. 964.

4370a. *Corroboration—Necessity for—Charges of grave sexual offences.*—(1) Where in a matrimonial cause one spouse accuses the other of very grave sexual offences the accusation, as in criminal cases, ought not, without due & cautious consideration, to be held to be proved by the mere oath of one party against the oath of the other, parti-

cularly when the accuser has been an accomplice in the offences. Where the decision in such a case depends upon the verdict of of jury, it is the duty of the judge to caution the jury to this effect; but the ct. will not reverse a finding of the jury that such an offence has been committed on the ground that they acted on the evidence of one party alone, or that that party was an accomplice, provided that the judge has given to the jury a proper warning as to the acceptance of such testimony without corroboration.

(2) The rule that to constitute legal cruelty there must be danger, or a reasonable apprehension of danger, to life, limb, or health, applies to cruelty which consists in making a wife submit to improper sexual acts, as well as to cruelty of a more usual kind, such as violence, ill-temper, etc.—*STATHAM v. STATHAM* (1928), 45 T. L. R. 127; 72 Sol. Jo. 817, C. A.

4422. *Add. Annotation*:—*Dlst. Preger v. Preger* (1926), 134 L. T. 670.

4427. *Add. Citation*:—11 W. R. 85.

4434. *Add. Annotation*:—*Refd. Capron v. Capron*, [1927] P. 243.

4439. *Add. Annotation*:—*Consd. Cavendish v. Cavendish*, [1926] P. 10.

4442. *Add. Annotation*:—*Refd. Bosworthick v. Bosworthick*, [1927] P. 64.

4447a. —.]—In undefended petitions for divorce the ct. should not be asked to act on evidence identifying resp. by photograph when personal identification by witnesses could easily have been effected.—*PRACTICE NOTE* (1925), 159 L. T. Jo. 95.

4636. *Add. Annotation*:—*Refd. Sloggett v. Sloggett*, [1928] P. 148.

4671. *Add. Annotations*:—*Refd. Statham v. Statham* (1928), 45 T. L. R. 127. *Mentd. Welton v. Welton*, [1927] P. 162.

*B. By Whom Assessed* (Vol. XXVII., p. 452).

After the cross-reference add as follows:—

4677a. *By court.*—The ct. has power to direct

PART XIII. SECT. 10, SUB-SECT. 1.—  
A.

4308 i. *Against whom order made—Not infant intervener or his next friend.*—*RUSSELL v. RUSSELL & MCKENNA* (Man.), [1927] 4 D. L. R. 403; [1927] 3 W. W. R. 144.—CAN.

PART XIII. SECT. 10, SUB-SECT. 1.—  
C.

4325 i. *What interrogatories allowed—Relating to charge of adultery.*—On an examination for discovery, in an action for judicial separation & alimony, deft. should not be required to answer questions intended to fasten responsibility on him for certain letters, where such letters tend to show that he has committed adultery.—*LIGHTHEART v. LIGHTHEART* (Sask.), [1926] 4 D. L. R. 885; [1926] 3 W. W. R. 494.—CAN.

PART XIII. SECT. 11, SUB-SECT. 2.

4376 i. *Whether formal proof essential—Suit for dissolution—Damages claimed against co-respondent.*—Where on a petition for divorce damages are claimed against co-resp. *prima facie* proof of marriage, if not rebutted, is sufficient to meet the strictness of proof required in the criminal conversation phase of the proceedings.—*KNIGHT v. KNIGHT & OWENS*, [1925] 2 D. L. R. 467; [1925] 1 W. W. R. 824.—CAN.

PART XIII. SECT. 11, SUB-SECT. 3.—  
B. (b).

4384 i. “*Proceeding instituted in consequence of adultery*”—*Suit for nullity.*—In a suit for nullity petitioner may be compelled to answer questions tending to show that he has committed adultery.—*W. v. W.*, [1926] S. A. S. R. 425.—AUS.

PART XIII. SECT. 11, SUB-SECT. 5.

husband for divorce, letters written by the wife to co-resp., but not delivered to him, are not made evidence of adultery admissible against co-resp. by Ceylon Evidence Ordinance, 1895, s. 9. The fact that co-resp.'s counsel has based questions in cross-examination upon the contents of the letters, which had properly been admitted as evidence against the wife, does not make the letters evidence against co-resp.—*GABRIEL v. ELIATAMBY*, [1926] A. C. 133; 95 L. J. P. C. 9; 134 L. T. 200.—CEYLON.

h ii. — *Letters to husband from alleged adulterers—Taken from husband's desk by wife.*—*Held*: admissible.—*LIGHTHEART v. LIGHTHEART*, [1927] 1 D. L. R. 386; [1927] 1 W. W. R. 393; 21 Sask. L. R. 300.—CAN.

sy. *Admissions—Of adultery—By wife—Bastardising offspring.*—Admissions by a wife, that the father of a child born to her during the marriage was not her husband:—*Held*: receivable in evidence, so far as they did not

relate to non-access.—*JUSTICE v. JUSTICE*, [1925] S. A. S. R. 278.—AUS.

PART XIII. SECT. 11, SUB-SECT. 12.

4456 ii. —.]—*DAHLBERG v. SWANSON*, [1927] 3 D. L. R. 669; [1927] 1 W. W. R. 617; 21 Sask. L. R. 388.—CAN.

PART XIII. SECT. 15, SUB-SECT. 2.—  
A.

g i. — *Withdrawal at trial—Order directing husband to pay interim costs not affected.*—*CAMRUD v. CAMRUD* (Sask.), [1927] 4 D. L. R. 365; [1927] 2 W. W. R. 759.—CAN.

PART XIII. SECT. 16, SUB-SECT. 5.—  
A.

4676 i. *General rule.*—The factors to be considered in granting damages against co-resp. are (1) the actual value of the wife to the husband; (2) the injury to his feelings, the blow to his marital honour & the hurt to his matrimonial & family life.—*HAYNES v. HAYNES* (Sask.), [1926] 4 D. L. R. 473; [1926] 2 W. W. R. 726.—CAN.

PART XIII. SECT. 16, SUB-SECT. 5.—  
B.

sh. *By jury.*—It is not the law in Saskatchewan that damages against co-resp. must be assessed by a jury.—*RIDER v. RIDER*, [1925] 3 D. L. R. 370; [1925] 1 W. W. R. 1051; 19 Sask. L. R. 384.—CAN.



that damages shall be assessed by a judge alone, unless one of the parties applies for trial by jury. The practice is now regulated by R. S. C., Ord. 36, rr. 2-6, & Matrimonial Causes Rules, 1924, r. 30 (b).—BEDFORD v. BEDFORD & POWDRILL (1926), 96 L. J. P. 22; 136 L. T. 383.

4746. *Add. Annotation*:—Generally, *Refd.* Bosworthick v. Bosworthick, [1927] P. 64.

4767a. — *Effect of—On status of parties.*—A decree for restitution of conjugal rights with the usual finding that the parties to the suit are husband & wife, though it may not directly affect their status, nevertheless proceeds upon the basis of their status being thus conclusively established *inter partes*. Resp. in a suit for restitution of conjugal rights, who does not resist such a finding, cannot afterwards dispute the validity of the marriage of the parties. A subsequent suit for nullity of the marriage, in which bigamy is alleged to have been in fact committed by one of the parties to it, does not, after this finding of its validity as between them, afford any exception to the general rule of estoppel.—WOODLAND v. WOODLAND (OTHERWISE BELIN OR BARTON), [1928] P. 169; 97 L. J. P. 92; 139 L. T. 262; 44 T. L. R. 495; 72 Sol. Jo. 303.

4790. *Add. Annotations*:—*Refd.* Bosworthick v. Bosworthick, [1927] P. 64; Hyman v. Hyman, Hughes v. Hughes (1928), 139 L. T. 416.

4837. *Add. Annotation*:—As to (2) *Refd.* Darnborough v. Darnborough & Smith, *Clare Intervening* (1926), 96 L. J. P. 24.

4845. *Add. Annotation*:—*Refd.* Capron v. Capron, [1927] P. 243.

4848a. — *Wife's petition—Woman charged with adultery added as respondent.*—If, in a wife's suit for divorce, the married woman with whom the husband is alleged to have committed adultery is made a resp. in the suit by an order made on summons under Jud. (Consolidation) Act, 1925 (c. 49), s. 177 (2), the ct. has power to award costs against both resps., but, as regards the married woman, limited to her separate estate.—PEPPER v. PEPPER & BAKER (1926), 96 L. J. P. 17; 136 L. T. 224; 43 T. L. R. 1.

4848b. — — — — —.]—DAVIS v. DAVIS & HELRING, No. 3635a, *ante*.

PART XIII. SECT. 16, SUB-SECT. 5.—  
D. (b).

4685 i. *Not punitive.*—RIDER v. RIDER, [1925] 3 D. L. R. 370; [1925] 1 W. W. R. 1051; 19 Sask. L. R. 384.—CAN.

4685 ii. — — — — —.]—TRANTER v. TRANTER & LAMB, [1925] N. Z. L. R. 593.—N.Z.

PART XIII. SECT. 16, SUB-SECT. 5.—  
D. (c).

4690 i. *Whether bar to claim for damages—Illicit relationship continued after knowledge.*—Co-resp.'s conduct in continuing adulterous relations with resp. after he became aware that she was married:—*Held*: to deprive him of any protection with respect to immunity from damages to which his prior ignorance of her married state might have entitled him.—HAYNES v. HAYNES (Sask.), [1926] 4 D. L. R. 473; [1926] 2 W. W. R. 726.—CAN.

PART XIII. SECT. 17, SUB-SECT. 2.

a i. — *Granted when divorce decree refused.*—Although a claim for divorce is withdrawn at the trial, *pltf.* is entitled

to judicial separation where the evidence warrants the granting of it & justifies the ct. in disregarding a separation agreement between the parties.—CAMRUD v. CAMRUD (Sask.), [1927] 4 D. L. R. 365; [1927] 2 W. W. R. 759.—CAN.

PART XIII. SECT. 18, SUB-SECT. 3.—  
B.

r i. — *Dismissal of suit on ground of absence of jurisdiction.*—*Held*: it was not competent to award expenses to a wife, where the suit had been dismissed on the ground that the ct. had no jurisdiction, & the husband had not appeared to defend.—KELLY v. KELLY, [1928] S. C. 43.—SCOT.

PART XIII. SECT. 18, SUB-SECT. 3.—  
C. (b).

t i. — — — — —.]—Although a divorce petition by a husband is decided in his favour, the wife is entitled to her costs, if she has had them secured & her defence has been *bond fide*.—KNIGHT v. KNIGHT & OWENS, [1925] 2 D. L. R. 467; [1925] 1 W. W. R. 824.—CAN.

4882a. — — — — —.]—Where a wife's petition is dismissed, the facts that security for the wife's costs has been ordered, & that the conduct of the wife's solr. is not open to censure, do not deprive the ct. of its discretion to give costs or to refuse them to the wife or to give costs against the wife.—BALDWIN RAPER v. BALDWIN RAPER & METZ, BALDWIN RAPER v. BALDWIN RAPER (1926), 42 T. L. R. 619.

4884. *Add. Annotation*:—As to (1) *Refd.* Welton v. Welton, [1927] P. 162.

4943. *Add. Annotation*:—*Mentd.* A.-G. for Alberta v. Cook, [1926] A. C. 444.

4985. *Add. Annotation*:—As to (2) *Folld.* Earl v. Earl & Kyle (1926), 96 L. J. P. 23.

4985a. — — — — —.]—Where an order has been made "consolidating" a husband's petition for dissolution on the ground of his wife's adultery with the wife's cross petition for dissolution on the ground of the husband's cruelty & adultery, & the two suits have been tried together, the ct. has no power under Jud. (Consolidation) Act, 1925 (c. 49), s. 50, to order co-*resp.* to pay the costs of the wife's suit to which he was not a "party."—EARL v. EARL & KYLE, EARL v. EARL (1926), 96 L. J. P. 23; 136 L. T. 383.

4985b. *Cross charges by wife.*—If a wife makes cross charges of cruelty & of adultery with a named woman against a husband in her answer to his petition for dissolution of marriage & the cross charges fail, the woman intervening being dismissed from the suit with costs & the husband being granted a decree *nisi*, there is one proceeding only, & co-*resp.* can be condemned in the whole of the costs, including those of the intervener.—DARNBOROUGH v. DARNBOROUGH & SMITH (1926), 96 L. J. P. 24; 136 L. T. 384.

5067. *Add. Annotation*:—*Refd.* Sloggett v. Sloggett, [1928] P. 148.

5068. *Add. Annotations*:—*Consd.* Hyman v. Hyman, Hughes v. Hughes (1928), 139 L. T. 416. *Refd.* Statham v. Statham (1928), 45 T. L. R. 127.

5070. *Add. Annotation*:—*Consd.* Sloggett v. Sloggett, [1928] P. 148.

5071. *Add. Annotation*:—*Mentd.* A.-G. for Alberta v. Cook, [1926] A. C. 444.

5074. *Add. Annotations*:—*Refd.* Sloggett v. Slog-

PART XIII. SECT. 18, SUB-SECT. 3.—  
F. (c).

4953 i. *Petition by husband—Wife proved innocent.*—*Held*: K. B. Rule 951 was not applicable, & full costs should be paid to the solr. of the successful wife.—PRESTON v. PRESTON & MOXLEY, [1925] 4 D. L. R. 1013.—CAN.

PART XIII. SECT. 18, SUB-SECT. 4.—  
B.

f. Read now "4964 i."

4964 ii. *S. P. CROSSE v. CROSSE & HEATH* (1926), 28 W. A. L. R. 10.—AUS.

PART XIII. SECT. 18, SUB-SECT. 4.—  
C. (c) i.

5020 i. *Effect of knowledge—Liability of co-respondent for whole costs.*—If co-*resp.* knew that the woman was married & a divorce is granted, he is liable for all the costs of the proceedings, including those which the husband has been compelled to pay the wife.—KNIGHT v. KNIGHT & OWENS, [1925] 2 D. L. R. 467; [1925] 1 W. W. R. 824.—CAN.

gett, [1928] P. 148. *Mentd. Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669.

5076. *Add. Annotation:—Refd. Sloggett v. Sloggett*, [1928] P. 148.

5076a. —. —. —.]—The intervention of &, if necessary, the calling of evidence by the King's Proctor, subject to the direction of the A.-G., in a suit for the dissolution of marriage, before decree nisi, is not limited to cases of suspected collusion.—*SLOGGETT v. SLOGGETT*, [1928] P. 148; 97 L. J. P. 71; 139 L. T. 238; 44 T. L. R. 394; 72 Sol. Jo. 192.

5112. *Add. Annotation:—Refd. Sloggett v. Sloggett*, [1928] P. 148.

5197. *Add. Annotation:—Refd. Fletcher v. Fletcher*, [1928] P. 20.

5209. *Add. Annotation:—Refd. Hyman v. Hyman, Hughes v. Hughes* (1928), 139 L. T. 416.

5236. *Add. Annotation:—Refd. Woodland v. Woodland* (otherwise *Belin*), [1928] P. 169.

5327. *Add. Annotation:—Consd. Hyman v. Hyman, Hughes v. Hughes* (1928), 139 L. T. 416.

5332. *Add. Annotations:—Consd. Gandy v. Gandy* (1885), 30 Ch. D. 57. *Distd. Hyman v. Hyman, Hughes v. Hughes* (1928), 139 L. T. 416.

5360a. *On lunacy of husband.*—The jurisdiction in lunacy to appoint a receiver of the estate of a person of unsound mind does not exclude other cts. from enforcing lawful claims against his estate, including claims arising in the Divorce Div. Although the primary duty of those concerned with the care of a person of unsound mind is to apply his estate for his maintenance, & there is power under Law of Property Act, 1925 (c. 20), s. 171, to direct

a settlement of the property of a lunatic or defective, the Divorce Div. is not thereby discharged from the duty of providing for the permanent maintenance of a petitioning wife out of the estate of a husband of unsound mind. When by an order in lunacy a provision has been directed for the wife during the lifetime of the husband & pending his incapacity, & the Divorce Div. approve the quantum of the order, the proper course, on application in that Div. by the wife for permanent maintenance, is to order it to be secured to her at the rate ordered in lunacy so far as the husband's means permit & without prejudice to any further order in lunacy, the security not to be enforceable pending subsistence of the order in lunacy, & should it subsist during the life of the husband not to be enforceable till his death.—*C. L. v. C. F. W.*, [1928] 2 K. B. 223; 97 L. J. P. 138.

5373. *Add. Annotation:—Appld. Hyman v. Hyman, Hughes v. Hughes* (1928), 139 L. T. 416.

5374. *Add. Annotation:—As to (1) Appld. Hyman v. Hyman, Hughes v. Hughes* (1928), 139 L. T. 416.

5375. *Add. Annotation:—Refd. Hyman v. Hyman, Hughes v. Hughes* (1928), 139 L. T. 416.

5382. *Add. Annotation:—Refd. Gilbey v. Gilbey*, [1927] P. 197.

5382a. —. —. —.]—Although the considerations which applied in the Ecclesiastical Cts. to awards of alimony must have due weight in determining the proper award of maintenance to a wife after a decree of divorce, the assumption of a fixed arithmetical rule & an indispensable process of applying that rule is erroneous, & disregards the duty imposed on the ct. by Jud. (Consolidation) Act, 1925

#### PART XIII. SECT. 20, SUB-SECT. 1.

5093 i. *King's Proctor.*—The King's Proctor can intervene in an action for divorce in the Supreme Ct. of Alberta, & can so intervene on the ground of collusion or on the ground of material facts not brought before the ct.—*ELKOWECH v. ELKOWECH*, [1925] 4 D. L. R. 1037; [1925] 3 W. W. R. 705; *affg.*, [1925] 3 D. L. R. 676; [1925] 2 W. W. R. 485.—CAN.

#### PART XIII. SECT. 20, SUB-SECT. 3.—A.

sd. *Decree obtained by evidence "framed up" between defendant & detective employed by petitioner.*—*Held*: the decree should be rescinded, even though neither petitioner nor her solr. were implicated in the "frame-up."—*RUSSELL v. RUSSELL & MCKENNA* (No. 2) (Man.), [1927] 3 W. W. R. 297.—CAN.

#### PART XIII. SECT. 20, SUB-SECT. 4.—A. (g) ii.

st. *Unsuccessful allegation of collusion.*—If, on an intervention by the King's Proctor, the allegation of collusion fails, the practice in England, that the King's Proctor is not entitled to costs, is not necessarily applicable in the Supreme Ct. of Alberta.—*ELKOWECH v. ELKOWECH*, [1925] 4 D. L. R. 1037; [1925] 3 W. W. R. 705.—CAN.

#### PART XIII. SECT. 21, SUB-SECT. 3.—B. (a).

sj. *Refusal of trial judge to infer adultery.*—*Appeal dismissed.*—*HENDERSON v. HENDERSON & MCKAY*, [1927] 3 D. L. R. 845; [1927] 2 W. W. R. 473; 21 Sask. L. R. 675.—CAN.

#### PART XIII. SECT. 21, SUB-SECT. 4.

sk. *Action for declaration that decree void for want of jurisdiction.*—Action for a declaration that two decrees ordering judicial separation & awarding permanent alimony were null & void for lack of jurisdiction, dismissed.—*CLAMAN v. CLAMAN* (No. 2) (1925), 35 B. O. R. 141.—CAN.

#### PART XIII. SECT. 22, SUB-SECT. 1.—A.

sn. *In decree of judicial separation.*—An award of permanent alimony may be made in a decree of judicial separation itself.—*WEDLEY v. WEDLEY*, [1925] 3 W. W. R. 46.—CAN.

sp. *Effect of—Wife not debarred from filing caveat under Homesteads Act, R. S. S., 1920 (c. 69).*—*Re LONNEM CAVEAT*, [1926] 1 D. L. R. 279; [1926] 1 W. W. R. 134; 20 Sask. L. R. 275.—CAN.

st. —. —. —. *Not defence to application for relief under Devolution of Estates Act, R. S. S., 1920 (c. 73).*—*Re LONNEM CAVEAT*, [1926] 1 D. L. R. 279; [1926] 1 W. W. R. 134; 20 Sask. L. R. 275.—CAN.

#### PART XIII. SECT. 22, SUB-SECT. 1.—C.

5282 i. *After decree of judicial separation—By application in chambers.*—*CAMRUD v. CAMRUD* (Sask.), [1927] 4 D. L. R. 365; [1927] 2 W. W. R. 759. CAN.

#### PART XIII. SECT. 22, SUB-SECT. 1.—D. (a).

e i. —. —. —.]—On an application for permanent alimony the ct. should not recognise any right in the husband to reduce his income by retaining unsale-

able & unproductive real estate & paying taxes & interest thereon; but it should be astute to frustrate an intention to make such payments the means of escaping payment of alimony.—*NEWTON v. NEWTON* (Man.), [1927] 1 D. L. R. 756; [1927] 1 W. W. R. 106.

#### PART XIII. SECT. 22, SUB-SECT. 1.—D. (c).

e i. —. —. —.]—*MACINTOSH v. MACINTOSH* (N. B.), [1927] 3 D. L. R. 1190.—CAN.

e ii. —. —. —.]—Where the wife was a school teacher, the ct. awarded her one-half of the joint income less the amount of her salary.—*NEWTON v. NEWTON* (Man.), [1927] 1 D. L. R. 756; [1927] 1 W. W. R. 106.—CAN.

#### PART XIII. SECT. 22, SUB-SECT. 1.—F.

5325 ii. —. —. —. *Facts discovered after trial.*—Amount of permanent alimony increased on consideration of facts discovered after the trial.—*WEDLEY v. WEDLEY*, [1925] 3 W. W. R. 46.—CAN.

5328 i. *Reduction—Husband's means reduced.*—*MACKINNON v. MACKINNON* (1924), 58 N. S. R. 220.—CAN.

#### PART XIII. SECT. 22, SUB-SECT. 2.—B.

5360 i. *On dissolution of marriage—For guilt of wife.*—Divorce & Matrimonial Causes Act, 1903, s. 42, does not authorise the ct., where a decree for dissolution of marriage has been obtained by a husband against a wife, to make an order on the husband for the permanent maintenance of the wife.—*HARRIS v. HARRIS*, [1926] N. Z. L. R.



(c. 49), s. 190 (1) & (2). Where the husband's whole income has been expended on the requirements of the matrimonial home, a third of his means may well be required for the wife's maintenance; but where, beyond everything called for by such requirements, the husband possesses an ample fortune, the amount of his income affords no definite guidance as to the sum required to supply his sometime wife with the necessities, comforts, & advantages incidental to her station in life.

Where the husband's gross income was £25,337 a year, derived mainly from his interest in a business concern, the registrar by his report submitted that the husband should be ordered to secure to his wife, who had divorced him, by way of permanent maintenance for her life, the annual sum of £3,500 less tax, & to pay to his wife during their joint lives the further annual sum of £500 less tax. The ct. confirmed the report.—*GILBEY v. GILBEY*, [1927] P. 197; 96 L. J. P. 55; 137 L. T. 31; 43 T. L. R. 283.

5382b. ———.]—Resp., a husband, who had been divorced, re-married, & by an ante-nuptial settlement settled property, which included the matrimonial home & the chattels therein & the major part of his capital, on his wife *in futuro*. Petitioner, his former wife, had obtained an order for permanent maintenance of £400 a year & of £100 for her son, when resp.'s annual income was about £1,500. Subsequently, when resp.'s income, not taking into account the settlement, was about £4,500, petitioner applied for an increase in the amount of the order, on the ground that resp.'s means had increased. The registrar increased the order for permanent maintenance from £400 to £1,200 a year, less income tax, & from £100 to £150 a year, free of income tax, for the son:—*Held*: (1) resp.'s means had increased, as by sharing the advantages of the matrimonial home as of right settled upon his wife, a larger portion of the £1,500 unsettled income was left free to be dealt with by him & by the ct.; (2) the order could not be made disregarding the settlement, which subsisted; (3) an order for permanent maintenance, or an increase of it, should not be based on the income of the husband during a year of exceptional prosperity; (4) an order for permanent maintenance in such a case should not be based on the old practice of the Ecclesiastical Cts. in the case of a decree *a mensâ et thoro*, of granting to the wife one-third of the husband's available means, as the conditions arising from the two decrees were not the same, petitioner & resp. being divorced, & free to marry again; (5) in view of the increased means of the husband, having regard to the wife's fortune, the ability of the husband & the conduct of the parties, the order for permanent maintenance for the former wife should be increased from £400

a year to £750 a year, less income tax.—  
N. v. N. (1928), 138 L. T. 693; 44 T. L. R.  
324; 72 Sol. Jo. 156.

5384. *Add. Citations* :—[1926] P. 1 ; 95 L. J. P. 30 ; 134 L. T. 24.

**Add. Annotation:—***Reid. Hyman v. Hyman, Hughes v. Hughes* (1928), 139 L. T. 416.

**5393. Add. Annotation:—***Reid. Gilbey v. Gilbey*,  
[1927] P. 197.

**5893a.** ———— **Wife owner of valuable jewellery.]**—In fixing the amount of permanent maintenance for a wife who has obtained a decree of divorce, the registrar is entitled to take into consideration the fact that she is the owner of valuable jewellery, which could be sold so as to produce an income.—**LYSAGHT v. LYSAGHT** (1928), 44 T. L. R. 723 ; 72 Sol. Jo. 546.

**5403. Add. Annotation :—***Reid v. Fanshawe v. Fanshawe*, [1927] P. 238.

5410a. — To increase maintenance.]— The power to increase the amount provided by an order for permanent maintenance upon an increase in the means of a husband conferred by Matrimonial Causes Act, 1907 (c. 12), & Jud. (Consolidation) Act, 1925 (c. 49), which repeals & re-enacts the power given by the former Act, is retrospective in its operation & extends to dealing with orders made under the previous Act, namely, Matrimonial Causes Act, 1866 (c. 32).—EDMUNDS v. EDMUNDS, [1920] P. 202; 95 L. J. P. 151; 136 L. T. 186.

5414a. ——— Increase in income caused by  
own acts.]—N. v. N., No. 5382b, *ante*.

**5446. Add. Annotation :—***Reid. Fanshawe v. Fanshawe*, [1927] P. 238.

**5447. Add. Annotation :—***Reid. Fanshawe v. Fanshawe* (1927), 43 T. L. R. 666.

**5449. Add. Annotation :—***Consd. Fanshawe v. Fanshawe*, [1927] P. 238.

**5450.** *Add. Citations* :—[1926] P. 93 ; 95 L. J. P. 83 ; 135 L. T. 1 ; 42 T. L. R. 413 ; 70 Sol. Jo. 503, C. A.

**Add. Annotations:—***Refd. Fanshawe v. Fanshawe*, [1927] P. 238; *Gilbert v. Gilbert & Boucher*, [1928] P. 1.

**5477. Add. Annotation :—***Reid. Re Nelson, Norris v. Nelson*, [1928] Ch. 920, n.

**5498. Add. Annotation :—****Expld.** *Sherwood v. Sherwood* (1928), 45 T. L. R. 53.

**5498a.** ——— **Amount of deduction.]**—In estimating the disposable income of a divorced husband after meeting his liability for taxes for the purpose of allotting permanent maintenance to his wife in future, within the principle of *Dayrell-Steyning v. Dayrell-Steyning*, No. 5498, the amount of deduction from his gross income in respect of income tax is the amount of those taxes normally chargeable on income received during the

**5410a ii.** ———.]—When application is made to the ct. under Divorce & Matrimonial Causes Act, 1908, s. 46, for the revision of a decree for permanent maintenance in favour of a wife or children of the marriage, the ct. may, in the case of children, either increase or reduce the order; but the ct. has no power to increase an order for permanent maintenance made in favour of the wife under sect. 42, though it may reduce it.—**BURTON v. BURTON,**

[1928] N. Z. L. R. 406.—N.Z.

**PART XIII. SECT. 22, SUB-SECT. 5.---**  
C.

**sw. Only circumstances at or immediately after dissolution of marriage.]—**The ct. should not consider extraneous events subsequent to the dissolution as good ground for varying a settlement.—**JACKSON v. JACKSON, [1928] N. Z. L. R. 88.—N.Z.**

**PART XIII. SECT. 22, SUB-SECT. 2.—**  
**F.**

**5410a1. Jurisdiction of court—To increase maintenance.]**—The ct. has no jurisdiction to increase the permanent maintenance ordered to be paid by a husband, on the ground of either the increased means of the husband or the increased necessities of the wife.—**HARRIS v. HARRIS, [1926] N. Z. L. R. 274.**—



current year. An extraordinary amount in respect of arrears of taxes payable in that year, but not chargeable in respect of the gross income of that year, is not an allowable deduction.—*SHERWOOD v. SHERWOOD* (1928), 45 T. L. R. 53; 72 Sol. Jo. 874, C. A.

5499. *Add. Annotations*:—*Refd.* *Gilbert v. Gilbert & Boucher* (1927), 96 L. J. P. 137; *Skipwith v. Skipwith* (1928), 139 L. T. 317.

5509. *Add. Annotation*:—*Generally, Mentd.* *Gilbert v. Gilbert & Boucher*, [1928] P. 1.

5515. *Add. Annotation*:—*As to* (6) *Consd.* *Allison v. Allison*, [1927] P. 308.

5523a. ———.]—Under Jud. (Consolidation) Act, 1925 (c. 49), s. 187 (2), a reversionary interest of a husband is not an asset which can form part of the security to be ordered for his periodical payments to his wife, on his non-compliance with a decree of restitution of conjugal rights.—*ALLISON v. ALLISON*, [1927] P. 308; 96 L. J. P. 181; 137 L. T. 823; 43 T. L. R. 823; 71 Sol. Jo. 682.

5531a. ——— *Application—After decree for divorce—Mode of application.*]—Upon the occasion of a wife's petition for restitution of conjugal rights the ct. ordered the husband to make certain periodical payments to her for herself & the children of the marriage. Later, the wife obtained a decree *nisi* for divorce, but as she, at the expiration of six months, made no move to have the decree made absolute, her husband applied by motion, under Jud. (Consolidation) Act, 1925 (c. 49), s. 196, to have the periodical payments suspended or discharged:—*Held*: the husband could make the application by motion, & was not constrained to apply by petition under Matrimonial Causes Rules, 1924, rr. 63 & 70.—*SKIPWITH v. SKIPWITH*, [1929] P. 93; 97 L. J. P. 109; 139 L. T. 317, C. A.

5537a. ——— *Application—After decree for divorce—Mode of application.*]—*SKIPWITH v. WITH*, No. 5531a, *ante*.

5542a. ——— *To order settlement where wife not domiciled in England.*]—(1) The property of a guilty wife, amenable, under Jud. (Consolidation) Act, 1925 (c. 49), s. 191, to the jurisdiction to order a settlement of it, is *prima facie* the property of a woman in England & subject to English jurisdiction. That jurisdiction can be invoked against a person not domiciled in England, & in respect of property beyond the jurisdiction, only subject to the principle that English cts. will not infringe the authority of foreign tribunals in their domestic affairs, or adjudicate with regard to property when their judgment will be ineffective. Apart from jurisdiction over property, the exercise of jurisdiction *in personam* in such a case depends upon the question whether the party to be affected by it is within the reach of the compulsory process of the ct.

(2) The provisions of Matrimonial Causes Act, 1857 (c. 85), s. 42, for service out of the jurisdiction, apply to the service of the petition in a suit, & not to proceedings for a settlement.

(3) The practice with reference to appearance to a petition for a settlement is governed by Divorce Rules, rr. 71 & 72, & (4) an appearance under these rules, qualified during the proceedings upon it, by denial of the existence of jurisdiction, is not to be regarded

as a submission to that jurisdiction.—*TALLACK v. TALLACK & BROEKEMA*, [1927] P. 211; 96 L. J. K. B. 117; 137 L. T. 487; 43 T. L. R. 467; 71 Sol. Jo. 521.

5543. *Add. Annotation*:—*Generally, Refd.* *Tallack v. Tallack & Broekema*, [1927] P. 211.

5543a. *Petition for settlement—Service—Out of jurisdiction.*]—*TALLACK v. TALLACK & BROEKEMA*, No. 5542a, *ante*.

5543b. ——— *Appearance to—Practice.*]—*TALLACK v. TALLACK & BROEKEMA*, No. 5542a, *ante*.

5543c. ——— *Effect of—Whether submission to jurisdiction.*]—*TALLACK v. TALLACK & BROEKEMA*, No. 5542a, *ante*.

5549. *Add. Annotations*:—*As to* (1) *Refd.* *Hargreaves v. Hargreaves*, [1926] P. 42. *As to* (2) *Refd.* *Jagger v. Jagger*, [1926] P. 93.

5551. *Add. Annotation*:—*Consd.* *Bosworthick v. Bosworthick* (1926), 95 L. J. P. 171.

5576. *Add. Annotation*:—*Refd.* *Tallack v. Tallack & Broekema*, [1927] P. 211.

5579. *Add. Annotation*:—*Refd.* *Tallack v. Tallack & Broekema*, [1927] P. 211.

5582. *Add. Annotation*:—*Refd.* *Fanshawe v. Fanshawe*, [1927] P. 238.

5583a. ———.]—After a decree *nisi* for dissolution of marriage the ct. has no jurisdiction under Jud. (Consolidation) Act, 1925 (c. 49), s. 192, to entertain any application for an inquiry into, & variation of, settlements until after the decree has been made absolute.—*GILBERT v. GILBERT & BOUCHER*, [1928] P. 1; 96 L. J. P. 137; 137 L. T. 619; 43 T. L. R. 589; 71 Sol. Jo. 582, C. A.

5588. *Add. Annotation*:—*N.F.* *Webster v. Webster & Williamson*, [1926] P. 198.

5588a. ———.]—Although there is the fullest power to vary settlements, the ct. will regard the interests of the children as the important element for consideration in varying a settlement. Where an ante-nuptial settlement did not provide for the contingency of one of the spouses dying & the survivor marrying again, the ct., when varying the settlement after dissolution of the marriage, declined to insert in the settlement a provision enabling the husband to appoint a portion of the trust funds to a future wife & future children.—*WEBSTER v. WEBSTER & WILLIAMSON*, [1926] P. 198; 95 L. J. P. 97; 135 L. T. 670.

*Annotation*:—*Distd.* *Scollick v. Scollick*, [1927] P. 205.

5588b. ———.]—In varying a settlement the ct. will exercise the wide powers conferred upon it by Jud. (Consolidation) Act, 1925 (c. 49), s. 192, with regard to the facts of the case & the interests of children. If on the facts before the ct. a child of a first marriage may gain advantages concurrently with the creation of a fresh power of appointment enabling children of a second marriage to share a settled fund with it, the ct. will create that power, although it is not originally existent in the settlement, & although its creation may eventually involve some pecuniary sacrifice on the part of the child of the first marriage.—*SCOLICK v. SCOLICK*, [1927] P. 205; 96 L. J. P. 96; 137 L. T. 485; 71 Sol. Jo. 584.

5596. *Add. Annotation*:—*Refd.* *Bosworthick v. Bosworthick*, [1926] P. 159.

5599. *Add. Annotation*:—*As to* (2) *Refd.* *Webster v. Webster & Williamson*, [1926] P. 198.

5600. *Add. Annotation*:—*Refd.* Webster v. Webster & Williamson, [1926] P. 198.
5622. *Add. Annotation*:—*Refd.* Bosworthick v. Bosworthick, [1926] P. 159.
5623. *Add. Annotation*:—*Refd.* Bosworthick v. Bosworthick, [1927] P. 64.
- 5623a. ——— **Bond to secure annuity—Appointment of annuity.**—A post-nuptial provision for his life made by a wife for her husband by a bond, or by the exercise of her power of appointment, giving him an annuity for his life expectant upon her death, are post-nuptial settlements within Matrimonial Causes Act, 1859 (c. 61), s. 5, & Jud. (Consolidation) Act, 1925 (c. 49), s. 192, & give rise on the dissolution of the marriage to the power of the ct. to vary the settlements.—*BOSWORTHICK v. BOSWORTHICK*, [1927] P. 64; 95 L. J. P. 171; 136 L. T. 211; 42 T. L. R. 719; 70 Sol. Jo. 857, C. A.
- 5623b. **Life policy—Contingent interest in policy money.**—A life policy effected after marriage by one of the spouses on the life of the spouse effecting it, with a contingent interest of the other spouse in the policy money, is a post-nuptial settlement, & after divorce the ct. has power, under Jud. (Consolidation) Act, 1925 (c. 49), s. 192, to make orders with reference to the application of the policy money.—*GULBENKIAN v. GULBENKIAN*, [1927] P. 237; 96 L. J. P. 53; 136 L. T. 800; 43 T. L. R. 267; 71 Sol. Jo. 311.
- 5624a. ——— **Settlement not made in contemplation of marriage.**—The expression “ante-nuptial or post-nuptial settlements,” in Jud. (Consolidation) Act, 1925 (c. 49), s. 192, does not, as regards the parties whose marriage is the subject of the decree, include a settlement of the property of either spouse not made in contemplation of any particular marriage, but giving the spouse power to appoint an interest to any future wife or husband.—*HARGREAVES v. HARGREAVES*, [1926] P. 42; 95 L. J. P. 31; 134 L. T. 543; 42 T. L. R. 252.
5629. *Add. Annotation*:—*As to* (1) *Folld.* Bosworthick v. Bosworthick (1926), 95 L. J. P. 171.
5630. *Add. Annotations*:—*Refd.* Webster v. Webster (1926), 135 L. T. 670; *Scollick v. Scollick* (1927), 96 L. J. P. 96.
5643. *Add. Annotation*:—*As to* (1) *Apld.* Hyman v. Hyman, *Hughes v. Hughes* (1928), 139 L. T. 416.
5650. *Add. Annotations*:—*Refd.* Webster v. Webster & Williamson, [1926] P. 198; *Scollick v. Scollick*, [1927] P. 205.
5653. *Add. Annotation*:—*Refd.* Webster v. Webster & Williamson, [1926] P. 198.
5674. *Add. Annotation*:—*Generally, Refd.* Tallack v. Tallack & Broekema, [1927] P. 211.
5700. *Add. Annotation*:—*Refd.* Bosworthick v. Bosworthick, [1927] P. 64.
- 5730a. ———.]—*TAYLOR v. TAYLOR* (1926), 161 L. T. Jo. 236.
5752. *Add. Annotation*:—*Refd.* Jagger v. Jagger, [1926] P. 93.
5766. *Add. Annotation*:—*Folld.* Gilbert v. Gilbert & Boucher (1927), 43 T. L. R. 589.
5770. *Add. Annotation*:—*Refd.* Bosworthick v. Bosworthick (1926), 136 L. T. 211.
- 5781a. **Child born before marriage.**—In a divorce suit, to which only the husband & wife were parties:—*Held*: an order giving to the husband custody of the child of the parties born before the marriage must be refused, as the ct. was not competent to find the facts necessary to make the child a legitimated child by virtue of Legitimacy Act, 1926 (c. 60).—*BEDNALL v. BEDNALL & SHIVUSAWA*, [1927] P. 225; 96 L. J. P. 150; 137 L. T. 632; 43 T. L. R. 599; 71 Sol. Jo. 453.
- Annotation*:—*Folld.* G. v. G. (1928), 45 T. L. R. 7.
- 5781b. ———.]—The ct. has no jurisdiction to make an order for custody in divorce proceedings, in the case of a child of the parties who was born before their marriage & had not been declared legitimate, in accordance with Legitimacy Act, 1926 (c. 60). The word “children” in Jud. (Consolidation) Act, 1925 (c. 49), s. 193, means legitimate children. Petitioner was given the “care & control” of the child by a direction of the ct., made under the general jurisdiction of the High Ct. in respect of infants.—*G. v. G.* (1928), 45 T. L. R. 7.
- 5792a. ——— **Father’s disobedience to decree for restitution of conjugal rights.**—There is no settled practice that after a husband’s disobedience to a decree for restitution of conjugal rights, the custody of children should be refused to the husband or given to the complaining wife. The paramount consideration must be the welfare of the children.—*W. v. W.*, [1926] P. 111; 95 L. J. P. 56; 135 L. T. 383; 42 T. L. R. 470.
- 5957a. ———.]—Process of sequestration in the Divorce Ct. is governed by Matrimonial Causes Rules, 1924, r. 79 (a), & not by R. S. C., Ord. 43, r. 6. According to the former a writ of sequestration is a remedy for non-payment of a sum of money at the time appointed, & is appropriate to the case of non-payment of an instalment of alimony. If it is contended that the issue of the writ would be futile or unreasonable by reason of the absence of available assets, the *onus* lies upon the party against whom relief is sought to establish that fact.—*CAPRON v. CAPRON*,

PART XIII. SECT. 22, SUB-SECT. 6.—  
A. (b).

*ex. Guilty wife.*—Although in a husband’s action for divorce he was found entitled to a decree on the ground of adultery, the wife was, in view of all the circumstances, given the custody of the children & maintenance for them & herself *dum sola et casta vixerit*.—*LILLIE v. LILLIE*, [1926] 1 D. L. R. 866; [1926] 1 W. W. R. 298; 20 Sask. L. R. 442.—CAN.

PART XIII. SECT. 22, SUB-SECT. 6.—  
A. (c).

5791 i. *Interests of children*—&

*parents.*—A wife obtained a decree of divorce for adultery in an action which also contained a conclusion for the custody of the two pupil children of the marriage. The Lord Ordinary, regarding the question solely from the point of view of the children’s welfare, awarded the custody to the father:—*Held*: (1) Guardianship of Infants Act, 1925 (c. 45), s. 1, recognised & proceeded upon the existence of rights & preferences in the spouses to the custody of their children, & its effect was not to abolish those rights & preferences, but to provide that they should not be enforced if the result

would be adverse to the children’s welfare; (2) the wife, as innocent spouse, had a primary claim to the custody of the children; (3) on the facts she was, from the point of view of the children’s welfare, as suitable a guardian as the father.—*HUME v. HUME*, [1926] S. C. 1008.—SCOT.

PART XIII. SECT. 23, SUB-SECT. 3.—  
A.

*o i.* ———.]—An order for *interim* alimony may be enforced by execution.—*MCCLUSKY v. MCCLUSKY*, [1925] 2 W. W. R. 649.—CAN.

[1927] P. 243; 96 L. J. P. 151; 137 L. T. 568; 43 T. L. R. 667; 71 Sol. Jo. 711.

5968. *Add. Annotation*:—*As to* (1) *Refd. Allison v. Allison*, [1927] P. 308.

5993. *Add. Annotation*:—*Refd. Fanshawe v. Fanshawe*, [1927] P. 238.

6005. *Add. Annotation*:—*Refd. Fanshawe v. Fanshawe*, [1927] P. 238.

6006. *Add. Annotation*:—*Refd. Fanshawe v. Fanshawe*, [1927] P. 238.

6006a. ———.]—The ct. will interfere by way of injunction to restrain a husband from dealing with his property so as to defeat an order for costs or alimony *pendente lite*, when the amount of the latter has been fixed & an instalment of it is already due & in arrear, but will not so restrain him in respect of instalments of alimony to become due at a future date.—*FANSHAWE v. FANSHAWE*, [1927] P. 238; 96 L. J. P. 133; 137 L. T. 496; 43 T. L. R. 666; 71 Sol. Jo. 762.

6011. *Add. Annotation*:—*Refd. Fanshawe v. Fanshawe*, [1927] P. 238.

6012a. ———.]—*FANSHAWE v. FANSHAWE*, No. 6006a, *ante*.

6026a. ———.]—Petitioner, in 1919, went through a ceremony of marriage with resp. In 1923 resp. was convicted of bigamy, she having been lawfully married to A. on Dec. 26, 1903, which marriage was still subsisting. The ct. pronounced a decree *nisi* of nullity, & under the powers conferred by Jud. (Consolidation) Act, 1925 (c. 49), s. 183 (1), allowed petitioner to apply for the decree to be made absolute after the expiration of one month.—*OSBORN v. OSBORN* (OTHERWISE IVIL) (1926), 70 Sol. Jo. 388.

6042a. ———.]—Application for substitution of alternative decree—Judicial separation.]—Circumstances in which such application was granted.—*ROCH v. ROCH* (1926), 161 L. T. Jo. 395.

6080. *Add. Annotations*:—*Mentd. Jacobson v. Frachon* (1927), 138 L. T. 386; *Salvesen (or von Lorang) v. Austrian Property Administrator*, [1927] A. C. 641.

6081a. ———.]—*R. v. LERESCHE* (1887), 56 L. J. M. C. 135; 35 W. R. 805, D. C.

6085a. Only one justice present throughout hearing—Validity of proceedings.]—On the hearing by justices of an application by a wife under Summary Jurisdiction (Separation & Maintenance) Acts, 1895 to 1925, for a maintenance order, on the ground of her husband's wilful neglect to provide her with reasonable maintenance, there was an adjournment, after four justices had heard evidence. At the resumed hearing there were two justices present, only one of whom had been present at the first hearing, & they made an order against the husband:—*Held*: the proceedings were rendered null & void by there being present throughout only one justice, &

the matter must go back to the justices.—*LEWIS v. LEWIS* (1928), 92 J. P. 88; 72 Sol. Jo. 369; 26 L. G. R. 323.

6085b. Power to make applicant elect—Summons containing several grounds of complaint.]—Where a summons under Summary Jurisdiction (Separation & Maintenance) Acts, 1895 to 1925, claiming an order for maintenance, non-cohabitation, & custody, contained two of the statutory grounds of complaint, namely, wilful neglect to provide reasonable maintenance & persistent cruelty, either of which, if established, would justify such an order being made, the justices have no right to put appct. to her election upon which ground only she will proceed. Both must be disposed of.—*TYRRELL v. TYRRELL* (1928), 138 L. T. 624; 92 J. P. 45; 26 L. G. R. 188; 28 Cox, C. C. 485, D. C.

6088. *Add. Annotation*:—*Refd. Diggins v. Diggins* (1926), 43 T. L. R. 37.

6098. *Add. Annotation*:—*Refd. Hyman v. Hyman, Hughes v. Hughes* (1928), 139 L. T. 416.

6124a. ———.]—Termination of separation agreement—On bankruptcy of husband.]—*DEWE v. DEWE, SNOWDON v. SNOWDON*, No. 595a, *ante*.

6124b. ———.]—Failure to continue payments under separation agreement.]—By an agreement of separation a husband undertook to pay his wife 17s. 6d. a week by way of maintenance, & the wife undertook that she would not by any means whatsoever endeavour to compel the husband to allow her any alimony or maintenance other than the above sum of 17s. 6d. a week. On the husband failing to continue payments under the agreement, the wife took out a summons under Summary Jurisdiction (Separation & Maintenance) Acts, 1895 to 1925 for an order against her husband, on the ground that he had wilfully neglected to provide reasonable maintenance for her & her infant child. The justices dismissed the summons, holding their jurisdiction was ousted by the undertaking of the wife, & the proper forum for her claim was the county ct.:—*Held*: as the payments under the agreement had not been maintained by the husband, the justices had jurisdiction, & if a case of wilful neglect were proved, to make an order, at any rate for an amount not exceeding 17s. 6d. a week.—*MCCREANEY v. MCCREANEY* (1928), 138 L. T. 671; 92 J. P. 44; 26 L. G. R. 185, D. C.

6124c. ———.]—*FLETCHER v. FLETCHER* (1928), 92 J. P. 94; 26 L. G. R. 398, D. C.

6161. *Add. Annotation*:—*Consd. Price v. Price* (1927), 43 T. L. R. 609.

6164a. ———.]—A complaint by a wife against her husband for wilful neglect to maintain her or her infant child need not, under Summary Jurisdiction Act, 1848 (c. 43), s. 11, be brought within six months from the time when by such neglect he caused her to

PART XIII. SECT. 27, SUB-SECT. 2.—  
B.

6098 i. ———.]—Refusal to cohabit—After temporary separation.]—A husband & wife agreed to separate immediately after their marriage until the husband, a constable in the Royal Ulster Constabulary, had sufficient length of service to permit him to support his wife. When the agreement expired the husband refused to cohabit with

his wife & refused & neglected to maintain her:—*Held*: the husband had deserted the wife.—*TIMONEY v. TIMONEY*, [1926] N. 75.—IR.

PART XIII. SECT. 27, SUB-SECT. 2.—  
C.

6121 i. Persistent cruelty—What amounts to.]—A husband who reflected on his wife's chastity & questioned the paternity of their child, displayed

indifference to her physical welfare, threatened to put her out of the house & to do her bodily harm & actually assaulted her, although not severely, on two isolated occasions:—*Held*: guilty of persistent cruelty.—*NAN v. MCKIERNAN*, [1926] 1 D. L. R. 558; [1926] 1 W. W. R. 199; 35 Man. L. R. 412.—CAN.

6121 ii. ———.]—*R. v. GARDNER* (Ont.) (1927), 47 Can. Crim. Cas. 180.—CAN.



live separately & apart from him, inasmuch as by Summary Jurisdiction (Separation & Maintenance) Act, 1925 (c. 51), s. 1 (1), the complaint may now be made notwithstanding that the neglect has not caused her to leave & live separately & apart from him.—PRICE v. PRICE (1927), 43 T. L. R. 609; 71 Sol. Jo. 432, D. C.

6179a. —.]—A wife's right to claim & obtain an order for maintenance from a bench of justices under Summary Jurisdiction (Separation & Maintenance) Act, 1925 (c. 51), is not necessarily barred by a deed of separation which makes an allowance for her maintenance, but it must depend on the terms of the deed whether she is or is not deprived of that right.—DIGGINS v. DIGGINS, [1927] P. 88; 96 L. J. P. 14; 136 L. T. 224; 90 J. P. 208; 43 T. L. R. 37, D. C.

Annotation:—Refd. McCreanney v. McCreanney (1928), 138 L. T. 671.

6188a. Power of magistrates—To make applicant elect—Summons containing several grounds of complaint.]—TYRRELL v. TYRRELL, No. 6085b, ante.

6217a. Adjourned hearing before different justices—Only one justice present throughout whole hearing—Validity of proceedings.]—LEWIS v. LEWIS, No. 6085a, ante.

6230a. — Attachment of husband's income—Discharge of maintenance order.]—Where a maintenance order under Summary Jurisdiction (Married Women) Act, 1895 (c. 39), has been discharged on the ground of the wife's adultery, she may nevertheless enforce payment of arrears accrued due down to the date of discharge & obtain an order for the attachment of her husband's income. Such an order is not an order "under this Act" within Summary Jurisdiction (Married Women) Act, 1895, s. 6.—OUTERBRIDGE v. OUTERBRIDGE, [1927] 1 K. B. 368; 96 L. J. K. B. 74; 136 L. T. 303; 90 J. P. 204; 43 T. L. R. 33; 70 Sol. Jo. 1113; 28 Cox, C. C. 281, D. C.

6233a. — Made in Dominion—Maintenance Orders (Facilities for Enforcement) Act, 1920 (c. 33).]—A married woman obtained in a police ct. in Australia a maintenance order against her husband ordering him to pay £5 10s. per week for her & her child's maintenance. An application was subsequently made by her to a ct. of summary jurisdiction in England under the above Act to confirm that order as against her husband who was resident in England. Upon that application no evidence was submitted to the justices on behalf of the husband. The justices confirmed the order with the modification or variation of substituting £2 10s. per week, i.e., £2 for the married woman & 10s. for the child, in lieu of £5 10s. per week, they being of opinion that they were bound to reduce the amount payable under the order to the limit prescribed for such orders made by a ct. of summary jurisdiction under Summary Jurisdiction (Married Women) Act, 1895 (c. 39):—Held: (1) the justices had power to state a case for the opinion of the K. B. Div. on the question whether they were right in so deciding; (2) they were wrong in holding that in dealing with an order under the above Act of 1920 they were bound to limit the amount payable to the sum prescribed for orders made under the above Act of 1895.

(3) The expression "Summary Jurisdiction Acts" in sect. 7 of the above Act of 1920 does not include Summary Jurisdiction (Married Women) Act, 1895 (c. 39) (AVORY, J.).—PEAGRAM v. PEAGRAM, [1926] 2 K. B. 165; 95 L. J. K. B. 819; 135 L. T. 48; 90 J. P. 136; 42 T. L. R. 530; 70 Sol. Jo. 670; 28 Cox, C. C. 213, D. C.

6236. After this case add "See, now, Criminal Justice Administration Act, 1914 (c. 58), s. 32 (1)."

6242a. — Effect of—On right to recover arrears of maintenance.]—OUTERBRIDGE v. OUTERBRIDGE, No. 6220a, ante.

6250. Add. Annotations:—As to (1) Apld. Outerbridge v. Outerbridge (1926), 90 J. P. 204. Refd. Peagram v. Peagram, [1926] 2 K. B. 165.

6250a. — — — —.]—Observations upon the administration of the jurisdiction conferred on justices by Summary Jurisdiction (Married Women) Act, 1895 (c. 39), s. 7, as amended by Summary Jurisdiction (Separation & Maintenance) Act, 1925 (c. 51), s. 2, to discharge a maintenance order on proof of the wife's adultery.—BROADBENT v. BROADBENT (1927), 43 T. L. R. 186, D. C.

6250b. — — — — Time for application.]—A complaint under Summary Jurisdiction (Married Women) Act, 1895 (c. 39), s. 7, that a married woman has committed adultery, is subject to the six months' limitation imposed by Summary Jurisdiction Act, 1848 (c. 43), s. 11.

A wife obtained an order for separation & an allowance in 1922. In 1926 justices purported to discharge the order by reason of adultery of the wife found by them to have been committed in 1915:—Held: the justices had exceeded their jurisdiction.—WALLER v. WALLER, [1927] P. 154; 96 L. J. P. 58; 136 L. T. 542; 43 T. L. R. 285; 71 Sol. Jo. 232; 28 Cox, C. C. 329, D. C.

Annotation:—Refd. Dutch v. Dutch (1928), 45 T. L. R. :

6250c. — — — —.]—A husband, in seeking the rescission of a maintenance order on the ground of the wife's subsequent adultery, must make his complaint within six months of the alleged act of adultery, or within six months of his knowledge, or his means of acquiring the knowledge, of the alleged act.—DUTCH v. DUTCH (1928) 92 J. P. 197; 45 T. L. R. 33; 72 Sol. Jo. 796.

6250d. — — — — Particulars of adultery.]—A wife had obtained an order under Summary Jurisdiction (Separation & Maintenance) Acts, 1895 to 1925, that her husband should pay her 30s. a week by way of maintenance. The order did not contain a non-cohabitation clause. Subsequently the husband took out a summons asking that the order for maintenance should be discharged, on the ground that the wife had committed adultery. The husband gave evidence that, since the date of the maintenance order, his wife had given birth to a child, & of non-access on his part. This was the only evidence of adultery. The justices found that the wife had committed adultery, & discharged the weekly order for maintenance:—Held: (1) the evidence of the husband of non-access to bastardise his child was not admissible, & the justices' order discharging the maintenance order must be set aside; (2) in proceedings under Summary

Jurisdiction (Separation & Maintenance) Acts, 1895 to 1925, if there is a charge of adultery, the act or acts of adultery should be specified with particulars, if possible, of the place where, the time when, & the name of the person with whom it is alleged the adultery has been committed.—*BOSTON v. BOSTON* (1928), 138 L. T. 647; 92 J. P. 44; 26 L. G. R. 183.

6251a. Revival of order.]—(1) A separation order granted to a wife, & made under Summary Jurisdiction (Married Women) Act, 1895 (c. 39), s. 5, upon cause being shown upon fresh evidence to the satisfaction of the ct., if the order has been discharged by the justices, may be revived by them under Criminal Justice Administration Act, 1914 (c. 58), s. 30 (3). (2) A finding of adultery against a wife by justices is not conclusive, whereas a subsequent finding by a judge of the High Ct., that the adultery alleged was not committed, is conclusive. Such a finding by a judge of the High Ct. is a new fact, & the nature of his finding is also a new fact, & both these facts are "fresh evidence" within the statutes.—*PRATT v. PRATT* (1927), 96 L. J. P. 123; 137 L. T. 491; 43 T. L. R. 523; 71 Sol. Jo. 433; 28 Cox, C. C. 413.

6252. *Add. Annotations*:—*Refd.* *Colchester v. Peck* (1926), 135 L. T. 32; *R. v. Copestake, Ex p. Wilkinson* (1926), 90 J. P. 191.

6255. *Add. Annotations*:—*Refd.* *Colchester v. Peck*, [1926] 2 K. B. 366; *R. v. Copestake, Ex p. Wilkinson*, [1927] 1 K. B. 468.

6255a. ———.]—*PRATT v. PRATT*, No. 6251a, *ante*.

6271. *Add. Annotation*:—*Refd.* *Mart v. Mart*, [1926] P. 24.

6272. *Add. Annotation*:—*Dlst.* *Peagram v. Peagram*, [1926] 2 K. B. 165.

6275a. ——— *Order made in Dominion.*]—*PEAGRAM v. PEAGRAM*, No. 6233a, *ante*.

6300. *Add. Annotation*:—*Dlst.* *Fletcher v. Fletcher*, [1928] P. 20.

6300a. ——— *Wife's appeal.*]—A wife who has failed in her application before justices for a maintenance order on the ground of her husband's desertion, is not entitled to an order against her husband for security of the costs of her appeal against the justices' decision.—*FLETCHER v. FLETCHER* [1928] P. 20; 97 L. J. P. 1; 138 L. T. 135; 91 J. P. 208; 44 T. L. R. 13; 71 Sol. Jo. 846.

# INCOME TAX.

## Part I.—Administration.

SUB-SECT. 1.—IN GENERAL (Vol. XXVIII., p. 5).

Add the following case :—

- 9a. **Delivery of lists by person in receipt of income belonging to others—Duty of bank.]—A.-G. v. NATIONAL PROVINCIAL BANK, LTD. (1928), 44 T. L. R. 701.**
10. **Add. Annotation :—***Refd. Pickford v. Quirke, Pickford v. I. R. Comrs. (1927), 138 L. T. 500.*

SECT. 1.—APPLICATION OF SCHEDULE (Vol. XXVIII., p. 6).

Add the following case :—

- 11a. **General rule.]—(1) Income tax under Schedule A., as under every other Schedule, is assessed on profits & gains, & the test in regard to liability to tax under Schedule A. is not whether the person taxed had an**

independent ownership of the property, but whether he had profits & gains in respect of his occupation.

(2) A person who by a will is given a right of residence in a house rent free so long as he wishes, & who is in residence during the year of assessment, is assessable to income tax for that year under Schedule A. in respect of his beneficial occupation; & the amount at which he is assessed must be included in a return of the total income for super tax purposes in the following year.

(3) When the right of residence is given to two persons jointly, it is for the Special Comrs. to fix the proportion of the total assessment applicable to each person, & when such a finding has been made, it should be accepted in any higher ct.—*SHANKS v. INLAND REVENUE COMRS. (1928), 45 T. L. R. 28, C. A.*

## Part II.—Schedule A.

13. **Add. Annotations :—Generally, Refd. Glenboig Union Fireclay Co. v. I. R. Comrs. (1922), 12 Tax Cas. 427; Naval Colliery Co. (1897), Ltd. v. I. R. Comrs. (1928), 138 L. T. 593; Ormond Investment Co. v. Betts, [1928] A. C. 143.**
15. **Add. Annotation :—As to (2) Refd. Shanks v. I. R. Comrs. (1928), 45 T. L. R. 28.**
- 24a. **Right of residence given to more than one person.]—SHANKS v. INLAND REVENUE COMRS., No. 11a, ante.**
- 25a. **Annual value—House let in apartments.]—Where a house or tenement is let in different apartments or tenements & occupied by two or more persons severally, the annual value, under 1918 Act, Schedule A., No. VII., r. 8 (c), is the aggregate of the hypothetical rack rents of the separate tenements, & not a hypothetical rack rent for the whole payable by one who would then sublet its separate tenements for the sake of profit.—WILLIAMS v. SANDERS, [1927] 2 K. B. 498; 96 L. J. K. B. 912; 137 L. T. 820; 43 T. L. R. 663; 11 Tax Cas. 673.**

**Annotation :—***Refd. Embleton v. Norwich Union Life Insce. Soc., Norwich Union Life Insce. Soc. v. Embleton (1927), 11 Tax Cas. 681.*

- 25b. **— Blocks of flats.]—Certain premises consisted of a number of blocks or buildings,**

each containing a number of self-contained flats which had separate entrance doors from the public staircase. The rents payable by the tenants included the payment of rates & taxes & the maintenance, lighting & cleaning of staircases & the performance of various other services by the landlord :—*Held*: (1) in accordance with 1918 Act, Schedule A., No. VII., r. 8 (c), one assessment must be made in respect of each block or building, & not a separate assessment in respect of each flat; (2) the allowance for repairs must also be made in respect of each building in accordance with Schedule A., No. V., r. 7; (3) the premises not being let at rack rent, in estimating the annual value the payments made by the owner for rates, etc., in the preceding year were to be excluded, as provided by Schedule A., No. IV., r. 1.—*NORWICH UNION LIFE INSURANCE SOCIETY v. EMBLETON, EMBLETON v. NORWICH UNION LIFE INSURANCE SOCIETY (1927), 137 L. T. 415; 11 Tax Cas. 681.*

**Annotation :—***Generally, Refd. Williams v. Sanders, [1927] 2 K. B. 498.*

- 25c. **— Premium paid for lease.]—Held**: the comrs. were entitled, in determining the annual value of premises, the lease of which

### PART II. SECT. 4, SUB-SECT. 1.

**sa. Company for advancement of woollen industry.]—A limited co., membership of which was restricted to persons engaged in the woollen industry in Scotland, was formed "with a view to the advancement of the woollen industry in Scotland, to promote by means of a college systematic education, instruction & study in all branches of the industry." Its income & property were dedicated to these objects, & no profits could be distri-**

buted among its members. It owned & occupied a college at which classes were held for instruction in the principles & practice of woollen & worsted cloth manufacture. The students were fifteen years of age & upwards, & paid fees for the courses of instruction :—*Held*: (1) the college was not a "public school"; (2) the college buildings were "heritages owned & occupied by a charity," & the co. was entitled to exemption under 1921 Act, s. 30 (1).—*SCOTTISH WOOLLEN TECHNICAL COLLEGE v. INLAND REVENUE COMRS., [1926] S. C. 934; 11 Tax Cas.*

139.—SCOT.

### PART II. SECT. 4, SUB-SECT. 2.

**ki. — Woollen technical college.]—SCOTTISH WOOLLEN TECHNICAL COLLEGE v. INLAND REVENUE COMRS., —SCOT.**

### PART II. SECT. 5.

**sb. Under Taxation Act, R. S. B. C., 1911 (c. 222), s. 155—Not income of non-residents derived from mines.]—KENT v. R., [1924] 4 D. L. R. 77; [1927] S. C. R. 388.—CAN.**



- had been assigned to applt., to take into account the premium originally paid by the assignor for the lease, plus interest thereon.—*DAVIES v. ABBOTT* (1927), 11 Tax Cas. 575, C. A.
- 25d. Gross value—Whether property included in valuation list—Property in occupation of Crown—Computed annual value entered as ratable value in valuation list.—*LEWIS v.* (1927), 11 Tax Cas. 723.
29. *Add. Annotation*:—*Reid. Glenboig Union Fireclay Co. v. I. R. Comrs.* (1922), 12 Tax Cas. 427.
- 36a. ———.]—Resp. board, which was constituted for the regulation & improvement of the navigation of the upper portion of a firth, was authorised to levy shipping dues, & these dues were its sole revenue:—*Held*: as the dues did not arise from “property in lands, tenements, hereditaments, & heritages,” the board was not liable to be assessed in respect of them to income tax under 1918 Act, Schedule A., No. III., r. 3.—*INLAND REVENUE COMRS. v. FORTH CONSERVANCY BOARD* (1928), 45 T. L. R. 83, H. L.
37. *Add. Annotation*:—*Distd. I. R. Comrs. v. Forth Conservancy Board* (1928), 45 T. L. R. 83.
- 50a. Blocks of flats.]—*NORWICH UNION LIFE INSURANCE SOCIETY v. EMBLETON, EMBLETON v. NORWICH UNION LIFE INSURANCE SOCIETY*, No. 25b, *ante*.
51. *Add. Annotations*:—As to (2) *Appld. I. R. Comrs. v. Glasgow Musical Festival Asscn.* (1926), 11 Tax Cas. 154; *Scottish Woollen Technical College, Galashiels v. I. R. Comrs.* (1926), 11 Tax Cas. 139. *Reid. Chesterman v. Taxation Federal Comr.*, [1926] A. C. 128. *Generally, Reid. I. R. Comrs. v. Falkirk Temperance Café Trust* (1926), 11 Tax Cas. 353; *I. R. Comrs. v. Peeblesshire Nursing Asscn.* (1926), 11 Tax Cas. 335; *I. R. Comrs. v. Yorkshire Agricultural Soc.* (1927), 44 T. L. R. 59; *Adamson v. Melbourne & Metropolitan Board of Works* (1928), 45 T. L. R. 3; *General Medical Council v. I. R. Comrs.*, *English Branch Council of General Medical Council v. Same* (1928), 97 L. J. K. B. 578. *Mentd. Martin v. Lowry, Martin v. I. R. Comrs.*, [1926] 1 K. B. 550; *Re Williams, Public Trustee v. Williams*, [1927] 2 Ch. 283.
- 58a. ——— *Convalescent home for members of friendly society.*]—An unregistered friendly society, of which there were over two million members, had for its principal objects the relief of distressed members & the widows & orphans of members, & the promotion of social intercourse & recreation in its lodges. Members of the society paid a small subscription, which was divided & allocated to various benevolent funds. A house & grounds were bought by the society for use as a convalescent home by its members. The purchase price was paid partly by the society & partly by contributions by its members. The home was maintained by the society & was furnished to accommodate twenty or thirty members. No expense was incurred by a member during his residence at the home, & medical men gave their services to it gratuitously:—*Held*: the home was a hospital within 1918 Act, Schedule A., No VI., r. 1 (c), & the society was entitled to be allowed the amount of tax charged in respect of the premises of which the home was composed.—*ROYAL ANTEDILUVIAN ORDER OF BUFFALOES v. OWENS*, [1928] 1 K. B. 446; 97 L. J. K. B. 210; 138 L. T. 644; 44 T. L. R. 122; 71 Sol. Jo. 928; 13 Tax Cas. 176.
- 59a. ———.]—*Applts.*, a limited co., owned & carried on a high-class secondary school managed by governors who were partly elected by the shareholders & partly nominated by the Crown. By the co.’s arts. no profit was to be divided amongst members. Practically the whole of the receipts of the co. arose from fees paid for pupils:—*Held*: the elements of permanence connoted by the word “foundation” were part of the essence of a public school, & as these elements were absent *applts.* were not entitled to an allowance on the ground that the school was a public school.—*BIRKENHEAD SCHOOL, LTD. v. DRING* (1926), 43 T. L. R. 48; 11 Tax Cas. 273.
69. *Add. Annotation*:—*Mentd. Metropolitan Meat Industry Board v. Sheedy*, [1927] A. C. 899.
74. *Add. Annotation*:—*Generally Reid. Huxham v. Johnson* (1926), 136 L. T. 410.

## Part III.—Schedule B.

77. *Add. Citations*:—70 Sol. Jo. 586; 10 Tax Cas. 346.

*Add. Annotation*:—*Reid. Huxham v. Johnson* (1926), 136 L. T. 410.

79a. “Dealer in milk”—Land insufficient for keep of cattle—Liability to be assessed under Schedule D.]—Resp. occupied a farm which was charged to tax under Schedule B. on which he kept a number of cows for milking. The soil was of such a poor quality that resp.

had to expend considerable sums yearly on feeding stuffs. The produce grown on the land represented only about thirty per cent. of the food required for the cows. Resp. sold his milk to regular customers in the district, & only purchased milk for resale when his own supply was insufficient for his customers’ ordinary requirements. He sold his cows when they became dry. The general comrs. held that resp. was not a dealer in milk, & they discharged an assessment made

### PART III.

77 i. ——— *Poultry farm.*]—A poultry farm consisted of thirty-three acres of land, all of which was in grass except half an acre upon which green crops were grown for consumption by the poultry in winter along with

other feeding stuffs. A permanent stock of about one thousand head of poultry was kept, & in addition forty-six sheep were grazed on the land, & some of the grass was cut for hay:—*Held*: the land was occupied for the purpose of husbandry, in respect that the fruits of the soil were used to a

material extent for the sustenance of the poultry, & the poultry farmer was entitled to be assessed on the profits of the business under Schedule B., & not under Schedule D.—*LEAN v. INLAND REVENUE*, [1926] S. C. 15; 10 Tax Cas. 341.—SCOT.

upon him in accordance with 1918 Act, Schedule D., Case III., r. 4:—*Held*: resp. was a dealer in milk whose land was insufficient for the keep of the cows within the rule, & the further question whether the assessable value afforded no just estimate of the profits was for the comrs. to find, & the case must be remitted to them for that purpose.—*HUXHAM v. JOHNSON* (1926), 136 L. T. 410; 11 Tax Cas. 266.

*Annotation*:—*Reid*. *Stephenson v. Waller* (1927), 13 Tax Cas. 318.

79b. "Seller of milk"—Land insufficient for keep of cattle—Liability to be assessed under Schedule D.]—A farmer may be a "seller of milk" within 1918 Act, Schedule D., Case III., r. 4, even though he merely sells, by wholesale, the milk produced on his farm; & it is not necessary that, to come within the rule, he should own some outside trading organisation for the disposal of the milk.—*STEPHENSON v. WALLER* (1927), 44 T. L. R. 155; 72 Sol. Jo. 102; 13 Tax Cas. 318.

## Part V.—Schedule D.

87. *Add. Annotations*:—*Consd.* *Machon v. McLoughlin* (1926), 11 Tax Cas. 83. *Expld.* *Shanks v. I. R. Comrs.* (1928), 45 T. L. R. 28. *Reid.* *Grainger v. Maxwell*, [1926] 1 K. B. 430; *Tollemache v. I. R. Comrs.* (1926), 136 L. T. 444; *Ormond Investment Co. v. Betts*, [1928] A. C. 143; *Tilling-Stevens Motors v. Kent County Council & Transport Minister* (1928), 97 L. J. Ch. 371.

90. *Add. Annotation*:—*Reid.* *Liverpool Corn Trade Assocn. v. Monks*, [1926] 2 K. B. 110.

91. *Add. Citations*:—[1926] 2 K. B. 110; 95 L. J. K. B. 519; 134 L. T. 756; 10 Tax Cas. 442.

93. *Add. Annotation*:—*Consd.* *Ducker v. Rees Roturbo Development Syndicate, I. R. Comrs. v. Rees Roturbo Development Syndicate*, [1928] A. C. 132.

93a. *Exchange transaction.*]—Under an agreement made on Mar. 8, 1921, for the supply of marble by a co. to building contractors, the contractors agreed to advance £20,000 of the price, percentage deductions being made from the amount due on each consignment of marble until the advance had been repaid. On Mar. 17, 1921, the £20,000 was paid to the co., & in anticipation of the marble being purchased in Italy, though not till the autumn of 1921, the co. at once arranged for the conversion of the greater part of the £20,000 into lire at one hundred & three to the £, & a lira account was opened. In May, 1921, the lira had appreciated in value, & as the money was not yet required by the co., their nominee, without the co.'s knowledge or authority, directed the sale of the balance of the lira account, & at seventy-two to the £ the lire realised a profit of £6,707, which was received by the co. The

lire were subsequently repurchased for the purposes of the contract for £19,386, which was allowed as a deduction from the co.'s profits for income tax purposes:—*Held*: in computing the co.'s profits for the purposes of assessment to income tax for the year 1922–23 the £6,707 was not a profit arising out of the contract for the supply of marble, but was merely an appreciation of a temporary investment, & was not assessable to income tax as part of the profits of the co.'s trade.—*McKINLAY v. JENKINS (H. T.) & SON, LTD.* (1926), 10 Tax Cas. 372.

*Annotation*:—*Distd.* *Thompson v. I. R. Comrs., I. R. Comrs. v. Thompson* (1927), 12 Tax Cas. 1091.

95. *Add. Annotation*:—*Reid.* *I. R. Comrs. v. Fisher's Exors.*, [1926] A. C. 395.

96. *Add. Citation*:—*affd.* (1924), 12 Tax Cas. 586, C. A.

96a. *Sale of patent rights.*]—A syndicate formed to work & develop a group of English & foreign patents carried on business mainly by granting licences to manufacturers at royalties. Certain foreign manufacturers refused to take licences, unless they were also given an option of purchase exercisable within a given period, & the syndicate entered into a contract with an American co. to grant them a licence to use & work the syndicate's American patents, with an option of purchase thereof. The co. having exercised its option of purchase, & paid to the syndicate a sum for the purchase of the American patents out & out, the Special Comrs. decided that profits on the sale of the patents arose in the course of the co.'s business & were chargeable to income tax:—*Held*: the Special Comrs. had not wrongly directed themselves, & there was ample evidence to support

### PART V. SECT. 1, SUB-SECT. 1.

*sd.* *Distribution of bonus—No option to shareholders to take cash—Distribution by company as capital.*]—A co. resolved that its accumulated profits should be distributed as a bonus amongst the shareholders, & that the directors should be authorised to distribute such number of unissued shares of £1 each paid up to 10s. as should be equivalent to the amount to be capitalised in satisfaction of such bonus; & it was agreed that the co. should allot & issue to each shareholder his respective proportion of the unissued £1 shares each credited as paid up to 10s., that the shares should be credited as paid up to 10s., & that the shares so credited should be accepted in satisfaction of the bonus. In the books of the co. each shareholder was credited with his proportion of the bonus in payment of 10s. in respect of

each of the shares so allotted & issued to him:—*Held*: the proportion of the bonus so credited to each shareholder was "profits or bonus credited" to him within Income Tax Assessment Act, 1915–1921, s. 14 (b), & was properly included in his income.—*JAMES v. FEDERAL COMR. OF TAXATION* (1924), 34 C. L. R. 404.—AUS.

*sd.* *Distribution of property on discontinuance of business by company—What is "income."*]—A reserve made up of accretions to the value of real estate & goodwill is not "income" within Income War Tax Act, 1917, s. 3 (9), but a reserve made up to trading profits or that portion of a co.'s income which has not been paid out is undistributed income of the co., unless before the distribution it has become capital.—*Re ANDERSON ESTATE*, [1925] 4 D. L. R. 116; [1925] 3 W. W. R. 312; 35 Man. L. R. 279.—CAN.

*a l.* —.]—From the date of incorporation to 1920 a co.'s profits were allowed to accumulate until G., the manager & owner of all the shares, declared a dividend of 92 per cent. amounting to \$40,000 paid out of such accumulated profits:—*Held*: such dividend was not a return of capital, but income & subject to taxation.—*GAGNE v. FINANCE MINISTER*, [1925] Exch. C. R. 19.—CAN.

*d l.* *S. P. MACPHERSON v. TAXATION COMR.* (1927), 27 S. R. N. S. W. 105; 44 N. S. W. W. N. 33.—AUS.

*sk.* *Income of accumulated fund—Under will for benefit of testator's children after twenty-one years.*]—*Held*: such income was taxable under Income War Tax Act, 1917, as amended by 10 & 11 Geo. 5, c. 49, s. 41.—*McLEOD v. CUSTOMS & EXCISE MINISTER*, [1925] Exch. C. R. 105; *affd.*, [1926] 3 D. L. R. 531; [1926] S. O. R. 457.—CAN.

- their conclusion of fact.—**DUCKER v. REES ROTURBO DEVELOPMENT SYNDICATE, INLAND REVENUE COMRS. v. REES ROTURBO DEVELOPMENT SYNDICATE**, [1928] A. C. 132; 97 L. J. K. B. 317; 138 L. T. 598; 44 T. L. R. 307; 72 Sol. Jo. 171; *sub nom.* REES ROTURBO DEVELOPMENT SYNDICATE, LTD. v. DUCKER, REES ROTURBO DEVELOPMENT SYNDICATE, LTD. v. INLAND REVENUE COMRS., 13 Tax Cas. 366, H. L.
97. *Add. Citation*:—*affd.* (1927), 43 T. L. R. 727, H. L.  
*Add Annotation*:—*Folld. Mills v. Jones* (1928), 45 T. L. R. 31.
- 97a. *S. P. MILLS v. JONES* (1928), 45 T. L. R. 31, C. A.
98. *Add. Annotation*:—*Refd. Davis v. Harrison* (1927), 11 Tax Cas. 707.
99. *Add. Citations*:—*sub nom.* JERSEY'S (LORD) EXECUTORS v. BASSOM, DERBY (LORD) v. BASSOM, 135 L. T. 274; 10 Tax Cas. 357.
- 99a. *Repaid excess profits duty*.]—Where a trader was assessed to income tax on the amount of excess profits duty repaid to him:—*Held*: he had been rightly assessed.—*HILL v. MATHEWS* (1925), 10 Tax Cas. 25.
- 99b. — *Repayment after trading ceased*.]—*Held*: liable to be assessed to income tax.—*KIRKE'S TRUSTEES v. INLAND REVENUE COMRS.* (1926), 136 L. T. 582; 11 Tax Cas. 323, H. L.
- 99c. *S. P. NESBITT (A. & W.), LTD. v. MITCHELL* (1926), 11 Tax Cas. 211, C. A.
- 99d. *Profits made in illegal business*.]—Income Tax Acts are not necessarily restricted in their application to lawful businesses only. The question is one of construction of the particular words used.—*CANADIAN MINISTER OF FINANCE v. SMITH* (1926), 42 T. L. R. 734; 70 Sol. Jo. 941; *sub nom.* MINISTER OF FINANCE v. SMITH, 95 L. J. P. C. 193, P. C.  
*Annotation*:—*Mentd. Clark v. Westaway*, [1927] 2 K. B. 597.
- 99e. *Repayment of sum illegally demanded by Food Controller for licence to purchase milk*.]—*Held*: in the computation of liability to income tax the amount repaid must be treated as a receipt of the year in which it was originally paid to the Food Controller.—*ENGLISH DAIRIES, LTD. v. PHILLIPS, ENGLISH DAIRIES, LTD. v. INLAND REVENUE COMRS.* (1927), 11 Tax Cas. 597.
100. *Add. Annotation*:—*Consd. I. R. Comrs. v. Forth Conservancy Board* (1928), 45 T. L. R. 83.
104. *Add. Annotations*:—*Consd. I. R. Comrs. v. Forth Conservancy Board* (1928), 45 T. L. R. 83. *Refd. Brighton College v. Marriott*, [1926] A. C. 192.
- 112a. *Company—Carrying on several businesses*.]—A co. may carry on more than one trade within 1918 Act, Schedule D., Case I. Whether the activities of a co. constitute one business or two separate businesses is a question of fact.—*SCALES v. THOMPSON (GEORGE) & CO., LTD.* (1927), 138 L. T. 331; 13 Tax Cas. 83.
113. *Add. Citation*:—10 Tax Cas. 29.  
*Add Annotations*:—*Refd. Re Bankruptcy Notice* (No. 292 of 1928) (1928), 44 T. L. R. 533; *I. R. Comrs. v. Lysaght*, [1928] A. C. 234; *Rees Roturbo Development Syndicate v. I. R. Comrs., Rees Roturbo Development Syndicate v. Ducker* (1928), 13 Tax Cas. 366.
114. *Add. Citations*:—[1927] A. C. 312; 96 L. J. K. B. 379; 136 L. T. 580; 43 T. L. R. 116; 71 Sol. Jo. 18; 11 Tax Cas. 297, H. L.; *affg.*, [1926] 1 K. B. 550.  
*Add. Annotations*:—*Refd. Kirke's Trustees v. I. R. Comrs.* (1926), 136 L. T. 582; *Nesbitt v. Mitchel* (1926), 11 Tax Cas. 211; *Constantinesco v. R.* (1927), 11 Tax Cas. 730; *Devon Mutual Steamship Insee. Assocn. v. Ogg* (1927), 13 Tax Cas. 184; *I. R. Comrs. v. Newcastle Breweries* (1927), 12 Tax Cas. 927; *Rees Roturbo Development Syndicate v. I. R. Comrs., Rees Roturbo Development Syndicate v. Ducker* (1928), 13 Tax Cas. 366.
- 114a. — “Turning over” cotton mills.]—During the boom in the Lancashire cotton trade in 1919, applt., with other persons, engaged in the operation known locally as “turning over” a cotton mill, *i.e.* acquiring a controlling interest in the mill, organising its administration & finances, & reselling it to a new co. The operation was successful & applt. joined other syndicates, composed partly of the same persons engaged in “turning over” three other mills. In each case a profit resulted to applt. On Mar. 24, 1923, the additional comrs. for the division in which applt. resided signed the book containing an estimated assessment upon applt. to income tax under Schedule D. for the year 1919–20. The book was not delivered to the general comrs. until Apr. 18, 1923; notice was given to applt. on May 5, 1923, & the assessment was signed by the general comrs. on Sept. 5, 1923:—*Held*: (1) though each adventure of “turning over” a mill, taken singly, was
- 99 i. *Stud fees*.]—Applt. was a farmer & breeder of horses, & occupied three farms, in respect of which he was assessed to income tax under Schedule B. He was also the owner of a number of stallions which he used for the service of his own mares, & in addition he sold for fees their services to the mares of other owners, the stallions travelling “rounds” for this purpose in the care of his own servants. He appealed against assessments to income tax made upon him under Schedule D. in respect of stallion fees, & the comrs. decided that in regard to stallion fees the expenses required to make the profits from service to mares, plus any expenses of keeping up the stud to the number of stallions earning fees should be allowed, but the number of horses to be used for replacement should not exceed one-third of those earning fees:—*Held*: applt. was assessable to income tax under Schedule D. in respect of profits from stallion fees, in accordance with the principle laid down by the comrs.—*MARSHAL v. TWEEDY* (1926), 11 Tax Cas. 524.—SCOT.
- k. Read now “99a i.”
- sm. *Money remitted from branch office*.]—Money remitted to the headquarters of a firm in British India, from a branch situated in a foreign country, is presumed to be profits & not capital, & is assessable to income tax.—*Re MURUGAPPA CHETTIAR* (1925), 1 L. L. R. 49 Mad. 465.—IND
- sn. *Gift of money to jockey from race-horse owner after winning race*.]—*Held*: an emolument which arose or accrued to the jockey by reason of his vocation as such, & liable to assessment for income tax.—*WING v. O'CONNELL*, [1927] I. R. 84.—IR.
- sp. *Compensation for detention of ships requisitioned by Government*.]—*Held*: a trading receipt, & chargeable.
- ALLIANCE & DUBLIN CONSUMERS' GAS CO. v. M'WILLIAMS*, [1928] I. R. 1.—IR.
- st. *Profit from sale of land at enhanced price—Whether taxable*.]—*STOTT v. INLAND REVENUE COMR.* (1927), 48 N. L. R. 471.—S. AF.
- sw. *Profits of company—Maintaining & conducting club for benefit of members—Whether taxable*.]—*Re DIBRUGARH DISTRICT CLUB, LTD.* (1927), 1 L. L. R. 55 Calc. 971.—IND.
- sy. — *Letting houses—Taxable*.]—*Re COMMERCIAL PROPERTIES, LTD.* (1928), 1 L. L. R. 55 Calc. 1057.—IND.

PART V. SECT. 1, SUB-SECT. 2.

sb. *Transmission of electricity & supply of air through pipes*.]—*Held*: the co. did not carry on the business of “manufacturer” within Assessment Act, s. 10 (1) (d).—*Re COLEMAN & NOR. ONT. LIGHT & POWER CO.* (1927), 60 O. L. R. 405.—CAN.



not a trade, but a capital transaction, yet the succession of such adventures, in each of which applt. took part, might constitute the carrying on of a trade, & the Special Comrs., on an appeal against the assessment, were not estopped by their previous decisions from reconsidering the whole of the facts, & finding that applt. was carrying on a trade, on the profits of which he was liable to income tax; (2) the assessment was made in time, having been made when it was signed by the additional comrs. within the three years allowed by 1918 Act, s. 125 (2), & the subsequent steps need not be within that time.—**PICKFORD v. QUIRKE, PICKFORD v. INLAND REVENUE COMRS.** (1927), 138 L. T. 500; 44 T. L. R. 15; 13 Tax Cas. 251, C. A.

118. *Add. Annotations*:—**Refd.** *Jersey's Exors. v. Bassom, Derby v. Bassom* (1926), 135 L. T. 274; *I. R. Comrs. v. Lysaght*, [1928] A. C. 234.

120. *Add. Annotations*:—*As to* (2) **Consd.** *Alabama Coal, Iron, Land & Colonization Co. v. Mylam* (1926), 11 Tax Cas. 232. **Refd.** *Rees Roturbo Development Syndicate v. I. R. Comrs., Rees Roturbo Development Syndicate v. Ducker* (1928), 13 Tax Cas. 366. *Generally, Refd.* *Hall v. I. R. Comrs.* (1926), 135 L. T. 759.

121. *Add. Annotation*:—**Distd.** *Alabama Coal, Iron, Land & Colonization Co. v. Mylam* (1926), 11 Tax Cas. 232.

122. *Add. Annotation*:—**Refd.** *Rees Roturbo Development Syndicate v. I. R. Comrs., Rees Roturbo Development Syndicate v. Ducker* (1928), 13 Tax Cas. 366.

122a. — **Managing trust lands for benefit of holders of Alabama bonds.**—*Held*: a trading co., & assessable on profits made in the realisation of such lands.—**ALABAMA COAL, IRON, LAND & COLONIZATION CO., LTD. v. MYLAM** (1926), 11 Tax Cas. 232.

125. *Add. Annotation*:—**Refd.** *I. R. Comrs. v. Yorkshire Agricultural Soc.* (1927), 44 T. L. R. 59.

127. *Add. Citations*:—95 L. J. K. B. 356; 10 Tax Cas. 213.

*Add. Annotation*:—*Generally, Refd.* *General Medical Council v. I. R. Comrs., English Branch Council of General Medical Council v. Same* (1928), 97 L. J. K. B. 578.

128. *Add. Annotation*:—**Refd.** *Levene v. I. R. Comrs.*, [1927] 2 K. B. 38.

129. *Add. Citation*:—10 Tax Cas. 424.

*Add. Annotation*:—**Refd.** *Levene v. I. R. Comrs.*, [1928] A. C. 217.

#### PART V. SECT. 2, SUB-SECT. 1.—A.

119 i. — *Poultry farm.*—**LEAN v. INLAND REVENUE**, No. 77 i, *ante.*—**SCOT.**

si. *Difference in value of stock-in-trade on sale of business.*—*Resp.* & his partner sold their business to a co. They treated their stock-in-trade as being of the value of £43,357, but the co. treated it as being worth £58,383:—*Held*: the difference between the two sums was not a profit derived from the business of the partnership, & *resp.* was not assessable for income tax in respect of his share of such difference.—**DOUGHTY v. COMR. OF TAXES**, [1927] A. C. 327; 96 L. J. P. C. 45; 136 L. T. 706; 43 T. L. R. 207.—**N.Z.**

sl. *Sale by lumber company of timber at profit.*—*Held*: not a sale in the ordinary course of trading by the co.,

but a sale of part of its capital assets, & the amount received was an appreciation of capital.—**A.-G. FOR BRITISH COLUMBIA v. STANDARD LUMBER CO., LTD.**, [1926] 2 W. W. R. 167; 36 B. C. R. 481.—**CAN.**

sn. *Purchase, conversion, & re-sale of ship—Isolated transaction.*—A ship repairer, a blacksmith, & a fish salesman's employee, who had not previously been connected with each other in business, bought a cargo steamer, converted it, partly by their own labour, into a steam drifter, & sold it within four months of the date of purchase at a profit:—*Held*: the transaction, though isolated, was the carrying on of a trade, the profits of which were assessable to income tax.—**INLAND REVENUE COMRS. v. LIVINGSTON**, [1927] S. O. 251; 11 Tax Cas. 538.—**SCOT.**

130. *Add. Annotation*:—**Consd.** *I. R. Comrs. v. Lysaght*, [1928] A. C. 234.

131. *Add. Annotations*:—*As to* (1) **Consd.** *I. R. Comrs. v. Lysaght*, [1928] A. C. 234. *As to* (2) **Refd.** *Fleming v. Wilkinson* (1925), 10 Tax Cas. 416. *Generally, Refd.* *Levene v. I. R. Comrs.*, [1927] 2 K. B. 38.

131a. — — — — —.]—*Applt.* was employed by a British co. as general manager of their sugar estates in Demerara where he lived & where his salary was wholly earned & paid. He was in England on leave from June to Sept. 1918, & during that time the co., at his request, placed to the credit of his banking account in England £525, being an advance on account of salary falling due before Apr. 5, 1919, & an assessment to income tax was made upon him for the year 1918–19 in respect of this sum under Schedule D., Case V. His wife had been for several years, & was throughout the year 1918–19, the owner of a house in Kent, towards the upkeep of which he contributed out of other income arising in England, but since Sept. 1917, she had been mainly living with him in Demerara, the house being left unoccupied. During his stay in England in 1918, *applt.* lived for the most part in hotels & in fact spent only one night at the house. The Special Comrs. having decided that *applt.* was resident in the United Kingdom during the year ending Apr. 5, 1919, & that he had been rightly assessed to income tax in respect of the above sum as having been received in the United Kingdom during that year from an employment abroad:—*Held*: inasmuch as *applt.*'s salary was payable in Demerara, the sum credited to him in the United Kingdom must be regarded as remitted to him from abroad & as constituting income from a foreign possession chargeable under Schedule D., Case V.—**FLEMING v. WILKINSON** (1925), 10 Tax Cas. 416, C. A.

131b. — — — — —.]—*Consideration of the meaning of the expressions "resident" & "ordinarily resident" in Income Tax Act, 1918 (c. 40).*—**LEVENE v. INLAND REVENUE COMRS.**, [1928] A. C. 217; 97 L. J. K. B. 377; 139 L. T. 1; 44 T. L. R. 371; 72 Sol. Jo. 270; 13 Tax Cas. 486 H. L.

*Annotation*:—**Distd.** *I. R. Comrs. v. Lysaght*, [1928] A. C. 234.

131c. — — — — —.]—*No special or technical meaning is attached to the terms "resident" & "ordinarily resident" as used in 1918 Act; accordingly the question whether a person is "resident" & "ordinarily resident" in*

#### PART V. SECT. 2, SUB-SECT. 2.—B.

sp. *General rule.*—A partnership resides, for purposes of income tax, at the place where its real business is carried on; & the real business is carried on where the central management & control of the whole of its business actually abides. There may be two such places of residence, but the suggested second residence must not merely have a delegation of the management of some portion of the partnership business, however extensive, but a delegation of some portion of the management of the business as a whole. The question as to where the individual partners actually have their places of residence is a wholly irrelevant consideration in determining the place of residence of the firm.—**MADRAS INCOME TAX COMR. v. T. S. FIRM, TANJORE AT NEGAPATAM** (1927), I. L. R. 50 Mad. 847.—**IND.**

the United Kingdom for the purposes of the Act is essentially a question of fact for the comrs.

A person is ordinarily resident in a country for income tax purposes, if his residence there is not casual or uncertain, but is in the ordinary course of his life.—INLAND REVENUE COMRS. v. LYSAGHT, [1928] A. C. 234; 97 L. J. K. B. 385; 139 L. T. 6; 44 T. L. R. 374; 72 Sol. Jo. 270; *sub nom.* LYSAGHT v. INLAND REVENUE COMRS., 13 Tax Cas. 511, H. L.

*Annotation*:—*Refd.* Egyptian Delta Land & Investment Co. v. Todd (1928), 44 T. L. R. 747.

131d. —.]—INLAND REVENUE COMRS. v. ZORAB (1926), 11 Tax Cas. 289.

*Annotation*:—*Refd.* I. R. Comrs. v. Brown (1926), 11 Tax Cas. 292.

131e. —.]—INLAND REVENUE COMRS. v. BROWN (1926), 11 Tax Cas. 292.

132. *Add. Annotation*:—*Refd.* Muller (London) v. Lethem, Muller (London) v. I. R. Comrs., [1927] 1 K. B. 780.

136. *Add. Annotations*:—*Apld.* Egyptian Delta Land & Investment Co. v. Todd (1928), 44 T. L. R. 747. *Refd.* Baelz v. Public Trustee, [1926] Ch. 863.

139. *Add. Annotations*:—*As to* (1) *Dlstd.* Noble v. Mitchell (1926), 43 T. L. R. 102. *Generally*, *Consd.* Egyptian Delta Land & Investment Co. v. Todd (1928), 44 T. L. R. 747.

141. *Add. Annotation*:—*Refd.* Egyptian Delta Land & Investment Co. v. Todd (1928), 44 T. L. R. 747.

142. *Add. Annotation*:—*Refd.* Egyptian Delta Land & Investment Co. v. Todd (1928), 44 T. L. R. 545.

142a. By resident director under power of attorney—Profits retained abroad.]—Applts., insurance & reinsurance brokers & agents in London, had an office in Paris for the purpose of direct insurance on behalf of cos. for which they acted as agents, & applts. in some cases represented the same cos. in London & in Paris. A resident director of applts. had the sole conduct of the Paris business under a power of attorney. The results of the Paris business were incorporated in applts.' balance-sheets, but no part of the French profits was remitted to London:—*Held*: as the power of attorney did not, except as against third parties, divest the directors in London of their power of control over the French business, applts. were assessable to income tax on the whole of their profits, including those of the Paris office.—NOBLE (B. W.), LTD. v. MITCHELL (1926), 43 T. L. R. 102.

144. *Add. Annotations*:—*Apld.* Egyptian Delta Land & Investment Co. v. Todd (1928), 44 T. L. R. 747. *Refd.* Baelz v. Public Trustee, [1926] Ch. 863.

144a. —.]—A co., which is registered in England but carries on its real business abroad, does not necessarily reside in England, so as to be liable to income tax, because it is obliged by law to perform in England certain duties which cannot be performed abroad, such as having a registered office & keeping a register of shareholders. For income tax purposes a co. resides where its real business is carried on.—EGYPTIAN DELTA LAND & INVESTMENT CO., LTD. v. TODD (1928), 44 T. L. R. 747; 72 Sol. Jo. 545, H. L.; *revsg.* S. C. *sub nom.* TODD v. EGYPTIAN DELTA LAND & INVESTMENT CO., [1928] 1 K. B. 152, C. A.

145. *Add. Annotation*:—*As to* (1) *Consd.* Egyptian Delta Land & Investment Co. v. Todd (1928), 44 T. L. R. 747.

153. *Add. Annotation*:—*Refd.* I. R. Comrs. v. Cavan Central Co-op. Agricultural & Dairy Soc. (1917), 12 Tax Cas. 1.

155. *Add. Annotations*:—*Consd.* Todd v. Egyptian Delta Land & Investment Co. (1927), 96 L. J. K. B. 554. *Folld.* Egyptian Delta Land & Investment Co. v. Todd (1928), 44 T. L. R. 747. *Mentd.* Baelz v. Public Trustee, [1926] Ch. 863.

156. *Add. Annotation*:—*Consd.* Michael Faraday, Rodgers & Eller v. Carter (1927), 11 Tax Cas. 565.

157. *Add. Annotations*:—*As to* (1) *Refd.* Rees Roturbo Development Syndicate v. I. R. Comrs., Rees Roturbo Development Syndicate v. Ducker (1928), 13 Tax Cas. 366. *As to* (2) *Consd.* Egyptian Delta Land & Investment Co. v. Todd (1928), 44 T. L. R. 747. *Generally*, *Refd.* I. R. Comrs. v. Cavan Central Co-op. Agricultural & Dairy Soc. (1917), 12 Tax Cas. 1; Lysaght v. I. R. Comrs., [1927] 2 K. B. 55.

159. *Add. Annotation*:—*Consd.* Egyptian Delta Land & Investment Co. v. Todd (1928), 44 T. L. R. 747.

160. *Add. Annotation*:—*Consd.* Egyptian Delta Land & Investment Co. v. Todd (1928), 44 T. L. R. 747.

164. *Add. Annotation*:—*Refd.* Egyptian Delta Land & Investment Co. v. Todd (1928), 44 T. L. R. 747.

166. *Add. Annotations*:—*Refd.* Maclaine v. Eccott, [1926] A. C. 424; Nielsen, Andersen v. Collins, Tarn v. Scanlan (1926), 135 L. T. 744; Whitney v. I. R. Comrs., [1926] A. C. 37; Belfour v. Mace (1928), 138 L. T. 338; I. R. Comrs. v. Pakenham, I. R. Comrs. v. Longford, [1928] A. C. 252.

168. *Add. Annotations*:—*Consd.* Maclaine v. Eccott, [1926] A. C. 424. *Apld.* Tarn v. Scanlan, Nielsen, Andersen v. Collins, Muller (London) v. Lethem, Muller (London) v. I. R.

#### PART V. SECT. 2, SUB-SECT. 2.—C.

144 i. *Registered office in England—Business & management abroad—General control by English office—Dual residence.*—A co. can carry on business in more places than one, & in places where it does not reside.

Three railway cos. were incorporated in England. A. co. owned a line of railway situate wholly in Portuguese East Africa. B. co. owned a line situate wholly in Portuguese East Africa with the exception of six miles situate in Southern Rhodesia, & C. co. owned a line situate wholly in Southern

Rhodesia. C. co. had its head office & general control in England, but also had offices in Bulawayo, where a general manager & staff conducted & managed the line. C. co. worked the lines of A. co. & B. co. as one with its own, & the three cos. shared the profits & losses of the joint venture upon a specified basis:—*Held*: A. co. & B. co. were in partnership with C. co., & the partnership business was carried on within Southern Rhodesian territory by the latter co. within Southern Rhodesia Income Tax Ordinance 20 of 1915.—RHODESIA RYS. v. COMR. TAXES, [1926] App. D. 438.—S. AF.

#### PART V. SECT. 2, SUB-SECT. 3.—A.

xx. *Salary earned & received in Canada by person residing in foreign country.*—*Held*: such person was not assessable by the corpn. of the city where he earned his salary.—*Re* FOX & WINDSOR CORPN. (1925), 57 O. L. R. 243.—CAN.

yy. *Royalties received in Canada by patentee residing in foreign country.*—*Held*: the patentee was chargeable.—*Re* POPE ALLIANCE CORP., LTD., [1926] 4 D. L. R. 1152.—CAN.





**222a. Company—Payment to director as inducement to retire.]—Held:** a payment by a co. to a director in order to induce him to retire, in circumstances in which the other directors had come to the conclusion that it was essential in the interests of the co. that he should retire, was a business expense deductible from the co.'s profits for purposes of income tax.—*MITCHELL v. NOBLE (B. W.), LTD.*, [1927] 1 K. B. 719; 96 L. J. K. B. 484; 137 L. T. 33; 43 T. L. R. 245; 71 Sol. Jo. 175; *sub nom.* *NOBLE (B. W.), LTD. v. MITCHELL, MITCHELL v. NOBLE (B. W.), LTD.*, 11 Tax Cas. 372, C. A.

*Add. Annotation:—Refd. Morley v. Lawford (1928)*, 44 T. L. R. 716.

**224a. Subscription to guarantee fund of British Empire Exhibition.]—Appls., asphalters, subscribed to the guarantee fund of the British Empire Exhibition at Wembley, solely, as the General Comrs. found, in the hope of obtaining preferential treatment in the allocation of contracts for asphaltting work within the exhibition grounds. They did not in fact obtain any contract at all from the exhibition authorities. Having been called upon to pay a considerable part of the amount guaranteed they sought to deduct the sum so paid from their profits assessable to income tax as a trade expense. The General Comrs. held it was an allowable deduction:—Held:** the question was one of fact, & as there was evidence to support the finding of the General Comrs., their decision must be affirmed.—*MORLEY v. LAWFORD & CO. (1928)*, 45 T. L. R. 30; 72 Sol. Jo. 825, C. A.

**227. Add. Annotation:—Refd. Naval Colliery Co. (1897), Ltd. v. I. R. Comrs. (1928), 138 L. T. 593.**

**235. Add. Citation:—12 Tax Cas. 227.**

**236. Add. Citation:—(1920), 12 Tax Cas. 232.**

*Add. Annotation:—Refd. Finance Minister v. Smith (1926)*, 95 L. J. P. C. 193.

**236a. Calls on shares in company formed to take**

**over trading company's buying agency.]—Held:** not a trading loss, but a loss of capital & not a sum that could be properly deducted.—*M. JACOBS YOUNG & CO., LTD. v. HARRIS (1926)*, 11 Tax Cas. 221.

**238. Add. Annotation:—Refd. Naval Colliery Co. (1897), Ltd. v. I. R. Comrs. (1928), 138 L. T. 593.**

**239. Add. Annotations:—As to (1) Consd. Mallett v. Staveley Coal & Iron Co., [1928] 2 K. B. 405. Refd. I. R. Comrs. v. Northfleet Coal & Ballast Co. (1927), 12 Tax Cas. 1102; Thompson v. I. R. Comrs., I. R. Comrs. v. Thompson (1927), 12 Tax Cas. 1091.**

**240. Add. Annotation:—Refd. Eastman v. Shaw (1927), 43 T. L. R. 549.**

**241a. Payment of liabilities of subsidiary company.]—Held:** a loss of capital, & no deduction could be allowed.—*BAKER v. MABIE TODD & CO., LTD. (1927)*, 13 Tax Cas. 235.

**244. Add. Annotation:—Refd. Mallet v. Staveley Coal & Iron Co. (1927), 138 L. T. 201.**

**248a. Payment in consideration of surrender of lease—Mining lease.]—Sums paid by a colliery co. to the lessor in consideration of the surrender of a portion of the area demised by a mining lease, & for the release of the co. from the obligations undertaken by the lease, are capital payments, & are not allowable deductions.—MALLETT v. STAVELEY COAL & IRON CO., LTD., [1928] 2 K. B. 405; 97 L. J. K. B. 475; 139 L. T. 241, C. A.**

*Annotations:—Fold. Cowcher v. Mills (1927)*, 13 Tax Cas. 216. *Refd. I. R. Comrs. v. Northfleet Coal & Ballast Co. (1927)*, 12 Tax Cas. 1102.

**248b. —.]—Resps. carried on business at premises held on a lease expiring in 1923. In 1916 the business was closed down, & the lessor agreed to accept a surrender of the lease in consideration of a sum to be paid by instalments of £250 a year, & resps. issued a debenture to the lessor securing the instalments by a floating charge on all their assets. In 1921 the lessor accepted £600 from resps. in satisfaction of all further liability under the**

was due to two specific causes, (1) an increase in the price of sugar due to interference with the Cuban supplies by the American Govt., the formation of a speculative ring in New York, & curtailment of European supplies owing to the French occupation of the Ruhr, & (2) an increase in bad debts caused by the failure of inexperienced venturers in the confectionery trade:—*Held:* (1) the expression "specific cause" denoted an exceptional circumstance, which could be clearly identified, & to which the shortage of profits could substantially be attributed; (2) the causes of the falling off of profits alleged were not "specific causes."—*STEWART & YOUNG v. INLAND REVENUE COMRS.*, [1926] S. C. 883; 11 Tax Cas. 123.—*SCOT.*

#### PART V. SECT. 2, SUB-SECT. 7.—B.

**p 1. —.]—A co. owned, & occupied for the purpose of its trade, land & heritages, which were "mills, factories or other similar premises," within Rules applicable to Cases I. & II., r. 5 (2):—Held:** in estimating the profits or gains of the co. for the purpose of assessment to income tax under Schedule D, the whole annual value of its trading premises fell to be deducted, & not merely the amount at which the premises were actually assessed for the purpose of collection of tax under Schedule A.—*INLAND REVENUE COMRS. v. SCOTTISH CENTRAL ELECTRIC POWER CO.*, [1928] S. C. 260.—*SCOT.*

#### PART V. SECT. 2, SUB-SECT. 7.—D.

**sa. Statutory company—Creation of reserve fund—Loss in realisation of investments forming part of fund.]—Held:** since the words of the Act authorising the creation of the reserve fund were permissive & enabling only, the exercise of the power was discretionary, & the loss was not an allowable deduction. *Semble:* it would have been otherwise, if the Act had imposed a duty on the co. to create a reserve fund.—*ALLIANCE & DUBLIN CONSUMERS' GAS CO. v. DAVIES*, [1926] 1 R. 372.—*IR.*

**sb. Bank—Losses written off during year—Method of computation.]—Re BANK OF MONTREAL ASSESSMENT (1909), 14 B. C. R. 282.—*CAN.***

**sc. — Losses on sales of temporary investments in Government securities.]—Held:** such temporary investments could not be regarded as an investment of capital; the investment & realisation of such funds from time to time was merely part of the bank's ordinary business, & the loss incurred was a loss incurred in the production of income.—*TAXATION COMR. v. COMMERCIAL BANKING CO. OF SYDNEY (1927)*, 27 S. R. N. S. W. 231; 44 N. S. W. W. N. 65.—*AUS.*

#### PART V. SECT. 2, SUB-SECT. 7.—E. (b).

**246 ii. — Instalment of purchase**

**price—& costs of plant additions.]—Held:** capital expenditure.—*ROSEBERRY-SURPRISE MINING CO. v. R.*, [1924] S. C. R. 445; [1924] 4 D. L. R. 197; [1924] 1 W. W. R. 1017.—*CAN.*

**se. Railway company—Expense of making deviations.]—Held:** sums expended by a railway co. in making deviations in its line from time to time were expenditure of a capital nature.—*RHODESIA RYS. v. COMR. OF TAXES*, [1925] App. D. 438.—*S. AF.*

**sf. Company owning one ship—Ship seized & used by enemy—Expenditure on reconditioning ship.]—Held:** not a proper deduction, in respect that the expenses were not a recurring maintenance expenditure, but were of the nature of capital outlay.—*INLAND REVENUE v. GRANITE CITY S. S. CO.*, [1927] S. C. 705.—*SCOT.*

**sh. Loss on conversion of plant & works—Under arrangement with Minister of Munitions.]—Held:** a loss of capital, & not admissible as a deduction for income tax purposes.—*LOTHIAN CHEMICAL CO., LTD. v. ROGERS, LOTHIAN CHEMICAL CO., LTD. v. INLAND REVENUE COMRS. (1926)*, 11 Tax Cas. 508.—*SCOT.*

**sj. Value of wool on backs of sheep purchased with station.]—WEBSTER v. WESTERN AUSTRALIA TAXATION DEPUTY COMR. (1927), 39 C. L. R. 180; [1927] Argus L. R. 113.—*AUS.***

debenture:—*Held*: the payment of £600 was not an admissible deduction.—*Cowcher v. Mills & Co., Ltd.* (1927), 13 Tax Cas. 216.

249. *Add. Annotations*:—*Consd.* *British Insulated & Helsby Cables v. Atherton*, [1926] A. C. 205. *Refd.* *Mitchell v. Noble* (1926), 43 T. L. R. 100.

250. *Add. Annotation*:—*Appld.* *Marsden v. I. R. Comrs.* (1919), 12 Tax Cas. 217.

251. *Add. Annotations*:—*Refd.* *Small v. Easson* (1920), 12 Tax Cas. 351; *British Insulated & Helsby Cables v. Atherton*, [1926] A. C. 205; *Mitchell v. Noble*, [1927] 1 K. B. 719.

252. *Add. Annotation*:—*Refd.* *Mallett v. Staveley Coal & Iron Co.* (1927), 138 L. T. 201.

252a. *Difference between cost & proceeds of sale of fixtures of branch shops.*—A trading co., with a number of branch shops controlled by a head office, followed a policy of opening & closing their branches in accordance with the local demands & the probabilities of profit or loss:—*Held*: the difference between the cost of new fixtures, fittings, & utensils for the new shops, & the receipts from the sales of equivalent second hand fixtures, etc., from the shops that were closed, was a capital expenditure, & was not a revenue expenditure which could be debited to the trading account of the co. in ascertaining the profits which were assessable to income tax.—*EASTMANS, LTD. v. SHAW, EASTMANS, LTD. v. INLAND REVENUE COMRS.* (1928), 45 T. L. R. 12; 72 Sol. Jo. 744, H. L.

260. *Add. Annotations*:—*As to* (1) *Refd.* *Small v. Easson* (1920), 12 Tax Cas. 351; *Mitchell v. Noble*, [1927] 1 K. B. 719. *As to* (2) *Distd.* *British Insulated & Helsby Cables v. Atherton*, [1926] A. C. 205; *Mallett v. Staveley Coal & Iron Co.*, [1928] 2 K. B. 405.

262. *Add. Annotations*:—*Distd.* *Mallett v. Staveley Coal & Iron Co.*, [1928] 2 K. B. 405. *Refd.* *British Insulated & Helsby Cables v. Atherton*, [1926] A. C. 205; *Mitchell v. Noble*, [1927] 1 K. B. 719; *Morley v. Lawford* (1928), 44 T. L. R. 716; *Rees Roturbo Development Syndicate v. I. R. Comrs.*, *Rees Roturbo Development Syndicate v. Ducker* (1928), 13 Tax Cas. 366.

264. *Add. Citation*:—*sub nom.* *ATHERTON v. BRITISH INSULATED & HELSBY CABLES, LTD.*, 10 Tax Cas. 155.

*Add. Annotations*:—*Appld.* *Mallett v. Staveley Coal & Iron Co.*, [1928] 2 K. B. 405. *Consd.* *Morley v. Lawford* (1928), 44 T. L. R. 716. *Refd.* *Mitchell v. Noble*, [1927] 1 K. B. 719.

265. *Add. Annotations*:—*Refd.* *British Insulated & Helsby Cables v. Atherton*, [1926] A. C. 205;

*Mallett v. Staveley Coal & Iron Co.* (1927), 138 L. T. 201.

268a. — *Books used for professional purposes—Solicitor.*—The word “plant” in Finance Act, 1925 (c. 36), s. 16, does not include a solr.’s books which he consults for professional purposes.—*DAPHNE v. SHAW* (1926), 43 T. L. R. 45; 71 Sol. Jo. 21; 11 Tax Cas. 256.

276a. *Replacement of obsolete plant or machinery—Meaning of obsolete—Question of fact for commissioners.*—*SOUTH METROPOLITAN GAS CO. v. DADD* (1927), 13 Tax Cas. 205.

278. *Add. Annotation*:—*Refd.* *Brighton College v. Marriott*, [1926] A. C. 192.

285. *Add. Annotations*:—*Appld.* *Waldie v. I. R. Comrs.* (1919), 12 Tax Cas. 113. *Refd.* *Bourne & Hollingsworth v. I. R. Comrs.* (1921), 12 Tax Cas. 4; *Baker v. Mabie Todd* (1927), 13 Tax Cas. 235.

287. *Add. Annotations*:—*Appld.* *Mallett v. Staveley Coal & Iron Co.*, [1928] 2 K. B. 405. *Consd.* *Morley v. Lawford* (1928), 45 T. L. R. 30. *Refd.* *Small v. Easson* (1920), 12 Tax Cas. 351; *Bourne & Hollingsworth v. I. R. Comrs.* (1921), 12 Tax Cas. 483; *British Insulated & Helsby Cables v. Atherton*, [1926] A. C. 205; *Mitchell v. Noble*, [1927] 1 K. B. 719; *Green v. Gliksten* (1928), 139 L. T. 12; *Rees Roturbo Development Syndicate v. I. R. Comrs.*, *Rees Roturbo Development Syndicate v. Ducker* (1928), 13 Tax Cas. 366. *Mentd.* *Hart v. Riversdale Mill Co.* (1927), 96 L. J. K. B. 691.

288. *Add. Annotation*:—*Refd.* *British Insulated & Helsby Cables v. Atherton*, [1926] A. C. 205.

290. *Add. Annotations*:—*As to* (2) *Refd.* *Mitchell v. Noble*, [1927] 1 K. B. 719. *Generally, Refd.* *Small v. Easson* (1920), 12 Tax Cas. 351.

291. *Add. Annotations*:—*Consd.* *Hart v. Riversdale Mill Co.* (1927), 96 L. J. K. B. 691. *Refd.* *I. R. Comrs. v. Lysaght*, [1928] A. C. 234.

292a. — *YOUNGS, CRAWSHAY & YOUNGS, LTD. v. BROOKE* (1912), 6 Tax Cas. 393.

293. *Add. Annotation*:—*Refd.* *Thomas v. Evans Jones v. South-West Lancashire Coal-Owners’ Asscn.* (1927), 11 Tax Cas. 790.

294. *Add. Annotation*:—*Refd.* *Collins v. I. R. Comrs.* (1924), 12 Tax Cas. 773.

295. *Add. Annotation*:—*Refd.* *Collins v. I. R. Comrs.* (1924), 12 Tax Cas. 773.

296. *Add. Citation*:—2 Tax Cas. 100.

*Add. Annotations*:—*As to* (2) *Consd.* *Thomas v. Evans, Jones v. South-West Lancashire Coal-Owners’ Asscn.* (1927), 11 Tax Cas. 790. *Generally, Refd.* *Pegg & Jones v. I. R. Comrs.* (1919), 12 Tax Cas. 82; *I. R. Comrs. v. Westleigh Estates Co., I. R. Comrs. v. South*

#### PART V. SECT. 2, SUB-SECT. 7.—F.

253 i. *Loss on advances to saw-miller to secure supplies of timber—Advances written off as bad debts on liquidation of saw-miller.*—*Held*: the loss was properly deducted.—*HOGG & CO., LTD. v. COMR. OF TAXES*, [1925] N. Z. L. R. 206.—N.Z.

#### PART V. SECT. 2, SUB-SECT. 7.—J.

b i. — *Diminished value of rails & sleepers.*—*Held*: a railway co. was not entitled to any deduction for such diminished value.—*RHODESIA RYS. v. COMR. OF TAXES*, [1925] App. D. 438.—S. AF.

#### PART V. SECT. 2, SUB-SECT. 7.—L.

p i. — *Separate assessments under*

*Schedules B. & D.*—A farmer bred horses & cattle on a considerable scale. He used his stallions for his own horse-breeding purposes, & also earned fees by sending them on journeys for the service of other owners’ mares. In this connection he kept a reserve of stallions to replace any which might become incapacitated. All his stallions, of which only a small proportion earned fees, formed part of one undivided stud. He was assessed to income tax, on the profits of his general farming business under Schedule B., & on the profits of his fee-earning stallions under Schedule D. As a method of fixing the amount of profits assessable under the latter Schedule, the comrs. determined to regard a certain number of stallions as exclusively used in earning

fees, & to allow the deduction of the cost of their full upkeep & attendance, & to provide for replacements by allowing a similar deduction in respect of other stallions in the stud to the extent of one-third of the number of travelling stallions. The farmer contended that his stallion-owning business should be treated as entirely separate from his farming business, & that the whole of the expenses & losses connected with his stallions should be set against the revenue derived from them:—*Held*: it was primarily a question for the comrs. to determine, & no cause had been shown for disturbing their determination.—*MARSHALL v. INLAND REVENUE COMRS.*, [1927] S. C. 243.—SCOT.



Behar Ry., I. R. Comrs. v. Eccentric Club (1925), 12 Tax Cas. 657.

297. *Add. Annotations*:—*Apld.* Pegg & Jones v. I. R. Comrs. (1919), 12 Tax Cas. 82. *Consd.* Thomas v. Evans, Jones v. South-West Lancashire Coal-Owners' Assocn. (1927), 11 Tax Cas. 790. *Refd.* I. R. Comrs. v. Westleigh Estates Co., I. R. Comrs. v. South Behar Ry., I. R. Comrs. v. Eccentric Club (1925), 12 Tax Cas. 657.

300. *Add. Annotations*:—*Consd.* I. R. Comrs. v. Westleigh Estates Co., I. R. Comrs. v. South Behar Ry., I. R. Comrs. v. Eccentric Club (1925), 12 Tax Cas. 657; Cornish Mutual Assce. v. I. R. Comrs., [1926] A. C. 281. *Distd.* Liverpool Corn Trade Assocn. v. Monks, [1926] 2 K. B. 110. *Apld.* Jones v. South-West Lancashire Coal-Owners' Assocn., [1927] A. C. 827.

301. *Add. Annotation*:—*Refd.* Butler v. Mortgage Co. of Egypt (1927), 138 L. T. 328.

302. *Add. Annotations*:—*Refd.* British Insulated & Helsby Cables v. Atherton, [1926] A. C. 205; A.-G. v. Metropolitan Water Board, [1928] 1 K. B. 833.

304. *Add. Annotations*:—*Distd.* Scales v. Thompson (1927), 138 L. T. 331. *Consd.* Butler v. Mortgage Co. of Egypt (1928), 139 L. T. 29.

305. *Add. Annotations*:—*Distd.* Scales v. Thompson (1927), 138 L. T. 331. *Consd.* Butler v. Mortgage Co. of Egypt (1928), 139 L. T. 29.

307a. *Accident Insurance—Mutual society.*—A mutual insurance assocn. was formed, its sole activity being the indemnity of its members, who were coal-owners, against liability for compensation in respect of fatal accidents to workmen. The members of the assocn. were the persons protected by it, every member being liable to contribute a sum not exceeding £25 in the event of a winding up. The assocn. formed a general fund by making calls upon members proportionate to the wages paid in their works for the time being, & the balance of the ordinary call fund was transferred to a reserve fund, into which any extraordinary calls were also paid. A member, on retirement, was entitled to get back in cash a proportion of his share in the above reserve fund, but, apart from this, members had no right at all to the cash in the reserve fund, though the interest accruing on the reserve fund could be used in diminution of members' calls:—*Held*: (1) the sums paid by the members to the assocn. were admissible deductions in computing the profits made by a member for the purpose of assessment to income tax, as the money was laid out by the respective members on a true insurance principle; (2) the surplus funds of the assocn. were not assessable to income tax, as the assocn. was mere machinery for the purpose of enabling subscribing members to insure themselves.—*THOMAS v. EVANS (RICHARD) & CO., JONES v. SOUTH-WEST LANCASHIRE COAL OWNERS' ASSOCN.*, [1927] 1 K. B. 33; 95 L. J. K. B. 990; 135 L. T. 673; 42 T. L. R. 703; 11 Tax Cas. 790, C. A.; *affd. sub. nom. JONES v. SOUTH-WEST LANCASHIRE COAL OWNERS' ASSOCN.*, [1927] A. C.

827; 96 L. J. K. B. 894; 137 L. T. 787; 43 T. L. R. 725; 71 Sol. Jo. 680, H. L.

307b. *Marine insurance company—Building ships—Cancellation of shipbuilding contracts.*—A marine insurance co., having entered into contracts for the building of four ships, accepted delivery of two of the ships & then, owing to a slump in the shipping trade, cancelled the contracts for the other two ships on payment of £70,000. It was contended that a new business of dealing in ships had been begun by the co., & that the £70,000 was a proper deduction in arriving at its profits:—*Held*: the co. was not carrying on any trade, from the profits of which the £70,000 was an admissible deduction.—*DEVON MUTUAL STEAMSHIP INSURANCE ASSOCN. v. OGG* (1927), 13 Tax Cas. 184.

309a. *Loss on investments—What amounts to.*—Appls., an insurance co., had investments in British railway stocks, & it was admitted by the Crown that any loss suffered by applts. on such investments was deductible from their profits for purposes of income tax. The result of Railways Act, 1921 (c. 55), was that applts. received in exchange for their various railway holdings stocks in the four amalgamated railway cos. created by that Act. The market value of these new stocks was less than the original cost to applts. of the old stocks, & they claimed that the loss so occasioned to them should be allowed as a deduction from their profits for 1922 & 1923 in computing their income tax liability:—*Held*: as the effect of what had happened was that the old investments had been closed & realised, & new investments had been begun, applts. were entitled to the deduction claimed.—*ROYAL INSURANCE CO., LTD. v. STEPHEN* (1928), 44 T. L. R. 630.

313a. — *Remuneration of solicitor-trustee under trust.*—A solr.-trustee was empowered by clauses in the instruments creating the trusts to charge for work done by him in connection with the trusts. By agreement between himself, his co-trustees & the beneficiaries, his remuneration was calculated as a percentage of the annual income of the trust funds, which income had already been brought into charge to tax:—*Held*: this remuneration was chargeable to income tax against the solr. under 1918 Act, Schedule D., Case II., as his profits or earnings arising from an employment, & was not constituted of annual payments payable wholly out of profits or gains brought into charge to tax within Rules applicable to all Schedules, r. 19.—*JONES v. WRIGHT* (1927), 139 L. T. 43; 44 T. L. R. 128; 72 Sol. Jo. 86; 13 Tax Cas. 221.

316. *Add. Annotations*:—*As to* (3) *Apld.* Henning, [1926] A. C. 293. *Distd.* Ormond Investment Co. v. Betts, [1927] 2 K. B. 326. *Refd.* Kirke's Trustees v. I. R. Comrs. (1926), 136 L. T. 582; Turton v. Mitchell (1927), 138 L. T. 365.

317. *Add. Citations*:—[1926] 1 K. B. 430; 10 Tax Cas. 139.

*Add. Annotations*:—*Apld.* Turton v. Mitchell

#### PART V. SECT. 4, SUB-SECT. 1.

1. *Dividends received by broker—Deduction of interest on unpaid balance*

*due to broker.*—*Held*: the client was not assessable for income in respect of the whole amount of the dividends received by the broker & credited to his account, but only in respect of the

difference between the sum of the dividends & the sum charged for interest.—*Re STOUT & TORONTO CITY*, [1927] 2 D. L. R. 1100; 60 O. L. R. 313.—CAN.



(1927) 138 L. T. 365. *Reid. Ormond Investment Co. v. Betts*, [1927] 2 K. B. 326.

**317a.** ——— Different holdings of War Loan.]—Applt., who owned £2,350 5 per cent. War Loan inscribed in the books of the Bank of England, in June 1924 converted this holding into 4½ per cent. Conversion Loan, the interest on which was payable under deduction of income tax. Applt., however, continued throughout the year 1925–26 to hold a small amount of 5 per cent. War Loan Post Office issue, to which he had succeeded on the death of his daughter, & which he was not aware he could convert:—*Held*: applt. continued throughout the year 1925–26 to hold the same source of income, i.e., 5 per cent. War Loan, & under Schedule D., Case III., r. 2, he was assessable to income tax for that year in the full amount of the interest received from such War Loan in the preceding year.—*TURTON v. MITCHELL* (1927), 138 L. T. 365; 13 Tax Cas. 245.

**317b.** ———.]—Where applt.'s wife, who was living with him, was in receipt of £9 16s. 10d. interest of War Loan in the year preceding the year of assessment, in which year applt. held no War Loan, & applt. in the year of assessment bought War Loan from which he received interest amounting to £3,662 10s.:—*Held*: applt. had been in possession of the source of such interest in the previous year, & was assessable only in the sum of £9 16s. 10d. in respect of interest of War Loan.—*WALKER v. HOWARD* (1927), 138 L. T. 367; 13 Tax Cas. 313.

**321a.** Surrender of Victory Bonds in payment of death duties—Unpaid interest taken into account in valuation.]—Where Victory Bonds are surrendered in payment of estate duty, & the accrued but still unpaid interest is taken into account in the valuation of the bonds, the interest is not subject to income tax.—*MONKS v. FOX'S EXECUTORS*, [1928] 1 K. B. 351; 97 L. J. K. B. 241; 138 L. T. 203; 44 T. L. R. 115; 72 Sol. Jo. 31; 13 Tax Cas. 171.

**337.** *Add. Annotations*:—*Consd. Re Fitch's Will Trusts, Public Trustee v. Nives* (1928), 139 L. T. 556. *Reid. Glenboig Union Fireclay Co. v. I. R. Comrs.* (1922), 12 Tax Cas. 427.

**354.** *Add. Annotation*:—*Consd. Sherwood v. Sherwood* (1928), 45 T. L. R. 53.

**356.** *Add. Annotation*:—*Appld. South American Stores (Gath & Chaves) v. I. R. Comrs.* (1926), 12 Tax Cas. 905.

**375.** *Add. Annotation*:—*Consd. Martin v. Lowry, Martin v. I. R. Comrs.*; [1926] 1 K. B. 550.

**378.** *Add. Annotation*:—*Reid. Re Jauncey, Bird v. Arnold*, [1926] Ch. 471.

**392.** *Add. Annotations*:—*Consd. Sterling Trust v. I. R. Comrs., I. R. Comrs. v. Sterling Trust* (1925), 12 Tax Cas. 868. *Distd. Dickson v. Hampstead B. C.* (1927), 91 J. P. 146. *Appld. A.-G. v. Metropolitan Water Board*, [1928] 1 K. B. 833; *Shanks v. I. R. Comrs.* (1928), 45 T. L. R. 28. *Reid. Birt, Potter & Hughes v. I. R. Comrs.* (1927), 12 Tax Cas. 976; *I. R. Comrs. v. Pakenham, I. R. Comrs. v. Longford, I. R. Comrs. v. Longford, Gascoigne v. I. R. Comrs.*, [1927] 1 K. B. 594.

**393.** *Add. Annotations*:—*Appld. Dickson v. Hampstead B. C.* (1927), 91 J. P. 146. *Reid. I. R. Comrs. v. Pakenham, I. R. Comrs. v. Longford, I. R. Comrs. v. Longford, Gascoigne v. I. R. Comrs.* (1927), 136 L. T. 699; *A.-G.*

*v. Metropolitan Water Board*, [1928] 1 K. B. 833.

**393a.** ———.]—Under Housing of the Working Classes Acts & Metropolis Management Act, 1855 (c. 120), resps., a metropolitan borough council, assigned to the London County Council all rates authorised to be raised by resps. under Metropolis Management Act, 1855, or London Govt. Act, 1899 (c. 14), to secure money advanced by the London County Council. The money so raised was used by resps. in connection with the construction of flats for the working classes in pursuance of a scheme prepared by them under Housing, Town Planning, etc., Act, 1919 (c. 35), s. 1. In making payments of interest on the sums advanced resps. deducted income tax under Rules applicable to all Schedules, r. 21. The interest was paid out of the general fund in the hands of resps., into which fund were paid all profits or gains, whether derived from a housing scheme or from elsewhere. Resps. had only one banking account, out of which all payments, including the interest, were made & into which all receipts, including the profits & gains derived from resps.' electricity undertaking, or otherwise, were paid. No special fund in respect of any housing scheme was maintained. Resps. possessed profits or gains brought into charge to income tax sufficient for the payment of interest on the sums advanced, apart from any revenue derived under any housing scheme:—*Held*: as none of resps.' profits & gains other than the receipts of the housing scheme contributed to the payment of the interest, & as resps. had an indemnity against loss on the scheme, resps. were liable to account for the amount of the deductions.—*DICKSON v. HAMPSTEAD BOROUGH COUNCIL* (1927), 91 J. P. 146; 43 T. L. R. 595; 25 L. G. R. 402; 11 Tax Cas. 691.

**394.** *Add. Annotation*:—*Reid. Sterling Trust v. I. R. Comrs., I. R. Comrs. v. Sterling Trust* (1925), 12 Tax Cas. 868.

**394a.** ———.]—The profits of the Metropolitan Water Board were assessable under 1918 Act, Schedule A., No. III., r. 3, by reference to the profits of the year preceding the year of assessment. The accounts of the Board for the year ending Mar. 31, 1922, showed a loss, & no assessment was made for the year ending Apr. 5, 1923. The accounts for the year ending Mar. 31, 1923, showed a profit of over two millions, out of which the Board paid over one million interest on water stock, & debentures, deducting & retaining the income tax thereon. On an information claiming that the Board was liable to account for the amount of the tax so deducted, the Board contended that the interest paid for the year 1922–23 was payable out of profits brought into charge for 1922–23 within Rules applicable to all Schedules, r. 19, & was in fact paid out of the profits for 1922–23, & that, although the income tax for 1922–23 was to be measured by the profits of the preceding year, the profits for 1922–23 had been brought into charge, & rule 21 did not apply:—*Held*: as the Board had been assessed at zero under Schedule A for 1922–23, the interest had not been paid out of profits brought into charge, & the Crown was entitled to succeed.—*A.-G. v. METROPOLITAN*

WATER BOARD, [1928] 1 K. B. 833; 97 L. J. K. B. 214; 138 L. T. 346; 44 T. L. R. 135; 72 Sol. Jo. 30; 13 Tax Cas. 294, C. A.

397. *Add. Annotations*:—**Consd.** *Sterling Trust v. I. R. Comrs.*, *I. R. Comrs. v. Sterling Trust* (1925), 12 Tax Cas. 868. **Apld.** *Dickson v. Hampstead B. C.* (1927), 91 J. P. 146. **Consd.** *A.-G. v. Metropolitan Water Board*, [1928] 1 K. B. 833.

416a. — **Debentures.**—A co. issued debentures, stating in the prospectus that the interest thereon would be payable “free of English income tax.” The debentures themselves, & the trust deeds by which they were secured, provided for payment of interest at 5½ per cent. *per annum* “free of English income tax,” & the co. undertook, in addition to the interest, to pay or indemnify the owner of each coupon against the English income tax on the interest to which the coupon related:—**Held**: the contract was void, as regards the stipulation for payment of interest free of income tax.—**SOUTH AMERICAN STORES (GATH & CHAVES), LTD. v. INLAND REVENUE COMRS.** (1926), 12 Tax Cas. 905.

425. *Add. Annotations*:—**Consd.** *I. R. Comrs. v. Pakenham*, *I. R. Comrs. v. Longford* (1927), 96 L. J. K. B. 882. **Refd.** *Baker v. Archer-Shee*, [1927] A. C. 844.

427. *Add. Annotation*:—**N.F.** *Manton's Trustees v. Steele*, *Steele v. Manton's Trustees* (1927), 11 Tax Cas. 549.

430. *Add. Annotations*:—**Apld.** *Manton's Trustees v. Steele*, *Steele v. Manton's Trustees* (1927), 11 Tax Cas. 549. **Refd.** *I. R. Comrs. v. Blackwell* (1925), 134 L. T. 372; *Baker v. Archer-Shee*, [1927] A. C. 844; *I. R. Comrs. v. Pakenham*, *I. R. Comrs. v. Longford* (1927), 96 L. J. K. B. 882.

430a. — **Foreign agreement for repayment by foreign company of loan with interest—Not a security.**—**MANTON'S (LORD) TRUSTEES v. STEELE**, *STEELE v. MANTON'S (LORD) TRUSTEES* (1927), 11 Tax Cas. 549, C. A.

430b. — **Company making investments on real estate abroad.**—A co. incorporated in the United Kingdom, & carrying on business there at its head office in the making of loans of money upon the security of land in Egypt, was assessed to income tax until Apr. 1, 1922, under Schedule D., Case I., upon the profits of the co.'s business. As from Apr. 1, 1922, the entire control of the business was removed to Egypt. The trade of the co. wholly consisted of the lending of money to approved borrowers in Egypt in accordance with Egyptian law, at rates of interest varying from 6 to 8½ per cent. No loans were entertained without good real security being given, & in the event of the borrower's default, proceedings were invariably taken in the local cts. to realise the security, & if it could not be sold immediately, the co. would go into possession:—**Held**: as from Apr. 1, 1922, the co., though it carried on a trade or business, was properly assessed to income tax under Schedule D., Case IV., in respect of income arising from securities in a place out of the United

Kingdom, & was to be taxed in the full amount of such income, whether it was remitted to the United Kingdom or not. There was no evidence upon which the comrs. could find, as they had, that the taking of securities for the loans advanced was only “an incident” in such business; on the contrary it was an indispensable condition of the business. The case being one coming both under Case IV. & Case V. the Crown had an option to tax the co. under either case.—**BUTLER v. MORTGAGE CO. OF EGYPT, LTD.** (1928), 139 L. T. 29, C. A.

431. *Add. Annotation*:—**Refd.** *Ormond Investment Co. v. Betts*, [1928] A. C. 143.

433. *Add. Annotations*:—**As to** (1) **Refd.** *Whitney v. I. R. Comrs.*, [1926] A. C. 37; *Archer-Shee v. Baker* (1927), 11 Tax Cas. 749; *I. R. Comrs. v. Pakenham*, *I. R. Comrs. v. Longford* (1927), 96 L. J. K. B. 882. **Generally, Mentd.** *Gregg v. Richards*, [1926] Ch. 521.

437. *Add. Annotation*:—**As to** (1) **Refd.** *Ormond Investment Co. v. Betts*, [1927] 2 K. B. 326.

441. *Add. Annotations*:—**Refd.** *Tollemache v. I. R. Comrs.* (1926), 96 L. J. K. B. 766; *I. R. Comrs. v. Pakenham*, *I. R. Comrs. v. Longford* (1927), 96 L. J. K. B. 882.

442. For the existing paragraph substitute the following paragraph:—

— — — — — ]—Testator, a citizen of the United States left the residue of his property in trust for his daughter during her life. The trustees, who had full power over the investment of the trust fund, were a co. constituted under the law of the State of New York & resident therein. The trust fund consisted of foreign govt. securities, foreign stocks & shares, & other foreign property. The trustees paid over such of the sums they received as they considered to be income, after deducting expenses, to the order of the daughter at a bank in New York. No part of the income was remitted to the United Kingdom. Resp., the husband of testator's daughter & resident in the United Kingdom, was assessed under Schedule D., Case IV., in the full amount of the income of the trust:—**Held**: (1) the daughter was specifically entitled under the will in equity during her life to the interest & dividends of the securities, stocks, & shares comprised in the trust fund, & her husband was assessable under Case IV., r. 1, & Case V., r. 1, to income tax in respect thereof, except such, if any, as were shown to be “foreign possessions other than stocks, shares & rents,” whether such interest & dividends were remitted to the United Kingdom or not; (2) the matter should be remitted to the comrs. to state which of the items of the trust fund were (a) “securities” within Case IV., r. 1, (b) “stocks, shares or rents” within Case V., r. 1, & (c) “possessions out of the United Kingdom other than stocks, shares or rents” within Case V., r. 2.—**BAKER v. ARCHER-SHEE**, [1927] A. C. 844; 96 L. J. K. B. 803; 137 L. T. 762; 43 T. L. R. 758; 71 Sol Jo. 727, H. L.; *reusg.*

#### PART V. SECT. 6.

q i. *Remittance under foreign decree of divorce.*—**Held**:

annual remittances received by a woman in Scotland from her divorced husband in Sweden, under a Swedish decree of divorce, fell to be taxed under Case V. in respect that “possessions”

included not only corporeal possessions but also incorporeal possessions.—**INLAND REVENUE COMRS. v. ANDERSTROM**, [1928] S. C. 224; 13 Tax. Cas. 482.—**SCOT.**



S. C. *sub nom.* SHEE v. BAKER, [1927] 1 K. B. 109; *sub nom.* ARCHER-SHEE v. BAKER, 11 Tax Cas. 749.

*Add. Annotation:—*Refd. Walker v. Howard (1927), 138 L. T. 367.

444a. ——— Includes interest paid under foreign agreement for repayment by foreign company of loan with interest.]—MANTON'S (LORD) TRUSTEES v. STEELE, STEELE v. MANTON'S (LORD) TRUSTEES (1927), 11 Tax Cas. 549, C. A.

445. *Add. Annotations:—*Refd. Egyptian Delta Land & Investment Co. v. Todd (1928), 44 T. L. R. 747. *Mentd.* Baelz v. Public Trustee, [1926] Ch. 863.

446a. ——— Advance on account of salary paid into banking account in United Kingdom.]—FLEMING v. WILKINSON, No. 131a, *ante*.

450. *Add. Citations:—*95 L. J. K. B. 394; 10 Tax Cas. 263, H. L.

*Add. Annotation:—*Appld. Grainger v. Maxwell, [1926] 1 K. B. 430.

450a. ——— Income received during less period than three years.]—An investment co. received during the first year of its existence a dividend from foreign shares & had no other income from foreign possessions. In assessing the co. to income tax under Case V.:—*Held*: (1) Rules applicable to Cases I. & II., r. 1 (2), had no application to the receipt of dividends on foreign securities, & the only relevant rule was the rule applicable to Case I.; (2) Finance Act, 1924 (c. 21), s. 26, which was founded upon an erroneous assumption as to the effect of Case V., r. 1, could not be referred to for the purpose of interpreting that provision; (3) the assessment for the first year should be nil, & for the second year one-third of the amount of the dividend.—ORMOND INVESTMENT CO. v. BETTS, [1928] A. C. 143; 97 L. J. K. B. 342; 138 L. T. 600; 13 Tax Cas. 400, H. L.

453. *Add. Annotations:—*Folld. Lyons v. Cowcher (1926), 10 Tax Cas. 438. *Apprvd.* Martin v. Lowry, Martin v. I. R. Comrs. (1926), 43 T. L. R. 116.

457a. ——— Director's commission on underwriting shares.]—Appltd., a co. director, received commission from a syndicate for underwriting shares in a new co., & he was assessed to income tax under Schedule D. for

the year 1919-20 in respect of the commission. He was not concerned in any other underwriting transaction in 1919, 1920 & 1921:—*Held*: the commission was an annual profit or gain within Schedule D., Case VI., & appltd. had been properly assessed to income tax in respect of such commission.—LYONS v. COWCHER (1926), 10 Tax Cas. 438.

460a. ——— Purchase & sale of properties by builder.]—Appltd. was a builders' foreman until Feb. 1923, & subsequently a director of a co. carrying on the business of a builder & contractor. During the years 1920 to 1924 he bought on his own account some seven properties, of which he sold four during the period, & still owned the remainder in 1926:—*Held*: the profits, if any, were not assessable under Case VI. of Schedule D., & the case should be rem'd to the Special Comrs. to consider whether the transactions in question constituted a trade assessable under Case I.—PEARNS v. MILLER (1927), 11 Tax Cas. 610.

462. *Add. Annotations:—*Refd. Brighton College v. Marriott, [1926] A. C. 192; Huxham v. Johnson (1926), 136 L. T. 410; Martin v. Lowry, Martin v. I. R. Comrs., [1926] 1 K. B. 550.

471. *Add. Citation:—*10 Tax Cas. 73.

*Add. Annotation:—*Refd. I. R. Comrs. v. Yorkshire Agricultural Soc. (1927), 44 T. L. R. 59.

472a. ——— Relief of members of medical association & dependants in necessitous circumstances.]—Two societies whose funds were applied entirely to making grants for the relief of subscribing members or their dependants in necessitous circumstances:—*Held*: charities, & entitled to exemption from income tax.—INLAND REVENUE COMRS. v. SOCIETY FOR RELIEF OF WIDOWS & ORPHANS OF MEDICAL MEN, INLAND REVENUE COMRS. v. MEDICAL CHARITABLE SOCIETY FOR WEST RIDING OF YORKSHIRE (1926), 136 L. T. 60; 42 T. L. R. 612; 70 Sol. Jo. 837; 11 Tax Cas. 1.

472b. ——— Temperance reform.]—A society whose main object was "united action to secure legislative & other temperance reform":—*Held*: not a body of persons established for charitable purposes only, & its income, inasmuch as it was not applied to charitable purposes only, was not entitled

#### PART V. SECT. 9.

470 i. *Exemption of charities—Charitable purposes.*]—By the law of Scotland a trust for "charitable or benevolent" purposes is a trust for "charitable" purposes alone, & is a trust for "charitable purposes only" within 1918 Act.—JACKSON'S TRUSTEES v. INLAND REVENUE, [1926] S. C. 579; 10 Tax Cas. 460.—SCOT.

470 ii. ——— Stimulating interest in music.]—INLAND REVENUE COMRS. v. GLASGOW MUSICAL FESTIVAL ASSOCN., [1926] S. C. 920; 11 Tax Cas. 154.—SCOT.

470 iii. ——— Supplying nurses.]—An assocn. was formed for the purpose of improving & extending nursing facilities in a county. The members were divided into three classes according to income, the largest class consisting of persons in comparatively poor circumstances. An annual membership fee was charged, varying, according to the class, from 2s. 6d. to 10s. 6d. *per annum*. The fees charged for the services of a nurse, or

for admission to the assocn.'s hospital, varied from sums which, in the case of the poorest class, were considerably below the cost of the services rendered, to sums which, in the case of the wealthiest class, were reasonably equivalent to such cost. Nursing facilities, when not required for members, were granted to non-members at increased rates. Funds were held by the assocn. which had been raised by public subscription, & the hospital had been acquired with funds similarly raised. In respect of special charitable donations, necessitous cases from certain parishes received the services of a nurse gratuitously:—*Held*: the assocn. was established for "charitable purposes only."—INLAND REVENUE COMRS. v. PERBLESSHIRE NURSING ASSOCN., [1927] S. C. 215; 11 Tax Cas. 335.—SCOT.

470 iv. ——— Promotion of temperance.]—Testator expressed his desire that the leading of a sober life might be made more easy for the inhabitants of F., & with that object conveyed half of the residue of his estate to trustees

for the purpose of providing F. with a temperance public-house. His trustees spent part of the funds in establishing a temperance hotel, containing a middle-class cafe & a cheap working-class cafe, free reading & recreation-rooms, & bedrooms, & a lecture-hall, which could be hired at moderate figures. Their policy was to make the hotel pay its way without earning profits, & the balance of the trust funds was invested & the interest was used to make good an annual deficit on the working of the hotel:—*Held*: the interest formed part of the income of a trust established for "charitable purposes only," & was "applied to charitable purposes only."—INLAND REVENUE COMRS. v. FALKIRK TEMPERANCE CAFE TRUST, [1927] S. C. 261; 11 Tax Cas. 353.—SCOT.

470 v. ——— Improvement of spiritual, intellectual, social & physical condition of young men.]—YOUNG MEN'S CHRISTIAN ASSOCN. OF MELBOURNE v. FEDERAL COMR. OF TAXATION (1926), 37 C. L. R. 351; [1926] Argus L. R. 97.—AUS.



to exemption from income tax.—**INLAND REVENUE COMRS. v. TEMPERANCE COUNCIL OF CHRISTIAN CHURCHES OF ENGLAND & WALES** (1926), 136 L. T. 27; 42 T. L. R. 618; 10 Tax Cas. 748.

**472c.** ——— **Seaside boarding-house with reduced charges.]**—By a declaration of trust “a home or place of residence” was founded & endowed, “where persons requiring temporary rest & change of air for the benefit of their health may obtain same.” About half the income of the home came from payments by visitors, who included convalescents, persons needing rest & change, & holiday applicants:—*Held*: since on the construction of the trust deed there was throughout an overriding charity which fulfilled the character of a charitable convalescent home, the trustees were entitled to exemption from income tax on the ground that the trust was established for charitable purposes only.—**INLAND REVENUE COMRS. v. ROBERTS MARINE MANSIONS TRUSTEES** (1926), 43 T. L. R. 270; 11 Tax Cas. 425, C. A.

**472d.** ——— **Agricultural society.]**—An agricultural society, founded mainly for the purpose of holding an annual agricultural show, had also among their objects the improvement of live stock & poultry & of machinery & appliances used in agriculture, & agricultural education & scientific research, & they claimed exemption from income tax upon the dividends from their investments, on the ground that they were a society established for charitable purposes only:—*Held*: there was evidence on which the Special Comrs. could find that the society was established for charitable purposes only.—**INLAND REVENUE COMRS. v. YORKSHIRE AGRICULTURAL SOCIETY**, [1928] 1 K. B. 611; 97 L. J. K. B. 100; 138 L. T. 192; 44 T. L. R. 59; 72 Sol. Jo. 68; 13 Tax Cas. 58, C. A.

**472e.** ——— **General Medical Council.]**—*Held*: not a body established for charitable purposes

only, & not entitled to exemption from income tax on the income from its funds.—**GENERAL MEDICAL COUNCIL v. INLAND REVENUE COMRS., ENGLISH BRANCH COUNCIL OF GENERAL MEDICAL COUNCIL v. INLAND REVENUE COMRS.** (1928), 97 L. J. K. B. 578; 139 L. T. 225; 44 T. L. R. 439, C. A.

**473.** *Add. Annotation*:—*Refd.* **Brighton College v. Marriott**, [1926] A. C. 192.

**476a.** ——— **Temperance reform.]**—**INLAND REVENUE COMRS. v. TEMPERANCE COUNCIL OF CHRISTIAN CHURCHES OF ENGLAND & WALES**, No. 472b, *ante*.

**477.** *Add. Annotation*:—*Refd.* **I. R. Comrs. v. Yorkshire Agricultural Soc.**, [1928] 1 K. B. 611.

**480.** *Add. Annotation*:—*Refd.* **A.-G. v. Metropolitan Water Board**, [1928] 1 K. B. 833.

**483.** *Add. Annotation*:—*Apld.* **Marie Celeste Samaritan Soc. of London Hospital v. I. R. Comrs.** (1926), 43 T. L. R. 23.

**483a.** ——— **Testator devised his residuary estate on trust for applts., who were a society established for charitable purposes only & were entitled to exemption from income tax on their income from investments. Pending completion of the administration the exors. paid to the trustees for applt. society certain sums on account of income. Applts. claimed repayment of income tax, but the Inland Revenue Comrs. refused repayment so far as related to income received by the exors. before the date when the residue was ascertained:—Held**: as the income when it was received was the income only of the exors. & the money paid to the charity was only a sum equal to the income payable to the charity as a matter of equitable book-keeping in due course of administration, applts. were not entitled to the repayment claimed.—**MARIE CELESTE SAMARITAN SOCIETY OF LONDON HOSPITAL v. INLAND REVENUE COMRS.** (1926), 43 T. L. R. 23; 11 Tax Cas. 226.

## Part VI.—Schedule E.

**484.** *Add. Citations*:—*revsd.*, [1927] A. C. 417; 96 L. J. K. B. 523; 136 L. T. 770; 91 J. P. 75; 43 T. L. R. 279; 71 Sol. Jo. 191; 25 L. G. R. 123; 11 Tax Cas. 446, H. L.

**486.** *Add. Annotations*:—*Consd.* **Watson v. Rowles** (1926), 95 L. J. K. B. 959. *Refd.* **Ingle v. Farrand**, [1927] A. C. 417; **Seymour v. Reed**, [1927] A. C. 554; **Lysaght v. I. R. Comrs.**, [1928] A. C. 234; **Rees Roturbo Development**

**Syndicate v. I. R. Comrs., Rees Roturbo Development Syndicate v. Ducker** (1928), 13 Tax Cas. 366.

**490.** *Add. Annotations*:—*Refd.* **Seymour v. Reed**, [1927] A. C. 554; **Benyon v. Thorpe** (1928), 97 L. J. K. B. 705.

*Add. Annotation*:—*Apld.* **Seymour v. Reed**, [1927] A. C. 554.

**473 i.** ——— *“Applied to charitable purposes only”*—*Promotion of temperance.*—**INLAND REVENUE COMRS. v. FALKIRK TEMPERANCE CAFE TRUST**, No. 470 iv, *ante*.—**SCOT.**

**473 ii.** ——— *Stimulating interest in music.*—**INLAND REVENUE COMRS. v. GLASGOW MUSICAL FESTIVAL ASSOCIATION**, [1926] S. C. 920; 11 Tax Cas. 164.—**SCOT.**

*st. Exemption of person not ordinarily resident in United Kingdom—Holder of securities issued free of tax.*—*Held*: the whole circumstances must be considered, & the Special Comrs. were entitled to find that applt. was

ordinarily resident in the United Kingdom.—**REID v. INLAND REVENUE**, [1926] S. C. 589.—**SCOT.**

*sv.* ——— *Held*: the Special Comrs. were entitled, on the facts stated, to find that applt. was ordinarily resident in the United Kingdom.—**PEEL v. INLAND REVENUE COMRS.**, [1928] S. C. 205; 13 Tax Cas. 443.—**SCOT.**

*sw. Whether preferred shares “borrowed capital” within Income War Tax Act, 1917, s. 3 (H.).*—**DUPUIS FRERES, LTD. v. CUSTOMS & EXCISE MINISTER**, [1927] Exch. O. R. 207.—**CAN.**

*sx. Under statutory agreement with Government—Construction of agreement.*—**NOVA SCOTIA STEEL & COAL CO., LTD. v. FINANCE & CUSTOMS MINISTER**, [1922] 2 A. C. 176, P. C.—**CAN.**

### PART VI. SECT. 1, SUB-SECT. 2.

**1 i.** ——— *Agent of company sharing in profits.*—*Held*: liable to income tax.—**SRELEY & Co. v. BROWN**, [1927] 1 W. W. R. 185; 37 B. C. R. 514.—**CAN.**

**1 ii.** ——— *Pay of locomotive engineer according to miles run by locomotive.*—*Held*: not liable to taxation.—**RE ASSESSMENT ACT** (1902), 9 B. C. R. 209.—**CAN.**

- 493.** *Add. Annotation*:—*Distd.* Reed v. Seymour (1927), 11 Tax Cas. 625.
- 494.** *Add. Annotation*:—*Consd.* Reed v. Seymour (1927), 11 Tax Cas. 625.
- 495.** *Add. Annotations*:—*Consd.* Seymour v. Reed, [1927] A. C. 554. *Refd.* Hartland v. Diggines, [1926] A. C. 289.
- 496a.** ——— Gift to directors of company.]—the payment, although called a gift, was extra remuneration paid to the directors, & was assessable to income tax.—RADCLIFFE v. HOLT (1927), 11 Tax Cas. 621.
- 496b.** ——— After retirement.]—It was the custom of a co. to grant an annual allowance to members of its staff by way of pension on retirement. Resp. had been managing director of the co., & after his retirement the directors made him a voluntary allowance annually. They subsequently stopped this annual allowance & paid resp. a lump sum as a gift in lieu thereof:—*Held*: the allowances could not be regarded as supplementary salary. They were not “a profit or gain arising from an employment,” nor could they be considered as receipts in respect of an office, but were merely gifts, & resp. was not liable to income tax on the sums so received by him.—BENYON v. THORPE (1928) 97 L. J. K. B. 705; 44 T. L. R. 610; 72 Sol. Jo. 453.
- 497.** *Add. Annotation*:—*Distd.* Jones v. Wright (1927), 44 T. L. R. 128.
- 499.** *Add. Citations*:—*affd.* (1926), 95 L. J. K. B. 959; 135 L. T. 614; 42 T. L. R. 691; 70 Src. Jo. 796; 11 Tax Cas. 171, C. A.
- 500.** *Pd. Citation*:—10 Tax Cas. 609.
- 501.** <sup>SU.</sup> “(1926), 161 L. T. Jo. 235” read “No. 500, post.”
- 501a.** ——— Applied in payment for shares.]—Applt., the chairman & managing director of a co. in which he held shares, agreed that he would take up additional shares in the co., in payment for which sums due by the co. to him by way of remuneration were to be applied:—*Held*: applt. was assessable to income tax under Schedule E. in respect of the remuneration, notwithstanding that it had been applied in payment for shares.—PARKER v. CHAPMAN (1928), 138 L. T. 729, C. A.
- 502.** *Add. Citations*:—[1927] 1 K. B. 90; 95 L. J. K. B. 796, 135 L. T. 259; 42 T. L. R. 514; 70 Sol. Jo. 707; 11 Tax Cas. 625, C. A.; *reversd. sub nom.* SEYMOUR v. REED, [1927] A. C. 554; 96 L. J. K. B. 839; 137 L. T. 312; 43 T. L. R. 584; 71 Sol. Jo. 488, H. L.  
*Add. Annotation*:—*Consd.* Davis v. Harrison (1927), 11 Tax Cas. 707.
- 502a.** ——— Accrued benefit—Professional footballer.]—Resp. was employed to play football for a club in return for payment, &, on his being transferred in accordance with the rules of the Football Assocn. to another club, he was given by the first-named club a sum as accrued benefit:—*Held*: the payment was neither a gift nor compensation for loss of employment, but was really remuneration for services, & was assessable to income tax.—DAVIS v. HARRISON (1927), 96 L. J. K. B. 848; 137 L. T. 324; 43 T. L. R. 623; 11 Tax Cas. 707.
- 504.** *Add. Annotations*:—*Distd.* Dauncey v. Howlett (1926), 135 L. T. 279. *Consd.* Davies v. Harrison (1927), 96 L. J. K. B. 848. *Refd.* Borthwick v. Nolder (1927), 11 Tax Cas. 261.
- 504a.** ——— Additional remuneration of company director.]—DAUNCEY v. HOWLETT, No. 510, post.
- 505.** *Add. Annotation*:—*Refd.* Machon v. McLoughlin (1926), 11 Tax Cas. 83.
- 506.** *Add. Citations*:—95 L. J. K. B. 392; 10 Tax Cas. 247.
- 507.** *Add. Annotation*:—*Refd.* Machon v. McLoughlin (1926), 11 Tax Cas. 83.
- 507a.** S. P. MACHON v. McLOUGHLIN (1926), 11 Tax. Cas. 83, C. A.
- 510.** For the existing paragraph substitute the following paragraph:—  
————— Additional remuneration of company director.]—Resp. as director of a co. was entitled as remuneration for his services to £3,000 per annum free of income tax. Towards the close of the year of assessment the co. in general meeting resolved that the directors be paid by way of additional remuneration for their services such a sum as after the provision of income tax would entitle them to receive the further sum of £25,000 free of tax:—*Held*: resp.’s share of such additional remuneration was not a perquisite, but was assessable by additional assessments under Income Tax Act, 1918 (c. 40), Schedule E., rr. 1 & 5.—DAUNCEY v. HOWLETT (1926), 135 L. T. 279; 10 Tax Cas. 454.
- 514.** *Add. Annotation*:—*Refd.* Hartland v. Diggines, [1926] A. C. 289.
- 519.** *Add. Citation*:—10 Tax Cas. 118.
- 526a.** ——— ——— ——— .]—MACHON v. No. 507a, ante.
- 530.** *Add. Annotations*:—*Refd.* Machon v. McLoughlin (1926), 11 Tax Cas. 83; Reed v. Seymour (1927), 11 Tax Cas. 625.

**PART VI. SECT. 2.**

508 i. *Basis of assessment.*<sup>1</sup>  
resp. was employed as solr. to a board :

—*Held*: he was chargeable to income tax for the year of assessment in respect of a sum for fees, notwithstanding that the bills of costs which included

such sum were not taxed or paid within the year of assessment.—*M'KEOWN v. ROE*, [1928] I. R. 195.—*IR.*

## Part VII.—General Allowances, Exemptions and Abatements.

- 539a. **Personal allowance—In respect of wife—Whether earned income of wife included in husband's total income.**—THOMPSON v. BRUCE (1927), 11 Tax Cas. 607.
- 540a. **Child receiving instruction at "educational establishment."**—A teacher's house, where he gives to individual pupils private lessons & directions for home study & practice, is not an "educational establishment" where a pupil receives full-time instruction, so as to entitle the father to a deduction from income tax under 1920 Act, s. 21 (1).—HEASLIP v. HASEMER (1927), 138 L. T. 207; 44 T. L. R. 112; 72 Sol. Jo. 31; 13 Tax Cas. 212.
- 545a. **Whether vested or contingent interest.**—Resp., who came of age in July, 1922, claimed relief under Income Tax Act, 1918 (c. 40), s. 25, in respect of the accumulated income of a fund given to his parents by a relation in 1902 with a letter, which, after referring to a gift for the benefit of resp.'s brother, continued: "I also hand you a stock receipt representing the investment of £500 in Consols which, with the accruing dividends thereon, will fall due to your youngest boy (resp.) as he attains the age of twenty-one years. You will observe that you & W. are practically trustees for carrying this out"—*Held*: resp. took a vested & not a contingent interest in the gift, & was not entitled to the relief conferred by the sect. in respect of the income of the fund which had been accumulated for his benefit.—ROBERTS v. HANKS (1926), 134 L. T. 754; 10 Tax Cas. 351.
- 545b. **—**—The words "for the benefit of" in 1918 Act, s. 25, include a case where the accumulations of income are added to the capital of a trust fund in which the beneficiary has only a life interest, & where the accumulations never pass to the beneficiary.—DALE v. MITCALFE, [1928] 1 K. B. 383; 97 L. J. K. B. 161; 138 L. T. 167; 44 T. L. R. 21; 71 Sol. Jo. 981; 13 Tax Cas. 41, C. A.
- 545c. **—**—The words "specified age" in 1918 Act, s. 25, mean an age expressed by a definite number of years, & not an age which can be ascertained only by reference to some other occurrence as, for instance, the death of testatrix, who has directed that an accumulated fund shall be paid to a beneficiary twenty years after her death.—WHITE v. WHITCHER, [1928] 1 K. B. 453; 97 L. J. K. B. 321; 138 L. T. 205; 44 T. L. R. 113; 13 Tax Cas. 202.
546. **Add. Annotation:—**Reid. Whitney v. I. R. Comrs., [1926] A. C. 37.
- 549a. **Polley on joint lives of two persons—Payment of premium shared equally.**—A person who has entered into an insurance on the joint lives of himself & another person at a single premium which is shared equally between them, has not "made an insurance on his life" within Income Tax Act, 1918 (c. 40), s. 32 (1), & is not entitled under that sect. to a deduction of the amount of the annual premium from his taxable profits.—WILSON v. SIMPSON, [1926] 2 K. B. 500; 95 L. J. K. B. 885; 135 L. T. 766; 42 T. L. R. 690; 10 Tax Cas. 753.
552. **Add. Annotation:—**As to (1) *Crown Gold Fields American Development Co. v. Consolidated Gold Fields of South Africa*, [1926] Ch. 338.
553. **Add. Annotation:—**Consd. Gold Fields American Development Co. v. Consolidated Gold Fields of South Africa, [1926] Ch. 338.
555. **Add. Annotation:—**Consd. Gold Fields American Development Co. v. Consolidated Gold Fields of South Africa, [1926] Ch. 338.
556. **Add. Citations:—**[1926] Ch. 338; 95 L. J. Ch. 329; 135 L. T. 14.
557. **Add. Citation:—**10 Tax Cas. 59.

## Part VIII. Miscellaneous Provisions Applicable to the Duties Generally.

567. For the word "two" in the existing paragraph read the word "three." *Add. Citations:—*[1927] 1 K. B. 780; 135 L. T. 744; 42 T. L. R. 704, C. A.; *affd. sub*

### PART VII. SECT. 1.

536 ii. **Whether gross or net income under will.**—*Held*: applt.'s income under her father's will, for the purposes of a claim to repayment of income tax in respect of personal allowance, etc., was one-half only of the net income of the estate after the deduction of all prior charges, including the expenses of management of the trust.—MURRAY v. INLAND REVENUE COMRS. (1926), 11 Tax Cas. 133.—SCOT.

545 i. **Relief in respect of income accumulated under trust—For benefit of person "contingently on his attaining some specified age"—Double contingency.**—Claims for repayment of tax refused, where the contingency

upon which the fund was held for the benefit of claimants was not that prescribed by 1918 Act, s. 25, but was a double contingency, namely, survival of their mother & attainment of a specified age.—INLAND REVENUE COMRS. v. BONE, [1927] S. C. 698.—SCOT.

*sm. Right to discount—Taxation Act, R. S. B. C., 1911 (c. 222), s. 10.*—GRANBY CONSOLIDATED MINING, SMELTING & POWER CO., LTD. v. A.-G. FOR BRITISH COLUMBIA, [1923] A. C. 247; 92 L. J. P. C. 74; 128 L. T. 677. CAN.—

*ad. Mining company—Reconstruction—Right of shareholders to deduction in respect of calls paid—Income Tax Assessment Act, 1915–1918, ss. 18 (1),*

53.]—JACQUES v. FEDERAL COMR. OF TAXATION (1924), 34 C. L. R. 328; 31 Argus L. R. 61.—AUS.

### PART VIII. SECT. 1, SUB-SECT. 1.

k i. **—**—In Oct. 1923, a trustee was assessed in respect of the income of an estate, which he was directed to receive & accumulate until 1933, & then to distribute among persons not ascertainable until the date fixed for distribution:—*Held*: the assessment being made in 1923 for taxes payable in 1924, the validity of the assessment should be determined by reference to the Act in force at the date of the assessment.—*Re McLEOD & WINDSON CORPN.*, [1925] 3 D. L. R. 89; 57 O. L. R. 15.—CAN.



*nom.* TARN *v.* SCANLAN, NIELSEN, ANDERSON & Co. *v.* COLLINS, MULLER (W. H.) & Co. (LONDON) *v.* LETHEM, SAME *v.* INLAND REVENUE COMRS., [1928] A. C. 34; 97 L. J. K. B. 267; 138 L. T. 241; 13 Tax Cas. 91, 126; *sub nom.* TARN *v.* SCANLAN, NEILSEN, ANDERSEN & Co. *v.* COLLINS, MULLER (WILLIAM H.) & Co. (LONDON), LTD. *v.* LETHEM, MULLER (WILLIAM H.) & Co. (LONDON), LTD. *v.* INLAND REVENUE COMRS. (1927), 44 T. L. R. 53; 71 Sol. Jo. 1002, H. L.

*Add. Annotation:—***Reid.** Belfour v. Mace (1928), 138 L. T. 338.

575. *Add. Annotation*:—**Reid**. I. R. Comrs. v. Pakenham, I. R. Comrs. v. Longford (1927), 96 L. J. K. B. 882.

**577. Add. Annotation:—***Reid. Whitney v. I. R. Comrs.*, [1926] A. C. 37.

**580.** *Add. Annotation:—As to (3) Refd. L. & N. E. Ry. v. Easington Union Assmt., Com. & Easington-with-Thorpe Parish Council (1925), 95 L. J. K. B. 255.*

## Part IX.—Procedure after Assessment.

588. *Add. Annotation*:—As to (2) **Refd.** Ingle v. Farrand, [1927] A. C. 417.

**591a. Whether assessment made in time.]—PICKFORD v. QUIRKE, PICKFORD v. INLAND REVENUE COMRS., No. 114a, ante.**

**596. Add. Citation :—**12 Tax Cas. 147.

613a. — — — —.]—With the object of reducing the amount of income tax payable in respect of the occupation of land & the profits from dealing in cattle, a farmer & his sons, who lived with him, entered into an agreement of partnership. The terms of the agreement were not carried out, & the General Comrs. were of opinion that there had been no partnership in fact, & refused the relief claimed in respect of each alleged partner:—*Held*: there was evidence to support the finding of the comrs., which could not be set aside.—*DICKENSON v. GROSS* (1927), 137 L. T. 351; 11 Tax Cas. 614.

**618.** *Add. Annotation :—***Refd.** Owl Mill Co. (1920), Ltd. v. Croft, Elliott v. Duchess Mill (1926), 95 L. J. K. B. 635.

**622. Add. Annotation :—***Apld* *Pickford v. Quirke*,

**Pickford v. I. R. Comrs.**, 927), 43 T. L. R. 659.

**629a.** — **Discretion of court.]**—Under 1918 Act, s. 149, it is within the discretion of the High Ct. to remit a case to the Comrs. for re-hearing & decision without requiring that it be amended & returned for the decision of the ct. itself.—**EDWARDS v. "OLD BUSHMILLS" DISTILLERY CO., LTD. (IN LIQUIDATION)** (1926), 10 Tax Cas. 285, H. L.

**Annotation:—***Reid. Aylmer v. Mahaffy* (1925), 10 Tax Cas. 594.

**630. Add. Citation :—**12 Tax Cas. 166.

**631a. Notice requiring commissioners to state & sign case—Must be in writing—Oral application to commissioners insufficient.]—R. v. INCOME TAX COMRS. FOR EDMONTON, *Ex p. THOMPSON* (1928), 45 T. L. R. 91, D. C.**

**632a. Transmission of case after "receiving" same.]**—After stating a case the comrs. sent it to the office of the person requiring it, the surveyor of taxes, at the office occupied by the latter at the time the appeal was before them, the address of which was on all the

**PART VIII. SECT. 1, SUB-SECT. 2.**

**570 i. Liability of married woman to be charged—***Married woman living in United Kingdom separate from husband—Income from property out of United Kingdom.*—The wife of a professor at Cairo University received annually a share of income from Canadian property, which was held by a body of Scottish trustees. Until 1922 she lived with her husband in Cairo, & accompanied him to England on furlough for three months every summer. During the furlough in 1922 the state of her health necessitated her removal to a nursing home, where she remained throughout the financial year 1923–24. The professor returned to Cairo at the end of his leave in 1922, visiting this country again the following summer. For the year 1923–24 the trustees were assessed to income tax upon the wife's share of Canadian income:—*Held*: the income was liable to be charged to income tax upon the wife, & was not to be deemed to be the husband's profits.—**DERRY v. INLAND REVENUE, [1927] S. C. 714.—SCOT.**

571 i. *Liability of husband to be charged*—*Whether married woman "living with her husband."*—Circumstances in which:—*Held*: a wife was not "living with her husband" so as to make her profits assessable & chargeable in the husband's name.—*DONOVAN v. CHORRS*, [1926] I. R. 477.—*IR.*

*system—Undertaking by operating company to pay owning company's income tax on annual payments under agreement.]—Held: such undertaking could not be pleaded by the owning co. in answer to the Crown's claim for income tax.—R. v. MONTREAL TELEGRAPH CO. & GREAT NORTH WESTERN TELEGRAPH CO. OF CANADA, [1925] Exch. C. R. 79.—CAN.*

**PART IX. SECT. 1.**

**5881 i. Jurisdiction of commissioner—**  
*Avoidance of tax owing to fraud.*—  
**MOREAU v. FEDERAL TAXATION COMR.**  
(1926), 39 C. L. R. 65.—**AUS.**

**PART IX. SECT. 2. SUB-SECT. 2.**

**600 i. The hearing—Whether taxpayer entitled to be heard.]**—In order to constitute a valid determination of the comr. under Income Tax Assessment Act, 1922, s. 21 (1), it is not necessary that the taxpayer shall have been heard.—**FEDERAL COMR. OF TAXATION v. AUSTRALIAN TESSELATED TILE CO. PROPRIETARY, LTD. (1925), 36 C. L. R. 119; 31 Argus L. R. 218.—AUS.**

sl. "*Determination.*"—The word "determination" in Income Tax Assessment Act, 1922, s. 21 (1), implies a communication of the determination to the taxpayer.—FEDERAL COMR. OF TAXATION v. AUSTRALIAN TESSIELATED TILE CO. PROPRIETARY, LTD. (1925), 36 C. L. R. 119; 31 Argus L. R. 218.—AUS.

*To hear appeal by commissioner from Board of Appeal.]—FEDERAL TAXATION COMR. v. MUNRO, BRITISH IMPERIAL OIL CO., LTD. v. FEDERAL TAXATION COMR. (1926), 38 C. L. R. 153.—AUS.*

**PART IX. SECT. 2, SUB-SECT. 3.—B.**

**617 i. When case may be stated—**  
*Rehearing by Board of Referees*  
*not condition precedent.*—**CARLAND**  
**(DAVID) & SONS, LTD. v. INLAND**  
**REVENUE COMRS., [1926] S. C. 870;**  
**11 Tax Cas. 96.—SCOT.**

**PART IX, SECT. 2, SUB-SECT. 3.—C.**

**c1. — To compel alteration of assessment.]**—The High Ct. will not, by *mandamus* or process of a like nature, compel the Federal Comr. of Taxation to exercise the power given him to make alteration in, or additions to, any assessment, where he does not think that such alterations or additions are necessary in order to insure the completeness & accuracy of the assessment.—*Ex p. CARPATHIA TIN MINING CO., LTD.* (1924), 35 C. L. R. 552; 31 Argus L. R. 22.—**AUS.**

**PART IX. SECT. 2, SUB-SECT. 3.—D.**

**sp. Evidence—Not limited to material before Board of Appeal.]—FEDERAL TAXATION COMR. v. LEWIS BERGER & SONS (AUSTRALIA), LTD. (1927), 39 C. L. R. 468.—AUS.**

**st. Burden of proof—On appellant—To establish right to benefit claimed.]—**  
**MOREAU v. FEDERAL TAXATION COMR.**  
**(1926), 39 C. L. R. 65.—AUS.**

**PART VIII. SECT. 1, SUB-SECT. 4.**

**sl. Agreement to operate telegraph**  
**J.S.**

**PART IX, SECT. 2, SUB-SECT. 3.—A.**

### sn. Jurisdiction of High Court—

official documents in the appeal. The surveyor had left the office in the interval & gone to another one:—*Held*: the case had been "received" by the surveyor within 1918 Act, s. 149 (1) (d).—*GRAINGER v. SINGER*, [1927] 2 K. B. 505; 96 L. J. K. B. 917; 137 L. T. 692; 43 T. L. R. 591; 11 Tax Cas. 704.

**632b. Exchanging points of argument.**—(1) It is not necessary to exchange points of argument, but either party may, not later than ten days before the argument, give to the other party notice in writing of any point intended to be made which would be likely to take the other party by surprise, in default of which the ct. may adjourn the argument on such terms as may be just.

(2) A case may be set down by either party subject to the same conditions in all respects as cases have heretofore been set down by the party at whose instance they have been stated.—*PRACTICE NOTE*, [1926] W. N. 250.

**632c. Setting down case.**—*PRACTICE NOTE*, No. 632b, *ante*.

**632d. Remitting case to commissioners.**—For amendment—*Grounds for granting or refusing application to remit.*—*HAYTHORNTHWAITE & SONS, LTD. v. KELLY* (1927), 11 Tax Cas. 657, C. A.

**633a. On appeal against assessment on person carrying on non-resident's regular agency—Order for costs made against agent.**—*WILCOCK v. PINTO & Co. (IN THE NAME OF KUMMER)* (1925), 10 Tax Cas. 415, C. A.

## Part Penal Provisions.

**642a. Penalties—Power to compound.**—Under 1918 Act, s. 222 (1), the comrs. may compound any penalties, which in their opinion have been incurred, without any proceedings to

enforce such penalties having been taken.—*A.-G. v. JOHNSTONE* (1926), 136 L. T. 31; 10 Tax Cas 758.

## Part XI.—The Super Tax.

**644. Add. Annotation:**—As to (2) *Refd. Re Armaghdale, Craig v. Armaghdale* (1928), 44 T. L. R. 239.

**646a. Party chargeable dying insolvent—Super tax due in respect of several years—To what years appropriation of payments made.**—*Re CAMPBELL, COMMERCIAL BANK OF SCOTLAND v. CAMPBELL* (1923), 10 Tax Cas. 585.

**648. Add. Annotations:**—*Apprvd. Whitney v. I. R. Comrs.*, [1926] A. C. 37. *Refd. I. R. Comrs. v. Pakenham, I. R. Comrs. v. Longford* (1927), 96 L. J. K. B. 882.

**649. Add Citation:**—10 Tax Cas. 88.

*Add. Annotations:*—*Refd. Birt, Potter & Hughes v. I. R. Comrs.* (1927), 12 Tax Cas. 976; *I. R. Comrs. v. Pakenham, I. R. Comrs. v. Longford* (1927), 96 L. J. K. B. 882.

**654. Add. Annotations:**—As to (1) *Refd. Whitney v. I. R. Comrs.*, [1926] A. C. 37. *Generally, Refd. I. R. Comrs. v. Pakenham, I. R. Comrs. v. Longford, I. R. Comrs. v. Longford, Gascoigne v. I. R. Comrs.*, [1927] 1 K. B. 594.

**661. Add. Citations:**—[1926] 2 K. B. 246; 95

### PART IX. SECT. 3.

**634 i. Whether available—Not action for return of money—Assessment levied in default of return.**—*DR. R. N. SINGHA v. SECRETARY OF STATE FOR INDIA IN COUNCIL* (1927), 1 L. R. 5 Ran. 825.—*IND.*

### PART X.

**j i. — Laying information—Within what time.**—Criminal Code, s. 1142, applies to prosecutions under Income War Tax Act, 1917 (c. 28).—*R. v. DONEN*, [1925] 1 D. L. R. 1141; [1925] 1 W. W. R. 567; 43 Can. Crim. Cas. 271; 34 Man. L. R. 597.—*CAN.*

**j ii. — — — — —.**—An information under Income War Tax Act, 1917 (c. 28), s. 8, for failing to make a return of income within thirty days after demand made therefor, must be laid within six months from the day or days as to which accused is charged with being in default, Criminal Code, s. 1142, being applicable thereto.—*R. v. [1925] 2 D. L. R. 411. [1925] 1 W. W. R. 819; 43 Can. Crim. Cas. 325.—CAN.*

**j iii. — By "person who has not made return"—Who is.**—Where on being charged for failing to make a return after demand made therefor, accused satisfies the magistrate that he had made a return when it was first

due, he is not a "person who has not made a return" within Income War Tax Act, 1917 (c. 28), s. 8, & is under no liability for failing to make another return upon the demand.—*R. v. BATTERS*, [1925] 1 D. L. R. 726; [1925] 1 W. W. R. 275; 35 Man. L. R. 146.—*CAN.*

**j iv. — Appeal—"Criminal cause."**—*Resp. having pleaded guilty on an information laid for a breach of Income War Tax Act, 1917 (c. 28), s. 8, the magistrate decided that he could impose a lesser penalty than that imposed by sect. 9 (1), & his decision was affirmed on appeal:—Held: special leave to appeal to the Supreme Ct. could not be granted, the proceeding being a "criminal cause" within Supreme Ct. Act, s. 36.—R. v. BELL*, [1925] 2 D. L. R. 57; [1925] S. C. R. 59; 43 Can. Crim. Cas. 286.—*CAN.*

**sw. Proceedings under Income War Tax Act—By whom instituted.**—*R. v. ED (N. B.)* (1926), 47 Can. Crim. Cas. 196.—*CAN.*

**sx. — Appeals—Costs.**—*R. v. ED (N. B.)*, [1927] 3 D. L. R. 826; 48 Can. Crim. Cas. 246.—*CAN.*

### PART XI. SECT. 1.

**sz. At what rate leviable—Unincorporated association converted into** (.)—*INCOME TAX COMR. v.*

*WESTERN INDIA TURF CLUB* (1927), 55 L. R. Ind. 14.—*IND.*

### PART XI. SECT. 3, SUB-SECT. 2.—B.

**pi. — — — — — For payment of death duties.**—*Testator, who died in 1919 possessed of large heritable estates, directed his trustees to convey "as soon as convenient after my death" his heritable estates to his widow in life rent & to certain persons in fee. He provided that his trustees should have "all powers of administration competent to a fee-simple proprietor," & authorised them to sell, lease, or feu any parts of the estate. The death duties amounted to £34,000, & the trustees arranged to pay them by sixteen half-yearly instalments. To meet these instalments it was necessary to sell part of the lands, testator's movable estate being insufficient to pay the duties. Pending realisation of sufficient heritage to meet the death duties, which was not completed till 1925, the trustees retained the estates in their own hands, & paid the free annual income to the widow for her maintenance. The widow having been assessed to super tax upon the basis of the assessments made on the whole heritage under Schedule A.:—*Held: she was assessable only on the income actually received by her during the year.—De ROBECK v. INLAND REVENUE COMRS.*, [1927] S. C. 235.—*SCOT.**

L. J. K. B. 694; 134 L. T. 699; 11 Tax Cas. 181.

*Add. Annotation:—*Reid. I. R. Comrs. v. Wright, [1927] 1 K. B. 333.

662. *Add. Citations:—*134 L. T. 754; 10 Tax Cas. 351.

662a. ————.]—A co. having a sum consisting of accumulated profits standing to the credit of its reserve fund & being empowered so to do by its arts. of assocn., passed resolutions that its capital should be increased by the creation of new shares, & that it was desirable to capitalise the sum & make it available for distribution among the shareholders as capital free from income tax, & further resolutions pursuant to which the sum was applied in payment up of the new shares, which were to be offered to the shareholders in proportion to their existing shares with an option to them either to accept the new shares so fully paid up, or to take their nominal value in cash. A shareholder having accepted the whole of the new shares offered to him as fully paid, was assessed to super tax in respect thereof. The Special Comrs. having discharged the assessment:—*Held*: so far as the question raised was a matter of fact, it was concluded against the revenue by the finding of the Comrs., & so far as it was a matter of law, it was concluded against the revenue by *Bouch v. Sproule* (1887), 12 App. Cas. 385, *Inland Revenue Comrs. v. Blott*, *Inland Revenue Comrs. v. Greenwood*, No. 663, & *Inland Revenue Comrs. v. Fisher's Executors*, No. 664, the co. being dominant for all purposes, & the shares not bearing the character of income.—INLAND REVENUE COMRS. v. WRIGHT, [1927] 1 K. B. 333; 95 L. J. K. B. 982; 135 L. T. 718; 11 Tax Cas. 181, C. A.; *reusg.* S. C. *sub nom.* INLAND REVENUE COMRS. v. COKE, SAME v. WRIGHT, [1926] 2 K. B. 246.

*Annotation:—*Distd. *Parker v. Chapman* (1928), 138 L. T. 729.

662b. ———— On amalgamation of company.]—*Held*: part of resp.'s income.—INLAND REVENUE COMRS. v. ROBERTS (1927), 13 Tax Cas. 277, C. A.

663. *Add. Annotations:—*Apld. I. R. Comrs. v. Fisher's Exors., [1926] A. C. 395; I. R. Comrs. v. Wright (1926), 95 L. J. K. B. 982. *Distd.* *Parker v. Chapman* (1928), 138 L. T. 729. *Reid.* *Whitmore v. I. R. Comrs.* (1925), 10 Tax Cas. 645; *Martin v. Lowry*, *Martin v. I. R. Comrs.*, [1926] 1 K. B. 550; *Baker v. Archer-Shee*, [1927] A. C. 844.

664. *Add. Citations:—*[1926] A. C. 395; 95 L. J. K. B. 487; 134 L. T. 681; 10 Tax Cas. 302, H. L.

*Add. Annotations:—*Folld. *Whitmore v. I. R. Comrs.* (1925), 10 Tax Cas. 645. *Apld.* I. R. Comrs. v. Wright (1926), 95 L. J. K. B. 982.

664a. ————.]—A limited co. appropriated for distribution among its ordinary shareholders as a capital bonus £200,000 undivided profits which had been carried to the credit of its reserve account, the amount to be applied (1) in subscribing for one

hundred & fifty £1,000 4 per cent. debentures of the co., & (2) in paying up in full fifty thousand £1 unissued ordinary shares of the co. All the ordinary shares were held by one of the directors. The debentures, all of which were issued to this shareholder, were redeemable at one month's notice by the co. at any time, & at one month's notice by the holder after May 25, 1920. On Apr. 16, 1920, the whole of the £150,000 due on the debentures was paid by the co. to the holder, interest being waived by him, & the co. thereupon borrowed £72,500 from him at 6 per cent. interest, a liability reduced to £33,117 by June 30, 1920:—*Held*: the debentures constituted a capital receipt in the hands of the shareholder, & he was not assessable to super tax for the year 1920–21 in respect of the amount of the debentures.—WHITMORE v. INLAND REVENUE COMRS. (1925), 10 Tax Cas. 645.

665. *Add. Annotations:—*Reid. I. R. Comrs. v. Fisher's Exors., [1926] A. C. 395; I. R. Comrs. v. Wright (1926), 95 L. J. K. B. 982.

666. For the existing paragraph substitute the following paragraph:—

*Distribution of profits—Assets of company written up—Loans to directors written off.]—*A partnership business was converted into a limited co. in 1916, practically the whole of the shares therein being held by two resps., the original partners, who were brothers, & were also the governing directors. The accounts showed profits of £117,000 for the three years ending Dec. 1919, but no dividends were declared or paid. The co., having power to lend money, granted loans amounting to £283,000 to resps. at 5 per cent. interest, against which the capital assets were increased in value by £226,000 & profits drawn upon to the extent of £57,000. The actual cash lent was mainly provided by a bank overdraft. At a later date resps. duly passed resolutions purporting to cancel the debt of £283,000 by writing it off against the general reserve fund. Resps. having been assessed to super tax upon £283,000:—*Held*: (1) the loans were genuine loans, which gave rise to no liability to super tax, even if cancelled, except as to the £57,000 taken from profit & loss account; (2) the purported release of the debt was wholly invalid & ineffectual, & resps. remained liable to the co. to repay the whole amount of the £283,000 but were not liable for any super tax thereon.—HALL v. INLAND REVENUE COMRS. (1926), 135 L. T. 759; 11 Tax Cas. 24, C. A.

668. *Add. Citations:—*95 L. J. K. B. 465; 42 T. L. R. 239; 70 Sol. Jo. 366; 10 Tax Cas. 235.

*Add. Annotation:—*Dbtd. I. R. Comrs. v. Pakenham, I. R. Comrs. v. Longford, I. R. Comrs. v. Longford, *Gascoigne v. I. R. Comrs.*, [1927] 1 K. B. 594.

671a. Loans to controlling shareholder of private company—No dividends declared.]—Applt. was the controlling shareholder of five

# PART XI., SECT. 3, SUB-SECT. 2.—C.

sa. *Income received by settlor under voluntary settlement—Deductions—Outgoings by trustees.]—Held*: only the free income paid over to the settlor after payment of the outgoings by the trustees, with the appropriate addition

for income tax, was his income for super tax purposes.—INLAND REVENUE COMRS. v. HAMILTON (LORD) OF DALZELL (1926), 10 Tax Cas. 406.—SCOT.

sb. *Free life rent use & enjoyment of house—All outgoings except tenant's taxes paid by trustees.]—Held*: the

assessments made to include the outgoings paid by the trustees, as increased by the appropriate addition for income tax, were properly made.—DONALDSON'S EXECUTORS v. INLAND REVENUE COMRS. (1927), 13 Tax. Cas. SCOT.



private limited cos. From time to time he withdrew from the business of each of the cos. sums which he used to finance the purchase in his own name of premises to be occupied by himself trading as a firm. The sums so withdrawn were described in the cos.' accounts as "loans" to applt. trading as such firm. Each of the cos. had power to advance money on loan, with or without security, but, while in some cases the loans shown in the accounts to have been made to applt. were subsequently approved formally in general meeting, no previous formal authorisation was given for any of the loans. The loans were not secured by any document, & no provision was made as to repayment or interest thereon. None of the cos. ever declared a dividend for any of the years material to the case. The Special Comrs. decided that the loans in question had not been made in the course of the businesses carried on by the cos., & that they were not genuine loans but constituted income of applt. for the purposes of super tax:—*Held*: there was ample evidence before the Comrs. to support their conclusion of fact.—*JACOBS v. INLAND REVENUE COMRS.* (1925), 10 Tax Cas. 1.

672. *Add. Citation*:—134 L. T. 408

672a. *Arrears of interest received by purchaser of bonds.*—Where a taxpayer purchases bearer bonds, on which the interest for several years is in arrear, & his purchase confers upon him the right to the arrears, & several years' arrears are subsequently paid to him in one sum, the whole of that sum forms for the purpose of super tax, under 1918 Act, s. 5 (3) (c), part of his income for the year in which payment was received.—*LEIGH v. INLAND REVENUE COMRS.*, [1928] 1 K. B. 73; 96 L. J. K. B. 853; 137 L. T. 303; 43 T. L. R. 528; 11 Tax Cas. 590.

673. *Add. Citations*:—135 L. T. 272; *affd.* (1928). 139 L. T. 26; 44 T. L. R. 420; 72 Sol. Jo. 239, C. A.

673a. *Income received by executor before assent to legacy.*—Under the will of his father, who died in Aug. 1921, resp. was entitled to a specific legacy of certain shares in two cos. Owing to difficulties in administration the exors. did not assent to the legacy until June, 1924, & in the meantime dividends had been declared upon the shares in Feb. & Aug. 1923, & in Mar. 1924, which dividends were retained by the exors. until their assent in June, 1924. Resp. was assessed to super tax upon these dividends for the years ending Apr. 5, 1924, & Apr. 5, 1925, respectively, on the basis that they were his income for the years when such dividends were payable by the cos. Resp. contended that as he was not in a position to require payment of the dividends from the exors. until June, 1924, they were not his income or receivable by him until then, & that he was wrongly assessed:—*Held*: the doctrine of relation of the exor.'s assent to the date of the death applied, & resp. was rightly assessed.—*INLAND REVENUE COMRS. v. HAWLEY*, [1928] 1 K. B. 578; 97 L. J. K. B. 191; 138 L. T. 710; 13 Tax Cas. 327.

674a. *Annual value of family mansion occupied*

*under will.*—*Held*: the occupant of a family mansion, under the terms of a will by which trustees were given general powers of management of the real estate & a discretion to admit to the mansion the present occupant or certain members of his family during his lifetime, must be regarded as being in occupation under the will, & the profits & gains representing the annual value of the house formed part of his income for purposes of super tax.—*TOLLEMACHE v. INLAND REVENUE COMRS.* (1926), 96 L. J. K. B. 766; 136 L. T. 444; 43 T. L. R. 58; 11 Tax Cas. 277.

*Annotation*:—*Reid. Shanks v. I. R. Comrs.* (1928), 45 T. L. R. 28.

674b. *Difference between net Schedule A. assessment & reduced rental paid under lease.*—Resp. negotiated for a lease of a house at a rent of £135 *per annum*, but it was eventually agreed that if resp. would pay £683, which was necessary to put the premises in a fit state for habitation, a lease would be granted at a rent of £35 *per annum*. The sum of £683 was paid before the execution of the lease. The circumstances in which the rent was fixed at £35 *per annum* were not set out in the lease, which was for a term of seven years, shortly afterwards extended for another year in consideration of resp. contributing £141 towards further repairs, but it was agreed therein that the rent under any new lease should be £140 *per annum*:—*Held*: the sums paid by resp. for repairs at the beginning of his tenancy were capital expenditure, & the difference between the net Schedule A. assessment on the house & the rent of £35 actually paid under the lease formed part of his total income for super tax purposes.—*INLAND REVENUE COMRS. v. FARGUS* (1926), 10 Tax Cas. 665.

*Annotation*:—*Reid. Shanks v. I. R. Comrs.* (1928), 45 T. L. R. 28.

674c. *Beneficial occupation—Right of residence in house rent free.*—*SHANKS v. INLAND REVENUE COMRS.*, No. 11a, *ante*.

674d. *Profits of partnership—Executor of deceased partner becoming partner.*—Applt. was the sole extrix. & residuary legatee of her late husband, who, until his death in 1916, was a partner in a firm. At the time of his death large sums were owing to the firm from residents in enemy countries, & by arrangement with the Inland Revenue these were allowed as bad debts, on the understanding that any sums received in respect of them should be brought into account for income tax as profits of the firm of the year in which they were received. On her husband's death applt. became a partner in the firm. In 1921 a sum was received in respect of the enemy debts, in respect of which the firm was assessed to income tax in the year ended Apr. 5, 1923. By arrangement between the partners applt. bore a proportion of the assessment in respect of the sum so received proportionate to her late husband's share of the profits:—*Held*: no part of the sum received in respect of the enemy debts formed any part of applt.'s total income for super tax purposes.—*LASSEN v. INLAND REVENUE COMRS.* (1927), 138 L. T. 463; 13 Tax Cas. 229.

PART XI. SECT. 3, SUB-SECT. 3.—A. *st. Lump sum paid to retiring partner.*—One of the partners of a

firm having retired, the partnership business was continued by the remaining partners, & the retiring partner

received £1,500 "in full satisfaction of his whole share & interest in the profits of the year current at the date of

680. *Add. Annotation*:—**Refd.** *Hartland v. Dig- gines*, [1926] A. C. 289.

683. *Add. Annotations*:—**Refd.** *I. R. Comrs. v. Pakenham*, *I. R. Comrs. v. Longford*, *I. R. Comrs. v. Longford*, *Gascoigne v. I. R. Comrs.*, [1927] 1 K. B. 594; *Jones v. Wright* (1927), 139 L. T. 43.

685. *Add. Annotation*:—*Generally*, **Refd.** *I. R. Comrs. v. Pakenham*, *I. R. Comrs. v. Longford* (1927), 96 L. J. K. B. 882.

691a. ——— Or settlement.]—Where trustees of a settlement set apart certain sums annually for the maintenance of an infant beneficiary & allow the balance of the income to accumulate, the income that is being accumulated is “receivable” by the infant within 1918 Act, s. 5 (3) (c), & he is liable to be assessed to super tax in respect of it. But representative assessments to super tax cannot be made upon the trustees or the guardian of the infant beneficiary, either in respect of the actual total income of the infant, or in respect of a total income limited, as regards the particular trustee or guardian, to that income with which the trust or guardianship is concerned.—**INLAND REVENUE COMRS. v. LONGFORD (COUNTESS)**, **SAME v. PAKENHAM**, [1928] A. C. 252; 97 L. J. K. B. 438; 139 L. T. 121; 44 T. L. R. 410, H. L.

696a. ———.]—By his will testator bequeathed

dissolution of the original partnership,” & it was further provided that there should be paid to him quarterly “out of the future profits of the business” sums amounting to £500 for the first year, & diminishing gradually to £100 for the fifth year:—*Held*: (1) the

£1,500 was not a share of the profits of the firm, but the price or consideration paid for a discharge by the retiring partner of his claim to participate in the profits of the firm prior to his retirement, & the agreement did not affect the ascertainment of their

to his wife an annuity of such a sum as, after allowing for income tax at the highest rate for the time being & for super tax, would yield her, free of all such tax, a cumulative net yearly sum of £3,500, & directed that there should be no apportionment of super tax between the annuity & the rest of his wife’s income, but that the whole of the super tax payable by his wife up to but not exceeding super tax on £3,500 a year, with the income tax thereon added to it, should be attributed to the annuity & paid by his trustees:—*Held*: the trustees were not liable to repay to the annuitant out of residue a sum arrived at on the footing that the annuity was to bear the highest rates of super tax payable on the annuitant’s total income, but were liable for no more than what would be payable on a super taxable sum of £3,500 with the income tax added thereto, namely, at the present rate of income tax, £4,200. With the present exemption, from super tax, of the first £2,000 of the income, the trustees would thus have to pay the super tax payable on a total income of £6,200.—*Re ARMAGHDALE (LORD)*, *CRAIG v. ARMAGHDALE (LADY)* (1928), 44 T. L. R. 239.

697. *Add. Annotations*:—**Refd.** *Whitney v. I. R. Comrs.*, [1926] A. C. 37; *I. R. Comrs. v. Pakenham*, *I. R. Comrs. v. Longford* (1927), 96 L. J. K. B. 882.

share of the profits up to that date; (2) the quarterly payments “out of the future profits” did fall to be taken into account in estimating their profits after that date.—*RUTHERFORD v. INLAND REVENUE COMRS.*, [1924] S. C. 689; 10 Tax Cas. 683.—**SCOT.**

## INDUSTRIAL, PROVIDENT AND SIMILAR SOCIETIES.

## Part V.—Membership.

44. *Add. Annotations:—As to (1) Overd.* Biddulph & District Agricultural Soc. v. Agricultural Wholesale Soc., [1927] A. C. 76. *Consd. Re* Wilts. & Somerset Farmers, [1928] Ch. 809.

45. *Add. Citation:—affd. sub nom.* BIDDULPH & DISTRICT AGRICULTURAL SOCIETY v. AGRICULTURAL WHOLESALE SOCIETY, [1927] A. C. 76; 95 L. J. Ch. 576; 136 L. T. 163; 42 T. L. R. 761, H. L.

*Add. Annotation:—Folld. Re* Wilts. & Somerset Farmers (1928), 45 T. L. R. 112.

45a. ———.]—A rule of a society registered under 1893 Act originally provided:

“Individual members shall hold at least one share for every twenty acres or fraction of twenty acres farmed by them up to 500 acres, & at least one share for every forty acres or fraction of forty acres above 500.” By successive amendments the words “one share” were altered to “shares of the nominal value of £5.” Applts. had become members of the society before the date of the last amendment, & they took no steps for the purpose of dissenting from it:—*Held*: the rule as amended was not invalid, & was binding on applts.—*Re* WILTS & SOMERSET FARMERS, LTD. (1928), 45 T. L. R. 112, C. A.

## Part VII.—Disputes.

57. *Add. Annotation:—As to (2) Refd.* Biddulph & District Agricultural Soc. v. Agricultural Wholesale Soc., [1927] A. C. 76.

## PART VI. SECT. 2.

*sf. Power to borrow—Restricted by rules.*]—Where the rules of a society registered under Industrial & Provident Societies Act, 1908, which has no implied power to borrow money, authorise only borrowing by taking deposits or on bonds, borrowing by means of debentures is unauthorised & *ultra vires*.—*SADLER v. AUCKLAND CO-OPERATIVE SOCIETY, LTD.*, [1926] N. Z. L. R. 84.—N.Z.

*sk. — Duty of lender.*]—A person proposing to lend money to a society

registered under Industrial & Provident Societies Act, 1908, must satisfy himself as to its power to borrow, & must see that the loan which he is about to make is within the limits of that power.—*SADLER v. AUCKLAND CO-OPERATIVE SOCIETY, LTD.*, [1926] N. Z. L. R. 84.—N.Z.

*sm. Power to lend—Rural credits society.*]—A rural credits society incorporated under Rural Credits Act, C. A., 1924 (c. 173), has no power to lend money directly, but merely power to guarantee loans, & a loan made by

the society cannot give it a lien or charge under the Act.—*ROBLIN RURAL CREDITS SOCIETY v. NEWTON*, [1927] 1 D. L. R. 105; 36 Man. L. R. 117; [1926] 3 W. W. R. 569.—CAN.

## PART X. SECT. 1, SUB-SECT. 1.

*sp Cancellation of registry.*]—The ct. will make an order to wind up a society registered under 1893 Act, notwithstanding the cancellation of the registry under sect. 9 of that Act.—*Re* CASTLECOMER CO-OPERATIVE SOCIETY, [1926] I. R. 238.—IR.



# INFANTS AND CHILDREN.

## Part III.—Civil and Legal Capacity and Disabilities.

- 42a. —.]—*Re KEANE, LUMLEY v. DESBOROUGH* (1871), L. R. 12 Eq. 115; 24 L. T. 780; 19 W. R. 1025; *sub nom. Re KEANE, Re LUMLEY v. DESBOROUGH*, 40 L. J. Ch. 617.  
*Annotations*:—*Mentd.* *Bulley v. Bulley* (1878), 8 Ch. D. 479;  
*Charlton v. Charlton* (1883), 52 L. J. Ch. 971; *Greer v. Young* (1883), 24 Ch. D. 545; *Re Glanville, Ellis v. Johnson* (1886), 31 Ch. D. 532; *Michell v. Michell*, [1891] P. 166.  
 62. *Add. Annotation*:—*Re L. A. & B. F. M., Official Receiver v. The Debtors* (1926), 95 L. J. Ch. 258.

## Part V.—Contracts.

194. *Add. Annotation*:—*Re L. A. & B. F. M., Official Receiver v. The Debtors* (1926), 95 L. J. Ch. 258.  
 209. *Add. Annotation*:—*Re L. A. & B. F. M., Official Receiver v. The Debtors* (1926), 95 L. J. Ch. 258.  
 210. *Add. Annotation*:—*Consd. Pontypridd Grdns. v. Drew* (1926), 95 L. J. K. B. 1080.  
 347. *Add. Citations*:—95 L. J. Ch. 258; [1926] B. & C. R. 19.

## Part VI.—Misrepresentation as to Age.

- 363a. *S. P. BARTLETT v. WELLS* (1862), 1 B. & S. 836; 31 L. J. Q. B. 57; 5 L. T. 607; 28 J. P. 228; 8 Jur. N. S. 762; 10 W. R. 229; 121 E. R. 924.  
*Annotations*:—*Folld. De Roo v. Foster* (1862), 12 C. B. N. S. 272. *Consd. Miller v. Blaukley* (1878), 38 L. T. 527. *Re L. A. & B. F. M., Official Receiver v. The Debtors* (1926), 95 L. J. Ch. 258. *Mentd. Re Llanover S. E.*, [1926] Ch. 626.  
*v. Mitchell* (1863), 9 Jur. N. S. 968; *Leslie v. Sheill*, [1914] 3 K. B. 607.  
 373. *Add. Annotations*:—*Re L. A. & B. F. M., Official Receiver v. The Debtors* (1926), 95 L. J. Ch. 258. *Mentd. Re Llanover S. E.*, [1926] Ch. 626.

## Part VIII.—Property.

- 454a. —.]—*SALSBURY v. BAGOTT* (1677), as reported in 2 Swan. 603; 36 E. R. 745.  
*Annotations*:—*Consd. Field v. Moore, Field v. Brown* (1855), 7 De G. M. & G. 691. *Mentd. Glumdaleitch d. Naunton v. Loman* (1775), 2 Win. Bl. 993.  
 538a. —.]—*Right to sell timber.*—*MASON v. MASON* (1724), cited in Amb. at p. 371; Mos. at p. 224; 27 E. R. 246.  
*Annotation*:—*Consd. Tullit v. Tullit* (1759), Amb. 370.  
 557. *Add. Annotation*:—*Re L. A. & B. F. M., Official Receiver v. The Debtors* (1926), 95 L. J. Ch. 258.  
 657a. —.]—*HASTINGS v. ORDE* (1840), 11 Sim. 205; 59 E. R. 853.  
*Annotations*:—*Mentd. Evans v. Carrington* (1859), 1 John. & H. 598; *Meredyth v. Meredyth*, [1895] P. 92.  
 666. *Add. Annotation*:—*Generally, Re L. A. & B. F. M., Official Receiver v. The Debtors* (1926), 95 L. J. Ch. 258. *Mentd. Re Llanover S. E.*, [1926] Ch. 626.  
 669a. *Covenant to disentail & resettle—Ineffective as resettlement.*—*NIGHTINGALE v. FERRERS (EARL)* (1733), 3 P. Wms. 206; 24 E. R. 1031.  
*Annotation*:—*Re L. A. & B. F. M., Official Receiver v. The Debtors* (1926), 95 L. J. Ch. 258. *Mentd. Re Llanover S. E.*, [1926] Ch. 626.

### PART V. SECT. 3.

k. *On appeal*, 28 Man. L. R. 229.

### PART V. SECT. 4, SUB-SECT. 2.

188 vii. —.]—*SHEPARD v. BRUNER* (1915), 10 D. L. R. 869; 31 W. L. R. 721.—CAN.

### PART V. SECT. 4, SUB-SECT. 3.

b. *On appeal*, 15 O. L. R. 53.

### PART VI. SECT. 2, SUB-SECT. 2.

376 iii. —.]—Where an infant has obtained an advantage by falsely stating himself to be of full age, equity will restore his ill-gotten gains & release the party deceived from obligations or acts in law induced by the fraud.—*KUMAR GANGANAND SINGH v. MAHARAJAH SIR RAMESHWAR SINGH BAHADUR* (1927), L. L. R. 6 Pat. 388.—IND.

### PART VII. SECT. 1.

sf. *General rule.*—An infant is liable for his torts of all kinds, & the tender of his age is immaterial, except

when the action is founded on malice or want of care.—*CONTINENTAL GUARANTY CORPN. OF CANADA, LTD. v. MARK (B. C.)*, [1926] 4 D. L. R. 707; [1926] 3 W. W. R. 428.—CAN.

381 i. *Tort independent of contract—Infant liable.*—An infant who sells goods, of which he is in possession under a lien agreement, is liable in damages for the conversion, since it is not a wrong connected with the contract.—*MCCALLUM v. URCHAK* (Alta.), [1926] 1 W. W. R. 137.—CAN.

q i. —.]—A father, who negligently left a shot gun & shells where they were accessible to his eleven-year-old son:—*Held*: liable in damages to infant pltf., who was injured by the discharge of the gun in the hands of the son. The fact that the mother of pltf. might have prevented the accident did not prevent recovery against the father & son by pltf.—*BLACK v. HUNTER*, [1925] 4 D. L. R. 285; [1925] 3 W. W. R. 393.—CAN.

sj. *Liability of stranger.*—Pltf. was injured by a bullet from an air-rifle fired

from a window in deft.'s house by a boy of fifteen years, a friend of deft.'s fourteen years old son:—*Held*: on the facts negligence on the part of deft. was not shown, & he could not be made liable for the wrongful act of the boy.—*MONTESANTO v. DI UBALDO*, [1927] 3 D. L. R. 1045; 60 O. L. R. 610.—CAN.

### PART VIII. SECT. 1, SUB-SECT. 1.—C. (a).

c i. —.]—*Held*: the estate of an infant, being an estate tail in possession, could be sold under R. S. O. 1877, c. 137.—*Re GRAY* (1895), 26 O. R. 355.—CAN.

sk. *Execution of conveyance by infant—Application—By petition.*—*Re MILLS, OWEN v. CAMPBELL* (1854), 4 Gr. 630.—CAN.

### PART VIII. SECT. 3, SUB-SECT. 1.

r i. —.]—A conveyance of land or mtge. made by an infant is not absolutely void, but voidable.—*MILLS v. DAVIS* (1860), 9 C. P. 510.—CAN

685a. — Not acceptance of jointure.]—*LUCY v. MOORE* (1730), 4 Bro. Parl. Cas. 343; 2 E. R. 232, H. L.

731a. Settlement with sanction of court—Effect of.]—A settlement made with the sanction of the ct. on the marriage of an infant, of certain funds alleged to represent the infant's

share under a will:—*Held*: not to operate as a confirmation of prior dealings by the trustees of the will.—*ZAMBACO v. CASSAVETTI* (1871), L. R. 11 Eq. 439; 24 L. T. 770.

Annotations:—*Mentd.* *Dowbiggin v. Trotter*, *Trotter v. Trotter* (1872), 20 W. R. 794; *Thomson v. S. E. Ry.*, *S. E. Ry. v. Thomson* (1882), 30 W. R. 537.

## Part X.—Maintenance and Advancement.

810. *Add. Annotations*:—*Consd.* *Hyman v. Hyman*, *Hughes v. Hughes* (1928), 139 L. T. 416. *Refd.* *H. v. H.* (1928), 97 L. J. P. 84.

831a. Ascertainment of period of twenty-one years.]—Testator, who died in Nov. 1893, gave his net residue, subject to certain life annuities which did not exhaust the income, in trust for a bachelor's children who should attain twenty-one, with a gift over in default. In Mar. 1896, the judge ordered the surplus income to be accumulated for twenty-one years from testator's death, *i.e.*, until Nov. 6, 1914, or until the bachelor's previous death without leaving issue. During this twenty-one years' period the bachelor married & died leaving three children, two of whom were still living. Temporary orders for maintenance were made. In Nov. 1914, the judge declared that as from Nov. 6, 1914, the two children then living were entitled to maintenance under Conveyancing Act, 1881 (c. 41), s. 43 (1), but that notwithstanding sub-sect. 2 any income not so applied passed as on an intestacy. In July, 1927, the elder child attained twenty-one, & her contingent moiety vested in possession. The question having arisen whether, having regard to Law of Property Act, 1925 (c. 20), s. 165, the order of Nov. 1914 ought still to be acted

on with regard to the younger child's contingent moiety:—*Held*: (1) the effect of sect. 165 was that the years of minority accumulation, which commenced during the twenty-one years' period, were not to be reckoned in ascertaining that period, & the income of the younger child's contingent moiety must in the first place be applied for her maintenance under Conveyancing Act, 1881, s. 43 (1), & the balance could be validly accumulated under sub-sect. 2; (2) quite apart from sect. 165, the moment the elder child attained a vested interest as a member of the contingent class, there could be no question of intestacy as to any part of the capital or income.—*Re MABER, WARD v. MABER*, [1928] Ch. 88; 97 L. J. Ch. 101; 138 L. T. 318.

935. *Add. Annotation*:—*Mentd.* *First Garden City, Ltd. v. Bonham-Carter*, [1928] Ch. 53.

1066. *Add. Annotation*:—*As to* (2) *Folld.* *Re Stokes, Bowen v. Davidson*, [1928] Ch. 716.

1074a. To enable business to be carried on—Giving guarantee for firm of which son was partner.]—*Held*: an advance to the son, within the description in a settlement of money advanced "to enable him to carry on his business."—*BERRY v. MORSE* (1847), 1 H. L. Cas. 71; 9 E. R. 678, H. L.

## Part XI.—Care and Custody.

1156a. —.]—The welfare of a child is the paramount consideration guiding the ct. in making an order as to its custody. But it is not the only consideration, & the next consideration is the right of a parent, particularly of a parent whose conduct has not been impeached, & effect will be given to a

parent's right & desire for the custody of his child where the welfare of that child does not require a contrary decision.—*Re THAIN, THAIN v. TAYLOR*, [1926] Ch. 676; 95 L. J. Ch. 292; 135 L. T. 99; 70 Sol. Jo. 634, C. A.

### PART X. SECT. 1, SUB-SECT. 2.—A.

al. *Agreement by third party to maintain infant.*]—Where any person has expressly or impliedly undertaken to pay for the maintenance of a child, neither the child himself, nor, if he is dead, his estate is liable for such maintenance.—*MCGUINNESS v. MCGUINNESS*, [1925] N. Z. L. R. 456.—N.Z.

### PART X. SECT. 1, SUB-SECT. 2.—H. (c).

934 i. *One fund supplementary to other—Resort had to primary fund first.*]—Testator directed that sums of £3,000 should be invested & held for each of his children, & should be paid over to each of them at the age of twenty-five, & empowered his trustees, for marriage or equipment in business, to pay to a child, although not yet of that age, any portion of that sum. The residue of his estate he left in life to his wife & in fee to his

children equally. In a question as to whether the wife's life interest or the income of the children's legacies was liable *primò loco* for the cost of maintaining & educating the children:—*Held*: as the children were vested in separate estate, the cost of their maintenance & education fell to be met in the first place out of the income of that estate.—*KER'S TRUSTEES v. KER*, [1927] S. C. 52.—SCOT.

### PART XI. SECT. 1.

sm. *Jurisdiction of Supreme Court—Of Ontario—Child adopted by defendant under Adoption Act, 1921—Effect of order of county court judge.*]—*CULLEN v. KEMP*, [1925] 4 D. L. R. 579.—CAN. sn. *Under Adoption Act.*]—*Re WARREN* (1926), 37 B. C. R. 322.—CAN.

PART XI. SECT. 2, SUB-SECT. 4.—A. r i. — *Validity of agreement.*]—*CHISHOLM v. CHISHOLM* (1908), 40 S. C. R. 115.—CAN.

### PART XI. SECT. 2, SUB-SECT. 4.—B.

1141 ii. —.]—Where a daughter, then being past fourteen years & eight months of age & not without adequate intelligence to make a reasonable choice, expressed her desire to remain with resp. with whom she had been living happily for seven years, the ct. refused a writ of *habeas corpus* to the mother.—*MARSHALL v. FOURNELLE*, [1927] 2 D. L. R. 173; [1927] S. C. R. 48.—CAN.

### PART XI. SECT. 4, SUB-SECT. 1.

1151 xx. —.]—*CODY v. CODY*, [1927] 3 D. L. R. 349; [1927] 1 W. W. R. 603; 21 Sask. L. R. 391.—CAN.

1154 iv. —.]—*Re YOUNG*, [1926] 1 D. L. R. 511; 58 N. S. R. 372.—CAN.

1154 v. —.]—*Re GEHM, GEHM v.*

## Part XIV.—Legal Proceedings.

1548. *Add. Annotation:—Mentd.* York Glass Co. v. Jubb (1925), 134 L. T. 36.
- 1563a. ———.]—PRACTICE NOTE, [1926] W. N. 8.
1695. *Add. Annotation:—Mentd.* Bennett v. Whitehead, [1926] 2 K. B. 380.
1698. *Add. Annotation:—Mentd.* Bennett v. Whitehead, [1926] 2 K. B. 380.
1751. *Add. Annotation:—Refd.* Re Clayton's Petn. (1927), 43 T. L. R. 659.
1841. For "Pltf.'s solr. ought to be appointed" read "Pltf.'s solr. ought not to be appointed."
1952. *Add. Annotation:—Apld.* Mansfield v. Robinson, [1928] 2 K. B. 353.
- 1961a. *Liability to solicitor employed by him—General rule.*—MARNELL v. PICKMORE (1796), 2 Esp. 472; 170 E. R. 424, N. P.
1993. *Add. Annotation:—Mentd.* Re Adelom, Oakshott v. Hawkins (1928), 72 Sol. Jo. 810.

GATJENS (B. C.), [1927] 4 D. L. R. 382.—CAN.

## PART XI. SECT. 4, SUB-SECT. 2.—A.

aa i. ———.]—A father will not be deprived of the custody of his children, merely because his wife prefers to live away from him.—*Re GRAY*, [1925] 4 D. L. R. 381.—CAN.

aa ii. *S. P. M. v. M.*, [1926] S. C. 778.—SCOT.

aa iii. ———.]—Where a wife has deserted her husband & taken their children with her, but is unable to prove such conduct against him as would justify her in doing so, there is no just cause to deprive him of his legal right to the custody of the children.—*Re DZYZ, Re ROZICKI* (Man.), [1927] 1 D. L. R. 1110; [1927] 1 W. W. R. 380.—CAN.

aa iv. ———.]—A father has an inalienable right to the custody of his minor son, unless there are overwhelming circumstances to the contrary.—*ABDUL AZIZ KHAN v. NANHE KHAN* (1926), 1 L. R. 49 All. 332.—IND.

aa v. ———.]—*Re SIMONSON, SIMONSON v. SLAATEN* (Sask.), [1927] 3 D. L. R. 543.—CAN.

aa vi. ———.]—On an application by a father to obtain from the mother custody of an infant son from six to seven years old, where there were no allegations of moral impropriety on either person's part:—*Held*: although from the point of view of the present happiness of the child, the ct. might hesitate to remove him from the custody of the mother, the paramount consideration of the future as well of the present welfare of the child, who was just approaching a time of life when a father's care & guidance would be all important, required that he should be in the custody of the father.—*Re HYLTON*, [1928] N. Z. L. R. 145.—N. Z.

## PART XI. SECT. 4, SUB-SECT. 2.—G.

o. *Revsd.*, [1925] 1 D. L. R. 761; [1925] 1 W. W. R. 378; 19 Sask. L. R. 247.

o i. ———.]—Where a child, upon the death of its mother, had been placed temporarily by the father in the care of a near relative under an arrangement whereby he was to pay for its maintenance, but he had failed to keep up the payments, & upon his remarriage the relative refused the custody of the child to its father:—*Held*: in the circumstance, the father had not surrendered his parental right over the child, nor had the *prima facie* presumption that it was for the child's benefit that it should be in the custody of its natural parent been displaced.—*Re MILLS*, [1928] N. Z. L. R. 158.—N. Z.

## PART XI. SECT. 4, SUB-SECT. 3.—A.

sp. *Child handed to father—& in custody of father's relations.*—A wife, living apart from her husband, met him in the street, placed the younger child of the marriage, a girl aged five

months & at that time in a delicate state of health, in his arms, & left the child with him. The mother made no inquiries as to the provision which the father was able to make for its care, nor did she afterwards make any inquiries as to its welfare. The father having died, the mother brought an action for delivery of the child against relatives of the father, in whose care the child had been placed by him. Circumstances in which the ct. ordered delivery of the child to the mother. *Seem*: the mother had not abandoned the child within Custody of Children Act, 1891 (c. 3).—*M'...* v. *HARDIE*, [1927] S. C. 344.—SCOT.

## PART XI. SECT. 7, SUB-SECT. 2.—A.

1221 i. *Infant to be freed from improper restraint.*—The writ of *habeas corpus* is the proper remedy of a mother who wishes to regain possession of her child illegally kept or detained from her.—*STEVENSON v. FLORANT*, [1925] 4 D. L. R. 530; [1925] S. C. R. 532; *affd.*, [1927] A. C. 211; 96 L. J. P. C. 1; 136 L. T. 265; 43 T. L. R. 6.—CAN.

## PART XI. SECT. 7, SUB-SECT. 2.—B. (c).

1239 i. *Nurse.*—The parents of a child placed it in the care of a nurse employed at an hospital shortly after its birth. The parents then had no home of their own, & were in poor circumstances, the mother was blind, & the father's sight seriously impaired. When the child was about three years old, the parents had a home of their own, & though the child was well treated at the hospital the parents did not have free access to him, & were losing touch with him:—*Held*: the child should be handed over to the father.—*Re ROGERS* (1923), 19 Tas. L. R. 11.—AUS.

## PART XI. SECT. 8, SUB-SECT. 3.

e i. ——— *Grounds for setting order—Order signed by two justices—Only one present at hearing.*—*Re MAILMAN*, [1927] 2 D. L. R. 529; 47 Can. Crim. Cas. 106; 59 N. S. R. 61; *subsequent proceedings*, [1927] 3 D. L. R. 1111; 59 N. S. R. 384.—CAN.

## PART XII. SECT. 1, SUB-SECT. 2.

1265 vi. ——— *Unless prejudicial to child.*—*Re LAURIN* (1927), 60 O. L. R. 409.—CAN.

k i. ——— *Not interfered with—Effect of Child Welfare Act, C. A., 1924 (c. 30), ss. 2, 186.*—*Re SKALESKI, POPHAM v. BERTRAND*, [1927] 1 D. L. R. 781; [1927] 1 W. W. R. 355; 47 Can. Crim. Cas. 81; 36 Man. L. R. 221.—CAN.

## PART XIII. SECT. 1.

st. *Infants Act, R. S. S., 1920 (c. 155), s. 20—Effect of.*—*Re NAKAUCHI ESTATE*, [1927] 3 D. L. R. 1087; [1927] 2 W. W. R. 607; 21 Sask. L. R. 673.—CAN.

SHERWIN ESTATE, *Re LANGLEY ESTATE*, [1927]

3 D. L. R. 1098; [1927] 2 W. W. R. 609; 21 Sask. L. R. 644.—CAN.

## PART XIII. SECT. 5, SUB-SECT. 1.—B.

sx. *Not infant having interest in property of undivided Mitashara family.*—*GHARIB-UL-LAH v. KHALAK SINGH* (1903), 19 T. L. R. 447, P. C.—IND.

## PART XIII. SECT. 5, SUB-SECT. 2.

sa. *Consent of official guardian—Withdrawal of.*—*Re ADMINISTRATION ACT, Re HADDON*, [1927] 2 D. L. R. 747; [1927] 1 W. W. R. 737; 38 B. C. R. 328.—CAN.

## PART XIV. SECT. 1, SUB-SECT. 1.

sd. *Consent or authority of next friend of infant plaintiff—Necessity for.*—*RYAN v. FRASK* (Alta.), [1926] 1 W. W. R. 772.—CAN.

## PART XIV. SECT. 1, SUB-SECT. 6.

sf. *General rule.*—Where a suit is brought by a minor pltf. to the knowledge of, & without objection from, deft., & pltf. becomes a major before the suit is heard & decided, it is not a nullity, & is maintainable.—*FURI BIBI v. KHOKAI MONDAL* (1927), 1 L. R. 55 Calc. 712.—IND.

## PART XIV. SECT. 1, SUB-SECT. 10.—B. (d).

h. *Revsd.*, 4 A. R. 449.

sg. *Applications as to property.*—On applications respecting the property of infants costs must be kept down & the cheapest & most expeditious procedure adopted. Where there is a choice as to the manner of procedure & the more expensive procedure is taken, the solr. can recover only those costs which would have been allowed him had the cheaper procedure been followed.—*ROYAL TRUST Co. v. BONSALE*, [1925] 3 D. L. R. 141; [1925] 2 W. W. R. 103; 19 Sask. L. R. 513.—CAN.

## PART XIV. SECT. 2, SUB-SECT. 2.—A.

1818 i. *Necessity for separate representation.*—*SHAIK ABDUL KARIM v. THAKURDAS THAKUR* (1928), 1 L. T. 55 Calc. 1241.—IND.

## PART XIV. SECT. 2, SUB-SECT. 2.—B. (b).

1856 i. *Power to consent—To decree.*—*KUMAR GANGANAND SINGH v. MAHARAJAH SIR RAMESHWAR SINGH BAHADUR*, No. 1916 i, *post*.

## PART XIV. SECT. 2, SUB-SECT. 7.—A.

1916 i. ——— *Where fraud or collusion can be alleged.*—A suit by a minor to set aside a consent decree, on the allegation that a fraud was practised not on the ct. but on himself, is maintainable.

It is the duty of a guardian *ad litem* to be as vigilant in guarding the interests of the minor as he would be expected to be if his own interests were involved, & the ct. will ordinarily



## Part XV.—Wards of Court.

2027. *Add. Annotation* :—**Apld.** *Greenway v. A.-G.* (1927), 44 T. L. R. 124. Lanyon, Lanyon v. Lanyon (1927), 43 T. L. R. 714.
2030. *Add. Annotation* :—*As to* (1) **Reid.** *Re* 2167a. ———.]—*Re OLIVE* (1863), 8 L. T. 567; 11 W. R. 819.  
*See, also*, No. 735, *ante*.

## Part XVII.—Protection of Infants.

2196. *Add. Citation* :—28 Cox, C. C. 43.

relieve the minor from the effect of a consent decree & give him an opportunity to defend the suit, if the guardian did no more than put his signature to a petition of compromise without considering for himself the question of benefit to the minor. But the ct. will not allow a minor to avoid a consent decree, if, in the circumstances, it considers that the settlement was for the benefit of the minor.—**KUMAR GANGANAND SINGH v. MAHARAJAH SIR RAMESHWAR SINGH BAHADUR** (1927), I. L. R. 6 Pat. 388.—**IND.**

**g i.** ——— *Negligence of guardian ad litem.*]—“Gross negligence,” which

may be interpreted as culpable neglect of the interests of a minor deft., on the part of his guardian *ad litem* will entitle the minor to the avoidance of proceedings taken against him. The negligence must be such negligence as leads to the loss of a right which, if the suit had been defended with due care, must have been successfully asserted.—**BRIJ RAJ v. RAM SARUP** (1925), I. L. R. 48 All. 44.—**IND.**

### PART XIV. SECT. 2, SUB-SECT. 7.—B.

1922 ii. ———.]—**CLIBBORN v. FORSTALL** (1843), 5 J. Eq. R. 531.—**IR.**

1922 iii. ———.]—A decree for a sale in a mtge. cause ought not to give the infant a day to show cause.—**CLINTON v. BERNARD** (1844), Drury temp. Sug. 287.—**IR.**

1922 iv. ———.]—A day to show cause ought not to be given to the minor.—**HUTTON v. MAYNE** (1846), 3 Jo. & Lat. —**IR.**

1922 v. ———.]—A final order of foreclosure should reserve a day for infant deft. to show cause.—**LONDON & CANADIAN LOAN & AGENCY CO. v. EVERETT** (1881), 8 P. R. 489.—**CAN.**

# INJUNCTION.

## Part II.—Jurisdiction.

14. *Add. Annotation*:—*As to* (1) *Refd.* Price v. Corpn. D'Energie De Montmagny, [1927] A. C. 363.
20. *Add. Annotation*:—*Appld.* Rex Co. & Rex Research Corpn. v. Muirhead & Comptroller-General of Patents (1926), 44 R. P. C. 38.
- 22a. ———.]—BEDDOW v. BEDDOW (1878), 9 Ch. D. 89; 47 L. J. Ch. 588; 26 W. R. 570.
- Annotations*:—*Consd.* North London Ry. v. G. N. Ry. (1883), 11 Q. B. D. 30. *Refd.* Thomas v. Williams (1880), 14 Ch. D. 864; Quartz Hill Consolidated Gold Mining Co. v. Beall (1882), 20 Ch. D. 501; Bonnard v. Perryman, [1891] 2 Ch. 269; Jackson v. Barry Ry., [1893] 1 Ch. 238.
28. *Add. Annotation*:—*Mentd.* North Shipping Co. v. Rank (1926), 43 T. L. R. 82.
39. *Add. Annotation*:—*Refd.* Hughes v. Satchell (1925), 134 L. T. 93.
40. *Add. Annotation*:—*Refd.* Preston v. Raphael Tuck, [1926] Ch. 667.
47. *Add. Annotation*:—*Refd.* Salisbury & Ford- ingbridge District Drainage Board v. Southern Tanning Co. (1920), Ltd., [1927] 2 K. B. 566.
54. *Add. Annotation*:—*Mentd.* Graigola Merthyr Co. v. Swansea Corpn., [1928] Ch. 235.

## Part III.—Interlocutory Injunctions.

- 105a. *S. P. GREAT WESTERN RY. CO. v. BIRMING- HAM & GLOUCESTER RY. CO.* (1844), 3 L. T. O. S. 317, L. C.
- 113a. ———.]—*NEW NIMROD CO., LTD. v. PERUVIAN PACIFIC RY., LTD., INTERNATIONAL CONSTRUCTION & FINANCE SYNDICATE, LTD. & CRANKSHAW* (1907), 51 Sol. Jo. 737.
177. *Add. Annotation*:—*Folld.* Wall v. Exchange Investment Corpn., [1926] Ch. 143.

## Part IV.—Perpetual Injunctions.

206. *Add. Annotation*:—*Mentd.* Attwood v. Llay Main Collieries, [1926] Ch. 444.
208. *Add. Annotation*:—*Mentd.* Drabble v. Hycolite Manufacturing Co. (1928), 44 T. L. R. 264.

## Part V.—Mandatory Injunctions.

267. *Add. Annotation*:—*Mentd.* Cohen v. Roche (1926), 95 L. J. K. B. 945.
270. *Add. Annotation*:—*As to* (1) *Consd.* Howard, Flanders v. Maldon Corpn. (1926), 135 L. T. 6.

## Part VI.—Injunction quia timet.

316. *Add. Annotation*:—*Mentd.* Attwood v. Llay Main Collieries, [1926] Ch. 444.
332. *Add. Annotation*:—*Refd.* Graigola Merthyr Co. v. Swansea Corpn., [1928] Ch. 235.
336. *Add. Annotation*:—*Refd.* Graigola Merthyr Co. v. Swansea Corpn., [1928] Ch. 235.
339. *Add. Annotation*:—*Refd.* Graigola Merthyr Co. v. Swansea Corpn., [1928] Ch. 235.

### PART II. SECT. 1.

*sa. General rule.*]—The discretionary power to grant an injunction must be exercised reasonably & in harmony with well-established principles.—PRATT v. SCHEVECK (Sask.), [1926] 4 D. L. R. 1169; [1926] 3 W. W. R. 657.—CAN.

13 iii. ———.]—KAULBACH v. BOYLAN (1906), 1 E. L. R. 136.—CAN.

### PART III. SECT. 1, SUB-SECT. 2.—B:

k i. ———.]—PRATT v. SCHEVECK (Sask.), [1926] 4 D. L. R. 1169; [1926] 3 W. W. R. 657.—CAN.

### PART III. SECT. 1, SUB-SECT. 2.—D.

i i. ———.]—*Injury to fishery.*—MOORE, ETC. v. A.-G., [1927] 1 R. 569.—IR.

PART III. SECT. 1, SUB-SECT. 2.—E.  
117 xvi. ———.]—MOORE, ETC. v. A.-G., [1927] 1 R. 569.—IR.

### PART III. SECT. 2.

194 i. *Whether granted after decision—To preserve property pending appeal.*]—Injunction to preserve rights pending an appeal, granted.—PREVEDOROS v. PREVEDOROS (B. C.), [1927] 3 W. W. R. 755.—CAN.

### PART V. SECT. 2.

240 ii. ———.]—To entitle pltf. to a mandatory injunction on an interlocutory application he must make out a strong *prima facie* case to the right which he asserts & for active interference by the ot. If his right is reasonably clear, & particularly if

there exists an urgent & paramount necessity for the injunction in order to prevent serious damage to pltf., the injunction will issue before trial.—PRATT v. SCHEVECK (Sask.), [1926] 4 D. L. R. 1169; [1926] 3 W. W. R. 657.—CAN.

### PART V. SECT. 3.

sd. *Injunction to remove building.*]—GILPINVILLE, LTD. v. DUMARESQU (N. S.), [1927] 1 D. L. R. 730.—CAN.

### PART V. SECT. 4.

267 ii. ———.]—Mandatory injunction refused, where the injury complained of was capable of being compensated by a small money payment, & it would be oppressive to grant a mandatory injunction.—CARPET IMPORT CO., LTD. v. BEATH & CO., LTD., [1927] N. Z. L. R. 37.—N.Z.

## Part VII.—Damages in lieu of or in addition to Injunction.

- 370.** *Add. Annotation* :—**Mentd.** Light v. West, [1926] 2 K. B. 238.
- 388.** *Add. Annotation* :—**Refd.** Bhagchand Dagdusa Gujrathi v. Secretary of State for India in Council (1927), 43 T. L. R. 617.
- 408.** *Add. Annotation* :—**As to** (1) **Refd.** Horton's Estate v. Beattie (1926), 42 T. L. R. 701.
- Consd.** Rely-A-Bell Burglar & Fire Alarm Co. v. Eisler, [1926] Ch. 609.

## Part VIII.—Effect of Conduct of Parties.

464. *Add. Annotation* :—**Mentd.** *Lynde v. Nash*,  
[1928] 2 K. B. 93.
551. *Add. Annotation* :—**Mentd.** *Grant v. Derwent*,  
[1928] Ch. 902.
568. *Add. Annotation* :—**Consd.** *Marbé v. George*  
*Edwardes (Daly's Theatre) (1927)*, 96 L. J.  
K. B. 980.
572. *Add. Annotation* :—**Consd.** *Marbé v. George*  
*Edwardes (Daly's Theatre) (1927)*, 96 L. J.  
K. B. 980.
579. *Add. Annotation* :—**Consd.** *Hyman v. Hyman*,  
*Hughes v. Hughes (1928)*. 139 L. T. 416.

## Part IX.—Against whom Injunction may be Granted.

- 585a. Public official.]—**REX CO. & REX RESEARCH CORPN. v. MUIRHEAD & COMPTROLLER-GENERAL OF PATENTS, No. 842a, *post*. **608. Add. Annotation :—**Refd. The Jupiter (1927), 137 L. T. 333.

**Part X. Matters in respect of which Injunction may be  
Granted.**

- 638a. **Enforcement of contract contrary to terms thereof.**]—Injunction refused. — **SAVAGE SOUTH AFRICA, LTD. v. LONDON EXHIBITIONS, LTD.** (1899), 43 Sol. Jo. 751.
649. *Add. Annotation* :—**Consd.** *Re Wait*, [1927] 1 Ch. 606.
674. *Add. Annotations* :—**Mentd.** Lord Strathcona S.S. Co. v. Dominion Coal Co., [1926] A. C. 108; *Price v. Corpn. D'Energie De Montmagny*, [1927] A. C. 363.
675. *Add. Annotation* :—**Refd.** *Torbay Hotel v. Jenkins*, [1927] 2 Ch. 225.
- 677a. —.]—Where a breach of a restrictive covenant causes substantial damage the ct. has no discretion to award damages in lieu of a mandatory injunction. This rule applies whether the covenant is broken by the original covenantor, or by an assignee with notice.—**ACHILLI v. TOVEILL**, [1927] 2 Ch. 243; 96 L. J. Ch. 493; 137 L. T. 805; 71 Sol. Jo. 745.
706. *Add. Annotations* :—**Refd.** Lord Strathcona S.S. Co. v. Dominion Coal Co., [1926] A. C. 108; *Rely-A-Bell Burglar & Fire Alarm Co. v. Eisler*, [1926] Ch. 609; *Re Wait*, [1927] 1 Ch. 606.
713. *Add. Annotation* :—**Refd.** Lord Strathcona S.S. Co. v. Dominion Coal Co., [1926] A. C. 108.
716. *Add. Annotation* :—**Folld.** *Rely-A-Bell Burglar & Fire Alarm Co. v. Eisler*, [1926] Ch. 609.
717. *Add. Annotation* :—**Refd.** *Crediton Gas Co. v. Crediton U. C.*, [1928] Ch. 447.
720. *Add. Annotation* :—**Apprvd.** Lord Strathcona S.S. Co. v. Dominion Coal Co., [1926] A. C. 108.
722. *Add. Annotation* :—**Mentd.** *The Penelope*, [1928] P. 180.
724. *Add. Citations* :—95 L. J. P. C. 71; 134 L. T. 227; 31 Com. Cas. 80; 16 Asp. M. L. C. 585.
- Add. Annotations* :—**Distd.** *Ontario Jockey Club v. McBride*, [1927] A. C. 916. **Mentd.** *Torbay Hotels v. Jenkins*, [1927] 2 Ch. 225.

**PART X. SECT. 2, SUB-SECT. 2.**  
**621 v. [redacted] v. FRASER**  
**(1904), 10 B. C. R. 291.—CAN.**

**PART X. SECT. 2, SUB-SECT. 3.—A.**  
*sl. Enforcement of agreement to deliver produce to company.]—*By the arts. of assocn. of a co., whose business was to market the fruit grown by its

members, it was provided that each member should deliver to the co. ninety-five per cent. of his fruit immediately after each variety thereof should be ready, suitable & fit for harvesting or picking but not later than a certain date in each year: —*Held*: the obligation imposed on each member of the co. was not one in respect of which the ct. should at the

instance of the co. grant an injunction.  
—PAKENHAM UPPER FRUIT CO., LTD.  
v. CROSBY, [1925] V. L. R. 27; 35  
C. L. R. 386; 31 Argus L. R. 13.—  
AUS.

**PART X. SECT. 4, SUB-SECT. 1.--**  
**A. (b).**

n. Add " (1914), 20 B. C. R. 215."



- 730a. —.] — **WILLIAMS v. WILLIAMS** (1817), 3 Mer. 157; 36 E. R. 61, L. C.  
*Annotations*:—**Consd.** *Morison v. Moat* (1851), 9 Hare, 241.  
**Mentd.** *Green v. Church* (1823), 1 L. J. O. S. Ch. 203.
735. *Add. Annotation*:—**Refd.** *Behnke v. Bede Shipping Co.*, [1927] 1 K. B. 649.
750. *Add. Annotation*:—**Consd.** *A.-G. v. County of London Electric Supply Co.*, [1926] Ch. 542.
755. *Add. Annotation*:—**Consd.** *Salisbury & Fordingbridge District Drainage Board v. Southern Tanning Co. (1920), Ltd.*, [1927] 2 K. B. 566.
785. *Add. Annotation*:—**Refd.** *R. v. Grain, Ex p. Wandsworth Grdns.*, [1927] 2 K. B. 205.
807. *Add. Annotation*:—**Appld.** *Wing v. Burn* (1928), 44 T. L. R. 258.
- 808a. — **Cancellation of affiliation.**] — Injunction refused.—*WING v. BURN* (1928), 44 T. L. R. 258.
829. *Add. Annotation*:—**Refd.** *Putsman v. Taylor*, [1927] 1 K. B. 637.
- 842a. — **Against public official.**] — Where a public officer, e.g., the Comptroller-General of

Patents, claims the right to disclose information to the public which pltf. in an action is *prima facie* entitled to withhold from publicity, it is proper to restrain that public official from taking a step which would result in that information being disclosed.—**REX CO. & REX RESEARCH CORPN. v. MUIRHEAD & COMPTROLLER-GENERAL OF PATENTS** (1926), 96 L. J. Ch. 121; 136 L. T. 568; 44 R. P. C. 38.

852. *Add. Annotation*:—**Mentd.** *Lowther v. Harris*, [1927] 1 K. B. 393.
- 923a. — **Misrepresentations—As to what took place in court.**]—*GILLETTE SAFETY RAZOR, LTD. v. PELLETT, LTD.* (1909), 26 R. P. C. 588.
928. *Add. Annotation*:—**Dbtd.** *R. v. Payne*, [1896] 1 Q. B. 577. In my opinion, in some instances, the cts. have gone rather too far (LORD RUSSELL, C.J.).
- 929a. **Publication by newspaper—Commenting on matters in dispute.**]—*GUILDING v. MORRELL BROTHERS, COBBETT & SONS, LTD.* (1888), 4 T. L. R. 198.

## Part XI.—Procedure.

981. *Add. Annotation*:—**Mentd.** *St. Nicholas Acons v. L. C. C.*, [1928] A. C. 469.
1000. *Add. Annotation*:—**Refd.** *Salisbury & Fordingbridge District Drainage Board v. Southern Tanning Co. (1920), Ltd.*, [1927] 2 K. B. 566.
1028. *Add. Annotation*:—**As to (1) Refd.** *Catton v. Ashwell & Nesbit* (1927), 44 T. L. R. 130.
1058. *Add. Annotation*:—**Mentd.** *Farey v. Cooper*, [1927] 2 K. B. 384.
1134. *Add. Citation*:—2 R. P. C. 73.  
*Add. Annotations*:—**Refd.** *Sharp & Dohme Inc. v. Boots Pure Drug Co.* (1927), 44 R. P. C. 367. **Mentd.** *Sharp & Dohme Inc. v. Boots Pure Drug Co.* (1928), 45 R. P. C. 153.
1157. *Add. Annotation*:—**Mentd.** *Reigate Corpn. v. Surrey County Council*, [1928] Ch. 359.
1216. *Add. Annotation*:—**Refd.** *Horton's Estate v. Beattie* (1926), 42 T. L. R. 701.

## Part XII.—Breach of Injunction and Remedies Therefor.

1346. *Add. Annotation*:—**Refd.** *Boyce v. Morris Motors* (1927), 44 R. P. C. 105.

## Part XIII.—Dissolution of Injunction.

1402. *Add. Annotation*:—**Mentd.** *Sharp & Dohme Inc. v. Boots Pure Drug Co.* (1928), 45 R. P. C. 153.
1430. *Add. Annotation*:—**Mentd.** *Ellerman Lines v. Read*, [1928] 2 K. B. 114.

### PART X. SECT. 8, SUB-SECT. 4.

b i. *Land bought with notice of prior equity.*]—*HOOPER v. SMITH & HAMILTON* (1905), 7 Terr. L. R. 27; 2 W. L. R. 194.—CAN.

f i. *S. P. CANADIAN PACIFIC RY. CO. v. CALGARY* (1887), 5 Man. L. R. 37.—CAN.

### PART X. SECT. 14, SUB-SECT. 2.

906 i. *Use of letters implying membership—Of professional institution—"U. A."*]—*INSTITUTE OF CHARTERED ACCOUNTANTS OF MANITOBA v. BEL-LAMY*, [1927] 3 D. L. R. 1071; [1927] 2 W. W. R. 106; 36 Man. L. R. 453.—CAN.

### PART XI. SECT. 1, SUB-SECT. 1.—A.

b. *Revsd.*, 2 A. R. 226.

### PART XI. SECT. 2, SUB-SECT. 2.

sp. *Plaintiff—Having only equitable interest.*]—Injunction granted.—*BESINNETT v. WHITE*, [1926] 1 D. L. R. 95; *affg.*, [1925] 3 D. L. R. 560; 57 O. L. R. 171.—CAN.

st. — *Having mere interesse termini.*]—Pltf. having a mere *interesse termini* is not necessarily debarred from maintaining an action for injunction.—*MIDNAPUR ZAMINDARI & CO., LTD. v. RAM KANAI SINGH DEO DARPA SAHA* (1925), 1 L. R. 5 Pat. 80.—IND.

### PART XI. SECT. 2, SUB-SECT. 3.—C.

1046 i. *Urgency—Preservation of property in dispute.*]—*WILMOT v. MAITLAND* (1851), 2 Gr. 556.—CAN.

### PART XI. SECT. 2, SUB-SECT. 7.

1083 i. *The application—Necessity*

*for full disclosure of facts.*]—*YARMIE v. YARMIE*, [1925] 2 D. L. R. 1215.—CAN.

### PART XI. SECT. 3, SUB-SECT. 1.

d i. *S. P. DAVIDSON & VANCOUVER TERMINAL GRAIN CO. v. NORTH WESTERN DREDGING CO. & VANCOUVER HARBOUR COMRS.* (1925), 35 B. C. R. 534.—CAN.

### PART XI. SECT. 5, SUB-SECT. 10.—A.

f i. — *Grounds for granting appeal.*]—*WINNIPEG LAUNDRY v. CAVERLEY (Man.)*, [1927] 4 D. L. R. 528.—CAN.

### PART XII. SECT. 2, SUB-SECT. 1.—A. (a).

e i. — *Breach doubtful.*]—*HOLDEN v. RYAN* (1913), 23 O. W. R. 961; 4 O. W. N. 668; 10 D. L. R. 90.—CAN.

## Part XIV.—Costs.

1540. *Add. Annotation* :—**Reid.** Donald Campbell  
v. Pollak, [1927] A. C. 732.

1553. *Add. Annotation* :—**Mentd.** Sharp & Döhme  
Inc. v. Boots Pure Drug Co. (1928), 45  
R. P. C. 153.

### PART XIV. SECT. 5.

**sx.** *Taxation on Supreme Court scale.*  
—In an action in the Supreme Ct. of  
Ontario for an injunction restraining  
deft. from carrying on or being con-  
cerned in any business similar to that

of pltfs. in whose business he had been  
employed, & for damages unspecified  
as to amount, the judge granted the  
injunction sought, but awarded no  
damages. He directed that pltfs.'  
costs should be paid by deft., but did

not give any special direction as to the  
scale of costs ;—*Held* : pltfs. were  
entitled to costs on the Supreme Ct.  
scale.—**DOMINION LOOSE LEAF Co. v.**  
**MANUEL**, [1925] 3 D. L. R. 426 ; 57  
O. L. R. 84.—**CAN.**

## INNS AND INNKEEPERS.

## Part I.—In General.

1. *Add. Annotation:—Generally, Refd. Aria v. Bridge House Hotel (Staines) (1927), 137 L. T. 299.*
3. *Add. Annotation:—Refd. Lorden v. Brooke-Hitching, [1927] 2 K. B. 237.*
40. In the "*Held*" paragraph for "(2) defts. were not entitled because," read "(2) defts. were not entitled to rely on Innkeepers Liability Act, 1863 (c. 4), s. 1, because."

## Part II.—Duties and Liabilities of Innkeepers.

67. *Add. Annotations:—Mentd. Albemarle Supply Co. v. Hind (1927), 43 T. L. R. 783.*
- 116a. — *Hole in floor.*—Pltf. went to a public-house by appointment to meet a friend, & as his friend had not arrived, walked into the parlour, & there fell through a hole in the floor, which was being repaired. As far as appeared his only object in going to the house was to meet his friend. In an action against the landlord for negligence in not fencing the hole, & in which pltf. alleged that he was in the house as a guest, the jury found for pltf. The ct. refused a rule to enter a nonsuit, which was asked for on the ground that there was no evidence, either of negligence on the part of deft., or of pltf. being in the house as a guest.—*AXFORD v. PRIOR (1866), 14 W. R. 611.*
125. *Add. Annotation:—Refd. Coleshill v. Manchester Corpn., [1928] 1 K. B. 776.*
151. *Add. Annotation:—Refd. Aria v. Bridge House Hotel (Staines) (1927), 137 L. T. 299.*
- 151a. — *Motor car stolen from parking place.*—A guest at an hotel parked his motor car in the space adjoining the hotel as directed by the hall-porter of the hotel, & which space was commonly used for the purpose. While the guest was at dinner at the hotel the car was stolen:—*Held*: there had been no alteration in the law regarding the liability of an innkeeper for the loss of goods brought on his premises by a guest, & where the relationship of innkeeper & guest existed as regards eating & drinking, that relationship extended also to the vehicle of the guest brought by him to the inn, & the common law rule still applied & was not affected by Innkeepers' Liability Act, 1863 (c. 41).—*ARIA v. BRIDGE HOUSE HOTEL (STAINES), LTD. (1927), 137 L. T. 299.*
201. *Add. Annotation:—Generally, Mentd. Stoney v. Eastbourne R. D. C., [1927] 1 Ch. 367.*

## PART II. SECT. 2, SUB-SECT. 1.

118 i. *Reasonable care—Limited to rooms where guest likely to go.*—While a person in attendance at a banquet given by an assocn. in a hotel is an invitee of the hotel proprietor, & not a mere licensee, the extent of the invitation is of the utmost importance, & if an accident happens & the invitation did not extend to the time & place & circumstances of the accident, then the question whether the proprietor is liable is to be determined in view of

the duty which he owes to a mere licensee.

Where a guest at such a banquet in deft.'s hotel, after the conclusion thereof, met his death by falling into a private-service elevator shaft:—*Held*: deft. was not liable.—*KNIGHT v. GRAND TRUNK PACIFIC DEVELOPMENT CO., [1927] 1 D. L. R. 498; [1926] S. C. R. 674.—CAN.*

123 i. *Invited visitor.*—In an action for damages for injuries resulting from a fall sustained when entering deft.'s hotel on a visit to one of the sample

rooms:—*Held*: the action must be dismissed, since the slope on which pltf. fell was not a "trap," & she had previous knowledge of it.—*WAY v. LELAND HOTEL CO. (B. C.), [1927] 3 W. W. R. 224.—CAN.*

## PART III. SECT. 2, SUB-SECT. 2.—A. (a).

245 i. *Goods brought to inn by guest—Although value of goods greatly in excess of amount owing.*—*NEWMAN v. WHITE HEAD (1909), 9 W. L. R. 688; 2 Sask. L. R. 11.—CAN.*



## INSURANCE.

## Part I.—General Principles.

3. *Add. Annotation*:—*As to* (2) *Refd.* Greenhill v. Federal Insce. (1926), 95 L. J. K. B. 717.
8. *Add. Annotation*:—*Mentd.* Public Trustee v. Lancaster Duchy, [1927] 1 K. B. 516.
13. *Add. Annotation*:—*Refd.* Greenhill v. Federal Insce. (1926), 95 L. J. K. B. 717.
- 18a. **Type calculated to elude observation—Insurers refused benefit of clause.**—Deft. co. insured a quantity of leather, consigned c.i.f., for a voyage from New York to Tunis, by a certificate of insurance which provided: "This certificate represents & takes the place of the policy & conveys all the rights of the original policy-holder as fully as if the property were covered by a special policy direct to the holder of this certificate." One of the conditions of the policy was in much smaller print than other parts of the policy & was as follows: "In case of loss or damage to the property hereby insured the loss shall be reported to the representatives of the co., or, if there be no representative of the co., to Lloyd's agent, as soon as the goods are landed or the loss is known or expected." On the day after the arrival of the goods at Tunis the consignee sold them to pltf., who found them to have been damaged by salt water. In an action by pltf. on the certificate of insurance deft. co. contended, (1) that pltf. was not the right person to sue, & (2) that the clause in the policy as to giving notice within a limited time had not been complied with:—*Held*: the certificate, having been issued by deft. co. itself, enured to the benefit of pltf., & since pltf. did not know of the condition as to notice, & since the clause as to notice was in such small print that it was not such as a reasonable man, reading with reasonable care, would regard as forming part of the contractual terms, pltf. was entitled to recover.—*KOSKAS v. STANDARD MARINE INSURANCE CO., LTD.* (1926), 42 T. L. R. 692; *affd.* (1927), 137 L. T. 165; 43 T. L. R. 169; 17 Asp. M. L. C. 240; 32 Com. Cas. 160, C. A.
- Annotation*:—*Consd.* De Monchy v. Phoenix Insce. Co. of Hartford (1928), 139 L. T. 703.
26. *Add. Annotation*:—*Refd.* Lake v. Simmons (1926), 95 L. J. K. B. 586.
52. *Add. Annotation*:—*Mentd.* *Re* Wait, [1927] 1 Ch. 606.
63. *Add. Citation*:—31 Com. Cas. 10.
- Add. Annotation*:—*Mentd.* Hirji Mulji v. Cheong Yue S.S. Co., [1926] A. C. 497.
93. *Add. Annotation*:—*Mentd.* Hirji Mulji v. Cheong Yue S.S. Co., [1926] A. C. 497.
170. *Add. Annotation*:—*As to* (2) *Apld.* Newsholme v. Road Transport & General Insce. (1928), 45 T. L. R. 123.
- 171a. ————.]—An insurance co. supplied accident proposal forms to their agent, & the true answers to the questions thereon were given to him orally by a partner in a firm. The agent wrote on the form answers to the questions, but the answers so written by him were not correct. The partner then signed the form, & the co. issued to the firm a policy incorporating the written proposal & accepted the premium. On the occurrence of an accident the co. repudiated the policy on the ground that the written answers were untrue:—*Held*: as the contract was that the written answers should be the basis of the insurance, the co. were not liable on the policy.—*NEWSHOLME BROTHERS v. ROAD TRANSPORT & GENERAL INSURANCE CO., LTD.* (1928), 45 T. L. R. 123; 72 Sol. Jo. 848.
192. *Add. Annotation*:—*Distd.* Newsholme v. Road Transport & General Insce. (1928), 45 T. L. R. 123.
200. *Add. Annotation*:—*As to* (2) *Distd.* Newsholme v. Road Transport & General Insce. (1928), 45 T. L. R. 123.

## PART I. SECT. 3, SUB-SECT. 1.

m i. ———.]—*Duty of insurer.*—It is the duty of insurance cos. to make the policies issued by them accord with & not depart from the terms of their proposal form, & to express both documents in clear & unambiguous terms.—*BRAUND v. MUTUAL LIFE & CITIZENS ASSURANCE CO., LTD.*, [1926] N. Z. L. R. 529.—N.Z.

PART I. SECT. 3, SUB-SECT. 2.—B.  
g. Read now "18a i."

## PART I. SECT. 8.

q i. ———.]—*CLARKE v. UNION FIRE INSURANCE CO., CLAIM OF AGRICULTURAL FIRE INSURANCE CO. OF WATERTOWN, NEW YORK* (1884), 6 O. R. 610.—CAN.

q ii. ———.]—*QUEEN INSURANCE CO. OF AMERICA v. BRITISH TRADERS INSURANCE CO.* (1926), 37 B. C. R. 202.—CAN.

## PART I. SECT. 9, SUB-SECT. 3.—A.

sb. *Second policy.*—*CRAWFORD v. WESTERN ASSURANCE CO.* (1873), 23 C. P. 365.—CAN.

## PART I. SECT. 9, SUB-SECT. 4.

144 ix. ———.]—*MUMA v. NIAGARA*

DISTRICT MUTUAL INSURANCE CO. (1862), 22 U. C. R. 214.—CAN.

## PART I. SECT. 14, SUB-SECT. 1.

m i. ———.]—*BINKLEY v. STEWART* (1912), 22 O. W. R. 330; 3 O. W. N. 1427; 4 D. L. R. 150.—CAN.

## PART I. SECT. 14, SUB-SECT. 2.

170 iii. ———.]—*JUMNA KHAN v. BANKERS & TRADERS' INSURANCE CO., LTD.* v. *JUMNA KHAN* (1925), 27 S. R. N. S. W. 13.—AUS.

e i. ———.]—Where appct. for an insurance policy was not to incur any liability until he should have accepted the policy, but the agent paid the premium before appct. had agreed to accept the policy:—*Held*: an action by the agent against appct., to recover the amount of the premium as money paid for deft. at his request, could not succeed.—*BILBROUGH v. DEMAR*, [1927] 1 D. L. R. 542; [1927] 1 W. W. R. 133; 21 Sask. L. R. 239.—CAN.

e ii. *S. P. HICKEY v. MCGUINNES* (Alta.), [1927] 3 W. W. R. 565.—CAN.

## PART I. SECT. 14, SUB-SECT. 4.

ki. ———.]—Applt., who was illiterate, went to the local office of resps. to insure his house & furniture

fire, & at the request of the agent of resps., signed a proposal form, the agent saying that he would fix everything up. The agent, without asking applt. any questions, filled in the form, & inserted in it an untrue answer to one of the questions:—*Held*: resps. were not prevented from relying upon the untruth of the answer in the proposal.—*JUMNA KHAN v. BANKERS & TRADERS' INSURANCE CO., LTD.* (1925), 37 C. L. R. 451; 43 N. S. W. W. N. 98.—AUS.

## PART I. SECT. 14, SUB-SECT. 5.

200 xix. ———.]—To a claim by pltf., carrying on business in partnership, for the value of tobacco insured with defts. & destroyed by fire, defts. pleaded that it was a condition of the proposal for insurance that the tobacco should be the property of the firm only, whereas a portion was in fact the property of three of the members jointly. In their replication pltf. alleged that defts.' agents had knowledge of the above fact at the time the proposal was made & issued the policy notwithstanding such knowledge, & that defts. were estopped from denying liability under the policy:—*Held*: an exception to the replication, as bad in law & disclosing no cause of action, should be dismissed.—*PETREAS & CO.*

## Part II.—Marine Insurance.

231. *Add. Annotation* :—*Appld. Re National Benefit Assce., Ex p. English Insce.*, [1928] Ch. 74.
233. *Add. Annotation* :—*Distd. Koskas v. Standard Marine Insce.* (1926), 42 T. L. R. 692.
236. *Add. Annotations* :—*Refd. Koskas v. Standard Marine Insce.* (1926), 42 T. L. R. 692; *De Monchy v. Phoenix Insce. Co. of Hartford* (1928), 138 L. T. 703; *Tredeggar v. Harwood*, [1928] Ch. 59. *Mentd. Sassoon v. International Banking Corpn.*, [1927] A. C. 711.
- 237a. *Policy containing fire policy clause—Validity.*—*SYMINGTON & Co. v. UNION INSURANCE SOCIETY OF CANTON*, No. 855a, *post*.
247. *Add. Annotation* :—*Refd. English Insce. v. National Benefit Assce.* (1928), 44 T. L. R. 801.
248. *Add. Annotation* :—*Refd. Cornish Mutual Assce. v. I. R. Comrs.*, [1926] A. C. 281.
- 252a. ———.]—*Re NATIONAL BENEFIT ASSURANCE Co., Ex p. ENGLISH INSURANCE Co.*, [1928] Ch. 74; 97 L. J. Ch. 28; 138 L. T. 122; 44 T. L. R. 14; 71 Sol. Jo. 880, C. A.
253. *Add. Annotation* :—*Consd. Royal Exchange Assce. v. Hope*, [1928] Ch. 179.
254. *Add. Annotation* :—*Refd. Royal Exchange Assce. v. Hope*, [1928] Ch. 179.
459. *Add. Annotations* :—*Mentd. Lloyds Bank v. Chartered Bank of India, Australia & China* (1928), 97 L. J. K. B. 609; *Reckitt v. Barnett, Pembroke & Slater* (1928), 45 T. L. R. 36.
463. *Add. Annotation* :—*Consd. Aron v. Miall* (1928), 139 L. T. 562.
- 480a. ———. *Before or after loss.*]—A firm of sellers in Africa sold goods, which were resold by the purchasers to pltfs. under a contract which required the second sellers to pass on to the second buyers the usual policy in the trade insuring against the usual risks. The goods were found to be damaged on delivery. A substantial part of the damage was caused at a time when pltfs. were not interested in the goods covered by the insurance, but by an indorsement on the policy all claims under it were assigned to the holder of the policy :—*Held* : under Marine Insurance Act, 1906 (c. 41), s. 50, a marine policy was assignable, unless it contained terms expressly prohibiting the assignment, & it could be assigned either before or after loss. The effect of assigning the policy in the manner in which the policy was assigned, which was the ordinary manner in which policies were assigned in England, was to assign to the person holding the policy the right to sue on any claim which the assignor had on the policy, irrespective of the fact that at the time of the loss or damage the assignee was not interested in the subject-matter lost or damaged. Pltfs. were the assignees of the policy; the assignor of the policy had a right to make a claim in respect of the damage; that claim was assignable, & it was in fact assigned to pltfs., & they were entitled to sue the underwriters in respect of the damage.—*ARON (J.) & Co. v. MIALL* (1928), 139 L. T. 562, C. A.
488. *Add. Annotation* :—*Consd. Aron v.* (1928), 139 L. T. 562.
- 488a. ———.]—*ARON (J.) & Co. v. MIALL*, No. 480a, *ante*.
497. *Add. Annotation* :—*Refd. Aron v. Miall* (1928), 139 L. T. 562.
- 505a. *Pontoon with crane fixed thereon.*]—*Held* : not a "ship or vessel" within the rules of an indemnity assocn., on the ground that the quality of adaptability for navigation was not sufficiently present to bring it within the meaning of those words in the rules.—*MERCHANTS' MARINE INSURANCE CO., LTD. v. NORTH OF ENGLAND PROTECTING & INDEMNITY ASSOCN.* (1926), 43 T. L. R. 107; 71 Sol. Jo. 82; 32 Com. Cas. 165, C. A.
527. *Add. Annotation* :—*Generally, Refd. Lind v. Mitchell* (1928), 45 T. L. R. 54.
630. *Add. Annotation* :—*Mentd. The St. George*, [1926] P. 217.
651. *Add. Annotation* :—*Mentd. Re Wait*, [1927] 1 Ch. 606.
666. *Add. Annotations* :—*As to (5) Expld. Lind v. Mitchell* (1928), 45 T. L. R. 54; *Generally, Refd. Banco de Barcelona v. Union Marine Insce.* (1925), 134 L. T. 350. *Mentd. Hain S.S. Co. v. Board of Trade*, [1928] 2 K. B. 534.
- 712a. *Effect of decrees of foreign State—On liability of foreign reinsurance company to discharge obligations.*]—By virtue of decrees of the Soviet Govt., insurance business in Russia was declared to be the monopoly of the State, & financial transactions in Russia were regulated. In an action to determine the effect of the above decrees on treaties of reinsurance entered into between a Russian reinsurance co., having a branch office in London, & an English reinsurance co. :—*Held* : the decrees did not prevent the Russian co. from discharging their liabilities to the English co. under one of the treaties by a payment in London out of their assets outside Russia, or by means of a set-off against the liabilities of the English co. to them under the treaties.—*FIRST RUSSIAN INSURANCE Co. v. LONDON & LANCASHIRE*

*v. LONDON GUARANTEE & ACCIDENT Co., LTD.*, [1925] App. D. 371.—S. AF.

200 xx. ———.]—*L. & Co.*, agents of defts., who had no express power to do so, appointed M. as their local agent in a district, but did not inform defts., who neither approved of, nor ratified, the appointment. M. sent to L. & Co. particulars of a proposed insurance against fire for pltf. on his dwelling-house, & a policy was issued by defts. to pltf. The policy provided that if there was any misrepresentation as to any fact material to be known for estimating the risk, or any omission to state such fact, defts. should not be

liable. Pltf. did not disclose the fact that his house had previously been burnt down & that an insurance co. had paid him in respect of that loss :—*Held* : (1) M. was not defts.' agent, & M.'s knowledge of the earlier fire, whenever acquired, could not be imputed to defts., & pltf. had concealed a material fact & thereby relieved defts. from all liability under the policy; (2) even if M. was defts.' agent, his knowledge acquired prior to his appointment as agent could not be imputed to defts.—*O'KEEFE v. LONDON & EDINBURGH INSURANCE Co., LTD.*, [1928] N. I. 85.—IR.

## PART I. SECT. 14, SUB-SECT. 6.

a i. ———.]—*PARSONS v. QUEEN INSURANCE Co.* (1882), 2 O. R. 15.—CAN.

## PART II. SECT. 5, SUB-SECT. 1.—E.

416 i. ———. *By usage—Custom of Lloyd's—Custom not introduced into Upper Canada by 32 Geo. 3, c. 1.*]—*O'KEEFE & LYNCH OF CANADA, LTD. v. TORONTO INSURANCE & VESSEL AGENCY, LTD.*, [1926] 4 D. L. R. 477; 59 O. L. R. 235.—CAN.

INSURANCE CO., [1928] Ch. 922 ; 97 L. J. Ch. 445 ; 44 T. L. R. 583.

718. *Add. Annotations*:—**Consd.** Sowerby v. Lindsay (1928), 139 L. T. 545. **Refd.** Excess Insce. v. Mathews (1925), 31 Com. Cas. 43.
719. *Add. Annotations*:—**Consd.** Firemen's Fund Insce. v. Western Australian Insce. & Atlantic Insce. (1927), 138 L. T. 108; Merchants' Marine Insce. v. Liverpool Marine & General Insce. (1928), 97 L. J. K. B. 589. **Refd.** Excess Insce. v. Mathews (1925), 31 Com. Cas. 43.
720. *Add. Annotation*:—**Consd.** Firemen's Fund Insce. v. Western Australian Insce. & Atlantic Insce. (1927), 138 L. T. 108.
- 720a. ———— .]—Pltfs. insured a consignment of gunpowder on a voyage & reinsured with defts. Both the original policy & the reinsurance policies covered perils of the sea & jettison, & were expressed to be "warranted free from loss arising from . . . destruction . . . in a port of distress or otherwise." The original policy contained no admission of seaworthiness, but the reinsurance policies did contain such an admission, & they provided that defts. would "pay as paid thereon," & that the payment should be subject to the same terms as in the original policy. The vessel carried, in addition to the gunpowder, drums of sulphuric acid, & owing to heavy weather some of the drums burst & the acid disabled the machinery, with the result that the ship had to put in to a port of distress. There the required repairs could not be carried out with the gunpowder on board, & it was thrown overboard & became a total loss. Pltfs. paid the owners as for a total loss, & claimed to be reimbursed by defts.:—**Held**: as the way in which the sulphuric acid was stowed & loaded affected the safety of the ship & rendered her unseaworthy, pltfs. were under no liability on the original policy, & they could not recover from defts. on the reinsurance policies.—**FIREMAN'S FUND INSURANCE CO. v. WESTERN AUSTRALIAN INSURANCE CO., LTD.** (1927), 138 L. T. 108 ; 43 T. L. R. 680 ; 17 Asp. M. L. C. 332 ; 33 Com. Cas. 36.
- 720b. "On a voyage."—Pltfs. insured a consignment of oranges from any port in Spain to Antwerp, & after the ship had left Valencia & had been in wireless communication with Gibraltar, they reinsured with deft. by a slip, which referred to the fact that the ship had been in such communication with Gibraltar & which contained the words "on a voyage," meaning, according to the evidence, that the risk should attach only from a named port in the course of the voyage. The ship stranded before she reached Gibraltar, the oranges were damaged, & pltfs. had to pay on the policy. In an action on the contract of reinsurance:—**Held**: on the true reading of the slip, the intention was to limit the risk to the voyage from Gibraltar, & the action failed.—**EAGLE, STAR & BRITISH DOMINIONS INSURANCE CO., LTD. v. REINER** (1927), 43 T. L. R. 259 ; 71 Sol. Jo. 176.
- 720c. Insured object in damaged condition at expiration of insurance—Continuation of risk for "immediate consequences" of such damage.]—Pltfs., reinsurers of a risk under a marine policy, reinsured that risk with defts. The policies were subject to the following conditions: "In the event of the vessel not being at the place of destination on the date of the expiration of the policy, the insurance shall continue in force till the end of the day when the vessel arrives at her first place of destination ;" & "If the insured object is in a damaged condition at the time when the insurance expires, the risk shall continue for the immediate consequences of such damage until the object without unnecessary delay has been repaired or sold." On the date of the expiration of the policy, the vessel had not arrived at L. Bay, her first place of destination, but before reaching it she grounded on a reef & was taken into L. Bay badly damaged. Temporary repairs having been effected, she continued her voyage, but as she began to leak again she had to be run ashore in order to prevent sinking, & was subsequently sold as a wreck. Pltfs. having paid the original insurers as for a total loss, claimed against defts. on their reinsurance policy:—**Held**: the loss was an immediate consequence of the damage done by the original stranding, & the risk covered by the policy continued, until the vessel was repaired with no unnecessary delay, for the immediate consequences of the original damage.—**MERCHANTS' MARINE INSURANCE CO. v. LIVERPOOL MARINE & GENERAL INSURANCE CO.** (1928), 97 L. J. K. B. 589 ; 139 L. T. 184 ; 44 T. L. R. 512 ; 17 Asp. M. L. C. 475 ; 33 Com. Cas. 294, C. A.
731. *Add. Annotation*:—**Generally**, **Refd.** Excess Insce. v. Mathews (1925), 31 Com. Cas. 43.
734. *Add. Annotation*:—**As to** (1) **Consd.** Firemen's Fund Insce. v. Western Australian Insce. & Atlantic Insce. (1927), 138 L. T. 108.
748. *Add. Annotation*:—**Refd.** Goole & Hull Steam Towing Co. v. Ocean Marine Insce. (1927), 44 T. L. R. 133.
782. *Add. Annotation*:—**Refd.** Lake v. Simmons (1926), 95 L. J. K. B. 586.
784. *Add. Annotation*:—**Mentd.** Mancomunidad Del Vapor Frumiz v. Royal Exchange Assce., [1927] 1 K. B. 567.
- 855a. *Effect of clause*.]—Claimants insured with defts. a quantity of cork from a port or place between Bordeaux & Nice to the United Kingdom. Claimants were cork growers & had a factory & warehouse near Algeciras, & they had sent from the factory to Algeciras quantities of cork for shipment, & had allowed it to accumulate on the jetty there until there should be enough for a cargo. While a quantity of cork was on the jetty awaiting shipment & before the policy was issued, a fire broke out on the jetty, & to prevent the fire spreading, the authorities jettisoned part of the cork & threw sea-water on the remainder, with the result that a large portion of the cork was lost or damaged. The policy, when issued, contained (*inter alia*) a marginal clause that the policy was not to enure to the benefit of any fire insurance co., but loss reasonably attributable to fire was covered. It also contained a warehouse to warehouse clause. A claim under the policy was referred to arbn., & the arbitrator treated the marginal clause as non-existent, on the ground that it was not included, or stipulated for, in the slip which represented the true contract between the parties, & he also found that the loss was one reasonably attributable to fire:—**Held**: (1) the goods on the pier at Algeciras, having come in the ordinary course of transit from



the shippers' manufactory at San Roque, were covered by the policy; (2) there being an existing fire & an imminent peril, the damage caused by water, used either to extinguish the fire or to prevent it from spreading, was a proximate consequence of fire, which could be recovered under the general words of the policy, as being *ejusdem generis* with fire; (3) the underwriters were not relieved from liability by the restraint of princes clause; (4) the case must be remitted to the arbitrator upon the question whether the policy issued, so far as it contained the fire policy clause, was or was not contrary to the usual form of marine insurance on goods.—*SYMINGTON & Co. v. UNION INSURANCE SOCIETY OF CANTON* (1928), 97 L. J. K. B. 646; 139 L. T. 386; 44 T. L. R. 635, C. A.

906. *Add. Annotation*:—*As to* (2) *Refd.* *Eagle, Star & British Dominions Insce. v. Reiner* (1927), 43 T. L. R. 259.

985. *Add. Annotation*:—*Mentd.* *Rio Tinto Co. v. Seed Shipping Co.* (1926), 134 L. T. 764.

1099. *Add. Annotation*:—*Mentd.* *Rio Tinto Co. v. Seed Shipping Co.* (1926), 134 L. T. 764.

1203a. ———.]—*LITLEDALE v. DIXON* (1805), 1 Bos. & P. N. R. 151; 127 E. R. 417.

*Annotation*:—*Refd.* *Morrison v. Muspratt* (1827), 12 Moore, C. P. 231.

1206. *Add. Annotation*:—*Consd.* *Greenhill v. Federal Insce.* (1926), 95 L. J. K. B. 717.

1220. *Add. Annotation*:—*Refd.* *Glicksman v. Lancashire & General Assce.*, [1927] A. C. 139.

1252. *Add. Annotation*:—*Consd.* *Greenhill v. Federal Insce.* (1926), 95 L. J. K. B. 717.

1265a. ———.]—In an action on a policy of marine insurance on a cargo of celluloid shipped from America to France, defts. pleaded that assured had wrongfully concealed certain facts material to be disclosed to them. The cargo had in fact been previously carried, partly on deck, in a protracted voyage from New York to Halifax, where, the vessel being unable to proceed further, it was unloaded & part put in a warehouse, & the rest left on the open quay, exposed to severe weather, for over two months:—*Held*: these facts were material to be disclosed to the underwriters, & as they were not disclosed, & there was no waiver of non-disclosure, the policy was vitiated.—*GREENHILL v. FEDERAL INSURANCE Co.*, [1927] 1 K. B. 65; 95 L. J. K. B. 717; 135 L. T. 244; 70 Sol. Jo. 565; 31 Com. Cas. 289; 17 Asp. M. L. C. 62, C. A.

1474a. *Absence of panting beams.*—*Held*: the vessel was unseaworthy.—*LUND v. THAMES*

& MERSEY MARINE INSURANCE Co., LTD. (1901), 17 T. L. R. 566.

1515. *Add. Annotation*:—*Mentd.* *Reed v. Page & East*, [1927] 1 K. B. 743.

1557. *Add. Annotation*:—*Consd.* *Greenhill v. Federal Insce.* (1926), 95 L. J. K. B. 717.

1589. *Add. Annotation*:—*As to* (2) *Dhtd.* *Greenhill v. Federal Insce.* (1926), 95 L. J. K. B. 717.

1611a. ———.]—*DE MONCHY v. PHENIX INSURANCE Co. OF HARTFORD* (1928), 138 L. T. 703; 44 T. L. R. 364; 17 Asp. M. L. C. 440; 33 Com Cas. 197, C. A.

1641. *Add. Annotations*:—*Refd.* *Banco de Barcelona v. Union Marine Insce.* (1925), 134 L. T. 350. *Mentd.* *Falcon v. Famous Players Film Co.*, [1926] 1 K. B. 393.

1650. *Add. Annotations*:—*Consd.* *Hain S.S. Co. v. Board of Trade*, [1928] 2 K. B. 534; *Merchants' Marine Insce. v. Liverpool Marine & General Insce.* (1928), 97 L. J. K. B. 589. *Refd.* *Mancomunidad del Vapor Frumiz v. Royal Exchange Assce.* (1926), 43 T. L. R. 103.

1660a. ———.]—A sailing ship, of which pltf. was mtgee., was insured by a policy, underwritten by deft., against perils of the sea & fire, & as per Institute Time Clauses, clause 8, against loss of the vessel "caused through the negligence of master, mariners, engineers or pilots." The vessel was damaged by ice & she leaked badly, & the captain, expecting a gale in which he thought she would be lost, decided to abandon her, & he set fire to her to prevent her from being a danger to navigation, & he & the crew then abandoned her. In an action by the mtgee. on the policy deft. did not allege any misconduct by the assured, by the mtgee., or by the managing owner, & there was no evidence that the abandonment was a wilful casting away of the ship by the master:—*Held*: on the facts the abandonment was unreasonable on the part of the master & constituted negligence, & this negligence, resulting in the continuing action of a previously existing peril of the sea, was covered by clause 8, & even apart from that clause, as the peril of the sea had endangered the ship & the negligence of the master resulted in proper measures not being taken to save her, pltf. was entitled to recover under Marine Insurance Act, 1906 (c. 41), s. 55 (2) (a).—*LAND v. MITCHELL* (1928), 45 T. L. R. 54, C. A.

1675. *Add. Annotations*:—*Refd.* *Firemen's Fund Insce. v. Western Australian Insce.* (1927), 43 T. L. R. 680; *Clan Line Steamers v. Board of Trade* (1928), 97 L. J. K. B. 735.

1684. *Add. Annotation*:—*Refd.* *Adelaide S.S. Co. v. A.-G.*, [1926] A. C. 172.

1701. *Add. Citations*:—31 Com. Cas. 145; 16 Asp. M. L. C. 579.

PART II. SECT. 16, SUB-SECT. 3.—B. (g).

a i. ———.]—*BOAK v. MERCHANTS' MARINE INSURANCE Co.* (1876), 10 N. S. R. (1 R. & C.) 288; *affd.* (1877), 1 S. C. R. 110.—CAN.

PART II. SECT. 18, SUB-SECT. 3.—B. (b).

1349 i. *Loss before departure from terminus a quo*—"From Quebec to Greenock vessel to go out in tow."—*Held*: towing from the loading berth to another part of the harbour was not a compliance with the warranty.—

PROVINCIAL INSURANCE Co. OF CANADA v. CONNOLLY (1879), 5 S. C. R. 258.—CAN.

PART II. SECT. 19, SUB-SECT. 1.—B.

1555 i. *Ship unseaworthy*—*Ship rendered unseaworthy by charterer without privity of assured*—*Assured entitled to recover.*—*PACIFIC COAST COAL FREIGHTERS, LTD. v. WESTCHESTER FIRE INSURANCE Co. OF NEW YORK, PACIFIC COAST COAL FREIGHTERS, LTD. v. WESTERN ASSURANCE Co. (B. C.)*, [1926] 4 D. L. R. 963; [1926] 3

W. W. R. 356; *affd.*, [1927] 2 D. L. R. 590; [1927] 1 W. W. R. 878; 38 B. C. R. 315.

PART II. SECT. 20, SUB-SECT. 1.—A. 1576 ii. ———.]—*MURRAY v. NOVA SCOTIA MARINE INSURANCE Co.* (1875), 10 N. S. R. (1 R. & C.) 24.—CAN.

PART II. SECT. 20, SUB-SECT. 1.—E. 1607 i. *What amounts to—Not sail torn as result of accident.*—*HILL v. UNION INSURANCE SOCIETY, CANTON, LTD.*, [1927] 4 D. L. R. 718; 61 O. L. R. 201.—CAN.

1703. *Add. Annotation*:—**Refd.** *Mancomunidad Del Vapor Frumiz v. Royal Exchange Assce.*, [1927] 1 K. B. 567.
1705. *Add. Annotation*:—**Consd.** *Mancomunidad Del Vapor Frumiz v. Royal Exchange Assce.*, [1927] 1 K. B. 567.
1706. *Add. Annotation*:—**Refd.** *Mancomunidad Del Vapor Frumiz v. Royal Exchange Assce.*, [1927] 1 K. B. 567.
- 1708a. “Collision with any object”—**Bumping on rocks.**—A policy of marine insurance on the hull & machinery of a steamer covered the ordinary perils of the sea & contained the following clause: “Subject to the Institute ‘Free of Particular Average absolutely’ time clauses as annexed, but this insurance to include damage received by collision with any object (ice included) other than water.” The ship, having stranded, bumped on the rocks & damaged her bottom plates:—**Held**: the contact with the rocks was a “collision with an object” within the policy.—**MANCOMUNIDAD DEL VAPOR FRUMIZ v. ROYAL EXCHANGE ASSURANCE**, [1927] 1 K. B. 567; 96 L. J. K. B. 229; 136 L. T. 537; 43 T. L. R. 103; 17 Asp. M. L. C. 205.
1709. *Add. Annotation*:—**Refd.** *Adelaide S.S. Co. v. A.-G.*, [1926] A. C. 172.
1710. *Add. Annotation*:—**Refd.** *Adelaide S.S. Co. v. A.-G.*, [1926] A. C. 172.
1718. *Add. Annotation*:—**Apld.** *Symington v. Union Insce. Soc. of Canton* (1928), 97 L. J. K. B. 646.
- 1719a. **Damage caused by water—To extinguish or check fire.**—**SYMINGTON & CO. v. UNION INSURANCE SOCIETY OF CANTON**, No. 855a, *ante*.
1727. *Add. Annotation*:—**Apld.** *Symington v. Union Insce. Soc. of Canton* (1928), 97 L. J. K. B. 646.
1736. *Add. Annotation*:—**Refd.** *Adelaide S.S. Co. v. A.-G.*, [1926] A. C. 172.
1809. *Add. Citations*:—134 L. T. 350; 16 Asp. M. L. C. 604.
1817. *Add. Annotation*:—**Refd.** *Symington v. Union Insce. Soc. of Canton* (1928), 139 L. T. 386.
1838. *Add. Annotations*:—**Consd.** *Clan Line Steamers v. Board of Trade*, [1928] 2 K. B. 557; *Hain S.S. Co. v. Board of Trade*, [1928] 2 K. B. 534. **Refd.** *Cayzer, Irvine v. Board of Trade*, [1927] 1 K. B. 269.
1846. *Add. Annotation*:—**Generally, Mentd.** *Falcon v. Famous Players Film Co.*, [1926] 1 K. B. 393.
1849. *Add. Annotation*:—**Consd.** *Clan Line Steamers v. Board of Trade*, [1928] 2 K. B. 557.
1850. *Add. Annotations*:—**As to (2) Apld.** *Hain S.S. Co. v. Board of Trade*, [1928] 2 K. B. 534. **Generally, Consd.** *Clan Line Steamers v. Board of Trade*, [1928] 2 K. B. 557. **Refd.** *Adelaide S.S. Co. v. R.* (1925), 95 L. J. K. B. 213; *Cayzer, Irvine v. Board of Trade* (1920), 42 T. L. R. 731.
1851. *Add. Annotations*:—**Consd.** *Clan Line Steamers v. Board of Trade*, [1928] 2 K. B. 557. **Refd.** *Hain S.S. Co. v. Board of Trade*, [1928] 2 K. B. 534.
1854. *Add. Annotations*:—**Consd.** *Clan Line Steamers v. Board of Trade*, [1928] 2 K. B. 557. **Refd.** *Adelaide S.S. Co. v. A.-G.*, [1926] A. C. 172.
1858. *Add. Annotations*:—**Consd.** *Clan Line Steamers v. Board of Trade* (1928), 97 L. J. K. B. 735; *Merchants’ Marine Insce. v. Liverpool Marine & General Insce.* (1928), 97 L. J. K. B. 589. **Apld.** *Hain S.S. Co. v. Board of Trade*, [1928] 2 K. B. 534. **Refd.** *Adelaide S.S. Co. v. A.-G.*, [1926] A. C. 172.
1860. *Add. Annotations*:—**Apld.** *Clan Line Steamers v. Board of Trade*, [1928] 2 K. B. 557. **Consd.** *Hain S.S. Co. v. Board of Trade*, [1928] 2 K. B. 534. **Refd.** *Board of Trade v. Cayzer, Irvine* (1927), 43 T. L. R. 625.
1876. *Add. Annotation*:—**Refd.** *Goole & Hull Steam Towing Co. v. Ocean Marine Insce.*, [1928] 1 K. B. 589.
1948. *Add. Annotation*:—**Refd.** *Mancomunidad Del Vapor Frumiz v. Royal Exchange Assce.*, [1927] 1 K. B. 567.
1965. *Add. Citation*:—[1904] P. 198, n. *Add. Annotations*:—**Refd.** *The Normandy*, [1904] P. 187; *Mancomunidad Del Vapor Frumiz v. Royal Exchange Assce.*, [1927] 1 K. B. 567.
1981. *Add. Annotation*:—**Apld.** *Admiralty Comrs. v. S.S. Chekiang*, [1926] A. C. 637.
1982. *Add. Annotation*:—**Refd.** *Admiralty Comrs. v. S.S. Chekiang*, [1926] A. C. 637.
- 2010a. — **Recovery of damages in collision action.**—**Defts.** insured **pltfs.’** steamer against the usual marine risks, the steamer being valued in the policy at £4,000. During the currency of the policy the steamer collided with another steamer. The ship was repaired at **pltfs.’** cost, & a collision action by **pltfs.** against the owners of the other steamer was settled, & the owners of the other steamer paid over to **pltfs.** £2,500, as being half the damages. In an action against **defts.** **pltfs.** contended that, as the balance of their loss was £2,500 they were entitled to recover that amount, it being less than the value of £4,000 put on the steamer in the policy:—**Held**: **defts.** were liable only for £1,500, being the difference between £4,000 & £2,500, the amount recovered by **pltfs.** from the owners of the other ship.—**GOOLE & HULL STEAM TOWING CO., LTD. v. OCEAN MARINE INSURANCE CO., LTD.**, [1928] 1 K. B. 589; 97 L. J. K. B. 175; 138 L. T. 548; 44 T. L. R. 133; 72 Sol. Jo. 17; 17 Asp. M. L. C. 409; 33 Com. Cas. 110.
- 2014a. **Loss less than amount paid into court.**—**Resps.** insured **appls.’** tug boat by a policy of marine insurance, which provided that, on a claim for a constructive total loss, the insured value was to be taken as the repaired value, & that nothing was to be taken into account for the damaged value, & also that all claims were to be subject to English law & usage. The tug was sunk by collision, & **appls.** at once gave notice of abandonment. Salvors employed by **resps.** raised the tug in a few days, & the abandonment was not accepted. The salvors, without the knowledge of **appls.**, made an offer to **resps.** for the tug, & **resps.** requested them

## PART II. SECT. 22, SUB-SECT. 5.—C. (a).

i. *By insurers—Subsequent sale of ship at profit—Rights of assured.*—**MEAGHER v. AETNA INSURANCE CO. & HOME INSURANCE CO.** (1873), 20 Gr. 354.—**CAN.**

to put it into writing, which they did. The appellate ct., considering the evidence as to the probable cost of repair, held that there had been only a partial loss to an amount less than that paid into ct.:—*Held*: (1) the sinking was not an actual total loss; (2) resps. were not precluded from denying that they had accepted the abandonment; (3) there had been no constructive total loss within Marine Insurance Act, 1906 (c. 41), s. 60 (2) (i), since even at the date of the abandonment it was not unlikely that the tug could be recovered, & it was unnecessary to consider whether the old rule, that the crucial moment was the commencement of the action, had been modified by sects. 61 & 62; (4) the appellate ct. was not bound to accept the highest estimate of the cost of repairs given by resps.' witnesses, & the ct.'s finding as to the sum necessary, being justified by the evidence & not being based upon any error of principle, could not be questioned.—CAPTAIN J. A. CATES TUG & WHARFAGE CO. v. FRANKLIN INSURANCE CO., [1927] A. C. 698; 96 L. J. P. C. 132; 137 L. T. 709; 17 Asp. M. L. C. 319, P. C.

2055a. ———.]—CAPTAIN J. A. CATES TUG & WHARFAGE CO. v. FRANKLIN INSURANCE CO., No. 2014a, *ante*.

2074. *Add. Annotation*:—*Refd.* Lambert v. I. R. Comrs. (1927), 12 Tax Cas. 1053.

2087. *Add. Annotation*:—*Mentd.* Hirji Mulji v. Cheong Yue S.S. Co., [1926] A. C. 497.

2110a. ———.]—MAEBURN v. LECKIE (1822), cited in Abbott's Merchant Shipping, 14th ed., p. 15.

*Annotation*:—*Consd.* Alcock v. Royal Exchange Assce. (1849), 13 Q. B. 292.

2145. *Add. Annotation*:—*Expld.* Captain J. A. Cates Tug & Wharfage Co. v. Franklin Insce., [1927] A. C. 698.

2152a. *Sunken ship—Recovery probable at date of abandonment.*]—CAPTAIN J. A. CATES TUG & WHARFAGE CO. v. FRANKLIN INSURANCE CO., No. 2014a, *ante*.

2189. *Add. Annotation*:—*Refd.* Australia (Owners) v. Nautilus (Owners) (1926), 95 L. J. P. 145.

2259. *Add. Annotation*:—*Mentd.* The Massillia, [1926] P. 180.

2286a. ———.]—VACUUM OIL CO. v. UNION INSURANCE SOCIETY OF CANTON, LTD. (1926), 32 Com. Cas. 53, C. A.

2333a. ——— *Negotiations for ship between underwriters & third party.*]—CAPTAIN J. A. CATES TUG & WHARFAGE CO. v. FRANKLIN INSURANCE CO., No. 2014a, *ante*.

2339. *Add. Annotations*:—*Consd.* Dee Conservancy Board v. McConnell, [1928] 2 K. B. 159. *Refd.* Sheppy Glue & Chemical Works v. Medway River Conservators (1926), 24 L. G. R. 457. *Mentd.* The Mostyn (1926), 135 L. T. 693; *Re* Ryder & Steadman's Contract, [1927] 2 Ch. 62.

PART II. SECT. 23, SUB-SECT. 4.—  
A. (e).

*sd. Provision as to survey—Application to total loss.*]—HAMILTON v. MONTREAL ASSURANCE CO. (1864), 23 U. C. R. 437.—CAN.

PART II. SECT. 23, SUB-SECT. 4.—  
C. (b).

2256 i. *Constructive total loss of ship.*]—*Held*: there having been a constructive loss of the ship, the action

of the underwriters in making repairs & earning the freight would not prevent the assured from recovering as for a total loss of freight.—TROOP & LEWIS v. MERCHANTS' MARINE INSURANCE CO. (1886), 13 S. C. R. 506; 6 C. L. T. 386.—CAN.

PART II. SECT. 26, SUB-SECT. 1.—A.

n. Read now "2404a i."  
o. Read now "2404a ii."

2340. *Add. Annotations*:—*Consd.* Dee Conservancy Board v. McConnell, [1928] 2 K. B. 159. *Refd.* Whitney v. I. R. Comrs., [1926] A. C. 37. *Mentd.* Sheppy Glue & Chemical Works v. Medway River Conservators (1926), 24 L. G. R. 457; Wigg v. A.-G. of Irish Free State (1927), 96 L. J. P. C. 88.

2341a. ——— *Damages for negligence in watching wreck.*]—Defts. & other underwriters insured plths.' steamship A. against total loss, & to the extent of three-quarters against damages which plths. might have to pay for collisions with other vessels. The A. was sunk in a river & in fact was a constructive total loss. Notice of abandonment was given & acceptance thereof refused. Plths. & defts. agreed without prejudice to their rights to take joint action to salve the property. The master of the A. employed a tug to watch the wreck & warn other vessels. Owing to the negligence of the crew of the tug the steamship S. came into collision with the A., & both vessels sustained damage. In an action brought, in the names of plths., by & for the benefit of defts., against the S., the owners of the S. counter-claimed & recovered judgment for the whole of their damages & costs, & the underwriters paid three-quarters of the damages & costs to the owners of the S.:—*Held*: the underwriters were jointly liable to indemnify plths. against the remaining one-quarter of the damages & costs of the S., the liability not arising under the policy but upon the contract of indemnity.—SUART & STEAMSHIP ALLEGHANY OF LONDON, LTD. v. MERCHANTS' MARINE INSURANCE CO., LTD. (1898), 14 T. L. R. 564; 3 Com. Cas. 312.

2379. *Add. Annotation*:—*Refd.* Goole & Hull Steam Towing Co. v. Ocean Marine Insce. (1927), 44 T. L. R. 133.

2404a. *Prosecution of claim—Condition limiting time for.*]—A certificate of insurance was issued under what were said to be policies of insurance. The policies contained a condition that no claim under them could be maintained unless brought within a year, but in the certificate there was no such condition. An action was brought on the certificate, but not within a year:—*Held*: the alleged policies were not contracts of insurance at all, but the certificate was the actual insurance, &, in the circumstances, the clause as to limitation of time could not be read into it.—DE MONCHY v. PHOENIX INSURANCE CO. OF HARTFORD (1928), 138 L. T. 703; 44 T. L. R. 364; 17 Asp. M. L. C. 440; 33 Com. Cas. 197, C. A.

2445. *Add. Annotation*:—*Refd.* Lothian v. Epworth Press (1926), 137 L. T. 582, n.

2469. *Add. Annotation*:—*Generally, Mentd.* British American Continental Bank v. British Bank for Foreign Trade, [1926] 1 K. B. 328.

PART II. SECT. 26, SUB-SECT. 2.—  
A. (b).

*sd. Recovery of interest—Although action tried without jury.*]—PACIFIC COAST COAL FREIGHTERS, LTD. v. WESTCHESTER FIRE INSURANCE CO. OF NEW YORK, PACIFIC COAST COAL FREIGHTERS, LTD. v. WESTERN ASSURANCE CO. (B. C.), [1926] 4 D. L. R. 963; [1926] 3 W. W. R. 356; *affd.*, [1927] 2 D. L. R. 590; [1927] 1 W. W. R. 878; 38 B. C. R. 315.—CAN.



## Part III.—Fire Insurance.

2568. *Add. Annotation* :—As to (2) *Consd. Lake v. Simmons* (1926), 95 L. J. K. B. 586.
2572. *Add. Citation* :—31 Com. Cas. 10.  
*Add. Annotation* :—*Mentd. Hirji Mulji v. Cheong Yue S.S. Co.*, [1926] A. C. 497.
2635. *Add. Annotation* :—As to (2) *Apld. Symington v. Union Insce. Soc. of Canton* (1928), 97 L. J. K. B. 646.
2644. *Add. Annotation* :—*Generally, Mentd. Pailin v. Northern Employers' Mutual Indemnity Co.* (1925), 95 L. J. K. B. 25.
2657. *Add. Annotation* :—*Consd. Looker v. Law Union & Rock Insce.*, [1928] 1 K. B. 554.
2718. *Add. Annotation* :—*Consd. Lake v. Simmons* (1926), 95 L. J. K. B. 586.
2740. *Add. Annotation* :—*Generally, Refd. Lake v. Simmons* (1926), 95 L. J. K. B. 586.

## Part IV.—Life Insurance.

2906. *Add. Annotation* :—*Apld. Looker v. Law Union & Rock Insce.*, [1928] 1 K. B. 554.
2907. *Add. Annotation* :—*Apld. Looker v. Law Union & Rock Insce.*, [1928] 1 K. B. 554.
- 2907a. ———.]—On July 10 L. sent to depts. a proposal for an insurance on his life, in which he stated that he was "now free from serious disease or ailment." The proposal contained this declaration: "It is hereby declared that the above particulars are true, & it is agreed that this proposal & declaration shall be the

### PART III. SECT. 2, SUB-SECT. 2.

t i. ——— *Liability of insured—Refusal to subrogate.*—*GLOBE & RUTGERS FIRE INSURANCE CO. v. TRUDELL*, [1927] 2 D. L. R. 659; 60 O. L. R. 227.—CAN.

### PART III. SECT. 3, SUB-SECT. 2.—B.

h (p. 311) i. ———.]—*CLARKE v. FIDELITY-PHOENIX FIRE INSURANCE CO. OF NEW YORK*, [1926] 1 D. L. R. 303; 58 O. L. R. 148.—CAN.

### PART III. SECT. 5.

h i. ——— *Covering note issued by broker—Loss before issue of policy—Broker not liable as insurer.*—*BROIT v. BENNIE S. COHEN & SON (N. S. W.) LTD.* (1926), 27 S. R. N. S. W. 29; 44 N. S. W. W. N. 44.—AUS.

k i. ———.]—*SUN INSURANCE OFFICE v. ROY (Can.)*, [1927] 1 D. L. R. 17; S. C. R. 8.—CAN.

### PART III. SECT. 7, SUB-SECT. 2.

2599 i. *Explosion—Grain-dust explosion.*—A policy of insurance against fire, which includes the condition that the co. shall make good loss or damage caused by the explosion of coal or natural gas in a building not forming part of gas works, & loss or damage by fire caused by any other explosion, covers loss caused by a grain-dust explosion, where, although the origin of the explosion cannot be positively proved, its most probable cause is found to have been the ignition of the particles of grain-dust suspended in the air.—*RIEDLE BREWERY, LTD. v. MERCHANTS FIRE ASSURANCE CORPN. OF NEW YORK (Man.)*, [1926] 1 W. W. R. 497.—CAN.

sm. "Burning of prairie."—*WEST RAND ESTATES, LTD. v. NEW ZEALAND INSURANCE CO., LTD.*, [1925] App. D. 245.—S. AF.

### PART III. SECT. 7, SUB-SECT. 3.

2629 v. ———.]—A condition, that the insurer is not liable for loss "if any subsequent insurance is effected with any other insurer, unless

& until the insurer assents thereto," is not applicable so as to defeat the insured's claim for loss, merely because, without the insurer's assent, he subsequently obtains from another co. a policy which never attaches by reason of the application of the condition therein, that "the insurer is not liable for loss if there is any prior insurance with any other insurer."—*HOME INSURANCE CO. OF NEW YORK v. GAVEL*, [1927] 3 D. L. R. 929; [1927] S. C. R. 481.—CAN.

d (p. 320) i. ——— *On change of nature of occupation on insured premises.*—*WEST RAND ESTATES, LTD. v. NEW ZEALAND INSURANCE CO., LTD.*, [1925] App. D. 245.—S. AF.

### PART III. SECT. 10, SUB-SECT. 2.

m i. ———.]—*MATERGIO v. CANADA ACCIDENT & FIRE ASSURANCE CO.*, [1926] 1 D. L. R. 1002; 58 N. S. R. 415.—CAN.

sn. *After recovery of judgment against railway company responsible for fire*—9 *Edw. 7, c. 32, s. 9.*—*BANTING v. WESTERN ASSURANCE CO.*, *BANTING v. LAW UNION & CROWN MORTGAGE CO.* (1911), 21 Man. L. R. 142.—CAN.

### PART III. SECT. 13, SUB-SECT. 2.—A.

2749 ii. ———.]—*SWIFT v. NEW ZEALAND INSURANCE CO., LTD.*, [1927] V. L. R. 249; 48 A. L. T. 182; [1927] Argus L. R. 194.—AUS.

### PART III. SECT. 13, SUB-SECT. 2.—B.

l i. ——— *Purchaser of property subject to mortgage—Although fire before registration of transfer.*—*ROYAL INSURANCE CO., LTD. v. MYLIUS* (1926), 38 C. L. R. 477; [1927] V. L. R. 1.—AUS.

### PART IV. SECT. 4, SUB-SECT. 1.

2781 i. *Application of statute—Insurance on own life—For benefit of another.*—*Re MORRIS, HATTER v. BOWMAN'S BLDGS. SUPPLIES (Ont.)*, [1927] 1 D. L. R. 805.—CAN.

### PART IV. SECT. 5.

r i. *Insurance for benefit of intended wife—Followed by marriage—Valid.*—

*Re WYTHE*, [1927] 2 D. L. R. 1161; 60 O. L. R. 323.—CAN.

### PART IV. SECT. 9, SUB-SECT. 1.—B.

r i. ———.]—*TURNER v. BRITISH COLUMBIA MUTUAL BENEFIT ASSOCN. (B. C.)*, [1927] 4 D. L. R. 541; [1927] 3 W. W. R. 341.—CAN.

### PART IV. SECT. 9, SUB-SECT. 2.—D.

2906 i. *Material alteration in health.*—A., after making a proposal for a policy of life insurance & undergoing, on Mar. 8, a medical examination, consulted a doctor the next day, & on his advice was, on Mar. 16, operated upon for hydrocele. On Mar. 15 the premium had been paid & a provisional receipt given, & on Mar. 20 the co.'s acceptance of the risk was posted. A. died from heart failure on Mar. 24.—*Held*: (1) non-disclosure of any material circumstances arising at any moment between the proposal & the completion of the contract avoided the contract; (2) the consultation on Mar. 9 & the operation were material facts, which A. ought to have communicated to the co.—*WALL v. SOUTHERN CROSS ASSURANCE CO., LTD.*, [1927] N. Z. L. R. 106.—N.Z.

### PART IV. SECT. 10.

sp. *Lapse—Whether policy resuscitated.*—*BIRKETT v. NORTHERN L. ASS'CE CO.*, [1927] 4 D. L. R. 91; 60 O. L. R. 666.—CAN.

### PART IV. SECT. 11, SUB-SECT. 1.

b i. ——— *Indebtedness exceeding reserve value—Termination of policy.*—*TEASDALL v. SUN LIFE ASSURANCE CO. OF CANADA*, [1927] 2 D. L. R. 502; 60 O. L. R. 201.—CAN.

### PART IV. SECT. 11, SUB-SECT. 5.—A.

a i. ——— *Death in garage—Deceased on motor vehicle while engine running—Deceased aware of danger from so doing.*—*Held*: on the evidence it was a case of suicide.—*LANG SHIRT CO.'S TRUSTEE v. LONDON L. INS. CO.*, [1927] 3 D. L. R. 89; 60 O. L. R. 476.—CAN.

basis of the contract of assurance." On July 15 defts. replied stating "The proposal made by you . . . has this day been accepted, & if the health of the life proposed remains meanwhile unaffected, the policy will be issued on payment of the first premium. . . . The risk of the co. will not commence until receipt of the first premium, & the directors meanwhile reserve the power to alter or withdraw this acceptance." On July 21 L. began to feel ill, & on the next day a friend filled in a cheque for the first premium, which L. signed in bed. The cheque was not sent off till the evening of July 24, by which time L. was seriously ill with pneumonia. On July 26 defts. received the cheque, & thereupon they sent to L. a certificate of that date stating that the proposal had been accepted, & that upon the payment of the first quarterly premium a policy would be issued in due course. On July 27 L. died. His administrators sued defts. for the sum insured:—*Held*: (1) the acceptance of the proposal by defts. was made in reliance upon the continued truth of the representations therein, & as the risk had been materially increased between proposal & acceptance, a condition which defts. had made a condition going to the root of the contract had not been fulfilled; (2) since contracts of insurance were contracts *uberrimæ fidei*, there was a duty of disclosure on the part of the assured to inform defts. of his change of health, which was a material change in the risk insured, & the position was here even stronger because defts. had inserted express terms in their documents to protect themselves.—*LOOKER v. LAW UNION & ROCK INSURANCE CO., LTD.*, [1928] 1 K. B. 554; 97 L. J. K. B. 323; 137 L. T. 648; 43 T. L. R. 691.

2938. *Add. Annotation*:—*Mentd.* Fisher v. Walters (1926), 90 J. P. 195.

2950. *Add. Citations*:—[1927] 1 Ch. 55; 95 L. J. Ch. 434; 135 L. T. 558; 42 T. L. R. 504, C. A.

*Add. Annotation*:—*Refd.* Royal London Mutual Insce. Soc. v. Barrett, [1928] Ch. 411.

2954. *Add. Annotation*:—*As to* (1) *Distd.* Royal London Mutual Insce. Soc. v. Barrett, [1928] Ch. 411.

2962a. ———.]—An assurance co. issued a policy containing the following condition: "5. Suicides, etc. The policy shall be void if the life assured dies by suicide or by the hands of justice. In any such case the directors may allow to the policy-holder such part of the sum assured as they shall think fit, & the policy shall remain in force to the extent of the pecuniary interest of third parties *bonâ fide* acquired for valuable consideration, satisfactory proof of which will be required, provided notice thereof in writing shall have been received & admitted by the directors at least one month prior to the date of death." The co. advanced money to the assured on a mtge. of leasehold property & on assignment to them of the policy by way of security. It was provided by a clause in the mtge. that the co. should satisfy themselves primarily out of the policy money. The assured committed suicide, &

the co. commenced an action against his extrix. for the purpose of enforcing their security:—*Held*: upon the true construction of clause 5, the expression "third parties" did not include the assurer, & the co. was entitled to proceed to enforce the security against the leasehold property, & the policy was void.—*ROYAL LONDON MUTUAL INSURANCE SOCIETY v. BARRETT*, [1928] Ch. 411; 97 L. J. Ch. 177; 139 L. T. 208; 44 T. L. R. 363; 72 Sol. Jo. 240.

2968. *Add. Annotation*:—*Mentd.* Re Wethered, *Ex p.* Salaman, [1926] Ch. 167.

2966. *Add. Annotation*:—*Consd.* Royal London Mutual Insce. Soc. v. Barrett, [1928] Ch. 411.

2969. *Add. Annotations*:—*Consd.* Royal Exchange Assce. v. Hope, [1928] Ch. 179. *Refd.* James v. British General Insce., [1927] 2 K. B. 311.

2993a. *Extension of period of policy by insured—Effect of.*—By an insurance policy dated Aug. 13, 1925, an assurance co. agreed to pay the assured, his exors., administrators or assigns £1,000 in the event of his death on or before July 31, 1926. The assured assigned the benefit of the policy to deft. In July, 1926, the assured arranged for an extension of the period of insurance to Oct. 31, 1926, & this extension was given effect to by indorsing on the policy a declaration "that the sum assured shall be payable in the event of the death of the life assured on or before Oct. 31, 1926." No assignment was ever made of the benefit of this extension. The assured died on Oct. 1, 1926:—*Held*: (1) the extension of the period of the policy by indorsement was not a new contract of insurance, but a variation of the original contract of which the benefit was vested in deft., & she was entitled to recover the policy money by virtue of the assignment to her of the policy; (2) the effect of the transaction was that the assured entered into the contract for the extension of the policy for the benefit of deft. & as trustee for her, & deft. was, on that ground, entitled to the policy money.—*ROYAL EXCHANGE ASSURANCE v. HOPE*, [1928] Ch. 179; 97 L. J. Ch. 153; 138 L. T. 446; 44 T. L. R. 160; 72 Sol. Jo. 68, C. A.

3050. *Citations*:—For "*Ex p.* LANCASTER" read "*Re JACOB'S ESTATE, LANCASTER v. GASELEE, Ex p.* LANCASTER."

3052a. ———.]—The grantee of an annuity effected a policy on the life of the grantor, at his own expense. The grantor had a power of redemption on payment of £2,500, & it was provided that in case the grantor should, "at the time of making such repurchase," by notice in writing elect to take the policy, the grantee would assign to him any policy "then vested" in him, which might be effected in respect of the annuity; but it was declared that it should not be incumbent on the grantor to keep on foot any policy. The policy became valuable, & the grantor gave the month's notice of repurchase, & declared his election to take the policy:—*Held*: (1) the grantee had no right afterwards to surrender the policy for his own profit. *Semble*: (2) although he

PART IV. SECT. 13, SUB-SECT. 1.—A.

o i. ——— For mortgage—Subrogation.—*SIMPSON v. CHAMBERLAIN*, [1923] 2 D. L. R. 1033; 33 Man. L. R.

81; [1923] 2 W. W. R. 99.—CAN.

o ii. ——— To non-preferred *fiat*—Validity.—*Re MURPHY* (P. E. I.), [1926] 4 D. L. R. 1136.—

CAN.

PART IV. SECT. 13, SUB-SECT. 1.—E.

m i. ———.]—*Re BENJAMIN* (1926), 59 O. L. R. 392.—CAN.

might have let the policy drop, he was not, at any time, entitled to surrender it for his own.—*HAWKINS v. WOODGATE* (1844), 7 Beav. 565; 8 Jur. 743; 49 E. R. 1185.

**3052b.** — Contract to redeem annuity—Whether insurance policy included.—*MILWARD v. LYSONS* (1836), Donnelly, 51; 47 E. R. 220, L. C.

**3052c.** — Annuity not redeemed by grantor.— Upon the execution of a mtge. from A. to B. to secure an annuity, B. insured A.'s life, & wrote to A. a letter, stating that the policy was to be assigned to A. as soon as the annuity was redeemed & all arrears & expenses paid. A. died without having redeemed the annuity. B. paid all the premiums on the policy till A.'s death:—*Held*: B. was entitled to receive the policy money from the assurance co. & the bonuses

payable in respect thereof.—*BASHFORD v. CANN* (1863), 33 Beav. 109; 9 L. T. 43; 11 W. R. 1037; 55 E. R. 308.

*Annotation*:—*Reid*, *Preston v. Neale* (1879), 12 Ch. D. 760.

**3066.** *Add. Annotations*:—*Consd.* *Royal Exchange Assce. v. Hope*, [1928] Ch. 179. *Reid*, *Smith v. Wood* (1928), 139 L. T. 250.

**3091.** *Add. Citations*:—95 L. J. Ch. 195; 135 L. T. 374.

**3097.** *Add. Annotation*:—*Generally*, *Reid*, *Tredegar v. Harwood* (1927), 44 T. L. R. 17.

**3104.** *Add. Citation*:—134 L. T. 557.

*Add. Annotation*:—*Reid*, *Buerger v. New York Life Assce.* (1927), 43 T. L. R. 601.

**3128.** *Add. Annotations*:—*Consd.* *Home & Colonial Insce. v. London Guarantee & Accident Co.* (1928), 45 T. L. R. 134. *Reid*, *Jones v. Waring & Gillow*, [1926] A. C. 670.

## Part V. Accident Insurance: Insurance against Liability for Accidents to Third Persons.

**3139.** *Add. Annotation*:—*As to* (2) *Apld.* *News-holme v. Road Transport & General Insce.* (1928), 45 T. L. R. 123.

**3141.** *Add. Annotation*:—*Apld.* *Roberts v. Anglo-Saxon Insce. Asscn.* (1927), 96 L. J. K. B. 590.

**3148.** *Add. Annotation*:—*Generally*, *Reid*, *Lake v. Simmons* (1926), 95 L. J. K. B. 580.

**3155.** *Add. Annotation*:—*Reid*, *Rowett, Leaky v. Scottish Provident Institution* (1926), 95 L. J. Ch. 434.

**3157a.** — “In charge of any vehicle.”—By a policy of insurance against death by accident the insurers undertook to pay £250 in case of death, “if the reader while a pedestrian in a public thoroughfare be killed by accidental impact with a moving vehicle,” provided that “the reader be not at the time of the accident in charge of any vehicle.” An insured person, who was riding a bicycle, got off at the foot of a hill, & having pushed it some way, stopped to speak to another man & stood holding his bicycle, & an unattended motor-car came running down the hill & struck the insured person & caused his death:—*Held*: the word “vehicle” included a bicycle, & as the deceased man was “in charge of” the bicycle within those words in the policy, the insurers were not liable.—

*HARPER v. ASSOCIATED NEWSPAPERS, LTD.* (1927), 43 T. L. R. 331.

**3157b.** *S. P.* *HANSFORD v. LONDON EXPRESS NEWSPAPER, LTD.* (1928), 44 T. L. R. 349; 72 Sol. Jo. 240.

**3176.** *Add. Annotation*:—*Reid*, *Rowett, Leaky v. Scottish Provident Institution* (1926), 95 L. J. Ch. 434.

**3194a.** — — — — —.]—*JAMES v. BRITISH GENERAL INSURANCE CO., No. 3214a, post.*

**3200.** *Add. Annotation*:—*Reid*, *Koskas v. Standard Marine Insce.* (1926), 42 T. L. R. 692.

**3205.** *Add. Annotation*:—*Apld.* *Wales v. Iron Trades Employers' Asscn.* (1928), 21 B. W. C. C. 316.

**3205a.** *S. P.* *WALES v. IRON TRADES EMPLOYERS' ASSCN., LTD.* (1928), 21 B. W. C. C. 316, C. A.

**3205b.** — — — — —.]—A workman was employed by a co., which went into liquidation, & ceased to carry on business. The co. were insured at the time of an accident to the workman with an assocn., whose arts. formed the contract of insurance. By the arts. the assocn. undertook liability if compensation became payable for more than six months, so long as the insured co. remained a member of the assocn. Membership was to cease if the co. went into liquidation, or

### PART IV. SECT. 15, SUB-SECT. 2.

*n i.* — Application for declaration as to—Who may apply—*Ontario Insurance Act*, 1924, s. 154 (2).—*Re* *TURNER & CANADIAN ORDER OF FORESTERS*, [1926] 4 D. L. R. 793; 59 O. L. R. 348.—*CAN.*

*sq.* Production of grant of probate—*Necessity for.*—*NATIONAL LIFE INSURANCE CO. v. McCOUBRAY*, [1926] 2 D. L. R. 550; [1926] S. C. R. 277.—*CAN.*

### PART V. SECT. 1, SUB-SECT. 4.—A.

*st.* Newspaper insurance—Finality of adjudication as to next of kin.—*Held*: it was a condition precedent to payment, that the person claiming should produce the decision of the proprietors of the paper that he was the next of

kin of deceased.—*LAW v. NEWNES, LTD.* (1894), 21 R. (Ct. of Sess.) 1027.—*SCOT.*

*sv.* — — — — —.]—Where deceased left three brothers & a sister, & the editor adjudged the sister next of kin & paid the money to her:—*Held*: the brothers had no right to share in the sum so paid.—*HUNTER v. HUNTER* (1904), 7 F. (Ct. of Sess.) 136.—*SCOT.*

### PART V. SECT. 2, SUB-SECT. 2.

*n i.* — — — — — “Business of farmer” —*What is.*—*CARR v. GUARDIAN ASSURANCE CO., LTD. & CRAOKNELL & CRIMP*, [1928] N. Z. L. R. 108.—*N. Z.*

### PART V. SECT. 2, SUB-SECT. 3.

*q i.* — — — — —.]—Pltf., a workman employed by the M. Co., was injured, & obtained an award for compensation

under Workmen's Compensation Act, 1902. At the date of the award the M. Co. were being wound up. Pltf. alleged that the C. Co., were liable to indemnify the M. Co. against losses or liability under the award, & brought an action for a declaration that he had a first charge upon the money which the M. Co. were entitled to receive from the C. Co., & for an order for payment. The C. Co. admitted that they had issued a policy which was valid & subsisting at the date of pltf.'s injuries, by which they agreed to indemnify the M. Co. against loss for damages on account of bodily injuries suffered within the period of the policy by any employee:—*Held*: pltf. had no status to maintain the action.—*DISOURDI v. SULLIVAN GROUP MINING CO. & MARYLAND CASUALTY CO.* (1910), 15 B. C. R. 305.—*CAN.*



ceased to carry on business. The workman having applied for an award of weekly compensation as against both his employers & the assocn., on the ground that the rights of his employers against the assocn. had been transferred to him:—*Held*: on the contract, the undertaking of liability by the assocn. after compensation had been paid for more than six months did not vest that liability once & for all, but merely indemnified the co. during its continuance of membership, & membership having ceased, the contract of insurance lapsed, & the assocn. was under no liability to the workman.—*HINDMARCH v. CARTERTHORNE COLLIERY, LTD. & DURHAM COLLIERY OWNERS' MUTUAL PROTECTION ASSOCN.* (1928), 21 B. W. C. C. 44, C. A.

**3206.** *Add. Annotations*:—*Distd.* *Hindmarch v. Carterthorne Colliery Co. & Durham Colliery Owners' Mutual Protection Assocn.* (1928), 21 B. W. C. C. 44. *Consd.* *Wales v. Iron Trades Employers' Assocn.* (1928), 21 B. W. C. C. 316.

**3210.** *Add. Citation*:—95 L. J. K. B. 25.

*Add. Annotations*:—*As to* (1) *Distd.* *Hindmarch v. Carterthorne Colliery Co. & Durham Colliery Owners' Mutual Protection Assocn.* (1928), 21 B. W. C. C. 44. *Generally, Consd.* *Wales v. Iron Trades Employers' Assocn.* (1928), 21 B. W. C. C. 316.

**3213a.** *S. P. WALES v. IRON TRADES EMPLOYERS' ASSOCN., LTD.* (1928), 21 B. W. C. C. 316, C. A.

**3214.** *Add. Annotations*:—*As to* (1) *Folld.* *James v. British General Insce.*, [1927] 2 K. B. 311. *As to* (3) *Folld.* *James v. British General Insce.*, [1927] 2 K. B. 311.

**3214a.** ————*]*—A policy of insurance provided that the insurance co. would indemnify the assured against all sums which he might be legally liable to pay for damages or compensation to any person for accidental bodily injury or accidental damage to property, where such injury or damage was caused by the driving of the insured's motor car, including law costs when incurred with the consent of the co. While the insured was driving his motor car a collision took place between it & a motor cycle, the result being that the driver of the latter vehicle was injured, a passenger thereon was killed, & both vehicles were damaged. At the time of the collision the insured was drunk through his own unpremeditated folly. The insured was convicted of the manslaughter of the deceased passenger. The injured driver brought an action for personal injuries against the insured, in which he was awarded damages & costs, & the insured incurred costs. The insured also incurred costs in repairing the vehicles, in attending an inquest on deceased, & in defending himself in the police ct. proceedings before his trial. In an action by the insured against the co. for indemnity against these damages & costs:—*Held*: (1) the policy covered liabilities of the insured for accidental bodily injury to any person or accidental damage to property caused by his negligence, even though gross & attended by criminal consequences; (2) the policy, by covering these liabilities, was not void as against public policy, & the insured was entitled to the indemnity which he claimed.—*JAMES v. BRITISH GENERAL INSURANCE CO.*, [1927] 2 K. B. 311; 96 L. J.

K. B. 729; 137 L. T. 156; 43 T. L. R. 354; 71 Sol. Jo. 273.

**3216a.** ————*]*—*JAMES v. BRITISH GENERAL INSURANCE CO.*, No. 3214a, *ante*.

**3216b.** *Protection against criminal consequences.*—*JAMES v. BRITISH GENERAL INSURANCE CO.*, No. 3214a, *ante*.

**3217a.** ———— *Actual driver also insured—*

*Ratable contribution.*—G. took out with the M. co. a motor car insurance policy covering himself & any friend driving with G.'s consent, & providing as following: "Condition 6. The extension of the indemnity to friends or relatives of the insured is conditional upon such friend or relative being a licensed & competent driver & not being insured under any other policy. Condition 10. If at the happening of any accident, injury, damage, or loss covered by this policy there shall be subsisting any other insurance or indemnity of any nature whatever covering same, whether effected by insured or by any other person, then the co. shall not be liable to pay or contribute towards any such damage or loss more than a ratable proportion of any sum payable in respect thereof for compensation." L., G.'s brother-in-law, took out with the G. co. a similar policy, providing that "insured will also be indemnified hereunder while personally driving a car not belonging to him provided that there is no other insurance in respect of such other car whereby insured may be indemnified," & that "if at the time of the occurrence of any accident, loss or damage there shall be any other indemnity or insurance subsisting whether effected by insured or by any other person the corpn. shall not be liable to pay or contribute more than a ratable proportion of any sums payable in respect of such accident loss or damage." While L. was driving G.'s car with G.'s consent it had a collision, & L. had to pay damages. G., as trustee for L., claimed against the M. co., & L. on his own behalf claimed against the G. co.:—*Held*: in each policy the provision as to ratable contribution qualified the preceding clause, & each co. was liable to pay claimants half the amount claimed.—*GALE v. MOTOR UNION INSURANCE CO., LTD., LOYST v. GENERAL ACCIDENT FIRE & LIFE ASSURANCE CORPN., LTD.*, [1928] 1 K. B. 359; 96 L. J. K. B. 199; 138 L. T. 712; 43 T. L. R. 15; 70 Sol. Jo. 1140.

**3217b.** *Action by repairer against insurers for repairs—Right of insurers to be subrogated to owner's rights against repairer.*—In an action by the repairer of a motor car against an insurance co. for repairs executed at their request, the co. contended that they were entitled to set-off, on the principle of subrogation, the claims of the assured, the owner of the car, against the repairer, who had been driving the car on the occasion of a collision. The insurance co. had commenced an action, in the name of the owner, against the repairer for the damage done to the car by his negligent driving, but, at the date of the commencement of the action by the repairer, certain claims of the assured under the policy in regard to third party risks, etc., were still unsettled:—*Held*: the fact that these claims were then unsettled prevented the insurance co. from being subrogated to the owner's rights against the

repairer, & the co. were not entitled to rely on these as a set-off to the repairer's claim.—

PAGE v. SCOTTISH INSURANCE CORPN.,  
FORSTER v. PAGE (1929), 167 L. T. Jo. 135, C.A.

## Part VII.—Insurance against Burglary and Theft

3252. *Add. Citations*:—*affd.*, [1927] A. C. 140; 136 L. T. 263; 43 T. L. R. 46; 70 Sol. Jo. 1111; 32 Com. Cas. 62, H. L.
3256. *Add. Annotation*:—*Refd.* Lake v. Simmons (1926), 95 L. J. K. B. 586.
3257. *Add. Annotation*:—*Generally, Refd.* Lake v. Simmons (1926), 95 L. J. K. B. 586.
3258. *Add Citations*:—*revsd.*, [1926] 2 K. B. 51; 95 L. J. K. B. 586; 135 L. T. 129; 42 T. L. R. 425; 70 Sol. Jo. 584; 31 Com. Cas. 271, C. A.; *revsd.*, [1927] A. C. 487; 96 L. J. K. B. 621; 137 L. T. 233; 43 T. L. R. 417; 71 Sol. Jo. 369; 33 Com. Cas. 16, H. L.
- 3260a. "Dishonesty"—Discounting bills of exchange subsequently dishonoured.]—Pltf. was insured by two policies, subscribed by deft., against loss or deprivation of bills of

exchange through theft & any other loss whatsoever through theft or other dishonesty. During the currency of the policies pltf. was induced by false representations to discount certain bills of exchange. The bills were dishonoured, & pltf. brought an action on the policies on the ground that he had suffered a loss through having dealt in the bills. Deft. contended that the above provision in the policies only covered accidental loss of documents or physical deprivation of the possession of documents:—*Held*: pltf.'s loss was caused by dishonesty within the policy.—WASSERMAN v. BLACKBURN (1926), 43 T. L. R. 95.

3269. *Add. Annotation*:—*Refd.* Lake v. Simmons (1926), 95 L. J. K. B. 586.

## Part VIII.—Other Kinds of Insurance.

- 3279a. — To be used only for commercial travelling—Damaged whilst carrying passengers.]—*Held*: a statement in a proposal form that a motor car was to be used only for commercial travelling was a statement descriptive of the risk covered by the insurance, & the insurers were not liable for an accident which happened while the motor car was being used to carry passengers, carrying passengers not being within the

description.—ROBERTS v. ANGLO-SAXON INSURANCE ASSOCN. (1927), 96 L. J. K. B. 590; 137 L. T. 243; 43 T. L. R. 359, C. A.

3282. *Add. Annotation*:—*Refd.* Lake v. Simmons, [1927] A. C. 487.

3288. *Add. Annotation*:—*Refd.* Royal Exchange Assce. v. Hope, [1928] Ch. 179.

3289. *Add. Citation*:—95 L. J. Ch. 24.

### PART VI. SECT. 1.

3220 iii. S. P. VICTORY v. SASKATCHEWAN GUARANTEE & FIDELITY CO., LTD., [1927] 3 D. L. R. 647; [1927] 2 W. W. R. 577; 21 Sask. L. R. 551.—CAN.

### PART VI. SECT. 3.

3233 iii. — — — — —.]—RURAL MUNICIPALITY OF ENFIELD v. LONDON GUARANTEE & ACCIDENT CO., LTD. (Sask.), [1926] 4 D. L. R. 37; [1926] 2 W. W. R. 737.—CAN.

3233 iv. — — — — —.]—GRAIN CLAIMS BUREAU, LTD. v. CANADIAN SURETY CO. (No. 2), [1927] 3 W. W. R. 1; 37 Man. L. R. 76.—CAN.

3243 i. *Embezzlement—Committed within twelve months prior to notice of discovery—What amounts to.*—LONDON GUARANTEE & ACCIDENT CO., LTD. v. CITY OF HALIFAX, [1927] 1 D. L. R. 1129; [1927] S. C. R. 165.—CAN.

### PART VII. SECT. 1.

3248 i. *Commencement of risk—Covering note issued by broker—Loss before issue of policy—Broker not liable as insurer.*—BROTT v. BENNIE S. COHEN & SON (N. S. W.), LTD. (1926), 27 S. R. N. S. W. 29; 44 N. S. W. W. N. 44.—AUS.

### PART VII. SECT. 2.

sa. *Burglary from "safe or vault described in schedule."*—Where money stolen by burglars was, at the time of the burglary, in a vault so described, but was not in the safe in the vault:—*Held*: the assurance was not confined to money in the safe.—WOODWARD'S, LTD. v. UNITED STATES FIDELITY & GUARANTEE CO., [1927] 2 D. L. R. 126; [1927] 1 W. W. R. 529; 38 B. C. R. 171.—CAN.

### PART VIII.

g i. — *Missstatements in proposal—What amount to.*—A motor vehicle in the possession of the purchaser under a hire-purchase agreement was destroyed by fire. An action was brought by the two parties to the hire-purchase agreement under a policy issued in the names of both parties. Defts. pleaded that all benefit under the policy had been forfeited through misstatements in the proposal. The proposal began "I/we, the undersigned desire to insure my/our motor vehicle." After the words "owner's full name," was written the names of both pltf. "for their respective rights & interests." The question "Have you ever made a claim against any insurance co." was answered "No." The proposal was signed by only one pltf. Although pltf. who signed the proposal had never made a claim, the other had done so:—*Held*: a non-suit, on the ground that the evidence proved the plea, should be set aside.—MEYERS & PAIDINGTON MOTOR SERVICE, LTD. v. DALGETY & CO., LTD. (1926), 26 S. R. N. S. W. 195; 43 N. S. W. W. N. 39.—AUS.

g ii. — — — — —.]—A proposal for the insurance of a motor car contained the question, "Has any proposal for insurance, or any policy ever been withdrawn, declined or cancelled?" Pltf.'s answer was "No." Pltf. had held a policy over the car with another co., but by arrangement, & to oblige pltf., this policy had been terminated:—*Held*: the word "cancelled" meant the determination of the policy by the unilateral act of the co., & the termination of the policy by mutual arrangement did not amount to a cancellation, & the answer to the

question in the proposal was true.—WILCOCKS v. NEW ZEALAND INSURANCE CO., [1926] N. Z. L. R. 805.—N.Z.

g iii. — — — — —.]—*Held*: a statement that the motor car insured was a new one, whereas in fact it was a second-hand one, was a material representation which avoided the policy.—ABASS v. GLOBE & RUTGERS F. INS. CO., [1927] 1 D. L. R. 435; 59 N. S. R. 81.—CAN.

g iv. — *Driver under influence of drink—Whether assured entitled to recover—Construction of policy.*—BALI-NATH v. ATLAS ASSURANCE CO., LTD. (1927), 48 N. L. R. 467.—S. AF.

g v. — *Insurance not to be effective until payment of premium—Failure to pay premium.*—*Held*: the insurance co. was not entitled to sue the assured for a short period premium, as the contract was not complete until the premium was paid & accepted, & the handing over to the assured of the policy containing the proviso did not amount to a waiver of the condition.—SOUTH BRITISH INSURANCE CO., LTD. v. STENSON (1928), 1 L. R. 52 Bom. 532.—IND.

g vi. — *Amount recoverable.*—On an appraisal of the value of an automobile which has been stolen & destroyed by fire, the fact that the sound value & the replacement value are found to be the same is not error on the face of the award, but is only another way of saying there was a total loss.—SEARLE v. ALLIANCE INSURANCE CO. (No. 3), [1926] 4 D. L. R. 1173; [1926] 3 W. W. R. 563; 36 Man. L. R. 110.—CAN.

## Part IX.—Wagering Policies.

3330. *Add. Annotations*:—**Refd.** Weddle, *Beck v. Hackett* (1928), 45 T. L. R. 67. **Mentd.** *Ellesmere v. Wallace* (1928), 44 T. L. R. 798; *Kennedy v. Thomassen* (1928), 45 T. L. R. 122.

## Part XI.—Mutual Insurance Associations.

3366. *Add. Annotations*:—**Refd.** *Dominion Iron & Steel Co. v. Invernairn*, [1927] W. N. 277. **Mentd.** *I. R. Comrs. v. Westleigh Estates Co.*, *I. R. Comrs. v. South Behar Ry.*, *I. R. Comrs. v. Eccentric Club* (1925), 12 Tax Cas. 657; *Re Debtor* (No. 3 of 1926) (1926), 135 L. T. 689. *Re United General Commercial Insce. Corpn.*, [1927] 2 Ch. 51. **Mentd.** *Thomas v. Evans*, *I. R. Comrs. v. South-West Lancashire Coal-Owners Assocn.* (1926), 135 L. T. 673.
3367. *Add. Annotation*:—**Refd.** *Cornish Mutual Assce. v. I. R. Comrs.*, [1926] A. C. 281.
3368. *Add. Annotations*:—**Refd.** *Cornish Mutual Assce. v. I. R. Comrs.*, [1926] A. C. 281; *Greenberg v. Cooperstein*, [1926] Ch. 657; *3396. Add. Annotation*:—**Refd.** *own v. Harrison* (1927), 96 L. J. K. B. 1025.
3397. *Add. Annotation*:—**Consd.** *Brown v. Harrison* (1927), 96 L. J. K. B. 1025.
3398. *Add. Annotation*:—**Refd.** *Brown v. Harrison* (1927), 96 L. J. K. B. 1025.

### PART X. SECT. 1.

**p i.** ———.]—*R. v. 1500 CLUB OF CALGARY* (Alta.), [1926] 3 W. W. R. 468; 46 Can. Crim. Cas. 276.—CAN.

**sd.** *Discrimination in rates charged*—

*Investigation by Superintendent of Insurance under Ontario Insurance Act, 1924, s. 262—Position & duties of Superintendent.]—Re GENERAL ACCIDENT ASSURANCE CO.*, [1926] 2 D. L. R. 390; 58 O. L. R. 479.—CAN.

### PART XI. SECT. 4, SUB-SECT. 1.

**sf.** *Provision for lien on ships insured for proportion of losses incurred—Validity.]—Re TUCKER, Ex p. MARINE INSURANCE CLUB* (1886), 7 Nfld. L. R. 123.—NFLD.



## INTERPLEADER.

## Part II.—Interpleader in the High Court.

10. *Add. Annotation* :—**Apld.** *Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669.
42. *Add. Annotation* :—**Refd.** *The Jupiter* (No. 3) (1927), 137 L. T. 333.
88. *Add. Annotation* :—**Refd.** *Earle v. Hemsworth* R. D. C. (1928), 44 T. L. R. 605.
- 173a. ———.]—The sheriff in possession of goods under a writ of *fi. fa.* being served with notice of an adjudication in bkpcy. against debtor, & notice by the assignee to quit possession, the execution creditor obtained an order requiring the sheriff to make a return to the writ. The sheriff sold the goods :—*Held* : he was entitled to file a bill of interpleader against the assignee & the execution creditor, & the assignee was, on interpleader, entitled to the proceeds of the sale.—*CHILD v. MANN* (1867), L. R. 3 Eq. 806 ; 16 L. T. 49.
- 178a. **Claim of equitable nature.**] — The sheriff having taken in execution goods which deft., who was one of the administrators of an intestate, had become possessed of under a sale from his co-administrator, was served with a notice from another party, that he & others were also entitled to shares in the goods, as next of kin to the intestate, & that, upon a bill filed by them in the Ct. of Ch. deft. had been restrained by injunction from selling, mortgaging, or disposing of the goods, & that they should hold the sheriff answerable for all loss & damage occasioned by the seizure :—*Held* : this was not such a claim as entitled the sheriff to apply for relief under Interpleader Act, 1831 (c. 58).—*ROACH v. WRIGHT* (1841), 8 M. & W. 155 ; 1 Dowl. N. S. 56 ; 10 L. J. Ex. 267 ; *sub nom.* *ROUCH v. WRIGHT*, 5 Jur. 755.
- Annotations* :—**Refd.** *Bird v. Crabb* (1861), 30 L. J. Ex. 318 ; *Richards v. Jenkins* (1886), 17 Q. B. D. 544.
324. *Add. Annotation* :—**Refd.** *Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669.
- 443a. ———.]—On Aug. 20 the sheriff, under a *fi. fa.* against A., took possession of B.'s furniture in A.'s house. Both before & after seizure B. gave formal notice to the sheriff that the furniture was his, & on the 23rd issued a writ in an action against the sheriff for an injunction & damages. On the 25th the sheriff issued an interpleader summons, under which an issue was directed & an order made for the sheriff withdrawing from possession on payment of £100 into ct. & the sheriff withdrew from possession on Sept. 1. B.'s title was afterwards admitted by the judgment creditor, & the £100 paid out to B. B. having brought the action to trial against the sheriff for damages & costs :—*Held* : the sheriff had not exceeded the scope of his duty in retaining possession till ordered to withdraw under the interpleader order, & the action must be dismissed, but without costs, on the ground that the sheriff might have applied to the judge, under the interpleader order, to dispose of the matters in question between him & pltf.—*AYLWIN v. EVANS* (1882), 52 L. J. Ch. 105 ; 47 L. T. 568.
447. *Add. Annotation* :—**Refd.** *Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669.
454. *Add. Annotation* :—**Refd.** *Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669.
455. *Add. Annotation* :—**Refd.** *Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669.
456. *Add. Annotation* :—**Refd.** *Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669.
- 462a. ——— **With leave.**]—Under R. S. C., Ord. 57, r. 11, an appeal lies by special leave from the decision of a judge sitting without a jury on the trial of an interpleader issue.—*REPUBLICA DE GUATEMALA v. NUNEZ*, [1927] 1 K. B. 669 ; 96 L. J. K. B. 441 ; 136 L. T. 743 ; 43 T. L. R. 187 ; 71 Sol. Jo. 35, C. A.
- Annotation* :—**Mentd.** *Richardson v. Richardson*, [1927] P. 228.
464. *Add. Annotation* :—**Apld.** *Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669.
- 497a. ———.]—*BOUCICAULT v. PONSFORD* (1886), 2 T. L. R. 646, D. C.
- 503a. **Whether entitled to costs.**]—*MORLAND v. CHITTY* (1833), 1 Dowl. 520.
- 503b. ———.]—*DABBS v. HUMPHRIES* (1835), 1 Bing. N. C. 412 ; 3 Dowl. 377 ; 1 Hodg. 4 ; 1 Scott, 325 ; 4 L. J. C. P. 101 ; 131 E. R. 1176.
- 503c. ———.]—*WEST v. ROTHERHAM* (1836), 2 Bing. N. C. 527 ; 1 Hodg. 461 ; 2 Scott, 802 ; 132 E. R. 206.

PART II. SECT. 3, SUB-SECT. 2.—C.  
70 v. ———.]—*WESTERN CANADA  
LOAN & SAVINGS CO. v. COURT* (1877),  
25 Gr. 151.—CAN.

PART II. SECT. 3, SUB-SECT. 3.—  
C. (a).  
140 i. *Necessity for notice of claim to*

*execution creditor.*]—*FRASER v. EKSTRON  
& MASSEY* (1900), 7 Terr. L. R. 1.—  
CAN.

PART II. SECT. 5, SUB-SECT. 1.—C.  
so. *Purchaser from agent*—*Whether  
vendor general agent within C. S. C.,  
c. 59.*]—*HAYS v. O'CONNOR* (1861), 21  
U. C. R. 251.—CAN.

PART II. SECT. 8, SUB-SECT. 4.  
e. *On appeal*, 11 P. R. 296.

PART II. SECT. 8, SUB-SECT. 7.  
d (p. 491) i. *On appeal*, 11 P. R. 296.  
g (p. 491) i. ———.]—*FURLONG v.  
REID* (1886), 12 O. R. 607.—CAN.

## Part III.—Interpleader in County Courts:

595. *Add. Annotation* :—*Refd.* Conquer v. Boot, [1928] 2 K. B. 336.

### PART III. SECT. 1.

**c i.** —.].—*KELLINGTON v. ROSA* (Sask.), [1927] 2 W. W. R. 309.—**CAN.**

**d i.** *Issues involving under \$800.*].—The district ct. has jurisdiction in interpleader matters where the value of the goods does not exceed \$800.—*KNOX v. SHAW*, [1927] 3 D. L. R. 1185; [1927] 2 W. W. R. 494; 21 Sask. L. R. 593; 8 C. B. R. 331.—**CAN.**

**e i.** —.].—A district ct. judge has no jurisdiction to deal with an interpleader issue which brings the title to land in question, although the issue is sought as a result of a seizure of land by the sheriff under an execution under a district ct. judgment.—*FARMERS' MUTUAL HAIL INSURANCE CO. v. FOSTER*, [1925] 3 D. L. R. 746; [1925] 2 W. W. R. 515; 19 Sask. L. R. 587.—**CAN.**

**sl.** *To set aside bill of sale as fraud on creditors.*].—In an interpleader issue the district ct. has jurisdiction to set aside a bill of sale, on the ground that it is a fraud on creditors, as being relief ancillary to a matter falling within the jurisdiction of the ct. under District Courts Act, R. S. S., 1920 (c. 40), s. 27.—*KNOX v. SHAW*, [1927] 3 D. L. R. 1185; [1927] 2 W. W. R. 494; 21 Sask. L. R. 593; 8 C. B. R. 331. — **CAN.**

## INTOXICATING LIQUORS.

## Part I.—Definitions.

- 9a. ——— Addition of quinine.]—Whether the addition of quinine to wine makes the mixture cease to be a wine within Licensing (Consolidation) Act, 1910 (c. 24), so as to exempt the seller from holding a justice's licence, depends on the proportion of the mixture.—*SHARP v. SPARKES* (1926), 70 Sol. Jo. 1069, D. C.
12. Add. Annotation:—*Refd.* *Lorden v. Brooke-Hitching*, [1927] 2 K. B. 237.

## Part III.—Application for Licenses.

49. Add. Annotation:—*Refd.* *R. v. Southampton County Confirming Committee, Ex p. Slade* (1928), 45 T. L. R. 72.
92. Add. Annotation:—*Refd.* *Thomas v. Newington Licensing JJ.* (1926), 136 L. T. 638.

## Part IV.—Grant of Licenses.

140. Add. Annotation:—*Refd.* *Thomas v. Newington Licensing JJ.* (1926), 136 L. T. 638.
141. Add. Annotation:—*Refd.* *Thomas v. Newington Licensing JJ.* (1926), 136 L. T. 638.
- 141a. ——— Pending hearing of summons against applicant.]—Appls., the licensee & the owners of a public-house, applied to the licensing justices on Mar. 1 for a renewal of the licence, which was due to expire on Apr. 4. The justices, on the ground that summonses were pending against the licensee for supplying during non-permitted hours intoxicating liquor for consumption on the premises, adjourned the consideration of the application to the next transfer sessions to be held on Apr. 12. On Mar. 4 the licensee was convicted on the summonses, & on Apr. 12 the licensing justices refused the renewal:—*Held*: the adjournment did not amount to a refusal of the renewal.—*THOMAS v. NEWINGTON LICENSING JJ.* (1926), 136 L. T. 638; 43 T. L. R. 181; *sub nom.* *THOMAS v. NEWINGTON LICENSING JJ., MEUX'S BREWERY CO., LTD. v. NEWINGTON LICENSING JJ.*, 91 J. P. 37; 25 L. G. R. 109.
149. Add. Annotation:—*Appld.* *Frome United Breweries Co. v. Bath JJ.*, [1926] A. C. 586.
- 202a. Applicant's willingness to contribute to compensation fund.]—A question arose which of two adjacent licensed houses should be granted a renewal of its licence, & which should be suppressed. The owners of each house submitted to the licensing justices plans of proposed alterations, & the owners of one of the houses offered to pay £1,250 to the compensation fund if the alterations were sanctioned. The same licensing justices sat as compensation authority to consider the question of redundancy, & decided to renew the licence of the house whose owners had offered the contribution, it appearing from the evidence that that house, when altered, could be made the better of the two. They then, as licensing justices, approved the alterations to that house:—*Held*: (1) in considering the question of the contribution offered to the compensation fund the licensing justices had taken extraneous matter into account, & as this must necessarily have affected their minds as compensation authority, their decision must be quashed; (2) it was contrary to the spirit of the Licensing Acts, though it might be within the letter of them, that the powers of the compensation authority should be delegated to the licensing

## PART I.

1 i. "Spirits"—*Include rum—Inland Revenue Act, R. S. C.*, 1906 (c. 51), s. 185.]—*Re R. v. MCKENZIE* (1926), 45 Can. Crim. Cas. 144; 58 N. S. R. 313.—CAN.

sa. "Residence"—*Temperance Act (Man.)*, 1924 (c. 118)—*Liquor Control Act (Man.)*, 1924 (c. 117).]—*R. v. HUBIN*, [1926] 4 D. L. R. 863; [1926] 2 W. W. R. 768; 46 Can. Crim. Cas. 202; 36 Man. L. R. 11.—CAN.

sb. ——— Amendment of latter Act by 1926 (c. 28), s. 1.]—*R. v. LEVINE*, [1926] 3 W. W. R. 550; 46 Can. Crim. Cas. 342; 36 Man. L. R. 95.—CAN.

RYALL (Man.), [1927] 1 W. W. R. 635; 48 Can. Crim. Cas. 360.—CAN.

sd. ———.]—*R. v. DRASHCOVICH* (Man.), [1927] 3 W. W. R. 40; 48 Can. Crim. Cas. 401.—CAN.

k i. ———.]—*HABERLACK v. BURR*, [1926] 1 D. L. R. 252; [1926] 1 W. W. R. 120; 45 Can. Crim. Cas. 58; 20 Sask. L. R. 293.—CAN.

k ii. ———.]—*R. (JOHNSTON) v. BUSIKIEWICZ* (Sask.), [1926] 4 D. L. R. 715; [1926] 2 W. W. R. 759; 46 Can. Crim. Cas. 145.—CAN.

k iii. ———.]—*R. v. CLARK* (Sask.) (1926), 45 Can. Crim. Cas. 265; [1926] 2 W. W. R. 373.—CAN.

k iv. ———.]—*R. v. ROTTERMAN* (Ont.) (1926), 47 Can. Crim. Cas. 44.—CAN.

k v. ——— *Manitoba Temperance Act, C. A.*, 1924 (c. 118).]—*R. (EDDIE) v. GROSNEY*, [1927] 1 D. L. R. 1001; [1927] 1 W. W. R. 295; 47 Can. Crim. Cas. 257; 36 Man. L. R. 249.—CAN.

k vi. ———.]—*R. v. DIGERNESS* (Sask.), [1927] 3 W. W. R. 689; 49 Can. Crim. Cas. 185.—CAN.

sf. "Guest."—A non-paying guest of a hotelkeeper may be a *bond fide* guest within *Liquor Act*, 1925.—*R. v. HENDERSON* (Sask.), [1926] 2 W. W. R. 430; 45 Can. Crim. Cas. 373.—CAN.



committee so that the two bodies were identical, it being clearly intended that they should be separate & independent bodies.—*R. v. SHEFFIELD JJ., Ex p. RAWSON (T.) & Co., LTD.* (1927), 138 L. T. 234; 91 J. P. 193; 44 T. L. R. 43; 25 L. G. R. 536, D. C.

206. *Add. Annotation*:—*Refd.* *Short v. Poole Corpn.*, [1926] Ch. 66.

284. *Add. Annotation*:—*Refd.* *R. v. Holborn Licensing JJ., Ex p. Stratford Catering Co.* (1926), 90 J. P. 159.

267. *Add. Annotation*:—*As to* (1) *Refd.* *R. v. Sheffield JJ., Ex p. Rawson* (1927), 91 J. P. 193.

268. *Add. Annotation*:—*Refd.* *R. v. Southampton County Confirming Committee, Ex p. Slade* (1928), 45 T. L. R. 72.

292a. ———.]—Though licensing justices have no jurisdiction to make the grant of an ordinary removal of a licence subject to any condition as to payment of monopoly value, they are entitled to refuse the removal upon the sole ground that it would confer a great pecuniary gain upon appct., & that he ought to apply for a new licence & pay monopoly value.—*R. v. SOUTHAMPTON COUNTY CONFIRMING COMMITTEE, Ex p. SLADE* (1928), 45 T. L. R. 72; 72 Sol. Jo. 873; 92 J. P. Jo. 763, C. A.

293a. *Grounds for refusal of removal—Great pecuniary gain conferred on applicant.*—*R. v. SOUTHAMPTON COUNTY CONFIRMING COMMITTEE, Ex p. SLADE*, No. 292a, *ante*.

299. *Add. Annotation*:—*Appld.* *R. v. Holborn Licensing JJ., Ex p. Stratford Catering Co.* (1926), 90 J. P. 159.

299a. ——— *Security of tenure.*—On an application for the transfer of a license the licensing justices may consider the security of tenure given to the proposed licensee as

a matter affecting his "fitness or propriety." They may also adopt a certain standard length of notice as generally desirable, & if they do so, it is convenient that they should make it publicly known, provided that it is not made a hard & fast rule to be applied indiscriminately.—*R. v. HOLBORN LICENSING JJ., Ex p. STRATFORD CATERING CO., LTD.* (1926), 136 L. T. 278; 90 J. P. 159; 42 T. L. R. 778; 24 L. G. R. 509, D. C.

328. *Add. Annotation*:—*Refd.* *R. v. Sheffield JJ., Ex p. Rawson* (1927), 91 J. P. 193.

339. *Add. Annotation*:—*As to* (2) *Folld.* *R. v. Sheffield JJ., Ex p. Rawson* (1927), 91 J. P. 193.

340a. ——— *All relevant matters—Means of access to premises.*]—Appcts. desired to alter licensed premises in a manner requiring the consent of the licensing justices. The justices refused to sanction the proposed alterations, unless appots. bricked up a door which was in the yard behind the premises, & which gave access to a site on which a public market place was being erected:—*Held*: the words of Licensing (Consolidation) Act, 1910 (c. 24), s. 71, which were descriptive of the alterations requiring the justices' consent, did not limit the justices to consideration of those named matters; & it was their duty to consider all relevant matters, of which the means of access to the premises might be one.—*R. v. WATFORD LICENSING JJ., Ex p. TRUST HOUSES, LTD.* (1928), 45 T. L. R. 89; 72 Sol. Jo. 825; 92 J. P. Jo. 747, D. C.

342. *Add. Annotation*:—*Refd.* *R. v. Watford Licensing JJ., Ex p. Trust Houses* (1928), 45 T. L. R. 89.

355. *Add. Annotation*:—*Folld.* *R. v. Leicester JJ., Ex p. Albrighton*, [1927] 1 K. B. 557.

## Part VII.—Compensation.

381. For the existing paragraph substitute the following paragraph:—

——— *Instructing solicitor to oppose.*]—On an application to the licensing justices of a county borough for the renewal of an old on-licence the justices referred the matter to the compensation authority of the borough under Licensing (Consolidation) Act, 1910 (c. 24), s. 19, & at a further meeting they resolved that a solr. should be instructed to appear before the compensation authority & oppose the renewal on their behalf. The solr. duly appeared & opposed, & the compensation authority refused the renewal, subject to payment of compensation. Three of the justices who sat & voted as members of the compensation authority had been parties to the resolution of the licensing justices authorising a solicitor to appear on their behalf:—*Held*: the three justices were disqualified from sitting on the compensation tribunal on the ground of bias, & the decision of the tribunal must be set aside.—*FROME UNITED BREWERIES CO. v. BATH JJ.*, [1926]

A. C. 586; 95 L. J. K. B. 730; 135 L. T. 482; 90 J. P. 121; 42 T. L. R. 571; 24 L. G. R. 261, H. L.; *reusg.* S. C. *sub nom.* *R. v. BATH COMPENSATION AUTHORITY*, [1925] 1 K. B. 685, C. A.

*Annotation*:—*Distd.* *R. v. Leicester JJ., Ex p. Albrighton* [1927] 1 K. B. 557.

381a. ———.]—The mere fact that a licensing justice has originated an objection to the renewal of a licence, which, consequently, is referred by him & other justices to the compensation authority, does not disqualify him by reason of interest from sitting & adjudicating, as a member of that authority, upon the matter of that licence.—*R. v. LEICESTER JJ., Ex p. ALLBRIGHTON*, [1927] 1 K. B. 557; 96 L. J. K. B. 310; 136 L. T. 635; 91 J. P. 31; 43 T. L. R. 183; 25 L. G. R. 149, D. C.

381b. *Delegation of powers to licensing justices—Improper.*—*R. v. SHEFFIELD JJ., Ex p. RAWSON (T.) & Co., LTD.*, No. 202a, *ante*.

394. *Add. Annotation*:—*Folld.* *R. v. Sheffield JJ., Ex p. Rawson* (1927), 91 J. P. 193.

PART IV. SECT. 2, SUB-SECT. 7.—  
D. (a).

sk. *After destruction of premises—Removal to other premises—Excise*

*Licences Act, 1825 (c. 81), s. 11.*]—The above sect. does not contemplate the grant of a new licence, the existing licence being altered by the substi-

tution therein of the new premises for the destroyed premises.—*A.-G. (MACKEN) v. CAVAN*, [1928] 1 R. 98.—*IR.*

- 416. Add. Annotation:—***Apld.* R. v. Customs & Excise Comrs., [1928] A. C. 402. | **424. Add. Annotation:—***Mentd.* R. v. Sheffield JJ., *Ex p.* Rawson (1927), 91 J. P. 193.

## Part VIII.—Decisions of Licensing Justices.

463. *Add. Annotation* :—**Generally, Refd. R. v. Leicester JJ., Ex p. Allbrighton**, [1927] 1 K. B. 557.
543. *Add. Annotation* :—**Refd. Lorden v. Brooke-Hitching**, [1927] 2 K. B. 237.
548. *Add. Annotation* :—**Refd. R. v. Leicester JJ., Ex p. Allbrighton**, [1927] 1 K. B. 557.
- 553a. ——— **On appeal from licensing justices.**  
Where, under Licensing (Consolidation) Act, 1910 (c. 24), s. 29 (1), there is an appeal to quarter sessions against the refusal of licensing justices to grant a renewal, transfer or special removal of a justices' licence, the judgment of quarter sessions, by sect. 29 (5), is final, & no appeal from it lies to the High Ct. by way of case stated.—**PIPER v. ST. MARYLEBONE LICENSING JJ.**, [1928] 2 K. B. 221 ; 97 L. J. K. B. 602 ; 139 L. T. 144 ; 92 J. P. 87 ; 44 T. L. R. 510 ; 26 L. G. R. 308, D. C.

## Part IX.—Hours of Sale.

- 575a. Add. Citations :—**[1926] 2 K. B. 519; 96 L. J. K. B. 1; 90 J. P. 155; 24 L. G. R. 471.

## Part XII.—Offences.

- 607a. Sale of wine to which quinine added.]—  
SHARP v. SPARKES, No. 9a, ante.
- 733a. — Sale by unauthorised servant.]—A boy of sixteen, employed by the holder of an off-licence solely as an errand boy, supplied bottles of whisky to a customer in his employer's absence, at a time when the premises were not open for business, & outside the permitted hours. He had never at any time been authorised to sell to or supply customers:—*Held*: he was not a servant or agent of the employer within Licensing Act, 1921 (c. 42), s. 4 (a), so as to make the employer liable under that sect. for supplying intoxicating liquor otherwise than during the permitted hours.—ADAMS v. CAMFONI (1928), 139 L. T. 608; 92 J. P. 186; 44 T. L. R. 822; 26 L. G. R. 542, D. C.
750. *Add. Annotation*:—*Consd.* Evans v. Fletcher (1926), 135 L. T. 153.
751. *Add. Annotation*:—*Refd.* Evans v. Fletcher (1926), 135 L. T. 153.
752. *Add. Annotation*:—*Folld.* Evans v. Fletcher (1926), 135 L. T. 153.
- 755a. — — — During non-permitted hours.]—*Resp.*, the licensee of a public-house, was found drunk in the kitchen of the premises at 10.30 p.m. during non-permitted hours, the front door being wide open at the time, & he was summoned for being found drunk on licensed premises under Licensing Act, 1872 (c. 94), s. 12. The justices dismissed the summons on the ground that the time at which *resp.* was found drunk was after the hours when the sale of intoxicating liquor was permitted:—*Held*: since at the time in question the premises were open & there was nothing to prevent the sale of food & non-intoxicating liquor at that time, the justices ought to have convicted *resp.*—EVANS v. FLETCHER (1926), 135 L. T. 153; 90 J. P. 157; 42 T. L. R. 507; 24 L. G. R. 424; 28 Cox, C. C. 231, D. C.
757. *Add. Annotation*:—*Generally, Refd.* Evans v. Fletcher (1926), 135 L. T. 153.

**PART XII. SECT. 1, SUB-SECT. 3.—A.**

656 ii. ————.]—Where a few minutes to closing-time on a busy evening a drunken man entered a bar, where there were from fifty to seventy people, & the barman told him to get out, & the man having turned towards the door, the barman, thinking he had left the premises, took no further effective steps to see that he had done so, & a few minutes later the police found the man standing at another part of the bar-counter:—*Held*: to constitute the offence of “permitting” drunkenness on licensed premises there must be evidence that the licensee, or his servants or agents, consented to, or consciously allowed, the drunken man to remain on the premises, & a “permission” in this sense had not been established.—*MCPARLAND v. SPARKS*, [1926] N. Z. L. R. 689.—N.Z.

**PART XII. SECT. 3, SUB-SECT. 1.**

51. *Aiding persons to commit offence of being found unlawfully on premises after closing hours.*—Where persons are found unlawfully on licensed

premises after closing hours, even though the licensee was not a consenting party to their original entry, & after their entry pressed them to depart, but showed looseness & lack of control not desirable in a licensee, & did not turn such persons out of the premises, the licensee is guilty of aiding & assisting such persons to commit the offence of being found unlawfully on licensed premises after closing hours.—**ARMSTRONG v. KELLEHER**, [1925] N. Z. L. R. 422.—N.Z.

**PART XII. SECT. 3, SUB-SECT. 2.—A.**

**727 vi.** ———.—Liquor supplied on licensed premises, by way of gift, by the wife of the licensee to her guests, at a time when such persons were not lawfully entitled to be supplied:—**Held** : an offence under Licensing Act, 1908, s. 205 (c).—**WATERSON v. LOW**, [1926] N. Z. L. R. 751.—**N.Z.**

728 ix. — — — —.]—A resident in a licensed hotel was visited by three friends, who were non-residents. After the permitted hours for the sale or supply of liquor, he ordered & paid for

three rounds of drinks, which were consumed by himself & his guests:—*Held*: the hotelkeeper had supplied the liquor to the resident's guests, & had been guilty of a contravention of Licensing Act, 1921 (c. 42), s. 4 (a).—*M'BAIN v. MITCHELL*, [1927] S. C. (J.) 57.—*SCOT*.

**733a i.** — *Sale by servant.* — Where a servant supplies his own guests with liquor after closing hours without the knowledge of the licensee, the latter cannot be convicted of unlawfully allowing liquor to be consumed on his premises. — **O'CONNELL v. CLAUSEN, BURKE v. CLAUSEN, [1928] N. Z. L. R. 227. — N. Z.**

**sm. Proof that person making illegal sales licensee's agent—Takings from legal & illegal sales placed in same cash register.]—R. v. RICHARDSON (Sask.) (1925), 45 Can. Crim. Cas. 142.—CAN.**

**PART XII. SECT. 3. SUB-SECT. 2.—B.**

sn. *Light in bar.*—FRANCE v  
HUMPHREYS, [1926] S. A. S. R. 214.—  
AUS.

**764a. "Drunk"—Question of fact.**—Whether accused is "drunk" within Criminal Justice Act, 1925 (c. 86), s. 40 (1), is a question for the jury.—*R. v. PRESDEE* (1927), 20 Cr. App. Rep. 95, C. C. A.

**764b. Severity of sentence—Wanton driving—By**

person "under influence of drink."—*R. v. BURDON* (1927), 20 Cr. App. Rep. 80, C. C. A.

**788. To the cross-references following this case add**  
 "Sale or supply in prohibited hours."—*See No. 733a, ante.*

**PART XII. SECT. 4, SUB-SECT. 1.—**  
**B (a).**

*sp. What constitutes offence.*—The mere fact of being drunk in a public place is not an offence under Criminal Code, s. 238 (f). It is the creating of a disturbance which is aimed at by that provision.—*R. v. OSJORM*, [1927] 3 D. L. R. 1018; [1927] 2 W. W. R. 703; 49 Can. Crim. Cas. 1; 22 Alta. L. R. 582.—CAN.

**PART XII. SECT. 4, SUB-SECT. 1.—**  
**B. (b).**

**764a i.** "Intoxicated"—What amounts to.—In order to be guilty of driving a motor car while intoxicated, the driver's intoxication must be of that degree which renders his driving of the car a danger to the public.—*MOLRAE v. McLAUGHLIN MOTOR CAR CO., LTD.* (Alta.), [1926] 1 D. L. R. 372; [1926] 1 W. W. R. 161.—CAN.

**PART XII. SECT. 6.**

**b i.**—What must be proved.—On a prosecution for unlawful possession of a still it must be proved that informant was an officer of the Inland Revenue Department or was authorised to take the proceedings, that accused's arrest was under warrant, & the liquor referred to in the certificate of analysis was that which was seized.—*R. v. MCKENZIE* (Man.), [1927] 1 W. W. R. 549; 45 Can. Crim. Cas. 137.—CAN.

**b ii.**—Prior charge of hiding still dismissed—Autrefois acquit.—*R. v. MCKENZIE* (Man.) (1926), 45 Can. Crim. Cas. 380.—CAN.

**c i.**—Proof of.—*R. (WILLIAMS) v. YARISH* (Man.), [1926] 3 W. W. R. 586.—CAN.

**PART XII. SECT. 11.**

**r (p. 105) i.**—"Hall's wine."—*R. v. AXLER* (1917), 40 O. L. R. 304.—CAN.

**d (p. 105) i.**—Mens rea.—*R. v. LAMBERT* (Ont.), [1926] 2 D. L. R. 362; 45 Can. Crim. Cas. 300.—CAN.

**k (p. 105) i.**—Whether place must be specified.—*R. v. IVAN* (Ont.) (1926), 45 Can. Crim. Cas. 237.—CAN.

**p (p. 105) i.**—SAWCZUK *v. PADGETT*, [1927] 1 D. L. R. 849; 47 Can. Crim. Cas. 78; 59 O. L. R. 638.—CAN.

**ppp (p. 105) i.**—Transportation by rail.—*R. v. O'KEEFE'S BEVERAGES, LTD.*, [1926] 1 D. L. R. 520; 45 Can. Crim. Cas. 153; 58 O. L. R. 221.—CAN.

**r (p. 106) i.**—Motor car in which liquor for sale found.—*R. v. MARTCH* (Ont.) (1926), 46 Can. Crim. Cas. 92.—CAN.

**a (p. 106) i.**—Discretion of magistrate to alter charge.—*R. v. HEALEY* (P. E. I.) (1926), 46 Can. Crim. Cas. 296.—CAN.

**b (p. 106) i.**—Grounds for allowing—Stenographer not sworn.—*R. v. JACOBS* (Ont.) (1925), 45 Can. Crim. Cas. 260.—CAN.

**sr. Carriage of Liquor Act (Ont.)—Not applicable to carriage on person.**—*R. v. TURCOTTE* (Ont.), [1926] 3 D. L. R. 138; 46 Can. Crim. Cas. 59.—CAN.

**bb (p. 106) i.**—Service of summons—Sufficiency.—*Re BROWN*, [1927] 2 D. L. R. 849; 47 Can. Crim. Cas. 314; 59 N. S. R. 303.—CAN.

**aaa (p. 106) i.** Temperance Act (Man.) 1924 (c. 118)—Second offence—First conviction more than six months previously—Conviction for second offence invalid.—*R. v. ZAMPIER* (Man.),

J.S.

[1926] 2 W. W. R. 721; 46 Can. Crim. Cas. 76.—CAN.

**aaa (p. 106) ii.**—Conviction for second offence valid.—*R. v. McILWAIN*, [1927] 1 D. L. R. 1150; [1927] 1 W. W. R. 353; 47 Can. Crim. Cas. 264; 36 Man. L. R. 349.—CAN.

**aaa (p. 106) iii.**—Whether under different section of Act.—*R. v. SNARE* (Man.), [1927] 1 W. W. R. 138, 47 Can. Crim. Cas. 115.—CAN.

**aaa (p. 106) iv.**—Act mandatory.—*R. v. CHERRY*, [1927] 3 D. L. R. 455; [1927] 2 W. W. R. 290; 48 Can. Crim. Cas. 180; 36 Man. L. R. 565.—CAN.

**aaa (p. 106) v.**—Notwithstanding 1927 (c. 33), s. 5.—*R. v. GASPARD* (Man.), [1927] 3 W. W. R. 301; 48 Can. Crim. Cas. 358.—CAN.

**aaa (p. 106) vi.**—Arrest—Without warrant—Failure to prove arrest by constable—Arrest invalid.—*R. v. ZENICK* (Man.), [1927] 3 W. W. R. 424; 48 Can. Crim. Cas. 398.—CAN.

**aaa (p. 106) vii.**—On Sunday—Arrest valid.—*R. v. SMITH*, [1927] 2 D. L. R. 982; [1927] 1 W. W. R. 734; 47 Can. Crim. Cas. 315; 36 Man. L. R. 386.—CAN.

**aaa (p. 106) viii.**—Keeping for sale.—*R. v. NEPP*, [1927] 3 W. W. R. 353; 48 Can. Crim. Cas. 275; 37 Man. L. R. 5.—CAN.

**aaa (p. 106) ix.**—Unlawful possession of liquor—Liquor on premises not private dwelling-house—Previous conviction in respect of same premises.—*R. v. RICARD*, [1927] 4 D. L. R. 777; [1927] 2 W. W. R. 591; 48 Can. Crim. Cas. 252; 37 Man. L. R. 1.—CAN.

**aaa (p. 106) x.**—Trial—Whether local venue.—*R. v. DEE* (Man.), [1927] 4 D. L. R. 1065; [1927] 3 W. W. R. 529; 49 Can. Crim. Cas. 57.—CAN.

**aaa (p. 106) xi.**—Stay of proceedings—Crown entitled to stay proceedings.—*R. (THOMPSON) v. HAMMATT* (Man.), [1926] 3 W. W. R. 350.—CAN.

**aaa (p. 106) xii.**—Sentence—Imprisonment with hard labour—Invalid.—*R. v. STEELE* (Man.), [1926] 2 W. W. R. 370; 45 Can. Crim. Cas. 259.—CAN.

**aaa (p. 106) xiii.**—Power of court to amend.—*R. v. HALE* (Man.), [1927] 2 W. W. R. 320; 49 Can. Crim. Cas. 253.—CAN.

**aaa (p. 106) xiv.**—Fine—Amount—Offence by company.—*R. v. SHEA'S WINNIPEG BREWERY, LTD.*, [1927] 3 W. W. R. 258; 48 Can. Crim. Cas. 322; 37 Man. L. R. 13.—CAN.

**aaa (p. 106) xv.**—Appeal—Hearing by county court judge—Cannot be reviewed by certiorari.—*R. v. CHAPMAN* (Man.) (1926), 45 Can. Crim. Cas. 266.—CAN.

**aaa (p. 106) xvi.**—Costs—Of informant—Taxation.—*R. v. SIMOVITCH* (Man.), [1927] 3 W. W. R. 568; 48 Can. Crim. Cas. 399.—CAN.

**d (p. 107) i.**—Offences under sect. 20 triable by single justice.—*Ex p. LEVASSEUR* (N. B.) (1926), 46 Can. Crim. Cas. 126.—CAN.

**ii (p. 107) i.**—Appeal—Costs—Taxation.—*R. v. BROWN* (Sask.) (1925), 45 Can. Crim. Cas. 268.—CAN.

**ii (p. 107) ii.** Liquor Act (Sask.), 1925 (c. 53)—Affidavit of merits—Condition precedent to appeal—By corporation or association.—*R. (McDOUGALL) v. ARMY & NAVY VETERANS ASSOCN. OF REGINA* (Sask.), [1926] 3 W. W. R. 695; 46 Can. Crim. Cas. 389.—CAN.

**ii (p. 107) iii.**—Unlawful possession of liquor—What amounts to.—*R. v.*

*HAGERUP* (Sask.) (1927), 48 Can. Crim. Cas. 95.—CAN.

**ii (p. 107) iv.**—Second offence—First conviction more than six months previously—Increased penalty for second offence applicable.—*R. v. MERRITT* [1927] 1 D. L. R. 940; [1927] 1 W. W. R. 53; 47 Can. Crim. Cas. 74; 21 Sask. L. R. 237.—CAN.

**rr (p. 107) i.** Government Liquor Act (B. C.), 1924 (c. 146)—Keeping liquor—In hotel—What is part of hotel—Question of fact.—*R. (LITHGOE) v. RILEY* (B. C.), [1926] 2 W. W. R. 534.

**rr p. (107) ii.**—In restaurant—Liquor found in place accessible to public—Conviction quashed.—*R. v. LEE KAM WAY* (B. C.), [1927] 3 W. W. R. 143.—CAN.

**rr (p. 107) iii.**—For sale—Liquor inside chocolates.—*R. v. PURDY* [1927] 1 W. W. R. 880; 48 Can. Crim. Cas. 152; 38 B. C. R. 267.—CAN.

**rr (p. 107) iv.**—Supplying liquor to infant—Mens rea not necessary.—*R. v. McDONALD*, [1927] 1 W. W. R. 867; 48 Can. Crim. Cas. 208; 38 B. C. R. 298.—CAN.

**rr (p. 107) v.**—Interdiction order—Conditions precedent.—*R. v. GRANT* (B. C.), [1926] 4 D. L. R. 784; [1926] 3 W. W. R. 253; 46 Can. Crim. Cas. 182.—CAN.

**rr (p. 107) vi.**—Burden of proof—On accused.—*R. v. NEW DOMINION CLUB* (1925), 35 B. C. R. 502.—CAN.

**rr (p. 107) vii.**—Accused entitled to benefit of reasonable doubt.—*R. (ANDERSON) v. PERRI*, [1926] 1 W. W. R. 551; 46 Can. Crim. Cas. 86; 37 B. C. R. 289.—CAN.

**rr (p. 107) viii.**—Trial—Whether local venue.—*R. v. LYNCH*, [1927] 1 W. W. R. 502; 47 Can. Crim. Cas. 176; 38 B. C. R. 124.—CAN.

**a (p. 108) i.**—WESTERN WINE & LIQUOR CO., *R. v. WOORTEN* (Alta.), [1918] 1 W. W. R. 55; 39 D. L. R. 397; 29 Can. Crim. Cas. 307.—CAN.

**gg (p. 108) i.**—Supplying liquor to infant—Ignorance of age immaterial.—*R. v. MAINFROID*, [1926] 1 D. L. R. 1013; [1926] 1 W. W. R. 465 45 Can. Crim. Cas. 204 22 Alta. L. R. 17.—CAN.

**hh (p. 108) i.**—No appeal from statutory judgment on filing of copy of conviction of corporation.—*R. v. ST. ELMO HOTEL CO., LTD.* (Alta.), [1926] 4 D. L. R. 364; [1926] 3 W. W. R. 324; 46 Can. Crim. Cas. 301.—CAN.

**hh (p. 108) ii.**—Local option areas—Creation.—*Re LOCAL OPTION PROVISION OF GOVERNMENT LIQUOR CONTROL ACT OF ALBERTA, Re HARDISTY & RIBSTONE*, [1927] 4 D. L. R. 83; [1927] 2 W. W. R. 711; 22 Alta. L. R. 592.—CAN.

**st. Customs Act, R. S. C., 1906 (c. 48)—Burden of proof—Of legal importation of goods—On accused.**—*Re R. v. MCKENZIE* (1926), 45 Can. Crim. Cas. 144; 58 N. S. R. 313.—CAN.

**sv. S. P. Re R. v. BLANK, [1926] 1 D. L. R. 323; 45 Can. Crim. Cas. 82; 58 N. S. R. 294.—CAN.**

**sw.**—Not on bail.—*R. v. LE BLANC* (N. B.), [1927] 2 D. L. R. 793; 47 Can. Crim. Cas. 302.

**sx.**—Removal of liquor unlawfully imported into Canada.—*R. v. BAIG*, [1927] 1 D. L. R. 896; 47 Can. Crim. Cas. 58; 59 N. S. R. 86.—CAN.

**sy.**—Appeal—Right of.—*R. v.*



## Part XV.—War Legislation.

843 *Add. Annotation*:—*Reid. Adams v. Camfoni* (1928), 139 L. T. 608.

BAIG, [1927] 1 D. L. R. 896; 47 Can. Crim. Cas. 58; 59 N. S. R. 86.—CAN.

sz. ——— *Non-compliance with sect. 82.*—*R. v. ROCHE* (1927), 48 Can. Crim. Cas. 210; 59 N. S. R. 218.—CAN.sb. *Inland Revenue Act, R. S. C., 1906 (c. 51)—Unlawful brewing—Evidence.*—*R. v. SMITH* (Ont.), [1926] 3 D. L. R. 419; 46 Can. Crim. Cas. 218.—CAN.so. ——— *Prosecution under—Condition precedent—Giving of list of seized articles.*—*R. (WILLIAMS) v. YARISH* (Man.), [1926] 3 W. W. R. 586.—CAN.sd. ——— *Certificate of analysis—Contents.*—*R. (WILLIAMS) v. YARISH* (Man.), [1926] 3 W. W. R. 586.—CAN.sf. ——— *Conviction—Form of.*—*R. (METCALFE) v. BAT*, [1926] 4 D. L. R. 829; [1926] 2 W. W. R. 582; 46 Can. Crim. Cas. 151; 20 Sask. L. R. 591.—CAN.sg. *Excise Act, R. S. C., 1906 (c. 51)—Possessing wash—Conviction—Form of.*—*R. v. DRAGANI*, [1927] 1 W. W. R. 914; 47 Can. Crim. Cas. 301; 38 B. C. R. 420.—CAN.sj. ——— *Brewing beer without licence.*—*R. (HANNA) v. ERNEST* (B. C.), [1927] 1 W. W. R. 961; 48 Can. Crim. Cas. 190.—CAN.d (p. 109) i. ——— *Form of.*—A conviction for an offence against the above Act omitted the provision in respect to the issuing of a warrant of distress, & the imposition of imprison-ment in default:—*Held*: the conviction was bad.—*R. v. MCFARLANE* (1891), 24 N. S. R. (12 It. & G.) 54.—CAN.dddd i. ——— *Mens rea necessary.*—*R. v. NADON* (1926), 46 Can. Crim. Cas.—CAN.dddd ii. ——— *—*—*R. v. SIMON* (Ont.) (1927), 47 Can. Crim. Cas. 167.—CAN.dddd iii. ——— *By druggist—Evidence.*—*Re CARROLL* (N. S.) (1926), 48 Can. Crim. Cas. 208; 59 N. S. R. 183.—CAN.g (p. 111) i. ——— *Liquor seized not identified with sample analysed—Conviction quashed.*—*R. v. HYDE* (Ont.) [1926] 2 D. L. R. 998; 45 Can. Crim. Cas. 397.—CAN.sk. *Unlawful possession of liquor—Evidence.*—*R. v. HALL* (Sask.) (1925), 45 Can. Crim. Cas. 147.—CAN.sl. ——— *—*—*Re COADY* (N. S.) (1926), 46 Can. Crim. Cas. 327.—CAN.sm. ——— *—*—*R. v. DRUZ* (Ont.) (1927), 47 Can. Crim. Cas. 250.—CAN.sn. ——— *Mens rea necessary.*—*R. v. CRAWFORD* (N. B.), [1927] 2 D. L. R. 565; 47 Can. Crim. Cas. 134.—CAN.so. ——— *What amounts to—Possession of undrinkable mash—Conviction quashed.*—*R. v. BOONE* (Ont.) (1925), 45 Can. Crim. Cas. 148.—CAN.sp. ——— *Appeal—Extension of time—After sentence partly served—Applica-*tion refused.]—*R. v. HENNEBERRY* (1926), 45 Can. Crim. Cas. 156; 58 N. S. R. 425.—CAN.sq. *Improper use of label—Mens rea necessary.*—*R. v. SAVICH* (Ont.) (1927), 47 Can. Crim. Cas. 262.—CAN.c (p. 111) i. *Conviction for second offence—Invalid—Where first conviction quashed.*—*R. v. WOODS* (N. S.) (1926), 46 Can. Crim. Cas. 171.—CAN.sr. *Certificate of analyst—Presumption arising from.*—*R. v. JOHNSTON* (Ont.) (1926), 46 Can. Crim. Cas. 360.—CAN.ff (p. 111) i. ——— *Right of—By Crown.*—*R. v. HODGSON* (1927), 47 Can. Crim. Cas. 171; 59 N. S. R. 202.—CAN.ff (p. 111) ii. ——— *To what court.*—*R. v. CLARK* (1879), 44 U. C. R. 385.—CAN.ff (p. 111) iii. ——— *Power of appellate court—Cannot review order for destruction of liquor.*—*Re KHATTAR, Re THEBAULT*, [1927] 2 D. L. R. 647; 47 Can. Crim. Cas. 184; 59 N. S. R. 191.—CAN.hh (p. 111) i. ——— *Effect of—Licence transferred—Intoxicating Liquor (General) Act, 1924 (No. 62 of 1924), ss. 16–18.*—*A.-G. (BUTLER) v. SHERHAN*, [1927] 1 R. 546.—IR.

## PART XIV. SECT. 1, SUB-SECT. 2.

f i. ——— *Payment for customs dues.*—*PARKMAN v. BENOIT* (P. E. I.), [1926] 2 D. L. R. 975.—CAN.

## JUDGMENTS AND ORDERS.

## Part I.—Definitions.

15. *Add. Annotation* :—**Mentd.** *Barkwell v. Barkwell*, [1928] P. 91.
18. *Add. Annotation* :—**Mentd.** *Farnham Grdns. v. Cambridge Grdns.* (1928), 45 T. L. R. 73.
21. *Add. Annotation* :—**Apld.** *Northwood v. L. C. C.* (1927), 137 L. T. 49.
- 30a. — **Order dismissing application to postpone hearing of action.**]—An order made by a judge dismissing an application to postpone the hearing of an action in his list, & ordering appct. to pay the costs, is a “judgment or order,” from which an appeal lies by leave to the Ct. of Appeal.—**MAXWELL v. KEUN.** [1928] 1 K. B. 645 ; 97 L. J. K. B. 305 ; 138 L. T. 310 ; 44 T. L. R. 100 ; 72 Sol. Jo. 48, C. A.
31. *Add. Annotation* :—**Mentd.** *Busby v. Avgherino*, [1928] A. C. 290.

## Part II.—Classification.

48. *Add. Annotation* :—**Mentd.** The Fagernes, [1927] P. 311.
52. *Add. Annotations* :—**Refd.** The Goulandris, [1927] P. 182; Ingenohl v. Wing On (Shanghai) (1927), 44 R. P. C. 343; Salvesen (or von Lorang) v. Austrian Property Administrator, [1927] A. C. 641.
101. *Add. Annotations* :—**Refd.** Campbell v. Pollak, [1927] A. C. 732. **Mentd.** The Modica, [1926] P. 72.
127. *Add. Annotation* :—**Folld.** Earl v. Earl & Kyle, Earl v. Earl (1926), 96 L. J. P. 23.
147. *Add. Annotation* :—**Mentd.** Re Chartres, Farman v. Barrett, [1927] 1 Ch. 466.
158. *Add. Annotation* :—**Refd.** The Lord Strathcona (No. 2), [1926] P. 18.
184. *Add. Annotations* :—*As to* (1) **Refd.** A.-G. for Ontario v. McLean Gold Mines, [1927] A. C. 185; Wigg v. A.-G. of Irish Free State, [1927] A. C. 674. *As to* (2) **Apld.** Jaeger v. Jaeger Co. (1927), 44 R. P. C. 437. *Generally, Mentd.* A.-G. for Ontario v. McLean Gold Mines Co. (1926), 95 L. J. P. C. 217.
185. *Add. Annotations* :—**Refd.** Whitney v. I. R. Comrs., [1926] A. C. 37; Wigg v. A.-G. of Irish Free State, [1927] A. C. 674; Grant v. Knaresborough U. C., [1928] Ch. 310.
- 187a. ————.]—**Held** : an action against the Air Council for a declaration that a patent was valid was not maintainable.—**ROWLAND v. AIR COUNCIL** (1923), 39 T. L. R. 228; 67 Sol. Jo. 365; 40 R. P. C. 87; *on appeal*, 39 T. L. R. 455, C. A.
- 187b. **S.P. ROWLAND & MACKENZIE-KENNEDY v. AIR COUNCIL** (1927), 96 L. J. Ch. 470; 137 L. T. 794; 43 T. L. R. 717; 44 R. P. C. 453, C. A.
190. *Add. Annotation* :—**Mentd.** Fennell v. East Ham Corpn., [1926] Ch. 641.
198. *Add. Citation* :—12 Tax Cas. 166.
199. *Annotations* :—Delete Anderson v. Equitable Life Assce. Soc. of the United States (1925), 42 T. L. R. 123.  
*Add. Annotation* :—**Mentd.** Public Trustee v. Elder, [1926] Ch. 776.
201. *Add. Annotation* :—**Mentd.** Jaeger v. Jaeger Co. (1927), 44 R. P. C. 437.
- 202a. **Right to proceed to trial—Notwithstanding default of defence.**]—Where plff. could not have obtained a declaration of the nature sought (*see* RATES & RATING, No. 1158a, *post*), on a motion for judgment in default of defence without evidence, & he was clearly entitled to the declaration at the date of the writ, subject to his substantiating his case by proper evidence :—**Held** : he was entitled to proceed to trial for that purpose & obtain his declaration with costs.—**GRANT v. KNARESBOROUGH URBAN COUNCIL**, [1928] Ch. 310; 97 L. J. Ch. 106; 138 L. T. 488; 92 J. P. 30; 44 T. L. R. 224; 26 L. G. R.
214. *Add. Citation* :—2 B. R. A. 779.
217. *Add. Annotations* :—**Mentd.** Jones v. Harris (1926), 43 T. L. R. 1; Hart v. Riversdale Mill Co., [1928] 1 K. B. 176.
219. *Add. Annotation* :—**Refd.** Jaeger v. Jaeger Co. (1927), 44 R. P. C. 437.
220. *Add. Annotation* :—**Refd.** The W. H. Randall, [1928] P. 41.
222. *Add. Annotations* :—**Refd.** Wigg v. A.-G. of Irish Free State (1927), 96 L. J. P. C. 88. **Mentd.** Sheppy Glue & Chemical Works v. Medway River Conservators (1926), 24 L. G. R.

**PART II, SECT. 2, SUB-SECT. 1.**

a. i. — *Order allowing set-off of costs.*—**BABCOCK v. STANDISH** (1900), 19 P. R. 195.—**CAN.**

74 ill. ———.—BULGER v. HOME  
INSURANCE CO., [1927] 3 D. L. R. 1044 ;  
[1927] S. C. R. 451.—CAN.

1 (p. 130) i. *Subject to reference to assess damages.*—Where the ct. decides the substantial question of liability in an action & merely refers the assessment of damages to a referee, reserving nothing to itself, the

judgment should be regarded as a final judgment for the purposes of appeal.—BOSLUND v. ABBOTSFORD LBR., MIN. & DEV. CO., [1927] 1 D. L. R. 279; 36 B. C. R. 386.—CAN.

q 1. — *Order fixing remuneration of executor.*]—*Re DAVIES, DAVIES v. DUGGAN* (1927), 38 B. C. R. 249.—CAN.

**PART II. SECT. 2, SUB-SECT. 5.--A.**

bb i. ———.]—Pltf. having begun an action by a specially indorsed writ, moved before a judge in chambers

for speedy judgment under R. S. C. (B. C.), Ord. 14, r. 1, & it was ordered that judgment should be entered for pltf. for the principal sum & that the action should proceed as to interest:—*Held*: the order for judgment was a final judgment.—**NATIONAL LIFE INSURANCE Co. v. McCoubRAY**, [1926] 2 D. L. R. 550; [1926] S. C. R. 277.—**CAN.**

**sub. Judgment maintaining inscription in law.]—Held: a final judgment.—DOMINION TEXTILE CO. v. SKAIFE, [1926] S. C. R. 310.—CAN.**

- 457; *Dee Conservancy Board v. McConnell*, [1928] 2 K. B. 159.
224. *Add. Annotation*:—**Refd.** *Salisbury & Ford-  
ingbridge District Drainage Board v.  
Southern Tanning Co.* (1920), Ltd., [1927]  
2 K. B. 566.
228. *Add. Annotation*:—**Mentd.** *Catton v. Ashwell  
& Nesbit*, [1928] Ch. 484.
230. *Add. Annotation*:—**Consd.** *Everett v. Ryder*  
(1926), 135 L. T. 302.
231. *Add. Annotations*:—**Apld.** *Groedel v. Hun-  
garian Property Administrator* (1927), 44  
T. L. R. 65. **Refd.** *Groebel v. Hungarian  
Property Administrator* (1925), 70 Sol. Jo.  
345.
238. *Add. Annotation*:—**Mentd.** *Hardie & Lane v.  
Chiltern*, [1928] 1 K. B. 663.
239. *Add. Annotations*:—**Refd.** *Layzell v. Thomp-  
son* (1926), 43 T. L. R. 58; *Jaeger v. Jaeger  
Co.* (1927), 44 R. P. C. 437.
251. *Add. Annotation*:—**Consd.** *R. v. Grain,  
Ex p. Wandsworth Grdna.*, [1927] 2 K. B.  
205.
257. *Add. Annotation*:—**Mentd.** *Gardner v. Cone*,  
[1928] Ch. 955.
- 260a. *As to validity of foreign judgment.*—Cir-  
cumstances (see **CONFLICT OF LAWS**, No.  
1135a, *ante*) in which:—**Held**: the ct. had  
power to make the declaration asked for.—  
**ELLERMAN LINES, LTD. v. READ** (1927),  
44 T. L. R. 7; *revsd.* on other points (1928),  
44 T. L. R. 285, C. A.

## Part IX.—Effect of Judgments and Orders.

282. *Add. Citation*:—[1925] B. & C. R. 265.
320. *Add. Annotation*:—**Refd.** *Knight v. Knight*  
(1925), 95 L. J. Ch. 33.
337. *Add. Citation*:—*revsg* *S. C. sub nom. Re  
SNEYD, Ex p. OXFORD (BP.)*, 52 L. J. Ch. 724.

## Part XIII.—Enforcement of Judgments and Orders.

- 366a. ————.]—**GRIFFITHS v. HUGHES**  
(1847), 16 M. & W. 809; 4 Dow. & L. 719;  
2 New Pract. Cas. 231; 16 L. J. Ex. 176;  
9 L. T. O. S. 57; 11 Jur. 313; 153 E. R.  
1418.
- 366b. ————.]—**GIBBS v. FLIGHT** (1853),  
13 C. B. 803; 1 C. L. R. 329; 22 L. J. C. P.  
256; 17 Jur. 1034; 138 E. R. 1417.
- 368a. ————.]—A rule for taxation of costs, &  
an *allocatur* thereon, do not amount to a  
“rule” or “order” within the above sect.,  
so as to be capable of being registered as  
a judgment.—**SHAW v. NEALE** (1858), 6  
H. L. Cas. 581; 27 L. J. Ch. 444; 31 L. T.  
O. S. 190; 4 Jur. N. S. 695; 6 W. R. 635;  
10 E. R. 1422, H. L.; *revsg.* on other points  
(1855), 20 Beav. 157.
- Annotations*:—**Mentd.** *Beavan v. Oxford* (1855), 6 De G. M.  
& G. 492; *Turner v. Letts* (1855), 20 Beav. 185; *Hopkin-  
son v. Rolt* (1861), 9 H. L. Cas. 514; *Meuzles v. Lightfoot*  
(1871), L. R. 11 Eq. 459; *North v. Stewart* (1890), 15  
App. Cas. 452; *Briscoe v. Briscoe*, [1892] 3 Ch. 543; *Re  
Knight, Knight v. Gardner*, [1892] 2 Ch. 368; *Mcguer-  
ditchian v. Lightbound*, [1917] 2 K. B. 298.
371. After this case add “—— **Order of Probate  
Division.**—See **EXECUTORS**, Vol. XXIII.,  
p. 281, No 3486.”

## Part XVI.—Interest on Judgments and Orders.

403. *Add. Annotation*:—**Mentd.** *I. R. Comrs. v.  
Fisher's Exors.*, [1926] A. C. 395.
- 407a. ——— **Erroneous decree.**—**HAMILTON v.  
HOUGHTON** (1820), 2 Bli. 169; 4 E. R. 290.  
H. L.
- Annotations*:—**Consd.** *Bateman v. Margerison* (1853), 16  
Beav. 477. **Mentd.** *Colclough v. Storum* (1821), 3 Bli. 181;  
*White v. Parnter* (1829), 1 Knapp. 179.
- 419a. ——— **Costs ordered to be charged on property.**  
**Held**: as the costs were an equitable charge,  
they bore interest at four per cent.—**LIP-**  
**PARD v. RICKETTS** (1872), L. R. 14 Eq. 291;  
41 L. J. Ch. 595; 20 W. R. 898.
- Annotations*:—**Consd.** *Eardley v. Knight* (1889), 41 Ch. D.  
537. **Apprvd.** *Re Drax, Saville v. Drax*, [1903] 1 Ch. 781.
- 422a. ————.]—The ct. will give interest on  
costs payable out of a fund which cannot  
be immediately realised.—**Re CAMPBELL'S  
TRUSTS** (1871), 19 W. R. 427.
430. *Add. Citation*:—16 Asp. M. L. C. 524.
- 448a. *S. P. FOX v. CHARLTON, CHARLTON v. FOX*  
(1865), 6 New Rep. 352.

### PART II. SECT. 3, SUB-SECT. 5.

**sd. Declaratory Judgments Act, 1908**  
—*Discretion of court—Anticipatory con-  
struction.*—The jurisdiction of the ct.  
to give or make a declaratory judgment  
or order under sect. 3 of the above  
Act is discretionary, & the ct. will not  
give or make such judgment or order  
by way of anticipatory interpretation  
or construction of statutory powers in  
the abstract, without knowledge of the  
facts & circumstances under which  
such powers might be exercised, or  
without any certitude that many of the  
powers will ever be exercised. Neither

will the ct. exercise its discretion to  
give or make any judgment or order on  
a question of construction which,  
whichever way it is decided, does not  
necessarily put an end to the litigation.  
—**DAIRY PROPRIETARY ASSOCN. (INC.)  
v. NEW ZEALAND DAIRY PRODUCE  
CONTROL BOARD**, [1926] N. Z. L. R.  
535.—N.Z.

**sf. ——— Whether binding on Crown.**—  
The Crown is not bound by the above  
Act, in a case where the question raised  
involves a decision affecting a monetary  
claim against the Crown.—**McDOUGALL  
v. A.-G.**, [1925] N. Z. L. R. 104.—N.Z.

### PART IX. SECT. 6.

**336 i. Effect of covenant to pay  
interest—Mortgage.**—By a mtge. the  
mtgor. covenanted, by a separate  
covenant, to pay interest. The mtgee.  
obtained judgment against the mtgor.  
for the principal & interest due:—  
**Held**: the security of the mtge. was  
not merged in the judgment.—  
**LOWRY v. WILLIAMS**, [1895] 1 I. R.  
274.—IR.

### PART XIV.

**sk. Judgment not registered—Priority  
of mortgage.**—**MINERAL PRODUCTS Co.  
v. CONTINENTAL TRUST Co.** (1906).  
37 S. C. R. 517.—CAN.



## Part XVII.—Judicial Decisions as Authorities.

492. *Add. Annotation* :—**Mentd.** *Re Mason* (1927), 97 L. J. Ch. 321.
494. *Add. Annotation* :—**Mentd.** *Re Wait*, [1927, 1 Ch. 606.
495. *Add. Annotation* :—**Mentd.** *Johnson v. Clarke*, [1928] Ch. 847.
- 498a. ————]—(1) When any tribunal is bound by the judgment of another ct., either superior or co-ordinate, it is bound by the judgment itself; & if from the opinions delivered it is clear what the *ratio decidendi* was which led to the judgment, then that *ratio decidendi* is also binding. But if it is not clear, then it is not part of the tribunal's duty to spell out with great difficulty a *ratio decidendi* in order to be bound by it.
- (2) If a decision of the House of Lords rests upon the special & peculiar circumstances of the case, the case does not bind the House, or any ct., by a general principle; but if the decision rests upon a general doctrine, it binds all cts. & the House, & that doctrine is part of the law of the land until the legislature be moved to interfere.—*GREAT WESTERN RY. CO. v. MOSTYN (OWNERS), THE MOSTYN*, [1928] A. C. 57, 97 L. J. P. 8; 138 L. T. 403; 92 J. P. 18; 44 T. L. R. 179; 26 L. G. R. 91; 17 Asp. M. L. C. 367, H. L.
- Annotations* :—**Generally, Mentd.** *Witham Outfall Board v. Boston Corpn.* (1926), 136 L. T. 756; *Dee Conservancy Board v. McConnell*, [1928] 2 K. B. 159.
504. *Add. Annotation* :—**Generally, Mentd.** *G. W. K. v. Dunlop Rubber Co.* (1926), 42 T. L. R. 376.
506. *Add. Annotation* :—**Refd.** *Koskas v. Standard Marine Insce.* (1926), 42 T. L. R. 692.
- 506a. *Cases decided on demurrer.*]—Observations of SCRUTTON, L.J., as to the extent to which cases decided on demurrer are to be regarded as authorities.—*ST. ANNE'S WELL BREWERY CO. v. ROBERTS* (1928), 140 L. T. 1; 92 J. P. 180; 44 T. L. R. 703; 26 L. G. R. 638, C. A.
520. *Add. Annotations* :—**Mentd.** *Robertson v. S.S. Appalachee, Rovira v. Same* (1926)] 136 L. T. 488; *Moule v. Marmite Food Extract Co.* (1927), 20 B. W. C. C. 446.
521. *Add. Annotation* :—**Mentd.** *Mergenthaler Linotype Co. v. Intertype Co.* (1926), 42 T. L. R. 682.
- 525a. ————]—In doubtful cases the cts. attach some importance to the fact that a decision has stood unchallenged for a considerable time, but neither the House of Lords nor the Ct. of Appeal has shown the slightest compunction in overruling cases of much higher authority than the decision in this case [*Birkenhead Guardians v. Brookes* (1906), 95 L. T. 359, decided by RIDLEY & DARLING, J.J.] if, when the matter is presented to them for consideration, they are of opinion that the decisions are wrong (SCRUTTON, L.J.).—*PONTYPRIDD UNION v. DREW*, [1927] 1 K. B. 214; 95 L. J. K. B. 1030; 136 L. T. 83; 90 J. P. 169; 42 T. L. R. 677; 70 Sol. Jo. 795; 24 L. G. R. 405, C. A.
531. *Add. Annotation* :—**Mentd.** *Hart v. Riversdale Mill Co.* (1927), 96 L. J. K. B. 691.
542. *Add. Annotation* :—**Refd.** *United States Shipping Board v. Strick*, [1926] A. C. 545.
546. *Add. Annotation* :—**Mentd.** *Boorne v. Wicker*, [1927] 1 Ch. 667.
551. *Add. Citations* :—[1926] A. C. 545; 31 Com. Cas. 357; 17 Asp. M. L. C. 40.  
*Add. Annotation* :—**Mentd.** *Hogarth v. Cory* (1926), 95 L. J. P. C. 204.
554. *Add. Annotation* :—**Mentd.** *Hyman v. Hyman, Hughes v. Hughes* (1928), 139 L. T. 416.
- 559a. *Affecting revenue.*]—Tax cases ought not to be unsettled (LORD SUMNER).—*SMITH (JOHN) & SON v. MOORE*, [1921] 2 A. C. 13; 90 L. J. P. C. 149; 125 L. T. 481; 37 T. L. R. 613; 65 Sol. Jo. 492; 12 Tax Cas. 266, H. L.
- Annotations* :—**Fold.** *Elliott v. Duchess Mill* (1926), 95 L. J. K. B. 963. **Mentd.** *Wankie Colliery Co. v. I. R. Comrs.* [1922] 2 A. C. 51; *Boase Spinning Co. v. I. R. Comrs.* (1926), 135 L. T. 211; *British Insulated & Helsby Cables v. Atherton*, [1926] A. C. 205; *I. R. Comrs. v. Newcastle Breweries* (1926), 95 L. J. K. B. 936; *I. R. Comrs. v. Northfleet Coal & Ballast Co.* (1927), 12 Tax Cas. 1102; *Thompson v. I. R. Comrs.*, *I. R. Comrs. v. Thompson* (1927), 12 Tax Cas. 1091; *Mallett v. Staveley Coal & Iron Co.*, [1928] 2 K. B. 405.
569. *Add. Annotation* :—**Mentd.** *Hyman v. Hyman, Hughes v. Hughes* (1928), 139 L. T. 416.
- 569a. ————]—Where a broad principle has been decided by the House of Lords it is very undesirable that it should be frittered away by fine distinctions (LORD CAVE, C.).—*NEWTON v. GUEST, KEEN & NETTLEFOLDS, LTD.* (1926), 135 L. T. 386; 70 Sol. Jo. 689; 19 B. W. C. C. 119, H. L.
- Annotations* :—**Apld.** *Robertson v. S.S. Appalachee, Rovira v. S.S. Appalachee* (1926), 136 L. T. 488; *Moule v. Marmite Food Extract Co.* (1927), 20 B. W. C. C. 446. **Mentd.** *Howells v. Powell Duffry Steam Coal Co.*, [1926] 1 K. B. 472.
- 569b. ————]—When a question of law has been clearly decided by the House of Lords, it is undesirable that the decision should be weakened or frittered away by fine distinctions (LORD CAVE, C.).—*JONES v. SOUTH-WEST LANCASHIRE COAL OWNERS' ASSOCN.*, [1927] A. C. 827; 96 L. J. K. B. 894; 137 L. T. 737; 43 T. L. R. 725; 71 Sol. Jo. 680; *sub nom. THOMAS v. EVANS (RICHARD) & CO.*; *JONES v. SOUTH-WEST LANCASHIRE COAL OWNERS' ASSOCN.*, 11 Tax Cas. 790, H. L.
- 569c. ————]—*GREAT WESTERN RY. CO. v. MOSTYN (OWNERS), THE MOSTYN*, No. 498a, *ante*.
571. *Add. Annotation* :—**Mentd.** *Hyman v. Hyman, Hughes v. Hughes* (1928), 139 L. T. 416.
577. *Add. Annotations* :—**Refd.** *Hart v. Riversdale Mill Co.* (1927), 96 L. J. K. B. 691. **Mentd.** *Small v. Easson* (1920), 12 Tax Cas. 351; *Bourne & Hollingsworth v. I. R. Comrs.* (1921), 12 Tax Cas. 483; *British Insulated & Helsby Cables v. Atherton*, [1926] A. C. 205; *Mitchell v. Noble*, [1927] 1 K. B. 719; *Green v. Gliksten* (1928), 139 L. T. 12; *Mallett v. Staveley Coal & Iron Co.*, [1928] 2 K. B. 405; *Morley v. Lawford* (1928), 45 T. L. R. 30; *Rees Roturbo Development Syndicate v.*

## PART XVII. SECT. 1.

## 494 i. What part of decision binding

—Only *ratio decidendi*.]—Only the jurisdiction & inferior cts.—*Re MA MYA v. MA THEIN* (1926), 1 L. R. 4 Ran. 313.—IND.

I. R. Comrs., *Same v. Ducker* (1928), 13 Tax Cas. 366.

588a. ———.]—A decision of the appellate ct. in a colony which is regulated by English law is not assumed to be wrong, because it conflicts with a decision of the Ct. of Appeal in England; it is otherwise if the conflict is with a decision of the House of Lords or of the Judicial Committee of the Privy Council.—*ROBINS v. NATIONAL TRUST CO.*, [1927] A. C. 515; 96 L. J. P. C. 84; 137 L. T. 1; 43 T. L. R. 243; 71 Sol. Jo. 158, P. C.

588b. ———.]—*GREAT WESTERN RY. CO. v. MOSTYN (OWNERS), THE MOSTYN*, No. 498a, *ante*.

595a. **Question of maritime law.**]—A judgment of the House of Lords upon a proper maritime question, whether given in an English or in a Scottish appeal, is of equal authority in all the Admty. Cts. of the kingdom.—*CURRIE v. MCKNIGHT*, [1897] A. C. 97; 66 L. J. P. C. 19; 75 L. T. 457; 13 T. L. R. 53; 8 Asp. M. L. C. 193, H. L.

*Annotations*:—*Refd. Blairmore S.S. Co. v. Macredie*, [1898] A. C. 593. *Mentd. The Ripon City*, [1897] P. 226; *The Veritas*, [1901] P. 304; *The Burns*, [1907] P. 137; *The Tervaele*, [1922] P. 259.

597. *Add. Annotations*:—*Consd. Barton-upon-Irwell Union v Wycombe Union*, [1926] 2 K. B. 3. *Refd. Wycombe Grdns. v. Barton-upon-Irwell Grdns.* (1926), 43 T. L. R. 89.

599. *Add. Annotations*:—*Mentd. Sheppy Glue & Chemical Works v. Medway River Conservators* (1926), 24 L. G. R. 457; *Wigg v. A.-G. of Irish Free State* (1927), 96 L. J. P. C. 88; *Dee Conservancy Board v. McConnell*, [1928] 2 K. B. 159.

600. *Add. Annotations*:—*Refd. Re Article X of Articles of Agreement for Treaty between Great Britain & Ireland* (1928), 45 T. L. R. 57. *Mentd. Capel St. Mary, Suffolk v. Packard*, [1927] P. 289.

601. *Add. Annotation*:—*Refd. Re Article X of Articles of Agreement for Treaty between Great Britain & Ireland* (1928), 45 T. L. R. 57.

602. *Add. Annotations*:—*Refd. Re Article X of Articles of Agreement for Treaty between Great Britain & Ireland* (1928), 45 T. L. R. 57. *Mentd. Capel St. Mary, Suffolk v. Packard*, [1927] P. 289.

#### PART XVII. SECT. 4, SUB-SECT. 1.— B.

*sm. On colonial court—Contrary decision of Privy Council.*]—*LOBB v. ROCKWOOD RURAL CREDITS SOCIETY*, No. 603 ii, *post*.—CAN.

#### PART XVII. SECT. 4, SUB-SECT. 2.

603 ii. *Contrary decision by House of Lords.*]—While a decision of the Privy Council on a point actually decided by it is binding on a Canadian ct., even though there is a contrary decision on the same point by the House of Lords, yet where a statement of law cited from a judgment of the Privy Council is merely a dictum, the Canadian ct. is free to follow the House of Lords.—*LOBB v. ROCKWOOD RURAL CREDITS SOCIETY*, [1926] 2 D. L. R. 819; [1926] 2 W. W. R. 1; 35 Man. L. R. 499.—CAN.

603 iii. ———.]—*Courts in India.*]—A decision of the Privy Council binds all the cts. in India, at any rate as soon as the decision is promulgated & comes to the knowledge of a ct. in India.—*NINGAPPA MARBASAPPA ABLESHVAR v. GYANAJI POURAJI MARWADI* (1926), 1. L. R. 51 Bom. 231.—IND.

iv. ———.]—The decisions of the Privy Council are absolutely binding on all cts. in India.—*Re MA MYA v. MA THEIN* (1926), 1. L. R. 4 Ran. 313.—IND

#### PART XVII. SECT. 4, SUB-SECT. 3.

624 iv. ———.]—A decision of the Appellate Div. is binding on it & on trial judges within the province, unless & until it is overruled by a higher ct. The belief that a higher ct. would take a different view from that expressed by the Appellate Div., though founded on general reasoning in other cases decided by the higher ct., is not a sufficient reasoning for not following the decision of the Appellate Div.—*DOWSETT v. EDMUNDS (Alta.)*, [1926] 4 D. L. R. 796; [1926] 3 W. W. R. 447; 46 Can. Crim. Cas. 330.—CAN.

631 iii. ———.]—A decision of the English Ct. of Appeal, which is not in conflict with a decision of the Supreme Ct. of Canada & has not been departed from by the Privy Council or overruled by the House of Lords, is binding on the K. B. of Manitoba with respect to the interpretation of an Act in the same terms as those of the Act interpreted in the Ct. of Appeal's

603. *Add. Annotations*:—*Mentd. Jones v. Waring & Gillow*, [1926] A. C. 670; *Auchteroni v. Midland Bank*, [1928] 2 K. B. 294.

604. *Add. Annotation*:—*Refd. Venn v. Tedesco*, [1926] 2 K. B. 227.

605. *Add. Annotation*:—*Consd. Venn v. Tedesco*, [1926] 2 K. B. 227.

608. *Add. Citations*:—95 L. J. K. B. 866; 90 J. P. 185; 42 T. L. R. 478; 24 L. G. R. 496.

609. *Add. Annotation*:—*Refd. Venn v. Tedesco*, [1926] 2 K. B. 227.

611. *Add. Annotation*:—*Mentd. Koskas v. Standard Marine Insce.* (1926), 42 T. L. R. 692.

614a. ———.]—*Colonial appellate court.*]—*ROBINS v. NATIONAL TRUST CO.*, No. 588a, *ante*.

621. *Add. Annotation*:—*Generally, Mentd. Earle v. Hemsworth R. D. C.* (1928), 44 T. L. R. 605.

626. *Add. Annotation*:—*Mentd. Venn v. Tedesco*, [1926] 2 K. B. 227.

628a. ———.]—(1) Where a Ct. of Appeal has before it a series of judgments of the Ct. of Appeal which do not appear to be consistent with each other, & the later judgment was given when the Lords Justices were not aware of some of the previous decisions, in such circumstances, as a matter of judicial comity, it is open to the ct. to consider all the previous decisions of the Ct. of Appeal & to form its own views as to which are the more accurate & which it shall follow.

(2) A Ct. of Appeal consisting of three Lords Justices is not entitled to overrule a decision of a Ct. of Appeal expressed by two Lords Justices (*ATKIN, L. J.*).—*GLASKIE v. WATKINS*, [1927] 2 K. B. 181; 96 L. J. K. B. 469; 137 L. T. 132; 43 T. L. R. 314; 71 Sol. Jo. 192, C. A.

628b. ———.]—*Conflicting decisions.*]—*GLASKIE v. WATKINS*, No. 628a, *ante*.

628c. ———.]—*Observations by SCRUTTON & SARGANT, L. JJ.*, where there were conflicting decisions of the Ct. of Appeal as to the construction of a rule of ct., on the right of the ct. to consider & decide the matter for itself.—*SMITH v. SCHILLING*, [1928] 1 K. B. 429; 97 L. J. K. B. 276; 138 L. T. 475; 44 T. L. R. 109, C. A.

decision, even though that decision is contrary to one given by a Ct. of Appeal of another province.—*LOWERY v. LAMONT (Man.)*, [1927] 1 D. L. R. 669; [1927] 1 W. W. R. 95.—CAN.

i. ———.]—*DOWSETT v. EDMUNDS (Alta.)*, No. 624 iv, *ante*.—CAN.

ii. ———.]—Decisions of the highest ct. of a province are absolutely binding on all subordinate cts. in that province.—*Re MA MYA v. MA THEIN* (1926), 1. L. R. 4 Ran. 313.—IND.

#### PART XVII. SECT. 4, SUB-SECT. 5.

641 i. *On another Divisional Court—Court equally divided.*]—The decision of an equally divided Div. Ct. is binding on all Div. Cts.—*DRISCOLL v. COLLETTI*, [1926] 2 D. L. R. 428; 58 O. L. R. 444.—CAN.

#### PART XVII. SECT. 4, SUB-SECT. 7.— A.

653 i. *General rule.*]—Where cts. have co-ordinate jurisdiction the practice in India appears to be that the decisions of one such ct. are not regarded as binding another.—*Re MA MYA v. MA THEIN* (1926), 1. L. R. 4 Ran. 313.—IND.

629a. ——— Court of Criminal Appeal.]—PRACTICE NOTE (1928), 20 Cr. App. Rep. 185.

631. *Add. Annotation*:—**Mentd.** Ellesmere v. Wallace (1928), 44 T. L. R. 798.

631a. ——— Colonial appellate court.]—ROBINS v. NATIONAL TRUST CO., No. 588a, *ante*.

642. *Add. Annotation*:—**Refd.** Lowther v. Clifford, [1927] 1 K. B. 130.

642a. ——— Conflicting decisions.]—Where there are two previous decisions of the Div. Ct., one of which was decided by a ct. of two judges & the other by a ct. of three judges, the rule of the Div. Ct. is to respect the decision of the ct. of three judges.—DE VRIES v. SMALLRIDGE, [1928] 1 K. B. 482; 97 L. J. K. B. 244; 138 L. T. 497, C. A.

642b. ———.]—Observations, where there were two inconsistent lines of authorities as to the construction of Rent Restriction Acts, on the duty of the ct. to consider & decide the matter for itself.—RATKINSKY v. JACOBS, [1929] 1 K. B. 24; 97 L. J. K. B. 566; 138 L. T. 739; 92 J. P. 142; 44 T. L. R. 548; 72 Sol. Jo. 354; 26 L. G. R. 380, D. C.

*Annotation*:—**Mentd.** Lloyd v. Cook, Goudge v. Broughton, Simson v. Miatt, Bartram v. Brown, Barker v. Hutson, [1929] 1 K. B. 103.

643. *Add. Annotations*:—**Mentd.** United Billposting Co. v. Somerset County Council (1926), 95 L. J. K. B. 899; Everton v. Walker (1927), 137 L. T. 594.

653. *Add. Annotation*:—**Mentd.** Bernard v. Williams (1928), 139 L. T. 22.

661. ———.]—When there is the decision of a ct. of co-ordinate jurisdiction upon the point, unreversed by a ct. of error, we ought to consider ourselves bound by it (WILDE, C.J.).—BARKER v. STEAD (1847), 3 C. B. 946; 5 Ry. & Can. Cas. 45; 16 L. J. C. P. 160; 8 L. T. O. S. 390; 11 Jur. 90; 136 E. R. 379.

*Annotation*:—**Mentd.** Norris v. Cottle (1850), 2 H. L. Cas. 647.

679a. ———.]—*Semble*: a decision of the Exchequer Chamber, where the judges were equally divided, will be regarded as binding on the Ct. of Appeal.—HART v. RIVERSDALE MILL CO., [1928] 1 K. B. 176; 96 L. J. K. B. 691; 137 L. T. 364; 91 J. P. 135; 43 T. L. R. 396; 71 Sol. Jo. 407, C. A.; *on appeal* from S. C. *sub nom.* RIVERSDALE MILL CO. v. HART, [1927] 1 K. B. 624, D. C.

705. *Add. Annotations*:—**Mentd.** Chesterman v. Federal Taxation Comr., [1926] A. C. 128; I. R. Comrs. v. Falkirk Temperance Café Trust (1926), 11 Tax Cas. 353; I. R. Comrs. v. Glasgow Musical Festival Asscn. (1926), 11 Tax Cas. 154; I. R. Comrs. v. Peeblesshire Nursing Asscn. (1926), 11 Tax Cas. 335; Martin v. Lowry, Martin v. I. R. Comrs., [1926] 1 K. B.

550; Scottish Woollen Technical College, Galashiels v. I. R. Comrs. (1926), 11 Tax Cas. 139; I. R. Comrs. v. Yorkshire Agricultural Soc. (1927), 44 T. L. R. 59; *Re* Williams Public Trustee v. Williams, [1927] 2 Ch. 283; Adamson v. Melbourne & Metropolitan Board of Works (1928), 45 T. L. R. 3; General Medical Council v. I. R. Comrs., English Branch of General Medical Council v. I. R. Comrs. (1928), 97 L. J. K. B. 578.

709a. ———.]—Decisions of the cts. in Ireland are not binding on an English ct., & if they conflict with decisions in England, or if they are not consistent with the ct.'s view of the English law, the ct. will decline to follow them.—*Re* INMAN, INMAN v. INMAN, [1903] 1 Ch. 241; 72 L. J. Ch. 120; 88 L. T. 173; 51 W. R. 188; 47 Sol. Jo. 92.

714. *Add. Citations*:—95 L. J. K. B. 936; 135 L. T. 618; 42 T. L. R. 609; 70 Sol. Jo. 734, C. A.; *affd. sub nom.* NEWCASTLE BREWERIES, LTD. v. INLAND REVENUE COMRS. (1927), 96 L. J. K. B. 735; 137 L. T. 426; 43 T. L. R. 476; 12 Tax Cas. 927, H. L.

*Add. Annotations*:—**Mentd.** Ford v. I. R. Comrs. (1926), 12 Tax Cas. 997; English Dairies v. Phillips, English Dairies v. I. R. Comrs. (1927), 11 Tax Cas. 597; Lambert v. I. R. Comrs. (1927), 12 Tax Cas. 1053.

717. *Add. Annotation*:—**Generally, Mentd.** Lake v. Simmons (1926), 95 L. J. K. B. 586.

718. *Add. Annotations*:—**Refd.** Buerger v. New York Life Assce. (1927), 96 L. J. K. B. 930. **Mentd.** Sassoon v. International Banking Corp., [1927] A. C. 711.

724. *Add. Annotation*:—**Mentd.** N. V. Kwik Hoo Tong Handel Maatschappij v. Finlay, [1927] A. C. 604.

727. *Add. Annotations*:—**Mentd.** Buerger v. New York Life Assce. (1927), 96 L. J. K. B. 930; Sassoon v. International Banking Corp., [1927] A. C. 711.

728a. ——— Shipping decisions.]—American shipping decisions, while treated with great respect, do not necessarily control the shipping decisions of the English cts.—GOSSE MILLARD v. CANADIAN GOVERNMENT MERCHANT MARINE, [1928] 1 K. B. 717; 138 L. T. 421; 44 T. L. R. 143; 17 Asp. M. L. C. 385; 33 Com. Cas. 139, C. A.; *sub nom.* GOSSE MILLARD v. CANADIAN GOVERNMENT MERCHANT MARINE, AMERICAN CANNING CO. v. CANADIAN GOVERNMENT MERCHANT MARINE, 97 L. J. K. B. 193; *on appeal* (1928), 45 T. L. R. 63, H. L.

*Annotation*:—**Mentd.** Foreman & Ellams v. Federal Steam Navigation Co., [1928] 2 K. B. 424.

*Add. Annotation*:—**Mentd.** Wycombe Grdns. v. Barton-upon-Irwell Grdns. (1926), 43 T. L. R. 89.

#### PART XVII. SECT. 4, SUB-SECT. 7.—D.

693 ii. S. P. Ross v. FISSET, [1926] 3 D. L. R. 289; [1926] 2 W. W. R. 422; 20 Sask. L. R. 553.—CAN.

#### PART XVII. SECT. 4, SUB-SECT. 13.

**st. India.**]—The decisions of the Sudder Dewani Adawlat & the Sudder Nizamat Adawlat are not binding on the High Cts.—*Re* MA MYA v. MA THEIN (1926), I. L. R. 4 Ran. 313.—IND.

**sv.** ———.]—Decisions of the highest ct. of a province are absolutely binding on all subordinate cts. in that province, & ordinarily decisions of a full bench of

a superior ct. are binding on benches other than full benches of that ct. & on all judges of that ct. sitting singly, & decisions of benches are binding on single judges.—*Re* MA MYA v. MA THEIN (1926), I. L. R. 4 Ran. 313.—IND.

**sw.** ——— Burma—Chief Court of Lower Burma—Whether binding—On High Court.]—The High Ct. in the exercise of its ordinary original & appellate jurisdictions is not bound by decisions of the Chief Ct. of Lower Burma, although its decisions are conditional authorities of the highest value to which the greatest weight & respect must be attached.—*Re* MA

MYA v. MA THEIN (1926), I. L. R. Ran. 313.—IND.

*subordinate courts.*]—On points where there is no decision of the High Ct., subordinate cts. in Lower Burma are still bound by the rulings of the Chief Ct., & subordinate cts. in Upper Burma are still bound by the decisions reported in Upper Burma Rulings. Under Govt. of India Act, s. 107, the High Ct. has power, if it so desires, to direct the subordinate cts. in Upper Burma to regard themselves as bound by the decisions of a bench of the Chief Ct. or even of a single judge of that ct.—*Re* MA MYA v. MA THEIN (1926), I. L. R. 4 Ran. 313.—IND.



**739a. Discrepancy between reports.]** — Where a case was reported in 1893 both in the *Law Reports* & in the *Law Times*, & the reports differed both in the narrative of facts & in the words of the judgments, LORD BUCKMASTER assumed that in the *Law Reports* there was a revision by the judges of the judgments that they delivered & accepted that as an authoritative statement.—**FAIRMAN v. PERPETUAL INVESTMENT BUILDING SOCIETY**, [1923] A. C. 74 ; 92 L. J. K. B. 50 ; 128 L. T. 386 ; 87 J. P. 21 ; 39 T. L. R. 54, H. L.

*Annotations*:—**Mentd.** *Cockburn v. Smith*, [1924] 2 K. B.

119 ; *Sutcliffe v. Clients Investment Co.*, [1924] 2 K. B. 746 ; *Coleshill v. Manchester Corpn.*, [1928], 1 K. B. 776.

**782. Add. Annotations:—Mentd.** *Hall v. Pim* (1927), 32 Com. Cas. 144 ; *Patrick v. Russo-British Grain Export Co.*, [1927] 2 K. B. 535.

**787a.** ———.]—Except on points of practice, the *Weekly Notes* should only be cited as interim reports of cases during the period required for their publication in the *Law Reports* (SWINFEN LEADY, J.).—*Re SMITH'S SETTLEMENT, WILKINS v SMITH* (1902), as reported in [1903] 1 Ch. 373.

*Annotations*:—**Mentd.** *Re Brydone's Settlement, Cobb v. Blackburne*, [1903] 2 Ch. 84 ; *Boyce v. Wasbrough*, [1922] 1 A. C. 425.

## JURIES.

## Part VII.—Juries of Issue and Assessment.

99. *Add. Annotations*:—*Generally*, *Mentd.* *R. v. Harris*, [1927] 2 K. B. 587; *R. v. Noble* (1928), 20 Cr. App. Rep. 191.
292. *Add. Annotations*:—*Mentd.* *R. v. Chesshire, Lucas & Bottom* (1927), 20 Cr. App. Rep. 47; *Statham v. Statham* (1928), 45 T. L. R. 127.
- 295a. *Death of judge.*]—*Semble*: a judge has no jurisdiction to continue the hearing of a case, in which witnesses have been called in ct. in the course of a trial before the jury & another judge.—*COLESHILL v. MANCHESTER CORPN.*, [1928] 1 K. B. 776; 97 L. J. K. B. 229; 138 L. T. 537; 92 J. P. 37; 44 T. L. R. 258; 26 L. G. R. 124, C. A.
- 301a. ———.]—Where a jury, before hearing all the evidence for the defence, finds a verdict for pltf., it is in the discretion of the judge to decide whether the jury should be discharged or whether the case should be continued before the same jury.—*DE FREVILLE v. DILL*, (1927), 43 T. L. R. 431; 71 Sol. Jo. 430, C. A.
303. *Add. Annotation*:—*Mentd.* *De Freville v. Dill* (1927), 43 T. L. R. 431.
421. *Add. Annotation*:—*Refd.* *Campbell v. Pollak*, [1927] A. C. 732.
- 423a. ——— *Jury finding verdict before all evidence given.*]—*DE FREVILLE v. DILL*, No. 301a, *ante*.
- 423b. ——— *Jury informed that defendant insured.*]—Where the established rule of practice, that in an accident case it should not be intimated to a jury that deft. is insured, has been violated, it is within the discretion of the judge to discharge the jury at the expense of the party whose advocate has violated the rule.—*GRINHAM v. DAVIES* (1928), 139 L. T. 379; 44 T. L. R. 523; 72 Sol. Jo. 303, D. C.
443. *Add. Annotations*:—*Ment* *Broome v. Agar* (1928), 138 L. T. 698; *Lockhart v. Harrison* (1928), 139 L. T. 521.
475. *Add. Annotation*:—*Refd.* *Dew v. United British S.S. Co.* (1928), 139 L. T. 628.
476. *Add. Annotation*:—*Expld.* *Dew v. United British S.S. Co.* (1928), 139 L. T. 628.
- 571a. ———.]—Where an action for damages, based on a breach of a statutory regulation made under Merchant Shipping Act, 1894 (c. 60), was tried by a judge with a jury, & several questions were left to the jury, which they answered:—*Held*: as the answers of the jury to the questions left to them were sufficient to determine the case, the judge was not entitled to ask them to reconsider their findings on the question of the effective cause of the accident, & the judge had thereby misdirected the jury.—*DEW v. UNITED BRITISH S.S. CO., LTD.* (1928), 139 L. T. 628, C. A.

## PART I.

sa. *Order granting*—"Common" inadvertently inserted.—*Amendment of order.*]—*Held*: the order should be amended by striking out the word "common."—*BRADSHAW v. B. C. RAPID TRANSIT*, [1927] 1 D. L. R. 599; 38 B. C. R. 64.—CAN.

## PART VII. SECT. 2.

72 iii. ———.]—Accused, except in cases of trial for high treason or misprison of treason, has no right to inspect the jury panel.—*R. v. BAUM* (1927), 27 S. R. N. S. W. 401; 44 N. S. W. W. N. 136.—AUS.

## PART VII. SECT. 5, SUB-SECT. 3.—C. (b) i.

183 i. *Revsd.*, 34 S. C. R. 228.

## PART VII. SECT. 5, SUB-SECT. 4.

sc. *Several actions tried together.*]—Five actions were brought by different pltf. against two defts. & were by consent tried together before a judge & jury:—*Held*: the consent to try the actions together did not give a right to more than four peremptory

challenges on each side.—*GAY CO., LTD. v. TRICK*, [1927] 1 D. L. R. 1091; 60 O. L. R. 8.—CAN.

## PART VII. SECT. 10, SUB-SECT. 4.

sd. *Agreement after further consideration for few minutes*—No ground for setting verdict aside.]—*BARRY v. RUBENSTEIN (N. B.)*, [1926] 1 D. L. R. 445.—CAN.

## PART VII. SECT. 10, SUB-SECT. 8.—B. (b).

q i. ———.]—The power given a trial judge by King's Bench Act, R. S. S., 1920 (c. 39), s. 47 (1), to dispense with a jury, although a jury has been claimed by one of the parties, is one which should be exercised with judicial discretion, i.e., the judge must give some good reason for depriving the party of his right to a jury.—*BLOOMAERT v. DUNLOP (Sask.)*, [1926] 4 D. L. R. 273; [1926] 2 W. W. R. 817.—CAN.

## PART VII. SECT. 13, SUB-SECT. 1.

466 ii. ———.]—*MAYES CASE v. PRESCOTT* (1925), 52 N. B. R. 272.—CAN.

## PART VII. SECT. 13, SUB-SECT. 4.

551 i. *Special matter*—*Statement of reasons.*]—*Held* the reasons could not be ignored.—*SUTTON v. SMITH*, [1927] 3 D. L. R. 1008; [1927] 2 W. W. R. 481; 38 B. C. R. 455.—CAN.

## PART VII. SECT. 15.

571 ii. ———.]—If an answer given by a jury to a question is not clear or sufficiently explanatory, it is a proper course for the trial judge to ask them to retire again & answer such supplementary questions as may be submitted to them for the purpose of further elucidation.—*PATERSON v. SASKATCHEWAN CREAMERY CO., LTD.*, [1921] 3 W. W. R. 551; 62 D. L. R. 387; 14 Sask. L. R. 544.—CAN.

571 iii. ———.]—Where a jury has given a general answer to a question & has been sent back to give a more definite answer & does answer more definitely, the last answer is its real answer & the one which must govern.—*BAILLOW v. CANADIAN PACIFIC Ry.*, [1926] 2 D. L. R. 956; [1926] 2 W. W. R. 11; 31 Can. Ry. Cas. 414; 35 Man. L. R. 517.—CAN.

## LAND IMPROVEMENT.

### Part III.—Under Settled Land Act, 1925.

79a. Authorised improvements—Electric lighting  
--Settled Land Act, 1925 (c. 18), ss. 83-85,

87, 88.]—*Re SHERBORNE'S (LORD) SETTLED ESTATE*, [1928] W. N. 239.

### Part IV—Under Private Improvement Acts.

216a. When effective.]—An improvement rent-charge imposed on land within the improvement area under London County Council (Improvements) Act, 1899, s. 61 :—*Held* : not an effective charge on the land until after a resolution of the council approving the assessment, notwithstanding that the improvement itself had been completed at an earlier date ; & if the land was contracted

to be sold free from incumbrances after the completion of the improvement but before the date of such resolution, the purchaser was not entitled to a conveyance of the land free from the improvement rentcharge.—*Re FARRER & GILBERT'S CONTRACT*, [1914] 1 Ch. 125 ; 83 L. J. Ch. 177 ; 110 L. T. 23 ; 58 Sol. Jo. 98, C. A.

#### PART VI.

sd. *By localty of Crown land—Basis of assessment.*] --*HIGHLAND v. SHERRY* (1900), 32 O. R. 371.—CAN.



LAND TAX.

12. *Add. Annotation :—Mentd. I. R. Comrs. v. Forth Conservancy Board (1928), 45 T. L. R. 83.*
116. *Add. Annotation :—Refd. Parr v. A.-G., [1926] A. C. 239.*

SECT. 4, SUB-SECT. 4.  
h i. — *In ascertaining unimproved value—Land held under Crown leases.*

—JOWETT v. FEDERAL TAXATION COMR. (1926), 38 C. L. R. 325.—AUS.  
h ii. *Licensed premises.*

*Re LAND TAX ACTS, WILSON'S CASE (1927), V. L. R. 399 ; 49 A. L. T. 54 ; [1927] Argus L. R. 328.—AUS.*

# LANDLORD AND TENANT.

## Part I.—Relation of Landlord and Tenant.

1. *Add. Annotation*:—**Refd.** *Oakley v. Wilson*, [1927] 2 K. B. 279.
20. *Add. Annotation*:—**Mentd.** *Hart v. Riversdale Mill Co.*, [1928] 1 K. B. 176.
230. *Add. Annotation*:—**Refd.** *Weld v. Petre* (1928), 97 L. J. Ch. 399.
243. *Add. Annotation*:—**Mentd.** *Anderson v. Equitable Life Assce. Soc. of United States* (1926), 134 L. T. 557.

## Part II.—Agreements for Lease.

296. *Add. Annotation*:—**Mentd.** *Newman v. Slade*, [1926] 2 K. B. 328.
- 330a. ———.]—**DOE d. HASTINGS v. WATERS** (1850), 16 L. T. O. S. 213.
362. *Add. Annotation*:—**As to** (1) **Refd.** *Franco-British Ship Store Co. v. Compagnie des Chargeurs Française* (1926), 42 T. L. R. 735.
368. *Add. Annotation*:—**Refd.** *Keppel v. Wheeler*, [1927] 1 K. B. 577.
374. *Add. Annotation*:—**Mentd.** *Franco-British Ship Store Co. v. Compagnie des Chargeurs Française* (1926), 42 T. L. R. 735.
- 396a. ———. **Letter purporting to enclose engrossment—& engrossment.**]—A prospective lessee having orally agreed to take a lease from a prospective lessor, a draft lease embodying the terms was approved by their respective solrs. By arrangement the engrossments of the lease & counterpart were then prepared by the lessee's solrs., who subsequently wrote to the lessor's solr. purporting to enclose the engrossment of the lease for his signature, & saying they had written to the lessee & expected to exchange parts shortly. By mistake the engrossment of the counterpart was enclosed to the lessor's solr., & the engrossment of the lease to the lessee, who subsequently delivered it to the lessor's solr.'s messenger in exchange for the engrossment of the counterpart. Shortly after this the lessee, relying (*inter alia*) on Stat. Frauds, repudiated the oral contract:—**Held**: the lessee's solrs.' letter purporting to enclose the engrossment of the lease coupled with that engrossment, subsequently handed over by the lessee in person, constituted a sufficient memorandum of the oral contract.—**HORNER v. WALKER**, [1923] 2 Ch. 218; 92 L. J. Ch. 573; 129 L. T. 782.
- 463a. ———.]—**BOWERS v. CATOR** (1798), 4 Ves. 91; 31 E. R. 47.
- 472a. ———.] **ANON.** (1718), 2 Eq. Cas. Abr. 48; 22 E. R. 42, L. C.
499. *Add. Annotation*:—**Refd.** *Rye v. Purcell*, [1926] 1 K. B. 446.
501. *Add. Annotation*:—**Refd.** *Rye v. Purcell*, [1926] 1 K. B. 446.
600. *Add. Annotation*:—**Refd.** *Torbay Hotels v. Jenkins*, [1927] 2 Ch. 225.
834. *Add. Annotation*:—**Refd.** *York Glass Co. v. Jubb* (1925), 134 L. T. 36.
864. *Add. Annotation*:—**Refd.** *Re Gough* (1927), 71 Sol. Jo. 470.

## Part III.—Leases.

929. *Add. Annotation*:—**Mentd.** *Akt. Dampskibs Steinstad v. Pearson* (1927), 137 L. T. 533.
981. *Add. Annotation*:—**Refd.** *Palmer v. Crone*, [1927] 1 K. B. 804.
- 1082a. ———.]—**DUCK v. BRADDYLL** (1824), M'Cle. 217; 13 Price, 455; 147 E. R. 1047.
- Annotations*:—**Folld.** *Doe d. Kettle v. Lewis* (1830), 10 B. & C. 673. **Mentd.** *Darby v. Harris* (1841), 1 Q. B. 895; *Dyer v. Green* (1847), 1 Exch. 71; *Re Mackenzie, Ex p. Hertfordshire Sheriff*, [1899] 2 Q. B. 566.
- 1195a. ———.]—**SUSSEX (COUNTESS) v. WROTH** (1582), Cro. Eliz. 5; 78 E. R. 272; *sub nom.* **SUSSEX (COUNTESS) & WORTHS CASE**, 4 Leon.

### PART I. SECT. 2, SUB-SECT. 2. B.

**sa.** *Under clause in agreement for sale.*]—In deciding whether an attornment clause in an agreement for the sale of land created the relationship of landlord & tenant between the vendor & the purchaser the ct. has to determine whether the parties introduced the clause *bond fide*, & this question must be determined on the circumstances of the particular case. Although the fact that the rental reserved is fluctuating is not usually of much point, yet it is a circumstance to be considered.—**BLOOMART v. DUNLOP**, [1927] 3 D. L. R. 57; [1927] 1 W. W. R. 1014; 21 Sask. L. R. 424.—**CAN.**

### PART I. SECT. 3, SUB-SECT. 1.—A.

63 xxvi.

—.]—**VERTANNES v.**

**ROBINSON** (1927), 1 L. R. 5 Kan. 427.—**IND.**

63 xxvii. ———.]—**MCDONALD v. ARBUCKLES** (1889), 22 N. S. R. 67.—**CAN.**

63 xxviii. ———.]—**BROCK v. BENNESS** (1898), 29 O. R. 468.—**CAN.**

### PART I. SECT. 3, SUB-SECT. 3.

**sd.** *Lease by life tenant to reversioner—Until death of lessor.*]—A lease by a life tenant for a term certain to the reversioner, containing a covenant by the lessee to pay rent to the lessor, "her heirs & assigns," does not estop the lessee from showing that he has become owner on the lessor's death.—**THATCHER v. BOWMAN** (1889), 18 O. R. 205.—**CAN.**

### PART II. SECT. 8, SUB-SECT. 1.—C. (a).

**sf.** *Valuation of furniture.*]—**WALKER v. KELLY** (1874), 24 C. P. 174.—**CAN.**

### PART III. SECT. 2, SUB-SECT. 1.

972 v. ———.]—**WILLIAMS MACHINE CO. OF WINNIPEG, LTD. v. WINNIPEG STORAGE, LTD. (Man.)**, [1926] 4 D. L. R. 1167; [1926] 3 W. W. R. 451; *reversd.*, [1928] 1 D. L. R. 12; [1927] 3 W. W. R. 665.

### PART III. SECT. 6.

**ni.** ———. "*Rights, liberties, privileges & appurtenances.*"—**Held**: to pass the right to advertise premises by means of a man standing with an advertisement board at the entrance to an arcade.—**HENRY, LTD. v. M** [1926] N. 144.—**IR.**

- 1197a. ———.]—SLOCOMB v. HAWKINS (1612), Yelv. 222; 80 E. R. 145; *sub nom.* SHECOMB v. HAWKINS, Cro. Jac. 318.  
*Annotations*:—**Consd.** Berry v. White (1662), O. Bridg. 82.  
**Refd.** Mun v. Baylies (1673), Freem. K. B. 340; Winter v. Loveday (1697), 1 Com. 37.  
1225a. ———.]—ANON. (1553), Bro. N. C. 95, pl. 437; 73 E. R. 895.  
1258. *Add. Annotation*:—**Refd.** Manchester Corpn v. Audenshaw U. C. & Denton U. C., [1928] Ch. 763.  
1295. *Add. Citation*:—*sub nom.* R. v. HASTINGS POOR LAW UNION GUARDIANS, 13 L. T. 362.  
1355. *Add. Annotation*:—**Refd.** Lowther v. Clifford, [1927] 1 K. B. 130.  
1372a. ——— **Destruction of premises—By fire.**—  
Deft. demised to pltfs. for three years a piece of land with a factory on it, & pltfs. were to keep the inside of the factory in repair. The agreement said nothing as to the repair of the outside & as to insurance,

but gave pltfs. an option of purchase during the term. Deft. insured the factory against fire, &, on the occurrence of a fire which almost completely destroyed it, he received compensation from the insurance co. Pltfs. then gave notice of the exercise of their option of purchase & paid a deposit, but deft. declined to reinstate the walls & roof, & alleged that in exercising the option pltfs. had to take the property as it was. In an action for a declaration that pltfs. were not bound to proceed with the purchase, deft. counterclaimed for specific performance:—*Held*: since at the date of the exercise of the option pltfs., to the knowledge of deft., thought that he was going to re-erect the factory, the parties were never *ad idem*, & pltfs. were entitled to a return of their deposit, & the counterclaim for specific performance failed.—**LONDON HOLEPROOF HOSIERY Co., LTD. v. PADMORE** (1928), 44 T. L. R. 499, C. A.

## Part IV.—Underleases.

1469. *Add. Annotation*:—**Refd.** Melzak v. Lilienfeld, [1926] Ch. 480.  
1470. *Add. Annotation*:—*As to* (2) **Refd.** Melzak v. Lilienfeld, [1926] Ch. 480.  
1514. *Add. Citations*:—95 L. J. Ch. 305; 135 L. T. 145.

## Part VI.—Licence.

1598. *Add. Annotations*:—**Mentd.** Kursell v. Timber Operators & Contractors, [1927] 1 K. B. 298; *Re* Wait, [1927] 1 Ch. 606; **First Russian Insee. v. London & Lancashire Insee.**, [1928] Ch. 922; *The Penelope*, [1928] P. 180.  
1643. *Add. Annotation*:—**Refd.** L. C. C. v. Hackney B. C., [1928] 2 K. B. 588.  
1650. *Add. Annotation*:—**Refd.** Chaplin v. Smith, [1926] 1 K. B. 198.  
1657. *Add. Annotation*:—**Refd.** Johnson v. Clarke, [1928] Ch. 847.  
1682. *Add. Annotation*:—**Refd.** Messenger v. British Broadcasting Co., (1927), 97 L. J. K. B. 251.  
1690. *Add. Annotation*:—**Mentd.** Lagan Navigation Co. v. Lambeg Bleaching, Dyeing & Finishing Co., [1927] A. C. 226.  
1694. *Add. Annotation*:—**Consd.** O'Cedar v. Slough Trading Co., [1927] 2 K. B. 123.  
1705. *Add. Annotation*:—**Refd.** Johnson v. Clarke, [1928] Ch. 847.  
1728. *Add. Citation*:—2 C. L. R. 1449.

## Part VII.—Premises Included in the Demise.

- 1783a. ——— **Garden not included.**—ANON. (1561), Moore, K. B. 24, pl. 82; Dal. 29, pl. 5; 72 E. R. 415.  
1810a. ——— **Liberty of passage for pipes—Extent**

**of right.**—Deft. co. were the lessees from a firm of architects for a determinable term of twenty-one years from June 24, 1923, & also occupiers of the first floor of a block of build-

### PART III. SECT. 12, SUB-SECT. 1.— B. (a).

1373 i. *Presumption of exercise.*—**CAHUAC v. SCOTT, CAHUAC v. ERLE** (1872), 22 C. P. 551.—CAN.

### PART IV. SECT. 3, SUB-SECT. 1.

1435 iii. ———.]—**BEJOY LAL SEAL v. BENARASIDAS KHANDLWAL** (1927), I. L. R. 54 Calc. 948.—IND.

### PART IV. SECT. 5, SUB-SECT. 2.

1471 i. *By what covenants underlessee bound—Usual covenants—Underlease of licensed premises.*—**MCGARRITY v. CONDY** (1927), 27 S. R. N. S. W. 217 44 N. S. W. W. N. 61.—AUS.

### PART VI. SECT. 2, SUB-SECT. 2.

r i. ———.]—**NEW BRUNSWICK & NOVA SCOTIA LAND Co. v. KIRK** (1849), 6 N. B. R. (1 All.) 443.—CAN.

r ii. ———.]—**DUCONDU v. DUPUY** (1883), 9 App. Cas. 150; 53 L. J. P. C. 12; 50 L. T. 129, P. C.—CAN.

a i. ———.]—**RUTTER v. ORDE** (B. C.) (1918), 59 S. C. R. 658; 49 D. L. R. 691.—CAN.

a ii. ———.]—**ROYAL BANK OF CANADA v. R.** (1921), 62 S. C. R. 313; 68 D. L. R. 23.—CAN.

a iii. ———.]—**O'BRIEN v. R.**, [1927] 2 D. L. R. 1139.—CAN.

s j. *Agreement to display advertisements in movable frames on spaces in post offices.*—*Held*: not a lease, but a

licence to use the spaces.—**U. K. ADVERTISING Co. v. GLASGOW BAG-WASH LAUNDRY**, [1926] S. C. 303.—SCOT.

### PART VI. SECT. 4.

1665 ii. ———.]—**MACLAREN Co. v. ELEC. REDUCTION Co. (Can.)**, [1926] 4 D. L. R. 593.—CAN.

### PART VI. SECT. 5, SUB-SECT. 1.

1669 iv. ———.]—**FIELDER v. BANNISTER** (1860), 8 Gr. 257.—CAN.

### PART VII. SECT. 1, SUB-SECT. 2.—B.

1773 i. *What is appurtenant to house or message—Not space between shop-front & street.*—**REID v. MIMICO**, [1927] 1 D. L. R. 235; 59 O. L. R. 579.—CAN.



ings known as I. Court under a lease which contained a reservation "excepting & reserving unto the lessors & the person or persons for the time being occupying the other parts of the building the passage of gas water & other pipes & electric wires through the demised premises & the free running of water & soil in & through the pipes connected with the demised premises." In May, 1924, pltf. took a lease of the second floor of I. Court from the firm, subject to a similar reservation. In exercise of the right reserved to the lessors

& persons occupying other parts of the premises pltf. conducted pipes from her premises through deft. co.'s part of the premises. Deft. co., after the operations had proceeded for some time, alleged that great inconvenience would be caused to them, & cut the pipes:—*Held*: the reservation gave no right to the lessors or pltf. to introduce any new pipes or wires into the premises.—*TAYLOR v. BRITISH LEGAL LIFE ASSURANCE Co.* (1925), 94 L. J. Ch. 284; 133 L. T. 453; 23 L. G. R. 585, O. A.

## Part VIII.—Nature, Creation, and Duration of Tenancies.

1848. *Add. Annotation*:—As to (2) *Refd.* *Lowther v. Clifford*, [1927] 1 K. B. 130.

1967. *Add. Annotation*:—*Mentd.* *Lowe v. Bentley* (1928), 44 T. L. R. 388.

1968. *Add. Annotation*:—*Refd.* *Anchor Trust Co. v. Bell*, [1926] Ch. 805.

1975a. *Duty of tenant from year to year—To use premises in tenantlike manner.*—A tenant from year to year is under an implied obligation to use the demised premises in a tenantlike manner & to yield them up so used at the end of the tenancy. The obligation continues as long as he continues tenant. If he alters the character of the premises, he commits a breach of the obligation, & is liable in damages for the injury to the reversion.—*MARSDEN v. EDWARD HEYES, LTD.*, [1927] 2 K. B. 1; 96 L. J. K. B. 410; 136 L. T. 593, C. A.

1978a. — *Option to take lease "for any term suitable to" occupier.*—Where premises had been for some years in the occupation of R., who produced a letter addressed to him in 1915 & signed by the landlord, purporting to give R. an indefinite option of purchase, & alternatively an option to take a lease of the

property for any term suitable to R., & an undertaking that so long as R. remained sole tenant the rent agreed on should not be increased:—*Held*: on the true construction of the agreement R. was merely a tenant from year to year.—*JOHNSON v. CLARKE*, [1928] Ch. 847; 97 L. J. Ch. 337; 139 L. T. 552; 72 Sol. Jo. 556.

2064. *Add. Annotation*:—*Mentd.* *St. Anne's Well Brewery Co. v. Roberts* (1928), 92 J. P. 95.

2078. *Add. Annotation*:—*Refd.* *Lowther v. Clifford*, [1927] 1 K. B. 130.

2079. *Add. Annotation*:—*Refd.* *Rye v. Purcell*, [1926] 1 K. B. 446.

2080. *Add. Annotation*:—*Refd.* *Lowther v. Clifford*, [1927] 1 K. B. 130.

2090. *Add. Annotation*:—*Refd.* *Rye v. Purcell*, [1926] 1 K. B. 446.

2097. *Add. Citations*:—[1927] 1 K. B. 130; 90 J. P. 113; 24 L. G. R. 231.

*Add. Annotation*:—*Refd.* *Mansfield v. Robinson*, [1928] 2 K. B. 353.

2101. *Add. Annotation*:—*Refd.* *Lowther v. Clifford*, [1927] 1 K. B. 130.

## Part IX.—Renewal of Tenancies.

2182. *Add. Annotation*:—*Mentd.* *Public Trustee v. Elder*, [1926] Ch. 776.

2243. Before this case, for "*See, now, Law of*

*Property Act, 1925 (c. 20), s. 145," read "See, now, Law of Property Act, 1922 (c. 16), s. 145."*

PART VIII. SECT. 4, SUB-SECT. 1.—D. 1855 iii. —.]—*DOE d. PURDY v. PETERS* (1838), 2 N. B. R. (Ber.) 530.—CAN.

PART VIII. SECT. 5, SUB-SECT. 1. 1946 i. — *Purchaser under agreement for sale at price payable by instalments—After forfeiture for non-payment.*—*PRINCE v. MOORE* (1864), 14 C. P. 349.—CAN.

PART VIII. SECT. 5, SUB-SECT. 2. sk. *Action for damages—Against landlord—Removal of roof by landlord.*—*Held*: damages not recoverable.—*HASTINGS v. LEONIDAS*, [1927] S. R. Q. 389; 21 Q. J. P. 156.—AUS.

PART VIII. SECT. 6, SUB-SECT. 2.—B. (b).

2034 x. —.]—*HAMBURG v. CAPE BRETON ELEC. CO.*, [1926] 4 D. L. R. 683; 58 N. S. R. 341.—CAN.

2034 xi. —.]—*STURDEE v. MERRITT* (1848), 5 N. B. R. (3 Kerr.) 641.—CAN.

PART VIII. SECT. 6, SUB-SECT. 5.—A. sm. *Agreement to purchase—Agreement not carried out.*—*Held*: the

tenancy was not determined.—*CROSKILL v. WORTMAN* (1863), 10 N. B. R. (5 All.) 648.—CAN.

PART VIII. SECT. 9, SUB-SECT. 3. sn. *Sub-lease for life & years.*—*Held*: the term of years was reversionary & not concurrent, & began to run when the life died.—*ADAMS v. M'GOLDRICK*, [1927] N. I.

PART IX. SECT. 2, SUB-SECT. 1.—B. 2159 v. —.]—A covenant to renew runs with the land, & can be specifically enforced by the assignee of a portion of the holding.—*SECRETARY OF STATE FOR INDIA IN COUNCIL v. VOLKART BROTHERS* (1926), 1 L. R. 50 Mad. 595.—IND.

PART IX. SECT. 2, SUB-SECT. 3.

n i. —.]—Where a renewal clause in a lease confers on the lessee the right to obtain from the lessor on the expiry of the old term, but not until then, the grant of a new lease *in presenti* in continuation of the old, the lessor cannot, during the currency of the lease, though himself presently willing to grant a new lease, compel the lessee to

accept it, even though the latter may have given notice of his intention to exercise his right of renewal.—*KENNEDY v. BERRYMAN*, [1925] N. Z. L. R. 178.—N.Z.

PART IX. SECT. 2, SUB-SECT. 5. 2181 v. —.]—*SECRETARY OF STATE FOR INDIA IN COUNCIL v. VOLKART BROTHERS*, No. 2159 v. *ante*.—IND.

2184 i. *Representative of lessee—Executor.*—*NUGENT v. McLELLAN*, [1927] 4 D. L. R. 845.—CAN.

p i. — *Not after transfer of leasehold interest to others.*—*JOGESH CHANDRA ROY v. ANNADA CHARAN CHAUDHURY* (1926), 1 L. R. 53 Calc. 590.—IND.

PART IX. SECT. 2, SUB-SECT. 6. sp. *Renewal by former partner.*—*Held*: the lease was held in trust for the partnership.—*PONG v. QUONG*, [1927] 3 D. L. R. 128; [1927] S. C. R. 271.—CAN.

PART IX. SECT. 2, SUB-SECT. 9.—A. r i. —.]—A lease of a house & consulting-rooms contained a

## Part X.—Particular Properties.

2331. *Add. Annotation*:—**Refd.** Bernard v. Williams (1928), 139 L. T. 22.
2371. *Add. Annotation*:—**As to** (1) **Refd.** O'Cedar v. Slough Trading Co., [1927] 2 K. B. 123.
2375. *Add. Annotation*:—**Appld.** Noble v. Harrison, [1926] 2 K. B. 332.
2381. *Add. Annotation*:—**Refd.** Coleshill v. Manchester Corp., [1928] 1 K. B. 776.
2387. *Add. Annotation*:—**Refd.** Coleshill v. Manchester Corp., [1928] 1 K. B. 776.
2390. *Add. Annotation*:—**Refd.** Booth v. Thomas (1926), 95 L. J. Ch. 160.
2433. *Add. Citation*:—134 L. T. 319.

## Part XI.—Covenants.

2573. *Add. Annotation*:—**Refd.** O'Cedar v. Slough Trading Co., [1927] 2 K. B. 123.
2641. *Add. Annotation*:—**As to** (2) **Folld.** Booth v. Thomas, [1926] Ch. 397.
2651. *Add. Annotation*:—**As to** (1) **Consd.** Booth v. Thomas, [1926] Ch. 397.
2663. *Add. Annotation*:—**Generally**, **Refd.** O'Cedar v. Slough Trading Co., [1927] 2 K. B. 123.
2666. *Add. Annotation*:—**Mentd.** Hyman v. Hyman, Hughes v. Hughes (1928), 139 L. T. 416.
2696. *Add. Annotation*:—**Generally**, **Refd.** Metcalfe v. Boyce, [1927] 1 K. B. 758.
2697. *Add. Annotations*:—**As to** (2) **Appld.** Booth v. Thomas, [1926] 2 Ch. 397. **As to** (3) **Refd.** Booth v. Thomas, [1926] Ch. 397.
2703. *Add. Annotation*:—**Refd.** O'Cedar v. Slough Trading Co., [1927] 2 K. B. 123.
2707. *Add. Annotation*:—**Refd.** O'Cedar v. Slough Trading Co., [1927] 2 K. B. 123.
2719. *Add. Annotation*:—**Appld.** Booth v. Thomas, [1926] Ch. 397.
- 2727a. *Suit in equity*.—**HUNT v. DANVERS** (1680), T. Raym. 370; 83 E. R. 193.
- Annotations*:—**Refd.** Dennett v. Atherton (1872), L. R. 7 Q. B. 316; Tebb v. Cave (1900), 82 L. T. 115.
2741. *Add. Annotation*:—**Refd.** O'Cedar v. Slough Trading Co., [1927] 2 K. B. 123.
2760. *Add. Annotation*:—**Refd.** Stoney v. Eastbourne R. D. C. & Devonshire (1925), 90 J. P. 133.
2776. After this case add “*See, now, Law of Property Act, 1925 (c. 20), s. 79.*”
2783. After this case add “*See, now, Law of Property Act, 1925 (c. 20), s. 79.*”
2802. *Add. Annotation*:—**Mentd.** Busby v. Avghe-rino, [1927] 2 Ch. 33.

## Part XII.—Restrictions on Use of Premises.

2872. *Add. Annotation*:—**Consd.** Melzak v. Lilienfeld, [1926] Ch. 480.
2909. *Add. Citations*:—95 L. J. Ch. 52; 135 L. T. 91.
- 2913a. — **Part of premises sublet.**—In 1906 there was granted to K., as lessee a dwelling-

house & premises for a term of ninety-nine years at a ground rent of £8 a year, & the lessee covenanted with the lessors that he would not, without the lessors' previous licence in writing, use the demised house, or any part thereof, “for any purpose whatsoever other than for the purpose of a private

covenant for renewal & an option to purchase, under which the house was purchased:—**Held**: the covenant for renewal only applied to the entirety of the premises, & not to the consulting-rooms alone.—**MORRIS v. DUNSTONE**, [1925] S. A. S. R. 340.—**AUS.**

**r ii.** —.—**SECRETARY OF STATE FOR INDIA IN COUNCIL v. VOLKART BROTHERS** (1928), L. R. 55 Ind. App. 423.—**IND.**

**PART X. SECT. 2, SUB-SECT. 3.—A.**  
**st. Land leased in lots by reference to plan—Lessor not entitled to depart from plan.**—**BURNS v. DILWORTH TRUST BOARD**, [1925] N. Z. L. R. 488.—**N.Z.**

**PART X. SECT. 5, SUB-SECT. 1.**  
**sw. Common court—Repair—Extent of obligation.**—The wife of the tenant of a house in a tenement brought an action against the proprietors for damages in respect of injuries, which she alleged she had sustained in consequence of a fall caused by her foot catching in a depression in the pavement of a common court at the back of the tenement. Pursuer averred

that the depression had been there, & the condition of the pavement had been defective & dangerous, for some years, & that the defective state of the pavement was open & obvious. She did not aver that she was unaware of the defect, or that she had ever complained of it to defenders, nor did she deny defenders' averment that she had lived in the tenement for years:—**Held**: pursuer's averments were not relevant to infer liability against defenders.—**YOUNG v. CAMPBELL**, [1924] S. C. 157.—**SCOT.**

**PART X. SECT. 5, SUB-SECT. 2.**  
**2380 viii.** —.—**WATT v. ADAMS BROTHERS MANUFACTURING Co. (Alta.)**, [1928] 1 D. L. R. 59; [1927] 3 W. W. R. 580.—**CAN.**

**PART X. SECT. 5, SUB-SECT. 4.**  
**2395 iv.** —.—**CONNOR v. NELSON, MOATE & Co.**, [1925] N. Z. L. R. 123.—**N.Z.**

**PART X. SECT. 7, SUB-SECT. 3.—B. (a).**  
**1 i.** —.—**Other trade carried on—Consequent refusal of justices to renew.**

—**Held**: as the tenant had brought about the refusal of the renewal of the licence by her own act, the lessor was entitled to recover possession of the premises & damages for breaches of covenants.—**MAGUIRE v. DAY**, [1926] N. 80.—**IR.**

### PART X. SECT. 14.

**sy. Lease of warehouse space.**—A lessee of warehouse space sued his lessor for damages caused by the freezing & bursting of a standpipe in the warehouse. There was no provision in the lease as to heating:—**Held**: the landlord was under no duty to prevent the standpipe from freezing.—**SCYTHES v. GIBSONS, LTD.**, [1927] 2 D. L. R. 834; S. C. R. 352.—**CAN.**

**PART XI. SECT. 5, SUB-SECT. 4.—A. (b) viii.**

**sa. Erection for breach of covenant—After inadequate notice of breach.**—**GORDON v. WILHELM (Sask.)**, [1926] 4 D. L. R. 1042; [1926] 3 W. W. R. 641.—**CAN.**

**PART XI. SECT. 5, SUB-SECT. 4.—D.**  
**2756 i. Varied**, [1926] 4 D. L. R. 527; [1926] 3 W. W. R. 11.

dwelling-house, wherein no business of any kind is carried on." There was a further covenant by the lessee that he would not do or suffer to be done in or on the demised premises anything which might, in the judgment of the lessors, be or grow to the injury or annoyance of the lessors or their tenants, or the occupiers of adjoining premises. In 1914 the lessee, without the knowledge of or licence from the lessors, sublet three rooms of the first floor of the demised house to a subtenant, whose tenancy expired in June, 1926. On July 19 the lessee, without any licence from the lessors, sublet the same three rooms to P. as a subtenant at a rent of £1 a week. In an action by the lessors against K. & P., & the mtgees. of K., claiming possession of the house as against all defts., on the ground that the lease had been forfeited by reason of the breaches of the two covenants:—*Held*: (1) there had been a forfeiture of the lease by breaches of both the restrictive covenants, & the words in the first covenant, "wherein no business of any kind is carried on," must be construed as adding to the stringency of the covenant that the house should be used as a private dwelling-house; (2) Rent Restriction Acts afforded no defence to the action, as K. was in actual possession of the whole of the dwelling-house in the interval between the two tenancies, & 1923 Act, s. 2 (1), came into operation, & the premises had become decontrolled.—*BARTON v. KEEBLE*, [1928] Ch. 517; 97 L. J. Ch. 215; 139 L. T. 136.

2922. *Add. Annotation*:—*Refd. Re Debtor* (No. 3 of 1926) (1926), 135 L. T. 689.  
 2929. *Add. Annotation*:—*Refd. Re Debtor* (No. 3 of 1926) (1926), 135 L. T. 689.  
 2943a. Covenant not to carry on trade of alehouse, beerhouse or tavern keeper or licensed victualler—Carrying on of restaurant.]—A

covenant in a lease that the trades or businesses of alehouse keeper, beerhouse keeper, tavern keeper, or licensed victualler should not be carried on on the demised premises, is not broken by the carrying on of a restaurant with a wine & beer on-licence subject to the condition that alcoholic liquor should only be served with meals.—*LORDEN v. BROOKE-HITCHING*, [1927] 2 K. B. 237; 96 L. J. K. B. 400; 137 L. T. 60; 91 J. P. 81; 43 T. L. R. 268; 71 Sol. Jo. 332.

2945. *Add. Annotation*:—*Refd. Lorden v. Brooke-Hitching*, [1927] 2 K. B. 237.  
 2952. *Add. Annotation*:—*Refd. Lorden v. Brooke-Hitching*, [1927] 2 K. B. 237.  
 2953. *Add. Annotation*:—*Refd. Lorden v. Brooke-Hitching*, [1927] 2 K. B. 237.  
 2965. *Add. Annotation*:—*Mentd. Haskell v. Marlow*, [1928] 2 K. B. 45.  
 2981a. — Subletting part of premises.]—*BARTON v. KEEBLE*, No. 2913a, *ante*.  
 2994. *Add. Citations*:—95 L. J. Ch. 1; 134 L. T. 56.  
 2997. *Add. Annotation*:—*Refd. Torbay Hotel v. Jenkins*, [1927] 2 Ch. 225.  
 3002. *Add. Annotation*:—*Refd. Lorden v. Brooke-Hitching*, [1927] 2 K. B. 237.  
 3026a. Not to allow placards, posters or advertisements other than plates or other similar announcements—Illuminated sign.]—*Held*: a breach of the covenant.—*GIFFORD v. DENT* (1926), 71 Sol. Jo. 83.  
 3033. *Add. Annotation*:—*Refd. Richardson v. Moncrieffe* (1926), 43 T. L. R. 32.  
 3035a. — Obligation of lessor as to adjacent premises.]—*O'CEDAR, LTD. v. SLOUGH TRADING CO.*, No. 5070a, *post*.  
 3067. *Add. Citations*:—[1926] Ch. 620; 95 L. J. Ch. 445; 135 L. T. 107.

## Part XIII.—Fitness of Premises.

3157. *Add. Annotation*:—*Consd. Haskell v. Marlow*, [1928] 2 K. B. 45.  
 3159. *Add. Annotation*:—*Refd. Fisher v. Walters* (1926), 90 J. P. 195.  
 3160. *Add. Citations*:—90 J. P. 195; 24 L. G. R. 327.  
 3160a. — — — — —.]—The tenant of an industrial dwelling-house, which, as regards rent, came within Housing Act, 1925 (c. 14), & Increase of Rent & Mtge. Interest (Restrictions) Act, 1920 (c. 17), & the rent of which had been increased under the latter Act, sought to recover from his landlords, deft. corpn., his medical expenses & damages for loss of work incurred by reason of an accident suffered by him when, in opening one of the windows of the house, as soon as

he had unlatched the top sash it fell owing to the breaking of the sash cord & severely crushed his hands. He based his claim on the alleged failure of the landlords to perform their statutory obligations under Housing Act, 1925, to keep the house "in all respects reasonably fit for human habitation" &, alternatively, under Increase of Rent & Mtge. Interest (Restrictions) Act, 1920, to keep the house in "good & tenantable repair":—*Held*: (1) whatever was the effect of the above mentioned Acts upon a landlord's responsibility for the condition or state of repair of houses coming within the scope of those Acts, upon which, as applied to the facts, the ct. was not unanimous, it was a condition precedent to the liability of the landlord that notice of latent, as well as of

### PART XII. SECT. 3, SUB-SECT. 4.—B. (a).

o i. — Tea & refreshment rooms—Letting premises for use as tea-rooms only.]—*Held*: a breach of covenant, & the person injured by the breach of covenant was entitled to an interdict restraining such breach.—*SAHEEROLAY v. WOOLFSON*, [1925] App. D. 38.—S. AF

### PART XII. SECT. 3, SUB-SECT. 7.—A.

2998 i. Not to let for particular trade—What amounts to breach.]—Where premises were let to a confectioner, & the landlord covenanted not to let any shop in the same block of buildings for a similar purpose, but subsequently let adjoining shops to a grocer & a greengrocer & fruiterer:—*Held*: there had been a breach of covenant by the landlord.—*SUTHERLAND v. DEVEREUX*,

[1928] N. Z. L. R. 171.—N.Z.

### PART XIII. SECT. 3, SUB-SECT. 2.—E.

3156 i. Breach—What amounts to—Hot ashes left in yard.]—Defts. agreed for reward to provide board & lodging for infant pltf., who was injured while playing in the yard of the premises through coming in contact with some hot ashes placed there by one of defts.:—*Held*: defts. were liable.—*IRWIN v. HAMAL*, [1927] N. Z. L. R. 7.—N.Z.



patent, defects should be given to him by the tenant, whether or not the landlord had a right of access to inspect the state of repair of the house, & the absence of such notice was fatal to pltf.'s claim. (2) Observations upon the meaning of the words "in all

respects reasonably fit for human habitation" in Housing Act, 1925, s. 1.—*MORGAN v. LIVERPOOL CORPN.*, [1927] 2 K. B. 131; 96 L. J. K. B. 234; 136 L. T. 622; 91 J. P. 26; 43 T. L. R. 146; 71 Sol. Jo. 35; 25 L. G. R. 79, C. A.

## Part XIV.—Fixtures.

3189. *Add. Annotation*:—*Generally, Mentd. Kurrell v. Timber Operators & Contractors*, [1927] 1 K. B. 298.  
3390. *Add. Citation*:—[1926] Ch. 877.

## Part XV.—Rent.

3555. *Add. Annotation*:—*Mentd. Busby v. Avgherino*, [1928] A. C. 290.  
3590. *Add. Citations*:—*sub nom. WINSTON v. PINKNEY*, 3 Keb. 137; 2 Lev. 80; T. Raym. 222.  
*Annotation*:—*Refd. Brownlow v. Hewley* (1696), 1 Ld. Raym. 58.  
3779. *Add. Annotation*:—*Refd. Rye v. Purcell*, [1926] 1 K. B. 446.  
3808. *Add. Annotation*:—*Distd. British & North European Bank v. Zalstein*, [1927] 2 K. B. 92.  
3867. *Add. Annotation*:—*Refd. Tredegar v. Harwood* (1928), 97 L. J. Ch. 392.  
3930. *Add. Annotations*:—*Consd. Dalton v. Pickard* (1911), [1926] 2 K. B. 545, n.; *Richmond v. Savill*, [1926] 2 K. B. 530.  
3958. *Add. Annotation*:—*Generally, Mentd. G. W. Ry. v. S.S. Mostyn, The Mostyn*, [1928] A. C. 57.  
3990. *Add. Annotation*:—*As to (4) Consd. Haskell v. Marlow*, [1928] 2 K. B. 45.  
4105. *Add. Annotations*:—*Refd. Dalton v. Pickard* (1911), [1926] 2 K. B. 545, n.; *Richmond v. Savill*, [1926] 2 K. B. 530.  
4116a. ———.]—A grantee of a rent reserved on a lease for years may sue the lessee for the rent where the lessee has attorned—*GOODMAN v. PACKER* (1970), T. Jo. 1; *Frcem. K. B. 1*; 84 E. R. 1116.  
*Annotation*:—*Refd. Brownlow v. Hewley* (1696), 1 Ld. Raym. 82.  
4142a. ———.]—*Sufficiency of consideration*.]—A declaration set out an agreement in writing, whereby pltf. agreed to let, & T. to take, a house, at a yearly rent, & deft. thereby also agreed to see the rent paid by T., or to pay it for him. Averment, that pltf. let the house, & T. became tenant on the terms of the agreement. Breach, that neither T. nor deft. paid the rent:—*Held*: the consideration for deft.'s promise was the letting of the house.—*CABALLERO v. SLATER* (1854), 14 C. B. 300; 23 L. J. C. P. 67; 2 W. R. 198; 139 E. R. 123; *sub nom. CAVALIERO v. SLATER*, 22 L. T. O. S. 243.  
4157. *Add. Annotation*:—*Mentd. Hoystead v. Taxation Comr.*, [1926] A. C. 155.  
4162. *Add. Annotation*:—*Refd. Hardie & Lane v. Chilton*, [1928] 2 K. B. 306.  
4163. *Add. Annotation*:—*Refd. Hoystead v. Taxation Comr.*, [1926] A. C. 155.  
4167a. *Rescission of purchase agreement determining tenancy*.]—*TURNER v. WATTS*, No. 6636a, *post*.  
4262. *Add. Annotation*:—*Refd. Akt. Dampskibs Steinstad v. Pearson* (1927), 137 L. T. 533.  
4276. *Add. Annotation*:—*Refd. Oakley v. Wilson*, [1927] 2 K. B. 279.

### PART XIV. SECT. 2, SUB-SECT. 1.—A. (d).

*so. Boilers*.]—*COLEMAN v. MONAHAN* (N. B.), [1927] 2 D. L. R. 209.—CAN.

### PART XIV. SECT. 2, SUB-SECT. 2.—C. (b) ii.

3256 ii. ———.]—*Re ROY WOLF BREWING Co. (Ont.)*, [1926] 2 D. L. R. 1002; 7 C. B. R. 625.—CAN.

### PART XIV. SECT. 2, SUB-SECT. 2.—E.

3279 i. *Boiler—& other machinery*.]—*ROGERS v. ONTARIO BANK* (1891), 21 O. R. 416.—CAN.

### PART XIV. SECT. 7, SUB-SECT. 4.

3461 iv. ———.]—*GLOBE LAND Co. v. HEASLIP*, [1927] 3 D. L. R. 604; 60 O. L. R. 499.—CAN.

### PART XV. SECT. 4, SUB-SECT. 2.—C. (a).

3765 i. *General rule*.]—*PEPPER v. BUTLER* (1875), 37 U. C. R. 253.—CAN.

### PART XV. SECT. 4, SUB-SECT. 3.

*so. Assignee—Assignment after expiry of term—Lease containing covenant for renewal*.]—*BENGAL NATIONAL BANK*, J.S.

*LTD. v. JANAKI LATH ROY* (1927), 1 L. R. 54 Calc. 813.—IND.

### PART XV. SECT. 5, SUB-SECT. 1.—B.

*sf. Failure to keep premises in tenantable repair*.]—The landlord of a house brought an action against the tenant for decree for payment of the rent due. In defence the tenant averred that the landlord was in breach of his obligation to keep the premises in tenantable condition, in respect that he had failed to renew certain piping which he knew or ought to have known was defective, with the result that a pipe burst & defender's effects were damaged, & she was compelled to leave the house. Defender retained the rent, & also counterclaimed for the damage suffered by her:—*Held*: a landlord's claim for rent was liquid only if he had fulfilled his obligations under the mutual contract of lease, & defender was entitled to retain her rent, & also to counterclaim for the damage she alleged she had suffered.—*FINGLAND & MITCHELL v. HOWIE*, [1926] S. C. 319.—SCOT.

### PART XV. SECT. 6, SUB-SECT. 2.

*sf. Application of rule to India*.]—*SUSIL KUMAR BISWAS v. RASANI*

*KANTA CHAKRAVARTI* (1927), 1 L. R. 55 Calc. 689.—IND.

### PART XV. SECT. 6, SUB-SECT. 5.—C.

3984 i. *Lands inundated*.]—Unless there is any stipulation in the agreement of tenancy to the contrary, a tenant is not entitled to claim abatement of rent on the ground that the productive powers of the land have deteriorated by reason of its liability to inundation at high water. It is only when a part of the premises leased is entirely lost by inundation of the sea that an abatement of rent on that account can be claimed.—*VISHWANATH v. RANKRISHUA* (1925), 1 L. R. 50 Bom. 94.—IND.

### PART XV. SECT. 10, SUB-SECT. 2.—E. (a).

*sp. Some heirs or successors-in-interest*.]—A suit for rent is maintainable against some of the heirs or successors-in-interest of a deceased tenant, without bringing all the heirs or successors-in-interest on the record.—*JAGAN MOHAN SARKAR v. BROJENDRA KUMAR CHAKRABARTI* (1925), 1 L. R. 53 Calc. 197.—IND.

## Part XVI.—Rates and Taxes.

4382. *Add. Annotation*:—*Reid. Shanks v. I. R. Comrs.* (1928), 45 T. L. R. 28.
4397. *Add. Annotation*:—*As to* (2) *Reid. R. v. Customs & Excise Comrs.*, [1928] A. C. 402.
4416. *Add. Annotation*:—*Reid. Musmann v. Engelke* (1927), 96 L. J. K. B. 824.
4447. *Add. Annotation*:—*Reid. R. v. Customs & Excise Comrs.*, [1928] A. C. 402.
- 4457a. *Right to deduct from rent—Under landlord's covenant to refund excess over specified sum.*—The lease of a flat beginning at midsummer at a rent of £400 a year, payable in advance at the rate of £100 on each quarter day, contained a covenant by the lessors that, in case the total sum paid by the tenant in any one year of the term in respect of rates & taxes should exceed £125, the lessors would, on production of the relative receipts, refund to the tenant the difference between the total sum paid by

him & £125. If this difference were not refunded by the lessors within fourteen days of demand the tenant was to be at liberty to deduct such difference from the next instalment of rent. The lease contained a covenant by the tenant that he would duly & punctually pay & discharge all rates, taxes, duties, charges, assessments, & outgoings payable in respect of the demised premises. The tenant in a year of the tenancy between midsummer & midsummer paid three half-years' rates, amounting in all to over £125, & having demanded the refund of the excess from the landlords, & having failed to get payment of the same within fourteen days of the demand, deducted it from his next instalment of rent:—*Held*: under the landlords' covenant to refund, the tenant was entitled to make the deduction.—*SOWERBY v. LINDSAY* (1928), 139 L. T. 545; 44 T. L. R. 714, C. A.

## Part XVII.—Assessments, Charges, Outgoings, etc.

4458. *Add. Annotation*:—*Generally, Reid. Lowther v. Clifford*, [1927] 1 K. B. 130.
4464. *Add. Annotations*:—*Reid. Calder's Yeast Co. v. Stockdale* (1926), 96 L. J. Ch. 357; *Lowther v. Clifford*, [1927] 1 K. B. 130.
4465. *Add. Annotation*:—*Reid. Lowther v. Clifford* (1926), 135 L. T. 200.
4467. *Add. Annotation*:—*Reid. Lowther v. Clifford*, [1927] 1 K. B. 130.
4468. *Add. Annotation*:—*Reid. Lowther v. Clifford* (1926), 135 L. T. 200.
4471. *Add. Citations*:—[1927] 1 K. B. 130; 95 L. J. K. B. 576; 135 L. T. 200; 90 J. P. 113; 24 L. G. R. 231.  
*Add. Annotation*:—*Reid. Mansfield v. Robinson*, [1928] 2 K. B. 353.
4475. *Add. Annotation*:—*Reid. Lowther v. Clifford*, [1927] 1 K. B. 130.
4477. *Add. Annotation*:—*Reid. Lowther v. Clifford*, [1927] 1 K. B. 130.
4479. *Add. Annotation*:—*Reid. Lowther v. Clifford*, [1927] 1 K. B. 130.
- 4482a. *Special expenses rate—Sewerage purposes.*—A special expenses rate levied for the purposes of sewerage is, like a poor rate, an outgoing for which the occupier, & not the owner, of a property is liable.—*CALDER'S YEAST CO. v. STOCKDALE*, [1928] Ch. 340; 96 L. J. Ch. 357; 136 L. T. 458; 91 J. P. 57; *sub nom. CALVER'S YEAST CO. v. STOCKDALE*, 25 L. G. R. 354, C. A.
4489. *Add. Annotation*:—*Apld. Lowther v. Clifford*, [1927] 1 K. B. 130.
4503. *Add. Annotation*:—*Reid. Lowther v. Clifford* (1926), 135 L. T. 200.
- 4534a. *To what tenancies applicable.*—Finance (1909–10) Act, 1910 (c. 8), s. 46, does not apply to tenancies entered into after the passing of the Act.—*R. v. CUSTOMS & EXCISE COMRS.*, [1928] A. C. 402; 97 L. J. K. B. 771; 44 T. L. R. 775; *sub nom. R. v. CUSTOMS & EXCISE COMRS., Ex p. PEGLER*, 139 L. T. 617; 92 J. P. 173; 26 L. G. R. 587, H. L.

## Part XVIII.—Repairs.

4568. *Add. Annotation*:—*Consd. Morgan v. Liverpool Corpn.*, [1927] 2 K. B. 131.
4569. *Add. Citations*:—90 J. P. 195; 24 L. G. R. 327.
- 4569a. — — — — — *MORGAN v. LIVERPOOL CORPN.*, No. 3160a, *ante*.
4578. *Add. Annotations*:—*Reid. Fisher v. Walters*, [1926] 2 K. B. 315; *Morgan v. Liverpool Corpn.*, [1927] 2 K. B. 131.
4582. *Add. Annotations*:—*Consd. Griffin v. Pillet*, [1926] 1 K. B. 17. *Reid. Fisher v. Walters*, [1926] 2 K. B. 315; *Morgan v. Liverpool Corpn.*, [1927] 2 K. B. 131.
4584. *Add. Annotations*:—*Distd. Fisher v. Walters*, [1926] 2 K. B. 315. *Reid. Morgan v. Liverpool Corpn.*, [1927] 2 K. B. 131.
4588. *Add. Annotations*:—*As to* (2) *Consd. Fisher v. Walters*, [1926] 2 K. B. 315; *Morgan v. Liverpool Corpn.*, [1927] 2 K. B. 131.

### PART XVI. SECT. 2, SUB-SECT. 4.—A.

h i. — “Which now are.”—Deft., in 1872, leased a farm from pltf. for a year from Sept. 27, 1872:—*Held*:

deft. was not liable for the taxes for 1872, for the words, “all rates, etc., which now are,” referred to the kind or character of the taxes assessable against the land.—*MACNAUGHTON v. Wigg* (1874), 35 U. C. R. 111.—OAN.

### PART XVI. SECT. 2, SUB-SECT. 4.—C.

st. *Covenant to pay “any future land tax”*—Rate imposed under bridge Act not included.—*JONES (DAVID), LTD. v. LEVENTHAL* (1927), 27 S. R. N. S. W. 350; 44 N. S. W. W. N. 105.—AUS.

—] —MORGAN v. LIVERPOOL CORPN., No. 3160a, ante.

4609. *Add. Annotation*:—As to (1) *Reid. Marsden v. Heyes*, [1927] 2 K. B. 1.

4616. *Add. Annotation*:—*Mentd. G. W. Ry. v. S.S. MOSTYN, THE MOSTYN*, [1928] A. C. 57.

4662. *Add. Annotation*:—As to (2) *Consd. Field v. Curnick*, [1926] 2 K. B. 374.

4670. *Add. Annotation*:—*Reid. Field v. Curnick*, [1926] 2 K. B. 374.

4682. *Add. Annotation*:—*Mentd. Haskell v. Marlow*, [1928] 2 K. B. 45.

4694. *Add. Annotation*:—As to (1) *Reid. Haskell v. Marlow*, [1928] 2 K. B. 45.

4698. *Add. Annotation*:—*Reid. Haskell v. Marlow*, [1928] 2 K. B. 45.

4699. *Add. Annotation*:—*Reid. Haskell v. Marlow*, [1928] 2 K. B. 45.

4735. *Add. Annotation*:—*Reid. Manchester Corpn. v. Audenshaw U. C. & Denton U. C.*, [1928] Ch. 763.

4739. *Add. Annotation*:—*Reid. Haskell v. Marlow*, [1928] 2 K. B. 45.

4739a. — *Dilapidations—Neglect to repair.*—Testator devised a dwelling-house to his wife for her life, she “keeping same in good repair & condition, reasonable wear & tear excepted,” & after her death he directed that same should fall into his residuary estate, which was to be divided among his children in equal shares. Testator’s widow occupied the premises until her death, a period of forty-two years. She did nothing actively to injure the premises, but did nothing substantially to counteract the natural process of decay. Pltfs., the trustees of the will, alleged that she had neglected to keep the premises in good repair & condition in conformity with the terms of the will, & claimed from her exors. the cost of the necessary repairs:—*Held*: testator’s widow, having accepted & occupied the premises, was bound by the terms of the devise; the words of the exception were not to be treated as mere surplusage, & a reasonable meaning must be given to them, but having regard to the length of time during which no substantial repairs had been done to the premises, & to the extent of the damage thereby caused, the widow, as tenant for life, was not protected by the words of the exception, & her exors. were liable for the damage arising from the natural process of decay.—*HASKELL v. MARLOW*, [1928] 2 K. B. 45; 97 L. J. K. B. 311; 138 L. T. 521; 44 T. L. R. 171, D. C.

4749. *Add. Annotation*:—*Consd. Haskell v. Marlow*, [1928] 2 K. B. 45.

4750. *Add. Annotation*:—*Consd. Haskell v. Marlow*, [1928] 2 K. B. 45.

4757. *Add. Annotation*:—*Reid. Haskell v. Marlow*, [1928] 2 K. B. 45.

4760a. To keep in good & proper order & condition—Ornamental waters—Removal of mud.]—Among the covenants in a lease was one by which deft. covenanted at all times during the term to maintain, keep, & leave

“all pleasure grounds,” lawns, walks, borders, & shrubberies in good & proper order & condition. Included in the pleasure grounds were ornamental waters consisting of two ponds & three lakes, which afforded boating & trout fishing. Pltf. complained of various breaches of the above covenant, particularly in respect of the accumulation of mud in the lodge lake & in a portion of the upper boat lake, thereby causing deterioration in the trout fishing, & required the lakes to be cleared of mud & weeds. Deft. had regularly cut the weeds in the lakes & kept in order the sluices & weirs, but repudiated liability to clean out any of the mud:—*Held*: in order to comply with the covenant which was absolutely unqualified in terms, deft. was liable to remove so much of the mud in the lodge lake, & also in a specified portion of the upper boat lake, as would leave a sheet of water of not less than 2 feet 6 inches in depth throughout.—*HORLICK v. SCULLY*, [1927] 2 Ch. 150; 96 L. J. Ch. 429; 137 L. T. 559; 71 Sol. Jo. 331.

4768. *Add. Annotation*:—*Reid. Bean v. Flaxton R. D. C.* (1928), 139 L. T. 320.

4775. *Add. Annotations*:—*Reid. Field v. Curnick*, [1926] 2 K. B. 374; *Marsden v. Heyes*, [1927] 2 K. B. 1.

4868. *Add. Annotation*:—*Reid. St. Anne’s Well Brewery Co. v. Roberts* (1928), 92 J. P. 95.

4869. *Add. Annotation*:—*Generally, Reid. St. Anne’s Well Brewery Co. v. Roberts* (1928), 92 J. P. 180.

4879. *Add. Annotation*:—*Distd. St. Anne’s Well Brewery Co. v. Roberts* (1928), 92 J. P. 180.

4882a. —.]—Defts. were the owners, but not the occupiers, of part of an ancient city wall, which also formed the back wall of an ancient inn owned by pltfs. The portion of the wall belonging to defts. collapsed, demolishing pltfs.’ inn:—*Held*: (1) the doctrine of *Rylands v. Fletcher* (1868), L. R. 3 H. L. 330, had never been applied to affect the liability of an owner who was out of possession at the time when the injury took place; though defts. did not erect the wall, they took it over when they bought the property as the boundary & retaining wall for their property, & they were only using that property in the ordinary ways in which property is used, so that they were outside the authority of that case; (2) there was no reason to suppose that when they let the property to their tenant it was in a ruinous condition, or that in the exercise of a reasonable diligence they should have ascertained that it was in a ruinous condition; & pltfs. failed to bring their case within the principle of *Todd v. Flight*, No. 4879, ante.—*ST. ANNE’S WELL BREWERY CO. v. ROBERTS* (1928), 92 J. P. 180; 44 T. L. R. 703; 26 L. G. R. 638, C. A.

4883. *Add. Annotation*:—*Reid. St. Anne’s Well Brewery Co. v. Roberts* (1928), 92 J. P. 95.

PART XVIII. SECT. 3, SUB-SECT. 2.—  
D. (a) vii.

4726 i. *Rebuilding subsidiary part—Floors.*]—A covenant to keep in repair involves an obligation to renew, where the thing affected is a subordinate part of the whole structure, as in the case

of a roof, floor, or wall.—*STAPLES & CO. v. BERRYMAN*, [1928] N. Z. L. R. 68.—N.Z.

4729 i. — *Wall.*]—*STAPLES & CO. v. BERRYMAN*, No. 4726 i, ante.

sw. — *Roof.*]—*STAPLES & CO. v. BERRYMAN*, No. 4726 i, ante.

PART XVIII. SECT. 3, SUB-SECT. 2.—  
D. (b) i.

sz. *To yield up in good repair—Bridge—Washed away by flood.*]—*RIDDIFORD, ETC. v. LYSAGHT*, [1927] N. Z. L. R. 663.—N.Z.



4887. *Add. Annotation*:—**Refd.** *St. Anne's Well Brewery Co. v. Roberts* (1928), 92 J. P. 95.
4889. *Add. Annotation*:—**Refd.** *Morgan v. Liverpool Corpn.*, [1927] 2 K. B. 131.
4891. *Add. Annotation*:—**As to** (2) **Refd.** *Fisher v. Walters* (1926), 90 J. P. 195.
4900. *Add. Annotation*:—**Refd.** *Morgan v. Liverpool Corpn.*, [1927] 2 K. B. 131.
4903. *Add. Annotation*:—**Refd.** *Fisher v. Walters* (1926), 90 J. P. 195.

## Part XIX.—Waste.

4932. *Add. Annotation*:—**Appld.** *Marsden v. Heyes*, [1927] 2 K. B. 1.
4943. *Add. Annotation*:—**As to** (1) **Refd.** *Price v. Corpn. d'Energie de Montmagny*, [1927] A. C. 363.
4985. *Add. Annotation*:—**Generally**, **Mentd.** *G. W. Ry. v. S.S. Mostyn, The Mostyn*, [1928] A. C. 57.
4998. *Add. Annotation*:—**Consd.** *Marsden v. Heyes*, [1927] 2 K. B. 1.
5003. *Add. Annotation*:—**Refd.** *Marsden v. Heyes* (1926), 96 L. J. K. B. 410.
5006. *Add. Annotation*:—**As to** (2) **Refd.** *Rye v. Purcell*, [1926] 1 K. B. 446.
5016. *Add. Annotation*:—**Consd.** *Haskell v. Marlow*, [1928] 2 K. B. 45.
5050. *Add. Annotation*:—**As to** (1) **Refd.** *Marsden v. Heyes*, [1927] 2 K. B. 1.

## Part XX.—Insurance and Damage by Fire.

5069a. In named office "or in some other responsible insurance office to be approved by the lessor"—**Duty of lessor.**—A covenant by a lessee to insure the demised premises in the joint names of the lessee & the lessor in a named insurance office, "or in some other responsible insurance office to be approved by the lessor," does not confer upon the lessee an alternative to be exercised at his volition; & under this covenant the lessee cannot properly tender an office which is not approved by the lessor.—**TREDEGAR v. HARWOOD**, [1929] A. C. 72; 97 L. J. Ch. 392; 139 L. T. 642; 44 T. L. R. 790, H. L.

5070a. Not to do anything to impose heavier insurance burden on premises—**Obligation of lessor as to adjacent premises.**—Lessees of factory premises for a term of twenty-one years covenanted to pay as additional rent such sums as the lessors might expend in effecting or maintaining the insurance of the demised premises against fire, & not to do or suffer anything on the demised premises which would render payable an increased or extra premium for the insurance of the demised premises or other premises adjacent thereto. The lessors covenanted to keep the demised premises insured against fire & that the lessees should have quiet enjoyment

of them. Subsequently, the lessors let premises adjacent to the demised premises to another lessee, whose trade as a wood-worker rendered it impossible for the insurance of the demised premises to be effected except at considerably increased premiums:—**Held**: (1) the lessors, by dealing with the adjoining premises in a way which was not unreasonable or unbusinesslike, which did not affect the originally demised premises physically & which had rendered it, not less easy or legal, but substantially more expensive to conduct on them the business for which they had been demised, had not so interfered with the purpose for which those premises had been demised as to have derogated from their own grant of them; (2) the covenant by the lessees not to do or suffer anything on the originally demised premises which would render payable an increased or extra premium for the insurance of those, or adjacent, premises did not impliedly put the lessors under a similar obligation with regard to their user of adjacent premises.—**O'CEDAR, LTD. v. SLOUGH TRADING CO.**, [1927] 2 K. B. 123; 96 L. J. K. B. 709; 137 L. T. 208; 43 T. L. R. 382.

5075. *Add. Annotation*:—**Refd.** *Tredegar v. Harwood* (1927), 44 T. L. R. 17.

### PART XVIII. SECT. 5, SUB-SECT. 1.—B. (c).

4887 iii. —.—.—.]—Where a balcony common to all the tenants was in a defective condition & was unsafe, & the landlord was notified of such condition, but did not repair it, & thereafter a tenant fell from the balcony & was injured:—**Held**: the landlord was liable.—**AMIN v. EBRAHIM** (1926), 47 N. L. R. 1.—**S. AF.**

### PART XVIII. SECT. 5, SUB-SECT. 2.—A. (b).

4900 ii. —.—.—.]—Male pltf. was tenant of a furnished apartment, which contained a gas heater used for heating water for use in the apartment & in the other apartments in the same house. The heater was defective to the knowledge of the landlord, &

owing to an escape of burning gas from the heater female pltf. was seriously burned:—**Held**: the landlord was liable to both pltf.s., for although the heater was not part of the demised premises, there was a positive agreement to keep it in repair, which gave rise to an action by the tenant for damages for breach of contract.—**HORNE v. MOULDS (Alta.)**, [1927] 2 D. L. R. 839; [1927] 1 W. W. R. 827.—**CAN.**

n i. —.—.—.]—Where the owner of an hotel leased the premises, & pltf. fell through an opening in a verandah:—**Held**: pltf. was not entitled to recover as against the owner, even if there were an express covenant by him to make outside repairs, as pltf. was a stranger to the covenant.—**MARCILLE v. DONNELLY** (1909), 14 O. W. R. 1044; 1 O. W. N.

195.—**CAN.**

n ii. —.—.—.]—Premises, the property of deft., were let to W., who let different portions to sub-tenants, including an upstairs room to D. The letting to W. was within Rent Restriction Act, N. I., 1925 (c. 12). Pltf., a district nurse, having visited D., descended the stairs, & whilst taking the last step on to the hall the floor gave way, & pltf. received serious injuries:—**Held**: pltf. could not succeed either in contract on the statutory obligation to repair implied in the letting, or in tort.—**O'REILLY v. DOHERTY**, [1923] N. I. 32.—**IR.**

### PART XX. SECT. 2, SUB-SECT. 2.

5145 i. *Under covenant to rebuild—Extent of liability.*—**DUNKELMAN v. LISTER**, [1927] 4 D. L. R. 612; 61 O. L. R. 89.—**CAN.**

## Part XXI.—Assignment and Devolution of Leases.

5157. *Add. Annotation*:—Generally, *Mentd. Public Trustee v. Elder*, [1926] Ch. 776.
5192. *Add. Annotation*:—*Refd. Chaplin v. Smith*, [1926] 1 K. B. 198.
5204. *Add. Annotation*:—*Refd. Roe v. Russell*, [1928] 2 K. B. 117.
5226. *Add. Annotation*:—*Apld. Chaplin v. Smith*, [1926] 1 K. B. 198.
5239. *Add. Annotation*:—*Refd. Roe v. Russell*, [1928] 2 K. B. 117.
5241. *Add. Annotation*:—*Apld. Chaplin v. Smith*, [1926] 1 K. B. 198.
- 5269a. *Effect of Landlord & Tenant Act, 1927 (c. 36), s. 19 (1).*—(1) Where a landlord, who is also a brewer, consents to the assignment of the lease of a free public-house, but stipulates that, for the remainder of the term of the lease, the house shall be a tied house, such stipulation is a “fine” or benefit “in the nature of a fine” within Law of Property Act, 1925 (c. 20), s. 144.
- (2) Landlord & Tenant Act, 1927 (c. 36), s. 19 (1), does not apply to a breach of contract, which took place before the Act came into force.—*GARDNER & Co. v. CONE*, [1928] Ch. 955; 97 L. J. Ch. 491.
5282. *Add. Annotation*:—*Distd. Farr v. Ginnings* (1928), 44 T. L. R. 249.
- 5282a. ——— *Covenant to repair.*—Where a lease contains a covenant by the lessee to repair, & a provision that the lessor’s consent to an assignment by the lessee is not to be unreasonably withheld, the mere fact that the lessee is committing a continuing breach of the covenant to repair does not necessarily entitle the lessor to refuse his consent to an assignment, at all events where the amount of disrepair is not very serious.—*FARR v. GINNINGS* (1928), 44 T. L. R. 249.
5284. *Add. Annotation*:—*Mentd. Lake v. Simmons* (1926), 95 L. J. K. B. 586.
5286. *Add. Annotation*:—*Dbtd. Tredegar v. Harwood*, [1929] A. C. 72.
- 5295a. ——— *Stipulation converting free public-house into tied house.*—*GARDNER & Co. v. CONE*, No. 5269a, *ante*.
5298. *Add. Annotation*:—*Apld. Gardner v. Cone*, [1928] Ch. 955.
5367. *Add. Annotation*:—*As to (2) Refd. Re Griffiths, Jones v. Jenkins*, [1926] Ch. 1007.
5450. *Add. Annotations*:—*Consd. Dalton v. Pickard* (1911), [1926] 2 K. B. 545, n.; *Richmond v. Savill*, [1926] 2 K. B. 530.
5492. *Add. Annotation*:—*Refd. Liggett (Liverpool) v. Barclays Bank* (1927), 137 L. T. 443.
5508. *Add. Annotation*:—*Refd. Akt. Dampskibs Steinstad v. Pearson* (1927), 137 L. T. 533.
5636. *Add. Annotation*:—*As to (1) Consd. Re Harrington Motor Co., Ex p. Chaplin*, [1928] Ch. 105.

## Part XXII.—Assignment and Devolution of Reversion.

5701. *Add. Annotation*:—*Refd. Rye v. Purcell*, [1926] 1 K. B. 446.
5714. *Add. Annotation*:—*Consd. Rye v. Purcell*, [1926] 1 K. B. 446.
5725. *Add. Annotation*:—*Refd. Booth v. Thomas*, [1926] Ch. 397.
5737. *Add. Annotation*:—*Apld. Rye v. Purcell*, [1926] 1 K. B. 446.

## Part XXIII.—Notice to Quit.

- 5788a. ———.]—*DOE d. AUSTIN v. COWDEROY* (1837), 1 Jur. 793.
5796. *Add. Annotation*:—*Refd. Roe v. Russell*, [1928] 2 K. B. 117.
5840. *Add. Annotation*:—*Distd. & N.F. Newman v. Slade*, [1926] 2 K. B. 328.
5841. *Add. Citations*:—95 L. J. K. B. 894; 135 L. T. 640; 42 T. L. R. 607.
5866. *Add. Annotation*:—*As to (2) Apld. Newman v. Slade*, [1926] 2 K. B. 328.
5979. After this case add “*Sec. now, Law of Property Act, 1925 (c. 20), s. 140 (1), (2); Law of Property (Amendment) Act, 1926 (c. 11), s. 2.*”
5980. *Add. Citation*:—95 L. J. Ch. 49.

### PART XXI. SECT. 1, SUB-SECT. 2.— B. (a) iii.

*sz. General rule.*—Unless there is a restriction against the alienation of any portion of the demised property, a restraint upon alienation of the demised premises does not prevent the alienation of a portion.—*CUTINHA v. SALVADORA MINAZES* (1926), 1 L. L. R. 50 Mad. 331.—IND.

### PART XXI. SECT. 10, SUB-SECT. 1.— B.

5463 i. ——— *Express covenant by lessee for payment.*—Where a lease contains an express covenant to pay rent, the lessee continues liable on his covenant, although the lease is assigned

over.—*MCCROHAN v. EDWARDS* (Alta.) [1927] 1 D. L. R. 490; [1927] 1 W. W. R. 9.—CAN.

### PART XXIII. SECT. 2, SUB-SECT. 3.— A.

5817 ii. ———.]—In the case of a rural tenancy from year to year a year’s notice to quit is not necessary, a reasonable notice only being required. Notice given in Jan. to quit at the end of the following June is reasonable.—*TSHABALALA v. VAN DER MERWE* (1926), 47 N. L. R. 75.—S. AF.

### PART XXIII. SECT. 2, SUB-SECT. 3.— D.

5840 i. *What amounts to week’s*

*notice.*—In order that a weekly tenancy may be determined by a notice to quit, the notice must be one which expires at the end of a periodic week from the commencement of the tenancy.—*HOW v. MANSFIELD*, [1923] N. Z. L. R. 91.—N.Z.

5842 vii. ———.]—*HART v. NADEAU, HART v. HANSON* (Alta.), [1927] 2 W. W. R. 318.—CAN.

### PART XXIII. SECT. 5, SUB-SECT. 1.— B.

5945 ii. *S. P. SANDISON v. ORDER OF* (Alta.), [1927] 2 D. L. R. 1024.—CAN.

## Part XXIV.—Determination of Term.

6144. *Add. Annotations*:—As to (1) *Distd. Turner v. Watts* (1928), 138 L. T. 680. As to (2) *Consd. Turner v. Watts* (1927), 44 T. L. R. 105.
6192. *Add. Annotation*:—*Consd. Richmond v. Savill*, [1926] 2 K. B. 530.
6281. *Add. Annotation*:—*Consd. Richmond v. Savill*, [1926] 2 K. B. 530.
- 6307a. — Agreement by tenant to pay arrears of rent & give up possession.]—The rent of premises being in arrear, the landlord obtained judgment against the tenant for possession of the premises. Subsequently a document was signed by the tenant, which provided that, if the landlord would withhold the writ of possession, the tenant would pay the rent & give up possession of the premises at the end of the quarter:—*Held*: the document was not inconsistent with the tenant's right to obtain relief against forfeiture under Jud. (Consolidation) Act, 1925 (c. 49), s. 46.—*NANCE v. NAYLOR*, [1928] 1 K. B. 263; 97 L. J. K. B. 39; 138 L. T. 165; 44 T. L. R. 11, C. A.
- 6315a. — On payment of rent—How rent calculated.]—*DOE d. HARCOURT v. ROE* (1813), 4 Taunt. 883; 128 E. R. 579.
- 6352a. On person on premises.]—Where a notice addressed to the lessee is left with a person on the premises, & there are reasonable grounds for supposing that that person will pass it on to the lessee, the service is good within Law of Property Act, 1925 (c. 20), s. 196 (3).—*CANNON BREWERY CO., LTD. v. SIGNAL PRESS, LTD.* (1928), 139 L. T. 384; 44 T. L. R. 486; 72 Sol. Jo. 285.
6356. *Add. Annotations*:—*Refd. Field v. Curnick*, [1926] 2 K. B. 374; *Marsden v. Heyes*, [1927] 2 K. B. 1.
6358. *Add. Annotations*:—*Appld. Sedgwick, Collins v. Rossia Insee. of Petrograd* (1926), 136 L. T. 72. *Refd. Employers' Liability Assce. Corp'n. v. Sedgwick, Collins*, [1927] A. C. 95.
6388. *Add. Annotation*:—*Refd. Tredegar v. Harwood* (1928), 97 L. J. Ch. 392.
6391. *Add. Annotation*:—As to (2) *Refd. Re Griffiths, Jones v. Jenkins*, [1926] Ch. 1007.
6393. *Add. Annotation*:—*Appld. Chaplin v. Smith*, [1926] 1 K. B. 198.
6435. *Add. Annotation*:—*Mentd. Busby v. Avgherino*, [1927] 2 Ch. 33.
6558. *Add. Annotation*:—*Consd. Turner v. Watts* (1928), 97 L. J. K. B. 403.
6578. *Add. Annotations*:—*Appld. Turner v. Watts* (1927), 44 T. L. R. 105. *Refd. Turner v. Watts* (1928), 138 L. T. 680.
6627. *Add. Annotations*:—*Appld. Smith v. Wood* (1928), 139 L. T. 250. *Mentd. Re Darwen & Pearce, Associated Paper Mills v. Barnes* (1926), 95 L. J. Ch. 487.
- 6636a. Substitution of licence or tenancy at will under purchase agreement—Rescission of agreement.]—By an agreement in writing dated Aug. 28, 1926, deft., the weekly tenant of a house to which Rent Restriction Acts applied, agreed to buy it from pltf., the landlord, for £900. The agreement provided that deft. acknowledged owing pltf. £63 10s. arrears of rent, & that pltf. would accept £50 in settlement; that, until certain mtges. had been transferred from pltf. to deft., pltf. should remain in absolute ownership of the premises; & that, until completion of the conveyance, deft., who was to remain in possession, should pay to pltf. interest on the £950 at the rate of 6 per cent. with interest on interest dating from Sept. 1, 1926. Deft. also agreed to pay certain deposits, pltf., on failure of such payments, to be entitled to rescind the agreement & enter into possession of the house. Deft. agreed to maintain the house in a good state of repair & to pay rates, taxes, & insurance. On Feb. 27, 1927, pltf. rescinded the agreement under the powers reserved in it, but deft. refused to give him possession of the house:—*Held*: (1) the effect of the agreement, as indicating the intention of the parties, was to determine the weekly tenancy, & to substitute for it either a licence or a tenancy at will, which, in its turn, was revoked or determined by the rescission of the purchase agreement, & deft. had no contractual right to resist the claim for possession; (2) deft. was not protected

### PART XXIV. SECT. 1, SUB-SECT. 2.— A. (b) ii.

sa. *Express right of non-payment for five days—Terms of lease misunderstood by lessee.*]—Upon an application for ejectment, the lessees set up the answer that they had mistaken the terms of the lease & were under the impression that the terms were similar to those of a previous lease, which gave them seven days' grace to pay the arrear rent:—*Held*: as the provision in the lease giving only five days' grace was clear & unambiguous, the answer was no defence.—*ILLING v. MANNE & MANNE* (1925), 46 N. L. R. 58.—S. AF.

### PART XXIV. SECT. 1, SUB-SECT. 4.— B. (b) i.

6221 i. *Re-letting—To new tenant.*]—When following notice of forfeiture of pltf.'s lease the lessor executed a lease of the same premises to another lessee:—*Held*: there had been an effectual re-entry.—*WINTER v. CAPILANO TIMBER CO.*, [1927] 4 D. L. R. 36; *varying*, [1927] 2 D. L. R. 784; [1927] 1 W. W. R. 811; 38 B. C. R. 401.—CAN.

### PART XXIV. SECT. 1, SUB-SECT. 4.— C. (c) i.

6308 xiv. —.]—*GORDON v. WILHELM* (Sask.), [1926] 4 D. L. R. 1042; [1926] 3 W. W. R. 641.—CAN.

### PART XXIV. SECT. 1, SUB-SECT. 4.— D. (a) i.

6322 viii. —.]—Where a grant of land to the congregation of S. provided that if the congregation should become united with any other congregation or cease to exist as a separate & independent congregation, the grant should become absolutely null & void, & a power of re-entry was reserved to the grantor, & the grantor served a notice demanding possession on the ground that the grant had become null & void by reason of the union of the congregations of C. & S.:—*Held*: a sufficient notice was a condition precedent to enforcing the forfeiture, & the notice given was not sufficient.—*WALSH v. WIGHTMAN*, [1927] N. I. 1.—IR.

### PART XXIV. SECT. 1, SUB-SECT. 4.— D. (a) ii.

6334 i.

*precise—Covenant to sell only goods authorised by lessor.*]—*GORDON v. (Sask.)*, [1926] 4 D. L. R. 1042; [1926] 3 W. W. R. 641.—CAN.

### PART XXIV. SECT. 1, SUB-SECT. 5.— A. (a).

6436 iii. — *Covenant by landlord to supply goods—Landlord offering to supply goods after serving notice of breach of covenant—No waiver.*]—*Re JACKSON (J. B.), LTD. & GETTAS*, [1926] 2 D. L. R. 721; 58 O. L. R. 564.—CAN.

### PART XXIV. SECT. 2, SUB-SECT. 3.— B. (b) i.

sd. *Agreement acted on by parties.*]—The renunciation of an existing lease by the tenant, & the grant of a new lease by the landlord, can be inferred from a written obligation on the part of the landlord to grant a new lease followed by actings of parties amounting to *rei interveniens* & by possession on the part of the tenant, not only where the landlord is a fee-simple proprietor, but also where he is an heir of entail in possession; & a lease so constituted is binding upon succeeding heirs of entail.—*CAMPBELTOWN COAL CO. v. ARGYLL (DUKE)*, [1926] S. C. 126.



by Rent Restriction Acts, because after Aug. 28, 1926, deft. remained in possession of the house by virtue of the contract of purchase, & not as a statutory tenant, & under that contract she was either a licensee or a tenant at will, & after its rescission, if she had been a licensee, she was not a tenant who had held over under the Acts, & if she had been a tenant at will, her tenancy had been at no rent, & by Increase of Rent & Mtge. Interest (Restrictions) Act, 1920 (c. 17), s. 12 (7), it must be ignored, with the result that the house was to be treated as untenanted & pltf. had an unrestricted right to recover possession of it; (3) the rescission of the purchase agreement did not deprive pltf. of his right to the arrears of rent which had accrued due to him before the agreement was made, but it did destroy deft.'s right to enforce the agreement with pltf. to accept a less sum than that which was in fact owing.—TURNER v. WATTS (1927), 97 L. J. K. B. 92; 44 T. L. R. 105; 26 L. G. R. 78, D. C. *Affd.* (1928), 97 L. J. K. B. 403; 138 L. T. 680; 92 J. P. 113; 44 T. L. R. 337; 26 L. G. R. 261, C. A.

6656. *Add. Annotation*:—*Reid. Metcalfe v. Boyce*, [1927] 1 K. B. 758.

6674a. —. —.]—In 1910, deft., a county police constable, became quarterly tenant of a house. In 1912 the county police authority, which had till then made a grant in aid of the rent of houses occupied by police constables, decided that for the future the chief constable should be the tenant of those houses, that the constables should occupy them as servants, that the chief constable should pay all rent, rates & taxes, & that a deduction should be made in respect thereof from the men's pay. Deft. knew of, & made no demur to, this arrangement, but no express notice to determine his tenancy was given. From 1912 onwards the demands for rent were sent to deft., addressed to the county authority. These deft. took to the police office, received the full amount

due, & paid it at the estate office of the landlord, being given a receipt acknowledging payment by the county authority, which receipt he sent to the county treasurer. No demands for rates & taxes were made to deft. This course of business continued for fourteen years, deft. continuing to occupy the house & his name remaining on the estate books as tenant. There was no written surrender or assignment of the tenancy:—*Held*: (1) there was evidence from which the inferences of fact could be drawn that in 1912 deft. agreed with the landlord that he would forthwith surrender his tenancy, that the landlord agreed with deft. to accept the surrender & accept the chief constable as his tenant, & that the deft. would in future occupy the house as a servant of the chief constable & not as a tenant, & on those facts there had been a surrender of the tenancy by operation of law; (2) deft. was in the circumstances estopped from denying that he had surrendered or assigned the tenancy.—METCALFE v. BOYCE, [1927] 1 K. B. 758; 96 L. J. K. B. 376; 136 L. T. 606; 91 J. P. 55; 43 T. L. R. 149, D. C.

6715. *Add. Annotations*:—*Consd. Metcalfe v. Boyce*, [1927] 1 K. B. 758. *Mentd. Layzell v. Thompson* (1927), 137 L. T. 106.

6762. *Add. Annotations*:—*Consd. Dalton v. Pickard* (1911), [1926] 2 K. B. 545, n.; *Richmond v. Savill*, [1926] 2 K. B. 530.

6764. *Add. Annotation*:—*As to* (2) *Consd. Richmond v. Savill*, [1926] 2 K. B. 530.

6766. *Add. Annotation*:—*Consd. Richmond v. Savill*, [1926] 2 K. B. 530.

6767. *Add. Citations*:—(1911), 95 L. J. K. B. 1052, n.; 136 L. T. 21, n., C. A.

*Add. Annotation*:—*Consd. Richmond v. Savill*, [1926] 2 K. B. 530.

6768. *Add. Citations*:—95 L. J. K. B. 1042; 136 L. T. 15.

6848. *Add. Annotation*:—*Reid. Morris v. Harris*, [1927] A. C. 252.

## Part XXV.—Delivery and Recovery of Possession.

6925. *Add. Annotation*:—*As to* (1) *Reid. Marsden v. Heyes*, [1927] 2 K. B. 1.

6945. *Add. Annotation*:—*Mentd. Anchor Trust Co. v. Bell*, [1926] Ch. 805.

PART XXIV. SECT. 2, SUB-SECT. 3.—  
C. (b) 1.

k i. —. —.]—LE CAIN v. WIELAND (1862), 4 R. & G. 71, n.—CAN.

PART XXIV. SECT. 2, SUB-SECT. 3.—  
D. (b).

p i. —. —.]—*Held*: retention of the keys & advertising the house for rent were ambiguous acts; they were, upon the evidence, referable to the lessor's promise to try to rent the house, & did not show an acceptance of a surrender.—GREEN v. TRESS (1927), 60 O. L. R. 151.—CAN.

PART XXV. SECT. 2.

16 i. *Grounds for interference by*  
.]—Where, following a dispute,

a settlement was made, by which the tenant was to quit the premises, & the tenant vacated accordingly:—*Held*: the tenant's claim for damages for eviction & to set aside the agreement for settlement should be dismissed, as the tenant was not at such a disadvantage with the landlord as to call for the intervention of the Ct. for his protection, & he must stand by the bargain he made.—MOKAY v. SEXSMITH (1914), 29 W. L. R. 210; 20 D. L. R. 986.—CAN.

PART XXV. SECT. 4, SUB-SECT. 2.—  
D.

c i. —. —. *When applicable*—*Not to land purchased at tax sale.*—FYHRI v.

BURKE, [1924] 4 D. L. R. 445; [1924] 3 W. W. R. 328; 19 Sask. L. R. 28.—CAN.

c ii. —. —. *Not by purchaser under agreement for sale—No assignment of lease.*—*Re* BERGEN & MOTT, [1924] 1 D. L. R. 499; [1924] 1 W. W. R. 494; 18 Sask. L. R. 290.—CAN.

f i. —. —. *Appeal—Order by judge in chambers.*—No appeal lies to the Ct. of Appeal from an order made by a judge of the K. B. in chambers, on an appeal to him from an order made by a district Ct. judge on an application under Landlord & Tenant Act for a writ of possession.—CANADA TRUST CO. v. SCHULTZ (Sask.), [1926] 4 D. L. R. 724; [1926] 2 W. W. R. 797.—CAN.

## Part XXVII.—Rent and Mortgage Restriction Acts.

- 7027a. ——— Notwithstanding tenant ceasing personally to reside on premises—Members of tenant's family residing on premises.]—KREITMAN v. VIDOFKY (1927), 43 T. L. R. 335, D. C.
7032. *Add. Annotations*:—*Refd.* Roe v. Russell, [1928] 2 K. B. 117; Lloyd v. Cook, Goudge v. Broughton, Simson v. Miatt, Bartram v. Brown, Barker v. Hutson, [1929] 1 K. B. 103.
7036. *Add. Annotations*:—*As to* (2) *Apprvd.* Lloyd v. Cook, Goudge v. Broughton, Simson v. Miatt, Bartram v. Brown, Barker v. Hutson, [1929] 1 K. B. 103. *Refd.* Catto v. Curry, [1926] 1 K. B. 460.
7037. *Add. Citation*:—24 L. G. R. 321.  
*Add. Annotations*:—*As to* (1) *Dbtd.* Brooks v. Liffen, [1928] 2 K. B. 347. *Apprvd.* Lloyd v. Cook, Goudge v. Broughton, Simson v. Miatt, Bartram v. Brown, Barker v. Hutson, [1929] 1 K. B. 103. *Apld.* Ratinsky v. Jacobs, [1929] 1 K. B. 24. *Refd.* Oakley v. Wilson, [1927] 2 K. B. 279.
- 7037a. ———.]—LLOYD v. COOK, GOUDGE v. BROUGHTON, SIMSON v. MIATT, BARTRAM v. BROWN, BARKER v. HUTSON, No. 7352d, *post*.
- 7037b. *Rent-free tenancy.*]—The Rent Restriction Acts afford no protection to a tenant who is rent-free.—BRACEY v. PALMS, [1927] 1 K. B. 818; 96 L. J. K. B. 305; 136 L. T. 282; 43 T. L. R. 69; 25 L. G. R. 156, D. C.  
*Annotation*:—*Refd.* Turner v. Watts (1927), 44 T. L. R. 105.
- 7037c. ———.]—TURNER v. WATTS, No. 6636a, *ante*.
7040. *Add. Annotations*:—*As to* (1) *Distd.* Leslie v. Cumming, [1926] 2 K. B. 417; Ebner v. Lascelles, [1928] 2 K. B. 486. *As to* (2) *Apld.* Ratinsky v. Jacobs, [1929] 1 K. B. 24. *Refd.* Thompson v. Rolls, [1926] 2 K. B. 426; Lloyd v. Cook, Goudge v. Broughton, Simson v. Miatt, Bartram v. Brown, Barker v. Hutson, [1929] 1 K. B. 103.
7041. *Add. Citations*:—95 L. J. K. B. 1007; 24 L. G. R. 315.  
*Add. Annotations*:—*As to* (1) *Refd.* Ebner v. Lascelles, [1928] 2 K. B. 486. *As to* (2) *Refd.* Thompson v. Rolls, [1926] 2 K. B. 426.
7047. *Add. Citation*:—24 L. G. R. 147.  
*Add. Annotations*:—*Distd.* Cohen v. Gold, [1927] 1 K. B. 865. *Apprvd.* Lloyd v. Cook,
- Goudge v. Broughton, Simson v. Miatt, Bartram v. Brown, Barker v. Hutson, [1929] 1 K. B. 103. *Refd.* Catto v. Curry, [1926] 1 K. B. 460; Oakley v. Wilson, [1927] 2 K. B. 279.
7049. *Add. Annotations*:—*Consd.* Jewish Maternity Soc. Trustees v. Garfinkle (1926), 95 L. J. K. B. 766. *Distd.* Barton v. Keeble, [1928] Ch. 517. *Refd.* Brooks v. Liffen, [1928] 2 K. B. 347.
7051. *Add. Citations*:—135 L. T. 476; 24 L. G. R. 543.
7061. *Add. Annotation*:—*Consd.* Leslie v. Cumming, [1926] 2 K. B. 417.
7062. *Add. Annotations*:—*Refd.* Leslie v. Cumming, [1926] 2 K. B. 417; Ebner v. Lascelles, [1928] 2 K. B. 486.
7063. *Add. Citations*:—95 L. J. K. B. 1; 134 L. T. 21; 24 L. G. R. 27.  
*Add. Annotations*:—*As to* (1) *Folld.* West Wales Joint Board for the Mentally Defective v. Evans (1928), 139 L. T. 382. *Refd.* Leslie v. Cumming, [1926] 2 K. B. 417; Thompson v. Rolls, [1926] 2 K. B. 426; Ebner v. Lascelles, [1928] 2 K. B. 486.
- 7067a. ——— Dwelling-house taken for purpose of subletting.]—A dwelling-house consisted of a ground floor & basement. The tenant did not herself occupy the dwelling-house or any part of it, but sublet the ground floor furnished, & the basement unfurnished, to sub-tenants whose occupation ceased shortly before the end of the tenancy:—*Held*: 1920 Act was not prevented from applying to the dwelling-house, so as to entitle the tenant to rely upon sect. 2 (3), because (1) the tenant took & used the dwelling-house only for the purpose of subletting it, inasmuch as the taking & user of premises only for that purpose did not make them business premises to which the Act did not apply; (2) the tenant did not herself occupy the dwelling-house, & her sub-tenants ceased to occupy it before the end of the tenancy; (3) the tenant had sublet the ground floor furnished to sub-tenants, who ceased to occupy it before the end of the tenancy.—EBNER v. LASCELLES, [1928] 2 K. B. 486; 97 L. J. K. B. 497; 139 L. T. 140; 92 J. P. 114; 44 T. L. R. 460; 72 Sol. Jo. 303; 26 L. G. R. 295, D. C.

### PART XXVII. SECT. 1, SUB-SECT. 1.

7022 i. *Application to premises—Letting not necessary.*]—The provisions of Rent & Mtge. Restrictions Act, 1923 (No. 19 of 1923), relating to the restriction of rent, only apply as between landlord & tenant, & are applicable only to a house which is let.—WALLACE v. FOGARTY, [1926] 1 R. 255, 257.—IR.

### PART XXVII. SECT. 1, SUB-SECT. 2.

7040 i. *Continuation of application of Acts—Sub-letting furnished of unfurnished house—Destruction of identity.*]—The widow of a tenant of a house let unfurnished sub-let the house furnished:—*Held*: the widow by sub-letting the house furnished made it cease to be a house to which Rent & Mtge. Restrictions Act, 1923 (No. 19

of 1923), applied.—KAVANAGH v. WHITTLE, [1926] 1 R. 425, 428.—IR.

### PART XXVII. SECT. 1, SUB-SECT. 3.—A. (a).

7045 ii. ——— *Rent & Mortgage Restrictions Act, 1923 (No. 19 of 1923), s. 3 (1).*]—The words "let as a separate dwelling" apply to "a house," as well as to "a part of a house."—WALLACE v. FOGARTY, [1926] 1 R. 255, 257.—IR.

### PART XXVII. SECT. 1, SUB-SECT. 3.—D.

c. For the word "hotel" in the catchwords substitute the word "house."

c i. ———.]—A farmhouse was let with a farm, the tenancy expiring

at Martinmas 1923. In Mar. 1922, the tenant sub-let the house, garden, & certain offices at a rent of £20, the rateable value of the garden & offices being less than one-quarter of that of the house. On the expiry of the farm tenancy at Martinmas 1923, the landlord let to the subtenant the house, garden, & offices, with the steading & farmyard, at a rent of £35. The rateable value of the garden, offices, steading, a farmyard was more than one-quarter of that of the house:—*Held*: as the value of the land & other premises let with the house since Martinmas 1923 exceeded one-quarter of that of the house, 1920 Act did not apply to the subjects, the addition of the farmyard & steading having altered the identity of the house, & thus elided sect. 12 (6) of the Act.—HALDANE v. SINCLAIR, [1927] S. C. 562.—SCOT.

- 7090.** *Add. Annotation*:—**Refd.** Lloyd v. Cook, Goudge v. Broughton, Simson v. Miatt, Bartram v. Brown, Barker v. Hutson, [1929] 1 K. B. 103.
- 7091.** *Add. Citation*:—24 L. G. R. 250.  
*Add Annotations*:—**Apld.** Doulin v. Purcell (1926), 136 L. T. 633. **Apprvd.** Lloyd v. Cook, Goudge v. Broughton, Simson v. Miatt, Bartram v. Brown, Barker v. Hutson, [1929] 1 K. B. 103. **Refd.** Oakley v. Wilson, [1927] 2 K. B. 279.
- 7095.** *Add. Citation*:—24 L. G. R. 321.  
*Add Annotations*:—**Dbtd.** Brookes v. Liffen, [1928] 2 K. B. 347. **Apprvd.** Lloyd v. Cook, Goudge v. Broughton, Simson v. Miatt, Bartram v. Brown, Barker v. Hutson, [1929] 1 K. B. 103. **Consd.** Ratkinsky v. Jacobs, [1929] 1 K. B. 24. **Refd.** Oakley v. Wilson, [1927] 2 K. B. 279.
- 7097.** *Add. Annotation*:—**Refd.** Roe v. Russell, [1928] 2 K. B. 117.
- 7101.** *Add. Annotations*:—**Distd.** Ebner v. Lascelles, [1928] 2 K. B. 486. **Consd.** West Wales Joint Board for the Mentally Defective v. Evans (1928), 139 L. T. 382.
- 7103a.** ——— **Application of 1920 Act, s. 2 (3).**  
—EBNER v. LASCELLES, No. 7067a, ante.
- 7103b.** ———.]—Where there has been no default by a tenant under 1923 Act, s. 4, no order at all for possession or ejectment can be made in respect of premises protected by the Act, so long as they are lawfully occupied; & the fact that a tenant has sublet the whole & does not occupy any part himself will not be a ground for an order for possession being made against either tenant or sub-tenant.—WEST WALES JOINT BOARD FOR MENTALLY DEFECTIVE v. EVANS (1928), 139 L. T. 382; 44 T. L. R. 565; 26 L. G. R. 447, D. C.
- 7105.** *Add. Annotation*:—**Refd.** Roe v. Russell, [1928] 2 K. B. 117.
- 7107a.** **Widow or member of deceased tenant's family.**]—A person who, by virtue of 1920 Act, s. 12 (1), is deemed to be a tenant of premises, is not liable to pay to the landlord arrears of rent which were owing by the original tenant at the time of his death.—
- TICKNER v. CLIFTON (1928), 45 T. L. R. 35; 72 Sol. Jo. 762, D. C.
- 7112.** *Add. Annotation*:—**Apprvd.** Lloyd v. Cook, Goudge v. Broughton, Simson v. Miatt, Bartram v. Brown, Barker v. Hutson, [1929] 1 K. B. 103.
- 7125.** *Add. Annotation*:—**Refd.** Lloyd v. Cook, Goudge v. Broughton, Simson v. Miatt, Bartram v. Brown, Barker v. Hutson, [1929] 1 K. B. 103.
- 7132.** *Add. Annotation*:—**As to (2)** **Refd.** Leslie v. Cumming, [1926] 2 K. B. 417.
- 7135.** *Add. Annotation*:—**As to (1)** **Consd.** Bracey v. Pales (1926), 43 T. L. R. 69.
- 7145a.** **What amounts to increase.**]—By a local Act, the rates in S. were consolidated & became a comprehensive borough rate. In May 1927, by virtue of the Act, which provided that in certain cases owners might be rated instead of occupiers, the city council passed a resolution transferring the liability for the rate as regards premises of which the ratable value did not exceed £10. The resolution took effect on Oct. 5, 1927. The rate, which the owners became liable to pay, was calculated on the basis of nine-tenths of the amount in the pound of the full consolidated rate previously payable by the occupier. The landlords of certain premises of a ratable value not exceeding £10 claimed that they were entitled to increase the rent of one of their tenants, under 1920 Act, by the amount of the full consolidated rate previously payable by the tenant:—**Held**: under sect. 2 (1) (b), the landlords were entitled to increase the rent, as there had been an increase in the amount of the rates for the time being payable by the landlords over the corresponding amount paid by them in the period specified by the sect.; but the amount of the permitted increase was an amount equivalent to nine-tenths of the full consolidated rate, & not the full amount of that rate.—HODGKINSON v. HEWITT (1928), 139 L. T. 401; 44 T. L. R. 694, D. C.
- 7149.** *Add. Annotation*:—**Apld.** Hodgkinson v. Hewitt (1928), 139 L. T. 401.
- 7150.** *Add. Annotation*:—**Refd.** Elvington Tenants v. Hatton (1928), 139 L. T. 211.

**PART XXVII. SECT. 2, SUB-SECT. 4.**

**7105 i. Executor of tenant.**]—**Held**: a tenant's rights under 1920 Act were altogether personal, & no interest in deceased's tenancy could devolve on depts. as her exors.—DRURY v. JOHNSTON, [1928] N. L. 25.—IR.

**PART XXVII. SECT. 2, SUB-SECT. 7.**

**7108 i. "Separate" — Whether physically separate—Or partitioned off.**]—Pltf., the owner of a house consisting of four floors & a basement, erected in each of the back rooms on the first & second floors a partition, which converted each large back room into two rooms. He put electric fittings in each floor, & did other work in connection with the gas & water supply, & let portion of the house to deft., describing it in the agreement as "consisting of a flat of three rooms & front basement on parlour floor." It had not a separate bath or separate sanitary accommodation, & there was no physical separation of it, as a residence, from the rest of the house:—**Held**: (1) the dwelling-house had not been "bona fide reconstructed by way of conversion

into two or more separate & self-contained flats" within Rent & Mtgo. Restrictions Act, 1923 (No. 19 of 1923).

The rent being in arrear, pltf. served notice to quit on deft., & instituted ejectment proceedings:—**Held**: (2) the letting was a new letting of portion of altered premises, so as to entitle pltf. to charge a rent without regard to the standard rent of the whole house; (3) deft.'s claim for apportionment of the rent must be dismissed; (4) pltf. was entitled to an order for possession, the ct. granting a stay for a limited period, the order for possession not to issue if the rent was paid within that period.—BOYLE v. FITZSIMONS, [1926] 1 R. 378.—IR.

**7109 i. "Self-contained" — Whether complete residence—Necessity for partition.**]—BOYLE v. FITZSIMONS, No. 7108 i, ante.—IR.

**PART XXVII. SECT. 3, SUB-SECT. 2.—**  
**B. (c).**

**7128 i. House converted into flats—Whether rent at first letting as flat.**]—BOYLE v. FITZSIMONS, No. 7108 i, ante.—IR.

**PART XXVII. SECT. 3, SUB-SECT. 3.—**  
**C. (a).**

**sl. Service of notice—Proof.**]—**Held**: (1) as 1920 Act required no particular formalities or solemnities to be observed in connection with the service of notices, service could be proved by evidence in the ordinary way; (2) upon the facts it must be inferred that notice had been received by the tenant.—GUTHRIE v. STEWART, [1926] S. C. 743.—SCOT.

**PART XXVII. SECT. 3, SUB-SECT. 3.—**  
**C. (b).**

**sn. Notice increasing rent during currency of lease.**]—A notice to be a valid notice must be correct in substance as well as in form.

A notice is not valid which purports to increase the rent during the currency of the original term of years for which the tenant holds the premises.—SAMMON v. BYRNE, [1926] 1 L. 411, 415.—IR.

**sp. Notice altering terms of tenancy.**]—A notice is not valid which purports to alter the terms & conditions of the original contract of tenancy, by alter-



## Cases 7171.—7281a. ENGLISH AND EMPIRE DIGEST

7171. *Add. Annotation*:—*Refd.* *Roe v. Russell*, [1928] 2 K. B. 117.
7175. *Add. Annotation*:—*Refd.* *Roe v. Russell*, [1928] 2 K. B. 117.
- 7181a. *Decision of county court judge—Right of appeal to High Court.*—Landlords served on one of their tenants a notice of increase of rent, purporting to increase his rent on account of their liability for repairs & other grounds. The tenant ultimately disputed the increase on the ground of repairs only. The landlords applied to the county ct. under 1920 Act, s. 2 (6), to determine the question whether the notice of increase was valid, whether they were responsible for the whole of the repairs, & if not for what proportion they were responsible:—*Held*: although questions of law were involved in the matters submitted, the terms of the Act made the decision of the county ct. judge final, & no appeal lay from it.—*ELVINGTON TENANTS, LTD. v. HATTON* (1928), 139 L. T. 211; 92 J. P. 92; 44 T. L. R. 453; 72 Sol. Jo. 319; 26 L. G. R. 303, D. C.
7195. *Add. Annotation*:—*As to* (1) *Refd.* *Lloyd v. Cook*, *Goudge v. Broughton*, *Simson v. Miatt*, *Bartram v. Brown*, *Barker v. Hutson*, [1929] 1 K. B. 103.
7219. *Add. Annotation*:—*Refd.* *Re Keystone Knitting Mills Trade Mk.* (1928), 97 L. J. Ch. 316.
7225. *Add. Annotation*:—*Consd.* *Elvington Tenants v. Hatton* (1928), 139 L. T. 211.
- 7225a. — *Who is tenant—1920 Act, s. 12 (1).*—*TICKNER v. CLIFTON*, No. 7107a, *ante*.
7237. *Add. Annotation*:—*Refd.* *Roe v. Russell*, [1928] 2 K. B. 117.
7250. *Add. Annotation*:—*Refd.* *Turner v. Watts* (1927), 44 T. L. R. 105.
7254. *Add. Annotations*:—*Distd.* *Campbell v. Lill* (1926), 135 L. T. 26. *Folld.* *Roe v. Russell* (1927), 71 Sol. Jo. 1008. *Consd.* *Roe v. Russell*, [1928] 2 K. B. 117. *Refd.* *Ebner v. Lascelles*, [1928] 2 K. B. 486.
- 7254a. *Right to sublet.*—A statutory tenant of a dwelling-house, holding upon terms which do not prohibit subletting, may sublet part of the dwelling-house, provided the remainder is not already sublet. His power to sublet is subject to apportionment of the standard rent of the dwelling-house.
- The words "lawfully sublet" in 1920 Act, s. 15 (3), & in 1923 Act, ss. 2 (2), 4 (5), & 7 (1), do not apply exclusively to a dwelling-house of which the tenant is a contractual tenant, but apply also to a dwelling-house of which the tenant is a statutory tenant.—*ROE v. RUSSELL*, [1928] 2 K. B. 117; 97 L. J. K. B. 290; 138 L. T. 253; 92 J. P. 81; 44 T. L. R. 278; 26 L. G. R. 145, C. A.
- .]—*See, also*, Nos. 7041, 7237.
7264. *Add. Annotation*:—*Consd.* *Roe v. Russell*, [1928] 2 K. B. 117.
7265. *Add. Annotation*:—*Refd.* *Roe v. Russell*, [1928] 2 K. B. 117.
7280. *Add. Annotations*:—*Appld.* *De Vries v. Sparks* (1927), 137 L. T. 441. *Distd.* *Turner v. Watts* (1927), 44 T. L. R. 105.
7281. *Add. Annotations*:—*Consd.* *Standingford v. Bruce*, [1926] 1 K. B. 466; *De Vries v. Sparks* (1927), 137 L. T. 441.
- 7281a. *Notice to quit—What amounts to.*—An agreement made by a tenant with his landlord for good consideration to give up possession cannot constitute a notice to quit within 1920 Act, s. 5 (1) (c), as substituted for the original sect. by 1923 Act, s. 4, so as to entitle a landlord, who on the strength of the agreement has contracted to sell the premises, to recover possession of same.—*DE VRIES v. SPARKS* (1927), 137 L. T. 441; 43 T. L. R. 448; 25 L. G. R. 497, D. C.

ing the liability for repairs.—*SAMMON v. BYRNE*, [1926] I. R. 411, 415.—*IR.*

*sq. Immaterial errors—Effect of.*—In an action for recovery of arrears of rent, the tenant maintained that a previous notice of intention to increase rent was invalid, in respect that (1) the notified increase of rates was inaccurate, & (2) a charge for stair gas had wrongly been included in the increased rates:—*Held*: as the tenant had suffered no prejudice, & as the notice did not contain any statement which was false or misleading in any material respect, & was as accurate as it could be in the circumstances at the time when it was given, the notice was not invalid.—*CLYDEBANK INVESTMENT CO., LTD. v. MARSHALL*, [1927] S. C. 860.—*SCOT.*

### PART XXVII. SECT. 3, SUB-SECT. 3.—C. (c).

*st. As to amount of rent.*—A notice of intention to increase rent, which was in writing & in the statutory form, was objected to by the tenant as incompetent, on the ground that the landlord had stated, as the "rent payable," not the standard rent, but a higher amount which he was receiving at the date of the notice, & had further failed to set forth how the existing excess over standard rent had become due:—*Held*: as the tenant had already for some time been paying without objection rent at the figure stated in the notice, the onus was upon him to establish that the amount in excess of standard rent was not legally

exigible, & as he had failed to do so, his objection fell to be repelled.—*M'KELLAR v. M'MASTER*, [1926] S. C. 754.—*SCOT.*

7167 i. *Amendment—Mode of.*—A notice of intention to increase rent, which was in writing & in the statutory form, showed under the appropriate headings how the proposed increase was made up. As the item of occupier's rates was subsequently found to have been overestimated, the original notice was amended by a corrective notice, sent by the landlord's factors & received by the tenant before any increased rent had become due:—*Held*: amendment of a defective notice was not restricted to the method prescribed by 1923 Act, s. 6, the primary purpose of which was to validate defective notices which had been acted on, & it was competent to amend the notice by the method adopted.—*M'KELLAR v. M'MASTER*, [1926] S. C. 754.—*SCOT.*

7167 ii. — *Jurisdiction of court.*—Increase of Rent & Mtge. Interest (Restrictions) Act, 1926 (No. 24 of 1926), s. 14, has been framed to put the ct. into the position of being able to do substantial justice between landlords & tenants, & the power conferred goes far beyond the mere correction of clerical errors or the rectifying of mistakes of fact.—*HIGGINS v. WARREN*, [1927] I. R. 558.—*IR.*

### PART XXVII. SECT. 3, SUB-SECT. 4.—B.

7189 i. *Where house reconstructed.*—

*Conversion into flats.*—*BOYLE v. FITZSIMONS*, No. 7108 i, *ante*.—*IR.*

### PART XXVII. SECT. 5, SUB-SECT. 2.—B. (b).

7278 i. *Premises used for immoral or illegal purpose—What amounts to—Offence against licensing laws.*—A tenant of licensed premises was convicted of an offence against the licensing laws, but the conviction was not recorded on the licence:—*Held*: the tenant had been convicted of using the premises for an illegal purpose, & the ct., considering it reasonable to do so, made an order for possession.—*FOLAN v. LEE*, [1926] I. R. 87.—*IR.*

### PART XXVII. SECT. 5, SUB-SECT. 2.—B. (d).

*sv. "Greater hardship"—Limited to tenant personally.*—Where deft. was tenant of a house, which was occupied, not by him, but by his sister & her husband, & in proceedings for possession it was contended that the ct. should consider hardship to deft.'s sister & her family:—*Held*: "hardship" under Rent & Mtge. Restrictions Act, 1923 (No. 19 of 1923), s. 4 (1) (d), was hardship to a tenant personally, & no hardship borne by third parties could be taken into consideration.—*COOLEY v. WALSH & COONEY*, [1926] I. R. 239.—*IR.*

*sw. — What amounts to.*—*KAVANAGH v. WHITTLE*, [1926] I. R. 426, 428.—*IR.*

7291. *Add. Citations*:—95 L. J. K. B. 901; 24 L. G. R. 531.

e. *Premises Required by Local Authority or for Statutory Undertaking* (Vol. XXXI., p. 581).

Add the words "or for Purpose in Public Interest."

7298a. "In public interest"—What is—Whether extension of trade.]—GOOCH v. STRATMAN (1927), 43 T. L. R. 475, D. C.

7301a. ———.]—WEST WALES JOINT BOARD FOR MENTALLY DEFECTIVE v. EVANS, No. 7108b, *ante*.

7302a. ———.]—EBNER v. LASCELLES, No. 7067a, *ante*.

7307. *Add. Citation*:—24 L. G. R. 141.

*Add Annotation*:—*Reid*. De Vries v. Sparks (1927), 137 L. T. 441.

7320. *Add. Citation*:—24 L. G. R. 192.

7346a. ——— Dispute not on question arising under Rent Restriction Acts—Dispute as to renewal of lease.]—*Held*: 1920 Act, s. 17 (2), applied.—BRANCH v. BENNETT'S DAIRIES, LTD. (1928), 44 T. L. R. 605.

7351a. ——— Lessee at rent less than two-thirds of ratable value.]—LLOYD v. COOK, GOUDGE v. BROUGHTON, SIMSON v. MIATT, BARTRAM v. BROWN, BARKER v. HUTSON, No. 7352d, *post*.

7351b. ——— Assignee of lease.]—In 1913 pltf. became the assignee of a lease of a house with twenty-six years unexpired. He went into occupation with his family & lived there until 1925, when he let three rooms on the ground floor to deft. on a weekly tenancy, the rooms constituting a separate dwelling-house within the Acts. He afterwards claimed to recover possession from deft., on the ground that 1923 Act, s. 2 (1), applied so as to decontrol the premises:—*Held*: the possession by pltf. of the whole house at the passing of 1923 Act & up to the time of the letting to deft. (1) was not possession of the "dwelling-house" in question, (2) nor was it possession by him in the capacity of "landlord," & sect. 2 (1) did not apply so as to decontrol the premises.—COHEN v. GOLD, [1927] 1 K. B. 865; 96 L. J. K. B. 419; 136 L. T. 723; 43 T. L. R. 376; 25 L. G. R. 198, D. C.

*Annotations*:—*Overd*. Lloyd v. Cook, Goudge v. Broughton, Simson v. Miatt, Bartram v. Brown, Barker v. Hutson, [1929] 1 K. B. 103. N.F. Ratinsky v. Jacobs, [1929] 1 K. B. 24. *Reid*. Barton v. Keeble, [1928] Ch. 517.

7352a. ——— Quarterly tenant.]—A quarterly tenant of a dwelling-house which he has sublet may be the "landlord" of the premises within 1923 Act, s. 2, so that, if he obtains possession of the whole of the dwelling-house after the passing of that Act, the house becomes decontrolled.—OAKLEY v. WILSON, [1927] 2 K. B. 279; 96 L. J. K. B. 783; 137 L. T. 479; 43 T. L. R. 521; 71 Sol. Jo. 409; 25 L. G. R. 316, D. C.

*Annotations*:—*Reid*. Lloyd v. Cook, Goudge v. Broughton, Simson v. Miatt, Bartram v. Brown, Barker v. Hutson, [1929] 1 K. B. 103; Ratinsky v. Jacobs, [1929] 1 K. B. 24.

7352b. ——— Mesne tenant—Part subsequently sublet.]—In Nov. 1922, P. became tenant of an entire house on a three years' lease from a superior landlord. In Nov. 1924, he sublet four of the rooms therein to

D., who subsequently applied that the standard rent of his rooms should be fixed by an apportionment of the rent of the entire house:—*Held*: the opening words of the proviso to 1923 Act, s. 2 (1), were merely descriptive of the position at the time when the question of decontrol arose, & should be construed as "where part of a dwelling-house is or during the currency of this Act shall be lawfully sublet," & D.'s rooms were saved from decontrol by the proviso.—DOULIN v. PARCELL (1926), 136 L. T. 633; 43 T. L. R. 140; 25 L. G. R. 71, D. C.

*Annotations*:—*Apprvd*. Lloyd v. Cook, Goudge v. Broughton, Simson v. Miatt, Bartram v. Brown, Barker v. Hutson, [1929] 1 K. B. 103. *Reid*. Oakley v. Wilson, [1927] 2 K. B. 279.

7352c. Tenant at rent less than two-thirds of ratable value.]—The tenant of a dwelling-house under a ninety-eight years' lease at a rent which was less than two-thirds of the ratable value of the house was in possession of the house at the passing of 1923 Act:—*Held*: notwithstanding 1920 Act, s. 12 (7), the tenant was not, as against the freeholders, to be deemed to be the landlord of the house for the purposes of 1923 Act, s. 2 (1), so as to cause the house to become decontrolled.—BROOKES v. LIEFFEN, [1928] 2 K. B. 347; 138 L. T. 676; 92 J. P. 102; 44 T. L. R. 350; 26 L. G. R. 199, C. A.

*Annotations*:—*Consd*. Lloyd v. Cook, Goudge v. Broughton, Simson v. Miatt, Bartram v. Brown, Barker v. Hutson, [1929] 1 K. B. 103. *Apld*. Ratinsky v. Jacobs, [1929] 1 K. B. 24.

7352d. ———.]—(1) The expression "landlord" in 1923 Act, s. 2 (1), is not to be construed in the strict sense as requiring a tenant & a contract of tenancy, but it must be used either in the looser sense of "owner," or in the still looser sense of a person who at a later stage is going to appear as a landlord contesting with a tenant the terms of his tenancy. Neither in 1920 Act, nor in 1923 Act, is the word "landlord" used in its technical sense of a person between whom & the tenant a contractual relationship of landlord & tenant exists.

Where a person who is a "landlord" within 1923 Act, s. 2 (1), can prove either that he was in possession of the whole of the dwelling-house at the date of the passing of 1923 Act, or at any time since that date, 1920 Act ceases to apply to that dwelling-house & to every part of it. The whole house & every part of it is decontrolled, & a subsequent letting of the dwelling-house, or of any part of it, cannot revive control.

(2) The expression "the tenant" in 1923 Act, s. 2 (2), refers to the sitting tenant, i.e. the person who is the tenant at the time when the lease referred to in the sub-sect. is granted.

(3) Where a lessee at a rent less than two-thirds of the ratable value is in actual possession of the dwelling-house after July 31, 1923, the dwelling-house is thereby decontrolled, because, under 1920 Act, s. 12, the lessee must be treated as the landlord, & a subsequent sub-letting of certain rooms forming part of that dwelling-house does not revive control.—LLOYD v. COOK, GOUDGE v. BROUGHTON, SIMSON v. MIATT, BARTRAM v. BROWN, BARKER v. HUTSON, [1929] 1 K. B.

**Cases 7352d—7359a. ENGLISH AND EMPIRE DIGEST SUPPLEMENT.**

103 ; 97 L. J. K. B. 657 ; 139 L. T. 452 ; 92 J. P. 199 ; 44 T. L. R. 761 ; 72 Sol. Jo. 533 ; 26 L. G. R. 609, C. A.

*Annotation* :—As to (1) *Consd. Ratkinsky v. Jacobs*, [1929] 1 K. B. 24.

**7358a.** ———. ]—Where, at the date of the passing of 1923 Act, a landlord was in possession of one part of a dwelling-house, & he had a tenant in possession of the other part, & the tenant subsequently gave up possession of his part :—*Held* : the house became decontrolled, & a subsequent tenant was not protected by Rent Restrictions Acts.

**PART XXVII. SECT. 6.**

**7355 i.** *By recovery of possession landlord—What amounts to possession—Actual distinguished from notional possession.*]—The tenant of a dwelling-house, to which the Acts applied,

gave notice of intention to remove at Whitsunday 1924. In Mar. 1924, the landlord let the house as from Whitsunday 1924 to a new tenant. At the Whitsunday term the old tenant removed from the house, & the new tenant entered into possession :—

—*RATKINSKY v. JACOBS*, [1929] 1 K. B. 24 ; 97 L. J. K. B. 566 ; 138 L. T. 739 ; 92 J. P. 142 ; 44 T. L. R. 548 ; 72 Sol. Jo. 354 ; 26 L. G. R. 380, D. C.

*Annotation* :—*Apprvd. Lloyd v. Cook, Goudge v. Broughton, Simson v. Miatt, Bartram v. Brown, Barker v. Hutson*, [1929] 1 K. B. 103.

**7358b.** ———. ]—*BARTON v. KEEBLE*, No. 2913a, *ante*.

**7359a.** *By grant of lease to tenant—Who is tenant.*]—*LLOYD v. COOK, GOUDGE v. BROUGHTON, SIMSON v. MIATT, BARTRAM v. BROWN, BARKER v. HUTSON*, No. 7352d, *ante*.

*Held* : the landlord had not come into "actual possession" of the house within 1923 Act, s. 2, & 1920 Act continued to apply to the house.—*CALEDONIAN HERITABLE ESTATES, LTD. v. METHVEN*, [1927] S. C. 39.—*SCOT*.



# LIBEL AND SLANDER.

## Part I.—In General.

4. *Add. Annotations* :—**Refd.** *Broome v. Agar* (1928), 138 L. T. 698 ; *Lockhart v. Harrison* (1928), 139 L. T. 521. 18. *Add. Annotations* :—**Consd.** *Broome v. Agar* (1928), 138 L. T. 698. **Refd.** *Lockhart v. Harrison* (1928), 139 L. T. 521.

## Part II.—Parties.

41. *Add. Annotation* :—**As to** (1) **Refd.** *The W. H. Randall*, [1928] P. 41.

## Part III.—Identity of Person Defamed.

77. *Add. Annotation* :—**Refd.** *Thomson v. McNulty* (1927), 71 Sol. Jo. 744.

## Part IV.—The Statement.

121. *Add. Annotation* :—**As to** (4) **Consd.** *Lockhart v. Harrison* (1928), 139 L. T. 521.

- 525a. **Candidate for seat in Parliament.**—Defamatory words, which are actionable in themselves, are not the less so because they are alleged to have been spoken of one as a candidate to serve in parliament.—**HARWOOD v. ASTLEY** (1804), 1 Bos. & P. N. R. 47 ; 127 E. R. 375, Ex. Ch.

*Annotation* :—**Refd.** *Pankhurst v. Hamilton* (1887), 3 T. L. R. 500.

541. *Add. Annotation* :—**Refd.** *Broome v. Agar* (1928), 138 L. T. 698

885. *Add. Annotations* :—**Refd.** *R. v. Denyer*, [1926] 2 K. B. 258 ; *Auto-Mart (London) v. Chilton* (1927), 43 T. L. R. 463 ; *Hardie & Lane v. Chilton* (1927), 96 L. J. K. B. 1040. **Mentd.** *Hardie & Lane v. Chilton*, [1928] 2 K. B. 306.

900. *Add. Annotation* :—**Consd.** *Broome v. Agar* (1928), 138 L. T. 698.

951. For the existing paragraph substitute the following paragraph :—

— — — — —.]—Pltf. complained of a statement published by defts., in which it was

alleged that pltf., then Free State Minister of Labour & head of the Free State Military Secret Service, was responsible for the murder of L., & knew who were the men implicated in an attack on British troops at Queenstown. Defts., in their plea of justification, did not justify the allegation of murder nor the allegation that pltf. was a murderer. But they said : “ If & in so far as the words complained of meant or were understood to mean or were capable of meaning that pltf. took no steps to bring to justice persons guilty of the death of L. or of the attack on the British troops at Queenstown, or that pltf. was unfit to hold any office of trust or responsibility, or of any kind, or that pltf. was a person with whom no honest or responsible man ought to have anything to do, such words were & are true in substance & in fact.” Pltf. having obtained an order for particulars of the justification, defts. delivered particulars of seventy-two murders committed in Ireland over a period of five years with an allegation that pltf. had assisted to organise them or had employed people to organise them :—**Held** : notwithstanding that

### PART III. SECT. 1.

1 i. — — — — —.]—**THOMSON & Co. v. McNULTY** (1927), 71 Sol. Jo. 744, H. L. —**SCOT.**

### PART IV. SECT. 1, SUB-SECT. 1.—B.

n i. **Accusation of being spy.**—Pltf. alleged that he had been called a Nationalist spy, but alleged no special circumstances :—**Held** : the words were not *per se* defamatory.—**HARDAKER v. TJABRING** (1927), 48 N. L. R. 145.—**S. AF.**

### PART IV. SECT. 2, SUB-SECT. 1.—E. (c) iii.

525 i. **Member of Parliament.**—The term “ office ” includes the position of a member of Parliament, whether or not such person holds an office in the strict common-law sense of the term.—

**PRATTEN v. THE LABOUR DAILY, LTD.**, [1926] V. L. R. 115 ; 47 A. L. T. 147 ; [1926] *Argus* L. R. 152.—**AUS.**

### PART IV. SECT. 2, SUB-SECT. 3.

858 i. **Charge of having had disease.**—An imputation of past infection is not actionable *per se*.—**HALLS v. MITCHELL** (1927), 59 O. L. R. 590.—**CAN.**

### PART IV. SECT. 2, SUB-SECT. 4.

h i. — — — — —.]—In order to succeed in an action under Libel Act, R. S. M. 1913 (c. 113), s. 12, the words complained of must unequivocally charge adultery, etc. ; the action does not lie for words which may bear both an innocent & injurious meaning.—**WILLIAMS v. BROWN**, [1927] 3 W. W. R. 305 ; 36 *Man. L. R.* 101.—**CAN.**

### PART IV. SECT. 4, SUB-SECT. 1.

867 vi. — — — — —.]—**SUTTER v. BROWN**, [1926] App. D. 155.—**S. AF.**

### PART IV. SECT. 5, SUB-SECT. 2.—A

se. **Words not ordinary English words.**—Where the words complained of are not ordinary English words, & pltf. adduces no evidence to show that they were understood in the sense alleged in the innuendo, he fails to establish a cause of action.—**MEIER v. KLOTZ** (Sask.), [1928] 1 D. L. R. 91 ; [1927] 3 W. W. R. 716.—**CAN.**

### PART IV. SECT. 6, SUB-SECT. 2.—A.

979 ii. — — — — —.]—**EVANS v. MARTYN**, [1926] 2 D. L. R. 698 ; 37 B. C. R. 231.—**CAN.**

defts., in their plea of justification had avoided justifying the allegations of murder, the particulars delivered by defts. were admissible.—*MACGRATH v. BLACK* (1926), 95 L. J. K. B. 951; 135 L. T. 594, C. A.

1006. *Add. Annotation*:—*Consd. Broome v. Agar* (1928), 138 L. T. 698.

1019. *Add. Annotations*:—*As to* (1) *Consd. Broome v. Agar* (1928), 138 L. T. 698; *Lockhart v. Harrison* (1928), 139 L. T. 521.

1032. *Add. Annotation*:—*Consd. Broome v. Agar* (1928), 138 L. T. 698.

1045a. —.]—Pltf., a chauffeur, brought an action for slander against his former mistress, complaining that she had falsely alleged that he gave "joy rides" in her motor car. Deft. pleaded justification. The jury found that deft. had uttered the words complained of, but that they were not defamatory of pltf.:—*Held*: the question of libel or no

libel was peculiarly a question for the jury, & it was only in the most extreme cases that the judge should allow his view to overrule that of the constitutional tribunal.—*BROOME v. AGAR* (1928), 138 L. T. 698; 44 T. L. R. 339 C. A.

*Annotation*:—*Folld. Lockhart v. Harrison* (1928), 139 L. T. 521.

1045b. —.]—In a libel action, where the words complained of are not of necessity defamatory, & the question of libel or no libel has been properly left to the jury, the verdict arrived at by them that the words were not defamatory must stand.

It is not true to say that a jury's verdict in these circumstances can never be assailed. A plain & obvious defamation incapable of any innocent explanation, if found by the jury to be non-libellous, would certainly be set aside (*LORD BUCKMASTER*).—*LOCKHART v. HARRISON* (1928), 139 L. T. 521; 44 T. L. R. 794, H. L.

## Part V.—Publication.

1084. *Add. Annotation*:—*N.F. More v. Weaver*, [1928] 2 K. B. 520.

1087. *Add. Annotations*:—*As to* (1) *Refd. Smith v.*

*Schilling*, [1928] 1 K. B. 429. *Generally. Refd. Martin v. Benson*, [1927] 1 K. B. 771.

1177. *Add. Annotation*:—*Refd. The Fagernes*, [1926] P. 185.

## Part VI.—Defences.

1245. *Add. Annotation*:—*Refd. Godman v. Times Publishing Co.*, [1926] 2 K. B. 273.

1302a. *Imputation as to disclosure of confidential information—By solicitor—Proof of disclosure of communications made by clients to solicitor.*—*MOORE v. TERRELL* (1833), 4 B. & Ad. 870; 1 Nev. & M. K. B. 559; 110 E. R. 683.

*Annotation*:—*Refd. Taylor v. Blacklow* (1836), 3 Bing. N. C. 235.

1310. *Add. Annotation*:—*Refd. Godman v. Times Publishing Co.*, [1926] 2 K. B. 273.

1313. *Add. Annotation*:—*Consd. Godman v. Times Publishing Co.*, [1926] 2 K. B. 273.

1317. *Add. Annotation*:—*Appld. Godman v. Times Publishing Co.*, [1926] 2 K. B. 273.

1329. *Add. Annotation*:—*As to* (1) *Refd. More v. Weaver*, [1928] 2 K. B. 520.

1339. *Add. Annotation*:—*As to* (3) *Refd. Collins v. Whiteway*, [1927] 2 K. B. 378.

1347. *Add. Annotation*:—*Refd. Collins v. Whiteway*, [1927] 2 K. B. 378.

1347a. *Court of referees—Under Unemployment Insurance Act, 1920 (c. 30).*—A ct. of referees, constituted under the above Act & the regulations thereunder for the purpose of deciding claims made upon the unemployment insurance funds, is a ct. discharging administrative duties only, & communications made to that ct. are not absolutely privileged, as would be the case if they were made to a judicial body in the discharge of its duties.—*COLLINS v. WHITEWAY (HENRY) & Co.*, [1927] 2 K. B. 378; 96 L. J. K. B. 790; 137 L. T. 297; 43 T. L. R. 532.

1351. *Add. Annotation*:—*Mentd. Wisbech R. D. C. v. Ward* (1927), 91 J. P. 200.

1395. *Add. Annotation*:—*Refd. De Freville v. Dill* (1927), 96 L. J. K. B. 1056.

1407. *Add. Annotation*:—*Refd. More v. Weaver*, [1928] 2 K. B. 520.

1429. *Add. Citation*:—134 L. T. 286.

### PART V. SECT. 1, SUB-SECT. 4.—B. (b).

sg. *Notice under Libel & Slander Act, s. 8.*—*SENTINEL-REVIEW CO. v. ROBINSON*, [1927] 4 D. L. R. 232; 61 O. L. R. 62.—CAN.

### PART V. SECT. 4, SUB-SECT. 1.

q i. —.]—*IRISH PEOPLE'S ASSURANCE SOCIETY v. DUBLIN CITY ASSURANCE CO., LTD.*, [1928] I. R. 204.—IR.

### PART VI. SECT. 1, SUB-SECT. 3.—C.

sk. *Unreasonable verdict—Set aside.*—Where the jury found that the words complained of, if defamatory, were true, & on appeal it was admitted

that some of the allegations were untrue:—*Held*: the verdict was such an one "as no jury could have found as reasonable men," & should be set aside, & a new trial had.—*ROSE v. SMITH'S NEWSPAPERS, LTD.* (1927), 27 S. R. N. S. W. 313; 44 N. S. W. W. N. 37, P. C.—AUS.

### PART VI. SECT. 1, SUB-SECT. 4.—A.

k i. —.]—If deft. does not in his plea of justification state the specific facts or instances on which he relies, he must do so in his particulars.—*BARNES v. SYKES (Man.)*, [1926] 8 W. W. R. 476.—CAN.

k ii. —.]—*BURNES v. SYKES (Man.)*, [1927] 1 D. L. R. 282.—CAN.

### PART VI. SECT. 2, SUB-SECT. 2.

A. (b).  
m i. —.]—*Under Municipal Act, R. S. O., 1914 (c. 192).*—*NIXON v. O'CALLAGHAN* (1927), 60 O. L. R. 76.—CAN.

### PART VI. SECT. 2, SUB-SECT. 2.—A. (c) ii.

1358 v. —.]—*NIRSO NARAYAN SINGH v. R.* (1926), I. L. R. 6 Pat. 224.—IND.

1358 vi. —.]—*MIR ANWARRUDIN v. FATHIM BAI ABIDIN* (1926), I. L. R. 50 Mad. 667.—IND.

1358 vii. —.]—*M. BANERJEE v. ANUKUL CHANDRA MITRA* (1927), I. L. R. 55 Calc. 85.—IND.

1521. *Add. Annotation*:—*Refd.* Hardie & Lane v. Chilton (1927), 96 L. J. K. B. 1040.
1526. *Add. Annotation*:—*Refd.* Collins v. White-way, [1927] 2 K. B. 378.
1579. *Add. Annotation*:—*Refd.* More v. Weaver, [1928] 2 K. B. 520.
- 1579a. ———.]—Communications passing between a solr. & his client, on the subject upon which the client has retained the solr., & which are relevant to that matter, are absolutely privileged.—*MORE v. WEAVER*, [1928] 2 K. B. 520; 44 T. L. R. 710; 72 Sol. Jo. 556, C. A.
1592. *Add. Annotation*:—*Generally, Refd.* Collins v. Whiteway, [1927] 2 K. B. 378.
- 1638a. ———.]—*THOMAS WITHERS & SONS, LTD. v. SAMUEL WITHERS & CO., LTD.* (1926), 44 R. P. C. 19.
1699. *Add. Annotation*:—*As to* (1) *Refd.* Mac-kenzie-Kennedy v. Air Council, [1927] 2 K. B. 517.
1735. *Add. Annotation*:—*Refd.* Broome v. Agar (1928), 138 L. T. 698.
1744. *Add. Annotation*:—*Mentd.* Nadan v. R., [1926] A. C. 482.
- 1854a. *Indemnity—& plea of justification—Separate trial of issue as to indemnity.*—In a libel action defts. pleaded justification, & that pltf. had, in return for payment, undertaken in writing to indemnify them against any actions for libel. Pltf., in his reply, disputed his signature, & said that he was not bound by the alleged undertaking. Pltf. then applied for an order that the issue as to the alleged undertaking & its construction should be tried separately before the other issues:—*Held*: when pltf. asked for an order that one issue should be disposed of before the trial of the other issues, the order should be made only when there were special circumstances justifying it, & as there were none in the present case, the order must be refused.—*BOTTOMLEY v. HURST & BLACKETT, LTD. & HOUSTON* (1928), 44 T. L. R. 451, C. A.

## Part VII.—Malice.

1948a. ———.]—Where deft. establishes a qualified privilege for a publication, & pltf. fails to adduce any evidence of malice, the judge is not obliged then & there to withdraw the case from the jury, but, if deft. proposes to call evidence, may in his discretion defer ruling on the question of malice until he has heard the evidence for

deft. In the exercise of this discretion the position of deft. who has to adduce evidence upon other issues in the action should be considered.—*MARBÉ v. GEORGE EDWARDS (DALY'S THEATRE), LTD.*, [1928] 1 K. B. 269; 96 L. J. K. B. 980; 138 L. T. 51; 43 T. L. R. 809, C. A.

**PART VI. SECT. 3, SUB-SECT. 1.**  
1437 i. *General rule.*—*SAPIRO v. LEADER PUBLISHING CO.*, [1926] 3 D. L. R. 68; [1926] 2 W. W. R. 268; 20 Sask. L. R. 449.—*CAN.*

**PART VI. SECT. 3, SUB-SECT. 3.—**  
A. (c) vii.

1580 iii. ———.]—A solr., in corresponding with third parties, is in no better position than his client. He is not free to write everything his client may suggest or state. He is bound to exclude from his letter anything defamatory that is not relevant to the occasion.—*M'KEOGH v. O'BRIEN MORAN*, [1927] I. R. 348.—*IR.*

**PART VI. SECT. 3, SUB-SECT. 3.—**  
A. (c) xiv.

sm. *Statement as to minister's conduct—By one church office holder to another—Occasion privileged.*—*KNAPP v. McLEOD*, [1926] 2 D. L. R. 1083; 58 O. L. R. 605.—*CAN.*

**PART VI. SECT. 3, SUB-SECT. 3.—B.**

1631 vi. ———.]—To clothe an occasion with privilege on the ground of common interest, the common interest must be in the subject-matter of the communication complained of.—*SAPIRO v. LEADER PUBLISHING CO.*, [1926] 3 D. L. R. 68; [1926] 2 W. W. R. 268; 20 Sask. L. R. 449.—*CAN.*

sm. *Statements reflecting on missionary appealing for funds—To committee formed to aid appeal.*—*HAYFORD v.*

*FORRESTER-PATON*, [1927] S. C. 740.—*SCOT.*

**PART VI. SECT. 3, SUB-SECT. 4.—**  
B. (d).

sp. *Under Libel & Slander Act.*—*HANSEN v. NUGGET PUBLISHERS, LTD.*, [1927] 4 D. L. R. 791; 61 O. L. R. 239.—*CAN.*

sq. ———.]—*SENTINEL-REVIEW CO. v. ROBINSON*, [1927] 4 D. L. R. 232; 61 O. L. R. 62.—*CAN.*

**PART VI. SECT. 3, SUB-SECT. 4.—**  
B. (e).

1678 ii. ———.]—*HUGHES v. SUN PUBLISHING CO.* (1926), 35 B. C. R. 422.—*CAN.*

**PART VI. SECT. 4, SUB-SECT. 2.**

1738 ii. ———.]—The "rolled up plea" to an action for libel is a plea of fair comment only, & where there is no plea of justification, evidence is not admissible to prove the truth of defamatory allegations of fact, & the defence of fair comment is no answer to such allegations.—*LEECH v. LEADER PUBLISHING CO., LTD.*, [1926] 2 D. L. R. 28; [1926] 1 W. W. R. 673; 20 Sask. L. R. 337.—*CAN.*

1738 iii. *S.P. BARNES v. SYKES (Man.)*, [1926] 3 W. W. R. 476.—*CAN.*

1738 iv. ———.]—In an action for libel, under the "rolled up plea" deft. has the right, without pleading justification, to adduce evidence to establish the truth of allegations of fact upon which comment is based,

as distinguished from comment itself.—*BOYS v. STAR PTG. & PUB. CO.*, [1927] 3 D. L. R. 847; 60 O. L. R. 592.—*CAN.*

**PART VI. SECT. 4, SUB-SECT. 6.**

1848 i. "Rolled up plea"—*Plea of fair comment not justification.*—*LEECH v. LEADER PUBLISHING CO., LTD.*, No. 1738 ii, *ante.*—*CAN.*

1848 ii. *S.P. BARNES v. SYKES (Man.)*, No. 1738 iii, *ante.*—*CAN.*

st. ———.]—Where the defence of fair comment is pleaded the comments must be warranted by the facts stated in the writing complained of, in the sense that the facts must afford a reasonable foundation for the comments, & it is not legitimate for defender, by the averment of new facts in his defences, to extend the limits of inquiry.—*WHEATLEY v. ANDERSON & MILLER*, [1927] S. C. 133.—*SCOT.*

**PART VI. SECT. 6.**

sv. *No libel—Innuendoes covered.*—*DALY v. IRISH TRANSPORT & GENERAL WORKERS' UNION*, [1926] I. R. 118.—*CAN.*

**PART VII. SECT. 2, SUB-SECT. 2.—A.**

1875 xii. ———.]—*DUNNET v. NELSON*, [1926] S. C. 764.—*SCOT.*

**PART VII. SECT. 2, SUB-SECT. 2.—**  
B. (b).

i. ———.]—Declining to give an apology is not evidence of malice.—*HALLS v. MITCHELL* (1927), 59 O. L. R. 590.—*CAN.*



## Part VIII.—Damages and Costs.

1988. *Add. Annotation* :—**Mentd.** Williams v. Barton, [1927] 2 Ch. 9.
1989. *Add. Annotation* :—**Refd.** Thomson v. McNulty (1927), 71 Sol. Jo. 744.
2174. *Add. Annotation* :—**Refd.** Smith v. Schilling, [1928] 1 K. B. 429.
2180. *Add. Annotation* :—**Refd.** Martin v. Benson, [1927] 1 K. B. 771.
2184. *Add. Annotation* :—**Refd.** Campbell v. Pollak, [1927] A. C. 732.
2195. *Add. Annotation* :—*As to* (1) **Refd.** Martin v. Benson, [1927] 1 K. B. 771.
- 2198a. — **Consideration of all circumstances.**—Where an action for defamation is tried by a judge with a jury, & pltf. recovers nominal damages only, the judge, in deciding whether there is “good cause” for depriving pltf. of costs, should take into consideration all the circumstances of the case, both before & after the issue of the writ. The smallness of the damages is only one element for consideration. The judge must exercise a discretion independent of any view expressed by the jury on the question of costs.—**MARTIN v. BENSON**, [1927] 1 K. B. 771; 96 L. J. K. B. 405; 137 L. T. 183; 43 T. L. R. 247.
2200. *Add. Annotation* :—**Refd.** Martin v. Benson, [1927] 1 K. B. 771.
2202. *Add. Annotation* :—**Refd.** Martin v. Benson, [1927] 1 K. B. 771.
2203. *Add. Annotation* :—**Refd.** Martin v. Benson, [1927] 1 K. B. 771.
- 2203a. — — —.]—**MARTIN v. BENSON**, No. 2198a, *ante*.
2206. *Add. Annotations* :—**Refd.** Campbell v. Pollak, [1927] A. C. 732; Martin v. Benson, [1927] 1 K. B. 771.
2207. *Add. Annotation* :—**Consd.** Martin v. Benson, [1927] 1 K. B. 771.

## Part IX.—Injunction.

2225. *Add. Annotation* :—**Refd.** Broome v. Agar (1928), 138 L. T. 698.

## Part XI.—Criminal Proceedings.

2307. *Add. Annotation* :—**Generally**, **Refd.** Martin v. Benson, [1927] 1 K. B. 771.
2441. *Add. Annotation* :—**Refd.** Broome v. Agar (1928), 138 L. T. 698.
2488. *Add. Annotation* :—**Refd.** R. v. Brixton Prison, *Ex p.* Shure, [1926] 1 K. B. 127.

## Part XIII.—Slander of Goods.

2599. *Add. Annotation* :—**Generally**, **Mentd.** Dominion Iron & Steel Co. v. Invernairn, [1927] W. N. 277.

**PART VIII. SECT. 1, SUB-SECT. 3.—C.**  
2080 vi. —.]—**SOLOMON v. ROBINSON & Co., LTD.** (1927), 48 N. L. R. 125.—**S. AF.**

**PART VIII. SECT. 1, SUB-SECT. 4.—**  
B. (b).

2156 iv. —.]—In libel it is not necessary to prove special damage, for

the law presumes that some damage will flow in the ordinary course of things from the mere invasion of pltf.'s rights, & the falsity of the imputation is presumed in favour of pltf.—**HALLS v. MITCHELL** (1927), 59 O. L. R. 590.—**CAN.**

**PART VIII. SECT. 2, SUB-SECT. 1.**  
sx. *Security for costs*—*Action against*

*newspaper.*]—**CARROLL v. NATIONAL PRESS, LTD.** (Man.), [1927] 3 W. W. R. 683.—**CAN.**

sy. — —.]—**BARTMAN v. UKRAINIAN PUBLISHING CO. OF CANADA** [1927] 3 D. L. R. 478; [1927] 2, W. W. R. 308; 36 Man. L. R. 581.—**CAN.**

## LIEN.

## Part II.—Legal or Possessory Lien Generally.

3. *Add. Annotation*:—**Mentd.** *Jones v. Waring & Gillow*, [1926] A. C. 670.
21. *Add. Annotation*:—**Mentd.** *Lowther v. Harris*, [1927] 1 K. B. 393.
- 27a. ———.]—**MULLINER v. FLORENCE**, No. 193, *post*.
152. *Add. Annotation*:—**Refd.** *Lowther v. Harris*, [1927] 1 K. B. 393.
180. *Add. Annotation*:—**As to (3) Refd.** *Albemarle Supply Co. v. Hind* (1927), 43 T. L. R. 783.
184. *Add. Annotation*:—**Refd.** *Albemarle Supply Co. v. Hind* (1927), 43 T. L. R. 783.
193. To the existing paragraph add as follows:—  
Distinction between a pledge & a lien, discussed.
- 208a. ———.]—**ROGERSON v. REID** (1830), 1 Knapp, 362; 12 E. R. 357, H. 1

## Part IV.—Particular Lien.

321. *Add. Annotation*:—**Refd.** *Albemarle Supply Co. v. Hind* (1927), 43 T. L. R. 783.
322. *Add. Annotation*:—**Refd.** *Albemarle Supply Co. v. Hind* (1927), 43 T. L. R. 783.
- 322a. ——— **No authority to create lien.**]—Pltfs. let three taxicabs to B. on hire-purchase agreements, which provided that B. should not have authority to create a lien on the taxicabs in respect of repairs. Up to May 1, 1925, the cabs, with the consent of pltfs., had been garaged at defts.' garage, & B. owed defts. the balance of a general account for garage rent, goods supplied, & washing, cleaning, & repairing the cabs. Defts. had never been aware of the terms of the agreements between B. & pltfs. On May 1, 1925, pltfs. terminated the agreements, as B. was in arrear with his payments, but defts. refused to hand them the cabs, asserting that they had a lien for repairs. In an action for the delivery up of the cabs & damages for their detention:—**Held**: the lien might attach notwithstanding the provision that B. should not have authority to create a lien, & although defts. did not have continuous possession of the cabs, yet since, in letting B. take them out to ply for hire, they parted with possession without any intention to abandon the right of lien, the action failed. —**ALBEMARLE SUPPLY CO., LTD. v. HIND & CO.**, [1928] 1 K. B. 397; 97 L. J. K. B. 25; 138 L. T. 102; 43 T. L. R. 783; 71 Sol. Jo. 777, C. A.
324. *Add. Annotation*:—**Refd.** *Albemarle Supply Co. v. Hind* (1927), 43 T. L. R. 652.
332. *Add. Annotation*:—**As to (1) Distd.** *Albemarle Supply Co. v. Hind* (1927), 43 T. L. R. 652.
371. *Add. Annotation*:—**Refd.** *Jebara v. Ottoman Bank*, [1927] 2 K. B. 254.

## PART IV. SECT. 1.

**m i.** ——— *Merchant giving vessel to planter & undertaking to supply vessel for fishery—Failure of merchant to supply vessel.*]—**Held**: the merchant's peculiar lien upon the profits of the vessel ceased to attach.—**GILL v. POWER** (1851), 3 Nfld. L. R. 197 —**NFLD.**

PART IV. SECT. 2, SUB-SECT. 1.—  
B. (a).

**322a i.** *Order given by hire-purchaser—No authority to create lien.*]—**Held**: the vendor was entitled to a return of the subject-matter of the agreement without payment of the cost of repairs ordered by the hire-purchaser.—**ALLIANCE FINANCE CO. & STANDARD MOTORS, LTD. v. SIMONS GARAGE & GOODCHAP** (1925), 36 B. C. R. 117.—**CAN.**

**322a ii.** ———.]—**Held**: the

repairers had not acquired a lien, in respect that the hirer's title excluded the right to create a lien.—**LAMONBY v. FOULDS, LTD.**, [1928] S. C. 89.—**SCOT.**

**322a iii.** ———.]—Although in a hire-purchase agreement there may be a clause expressly negating any authority to create a lien, it does not prevent a lien arising for repairs done to the subject-matter of the agreement.—**MOYES v. MAGNUS MOTORS, LTD.**, [1927] N. Z. L. R. 906.—**N.Z.**

PART IV. SECT. 2, SUB-SECT. 1.—C.  
**m. Revsd.**, 15 S. C. R. 194.

## PART IV. SECT. 3.

**k i.** ——— *Under Business Profits War Tax Act, 1916 (c. 11), s. 24—Necessity for registration.*]—**CANADIAN PEERLESS JEWELRY CO. & ROYAL TRUST CO. v. R.** (1926), Q. R. 64 S. C. 574.—**CAN.**

**k ii.** ——— *Priority over subsequent mortgage.*]—**Re ANDREW MOTHERWELL OF CANADA, LTD.** (Ont.), [1927] 1 D. L. 80; 8 C. B. R. 58.—**CAN.**

**m i.** ——— *Enforcement—By sale—Requisites of valid sale.*]—**GILLIS v. SOUNDING CREEK**, [1927] 2 D. L. R. 136; [1927] 1 W. W. R. 481; 22 Alta. L. R. 546.—**CAN.**

**sa. For rates.**]—**BUTHELL v. SYDNEY CORPN.**, [1927] 1 D. L. R. 486; 59 N. S. R. 91.—**CAN.**

**sb. Under Rural Credits Act, C. A., 1924 (c. 173).**]—A rural credit society's statutory lien under the above Act binds growing crops & crops to be grown, & takes priority over an execution which did not come into the sheriff's hands until after the making of the loan by the society.—**LOBB v. ROCKWOOD RURAL CREDITS SOCIETY**, [1926] 2 D. L. R. 819; [1926] 2 W. W. R. 1; 35 Man. L. R. 499.—**CAN.**





# LIMITATION OF ACTIONS.

## Part I.—The Statutes of Limitation Generally.

8. *Add. Annotation*:—**Refd.** *Harnett v. Fisher*, [1927] A. C. 573. T. L. R. 625; 71 Sol. Jo. 560; 17 Asp. M. L. C. 281; 32 Com. Cas. 351, H. L.
15. *Add. Annotation*:—**Refd.** *Board of Trade v. Cayzer, Irvine*, [1927] A. C. 610. *Annotation*:—**Mentd.** *Hyman v. Hyman, Hughes v. Hughes* (1928), 139 L. T. 416.
16. *Add. Citations*:—[1927] 1 K. B. 269; 136 L. T. 7, C. A.; *affd. sub nom.* *BOARD OF TRADE v. CAYZER, IRVINE & Co.*, [1927] A. C. 610; 96 L. J. K. B. 872; 137 L. T. 419; 43
28. *Add. Annotation*:—**Refd.** *Weld v. Petre* (1928), 97 L. J. Ch. 399.
31. *Add. Annotation*:—**Refd.** *Weld v. Petre* (1928), 97 L. J. Ch. 399.
36. *Add. Annotation*:—**Refd.** *Weld v. Petre* (1928), 97 L. J. Ch. 399.

## Part II.—Simple Contract Debts and Personal Actions.

56. *Add. Annotation*:—**Consd.** *Aylott v. West Ham Corpn.*, [1927] 1 Ch. 30.
57. *Citation*:—For “20 J. P. 99” read “90 J. P. 99.”
59. *Add. Annotation*:—**Distd.** *Aylott v. West Ham Corpn.*, [1927] 1 Ch. 30.
65. *Add. Citation*:—[1927] 1 Ch. 30.
73. *Add. Annotation*:—**Refd.** *Mackenzie-Kennedy v. Air Council*, [1927] 2 K. B. 517.
77. *Add. Annotation*:—**Refd.** *Re Mason* (1928), 97 L. J. Ch. 321.
78. *Add. Annotations*:—**Consd.** *Re Mason* (1928), 97 L. J. Ch. 321. **Refd.** *Wigg v. A.-G. of Irish Free State* (1927), 96 L. J. P. C. 88.
79. *Add. Citations*:—[1927] 1 K. B. 269; 136 L. T. 7, C. A.; *affd. sub nom.* *BOARD OF TRADE v. CAYZER, IRVINE & Co.*, [1927] A. C. 610; 96 L. J. K. B. 872; 137 L. T. 419; 43 T. L. R. 625; 71 Sol. Jo. 560; 17 Asp. M. L. C. 281; 32 Com. Cas. 351, H. L.
- Annotation*:—**Mentd.** *Hyman v. Hyman, Hughes v. Hughes* (1928), 139 L. T. 416.
93. *Add. Annotation*:—**Refd.** *Lowe v. Bentley* (1928), 44 T. L. R. 388.
94. *Add. Annotation*:—**Consd.** *Lowe v. Bentley* (1928), 44 T. L. R. 388.
128. *Add. Annotation*:—**Refd.** *Weld v. Petre* (1928), 97 L. J. Ch. 399.
- 139a. — **Arbitration condition precedent.**—The Crown requisitioned appcts.’ ship under a charterparty, which provided that any dispute under the charter should be referred to arbn. under Arbn. Act, 1889 (c. 49), & which concluded as follows: “& it is further mutually agreed that such arbn. shall be a condition precedent to the commencement of any action at law.” In July, 1917, the ship was lost, but appcts. did not proceed to arbn. until Dec. 1923. The Crown contended that, as the arbn. was not commenced within six years of the loss, the claim was barred by Stat. Limitations, 1623 (c. 16):—**Held**: under the arbn. clause no cause of action arose until the award was made, & time did not run until the making of the award, & the claim was not barred.—**BOARD OF TRADE v. CAYZER, IRVINE & Co.**, [1927] A. C. 610; 96 L. J. K. B. 872; 137 L. T. 419; 43 T. L. R. 625; 71 Sol. Jo. 560; 17 Asp. M. L. C. 281; 32 Com. Cas. 351, H. L.; *affg.* *S. C. sub nom.* *CAYZER, IRVINE & Co. v. BOARD OF TRADE*, [1927] 1 K. B. 269, C. A.
- Annotation*:—**Mentd.** *Hyman v. Hyman, Hughes v. Hughes* (1928), 139 L. T. 416.
206. *Add. Annotation*:—As to (1) **Apld.** *Re Mason* (1928), 97 L. J. Ch. 321.
238. *Add. Annotation*:—**Mentd.** *Conquer v. Boot*, [1928] 2 K. B. 336.
250. *Add. Annotation*:—**Mentd.** *Conquer v. Boot*, [1928] 2 K. B. 336.
256. *Add. Citations*:—[1927] 1 K. B. 402; 96 L. J. K. B. 55, C. A.; *affd.*, [1927] A. C. 573; 96 L. J. K. B. 856; 137 L. T. 602; 91 J. P. 175; 43 T. L. R. 567; 71 Sol. Jo. 470; 25 L. G. R. 454, H. L.
- Add. Annotation*:—**Consd.** *De Freville v. Dill* (1927), 96 L. J. K. B. 1056.
284. *Add. Annotation*:—**Refd.** *Harnett v. Fisher*, [1927] A. C. 573.
578. *Add. Annotation*:—**Refd.** *Harnett v. Fisher*, [1927] A. C. 573.

PART II. SECT. 2, SUB-SECT. 5.—B.  
b i. — *Highway Traffic Act*, 1923 (c. 48), ss. 43a, 54—*Effect of.*—*CARLINO v. ZIMBLARTE*, [1927] 2 D. L. R. 945; 60 O. L. R. 269.—CAN.

PART II. SECT. 2, SUB-SECT. 9.—A.  
sb. *Claim for injurious affection—Within Statute of Limitations (Nova Scotia)*, s. 2 (d).—*MILLER v. R.*, [1927] Exch. O. R. 52.—CAN.

PART II. SECT. 5, SUB-SECT. 2.—C. (a).

147 i. *Date of making.*—Where a promissory note is payable with interest on demand, Stat. Limitations begins to run from the date of the note.—*IMPERIAL BANK OF CANADA v. SIMPSON*

(Man.), [1927] 3 W. W. R. 500.—CAN.

PART II. SECT. 5, SUB-SECT. 2.—M.  
se. *Money repayable “as soon as possible”*—*Time runs from date of ability to pay.*—*INGREBRETSSEN v. CHRISTENSEN*, [1927] 3 W. W. R. 135; 37 Man. L. R. 93.—CAN.

PART II. SECT. 5, SUB-SECT. 2.—U.  
235 ii. — *Proviso for compensation by will—Time does not run until death of employer.*—*HUNTER v. THOMPSON*, [1927] 2 D. L. R. 340; 60 O. L. R. 185.—CAN.

PART II. SECT. 8, SUB-SECT. 2.

o i. — *—*—*GANDA SINGH v. BHAG*

*SINGH-BHAGWAN SINGH, Mst. BHANI* (1926), 1 L. R. 7 Lah. 403.—IND.

PART II. SECT. 8, SUB-SECT. 6.—A.  
409 viii. — *—*—*PHUL SINGH v. BHOJRAJ* (1927), 1 L. R. 49 All. 801.—IND.

PART II. SECT. 8, SUB-SECT. 6.—D.  
450 xi. — *—*—*CHAPMAN v. PAULSON* (Man.), [1926] 4 D. L. R. 590.—CAN.

PART II. SECT. 8, SUB-SECT. 6.—E. (b).

485 ii. — *—*—*Re WAHN ESTATE*, [1927] 4 D. L. R. 410; [1927] 3 W. W. R. 138; 37 Man. L. R. 95.—CAN.

696. *Add. Annotation* :—*Generally*, *Mentd.* Smith v. Wood (1928), 139 L. T. 250.

746. *Add. Annotation* :—*Mentd.* Albemarle Supply Co. v. Hind, [1928] 1 K. B. 307.

### Part III.—Specialties.

757. *Add. Annotation* :—*Refd.* Weld v. Petre (1928), 97 L. J. Ch. 399.

785a. ——— *In balance sheet.*—A balance sheet contained in an annual report sent by a co. to its shareholders, & filed with the registrar of companies, & stating the total amount of the co.'s indebtedness under its debentures for principal & interest accrued thereon since their issue is, although not sent

to the debenture-holders, a sufficient acknowledgment by the co. of its liability under the debentures to take the case out of the operation of Civil Procedure Act, 1833 (c. 42), s. 3.—*Re* ATLANTIC & PACIFIC FIBRE IMPORTING & MANUFACTURING CO., BURNHAM (VISCOUNT) v. ATLANTIC & PACIFIC FIBRE IMPORTING & MANUFACTURING CO., [1928] Ch. 836; 97 L. J. Ch. 369; 44 T. L. R. 702; 72 Sol. Jo. 598.

### Part IV.—Money Charged Upon or Payable out of Land or Rent, or Secured by a Judgment, and Legacies, and Personal Estates of Intestates.

819. *Add. Annotation* :—*Refd.* Weld v. Petre (1928), 97 L. J. Ch. 399.

834. *Add. Annotation* :—*Mentd.* I. R. Comrs. v. Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. v. Medical Charitable Soc. for West Riding of Yorkshire (1926), 136 L. T. 60.

848. *Add. Annotation* :—*Refd.* Purnell v. Roche, [1927] 2 Ch. 142.

915. *Add. Annotation* :—*As to* (1) *Refd.* Weld v. Petre (1928), 97 L. J. Ch. 399.

964a. ———.]—HORTON v. THOMPSON (1855), 25 L. T. O. S. 292, L. J.

976. *Annotations* :—*Refd.* *Re* Lloyd, Lloyd v. Lloyd, [1903] 1 Ch. 385; Lewis v. McKay,

Algate v. Vugler, Clark v. Potter (1924), 93 L. J. K. B. 840.

976a. ———.]—The allowance of interest upon a legacy charged upon real estate, & due upwards of six years, is to be calculated from the filing of the bill, & not from the date of the decree, though the bill is not filed by the legatee.—CHAPPELL v. REES (1852), 1 De G. M. & G. 393; 20 L. T. O. S. 57; 16 Jur. 415, 417; 42 E. R. 603, L. C.

*Annotations* :—*Refd.* *Re* Lloyd, Lloyd v. Lloyd, [1903] 1 Ch. 385; Lewis v. McKay, Algate v. Vugler, Clark v. Potter (1924), 93 L. J. K. B. 840. *Mentd.* Petre v. Petre (1853), 1 Drew. 371.

1011. *Add. Annotation* :—*Refd.* *Re* Wait, [1927] 1 Ch. 606.

### Part V.—Land or Rent.

1029. *Add. Annotation* :—*Refd.* Palmer v. Crone, [1927] 1 K. B. 804.

1030. *Add. Annotation* :—*Generally*, *Mentd.* Busby v. Avgherino, [1928] A. C. 290.

1033. *Add. Annotation* :—*Refd.* Weld v. Petre (1928), 97 L. J. Ch. 399.

1041. *Add. Annotation* :—*As to* (1) *Refd.* Purnell v. Roche, [1927] 2 Ch. 142.

PART IV. SECT. 1, SUB-SECT. 1.—C. LING (1908), 43 N. S. R. 60; 6 E. L. R. 264.—CAN.

q i. ——— *Receivership order.*—A receivership order based on a judgment does not become ineffective, when the remedy on the judgment becomes barred by Stat. Limitations.—WILKINS v. MINER (Alta.), [1927] 1 D. L. R. 286; [1926] 3 W. W. R. 778.—CAN.

s j. *How judgment kept alive.*—*Revisor.*—Where a judgment is about to become barred by Stat. Limitations, twelve years having nearly run, it may be kept alive by applying for leave to enter on the judgment roll a suggestion reviving the judgment & allowing

execution to be issued thereon. Plt.'s alternative is to resue on the judgment.—SECURITY LUMBER CO., LTD. v. KOSKIE, [1924] 1 W. W. R. 548.—CAN.

PART IV. SECT. 1, SUB-SECT. 1.—E.

852 ii. ———.]—A debt under a covenant in a mtge. executed under seal is a specialty debt, & the period of limitation applicable thereto is twelve years.—INVESTORS MORTGAGE SECURITY CO. v. McDONALD & HENRY, [1927] 1 W. W. R. 671; 21 Sask. L. R. 409.—CAN.

852 iii. ——— *In mortgage not under seal.*—An action on the personal covenant in a mtge., which is registered

against land in Alberta but which is not under seal, is an action on a simple contract debt, & the period of limitation applicable thereto is six years.—SOCIÉTÉ BELGE D'ENTREPRISES INDUSTRIELLES IMMOBILIÈRES v. WEBSTER & MILL (Alta.), [1927] 3 W. W. R. 817.—CAN.

PART IV. SECT. 1, SUB-SECT. 1.—H.

sk. *Money due on covenant.*—*In agreement for sale.*—Real Property Limitation Act, R. S. M., 1913 (c. 116), s. 24, applies to an action on a covenant in an agreement for sale for payment of the purchase-price.—LOWERY v. LAMONT (Man.), [1927] 1 D. L. R. 669; [1927] 1 W. W. R. 95.—CAN.

1088. *Add. Annotation* :—**Folld.** Salisbury & Fordingbridge District Drainage Board *v.* Southern Tanning Co. (1920), Ltd., [1927] 2 K. B. 566.
1145. *Add. Annotation* :—**Refd.** Harnett *v.* Fisher, [1927] A. C. 573.
1284. *Add. Annotation* :—**Refd.** Purnell *v.* Roche, [1927] 2 Ch. 142.
- 1286a. ————.]—**PURNELL v. ROCHE**, No. 1369a, *post*.
1298. *Add. Annotation* :—**Consd.** Weld *v.* Petre (1928), 97 L. J. Ch. 399.
1310. *Add. Annotation* :—**Refd.** Horlick *v.* Scully, [1927] 2 Ch. 150.
- 1353a. ———— **Not by possession by permission of mortgagee.**]—**HALL v. DOE d. SURTEES** (1822), 5 B. & Ald. 687; 1 Dow. & Ry. K. B. 340; 106 E. R. 1342.
- Annotations* :—**Refd.** Doe d. Corby *v.* Branston (1835), 4 L. J. K. B. 166; Heath *v.* Pugh (1881), 6 Q. B. D. 345.
- 1369a. ———— **Subsequent disability of mortgagee.**]—In 1902 freehold hereditaments were assured to a mtgee. In Feb. 1907, the mtgee. became, & thenceforward continued to be, of unsound mind. The last payment in respect of interest before the date on which the mtgee. became of unsound mind was made on Jan. 30, 1907. In Mar. 1907, the

husband of the mtgee. accepted, on behalf of the mtgee., a further payment on account of interest. Since that payment no further payment of interest was made. On a summons for foreclosure issued in 1926 by the mtgee. :—*Held* : (1) the right to commence proceedings first accrued, at the latest, at the date fixed for the redemption of the mtge., which was a date earlier than that on which the mtgee. became of unsound mind; (2) the foreclosure proceedings must be dismissed, inasmuch as, in view of the express words of Real Property Limitation Act, 1837 (c. 28), a disability beginning after the date when the right to bring the action first accrued, or must be deemed to have first accrued, would not entitle the mtgee. to the protection given by Real Property Limitation Act, 1874 (c. 57), s. 3.—**PURNELL v. ROCHE**, [1927] 2 Ch. 142; 96 L. J. Ch. 434; 137 L. T. 407; 71 Sol. Jo. 452.

1385. *Add. Annotation* :—**Refd.** Purnell *v.* Roche, [1927] 2 Ch. 142.
1436. *Add. Annotation* :—**Consd.** Weld *v.* Petre (1928), 97 L. J. Ch. 399.
1494. *Add. Annotation* :—**Mentd.** *Re* Spencer & Hauser's Contract, [1928] Ch. 598.

## Part VI.—Actions against Trustees.

1532. *Add. Annotation* :—**Consd.** Irish Catholic Church Property Insee. *v.* I. R. Comrs. (1918), 12 Tax Cas. 13.
1548. *Add. Annotation* :—**Refd.** Windsor Steam Coal Co. (1901), Ltd., [1928] Ch. 609.
1551. *Add. Annotation* :—**Consd.** Irish Catholic Church Property Insee. *v.* I. R. Comrs. (1918), 12 Tax Cas. 13.
- 1568a. ————.]—**Testatrix**, who died in 1890, gave her residuary real & personal estate to two persons whom she appointed her exors. upon trust for sale & conversion, & out of the proceeds to set aside £2,000 upon

trust to pay the income to L. during widowhood &, after L.'s death or marriage, to fall into residue & subject thereto gave the proceeds of sale of the residue to her six children in equal shares. L. died in 1916. An action was commenced in 1925 by persons interested in a share of residue against the personal representatives of the two exors., who were dead, claiming a declaration that certain sums of Consols & bank stock had been wrongfully expended or disposed of by or converted to the use of the exors., & an order that these sums should be replaced. Defts. alleged that these sums had been

### PART V. SECT. 3, SUB-SECT. 1.—B. (a) i.

1057 *v.* ————.]—**NOBLE v. NOBLE** (1912), 27 O. L. R. 342; 4 O. W. N. 359; 9 D. L. R. 735.—**CAN.**

t i. ————.]—**WESTERN CANADA LOAN CO. v. GARRISON** (1888), 16 O. R. 81.—**CAN.**

t ii. ————.]—**TOWNSHIP OF COLCHESTER SOUTH v. HACKETT**, [1927] 4 D. L. R. 317; 61 O. L. R. 77.—**CAN.**

### PART V. SECT. 3, SUB-SECT. 1.—B. (b) i.

c i. ———— *Acts done with consent of owner.*]—*Held* : the operation of Stat. Limitations in favour of the owner was not suspended.—**KAULBACH v. COOK** (1906), 39 N. S. R. 500.—**CAN.**

c ii. ————.]—**CLARKE v. BABBITT**, [1927] 2 D. L. R. 7; [1927] S. C. R. 148.—**CAN.**

d i. *Cutting wood on upland & grass on meadow.*]—*Held* : not of very serious importance in establishing a title by occupation without more.—**DUNCANSON v. ATWEIL** (1914), 14 E. L. R. 348.—**CAN.**

### PART V. SECT. 3, SUB-SECT. 1.—B. (b) iv.

1089 i. *Adverse title may be acquired—*

*Land acquired for public undertaking.*]—A title by possession may be acquired as against a railway co. to land originally obtained by them for railway purposes.—**ERIE & NIAGARA RY. CO. v. ROUSSEAU** (1890), 17 A. R. 483.—**CAN.**

### PART V. SECT. 3, SUB-SECT. 1.—B. (b) xiii.

r i. ————.]—**CUNARD'S LESSEE v. IRVINE** (1853), 2 N. S. R. (James) 31.—**CAN.**

c i. ————.]—**MENISH v. MUNRO** (1875), 25 C. P. 290.—**CAN.**

sn. *No occupation by anyone for nearly twenty years.*]—**WALLBRIDGE v. GILMOUR** (1872), 22 C. P. 135.—**CAN.**

### PART V. SECT. 3, SUB-SECT. 3.—A. r. *Revsd.*, 2 O. L. R. 637.

### PART V. SECT. 12, SUB-SECT. 1.—A. (a).

1350 iii. ————.]—**DOE d. MCGREGOR v. HAWKE, DOE d. MCGREGOR v. CROW** (1837), 5 O. S. 490.—**CAN.**

1350 iv. ———— 6 *Will.* 4, c. 43, s. 2.]—**DOE d. CHIPMAN v. DEVEBER** (1854), 8 N. B. R. (3 All.) 23.—**CAN.**

1350 v. ———— *Real Property Limitation Act, R. S. M., c. 89.*]—**STOVER v.**

**MARCHAND** (1895), 10 Man. L. R. 322.—**CAN.**

sp. *Assignment under Insolvent Act*, 1875.]—**COURT v. WALSH** (1883), 9 A. R. 294.—**CAN.**

sr. *Right of equitable mortgagee to recover—Notwithstanding personal remedy barred.*]—**Re CONLAN'S ESTATE** (1892), 29 L. R. Ir. 199.—**IR.**

### PART V. SECT. 12, SUB-SECT. 1.—A. (b) i.

st. *Recovery of judgment in action of ejectment within twenty years before suit for foreclosure.*]—*Held* : Stat. Limitations was prevented from operating except from the judgment.—**McKEEN v. MCKAY** (circa 1873), R. E. D. 121.—**CAN.**

### PART V. SECT. 12, SUB-SECT. 1.—C.

d i. ———— *Not possession by lessee of mortgagor.*]—**Re SHANTZ & HALLMAN**, [1927] 3 D. L. R. 658; 60 O. L. R. 543.—**CAN.**

### PART V. SECT. 12, SUB-SECT. 2.—A. (a).

1398 i. *Entry by mortgagee.*]—**DEDFORD v. BOULTON** (1878), 25 Gr. 561.—**CAN.**

1398 ii. ———— *Twenty years' delay after decree for redemption.*]—**Re LESLIE** (1893), 23 O. R. 143.—**CAN.**



expended in 1894 in satisfying liabilities of testatrix, & pleaded the appropriate statute of limitation. The exors. had set aside sums to answer the £2,000 legacy in part, & on L.'s death payments of capital were from time to time made to the persons interested in remainder, the last payment being made in June, 1921. If the stock had been paid away in 1894, the statute of limitation afforded a good defence except in regard to the share of the £2,000 legacy, which only fell into possession in 1916:—*Held*: (1) as the claim was against exors. holding on express trusts, it was not a claim to recover a legacy within Real Property Limitation Act, 1874 (c. 57), s. 8, & the statute of limitation applicable was Trustee Act, 1888 (c. 59), s. 8, under which the period for which the statute had to run in order to afford a defence was only six years; (2) the payments relied on, being payments in respect of the part of testatrix's estate accounted for, did

not constitute an acknowledgment of liability in regard to that part which the exors. were said to have misapplied; (3) the statute afforded a good defence in regard to the share of the £2,000 legacy also.—*Re OLIVER, THEOBALD v. OLIVER*, [1927] 2 Ch. 323; 96 L. J. Ch. 496; 137 L. T. 788; 71 Sol. Jo. 710.

1584a. — Misapplication of fund—Payments in respect of sum accounted for.—*Re OLIVER, THEOBALD v. OLIVER*, No. 1568a, *ante*.

1651. *Add. Annotation*:—*Apld. Re A. Debtor*, [1927] 1 Ch. 410.

1653. *Add. Annotation*:—*Refd. Weld v. Petre* (1928), 97 L. J. Ch. 399.

1665. *Add. Annotation*:—*Refd. Re Mason* (1928), 97 L. J. Ch. 321.

1674. *Add. Annotation*:—*Refd. Re Mason* (1928), 97 L. J. Ch. 321.

1677. *Add. Annotation*:—*As to* (1) *Refd. Re Mason* (1928), 97 L. J. Ch. 321.

## Part VII.—Equity and the Statutes of Limitation.

1687. *Add. Annotation*:—*As to* (2) *Refd. Weld v. Petre* (1928), 97 L. J. Ch. 399.

1709. *Add. Annotation*:—*Refd. Weld v. Petre* (1928), 97 L. J. Ch. 399

1709a. — — — — —.]— In 1900 W. mortgaged shares to L. to secure a loan with interest. L. received dividends to clear the interest up to 1908, when they ceased & the shares became of practically no value, L. retaining them, but without foreclosing. In 1916 & thereafter the value of the shares increased enormously, & such large dividends were paid that by 1921 L. had received sufficient to pay off the capital of the loan & all interest in arrear. He died in 1923. Pltfs., who were entitled to the equity of redemption of the mtge., took out a summons claiming redemption, & also repayment of the excess of the amount of dividends received by L. or his exors. over & above the amount due under the mtge.:—*Held*: (1) equity ought not to deprive a mtgor. of his right to redeem if the debt had been or could be repaid, the

security were still available, & the position of the mtgee. had not been altered to his prejudice by the delay; (2) the limit of twelve years applicable by Real Property Limitation Act, 1874 (c. 57), in the case of a mtge. of realty would not, by equitable principles, be extended so as to support a plea of delay & laches & be made applicable to a mtge. of personalty.—*WELD v. PETRE* (1928), 97 L. J. Ch. 399; 139 L. T. 596; 44 T. L. R. 739; 72 Sol. Jo. 569, C. A.

1758. *Add. Annotation*:—*Refd. Re Mason* (1928), 97 L. J. Ch. 321.

1761. *Add. Annotation*:—*Consd. Re Mason* (1928), 97 L. J. Ch. 321.

1761a. — — — — —.]—Circumstances (*see DESCENT*, No. 336a, *ante*), in which:—*Held*: suppliants' petition was barred by Stat. Limitations, 1623 (c. 16).—*Re MASON*, [1929] 1 Ch. 1; 97 L. J. Ch. 321; 139 L. T. 477; 44 T. L. R. 603; 72 Sol. Jo. 545, C. A.

## Part VIII.—Fraud and the Statutes of Limitation.

1795. *Add. Annotation*:—*Refd. Board of Trade v. Cayzer, Irvine*, [1927] A. C. 610.

1813. *Add. Annotation*:—*Refd. Aylott v. West Ham Corpn.*, [1927] 1 Ch. 30.

## Part XII.—Pleading and Practice.

1969. *Add. Annotation*:—*Dstd. Re Wheeler*, [1928] Ch. 223.

1975. *Add. Annotation*:—*Consd. Lowe v. Bentley* (1928), 44 T. L. R. 388.

### PART IX. SECT. 1, SUB-SECT. 2.

1838 i. *Who is "party grieved"*—*Provincial Treasurer of Alberta*.—*R. v. CANADIAN NORTHERN RY. CO.*, [1923] A. C. 714; 93 L. J. P. C. 18; 39 T. L. R. 691.—CAN.

### PART XI. SECT. 7.

*sw. Fieri facias*—*Sale under—Property bought in by defendant—Claim not revived.*—*JONES v. HUTTON* (1853), 11 U. C. R. 554.—CAN.

### PART XII. SECT. 2.

*ri. ———.*—*PULSIFER v. KING*, [1926] 1 D. L. R. 1006; 58 N. S. R. 412.—CAN.

- 1976a.** Counterclaim need not be barred when action brought.]—Stat. Limitations 1623 (c. 16), s. 3, bars a counterclaim on a cause of action which arose more than six years before the delivery of the counterclaim, though less than six years before the issue of the writ in the action.—LOWE v. BENTLEY (1928), 44 T. L. R. 388 ; 72 Sol. Jo. 254.
- 1977.** *Add. Annotation :—*Refd. Lowe v. Bentley (1928), 44 T. L. R. 388.
- 2002.** *Add. Annotation :—*Refd. Purnell v. Roche, [1927] 2 Ch. 142.
- 2016.** *Add. Annotation :—*Refd. Campbell v. Pollak, [1927] A. C. 732.

## LOCAL GOVERNMENT.

## Part II.—Local Authorities generally.

27a. — — — —.] Pltf. sued deft. for a £50 penalty for acting as a comr. in the execution of a local Act without being qualified. Deft. proved that he was qualified in the particular manner specified by the Act, but did not prove that he had taken & subscribed the oath:—*Held*: a verdict was properly found for deft., since he was sued as acting as a comr. without being qualified, & not for acting as a comr. without having taken & subscribed the oath.—*TUPPER v. NEWTON* (1853), 14 C. B. 114; 2 C. L. R. 85; 22 L. T. O. S. 103; 17 J. P. 824; 2 W. R. 36; 139 E. R. 48.

27b. — — — —.]—A member of a local board, who having been concerned in a contract by the board has thereupon ceased to be such member by force of P. H. Act, 1875, Sched. II. r. 64, is a person disabled from acting as a member by a provision of the Act within r. 70, & if afterwards he does so act, he is liable to a penalty of £50.—*FLETCHER v. HUDSON* (1881), 7 Q. B. D. 611; 51 L. J.

Q. B. 48; 46 L. T. 125; 46 J. P. 372; 30 W. R. 349, C. A.

*Annotation*:—*Appld.* *R. v. Rowlands*, [1906] 2 K. B. 292.

39. *Add. Annotation*:—*Refd.* *Witham Outfall Board v. Boston Corpn.* (1926), 136 L. T. 756.

60. *Add. Annotation*:—*Refd.* *A.-G. v. Still* (1927), 44 T. L. R. 102.

83. *Add. Annotations*:—*Appld.* *Woolwich Corpn. v. Roberts* (1927), 96 L. J. K. B. 757. *Refd.* *R. v. Grain, Ex p. Wandsworth Grdns.*, [1927] 96 L. J. K. B. 563; *R. v. Health Minister, Ex p. Dore*, [1927] 1 K. B. 765.

84. *Add. Citations*:—*affd.* (1927), 25 L. G. R. 347; *sub nom.* *WOOLWICH BOROUGH COUNCIL v. ROBERTS*, 91 J. P. 121; 43 T. L. R. 576; 71 Sol. Jo. 488, H. L.

91. *Add. Annotation*:—*As to* (1) *Consd.* *Clarke v. Epsom R. D. C.* (1928), 45 T. L. R. 106.

99. *Add. Annotation*:—*Consd.* *Scammell v. Attlee* (1928), 45 T. L. R. 75.

110. *Add. Annotation*:—*As to* (1) *Refd.* *Crediton Gas Co. v. Crediton U. C.*, [1928] Ch. 447.

## Part V.—The Urban District.

196. *Add. Citations*:—[1927] 1 Ch. 128; 96 L. J. Ch. 38; 136 L. T. 235.

220. *Add. Annotation*:—*Generally*, *Refd.* *R. v. Grain, Ex p. Wandsworth Grdns.*, [1927] 1 K. B. 540.

230. *Add. Citations*:—[1927] 1 K. B. 765; 96 L. J. K. B. 322; 137 L. T. 30; 91 J. P. 45; 43 T. L. R. 263; 71 Sol. Jo. 160; 25 L. G. R. 166.

## Part VII.—The Borough.

303. *Add. Annotation*:—*Refd.* *St. Nicholas Lecons v. L. C. C.*, [1928] A. C. 469.

350. *Add. Annotation*: *Distd.* *R. v. Transport Minister, Ex p. H. C. Motor Works*, [1927] 2 K. B. 401.

## Part XII.—The County.

699. *Add. Annotation*:—*As to* (1) *Consd.* *Collins v. Whiteway*, [1927] 2 K. B. 378.

759. *Add. Annotation*:—*As to* (1) *Consd.* *Aylott v. West Ham Corpn.*, [1927] 1 Ch. 30.

## PART II. SECT. 4.

sa. *Contract for public utilities—Charge of rates under.*—*Ex p. MONCTON TRAMWAY ELECTRICITY & GAS CO.* (N. B.), [1927] 3 D. L. R. 1112.—CAN.

## PART II. SECT. 6.

53 i. *Duration of office*—42 *Vict. c. 1*, s. 66.]—*LETTENEY v. DILLON* (1885), 18 N. S. R. (6 R. & G.) 146.—CAN.

## PART II. SECT. 9, SUB-SECT. 1.

sd. *Debentures—Priority—Debentures issued by Lethbridge Northern Irrigation District.*—*HOME INVESTMENT & SAVINGS ASSOCN. v. LETHBRIDGE NORTHERN COLONISATION MANAGER*, [1927] 1 D. L. R. 437; [1927] 1 W. W. R. 1; 22 Alta. L. R. 338.—CAN.

## PART II. SECT. 10.

sf. *Reference to arbitration—Under 12 & 13 Geo. 5, c. 140 (Ont.)—Arbitrators not entitled to submit questions for opinion of court except upon matters of law.*—*Re TOWNSHIP OF YORK & TOWNSHIP OF NORTH YORK* (1925), 57 O. L. R. 644.—CAN.

## PART VII. SECT. 2, SUB-SECT. 2.—B.

q (p. 63) i. — — — —.]—*R. (HARDING) v. BENNETT* (1896), 27 O. R. 314.—CAN.

bb i. — — — — *Necessity for residence in ward—Candidate cannot be resident of two wards.*—*HOKANSON v. LAMPLE (Man.)*, [1927] 1 W. W. R. 725.—CAN.

## PART VII. SECT. 2, SUB-SECT. 2.—C. (e).

f (p. 66) i. — — — —.]—*R. (HARDING) v. BENNETT* (1896), 27 O. R. 314.—CAN.

m (p. 68) i. *S. P. ELLIOTT v. ST. CATHARINES MUNICIPAL CORPN.* (1908), 18 O. L. R. 57; 13 O. W. R. 89.—CAN.

## PART VII. SECT. 2, SUB-SECT. 4.—A.

447 i. *Qualifications—Business assessment—What amounts to assessment.*—*Re EDMONTON CHARTER. R. (CLARKE) v. BURY (Alta.)*, [1927] 1 D. L. R. 885; [1927] 1 W. W. R. 456.—CAN.

## PART VII. SECT. 3, SUB-SECT. 3.

qi. — — — —.]—A town council may dismiss its officers without notice &

without cause.—*NEWBY v. BROWNLEE* (1916), 31 W. L. R. 278; 10 W. W. R. 249.—CAN.

q ii. *S. P. WILSON v. YORK* (1881), 46 U. C. R. 289.—CAN.

ri. — — — — *B. C. Municipal Act.*—*ZEIGLER v. VICTORIA CITY*, [1922] 1 W. W. R. 75; 70 D. L. R. 722; 30 B. C. R. 389.—CAN.

ai. — — — — *Validity of resolution.*—Where the necessary majority could only be obtained by including the vote of an alderman who had attended meetings at which the question of dismissal had been considered, but who had not been present at a meeting at which important evidence was taken:—*Held*: the resolution of dismissal was null & void.—*FOSTER v. HALIFAX*, [1926] 1 D. L. R. 125; 57 N. S. R. 268.—CAN.

## PART VII. SECT. 5, SUB-SECT 1.—B. (a) ix.

sk. *Building prison.*—*R. v. NEWCASTLE JJ.* (1830), Dra. 214.—CAN.

## PART VII. SECT. 8, SUB-SECT. 1.

n. *Varied*, 9 Alta. L. R. 343.



# LUNATICS AND PERSONS OF UNSOUND MIND.

## PART II.—Civil Capacity.

40. *Add. Annotation:—Mentd.* *Dewe v. Dewe, Snowdon v. Snowdon*, [1928] P. 113. | 294. *Add. Annotation:—Refd.* *In the Estate of Musgrove, Davis v. Mayhew*, [1927] P. 264.

## Part V.—Jurisdiction of Chancery Division of High Court of Justice.

512. *Add. Annotation:—Refd.* *C. L. v. C. F. W.*, [1928] P. 223.

## Part VI.—Jurisdiction in Lunacy.

529a. **Jurisdiction to direct settlement of lunatic's property—Change of circumstances—Causing party to "suffer an injustice"—Law of Property Act, 1925 (c. 20), s. 171 (1).—**A lunatic not so found had been of unsound mind since 1882. She was a spinster aged eighty-one, & was possessed of personal property of the value of £2,000. From the time when she became of unsound mind she had lived under the care of an uncle & aunt, who had provided £2,076 towards her maintenance. The uncle died in 1885 & the aunt in 1907. By the will of the latter an annuity of £300 was bequeathed for the support of the lunatic. Upon the death of the aunt a sister of the lunatic was appointed receiver of her estate & acted until 1920, when she was relieved & a sister of appcts. was appointed in her place. On her death in 1925 one of appcts. was appointed & was receiver of the lunatic's estate. In 1880 before her reason left her the lunatic made a will, by which she bequeathed her property to her three sisters, all of whom were dead. On an application by appcts., the residuary legatees under the aunt's will & second cousins of the lunatic, to the ct. to exercise the powers vested in it by sect. 171 of the above Act, & to direct a settlement to be made of the property of the lunatic:—*Held*: (1) the phrase "suffer an injustice" in sect. 171 (1) (c) must not be rigidly confined to a deprivation of a strict legal right, since that would stultify the operation of the sect. altogether, but it must in its context include the destruction of a clear moral claim, or even the disappointment of a thoroughly legitimate & well founded expectation, & in the circumstances appcts. would "suffer an injustice" if the recent change in the law of intestacy were allowed to defeat the moral claim which they had to succeed to the estate of the lunatic, particularly in view of the continuous recognition, pecuniary & otherwise, which their side of the family had throughout shown of the obligations imposed on them by their kinship to the lunatic; (2) there had been "a change of circumstances" within the sub-sect. since the

execution by the lunatic of her will, by reason of the deaths of her three sisters to whom she had left her property; (3) the case was one in which the ct. ought to exercise the discretion vested in it by sect. 171, by directing the receiver to execute a settlement of the property of the lunatic, to be approved by the judge in lunacy, which must be subject during the life of the lunatic to her right to be maintained out of the income, & if & so far as might be necessary out of the capital thereof, & subject also to any effective disposition by will or deed which the lunatic might make should she recover.—*Re FREEMAN*, [1927] 1 Ch. 479; 96 L. J. Ch. 225; 136 L. T. 657; 71 Sol. Jo. 272, C. A.

*Annotation:—As to (1) Consd. Re Greenc, Re Whitworth, Re E. A., Re Fraser, Re Wood*, [1928] Ch. 528.

529b. ————.]—Under a marriage settlement dated Oct. 16, 1879, personalty funds were settled by a husband & wife upon trusts under which, after the death of the husband in 1915, the wife was entitled to the income for life with a power of appointment by deed or will among the issue of the marriage, & in default of appointment the funds were settled in trust for the two surviving children, now aged forty-six & forty-four years, who by inquisitions in 1902 & 1910 had been certified to be of unsound mind. In default of children who attained twenty-one or being daughters married, the wife's fund would have passed to the wife absolutely & the husband's fund to the husband, who had given all his property to his wife. By his will the wife's father, who died in 1885, gave his residuary real & personal estate upon trusts under which, in the events which had happened, his daughter, the wife, received the income for her life with a power of appointment by deed or will amongst her issue. In default of appointment the residue was settled on trusts under which the wife's two children were the only beneficiaries. Neither of the children had made a will & apart from their mother & an aunt aged eighty-two, who was a spinster of unsound mind, their next of kin were second cousins,

so that if they survived their mother & aunt, the Crown would take on their deaths under an intestacy. In these circumstances the wife took out summonses under the above sect., asking the ct. to direct settlements of the children's personal property under the marriage settlement & her father's will, which should include trusts in her favour absolutely after the death of each child or, alternatively, a general power of appointment by will so as to enable her to benefit friends & charities in which the family had always been interested. Before the applications were heard an arrangement was come to between the wife & the Crown by which, subject to the approval of the ct., the Crown consented to the wife's having a general power of appointment over the whole of the marriage settlement funds & over the father's residuary personal estate to the extent of £21,140, being the amount provided by the wife out of her own money as a maintenance fund for the children, upon the wife's abandoning all claim to the rest of her father's residuary estate, valued at about £285,000, & agreeing to supplement the income of the maintenance fund for the benefit of the children as theretofore:—*Held*: there was no ground justifying the ct. in making a settlement in respect of the wife's father's residuary estate, for no injustice would be suffered by the wife within sect. 171 (1) (c), if each child's share of the property was allowed to devolve as on an intestacy on his or her death, nor ought the trusts to be altered under sect. 171 (1) (b); but as the Crown did not oppose a settlement of the marriage settlement funds, orders would be made for settlements of the two children's shares so as to give the wife a general power of disposal over the funds. The provision of the maintenance fund of £21,400 did not afford a ground for directing settlements under sect. 171, but the wife would remain free to apply for recoupment under Lunacy Act, 1890 (c. 5), s. 117, if so advised.

An application for a settlement was made by a widow, aged eighty-one years, & first

cousin of the patient, who was sixty-two years of age. The only other near relatives of the patient were two first cousins, who were born in 1847 & 1850 respectively & who were & always had been resident in South America. Appct. stated that by reason of her own great age & that of her two cousins in South America any settlement which the ct. might be pleased to direct would not be of any material benefit to the patient's next of kin, unless its scope were extended to include children of any deceased first cousins of the patient's mother:—*Held*: there was no sufficient ground shown for directing a settlement to be made.

A patient had made a will in 1887, by which he had disposed of his residuary estate equally between his wife & children as a class. The wife had since died, as had also one of patient's sons, leaving issue. The patient's family were desirous that the deceased son's issue should be in no worse position than they would have been if their father had survived the patient:—*Held*: the case was a proper one for the exercise by the ct. of its discretion under sect. 171, by directing a settlement.

The property of a patient was derived under the will of his maternal grandfather. It had been settled by the patient's mother on her marriage with his father, whom she had divorced in 1877, & who had not since been heard of. The object of an application for a settlement was to exclude any claim by the father or his family:—*Held*: a settlement ought to be directed.

A patient had made a will in 1922, leaving the whole of his property to his wife, & in 1925 became of unsound mind. The will had been lost. On an application by the wife for a settlement, evidence was produced which satisfied the ct. as to the fact of the loss & as to the contents of the will:—*Held*: a settlement carrying out the terms of the will ought to be directed.—*Re GREENE, Re WHITWORTH, Re E. A., Re FRASER, Re WOOD*, [1928] Ch. 528; 97 L. J. Ch. 378; 139 L. T. 152; 44 T. L. R. 449, C. A.

## Part VII.—Judicial Inquisitions as to Lunacy.

681. *Add. Annotation*:—*Refd. Greenway v. A.-G.* (1927), 44 T. L. R. 124.

—*Re WEBB* (1846), 2 Ph. 116; 2 Coop. temp. Cott. 102; 17 L. J. Ch. 276; 41 E. R. 885, L. C.

778a. — By natural daughter of bastard lunatic tenant for life—As check on remainderman.]

820. *Add. Citation*:—*previous proceedings*, 2 L. T. O. S. 325, L. C.

## Part VIII.—Appointment of Receiver.

827a. — — — Committee infirm.]—*Re BIRCH* (1808), Shelford on Lunatics, 2nd ed. 187.

827b. — — — Committee resident at distance from estate.]—*Re SEAMAN* (1808), Shelford on Lunatics, 2nd ed. 187.

829. After this case add "On jurisdiction of other courts to enforce claims against lunatic's estate."]—*See HUSBAND & WIFE*, NQ. 5360a,

## Part X.—Judicial Powers over Estate.

980. *Add. Annotation*:—*Reid. Re Freeman*, [1927] 1 Ch. 479.
981. *Add. Annotation*:—*Reid. Re Freeman*, [1927] 1 Ch. 479.
- 1009a. ———.]—*Re FISHER* (1850), 2 H. & Tw. 449; 19 L. J. Ch. 521; 14 Jur. 233; 47 E. R. 1759, L. C.
1012. *Add. Annotation*:—*As to* (1) *Reid. C. L. v. C. F. W.*, [1928] P. 223.
1069. *Add. Annotation*:—*Reid. C. L. v. C. F. W.*, [1928] P. 223.
1070. *Add. Annotation*:—*Reid. C. L. v. C. F. W.*, [1928] P. 223.
1091. After this case add “*See, also*, No. 1378a, *post*.”
1229. *Add. Annotation*:—*Reid. Re Price*, [1928] Ch. 579.
1349. *Add. Annotation*:—*Mentd. Evans v. Morgan*, [1928] 2 K. B. 527.
- 1378a. ———.]—On May 26, 1927, the receiver of a lunatic's estate, who had been authorised to continue the lunatic's business, obtained an order from the master directing him to distribute £1,800 amongst certain scheduled creditors of the business whose debts had been incurred subsequently to the date of the receivership order. The scheduled creditors were not parties to the order. On May 29, three days after the order was pronounced & before it was completed, the lunatic died. The order was subsequently completed on June 14. In July the exors.

of the lunatic's will applied for an order for payment out of ct. to them of the fund representing the lunatic's residuary estate, & on July 28 the master refused to make the order except upon the terms of effect being given to the order of May 26. Subsequently to the making of this order an order was made for the administration of the lunatic's estate:—*Held*: (1) the order of May 26 was a mere direction to the receiver to make the payments in question which might have been varied or rescinded at any time by the master before it was finally completed, & it gave the creditors no equitable charge on the £1,000 thereby ordered to be distributed among them; (2) the jurisdiction in lunacy ceased on the death of the lunatic, & the master had no jurisdiction to direct that effect should be given to the order of May 26; (3) the exors. were entitled to the fund in ct. without regard to the order of May 26, but inasmuch as an order had since been made for the administration of the lunatic's estate, the fund must be paid to the credit of the administration action.—*Re WHEATER*, [1928] Ch. 223; 97 L. J. Ch. 97; 138 L. T. 433; 44 T. L. R. 156; 72 Sol. Jo. 17, C. A.

- 1391a. ———.]—*Re WHEATER*, No. 1378a, *ante*.
1404. *Add. Annotation*:—*As to* (1) *Apld. Re Wheeler*, [1928] Ch. 223.
1411. *Add. Annotation*:—*Apld. Re Wheeler*, [1928] Ch. 223.

## Part XI.—Actions.

- 1459a. ———.]—*CHARLTON v. WEST* (1861), 3 De G. F. & J. 156; 30 L. J. Ch. 815; 4 L. T. 455; 7 Jur. N. S. 614; 9 W. R. 511; 45 E. R. 837, L. J.J.
1466. After this case add **Married woman.**  
—*See HUSBAND & WIFE*, Nos. 2189, 2189a.

## Part XII.—Costs.

1606. *Add. Annotation*:—*Consd. Re Wheeler*, [1928] Ch. 223.

### PART X. SECT. 1, SUB-SECT. 1.— B. (a).

t i. *Foreign committee—Recognition by court.*—*Re HICKSON*, [1927] 4 D. L. R. 607; 61 O. L. R. 180.—CAN.

### PART X. SECT. 2, SUB-SECT. 3.— E. (b).

sd. *Estate insolvent.*—A person of unsound mind had been placed in a private mental hospital at a fixed annual charge for maintenance & treatment, which had been sanctioned by an order of the ct. She died intestate, & her estate was insufficient to meet all claims:—*Held*: payment should be made in the following order of priority: (1) funeral expenses; (2) the lunacy “percentage”; (3) the committee's costs of dismissing the matter out of lunacy; (4) arrears due to the hospital for maintenance. The assets were not sufficient to meet the payment next in priority, viz., the general costs of the

committee.—*Re P.*, [1926] I. R. 422.—IR.

### PART X. SECT. 2, SUB-SECT. 3.—I. *See case in Sect. 2, sub-sect. 3, E. (b), ante.*

### PART X. SECT. 5, SUB-SECT. 1.—A.

t i. *Lunatic foreigner residing abroad—Sale of land in Ontario—Power of court.*—A man resident in the State of New York was declared a lunatic. He was the owner, subject to a mtge., of land in Ontario, & the foreign committee applied to the Supreme Ct. of Ontario for an order declaring him a lunatic, with a view to obtaining authority to sell the land:—*Held*: the ct. had power to declare the man to be a lunatic, to appoint a committee & to authorise & direct the committee to sell the land, although the lunatic was a foreigner in a foreign land, & under the care & custody of the law

of that land.—*Re PIPER*, [1927] 4 D. L. R. 924; 61 O. L. R. 257.—CAN.

t ii. ———.]—As regards land situate in Ontario, the provisions of Lunacy Act, authorising the sale of land, apply only where the lunatic has been so found by an Ontario ct.—*Re HICKSON*, [1927] 4 D. L. R. 607; 61 O. L. R. 180.—CAN.

### PART X. SECT. 8, SUB-SECT. 1.—D.

sl. *Shares held in joint tenancy—Lunacy of one tenant.*—*Held*: the ct. had power under its statutory jurisdiction to sever such joint tenancy, & to realise the lunatic's share, if his interest & benefit so required.—*O'CONNELL v. HARRISON*, [1927] I. R. 330.—

PART XI. SECT. 6, SUB-SECT. 1.  
bi. ———.]—*Appointment of curator ad litem.*—*DAVIDSON v. SCOTT'S SHIP-BUILDING & ENGINEERING CO., LTD.*, [1926] S. C. 970.—SCOT.



## Part XIII.—Administration in Regard to Reception and Care of Lunatics.

1670a. ——— When criminal information granted.]—*Ex p. Lowe* (1872), 36 J. P. Jo. 760.

## Part XIV.—Certification, Reception, Treatment and Discharge of Lunatics.

1852. *Add. Annotations* :—**Apld.** *De Freville v. Dill* (1927), 96 L. J. K. B. 1056. **Apprvd.** *Harnett v. Fisher*, [1927] A. C. 573.
- 1856a. ———.]—Pltf. was certified by deft., a medical man, to be a lunatic & a person to be detained under care & treatment :—*Held* : (1) deft., inasmuch as he undertook the statutory duty of certifying pltf. as a lunatic, owed a duty to him to exercise reasonable care ; (2) since no reception order could have been made by a magistrate without the certificate of a doctor, & as the certificate was given by deft. with a view to the obtaining of such an order, the giving of the certificate was the direct cause of the order & of pltf.'s detention.—*HARNETT v. FISHER*, [1927] 1 K. B. 402 ; 96 L. J. K. B. 55 ; 135 L. T. 724 ; 42 T. L. R. 745 ; 70 Sol. Jo. 917, C. A. ; *on appeal*, [1927] A. C. 573, H. L.
- Annotations* :—*As to* (1) **Folld.** *De Freville v. Dill* (1927), 96 L. J. K. B. 1056. *As to* (2) **Folld.** *De Freville v. Dill* (1927), 96 L. J. K. B. 1056.
- 1856b. *S. P.* *DE FREVILLE v. DILL* (1927), 96 L. J. K. B. 1056 ; 138 L. T. 83 ; 43 T. L. R. 702.
- 1856c. *Effect of certificate.*]—*HARNETT v. FISHER*, No. 1856a, *ante*.
- 1856d. *S. P.* *DE FREVILLE v. DILL*, No. 1856b, *ante*.
1859. *Add. Annotation* :—**Refd.** *De Freville v. Dill* (1927), 96 L. J. K. B. 1056.
1862. *Add. Annotations* :—*As to* (1) **Apld.** *De Freville v. Dill* (1927), 96 L. J. K. B. 1056. **Refd.** *Harnett v. Fisher*, [1927] A. C. 573.
1863. *Add. Annotation* :—**Refd.** *De Freville v. Dill* (1927), 96 L. J. K. B. 1056.
1865. *Add. Annotation* :—**Refd.** *De Freville v. Dill* (1927), 96 L. J. K. B. 1056.
1867. *Add. Annotation* :—**Refd.** *De Freville v. Dill* (1927), 96 L. J. K. B. 1056.
1869. *Add. Annotations* :—**Refd.** *De Freville v. Dill* (1927), 96 L. J. K. B. 1056 ; *Harnett v. Fisher*, [1927] A. C. 573.

## Part XVI.—Mental Deficiency.

1897. *Add. Annotation* :—*As to* (2) **Dlstd.** *Woodward v. Oldfield* (1927), 96 L. J. K. B. 796.

### PART XIV. SECT. 1.

1856 i. *Duty of doctor to act in good faith & with reasonable care.*]—Circumstances in which an application under

Mental Diseases Act, R. S. A., 1922 (c. 223), s. 25, for the stay of an action against a doctor for negligence in that pltf. had been committed to an asylum

without a proper inquiry being held, was refused.—*HIBBERD v. JAMIESON* (Alta.), [1927] 4 D. L. R. 807, 1095 ; [1927] 3 W. W. R. 543.—**CAN.**

## MAGISTRATES.

## Part II.—Qualifications and Disqualifications.

88. *Add. Annotation*:—**Dlstd.** *R. v. Leicester JJ.*, *Ex p. Allbrighton*, [1927] 1 K. B. 557.
97. *Add. Annotation*:—**Apld.** *R. v. Essex JJ.*, *Ex p. Perkins*, [1927] 2 K. B. 475.
- 97a. **Clerk's firm acting against defendant in earlier proceedings.**—(1) *Certiorari* will issue to quash a maintenance order made by justices, when it is shown that the justices' clerk is a member of a firm of solrs. which acted for the wife at an earlier stage of the same proceedings, even though it is proved that the wife's business was conducted exclusively by a managing clerk in charge of a branch office, & that the justices' clerk was in fact quite unaware that his firm had ever acted for her. The test is not whether there is in fact bias, but whether a reasonable man

concerned in the proceedings might think that the tribunal was not impartial.

(2) Appct. for a *certiorari* in such circumstances does not waive his right to take objection to the presence of the clerk by not having exercised it, when he does not know that he was entitled to it.—*R. v. Essex JJ.*, *Ex p. Perkins*, [1927] 2 K. B. 475; 96 L. J. K. B. 530; 137 L. T. 455; 91 J. P. 94; 43 T. L. R. 415; 28 Cox, C. C. 405, D. C.

105. *Add. Annotation*:—**Rehd.** *R. v. Sheffield JJ.* *Ex p. Rawson* (1927), 91 J. P. 193.
114. *Annotation*:—Insert "**Apld.**" before "*R. v. Middlesex JJ.*,"
- 150a. ————.—*R. v. Essex JJ.*, *Ex p. Perkins*, No. 97a, *ante*.

## Part VIII.—Procedure under Summary Jurisdiction.

432. *Add. Citation*:—2 B. R. A. 626.
- 503a. ———— **Breach of bye-laws—Playing football in street—Open space intersected by public footpaths—Claim overruled.**—*PEARSON v. WHITFIELD* (1888), 52 J. P. Jo. 708, D. C.
- 503b. ———— **Auction held in street.**—A bye-law made it an offence to sell goods, etc., by

auction in any street of a city without the leave of the constable. C. being summoned for selling on a plot of ground, set up the defence that it was private property, & not part of a street:—*Held*: this was a *bonâ fide* claim of title, & the justices properly declined jurisdiction.—*PHILLIPS v. CANHAM* (No. 1) (1872), 36 J. P. 310.

PART II. SECT. 2, SUB-SECT. 1.—  
A. (b) i.

d i. ———— *Magistrate insurance agent placing part of insurance on municipal property—Prosecution for breach of municipal bye-law.*—*R. (KINGSETT) v. McELHINNEY* (Alta.), [1927] 3 D. L. R. 1189; [1927] 3 W. W. R. 284; 49 Can. Crim. Cas. 13.—CAN.

## PART VII. SECT. 2.

kki. ———— *R. v. LEE SOW* (B. C.), [1922] 2 W. W. R. 208; 66 D. L. R. 146; 37 Can. Crim. Cas. 196.—CAN.

rr i. ———— *R. v. NELSON* (1901), 8 B. C. R. 110.—CAN.

i. *Proceedings under Opium & Narcotic Drug Act, 1923.*—*R. v. LEW HING LOY* (B. C.), [1926] 2 W. W. R. 543; 46 Can. Crim. Cas. 75.—CAN.

ii. ———— *R. v. SAM HING*, [1926] 1 D. L. R. 1000; 45 Can. Crim. Cas. 202; 58 O. L. R. 370.—CAN.

ggg iii. ———— *R. v. DENIS* (Man.), [1927] 3 W. W. R. 400; 49 Can. Crim. Cas. 8.—CAN.

ggg iv. ———— *Re R. v. RUTHERFORD* [1927] 4 D. L. R. 434; 48 Can. Crim. Cas. 237; 60 O. L. R. 654.—CAN.

mmm i. ———— *Necessity for consent of accused.*—*LAMBERT v. R.* (1926), 47 Can. Crim. Cas. 159; Q. R. 42 K. B. 91.—CAN.

mmm ii. ———— *R. v. J.* (1927), 47 Can. Crim. Cas. 193; 60 O. L. R. 189.—CAN.

mmm iii. ———— *R. v. JOHNSON MCKENZIE* (1927), 48 Can. Crim. Cas. 255; 59 N. S. R. 326.—CAN.

ooo i. ———— *R. v. DENIS* (Man.), [1927] 3 W. W. R. 400; 49 Can. Crim. Cas. 8.—CAN.

PART VIII. SECT. 1, SUB-SECT. 1.  
d i. ———— *R. v. O'HARA* (N. B.) (1927), 18 Can. Crim. Cas. 231.—CAN.

## PART VIII. SECT. 1, SUB-SECT. 5.—A.

377 i. *What amount to separate offences—Not "having opium & cocaine."*—*R. v. CHOW BEN* (1925), 45 Can. Crim. Cas. 152; 36 B. C. R. 319; [1926] 1 W. W. R. 384.—CAN.

## PART VIII. SECT. 4, SUB-SECT. 1.

sb. *Summary trial of indictable offence—Criminal Code, s. 884.*—*R. v. ROBERTS* (Sask.), [1928] 1 D. L. R. 260; [1927] 3 W. W. R. 844.—CAN.

PART VIII. SECT. 4, SUB-SECT. 3.—  
B. (b) iii.

484 i. ———— *Further charge preferred.*—When accused is brought before a magistrate after being properly arrested he can be proceeded against on a fresh charge, although a summons commanding his appearance or warrant for arrest has not been issued thereunder.—*Re LAMB* (Man.), [1927] 1 W. W. R. 432; 47 Can. Crim. Cas. 277.—CAN.

## PART VIII. SECT. 4, SUB-SECT. 7.

sc. *Power to order arrest of witness—Criminal Code, s. 675.*—*Ex p. COYLE* (P. E. I.), [1927] 4 D. L. R. 1129; 49 Can. Crim. Cas. 91.—CAN.

## PART VIII. SECT. 4, SUB-SECT. 8.

sd. *Must be according to rules of evidence.*—*R. v. DUNN* (Ont.) (1926), 45 Can. Crim. Cas. 139.—CAN.

p i. ———— *A justice of the peace has no authority to administer an oath to accused, & examine him thereunder, after he has pleaded guilty.*—*R.*

*Ex p. BROWN*, [1927] 3 W. W. R. 335.—CAN.

ri. ———— *R. v. STEPHENS, R. v. LAHAY* (Ont.) (1926), 45 Can. Crim. Cas. 123.—CAN.

## PART VIII. SECT. 4, SUB-SECT. 9.

545 ii. ———— *R. v. HENDERSON, Ex p. BRINDLE* (N. B.), [1926] 2 D. L. R. 583; 45 Can. Crim. Cas. 310.—CAN.

## PART VIII. SECT. 4, SUB-SECT. 10.

sf. *To call further evidence.*—It is within a magistrate's discretion to allow the prosecution to adduce further evidence after its case has been closed.—*R. (PARKER) v. SMITH*, [1927] 4 D. L. R. 410; [1927] 2 W. W. R. 722; 48 Can. Crim. Cas. 249; 21 Sask. L. R. 600.—CAN.

## PART VIII. SECT. 4, SUB-SECT. 11.

d (p. 315) i. ———— *R. v. DUPRAS, LTD., R. v. LATRAVERSE*, [1927] 3 D. L. R. 399; 47 Can. Crim. Cas. 321.—CAN.

gi. ———— *Number of adjournments.*—*MESSINGER v. PARKER* (1885), 18 N. S. R. (3 R. & G.) 237; 6 C. L. T. 141.—CAN.

sl. *Effect of adjournment—Charge under Liquor Act—Whether magistrate deprived of jurisdiction.*—*HALL v. TAYLOR*, [1926] 3 D. L. R. 34; [1926] 2 W. W. R. 175; 46 Can. Crim. Cas. 50; 20 Sask. L. R. 463.—CAN.

PART VIII. SECT. 5, SUB-SECT. 1.—  
B. (a).

584 vi. ———— *R. v. BARRY* (N. S.) (1926), 46 Can. Crim. Cas. 143.—CAN.

584 vii. ———— *R. v. RODGERS* (Ont.), [1926] 4 D. L. R. 609; 46 Can. Crim. Cas. 372.—CAN.

593. *Add. Annotation*:—**Consd.** Pointon v. Cox (1926), 136 L. T. 506.  
 603. *Add. Annotation*:—**Consd.** Pointon v. Cox (1926), 136 L. T. 506.  
 642. *Add. Annotation*:—**Refd.** Pointon v. Cox (1926), 136 L. T. 506.  
 679. *Add. Annotation*:—**Refd.** Palmer v. Crone, [1927] 1 K. B. 804.  
 738. *Add. Annotation*:—**Mentd.** Bowker v. Woodroffe, Bowker v. Premier Drug Co. (1927), 96 L. J. K. B. 750.  
 793. *Add. Annotations*:—**Mentd.** Wigg v. A.-G. of Irish Free State (1927), 96 L. J. P. C. 88; Dee Conservancy Board v. McConnell, [1928] 2 K. B. 159.

## Part X.—Clerks to Justices.

808. *Add. Annotation*:—**Consd.** R. v. Ely JJ., *Ex p. Mann* (1928), 45 T. L. R. 92.  
 811a. **Should not act as solicitor for prosecution—At quarter sessions.**—It is highly undesirable that the clerk to county justices, who have committed a prisoner for trial at quarter sessions, should act at quarter sessions as solr. for the prosecution, &, if quarter sessions on proper materials come to the con-

clusion that he has done so, they are entitled, after prisoner has been convicted, to take that conclusion into consideration in deciding whether they should order the costs of the prosecution to be paid out of the county fund under Costs in Criminal Cases Act, 1908 (c. 15), s. 1.—R. v. ELY JJ., *Ex p. MANN* (1928), 45 T. L. R. 92; 72 Sol. Jo. 861; 92 J. P. Jo. 782, D. C.

## Part XII.—Jurisdiction of Quarter Sessions.

- 1002a. **Power to reduce charges—To found jurisdiction.**—Charges of sufficient gravity should not be reduced merely to found the jurisdiction of petty or quarter sessions, but should be committed to assizes.—R. v. BENNETT (1928), 20 Cr. App. Rep. 188, C. C. A.

## Part XIII.—Appeals from Courts of Summary Jurisdiction.

1015. *Add. Citations*:—*sub nom.* HARRUP v. BAYLEY, 6 E. & B. 218; 25 L. J. M. C. 107; 2 Jur. N. S. 882; 119 E. R. 845; *sub nom.* R. v. HARROSS, 4 W. R. 461.  
 1100. *Add. Citation*:—2 B. R. A. 1135.  
 1219. *Add. Citations*:—96 L. J. K. B. 49; 28 Cox, C. C. 261.  
 1229. *Add. Citations*:—[1927] 1 K. B. 315; 96 L. J. K. B. 115; 91 J. P. 14; 25 L. G. R. 35; *affd.*, [1927] 1 K. B. 853; 96 L. J. K. B. 383; 137 L. T. 10; 91 J. P. 64; 43 T. L. R. 326; 71 Sol. Jo. 293; 25 L. G. R. 188, C. A.  
*Add. Annotation*:—**Distd.** Lawrence v. Martin, [1928] 2 K. B. 454.  
 1229a. **Appeal by clerk of urban district council—Recognisance entered into by clerk—Validity.**—On the application of a clerk of an urban district council for a case to be stated for the opinion of the High Ct., the clerk himself entered into the recognisance conditioned to prosecute the appeal, rendered necessary by Summary Jurisdiction Act, 1857 (c. 43), s. 3. On a preliminary objection at the hearing of the appeal, that the recognisance should have been entered into by the clerk on behalf of the council, so as to render their goods liable, for the reason that the council had by resolution authorised the clerk to lay the original information &

### PART VIII. SECT. 5, SUB-SECT. 1.—D. (a).

613 i. *Proper hearing of accused party.*—Criminal Code, s. 721, does not authorise any interrogation of prisoner by a magistrate other than the asking him whether he has any cause to show why he should not be convicted. This can be done by asking, "What does he say, guilty or not," but if the reply be not a clear admission of all the elements of the crime, the magistrate must proceed to inquire into the charge without further questioning.—R. v. LEE, [1925] 2 W. W. R. 190; 45 Can. Crim. Cas. 280; 35 B. C. R. 401.—CAN.

613 ii. —.—.—R. v. JOHNSON (1927), 48 Can. Crim. Cas. 59 N. S. R. 326.—CAN.

### PART VIII. SECT. 5, SUB-SECT. 1.—D. (c).

i. —.—.—.—*Re* BAKER (1900), 20 C. L. T. 16.—CAN.

### PART VIII. SECT. 5, SUB-SECT. 1.—D. (e).

644 i. *Joint trial—Separate convictions.*—A magistrate has no jurisdiction to hear separate offences against different persons together, even where the persons charged consent to the adoption of that course, & the proceedings in such cases are void *ab initio*.—RUSSELL v. BATES (1927), 27 S. R. N. S. W. 257; 44 N. S. W. W. N. 79.—AUS.

### PART VIII. SECT. 5, SUB-SECT. 1.—E.

ni. —.—.—.—A magistrate may, before making the appropriate entry in the Criminal Record Book, alter his decision as to the quantum of punishment imposed; but if the alteration is made for a purpose which constitutes an improper exercise of his discretion in the matter of punishment, such alteration is irregular, & the detention of accused in pursuance thereof is illegal.—*Re* CAVENETT, [1926] N. Z. L. R. 755.—N.Z.

### PART VIII. SECT. 5, SUB-SECT. 3.—A. (b) i.

705 iii. —.—.—.—*Offence under Opium & Narcotic Drug Act, s. 5A (2) (e).*—R. (WAUGH) v. WONG MAH, [1922] 1 W. W. R. 67; 66 D. L. R. 517; 36 Can. Crim. Cas. 319; 17 Alta. L. R. 363.—CAN.

sm. *Substitution of new warrant—Term of imprisonment extended—New warrant invalid.*—*Re* WHEATON (N. S.) (1926), 46 Can. Crim. Cas. 247.—CAN.

### PART VIII. SECT. 5, SUB-SECT. 3.—A. (e).

sn. *Power to suspend sentence—Summary conviction under Criminal Code, Part XV.*—R. v. BROWNLEE, [1927] 4 D. L. R. 703; 48 Can. Crim. Cas. 218; 61 O. L. R. 28.—CAN.

### PART VIII. SECT. 5, SUB-SECT. 4.

sp. *Right of magistrate to fee—Proceedings under Criminal Code, Part XVI.*—R. v. SERVETNYK (Sask.) (1926), 45 Can. Crim. Cas. 280.—CAN.



if unsuccessful, to carry the proceedings further, & that the clerk "duly authorised" had sworn the information, & entered into the recognisance "as principal":—*Held*: the recognisance was good, in that in fact the clerk as informant was applt., being at liberty by virtue of Public Health Act, 1875 (c. 55), s. 259 to institute & carry on any proceedings which the local authority was authorised to institute, & the above words of authorisation were surplusage.—*LAWRENCE v. MARTIN*, [1928] 2 K. B. 454; 97 L. J. K. B. 707; 139 L. T. 373; 92 J. P. 112; 44 T. L. R. 621; 26 L. G. R. 454.

1236. *Add. Annotation*:—*Distd.* *Marsland v. Taggart*, [1928] 2 K. B. 447.

1236a. ——— *Death of one justice—Signature by surviving justices.*—A complaint was heard by three justices, who unanimously dismissed it, but agreed to state a case for the opinion of the High Ct. Before the case

was stated one of the justices died, & the case was signed by the surviving two justices only:—*Held*: as the obligation of the justice to sign the case was created by law & not by voluntary contract, & as his failure to fulfil that obligation was due to his death & not to any spontaneous act on his part, the Crown had jurisdiction to proceed with the matter.—*MARSLAND v. TAGGART*, [1928] 2 K. B. 447; 97 L. J. K. B. 787; 139 L. T. 192; 92 J. P. 118; 44 T. L. R. 543; 26 L. G. R. 377, D. C.

1393a. ———.]—*Mandamus* will issue to justices who have refused to hear an application under Small Tenements Recovery Act, 1838 (c. 74), because they have adopted a general practice not to hear such cases on the ground that the county ct. is a more suitable tribunal.—*R. v. KENT JJ.*, *Ex p. L. IPLOW* (1927), 137 L. T. 25; 91 J. P. 38; 43 T. L. R. 227; 25 L. G. R. 120, D. C.

## Part XIV.—Appeals from Quarter Sessions.

1607. *Add. Annotation*:—*Apld.* *Piper v. St. Marylebone Licensing JJ.*, [1928] 2 K. B. 221.

1645. *Add. Citation*:—1 B. R. A. 549.

## Part XVI.—Appeal to Court of Appeal.

1708. *Add. Annotation*:—*Mentd.* *Farnham Grdns. v. Cambridge Grdns.* (1928), 45 T. L. R. 73.

PART XIII. SECT. 1, SUB-SECT. 2.—A. f i. ———.]—*R. v. POCKOCK*, *R. v. ELLISON* (Ont.), [1927] 4 D. L. R. 1121; 49 Can. Crim. Cas. 95.—CAN.

PART XIII. SECT. 1, SUB-SECT. 4.—G. st. *Request for jury—Discretion to grant or refuse*—36 Vict. c. 58, s. 2.]—*R. v. WASHINGTON* (1881), 46 U. C. R. 221.—CAN.

### PART XIII. SECT. 7.

hhh (p. 431) i. ———.]—*Findings of fact.*—*R. v. BELLMAN* (Ont.) (1925), 45 Can. Crim. Cas. 145.—CAN.  
sv. *Who may appeal—Under Crim-*

*inal Code*, s. 749.]—*R. v. HICKS*, [1926] 1 W. W. R. 182; 46 Can. Crim. Cas. 94; 37 B. C. R. 280.—CAN.

aaaa i. ———.]—*To nearest court—How nearest court ascertained.*—*R. v. HOLT* (1925), 46 Can. Crim. Cas. 40; 36 B. C. R. 391; [1926] 1 W. W. R. 47.—CAN.

aaaa ii. *S.P. R. v. CANADIAN ROBERT DOLLAR CO., LTD.* (1926), 37 B. C. R. 264.—CAN.

dddd i. ———.]—*R. v. MCJATCHEY*, *Ex p. STEWART* (N.B.), [1926] 2 D. L. R. 334; 45 Can. Crim. Cas. 293.—

— (p. 433) i. ———.]—On an appeal from a conviction founded on an alleged plea of guilty, it is open to accused to raise the point that he did not, in the true legal sense, plead guilty to the information or complaint preferred against him, since he did not understand the nature of the charge & pleaded guilty in ignorance.—*R. v. OLNEY* (B. C.), [1926] 4 D. L. R. 869; [1926] 3 W. W. R. 273; 46 Can. Crim. Cas. 196.—CAN.

sw. *Postponement of appeal—Grounds for granting.*—*R. v. CUMYOW*, [1926] 1 D. L. R. 623; 45 Can. Crim. Cas. 172; 36 B. C. R. 435.—CAN.

## MALICIOUS PROSECUTION AND PROCEDURE.

## Part I.—Distinguished from Trespass and False Imprisonment.

12. *Add. Annotation* :—**Mentd.** *De Freville v. Dill* (1927), 96 L. J. K. B. 1056.

## Part IV.—Essentials to Action.

365. *Add. Annotation* :—**Mentd.** *Hardie & Lane v. Chilton*, [1928] 2 K. B. 306.

## Part V.—Evidence.

574. *Add. Annotations* :—**Refd.** *Campbell v. Pollak*, [1927] A. C. 732 ; *Martin v. Benson*, [1927] 1 K. B. 771.

## Part VII.—Pleading and Practice.

586. *Add. Annotation* :—**Refd.** *La Radiotechnique v. Weinbaum* (1927), 137 L. T. 638.

## PART IV. SECT. 1, SUB-SECT. 1.—A.

121 ii. ———.—Pltf. must prove that he was innocent, & that his innocence was pronounced by the tribunal before which the accusation was made. Where a *nolle prosequi* is entered, although it establishes that the proceedings terminated in favour of pltf., it does not establish his innocence.—*Rich v. Forman* (1927), 29 W. A. L. R. 13.—AUS.

## PART IV. SECT. 1, SUB-SECT. 2.

d i. *Discontinuance of proceedings*.—*Dalling v. McKendrick* (P. E. I.), 2 D. L. R. 999.—CAN.

## PART IV. SECT. 2, SUB-SECT. 2.—A.

230 i. *Acting without just cause or*

*excuse*.]—*Manning v.* (B. C.), [1927] 3 D. L. R. 728 ; [1927] 2 W. W. R. 623.—CAN.

230 ii. ———.—*Paulson v. Clef* (Alta.), [1927] 3 D. L. R. 716.—CAN.

241 vi. ———.—*Henderson v. Bailleul*, [1927] 3 D. L. R. 374 ; [1927] 2 W. W. R. 197 ; 36 Man. L. R. 519.—CAN.

## PART IV. SECT. 2, SUB-SECT. 4.—A.

284 xiv. ———.—*Mecklenburg v. Canadian Pacific Ry. Co.* (Alta.), [1926] 1 D. L. R. 706.—CAN.

284 xv. ———.—*McLae v. McLaughlin Motor Car Co., Ltd.* (Alta.), [1926] 1 D. L. R. 372 ; [1926] 1 W. W. R. 161.—CAN.

## PART IV. SECT. 3, SUB-SECT. 3.—E.

417 i. *Absence of probable cause not implied*.—*Shubrat v. Shams-Uddin* (1928), I. L. R. 50 All. 713.—IND.

## PART IV. SECT. 3, SUB-SECT. 4.—B. (a).

436 xii. ———.—*Pidgeon v. Holman* (P. E. I.), [1926] 3 D. L. R. 480.—CAN.

## PART IV. SECT. 3, SUB-SECT. 4.—C. (a).

467 iv. ———.—*Pidgeon v. Holman* (P. E. I.), [1926] 3 D. L. R. 480.—CAN.

## PART V. SECT. 1, SUB-SECT. 2.

537 ix. ———.—*Pidgeon v. Holman* (P. E. I.), [1926] 3 D. L. R. 480.—CAN.

## MARKETS AND FAIRS.

### Part III.—Rights and Liabilities in connection with Markets and Fairs.

68. *Add. Annotation* :—**Refd.** *Hardie & Lane v. Chiltern* (1927), 96 L. J. K. B. 773.

### Part IV.—Holding of Markets and Fairs.

103. *Add. Annotation* :—**Refd.** *Layzell v. Thompson* (1927), 137 L. T. 106.

### Part VII.—Disturbance.

312. *Add. Annotation* :—**Refd.** *Layzell v. Thompson* (1926), 91 J. P. 89.

### Part IX.—Sale in Market Overt.

430. *Add. Annotations* :—**Mentd.** *Greer v. Downs Supply Co.*, [1927] 2 K. B. 28; *Lake v. Simmons*, [1927] A. C. 487.

467. *Add. Annotation* :—**Mentd.** *Lowther v. Harris*, [1927] 1 K. B. 393.

478. *Add. Annotation* :—**Mentd.** *Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669.

**PART II. SECT. 3, SUB-SECT. 1.**  
36 i. *Acquisition of site—Necessity for bye-law.*—*CITY OF EDMONTON v. MACDONALD* (Alta.) (1907), 7 W. L. R. 201.—CAN.

**PART VII. SECT. 1, SUB-SECT. 3.—C.**  
sf. *Buying goods outside market.*—Although no market tolls are chargeable by an owner of a market, buyers can disturb, in an actionable sense, the market by buying outside its limits.—

*LOUGHREY v. DOHERTY*, [1928] I. R. 103.—IR.

**PART XI. SECT. 1, SUB-SECT. 1.—A.**  
501 ii. — *What amounts to.*—*R. v. THORNBERT*, [1925] 2 W. W. R. 175; 19 Sask. L. R. 429.—CAN.

**PART XI. SECT. 1, SUB-SECT. 2.—A.**  
sk. *Sale by agent of company—Tax imposed by Corporations Taxation Act,*

*R. S. S.*, 1920 (c. 31), *paid by company.*—*R. v. AUNE*, [1925] 2 W. W. R. 539; 44 Can. Crim. Cas. 194; 19 Sask. L. R. 566.—CAN.

**PART XI. SECT. 3.**

a i. — *Not company selling goods at premises rented for two months.*—*R. v. DOMINION GENERAL JOBBERS, LTD.*, [1925] 3 D. L. R. 570; [1925] 2 W. W. R. 289; 44 Can. Crim. Cas. 229; 35 Man. L. R. 57.—CAN.



## MASTER AND SERVANT.

### Part I.—The Relationship.

8. *Add. Annotation* :—*As to* (1) *Refd.* Williams v. Larsen (1928), 21 B. W. C. C. 339.
13. *Add. Annotation* :—*Apld.* Williams v. Larsen (1928), 21 B. W. C. C. 339.
15. *Add. Annotations* :—*Consd.* Roberts v. Gardner (1928), 21 B. W. C. C. 154. *Refd.* Williams v. Larsen (1928), 21 B. W. C. C. 339.
27. *Add. Annotation* :—*Consd.* Bull v. West African Shipping, etc. Co., [1927] A. C. 686.
29. *Add. Annotation* :—*Consd.* Bull v. West African Shipping, etc. Co., [1927] A. C. 686.
46. *Add. Annotation* :—*Consd.* Bull v. West African Shipping, etc. Co., [1927] A. C. 686.
49. *Add. Annotation* :—*Consd.* Bull v. West African Shipping, etc. Co., [1927] A. C. 686.
54. *Add. Annotation* :—*Consd.* Bull v. West African Shipping, etc. Co., [1927] A. C. 686.
- 55a. Lightermen hired with lighter.]—Applts. let on hire to resps. a lighter manned by two native lightermen. The lighter was moored to resps.' ship, & was used by them during the day in loading the ship. During the night the lightermen negligently left the lighter, which got adrift, &, owing to the absence of the lightermen, was carried out to sea, ran ashore, & broke up :—*Held* : the lightermen being under the orders & control of resps. during the night as well as during the actual loading, resps. were responsible for their negligence & were liable to applts. in damages.—BULL (A. H.) & Co. v. WEST AFRICAN SHIPPING, ETC. Co., [1927] A. C. 686; 96 L. J. P. C. 127; 137 L. T. 498; 43 T. L. R. 548; 17 Asp. M. L. C. 292, P. C.
66. *Add. Citations* :—96 L. J. K. B. 170; 136 L. T. 377.
89. *Add. Annotation* :—*Refd.* Brooke v. Bool, [1928] 2 K. B. 578.

### Part II.—Particular Classes of Servants.

138. *Add. Annotations* :—*Apld.* Re Mackay, Re Rowland, Re Barry (1928), 44 T. L. R. 688. *Refd.* Birmingham Corpn. v. Labour Minister, Re Lee, Re Hudson (1927), 92 J. P. 17.
151. *Add. Annotation* :—*Mentd.* Hardie & Lane v. Chilton, [1928] 2 K. B. 306.

### Part III.—The Contract of Service.

- 212a. ——— *Pltman.*]—ORD. v. BURKUS (1843), 1 L. T. O. S. 35.
230. *Add. Annotation* :—*Refd.* Marbé v. George Edwardes (Daly's Theatre) (1927), 96 L. J. K. B. 980.
252. *Add. Annotation* :—*Consd.* Marbé v. George Edwardes (Daly's Theatre) (1927), 96 L. J. K. B. 980.

### Part IV.—Duration and Termination of Contract.

262. *Add. Annotation* :—*Distd.* Milsted v. Hamp & Ross & Glendinning (1927), 71 Sol. Jo. 845.
- 262a. ———.]—Pltfs. agreed to employ deft., & deft. agreed to serve pltfs., for three years & thereafter from year to year subject to three months' notice by pltfs. Delt. was to devote the whole of his time to the business :—*Held* : the agreement was wholly one-sided & unenforceable.—MILSTED (W. H.) & SON, LTD. v. HAMP & ROSS & GLENDINNING, LTD. (1927), 71 Sol. Jo. 845.
- 530a. Driving motor car to common danger.]—Pltf., a commercial traveller, was employed by defts. under an agreement which provided that pltf. was to use a motor car for the carriage of samples. Pltf. was convicted of driving the car to the common danger & was fined, & his driving licence was suspended for three months. Defts. terminated pltf.'s employment, on the ground that these facts constituted misconduct justifying dismissal. In an action for wrongful dismissal

#### PART I. SECT. 1.

a i. Hospital & nurses.]—NYBERG v. PROVOST MUNICIPAL HOSPITAL BOARD, No. 52 II, post.—CAN.

#### PART I. SECT. 2, SUB-SECT. 1.— A. (b).

211. For "CAN." read "SHANGHAI."

#### PART I. SECT. 2, SUB-SECT. 1.— B. (a).

52 ii. ———.]—Hospital liable for the negligence of nurses after an operation.—NYBERG v. PROVOST MUNICIPAL HOSPITAL BOARD, [1927] 1 D. L. R. 969; [1927] S. C. R. 226.—CAN.

#### PART I. SECT. 3, SUB-SECT. 5.— A. (d).

sb. Power to veto employment & to

insist on dismissal of any employee.]—*Held* : in the circumstances, a brusher, engaged by a colliery co. to drive a stonemino in one of their pits at a fathomage rate, & permitted by the contract to engage two miners to assist him in the work, was a servant, & not an independent contractor.—PARK v. WILSONS & CLYDE COAL CO., HAGGERTY v. WILSONS & CLYDE COAL CO., [1928] S. C. 121.—SCOT.

defts. also pleaded that, before the agreement was made, pltf. ought to have informed them that he had previously been convicted of being drunk when in charge of a motor car & been sentenced to imprisonment for driving it in a manner dangerous to the public:—*Held*: (1) there was no obligation on pltf. to disclose his previous conviction for a motoring offence; (2) the conviction during the currency of the agreement, even although pltf.'s licence was suspended, was not a ground for terminating the agreement, as pltf. could have got some-

one to drive the car.—*HANDS v. SIMPSON, FAWCETT & Co., LTD.* (1928), 44 T. L. R. 295; 72 Sol. Jo. 138.

565. *Add. Annotation*:—*Apld.* *Hands v. Simpson, Fawcett* (1928), 44 T. L. R. 295.

565a. What are material facts—Employment of commercial traveller—Not previous conviction for motoring offence.]—*HANDS v. SIMPSON, FAWCETT & Co., LTD.*, No. 530a, ante.

## Part V.—Remuneration.

628a. ———.]—*ADAMS v. LIVERPOOL CORPN.* (1927), 137 L. T. 396; 91 J. P. 106; 25 L. G. R. 359, C. A.

*Annotation*:—*Folld.* *Kelsey v. Birmingham Corpn.* (1927), 92 J. P. 12.

628b. ———.]—*KELSEY v. BIRMINGHAM CORPN.* (1927), 92 J. P. 12.

629. *Add. Annotations*:—*Dlstd.* *Adams v. Liver-*

pool Corpn. (1927), 137 L. T. 396. *Apld.* *Aylott v. West Ham Corpn.*, [1927] 1 Ch. 30.

630. *Add. Annotation*:—*Apld.* *Adams v. Liverpool Corpn.* (1927), 137 L. T. 396.

644. *Add. Annotation*:—*Refd.* *Mellor v. Beardmore* (1927), 44 R. P. C. 175.

725. *Add. Annotation*:—*Mentd.* *Houghton v. Not-*

hard, Lowe & Wills (1927), 44 T. L. R. 76.

## Part VI.—Breach of Contract and Remedies Therefor.

739. *Add. Annotation*:—*Mentd.* *Livock v. Pearson* (1928), 33 Com. Cas. 188.

788. *Add. Annotation*:—*Consd.* *Marbé v. George*

*Edwardes* (Daly's Theatre) (1927), 96 L. J. K. B. 980.

790. *Add. Annotation*:—*Refd.* *Marbé v. George Edwardes* (Daly's Theatre) (1927), 43 T. L. R. 460.

## Part VII.—Duties and Liabilities of Master.

880. *Add. Annotation*:—*Refd.* *James v. British General Insce.*, [1927] 2 K. B. 311.

## Part VIII.—Duties and Liabilities of Servant.

883. *Add. Annotation*:—*Mentd.* *The Jupiter* (No. 3) (1927), 137 L. T. 333.

890. *Add. Citations*:—96 L. J. K. B. 152; 136 L. T. 271.

895. *Add. Annotation*:—*Refd.* *Re A Debtor* (No. 229 of 1927), [1927] 2 Ch. 367.

928. *Add. Annotation*:—*Refd.* *Putsman v. Taylor*, [1927] 1 K. B. 637.

938. *Add. Annotation*:—*Reid.* *Boorne v. Wicker*, [1927] 1 Ch. 667.

941. *Add. Annotation*:—*Refd.* *Putsman v. Taylor*, [1927] 1 K. B. 637.

### PART IV. SECT. 2, SUB-SECT. 10.— B. (bi).

393 v. ———.]—*MESSEY v. BARRETT CO.*, [1927] 1 D. L. R. 284; 59 O. L. R. 566.—CAN.

### PART IV. SECT. 2, SUB-SECT. 11.— A. (a).

t i. ———.]—Where the dismissal of an employee is for cause, he is not entitled to any notice.—*VAILLANCOURT v. R.*, [1927] Exch. C. R. 21.—CAN.

t ii. ———.]—*ROSS v. WILLARDS CHOCOLATES, LTD.* (Man.), [1927] 2 D. L. R. 461.—CAN.

### PART IV. SECT. 2, SUB-SECT. 11.— A. (g) vii.

548 ii. ———.]—A native servant addressed a remark of a grossly insolent & insulting nature to one of his employer's customers, a European,

in the presence of a gang of native fellow servants:—*Held*: the master was justified in summarily dismissing him, & was not liable for salary for the unexpired portion of the month.—*GOGI v. WILSON & COLLINS* (1927), 48 N. L. R. 21.—S. AF.

### PART V. SECT. 2, SUB-SECT. 1.—G.

648 vi. ———.]—A farm labourer, hired for the season at so much per month, is entitled to payment of his wages at the end of each month, unless the contract provides to the contrary.—*COWAN v. EISLER*, [1927] 2 D. L. R. 713; [1927] 1 W. W. R. 776; 36 Man. L. R. 464.—CAN.

### PART V. SECT. 2, SUB-SECT. 6.— A. (b).

—.]—infant,

who has become emancipated from the control of his father, is entitled to recover wages earned by him by working for a stranger, even though he agreed, at the time of the hiring, that his wages should be credited on a debt due from his father to his employer.—*LEZETC v. METHERAL* (Sask.), [1927] 1 W. W. R. 990.—CAN. *st. Against whom maintainable—Merchant supplying planter—Wages of planter's servants.*]—*DOOLEY v. BURKE & HACKETT* (1819), 1 Nfld. L. R. 190.—NFLD.

### PART V. SECT. 2, SUB-SECT. 6.— A. (c).

sj. Want of notice—Of shipping of servant—21 Vict. c. 9.]—*GOFF v. BARRON* (1859), 4 Nfld. L. R. 286.—NFLD.

## Part IX.—Liability of Master to Third Persons.

- 962a. *Authority to sell.*—SENIOR *v.* WOLMER (1623), Benl. 132; 73 E. R. 990; *sub nom.* SEIGNIOR & WOLMER'S CASE, Godb. 360.
966. *Add. Annotation* :—*Refd.* Bull *v.* West African Shipping, etc. Co., [1927] A. C. 686.
- 970a. ———.]—*Respondent superior* extends to civil matters only.—R. *v.* LEVER (1746), Barnes, 34; 94 E. R. 793.
987. *Add. Annotations* :—*Refd.* Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1927] 1 K. B. 826; Reckitt *v.* Barnett, Pembroke & Slater, [1928] 2 K. B. 244.
991. *Add. Annotations* :—*Consd.* Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1927] 1 K. B. 826; Reckitt *v.* Barnett, Pembroke & Slater, [1928] 2 K. B. 244. *Refd.* Britt *v.* Galmoye & Nevill (1928), 44 T. L. R. 294; Lloyds Bank *v.* Chartered Bank of India, Australia & China (1928), 97 L. J. K. B. 609.
996. *Add. Annotations* :—*Consd.* Poland *v.* Parr, [1927] 1 K. B. 236. *Refd.* Britt *v.* Galmoye & Nevill (1928), 44 T. L. R. 293.
1011. *Add. Annotations* :—*Consd.* Lloyds Bank *v.* Chartered Bank of India, Australia & China (1928), 97 L. J. K. B. 609; Reckitt *v.* Barnett, Pembroke & Slater, [1928] 2 K. B. 244.
1018. *Add. Annotation* :—*Mentd.* Brown *v.* Harrison, Hourani *v.* Harrison (1927), 137 L. T. 549.
1093. *Add. Annotation* :—*Distd.* Britt *v.* Galmoye & Nevill (1928), 44 T. L. R. 294.
- 1100a. ———.]—A., who had B. in his employment as a van-driver, lent him his private motor car, after the day's work was finished, to take friends to a theatre. B. by his negligent driving injured pltf. :—*Held* : as the journey was not on the master's business & the master was not in control, he was not liable for his servant's act.—BRITT *v.* GALMOYE & NEVILL (1928), 44 T. L. R. 294; 72 Sol. Jo. 122.
1117. *Add. Annotation* :—*Mentd.* Jebarra *v.* Ottoman Bank, [1927] 2 K. B. 254.
1143. *Add. Annotation* :—*Consd.* Williams *v.* Larsen (1928), 21 B. W. C. C. 339.
- 1145a. ———.]—THE ENTERPRISE, STRONG *v.* TAYLOR (1853), 9 L. T. 302.
- 1173a. ———.]—R. *v.* LEVER, No. 970a, *ante*.
1231. *Add. Annotation* :—*Refd.* Silverman *v.* Imperial London Hotels (1927), 137 L. T. 57.
1234. *Add. Annotation* :—*Refd.* Brooke *v.* Bool, [1928] 2 K. B. 578.
1255. *Add. Annotation* :—*Refd.* Brooke *v.* Bool, [1928] 2 K. B. 578.
1266. *Add. Annotation* :—*Refd.* Brooke *v.* Bool, [1928] 2 K. B. 578.
1267. *Add. Annotation* :—*Consd.* Dec Conservancy Board *v.* McConnell, [1928] 2 K. B. 159.
1271. *Add. Annotation* :—*Refd.* Brooke *v.* Bool, [1928] 2 K. B. 578.
1274. *Add. Annotation* :—*Consd.* Reigate Corpn. *v.* Surrey County Council, [1928] Ch. 359.
1275. *Add. Annotation* :—*Refd.* Brooke *v.* Bool, [1928] 2 K. B. 578.
1276. *Add. Annotation* :—*Refd.* Brooke *v.* Bool, [1928] 2 K. B. 578.

## Part X.—Rights of Master against Third Persons.

1307. *Add. Annotation* :—*Refd.* Scammell & Nephew *v.* Attlee (1928), 45 T. L. R. 75.
1320. *Add. Annotation* :—*Refd.* Hardie & Lane *v.* Chilton, [1928] 2 K. B. 306.

## Part XI.—Liabilities of the Servant to Third Persons.

1513. *Add. Annotation* :—*Consd.* Scammell & Nephew *v.* Attlee (1928), 45 T. L. R. 75.

## Part XII.—Rights of the Servant against Third Persons.

1553. *Add. Annotation* :—*Refd.* Hardie & Lane *v.* Chilton, [1928] 2 K. B. 306.
1565. *Add. Annotations* :—*Consd.* Silverman *v.* Imperial London Hotels (1927), 137 L. T. 57; Forbes, Abbott & Lennard *v.* G. W. Ry. (1927), 138 L. T. 286. *Refd.* Coleshill *v.* Manchester Corpn., [1928] 1 K. B. 776.
1572. *Add. Annotation* :—*Refd.* Coleshill *v.* Manchester Corpn., [1928] 1 K. B. 776.

PART IX. SECT. 3, SUB-SECT. 4.—A.  
981 xxi. ———.]—ESTATE VAN DER BYL *v.* SWANEPOEL, [1927] App. D. 141.—S. AF.

981 xxii. ———.]—BURRIS *v.* DARTMOUTH TOWN (1927), 59 N. S. R. 227.—CAN.

i. ——— *Servant acting for master's benefit.*—WING KEE *v.* BUTT (B. C.),

[1927] 2 D. L. R. 641.—CAN.

PART IX. SECT. 3, SUB-SECT. 13.—B. (e).

1115 iii. ———.]—Applt. employed a man to take his horse from his business premises to a paddock. Without the authority of applt., the man entrusted this duty to a young

boy, who rode the horse so recklessly that resp. was knocked down & injured :—*Held* : applt. was not liable.—THOMSON *v.* HAMILTON, [1927] N. Z. L. R. 11.—N.Z.

PART IX. SECT. 6, SUB-SECT. 2.—A.  
1240 i. ———.]—NYBERG *v.* PROVOST MUNICIPAL HOSPITAL BOARD No. 52 ii, *ante*.—CAN.



## Part XIII.—Liability of Master in Case of Accident or Death.

1657. *Add. Annotations*:—As to (1) **Refd.** Dew v. United British S.S. Co. (1928), 139 L. T. 628. *Generally, Mentd.* Lloyd v. Cook, Goudge v. Broughton, Simson v. Miatt, Bartram v. Brown, Barker v. Hutson (1928), 97 L. J. K. B. 657.
1725. *Add. Annotation*:—**Consd.** Bull v. West African Shipping, etc. Co., [1927] A. C. 686.
1787. *Add. Annotations*:—**Consd.** Coleshill v. Manchester Corpn., [1928] 1 K. B. 776. **Refd.** Silverman v. Imperial London Hotels (1927), 137 L. T. 57.
1802. *Add. Annotation*:—**Refd.** Dew v. United British S.S. Co. (1928), 139 L. T. 628.
1815. *Add. Annotations*:—**Refd.** Dew v. United British S.S. Co. (1928), 139 L. T. 628; Scammell & Nephew v. Attlee (1928), 45 T. L. R. 75.
1818. *Add. Annotation*:—**Refd.** Dew v. United British S.S. Co. (1928), 139 L. T. 628.

## Part XIV.—Workmen's Compensation Acts.

2045. *Add. Annotation*:—**Refd.** Roberts v. Gardner (1928), 21 B. W. C. C. 154.
2057. *Add. Citations*:—136 L. T. 322; 20 B. W. C. C. 139. *Add. Annotation*:—**Refd.** Watson v. Government Instructional Centre (Birmingham) (1928), 97 L. J. K. B. 596.
- 2057a. — Unemployed youth undergoing industrial training—In Government instructional centre.]—*Held*: not a workman within Workmen's Compensation Acts.—WATSON v. GOVERNMENT INSTRUCTIONAL CENTRE, BIRMINGHAM (1928), 97 L. J. K. B. 596; 139 L. T. 290; 44 T. L. R. 576; 72 Sol. Jo. 384; 21 B. W. C. C. 174, C. A.
- 2079a. — Not born within normal period of gestation.]—A claim for compensation in respect of such a child:—*Held*: rightly rejected.—RACE v. WARDESEND STEEL CO. (1927), 20 B. W. C. C. 260, C. A.
2086. *Add. Citations*:—96 L. J. K. B. 135; 136 L. T. 290; 19 B. W. C. C. 457.
2111. *Add. Annotation*:—**Folld.** Bloor v. Ship Sutton (1926), 20 B. W. C. C. 12.
2114. *Add. Annotations*:—**Consd.** Fife Coal Co. v. M'Arthur (1926), 96 L. J. K. B. 330. **Expld.** Welsh Navigation Steam Coal Co. v. Evans, [1927] A. C. 834.
2115. *Add. Annotations*:—**Consd.** Fife Coal Co. v. M'Arthur (1926), 96 L. J. K. B. 330; Welsh Navigation Steam Coal Co. v. Evans, [1927] A. C. 834.
2117. *Add. Annotation*:—**Consd.** Welsh Navigation Steam Coal Co. v. Evans, [1927] A. C. 834.
2118. *Add. Annotations*:—As to (1) **Refd.** Welsh Navigation Steam Coal Co. v. Evans, [1927] A. C. 834. As to (2) **Refd.** Welsh Navigation Steam Coal Co. v. Evans, [1927] A. C. 834.
- 2120a. —.]—The expression "ordinary necessities of life" in Workmen's Compensation Act, 1925 (c. 84), s. 4, indicates food, clothing, & shelter, but does not extend to such a thing as savings out of the surplus in earnings.—WELSH NAVIGATION STEAM COAL CO. v. EVANS, [1927] A. C. 834; 96 L. J. K. B. 906; 137 L. T. 775; 43 T. L. R. 730; 71 Sol. Jo. 694; 20 B. W. C. C. 537, H. L.; *reusg.* S. C. sub nom. EVANS v. WELSH NAVIGATION STEAM COAL CO. (1926), 96 L. J. K. B. 290, C. A.
2134. *Add. Annotation*:—As to (2) **Consd.** Athey v. Pickerings (1926), 96 L. J. K. B. 250.
2143. *Add. Annotation*:—**Refd.** M'Arthur v. Fife Coal Co. (1926), 19 B. W. C. C. 669.
- 2166a. —.]—A workman, when on shore, which was about three months in a year, lodged with his married sister & paid

### PART XIII. SECT. 1, SUB-SECT. 1.—B.

1623 i. *Duty to maintain premises—Free from concealed danger.*]—Circumstances in which:—*Held*: the master was not liable.—SIGERSETH v. PEDERSEN, [1927] 2 D. L. R. 651; S. C. R. 342.—CAN.

### PART XIII. SECT. 1, SUB-SECT. 1.—D.

1624 v. *Varied*, 14 D. L. R. 575.

### PART XIII. SECT. 1, SUB-SECT. 3.—B.

h i. —.]—Pltf., a chambermaid, after making up a room at the end of a corridor on a Dec. afternoon, left the room, &, after taking a few steps, fell over a man lying on the floor, & was injured. The corridor was fairly dark at the time & was not lighted. The man pltf. fell over disappeared immediately after the accident. The jury found defts. were negligent in not having the corridor properly lighted:—*Held*: the verdict should not be disturbed.—BOOTH v. FORD & SHAW (1927), 38 B. C. R. 279.—CAN.

### PART XIII. SECT. 1, SUB-SECT. 3.—C.

1658 vii. —.]—ARMSTRONG v. CANADIAN NORTHERN RY. (Man.), [1917] 3 W. W. R. 219; 35 D. L. R. 568.—CAN.

### PART XIII. SECT. 1, SUB-SECT. 3.—D. (a).

n. —.]—SIGERSETH v. PEDERSEN, No. 1623 i, ante.—CAN.

sl. *Plant let with crew to third party—Plant unfit for required purpose—Owner of plant not informed as to required purpose.*]—*Held*: the owner was not liable for damages for the death of one of the crew.—DUBE v. ALGOMA STEEL CORPN., LTD. (1916), 35 O. L. R. 371; 9 O. W. N. 389.—CAN.

sm. *Amount of damages recoverable.*—BELLAMY v. GREEN, [1927] 2 D. L. R. 327; 38 B. C. R. 182.—CAN.

### PART XIII. SECT. 1, SUB-SECT. 5.—C. (a).

1697 xviii. —.]—M'EWAN v.

EDINBURGH & DISTRICT TRAMWAYS CO. (1899), 6 S. L. T. 400.—SCOT.

o i. —.]—In Nova Scotia the Crown is entitled to raise the defence of common employment.—CONROD v. R. (1913), 14 Exch. C. R. 472.—CAN

### PART XIII. SECT. 1, SUB-SECT. 5.—C. (d) iv.

1770 iv. —.]—M'CARTAN v. BELFAST HARBOUR COMRS., [1911] 2 I. R. 143, H. J.—IR.

### PART XIV. SECT. 1.

i i. —.]—NIELSEN v. DORATY, [1927] 1 D. L. R. 358; [1927] 1 W. W. R. 20; 21 Sask. L. R. 228.—CAN.

### PART XIV. SECT. 2, SUB-SECT. 1.—A.

a i. —.]—LYNCH v. LIMERICK COUNTY COUNCIL, [1926] I. R. 176.—IR.

ci. — *Nurse.*]—*Held*: not within Act 25, 1914.—LOWE v. BRUCE (1926), 47 N. L. R. 459.—S. AF.

her 30s. a week, & he also paid her £1 a week whilst at sea, out of which, after paying the expenses of his keep, she made a profit. The county ct. judge found that the sister was partially dependent on his earnings:—*Held*: it was a question of fact, & there was evidence to support the finding, & no misdirection.—*BLOOR v. SUTTON (OWNERS)* (1926), 20 B. W. C. C. 12, C. A.

2167. *Add. Citation*:—19 B. W. C. C. 394.

2173. *Add. Annotation*:—*As to* (1) *Dlstd.* Lee v. Breckman (1928), 138 L. T. 610.

2179a. — *Expenses.*]—*Applt.*, a traveller employed by resps., had been engaged at a salary of £450 a year, but subsequently resps. by a letter agreed at his request to show his remuneration as being £150 salary & £300 for expenses. *Applt.* met with an accident & applied for compensation. The county ct. judge found that the agreement in the letter was a thing done for income tax purpose, & that *applt.*'s earnings must be treated as £450 a year, & that he was not a workman within Workmen's Compensation Acts:—*Held*: as there was no evidence as to what *applt.*'s expenses in fact were, the judge's decision was right.—*SKIDMORE v. BULLOCK, LADE & CO., LTD.* (1928), 44 T. L. R. 575; 21 B. W. C. C. 199, C. A.

2213a. — *Jobbing glazier—Supplying own tools.*]—*Held*: there was evidence to support the finding of the county ct. judge that *applt.* was an independent contractor.—*WILLIAMS v. LARSEN, LTD.* (1928), 21 B. W. C. C. 339, C. A.

2216. *Add. Citation*:—*subsequent proceedings*, 15 B. W. C. C. 257, C. A.

*Add. Annotation*:—*Refd.* Williams v. Larsen (1928), 21 B. W. C. C. 339.

2220. *Add. Annotation*:—*Consd.* Roberts v. Gardner (1928), 21 B. W. C. C. 154.

2229. *Add. Annotation*:—*Dlstd.* Watson v. Government Instructional Centre (Birmingham) (1928), 97 L. J. K. B. 596.

2238. *Add. Annotation*:—*Refd.* Geddes v. Dunfermline District Committee (1927), 20 B. W. C. C. 815.

2256. *Add. Annotation*:—*Refd.* Geddes v. Dunfermline District Committee (1927), 20 B. W. C. C. 815.

2261. *Add. Annotations*:—*Consd.* McFarlane v. Hutton (Stevedores) (1926), 96 L. J. K. B. 357. *Refd.* Muscroft v. Stewarts & Lloyds (1928), 21 B. W. C. C. 274.

2264. *Add. Annotations*:—*Appld.* McFarlane v. Hutton (Stevedores) (1926), 96 L. J. K. B. 357; Ferguson v. Shotts Iron Co. (1927), 20 B. W. C. C. 741. *Refd.* Flanagan v. Ackers Whitley (1926), 19 B. W. C. C. 399; Raeburn v. Lochgelly Iron & Coal Co. (1926), 20 B. W. C. C. 637; Muscroft v. Stewarts & Lloyds (1928), 21 B. W. C. C. 274; Wiles v.

Ellerman's Wilson Line (1928), 21 B. W. C. C. 194.

2276. *Add. Annotation*:—*Refd.* Raeburn v. Lochgelly Iron & Coal Co. (1926), 20 B. W. C. C. 637.

2284. *Add. Annotation*:—*Refd.* Raeburn v. Lochgelly Iron & Coal Co. (1926), 20 B. W. C. C. 637.

2297. *Add. Annotation*:—*Dlstd.* Lee v. Breckman (1928), 138 L. T. 610.

After this case add "See, also, Nos. 2586–2589a, post."

2299. *Add. Annotation*:—*Consd.* Lee v. Breckman (1928), 138 L. T. 610.

2300. *Add. Annotations*:—*As to* (2) *Consd.* Lee v. Breckman (1928), 138 L. T. 610. *Generally*, *Mentd.* Tilling-Stevens Motors v. Kent County Council & Transport Minister (1928), 97 L. J. Ch. 371.

2304. *Add. Annotations*:—*As to* (2) *Refd.* Raeburn v. Lochgelly Iron & Coal Co. (1926), 20 B. W. C. C. 637; Ferguson v. Shotts Iron Co. (1927), 20 B. W. C. C. 741.

2308. *Add. Annotations*:—*As to* (1) *Appld.* Raeburn v. Lochgelly Iron & Coal Co. (1926), 20 B. W. C. C. 637. *Refd.* Ferguson v. Shotts Iron Co. (1927), 20 B. W. C. C. 741.

2309. *Add. Annotation*:—*Consd.* Cole v. L. & N. E. Ry. (1928), 21 B. W. C. C. 87. *Refd.* Ferguson v. Shotts Iron Co. (1927), 20 B. W. C. C. 741.

2310. *Add. Annotations*:—*Consd.* Cole v. L. & N. E. Ry. (1928), 21 B. W. C. C. 87. *Refd.* Ferguson v. Shotts Iron Co. (1927), 20 B. W. C. C. 741.

2310a. — *Anthracosis.*]—A platelayer employed by a railway co. worked in tunnels on an average of two days a week. From May 10 to Aug. 2, 1924, he was at work continuously in a long tunnel where a considerable amount of work was being done, & the full train service was running. On Aug. 2, he coughed up a lump of black stuff, & consulted a doctor, who, on Oct. 1, certified that he was suffering from anthracosis, a form of dust disease. He obtained light work as a gardener, but abandoned that on Oct. 9, 1925, & did no further work. No notice of any accident was given, nor was any claim made, until he commenced proceedings for an award some three years after he had given up work as a platelayer. The county ct. judge held *applt.* had not discharged the burden of proving that his past or present incapacity was due to injury by accident which arose out of or in the course of his employment by resps.:—*Held*: the judge was bound in law to come to the conclusion to which he did, & there was no misdirection.—*COLE v. LONDON & NORTH EASTERN RY. CO.* (1928), 21 B. W. C. C. 87, C. A.

2316. *Add. Annotations*:—*Appld.* Flanagan v. Ackers Whitley (1926), 19 B. W. C. C. 399. *Consd.* McFarlane v. Hutton (Stevedores)

PART XIV. SECT. 3, SUB-SECT. 2.—A.  
i. — *Nurse.*]—*Held*: employed to perform work of a casual nature.—*LOWE v. BRUCE* (1926), 47 N. L. R. 459.—S. AF.

PART XIV. SECT. 3, SUB-SECT. 5.  
i. — — —.]—*Pltf.* engaged with deft. to sink a well at an agreed rate per foot. Deft. exercised no control or direction over *pltf.* in the execution of the work, *pltf.* being an expert well-

sinker:—*Held*: *pltf.* was an independent contractor.—*DELOW v. BELL*, [1927] N. Z. L. R. 140.—N.Z.

PART XIV. SECT. 4, SUB SECT. 3.—D.  
a. *Workman receiving weekly payments from contractor—Workman son of contractor.*]—*Held*: although the contractor explained that he would not have made the payments but for the fact that the workman was his son, the facts justified the arbitrator

in finding that the son had elected to take his father as his debtor in the obligation to pay compensation, & he was barred from claiming against the principal.—*GEDDES v. DUNFERMLINE DISTRICT COMMITTEE*, [1927] S. C. 797; 20 B. W. C. C. 815.—SCOT.

PART XIV. SECT. 5, SUB-SECT. 1.—C. (c).

2282 ia. *S. P. BRESAND v. NORTHERN S.S. CO., LTD.*, [1928] N. Z. L. R. 461.—N. Z.

(1926), 96 L. J. K. B. 357. *Distd.* Ferguson v. Shotts Iron Co. (1927), 20 B. W. C. C. 741; *Muscroft v. Stewarts & Lloyds* (1928), 21 B. W. C. C. 274.

2317. *Add. Annotation*:—*Apld.* McFarlane v. Hutton (Stevedores) (1926), 96 L. J. K. B. 357. *Distd.* Muscroft v. Stewarts & Lloyds (1928), 21 B. W. C. C. 274. *Refd.* Ferguson v. Shotts Iron Co. (1927), 20 B. W. C. C. 741.

2317a. *Workman with heart disease—Death from strain.*—A workman, employed in a mine, exerted himself in the ordinary course of his employment in lifting & replacing the wheels of a tub which had left the rails. He immediately complained of pain. He went to work the following day, & on his way home fell dead. Death was due to the bursting of the right auricle, owing to the walls of the heart having steadily become thinner over a period of years. Medical evidence was given to the effect that the strain of lifting would tend to make the workman's condition more critical & so lead to the collapse. The county ct. judge held the workman's death was caused by an accident, & he awarded compensation:—*Held*: it was a question of fact, as to which there was evidence to support the finding.—*FLANAGAN v. ACKERS WHITLEY & Co.* (1926), 19 B. W. C. C. 399, C. A.

2317b. ———.]—A stevedore, who for many years had done his work without ailing, while employed unloading a ship had to fill a tub with iron ore, & at a certain point in the transit of the tub to deflect it so as to allow it to clear an obstacle. While pulling the tub into the right position he suddenly said "Oh!" & ceased work for a moment, but, recovering, put some iron ore into the tub, when he again felt ill & stopped. He lay down, & within half an hour from his saying "Oh!" was dead. On a *post mortem* examination it was found that he suffered from coronary disease of the heart, which sooner or later would have caused death:—*Held*: death resulted from a strain incurred in the ordinary exercise of the man's work, & this amounted to an accident, as to establish an accident it was not necessary to find a sudden or special strain, & an award should be made in favour of the dependant.—*McFARLANE v. HUTTON BROTHERS (STEVEDORES), LTD.* (1926), 96 L. J. K. B. 357; 136 L. T. 547; 20 B. W. C. C. 222, C. A.

*Annotation*:—*Consd.* Muscroft v. Stewarts & Lloyds (1928), 21 B. W. C. C. 274.

2327. *Add. Annotations*:—*As to* (1) *Refd.* Raeburn v. Lochgelly Iron & Coal Co. (1926), 20 B. W. C. C. 637; *Ferguson v. Shotts Iron Co.* (1927), 20 B. W. C. C. 741.

2331a. ———.]—A workman, employed as a ripper, was subject to the disease of osteoperiostitis, rendering his bones brittle & even liable to a spontaneous fracture, but he was able to do his work, & in 1919, by an accident whilst so employed, suffered a fracture of his right femur. He received compensation, but

in 1920 resumed work, & continued so to work until 1924, when the seam on which he was employed was shut down & he ceased to work. In Aug. 1925, he was out for a walk, & after walking two or three miles & while standing still his right tibia suddenly snapped, & he claimed compensation for the injury, on the ground that it was attributable to the accident suffered by him in 1919. The medical theory advanced was that, after the injury suffered from the accident in 1919, the muscles of the leg became inelastic, & if he slipped his power of recovering himself would be affected. There was no evidence that he did slip when the tibia snapped in Aug. 1925. The county ct. judge held the injury was due to the first accident in 1919, & awarded compensation:—*eld*: there was no evidence to support the finding, & the award must be *set* aside.—*WERRIN v. UNITED NATIONAL COLLIERIES, LTD.* (1926), 20 B. W. C. C. 166, C. A.

2336. *Add. Annotations*:—*Distd.* Lawrence v. Matthews (1924), Ltd. (1928), 97 L. J. K. B. 758. *Consd.* Lee v. Breckman (1928), 138 L. T. 610.

2339. *Add. Annotations*:—*As to* (1) *Refd.* Moule v. Marmite Food Extract Co. (1927), 20 B. W. C. C. 446. *As to* (2) *Consd.* Gorman v. Barclay Curle (1925), 19 B. W. C. C. 564. *Refd.* Robertson v. S.S. Appalachee, Rovira v. Same (1926), 136 L. T. 488.

2340a. ———.]—*PRUCE v. DAVEY*, No. 2460b, *post*.

2342. *Add. Annotation*:—*Consd.* Howells v. G. W. Ry. (1928), 97 L. J. K. B. 183.

2342a. ———.]—A dock labourer was employed to load cargo into a steamer in a dock. He could have reached the shed where he worked by a provided route over a metalled road, but as this was a long way round he took a shorter cut, which involved his crossing a number of railway lines on the level, & while doing so was knocked down & killed by a light engine. The county ct. judge found that deceased could have used the provided way through the docks, but as he did not do so, but used an unauthorised route, albeit one commonly used to the knowledge & with the implied permission of the co.'s officials by a large number of workmen, & as at the time when the accident happened he was not doing anything which he was under any obligation to do, the accident did not arise in the course of the employment:—*Held*: this was a misdirection. On the facts, the workman was on the employers' premises, proceeding to work over an accustomed & permitted, though not a provided, route, & the accident arose out of & in the course of the employment.—*HOWELLS v. GREAT WESTERN RY. Co.* (1928), 97 L. J. K. B. 183; 138 L. T. 544; 21 B. W. C. C. 18, C. A.

2348. *Add. Annotation*:—*Refd.* Lye v. British & Argentine Meat Co. (1923), Ltd. (1927), 20 B. W. C. C. 341.

2356. *Add. Annotation*:—*Refd.* Morrison v. S.S.

PART XIV. SECT. 5, SUB-SECT. 1.—  
C. (f) iv.

*sl. Facial paralysis—Resulting from chill.*—Award in workman's favour upheld.—*BURF v. BROKEN HILL SOUTH, LTD.* (1926), 26 S. R. N. S. W. 307; 43 N. S. W. W. N. 69.—AUS.

*sk. Disease proceeding from bacilli.*—  
disease proceeding from bacilli

may be a personal injury by accident.—*SIMPSON v. FINLAYSON* (1926), 26 S. R. N. S. W. 280; 43 N. S. W. W. N. 60.—AUS.

*sl. Infective jaundice.*—*Held*: there was evidence on which the arbitrator was entitled to hold the contracting of the disease was an accident, & the workman's death resulted from an

injury by accident.—*RAEBURN v. LOCHGELLY IRON & COAL Co., LTD.*, [1927] S. C. 21.—SCOT.

PART XIV. SECT. 5, SUB-SECT. 2.—  
B. (a) i.

*ti.* ———.]—*HOLDING v. SOUTH AUSTRALIAN RAILWAYS COMR.*, [1925] S. A. S. R. 92.—AUS.



- Aboukir, Woods v. Same (1928), 21 B. W. C. C. 163.
2357. *Add. Annotation*:—**Consd.** Howells v. G. W. Ry. (1928), 97 L. J. K. B. 183.
2360. *Add. Annotation*:—**Apld.** Howells v. G. W. Ry. (1928), 97 L. J. K. B. 183.
2364. *Add. Annotations*:—**Apld.** M'Pherson v. Reid M'Farlane (1926), 19 B. W. C. C. 575; Preece v. Davey (1926), 136 L. T. 601; Robertson v. S.S. Appalachee, Rovira v. Same (1926), 136 L. T. 488. **Consd.** Lye v. British & Argentine Meat Co. (1923), Ltd. (1927), 20 B. W. C. C. 341; Moule v. Marmite Food Extract Co. (1927), 20 B. W. C. C. 446; Howells v. G. W. Ry. (1928), 97 L. J. K. B. 183.
2366. *Add. Annotations*:—**Apld.** Robertson v. S.S. Appalachee, Rovira v. Same (1926), 136 L. T. 488; Moule v. Marmite Food Extract Co. (1927), 20 B. W. C. C. 446.
2369. *Add. Annotation*:—**Refd.** Robertson v. S.S. Appalachee, Rovira v. Same (1926), 136 L. T. 488.
2370. *Add. Annotation*:—**Refd.** Robertson v. S.S. Appalachee, Rovira v. Same (1926), 136 L. T. 488.
- 2370a. — Different boat used by workman.]—ROBERTSON v. APPALACHEE (OWNERS), ROVIRA v. SAME, No. 2552a, *post*.
2372. *Add. Annotation*:—**Consd.** Gorman v. Barclay Curle (1925), 19 B. W. C. C. 564.
2381. *Add. Annotation*:—**Distd.** Standen v. Smith (1927), 20 B. W. C. C. 305.
- 2384a. — A butcher's boy was allowed to go home for his tea, for which there was not a fixed time, & generally he was told to deliver or take orders from customers on his way there or back. If he had orders to deliver, he rode a bicycle, & on Dec. 17, 1926, he was told he might go for his tea, & was to deliver an order on the way, & take two orders coming back. He delivered the order, had his tea, & was bicycling back, but before he had called for the two orders he was knocked down by a motor lorry & injured. The county ct. judge found that at the time of the accident the boy was engaged on his own affairs in returning from tea, & that the accident did not arise out of & in the course of his employment:—**Held**: there was evidence to support the finding, & no misdirection.—**LYE v. BRITISH & ARGENTINE MEAT CO. (1923), LTD. (1927), 20 B. W. C. C. 341, C. A.**
- 2384b. —.]—A workman employed on a night shift was permitted to leave the premises to get his supper. There was no necessity for this, & he could do as he pleased. He did in fact leave the premises for his supper & met with an accident in a public street:—**Held**: the accident did not arise out of & in the course of the employment, because at the time of the accident the workman was not doing anything in discharge of a duty which he owed to his employers:—**MOULE v. MARMITE FOOD EXTRACT CO. (1927), 20 B. W. C. C. 446, C. A.**
2401. *Add. Annotations*:—**Consd.** Durie v. Anchor-Donaldson Line (1925), 19 B. W. C. C. 512. **Apld.** Gorman v. Barclay Curle (1925), 19 B. W. C. C. 564.
2407. *Add. Annotation*:—**Refd.** Altobelli v. Ellis (1926), 136 L. T. 602.
2415. *Add. Annotations*:—**Consd.** Altobelli v. Ellis (1926), 136 L. T. 602; Edwards v. Gwauncaegurwen Colliery Co., James v. Same, Jenkins v. Same (1926), 96 L. J. K. B. 337; James v. Penderyn Limestone Quarries (Hirwain) (1926), 20 B. W. C. C. 27; Jardine v. Steel Co. of Scotland (1926), 19 B. W. C. C. 726; Clarke v. Southern Ry. (1927), 96 L. J. K. B. 572. **Refd.** Durie v. Anchor-Donaldson Line (1925), 19 B. W. C. C. 512.
2425. *Add. Annotations*:—**Consd.** Edwards v. Gwauncaegurwen Colliery Co., James v. Same, Jenkins v. Same (1926), 96 L. J. K. B. 337; Clarke v. Southern Ry. (1927), 96 L. J. K. B. 572. **Apld.** Howells v. G. W. Ry. (1928), 97 L. J. K. B. 183.
- 2426a. — Alighting from train in motion.]—ALTOBELLI v. JOHN ELLIS & SONS, LTD., No. 2574a, *post*.
2437. *Add. Annotations*:—**Consd.** Altobelli v. Ellis (1926), 136 L. T. 602; Clarke v. Southern Ry. (1927), 96 L. J. K. B. 572.
2440. *Add. Annotation*:—**Consd.** Poland v. Parr, [1927] 1 K. B. 236.
2446. *Add. Annotation*:—*As to* (1) **Refd.** James v. Penderyn Limestone Quarries (Hirwain) (1926), 20 B. W. C. C. 27.
2447. *Add. Annotations*:—**Apld.** Painter v. C. & S. L. Ry. (1926), 20 B. W. C. C. 157. **Refd.** Vickers v. Miners, Thames Steam Tug & Lighterage Co. v. Ingram (1927), 96 L. J. K. B. 490.
- 2448a. —.]—A porter, after a gate of a train had been shut, got on to the small piece of platform outside the gate to talk to the gateman, & as the train gathered speed very quickly, was carried into the tunnel & seriously injured. He acknowledged that the only time a porter had a right to be on the platform of a train was for the purpose of removing luggage. There was also a regulation forbidding any porter to do what he was doing at the time of the accident. The county ct. judge held the accident did not arise out of the employment, & as the act that caused it was not done for the purposes of & in connection with the employers' trade or business, the accident was not to be deemed to have arisen out of the employment:—**Held**: there was evidence to support the award, & no misdirection.—**PAINTER v. CITY & SOUTH LONDON RY. CO. (1926), 20 B. W. C. C. 157, C. A.**

PART XIV. SECT. 5, SUB-SECT. 2.—  
D. (b) i.

**sn.** Workman standing by open door of railway carriage—Door left open.]—**Held**: the workman had not exposed himself to any greater risk than that to which an ordinary traveller in the train would have been exposed, & the accident had arisen out of his employment.—**GREAT INDIAN PENINSULAR RY. CO. v. KASHINATH CHIMAJI (1927), 1 L. R. 52 Bom. 45.—IND**

PART XIV. SECT. 5, SUB-SECT. 2.—  
D. (b) ii.

**sp.** Workman employed to water sheep & look after & bring in horses—Death through accidental discharge of gun—Use of gun expressly forbidden.]—**Held**: the accident did not arise out of deceased's employment.—**DORIZZI v. MACKEY (1925), 27 W. A. L. R. 93.—AUS.**

**sr.** Workman employed to drive reaping machine—Attempt to readjust harness without putting cutting blade out of gear—workman walking along pole between horses & falling on to cutting blade.]—**Held**: while the accident arose in the course of the employment, the risk taken by the driver was not incidental to that employment, but was an added peril due to his own voluntary conduct, & the accident did not arise out of the employment.—**STEPHEN v. COOPER, [1928] S. C. 337.—SCOT.**

2452. *Add. Annotations*:—*Refd.* Durie v. Anchor-Donaldson Line (1925), 19 B. W. C. C. 512; Gorman v. Barclay Curle (1925), 19 B. W. C. C. 564.

2456. *Add. Annotations*:—*Consd.* Pruce v. Davey (1926), 136 L. T. 601; Robertson v. S.S. Appalachee, Rovira v. Same (1926), 136 L. T. 488; Moule v. Marmite Food Extract Co. (1927), 20 B. W. C. C. 446.

2460a. *Farm labourer—Carting turf to own cottage.*—Applt. was employed by resp., his cousin, as a farm labourer. He had all his meals in the farmhouse & was paid 10s. a week. Resp. allowed him to cut turf & use it for his own purposes, & also allowed him to have the use of a horse & cart to cart the turf to his cottage. While so carting it, he was run into by a motor car & received serious injuries:—*Held*: the accident did not arise out of & in the course of applt.'s employment. —STANDEN v. SMITH (1927), 20 B. W. C. C. 305, C. A.

2460b. *Leaving premises to purchase provisions.*—Deceased was employed as the only shop assistant in a shop, & used to have his tea in the shop & went to fetch the milk for his tea from across the road. The shop was left open during his tea hour if he liked. While crossing the road to get the milk, he was knocked down by a motor cyclist, & was killed. Deceased paid for his own milk for his tea, & if he chose to might have got his tea out:—*Held*: the injury having occurred at the time when deceased had left the place of & the course of his employment to get the milk for his tea at his own cost for his own purposes, the accident did not arise out of & in the course of his employment, as he was not within the test laid down in *Parker v. Black Rock (Owners)*, No. 2456, & by LORD ATKINSON in *St. Helens Colliery Co., Ltd. v. Hewitson*, No. 2364.—PRUCE v. DAVEY (1926), 136 L. T. 601; 20 B. W. C. C. 237, C. A.

2472. *Add. Annotation*:—*Consd.* Edwards v. Gwauncaegurwen Colliery Co., James v. Same, Jenkins v. Same (1926), 136 L. T. 494.

2479a. ———.]—A young girl was injured while cleaning a machine for pulping cheese. She was employed to dust bottles & sweep the floors & not to do any work in connection with the machine, & permission to help on the machine had been refused:—*Held*: as the girl was injured when doing something entirely different in kind from what she was employed to do, the accident did not arise out of or in the course of her employment, & Workmen's Compensation Act, 1923 (c. 42), s. 7, did not apply to such a case.—DENNISON v. KEILLER, LTD. (1926), 19 B. W. C. C. 409, C. A.

2483. *Add. Annotation*:—*Refd.* Clarke v. Southern Ry. (1927), 96 L. J. K. B. 572.

2486. *Add. Citation*:—136 L. T. 208.

2488a. *Riding on engine.*—The duty of C., a workman in the employ of the S. Railway, required him to go from point A. to point B. on their premises. Instead of going by a public road he proceeded to walk along the permanent way, a shorter route, in disregard

of an emphatic prohibition. It was a common practice, acquiesced in by the railway's responsible officers, though forbidden by their rules, for workmen passing between A. & B. to travel on an engine if one happened to be running at a convenient time. When C. had walked about three-quarters of the distance along the line an engine going in the same direction passed him at a low speed, & to save himself the trouble of completing the journey on foot, he attempted to mount the engine in motion, with the result that he was seriously & permanently injured. The county ct. judge found that, although the prohibition was a very real one, C. was entitled to compensation, as he was acting "for the purposes of & in connection with" the railway's business within Workmen's Compensation Act, 192' (c. 84), s. 1 (2):—*Held*: the above sub-sect. did not extend compensation to workmen who were not in their employment at all, & as C. in going into a definitely prohibited area, had gone outside his sphere of employment, he could not recover.—CLARKE v. SOUTHERN RY. CO. (1927), 96 L. J. K. B. 572; 137 L. T. 200; 20 B. W. C. C. 309, C. A.

2489. *Add. Annotations*:—*Consd.* Edwards v. Gwauncaegurwen Colliery Co., James v. Same, Jenkins v. Same (1926), 96 L. J. K. B. 337; Jardine v. Steel Co. of Scotland (1926), 19 B. W. C. C. 726; Clarke v. Southern Ry. (1927), 96 L. J. K. B. 572.

2492a. ———.]—Some miners had been conveyed from their work at the face to the shaft in a train of tubs provided by the employers. Some conveyance was necessary in order to enable the men to leave the pit within the limit of seven hours permitted for each shift. Subsequently the employers provided a "spake," i.e., a train of special vehicles containing seats. On the occasion of the accident the driver in charge of the spake, for some purpose of his own, did what he had sometimes done before, namely, instead of using the spake used a train of tubs for conveying the miners, who knew that riding on tubs was prohibited, but did not complain. The train of tubs broke & overturned, & two of the miners were killed, & one was slightly injured:—*Held*: the prohibition was of the class that dealt with conduct within the sphere of the employment, & Workmen's Compensation Act, 1925 (c. 84), s. 1 (2), applied. It was necessary for the employers that the men should leave within a specified time, & the act was done for the purposes of the employers' trade or business, & compensation should be awarded to the dependants of the two miners who were killed, but not to the slightly injured miner, who was, for that reason, not covered by sect. 1 (2).—EDWARDS v. GWAUNCAEGURWEN COLLIERY CO., JAMES v. SAME, JENKINS v. SAME (1926), 96 L. J. K. B. 337; 136 L. T. 494; 20 B. W. C. C. 75, C. A.

2494. *Add. Annotation*:—As to (1) *Refd.* James v. Penderyn Limestone Quarries (Hirwain) (1926), 20 B. W. C. C. 27.

2494a. ———.]—A shunter was employed to accompany a short train & to get down to open



gates, through which the train had to pass, & also to do the necessary shunting. He should have ridden in the front waggon, but used to ride by means of his coupling stick on the buffer so as to enable him to get off & on more easily. Whilst so engaged the train went over a stone & jolted him off, & the injury he received resulted in the loss of a leg. Riding on a waggon by means of a coupling pole was prohibited:—*Held*: the prohibition was not one defining the sphere of the man's employment, though the breach of it, apart from Workmen's Compensation Act, 1925 (c. 84), s. 1 (2), would have prevented the accident arising out of the employment. There was evidence to support the finding of the county ct. judge that the act done was for the purposes of & in connection with the employers' trade or business, & the accident, by sect. 1 (2), was to be deemed to arise out of the employment.—*JAMES v. PENDERYN LIMESTONE QUARRIES (HIRWAIN), LTD.* (1926), 20 B. W. C. C. 27, C. A.

*Annotation*:—*Refd.* *Stokoe v. Mickley Coal Co.* (1928), 138 L. T. 566.

2496. *Add. Annotation*:—*As to* (1) *Refd.* *Edwards v. Gwauncaegurwen Colliery Co., James v. Same, Jenkins v. Same* (1926), 96 L. J. K. B. 337.

2499. *Add. Annotations*:—*As to* (1) *Consd.* *Edwards v. Gwauncaegurwen Colliery Co., James v. Same, Jenkins v. Same* (1926), 96 L. J. K. B. 337; *Apld.* *M'Corquindale v. Carnbroe Coal Co.* (1926), 20 B. W. C. C. 689. *Consd.* *Clarke v. Southern Ry.* (1927), 96 L. J. K. B. 572. *Distd.* *Wood v. Garscube Colliery Co.* (1927), 20 B. W. C. C. 837. *Refd.* *Dennison v. Keiller* (1926), 19 B. W. C. C. 409. *As to* (2) *Apld.* *Edwards v. Gwauncaegurwen Colliery Co., James v. Same, Jenkins v. Same* (1926), 96 L. J. K. B. 337. *Consd.* *James v. Penderyn Limestone Quarries (Hirwain)* (1926), 20 B. W. C. C. 27; *Carter v. British Thomson-Houston Co.* (1927), 137 L. T. 329. *Apld.* *Stokoe v. Mickley Coal Co.* (1928), 138 L. T. 566. *Refd.* *Clarke v. Southern Ry.* (1927), 96 L. J. K. B. 572.

2501. *Add. Annotations*:—*Consd.* *Edwards v. Gwauncaegurwen Colliery Co., James v. Same, Jenkins v. Same* (1926), 96 L. J. K. B. 337. *Distd.* *Carter v. British Thomson-Houston Co.* (1927), 137 L. T. 329. *Refd.* *James v. Penderyn Limestone Quarries (Hirwain)* (1926), 20 B. W. C. C. 27; *Stokoe v. Mickley Coal Co.* (1928), 138 L. T. 566.

2506. *Add. Annotations*:—*Consd.* *Stokoe v. Mickley Coal Co.* (1928), 138 L. T. 566. *Refd.* *Guest v. Gaston*, [1927] 1 K. B. 1.

2506a. ————*]*—*S.*, a stoneman, was employed by resps. driving a drift through rock by shotfiring & was found dead within three yards of the working face, his body being very badly damaged & his left arm practically blown off, he being a left-handed man. The drill & ratchet were found burnt, broken, & twisted a few yards from the

working face, & the standard some way from the face & undamaged. The drill & ratchet together with the standard were used for drilling holes to put the shots in, but if a shot misfired & the stemming was drilled out the standard was not used. *S.* was a licensed shot firer, & his duty would be to deal with the case of a misfire, but the use of a hole in which a shot had misfired was prohibited, as also the drilling out of it the stemming in order to put in another charge, it being directed that a fresh hole must be bored not less than a foot from the old hole. There was no evidence that there had been any attempt to drill a fresh hole. The county ct. judge held the man was killed whilst doing a prohibited act, but, as his motive was to save himself the trouble of drilling a fresh hole, he was not at the time of the accident doing an act for the purposes of & in connection with the employers' trade or business within Workmen's Compensation Act, 1925 (c. 84), s. 1 (2), & his dependant was not entitled to recover compensation:—*Held*: the personal motive of the man in doing the prohibited act was not a criterion as to whether he was doing it for the purposes of & in connection with the employers' trade or business, & as the man was engaged at the working face within the sphere of his employment he must be deemed to have acted for the purposes of & in connection with the employers' trade or business, & though doing a prohibited act, he was brought back within sect. 1 (1), & compensation was payable as for an accident arising out of & in the course of the employment.—*STOKOE v. MICKLEY COAL CO., LTD.* (1928), 138 L. T. 566; 21 B. W. C. C. 70, C. A.

2511. *Add. Citations*:—96 L. J. P. C. 17; 136 L. T. 66.

*Add. Annotations*:—*As to* (2) *Consd.* *James v. Penderyn Limestone Quarries (Hirwain)* (1926), 20 B. W. C. C. 27. *Apld.* *Stokoe v. Mickley Coal Co.* (1928), 138 L. T. 566.

2515a. *Workman entering prohibited place by mistake.*—A series of cubicles for electrical works were in course of being fitted up, some of which had been completed & contained live electrical machinery, & were locked. There was an express order to the workmen not to enter the completed cubicles. The cubicles being worked upon were quite close to those finished, being in the same series. The workman, a very competent man at his job, was very short-sighted, & was found electrocuted in one of the completed cubicles, he having unlocked the others. The county ct. judge drew the inference that the workman had entered a completed cubicle by mistake, & was there for the purposes of his employers' trade or business, & that the accident arose out of & in the course of his employment:—*Held*: there was evidence to support this inference of fact, & although the workman was acting contrary to a prohibition, the

PART XIV. SECT. 5, SUB-SECT. 2.—  
E. (b) iii.

2498 iii. ———— *Firing shots—Shot firer connecting cable with charge—Premature firing by miner.*—*Held*: the shot firer was entitled to compensation.—*WOOD v. GARS\_CUBE COLLIERY CO.*, [1927] S. C. 877; 20 B. W. C. C.

b i. ———— *Fireman converting electric detonator into fuse detonator.*—*Held*:

the workman, when injured, was doing an act not within the scope of his employment, & even assuming it was done for the purposes of the employer's business, it was not an act to which Workmen's Compensation Act, 1923 (c. 42), s. 7, applied.—*M'CORQUINDALE v. CARNBROE COAL CO., LTD.*, [1927] S. C. 14.—*SCOT.*

d i. *Allowing burning material to lie about mine.*—*Held*: (1) a smouldering

cigarette was "burning material" within Coal Mines General Regulations, 1913, r. 12; (2) there was evidence on which the arbitrator was entitled to hold that the workman had been guilty of serious & wilful misconduct, in respect that the facts showed that he had created a dangerous situation as a result of a deliberate act of the will.—*SMITH v. WEMYSS COAL CO.*, [1928] S. C. 180.—*SCOT.*



accident must be deemed to arise out of & in the course of the employment.—*CARTER v. BRITISH THOMSON-HOUSTON CO., LTD.* (1927), 137 L. T. 329; 20 B. W. C. C. 331, C. A.

2535. *Add. Annotation*:—*Refd.* *Edwards v. Gwauncaegurwen Colliery Co., James v. Same, Jenkins v. Same* (1926), 96 L. J. K. B. 337.

2547. *Add. Annotation*:—*As to* (2) *Refd.* *Durie v. Anchor-Donaldson Line* (1925), 19 B. W. C. C. 512.

2548. *Add. Annotation*:—*Apld.* *Morrison v. S.S. Aboukir, Woods v. Same* (1928), 21 B. W. C. C. 163.

2552a. *Drowned when using boat not provided by employer.*—Five sailors got leave to go on shore. The bo'sun said that they were not bound to be back in the ship until 6.15 a.m. A launch had been provided to take the sailors on leave to the shore & back again, & the captain told the men that the last journey to the ship by the launch would be made at 8 p.m., & that if they came back later than that, they would have to find some other means of returning to the ship. The men desired to enjoy their leave till later than 8 p.m., & tried to arrange with the man who worked the launch to come for them at 10 p.m., offering to pay him 2s. each, but the launch never came for them at 10 p.m., so they got into the first boat handy, a dinghy, & borrowed a scull with which they propelled the dinghy from the stern. The dinghy, though the men were unaware of it, was rotten & sank, the result being that three of the five men were drowned:—*Held*: there was no contractual obligation on the deceased men to return to their ship by the boat they used, which was not provided by the employers, & as no such duty was on the men to use that boat, the accident by which they lost their lives was not in the course of performing some duty arising out of their contract of service, or, in other words, in the course of their employment.—*ROBERTSON v. APPALACHEE (OWNERS), ROVIRA v. SAME* (1926), 136 L. T. 488; 20 B. W. C. C. 57, C. A.

*Annotation*:—*Consd.* *Morrison v. S.S. Aboukir, Woods v. Same* (1928), 21 B. W. C. C. 163.

2552b. *Standing up in boat to take hold of gangway—Boat sinking.*—M. & W. were members of the crew of a ship lying in a river about twenty-five feet from the wharf. The ship provided no boat for the purpose of going to or from the shore. A game of football was being played on shore, at which the captain & some of the officers were present & in which M. took part. On returning to the wharf after the game M. hailed W., who got into a canoe at the foot of the gangway & fetched M. When M. got up to take hold of the gangway, the canoe filled, & both men were drowned. The county ct. judge held the accident was occasioned by a reasonable attempt to get hold of the gangway, & such attempt involved more than an ordinary risk of navigation to which any passenger would be exposed, & was an act specifically connected with his employment on the ship, & he made an award in favour of the dependants in both cases, on the ground that both men had been drowned in an accident arising out of & in the course of their employment:—*Held*: there was evidence to support the finding.—*MORRISON*

*v. ABOUKIR (OWNERS), WOODS v. SAME* (1928), 21 B. W. C. C. 163, C. A.

2559. *Add. Annotations*:—*As to* (3) *Apld.* *Howells v. G. W. Ry.* (1928), 97 L. J. K. B. 183. *Refd.* *Jardine v. Steel Co. of Scotland* (1926), 19 B. W. C. C. 726.

2569. *Add. Annotation*:—*Refd.* *Gorman v. Barclay Curle* (1925), 19 B. W. C. C. 564.

2572. *Add. Annotations*:—*Expld.* *Edwards v. Gwauncaegurwen Colliery Co., James v. Same, Jenkins v. Same* (1926), 96 L. J. K. B. 337. *Consd.* *Clarke v. Southern Ry.* (1927), 96 L. J. K. B. 572. *Refd.* *James v. Penderyn Limestone Quarries (Hirwain)* (1926), 20 B. W. C. C. 27; *Stokoe v. Mickley Coal Co.* (1928), 138 L. T. 566.

2573. *Add. Annotations*:—*Consd.* *Dennison v. Keiller* (1926), 19 B. W. C. C. 409. *Refd.* *James v. Penderyn Limestone Quarries (Hirwain)* (1926), 20 B. W. C. C. 27.

2574a. —.]—Deceased was a mosaic worker employed by applts., who had a flooring contract at K., & deceased was carrying out at K. mosaic work for the purposes of the contract. It was the duty of deceased to travel by train from L. to K. daily, & he was paid by applts. for the time occupied in so travelling, & his railway ticket was also paid for by applts. Deceased, having gone to sleep, got out of the train whilst it was in motion leaving K. & slipped on the platform as he landed, fell heavily on his back, his head striking the platform violently, & died of the injuries received:—*Held*: though deceased was in the course of his employment whilst travelling in the train, he was committing an illegal act in getting out of the train while in motion, & was doing an act which did not arise out of the employment, but under the above sect. it must be deemed to arise out of & in the course of the employment as having been done in pursuance of & for the purposes of the employers' trade or business, & the act done was not so contrary to law as to put the man wholly outside the sphere of the employment, & his widow was entitled to compensation.—*ALTOBELLI v. JOHN ELLIS & SONS, LTD.* (1926), 136 L. T. 602; 20 B. W. C. C. 190, C. A.

2578. *Add. Annotations*:—*Apld.* *Lye v. British & Argentine Meat Co. (1923), Ltd.* (1927), 20 B. W. C. C. 341; *Moule v. Marmite Food Extract Co.* (1927), 20 B. W. C. C. 446. *Refd.* *Pruce v. Davey* (1926), 136 L. T. 601.

2579. *Add. Annotations*:—*Consd.* *Moule v. Marmite Food Extract Co.* (1927), 20 B. W. C. C. 446. *Refd.* *Gorman v. Barclay Curle* (1925), 19 B. W. C. C. 564; *Pruce v. Davey* (1926), 136 L. T. 601.

2582. *Add. Annotation*:—*Consd.* *Lawrence v. Matthews* (1924), Ltd. (1928), 97 L. J. K. B. 758.

2583. *Add. Annotation*:—*Refd.* *Lawrence v. Matthews* (1924), Ltd. (1928), 97 L. J. K. B. 758.

2589a. —.]—A porter employed by furniture & upholstery makers claimed compensation for injury by accident arising out of an assault committed upon him in the course of his employment. Whilst engaged in loading furniture into a railway van outside resp.'s premises an altercation arose between appct. & the van driver in consequence of a suggestion made to the driver that he should

assist in expediting the work. The driver struck appct. in the face, & so injured one of his eyes that it had to be removed. The county ct. judge dismissed the application, finding that though the assault was an accident, it was not one of the risks of appct.'s employment that he should be assaulted, & it was not the result of doing anything of service to his employer, & it was not an accident arising out of the employment:—*Held*: the decision was right, as there was evidence upon which the judge could support his decision, & no misdirection.—*LEE v. BRECKMAN (S. & I.) & Co.* (1928), 138 L. T. 610; 44 T. L. R. 235; 72 Sol. Jo. 154; 21 B. W. C. C. 32, C. A.

**2602a.** ———.]—A ship's fireman was found injured at midnight at the bottom of a roped-in hold, after having been helped on board three hours earlier in a hopelessly drunken condition. The accident happened when he was engaged in carrying food, it being no part of his duty to do so, on that night. The county ct. judge found that the workman must have crawled through the ropes round the hold without having any duty whatsoever to do so, & held the accident arose neither out of nor in the course of his employment:—*Held*: the judge could have come to no other conclusion on the evidence, & there was no misdirection.—*WATSON v. ALEPPO (OWNERS)* (1927), 20 B. W. C. C. 634, C. A.

**2604.** *Add. Annotation*:—*As to (2) Reifd. Lawrence v. Matthews* (1924), Ltd. (1928), 97 L. J. K. B. 758.

**2605.** *Add. Annotation*:—*Reifd. Lawrence v. Matthews* (1924), Ltd. (1928), 97 L. J. K. B. 758.

**2619.** *Add. Annotations*:—*Appld. Lawrence v. Matthews* (1924), Ltd. (1928), 97 L. J. K. B. 758. *Consd. Lee v. Breckman* (1928), 138 L. T. 610.

**2619a.** ———.]—A commercial traveller was killed by a falling tree while motor-cycling upon his employers' business. The fall of the tree was apparently caused by a gale of unusual force:—*Held*: as deceased was brought into a danger zone by reason of his employment, the accident arose "out of the employment" within Workmen's Compensation Act, 1925 (c. 84), s. 1, & the question as to what caused the fall of the tree was irrelevant.—*LAWRENCE v. MATTHEWS* (1924), LTD. (1928), 97 L. J. K. B. 758; 44 T. L. R. 812; 21 B. W. C. C. 345, C. A.

**2627.** *Add. Annotations*:—*As to (1) Reifd. Lawrence v. Matthews* (1924), Ltd. (1928), 97 L. J. K. B. 758. *As to (2) Reifd. Lawrence v. Matthews* (1924), Ltd. (1928), 97 L. J. K. B. 758.

**2646.** *Add. Annotation*:—*Consd. Muscroft v. Stewarts & Lloyds* (1928), 21 B. W. C. C. 274.

**2649.** *Add. Annotations*:—*Appld. Stroud v. Bath Gas Light & Coke Co.* (1927), 137 L. T. 623. *Consd. Stokoe v. Mickley Coal Co.* (1928), 138 L. T. 566.

**2652.** *Add. Annotation*:—*Reifd. Stroud v. Bath Gas Light & Coke Co.* (1927), 137 L. T. 623.

**2653a.** ———.]—A workman in charge of a coke-conveyor was found entangled in the machinery, & died shortly after being released. There was no explanation of how he met with the accident, but when last seen shortly before he was acting in the course of his duty. The county ct. judge drew the inference from the facts before him that the workman was acting in the course of his employment:—*Held*: the county ct. judge was entitled to draw the inference he did, & there was no misdirection.—*STROUD v. BATH GAS LIGHT & COKE CO.* (1927), 137 L. T. 623; 20 B. W. C. C. 496, C. A.

*Annotation*:—*Consd. Muscroft v. Stewarts & Lloyds* (1928), 21 B. W. C. C. 274.

**2656.** *Add. Annotation*:—*As to (1) Consd. Jones v. Cory* (1926), 20 B. W. C. C. 251; *Muscroft v. Stewarts & Lloyds* (1928), 21 B. W. C. C. 274.

**2660.** *Add. Annotation*:—*Reifd. Gill v. Perrott* (1928), 21 B. W. C. C. 9.

**2665.** *Add. Annotations*:—*Consd. Raeburn v. Lochgelly Iron & Coal Co.* (1926), 20 B. W. C. C. 637. *Reifd. Ferguson v. Shotts Iron Co.* (1927), 20 B. W. C. C. 741.

**2666.** *Add. Annotations*:—*Consd. Cole v. L. & N. E. Ry.* (1928), 21 B. W. C. C. 87. *Reifd. Ferguson v. Shotts Iron Co.* (1927), 20 B. W. C. C. 741.

**2668a.** ——— *Dispenser—Scratch.*]—Appct. was employed by two doctors in partnership as a dispenser, her duties being to fill medicine bottles & clean instruments. On Nov. 9, 1926, at 10.30 a.m., whilst so employed, she noticed that her right thumb was bleeding, but was not sure how the scratch which caused the bleeding had occurred, & she had not felt pain. She inferred that she must have knocked it at the time on a rough bit of wood at the side of the sink or on the edge of a cork box. She applied iodine, but as the bleeding did not stop she went to the assistant, who bandaged her thumb, & she continued at work until 11.30, when she went to one of the partners, who dressed the wound. On Nov. 16 she felt too unwell to go to work, & subsequently was in the infirmary until Jan. 18, 1927, suffering from septic poisoning:—*Held*: (1) there were sufficient facts proved before the county ct. judge to enable him to draw an inference one way or the other, so that there was no necessity for surmise, conjecture, or guess; (2) the employers had had knowledge of the accident, & notice was not necessary.—*GILL v. PERROTT* (1928), 21 B. W. C. C. 9, C. A.

**2668b.** ——— *Workman moving gutters with sharp edges.*]—On May 16 a workman was employed as a labourer in moving semi-circular rain gutters with somewhat sharp edges, & returned home with a slight wound in his right shoulder. On the following day he told a fellow-workman that he was "feeling his shoulder," but he continued at work until May 21. A doctor was called in on May 23, but the workman rapidly grew worse & died on May 25 from septicæmia.

## PART XIV. SECT. 5, SUB-SECT. 4.—A.

**2642** viii. ———.]—*HETHERINGTON v. DUBLIN & BLESSINGTON STEAM TRAMWAY CO.*, [1927] Ir. 75; 20 B. W. C. C. 852.—IR.

## PART XIV. SECT. 5, SUB-SECT. 4.—B. (a).

**2652** ii. ———.]—*Workman's finger crushed by mangle—Pain wrongfully attributed by workman to prick from thorn.*]—*BRIDSON v. PERTH DIOCESAN TRUSTEES* (1925), W. A. L. R.

## 96.—AUS.

## PART XIV. SECT. 5, SUB-SECT. 4.—B. (d).

sw. *Claim unsuccessful—Origin of infection unexplained.*]—*GALES v. HOLLDAY*, [1927] N. Z. L. R. 263.—N.Z.

The widow spoke to the employers' time-keeper of the death & gave formal notice on June 11. The county ct. judge held he was entitled to infer an injury resulting from an accident which arose out of & in the course of the employment, & also held the employers were not prejudiced by any delay in giving notice:—*Held*: there was evidence to support the findings, & no misdirection.—*FLETCHER v. SINCLAIR IRON CO., LTD.* (1928), 21 B. W. C. C. 62, C. A.

2681. *Add. Annotation*:—*Refd.* *Stroud v. Bath Gas Light & Coke Co.* (1927), 137 L. T. 623.

2690a. ——— *Chronic glaucoma.*]—A stoker, who was already blind in his left eye, complained that he had become completely blind. He alleged that a foreign body had entered his right eye, but at the time of the alleged accident he made no complaint of anything having entered his right eye. A doctor, who examined him, diagnosed the case as one of chronic glaucoma. The county ct. judge found that the workman was at all material times suffering from chronic glaucoma, & that there was no injury by accident arising out of or in the course of his employment:—*Held*: there was evidence to support the finding, & no misdirection.—*WARSAWA v. WATSNES (OWNERS)* (1921), 21 B. W. C. C. 85, C. A.

2693. *Add. Annotations*:—*Appl.* *Stroud v. Bath Gas Light & Coke Co.* (1927), 137 L. T. 623. *Consd.* *Stokoe v. Mickley Coal Co.* (1928), 138 L. T. 566.

2706. *Add. Annotations*:—*Consd.* *Muscroft v. Stewarts & Lloyds* (1928), 21 B. W. C. C. 274. *Refd.* *Gill v. Perrott* (1928), 21 B. W. C. C. 9.

2710. *Add. Annotation*:—*Consd.* *Muscroft v. Stewarts & Lloyds* (1928), 2 B. W. C. C. 274.

2710a. ———.]—A miner, who was known to be suffering from valvular disease of the heart, returned to work against his doctor's advice. His condition was such that he was liable to collapse or sudden death at any moment. He went down the mine at 10.30 p.m., & was alive & well at 3 o'clock. At 4 o'clock he was found dead in his stall, lying back as though asleep. There was no evidence of any fall of roof, & he had no pick in his hand. He was alone at the time of his death, & there was no evidence of what the man was actually doing:—*Held*: there was no evidence that the man's death was caused by any strain at work, & no evidence that death resulted from any injury by accident arising out of the employment.—*MUSCROFT v. STEWARTS & LLOYDS, LTD.* (1928) 21 B. W. C. C. 274, C. A.

2713. *Add. Annotation*:—*Refd.* *Ferguson v. Shotts Iron Co.* (1927), 20 B. W. C. C. 741.

2714. *Add. Annotation*:—*Consd.* *Flanagan v. Ackers Whitley* (1926), 19 B. W. C. C. 399.

2747. *Add. Annotation*:—*Refd.* *Wood v. Garscube Colliery Co.* (1927), 20 B. W. C. C. 837.

2751. *Add. Annotation*:—*Mentd.* *Wood v. Garscube Colliery Co.* (1927), 20 B. W. C. C. 837.

2757. *Add. Annotation*:—*Refd.* *Wood v. Garscube Colliery Co.* (1927), 20 B. W. C. C. 837.

2759. *Add. Annotation*:—*As to (2)* *Refd.* *Gilmour*

*v. Garrallan Coal Co.* (1926), 19 B. W. C. C. 683.

2766. *Add. Annotation*:—*As to (2)* *Consd.* *Young v. Keeble* (1928), 21 B. W. C. C. 294.

2768. *Add. Annotation*:—*Appl.* *Thorpe v. Sadler, Sadler v. Thorpe* (1927), 20 B. W. C. C. 488.

2768a. ———.]—A workman was struck on the elbow while passing through a swing door. He suffered great pain & had to see a doctor. At the end of a week symptoms of osteomyelitis showed themselves. The arm gradually grew worse & was finally amputated. The county ct. judge held the incapacity was due to the accident:—*Held*: there was evidence to support the finding, & no misdirection.—*VINCE v. ABEL & IMRAY* (1928), 21 B. W. C. C. 151, C. A.

2783. *Add. Annotation*:—*Appl.* *Gilmour v. Garrallan Coal Co.* (1926), 19 B. W. C. C. 683.

2787. *Add. Annotation*:—*Consd.* *Lewis v. Guest, Keen & Nettlefolds, Watkins v. Same, Tucker v. Same, Ingram v. Crawshay* (1927), 96 L. J. K. B. 664.

2799. *Add. Annotations*:—*Consd.* *Evans v. Gilbie* (1926), 96 L. J. K. B. 117; *Wagstaff v. Gutta Percha Co.* (1927), 20 B. W. C. C. 430; *Williams v. Tredegar Iron & Coal Co.* (1927), 96 L. J. K. B. 722.

2795. *Add. Annotation*:—*Refd.* *Gilmour v. Garrallan Coal Co.* (1926), 19 B. W. C. C. 683.

2799. *Add. Annotation*:—*Consd.* *Werrin v. United National Collieries* (1926), 20 B. W. C. C. 166.

2803. *Add. Annotations*:—*Consd.* *Lewis v. Guest, Keen & Nettlefolds, Watkins v. Same, Tucker v. Same, Ingram v. Crawshay* (1927), 96 L. J. K. B. 664. *Refd.* *Williams v. Cwmaman Coal Co.* (1927), 20 B. W. C. C. 476.

2811. *Add. Annotation*:—*Refd.* *Fyfe v. Fife Coal Co.* (1926), 20 B. W. C. C. 548.

2811a. ———.]—Where an award was made terminating weekly payments, on the grounds that refusal to undergo certain treatment was unreasonable, & that the *onus* lay on the workman to prove that the proposed operation would not have cured him & that he was reasonable in refusing the operation:—*Held*: the *onus* lay on the employers to show that the workman would have recovered if he had undergone the treatment.—*INDIA RUBBER, \* GUTTA PERCHA & TELEGRAPH WORKS CO., LTD. v. CHAPMAN* (1926), 20 B. W. C. C. 184, C. A.

2815. *Add. Annotation*:—*Refd.* *Cauldon Potteries v. Johnson* (1926), 20 B. W. C. C. 42.

2822a. ——— *Whether refusal unreasonable.*]—The question whether the refusal of a workman to undergo treatment is reasonable or unreasonable, is one of fact.—*FYFE v. FIFE COAL CO., LTD.* (1927), 138 L. T. 65; 20 B. W. C. C. 548, H. L.

2831a. ———.]—A miner received an injury to the spine, which caused paralysis of the lower part of the body. An operation was unsuccessful, & the injury was classed as incurable. The miner was taken to his home & suffered great pain. He committed suicide by cutting his femoral artery, & left a letter addressed to his wife explaining his act. The county ct. judge held the man was not insane when he committed suicide, & death



**Cases 2831a—2999. ENGLISH AND EMPIRE DIGEST SUPPLEMENT.**

had not resulted from the injury :—*Held* : it was a question of fact, as to which there was evidence to support the finding, & there was no misdirection.—*BEVAN v. LANCASTERS STEAM COAL COLLIERIES* (1927), 20 B. W. C. C. 241, C. A.

2833. *Add. Annotation* :—*As to* (2) *Refd.* *Bevan v. Lancasters Steam Coal Collieries* (1927), 20 B. W. C. C. 241.

2839. *Add. Annotation* :—*Consd.* *Lewis v. Guest, Keen & Nettlefolds, Watkins v. Same, Tucker v. Same, Ingram v. Crawshay* (1927), 96 L. J. K. B. 664.

2840. *Add. Annotation* :—*Refd.* *Lewis v. Guest, Keen & Nettlefolds, Watkins v. Same, Tucker v. Same, Ingram v. Crawshay* (1927), 96 L. J. K. B. 664.

2849a. *Contents—All injuries need not be specified.*  
—The mere fact that notice has to be given does not imply that all injuries must be specified.

A workman gave notice of an accident, in which he complained of injury to his ribs, & his employers paid him compensation. He returned to work after two months. He then began to suffer with his hip, & eventually had to cease work on that account. His employers resisted a second claim for compensation, on the ground that no injury to the hip was specified in the notice of the accident. The county ct. judge found that the injury to the hip was due to the original accident, that the employers had not been prejudiced by any failure to mention the hip in the notice of accident, as they had paid compensation to the workman after an examination by their own doctor :—*Held* : there was evidence to support the findings, & no misdirection.—*WILES v. ELLERMAN'S WILSON LINE* (1928), 21 B. W. C. C. 194, C. A.

2856a. — — — — —.]—A workman cut his finger slightly. He continued at work for about a month, when his thumb became swollen & he had to go to the infirmary, where a week later he died of blood-poisoning. Notice of the accident was not given to the employers until a month after the workman's death. The county ct. judge found that notice of the accident had not been given as soon as practicable, & that the employers were prejudiced by the want of notice :—*Held* : it was a question of fact, as to which there was evidence to support the finding.—*EVANS v. SIMPSON (JAMES) & SON* (1926), 19 B. W. C. C. 407, C. A.

2856b. — — — — —.]—On Jan. 31, 1927, a workman suffered an accident to his right thumb. He left work as a result of the accident, & a week later, on Feb. 7, notice of the accident was given to the employers on his behalf. The county ct. judge found that the notice was not given as soon as practicable after the accident, but he also found that the employers were not prejudiced in their defence by such want of notice :—*Held* : there was evidence to support the findings, & no misdirection.—*HINKS v. RISCOE (JAMES) & SONS* (1927), 96 L. J. K. B. 1068 ; 20 B. W. C. C. 558, C. A.

2885a. — — — — —.]—*GILL v. PERROTT*, No. 2668a, *ante*.

2890a. — — — — —.]—When notice of an accident has not been given as soon as practicable after the accident, it is a question of fact for the county ct. judge whether the employer is or is not prejudiced in his defence by the want of such notice, & if there was evidence upon which the judge could so decide, the ct. will not interfere.—*DERRY v. GREAT WESTERN RY. Co.* (1926), 19 B. W. C. C. 405, C. A.

2890b. — — — — —.]—*EVANS v. SIMPSON (JAMES) & SON*, No. 2856a, *ante*.

2890c. — — — — —.]—*HINKS v. RISCOE (JAMES) & SONS*, No. 2856b, *ante*.

2890d. — — — — —.]—*FLETCHER v. SINCLAIR IRON Co., LTD.*, No. 2668b, *ante*.

2921. *Add. Annotations* :—*Refd.* *Drewitt v. Britannic Assce.* (1927), 137 L. T. 511 ; *Soyer v. Johnson, Matthey* (1927), 96 L. J. K. B. 1011.

2930. *Add. Annotations* :—*Consd.* *Drewitt v. Britannic Assce.* (1927), 137 L. T. 511 ; *Soyer v. Johnson, Matthey* (1927), 96 L. J. K. B. 1011.

2949a. — — — — —.]—*WILES v. ELLERMAN'S WILSON LINE*, No. 2849a, *ante*.

2956. *Add. Annotation* :—*Consd.* *Telephone Manufacturing Co. v. Abel* (1928), 21 B. W. C. C. 289.

2958. *Add. Annotation* :—*As to* (2) *Consd.* *Telephone Manufacturing Co. v. Abel* (1928), 21 B. W. C. C. 289.

2968a. — — — — —.]—An injured workman was treated in hospital by a consultant of the hospital. She returned to work, but ceased work again owing to the injury. She was then requested by her employers to submit to an examination by the same consultant acting as their medical adviser. She refused, on the ground that he would be a necessary witness on her behalf in any arbn. proceedings. The employers applied for suspension of weekly payments until the examination had taken place. The county ct. judge granted the application, on the ground that the reason given for the refusal was itself unreasonable :—*Held* : to find that the refusal was unreasonable merely because the workman objected to being examined, at the instance of the employer, by a consultant at the hospital at which she had been treated, was not sufficient. The matter must be further inquired into to ascertain (1) whether this consultant was the only medical adviser available to the workman, & (2) whether the woman's case, if it went to arbn., would be imperilled by reference to this particular consultant.—*TELEPHONE MANUFACTURING Co., LTD. v. ABEL* (1928), 21 B. W. C. C. 289, C. A.

2983. *Add. Annotations* :—*Refd.* *Drewitt v. Britannic Assce.* (1927), 137 L. T. 511. *Mentd.* *Soyer v. Johnson, Matthey* (1927), 96 L. J. K. B. 1011.

2999. *Add. Annotation* :—*Consd.* *Soyer v. Johnson, Matthey* (1927), 96 L. J. K. B. 1011.

**PART XIV. SECT. 7, SUB-SECT. 1.—C.**

2850 ii. — — — — —.]—An accident occurred on Jan. 16 :—*Held* : a notice

given on Jan. 22 was sufficient.—*GREAT INDIAN PENINSULAR RY. Co. v. KASHINATH CHIMAJI* (1927), 1 L. R. 52 Bom. 45.—*IND.*

**PART XIV. SECT. 8, SUB-SECT. 1.**

xx. *Failure of employer to file prescribed statement—Effect of.*—*BLACKBURN v. MCINTOSH (N. B.)*, [1927] 1 D. L. R. 1084.—*CAN.*

- 3005. Add. Annotation :—**Consd. *Soyer v. Johnson*, Matthey (1927), 96 L. J. K. B. 1011.
- 3006. Add. Annotation :—**Consd. *Drewitt v. Britannic Assce.* (1927), 137 L. T. 511.
- 3013. Add. Annotations :—**Refd. *Drewitt v. Britannic Assce.* (1927), 137 L. T. 511; *Soyer v. Johnson*, Matthey (1927), 96 L. J. K. B. 1011.
- 3016. Add. Annotations :—**Consd. *Drewitt v. Britannic Assce.* (1927), 137 L. T. 511; *Soyer v. Johnson*, Matthey (1927), 96 L. J. K. B. 1011.
- 3020. Add. Annotation :—**As to (2) Consd. *Soyer v. Johnson*, Matthey (1927), 96 L. J. K. B. 1011.
- 3029. Add. Annotation :—**Refd. *Drewitt v. Britannic Assce.* (1927), 137 L. T. 511.
- 3030. Add. Annotation :—**Refd. *Soyer v. Johnson*, Matthey (1927), 96 L. J. K. B. 1011.
- 3031. Add. Annotation :—**Appld. *Drewitt v. Britannic Assce.* (1927), 137 L. T. 511.
- 3031a. —.**—]—On Apr. 16, 1926, a workman fell & injured his knee. He was paid full wages, although incapacitated, until Sept. 3, when he was summarily dismissed from employment for misconduct. In the hope of being reinstated, he threatened to bring an action for wrongful dismissal, but made no claim under Workmen's Compensation Act, 1925 (c. 84), until two days after the statutory six months had expired. The county ct. judge found that the workman never intended to claim within the necessary period of six months, & there was no reasonable cause for the delay, & he refused to award compensation:—*Held*: the evidence supported the findings, & there was no misdirection.
- When the workman knows that the injury he suffers from was occasioned by an accident giving him a right to compensation, & fails to make a claim within six months, if that failure was prompted by his own interests, & was not induced by any action of the employer which would lead him to believe he could get compensation without making a claim, he shows no reasonable cause (SCRUTTON, L.J.).—*DREWITT v. BRITANNIC ASSURANCE CO., LTD.* (1927), 137 L. T. 511; 20 B. W. C. C. 434, C. A.

**3033a. Expectation of compensation without necessity of making claim.]—**In Apr. 1925, a chef severed the ligaments of his right hand in handling a dish which broke, but he continued his work at his full wages. His employers knew of the accident, but were not aware the chef could not do his full work. In July, 1926, he was dismissed, & in that month made a claim for compensation. The county ct. judge found that the workman did not refrain from making a claim because he formed the view that he would receive compensation should incapacity supervene in the future without the necessity of making a claim, & that the employers did nothing to encourage such a view, & there was no reasonable cause for not making the claim within six months of the accident:—*Held*: there was evidence to support the findings, & no misdirection.

There would be reasonable cause for not

making a claim within six months, if the workman could prove that there was a tacit understanding that the employers knew all about the possibility of a claim & were prepared to give him compensation, even though his claim might fall outside the six months (LORD HANWORTH, M.R.).—*SOYER v. JOHNSON, MATTHEY & CO.* (1927), 96 L. J. K. B. 1011; 20 B. W. C. C. 504, C. A.

**3035. Add. Annotations :—**As to (1) Consd. *Drewitt v. Britannic Assce.* (1927), 137 L. T. 511. *Folld. Soyer v. Johnson*, Matthey (1927), 96 L. J. K. B. 1011.

**3055. Add. Annotation :—**Appld. *Pullen v. Enthoven* (1927), 20 B. W. C. C. 248.

**3056a. —.**—]—Appct. was in receipt of a weekly payment on account of injuries received in the course of his employment. The employers gave notice of termination of the weekly payment, on the ground of recovery as certified by their doctor. The workman replied with a counter-certificate of his doctor. The matter was submitted to the medical referee, who certified that the man was fit for most forms of work. The employers ceased making the weekly payments, & the workman appealed to the county ct. judge as to the effect of the certificate. The judge, sitting with the same medical referee as assessor, who explained his certificate as being one of complete recovery, held the man was fit for work on the date when compensation ceased, but awarded compensation from the date of cessation of the weekly payment to the date of his award:—*Held*: (1) compensation was not payable after incapacity had ceased; (2) the certificate of the medical referee was sufficient & conclusive.—*PULLEN v. ENTHOVEN & SON* (1927), 20 B. W. C. C. 248, C. A.

**3056b. —.**—]—In a reference to a medical referee made under Workmen's Compensation Act, 1925 (c. 84), s. 19 (2), the medical referee certified that the workman was fit to resume his ordinary occupation, but described it as being something different from what in fact it had previously been. The county ct. judge refused to treat the certificate as conclusive, & received evidence as to the nature of the respective occupations, the parties having objected to the certificate being sent back to the medical referee for explanation or correction:—*Held*: the certificate being ambiguous was not conclusive, & the parties having refused the opportunity of the ambiguity being explained by the medical referee, the judge was entitled to hear the evidence tendered & act upon it.—*AUSTIN v. PARTINGTON STEEL & IRON CO., LTD.* (1928), 21 B. W. C. C. 1, C. A.

**3056c. —.**—]—A stoneman in a colliery was certified by a medical referee to be suffering from miners' nystagmus, & unable to do work which involved stooping. The county ct. judge, after hearing evidence, interpreted that certificate as meaning that the workman was unable to do work which involved continuous stooping, such as his old employment necessitated, & made an award on the basis

**PART XIV. SECT. 9, SUB-SECT. 1.**  
f 1. —.]—The Workmen's Compensation Board has no jurisdiction over rights of action or proceedings in the Exchequer Ct. in Admty.—*DAGELAND v. S.S. CATALA*, [1927] 4

D. L. R. 426; [1927] 3 W. W. R. 97; 38 B. C. R. 440.—CAN.

**PART XIV. SECT. 9, SUB-SECT. 3.**  
3044 i. *Position of judge—Sits as arbitrator.*—*DELAHUNT v. MOODY*,

**PART XIV. SECT. 9, SUB-SECT. 5.**  
3053 xv. —.]—*M'CREADIE v. DOULTON & CO.*, [1928] S. C. 29.—SCOT.

of partial incapacity:—*Held*: the judge had properly treated the certificate as conclusive, & interpreted it rightly, & was justified in hearing evidence as to the amount of stooping that would incapacitate the man in order to make an award for the proper compensation.—*TAYLDER v. LAMBTON, HERTON & JOICEY COLLIERIES, LTD.* (1928), 21 B. W. C. C. 115, C. A.

3057a. ———.]—*What amounts to ambiguity.*—*EVANS (RICHARD) & CO., LTD. v. GILBIE*, No. 3541a, *post*.

3057b. ———.]—*AUSTIN v. PARTINGTON STEEL & IRON CO., LTD.*, No. 3056b, *ante*.

3059. *Add. Annotations*:—*Consd.* *Somerville v. Barclay Curle* (1925), 19 B. W. C. C. 536; *Penman v. Caprington & Auchlochan Collieries* (1926), 19 B. W. C. C. 604. *Refd.* *Lafferty v. Darngavil Coal Co.* (1926), 20 B. W. C. C. 671; *Catton v. Ashwell & Nesbit*, [1928] Ch. 484. *Mentd.* *Akers v. L. & N. E. Ry.* (1926), 20 B. W. C. C. 195.

3068. *Add. Annotation*:—*Distd.* *Parker v. London Brick Co. & Forders* (1927), 20 B. W. C. C. 573.

3081. *Add. Annotations*:—*As to* (1) *Apld.* *Dodd v. Oceanic Steam Navigation Co.* (1928), 21 B. W. C. C. 118. *As to* (2) *Refd.* *Lafferty v. Darngavil Coal Co.* (1926), 20 B. W. C. C. 671. *Generally, Refd.* *Howarth v. Singleton* (1926), 20 B. W. C. C. 136.

3086. *Add. Annotation*:—*Consd.* *Parker v. London Brick Co. & Forders* (1927), 20 B. W. C. C. 573.

3091. *Add. Annotation*:—*As to* (1) *Folld.* *Parker v. London Brick Co. & Forders* (1927), 20 B. W. C. C. 573.

3096. *Add. Annotation*:—*Distd.* *Parker v. London Brick Co. & Forders* (1927), 20 B. W. C. C. 573.

3097. *Add. Annotation*:—*Folld.* *Parker v. London Brick Co. & Forders* (1927), B. W. C. C. 573.

3098. *Add. Annotation*:—*Folld.* *Parker v. London Brick Co. & Forders* (1927), 20 B. W. C. C. 573.

3098a. ———.]—An infant workman lost his left arm below the elbow as a result of an accident. The employers admitted liability, & paid full compensation. On Nov. 5, 1926, the workman signed a receipt for payments in the form of an agreement, by which he agreed that the payments were to be continued only so long as he was totally disabled, but that the amount of payment in respect of any subsequent partial incapacity should be settled if & when the question arose. In Jan. 1927, he applied for registration of an agreement in the terms of Form 24, that the weekly payments should continue during partial or total incapacity or until the same should be ended or diminished in accordance with 1925 Act. The employers objected to that agreement being recorded, on the ground that the terms of the real agreement of Nov. 5, 1926, were not therein correctly stated, & thereupon the workman filed a request for arbn. on Feb. 23, 1927. The boy obtained work as a messenger boy on Feb. 11, 1927. The county ct. judge ordered the document of Nov. 5 to be recorded as the agreement

between the parties, & dismissed the request for arbn.:—*Held*: a totally incapacitated workman in receipt of full compensation under an admission of liability was entitled, either to a recorded memorandum of agreement stating his rights in the terms of Form 24, or, if the employers objected to that, he was entitled, on the question so raised, to apply in arbn. proceedings for the judge to grant an award in such terms; the document of Nov. 5 did not give the workman his full rights as expressed in Form 24, & was not binding on the workman, being an infant, & when the employers objected to the recording of a memorandum in the terms of Form 24 a question was raised fit for arbn., & an award should have been made having regard to the terms of Form 24, & there was no power on the proceedings to order a memorandum of agreement to be recorded, & the case must be remitted for the proper award to be made to suit the circumstances of the workman having actually returned to work.—*PARKER v. LONDON BRICK CO. & FORDERS, LTD.* (1927), 97 L. J. K. B. 42; 20 B. W. C. C. 573, C. A.

3099. *Add. Annotation*:—*Distd.* *Parker v. London Brick Co. & Forders* (1927), 20 B. W. C. C. 573.

3100. *Add. Annotation*:—*Folld.* *Parker v. London Brick Co. & Forders* (1927), 20 B. W. C. C. 573.

3129a. ———.]—Deceased, on leaving off work, remarked to a fireman that he had been hit by a fall of rock. He died the next day. The *post mortem* examination showed he was suffering from heart & other diseases, & might have died at any moment. The county ct. judge rejected the remark as evidence of an accident, & after hearing all the evidence, found that no accident had occurred:—*Held*: the statement was inadmissible as evidence of an accident, & the finding, being one of fact, & there being no misdirection, could not be disturbed.—*JONES v. COREY BROTHERS & CO., LTD.* (1926), 20 B. W. C. C. 251, C. A.

3129b. ———.]—*WOLSEY v. PETHICK BROTHERS*, No. 3897, *post*.

3140. *Add. Annotations*:—*Distd.* *Rees v. Imperial Navigation Coal Co.* (1926), 20 B. W. C. C. 287. *Refd.* *Broome v. Minister of Labour* (1926), 136 L. T. 322.

3140a. ———.]—An infant workman lost a little finger while handling a machine. He was paid varying amounts of compensation for some months, & when this was stopped asked for an award. The county ct. judge allowed the employers to give evidence as to the scope of the workman's employment, & found as a fact that he was not employed to touch or handle any machinery:—*Held*: the employers were not estopped by previous payments of compensation from putting the true facts of the workman's employment before the judge, & his finding thereon was purely a question of fact.—*NOMERACSKY v. CANTERBURY DRESSING WORKS* (1928), 21 B. W. C. C. 41, C. A.

3162a. ———.]—Where conflicting medical evidence was given, & the county ct. judge



followed the view expressed by the medical assessor, who was sitting with him:—*Held*: the county ct. judge must form his own opinion on the facts as proved & then accept advice given by the medical assessor as to the scientific inference to be drawn from those facts, & having entirely founded his award on the opinion formed by the medical assessor his award could not stand.—*FOX v. PRICE* (1926), 20 B. W. C. C. 160, C. A.

3165. *Add. Annotation*:—*Apld.* *FOX v. PRICE* (1926), 20 B. W. C. C. 160.

3169. *Add. Annotation*:—*Refd.* *Maxwell v. Keun, Lane, Bodley Head & Butler & Tanner, Maxwell v. Keun, Jonathan Cape & Butler & Tanner* (1927), 44 T. L. R. 100.

3188. *Add. Annotation*:—*As to* (1) *Folld.* *Cauldon Potteries v. Johnson* (1926), 20 B. W. C. C. 42.

3192a. ————.]—*CAULDON POTTERIES, LTD. v. JOHNSON*, No. 3821a, *post*.

3208. *Add. Annotation*:—*Distd.* *Parker v. London Brick Co. & Forders* (1927), 20 B. W. C. C. 573.

3226a. ————.]—Where a workman injured his left hand, but the county ct. judge found that there was no incapacity resulting from the accident & no probability of any:—*Held*: the evidence supported the findings, & there was no misdirection.—*WAGSTAFF v. GUTTA PERCHA CO.* (1927), 20 B. W. C. C. 430, C. A.

3226b. ————.]—A workman earned £9 9s. a week as a stone contractor under a contract at a fixed price, upon which he himself worked, & also employed others. While so working he was injured by an accident. The county ct. judge said that he did not accept the evidence which had been given as to the inability of the workman to do the full work of a contractor, & refused compensation:—*Held*: it was a question of fact, as to which there was evidence to support the finding, & no misdirection.—*JONES v. GARFORTH COLLIERIES, LTD.* (1926), 20 B. W. C. C. 109, C. A.

*Annotation*:—*Refd.* *Dodd v. Oceanic Steam Navigation Co.* (1928), 21 B. W. C. C. 118.

3226c. ————.]—In July a seaman caught his left hand in the cogs of a windlass, & in Aug. had the little finger amputated. He was paid compensation until Dec. He claimed compensation as for total incapacity, with a declaration of liability. The county ct. judge made an award in favour of the employers:—*Held*: there was abundant evidence to support the award.—*BARRY v. PORTHLEVEN SHIP OWNERS* (1928), 21 B. W. C. C. 219, C. A.

3227a. ————.]—A workman suffered an injury to his finger by an accident arising out of & in the course of his employment, with the result that the finger had to be amputated. Compensation was paid, but was determined upon the certificate of the employer's doctor that the workman was no longer incapacitated. In proceedings instituted by the workman medical evidence was given on his behalf that his grip was weakened, that the muscles were still tender, & that he was still partially incapacitated. The doctor called

on behalf of the employers agreed that the grip was weak, but stated that the workman was capable of doing some work which would be beneficial. The county ct. judge found that the workman had fully recovered, & made a declaration of liability only:—*Held*: there was no evidence to support the finding, & the case must be remitted for compensation to be assessed.—*BUCK v. DENNING* (1926), 19 B. W. C. C. 388, C. A.

3228. *Add. Annotations*:—*As to* (2) *Consd.* *Williams v. Tredegar Iron & Coal Co.* (1927), 96 L. J. K. B. 722; *Bevan v. Nixon's Navigation Co.* (1928), 139 L. T. 647. *Generally*, *Refd.* *Lewis v. Guest, Keen & Nettlefolds, Watkins v. Same, Tucker v. Same, Ingram v. Crawshay* (1927), 96 L. J. K. B. 664.

3230. *Add. Annotation*:—*Consd.* *Lewis v. Guest, Keen & Nettlefolds, Watkins v. Same, Tucker v. Same, Ingram v. Crawshay* (1927), 96 L. J. K. B. 664. *Refd.* *Bevan v. Nixon's Navigation Co.* (1928), 139 L. T. 647.

3232. *Add. Annotations*:—*Consd.* *Lewis v. Guest, Keen & Nettlefolds, Watkins v. Same, Tucker v. Same, Ingram v. Crawshay* (1927), 96 L. J. K. B. 664. *Refd.* *Cushion v. Tredegar Iron & Coal Co.* (1927), 20 B. W. C. C. 454; *Bevan v. Nixon's Navigation Co.* (1928), 139 L. T. 647.

3238. *Add. Annotation*:—*As to* (1) *Refd.* *Lewis v. Guest, Keen & Nettlefolds, Watkins v. Same, Tucker v. Same, Ingram v. Crawshay* (1927), 96 L. J. K. B. 664.

3239. *Add. Citations*:—96 L. J. K. B. 295; 136 L. T. 427; 19 B. W. C. C. 475.

*Add. Annotation*:—*Refd.* *Lewis v. Guest, Keen & Nettlefolds, Watkins v. Same, Tucker v. Same, Ingram v. Crawshay* (1927), 96 L. J. K. B. 664.

3239a. ————.]—A miner who, in Apr. 1926, had the symptoms of nystagmus, on Apr. 30 went on strike until Dec. 2. On July 13, he obtained a certificate that he was disabled by the disease as from June 14. The county ct. judge held, although totally incapacitated from June 14, the workman would not, in any case, have been at work owing to the strike, & refused compensation:—*Held*: if a workman was totally incapacitated by an accident, it was immaterial that he might also have been prevented from earning money by some other cause.—*WILLIAMS v. CWMAMAN COAL CO., LTD.* (1927), 20 B. W. C. C. 476, C. A.

3240. *Add. Annotation*:—*Consd.* *Lewis v. Guest, Keen & Nettlefolds, Watkins v. Same, Tucker v. Same, Ingram v. Crawshay* (1927), 96 L. J. K. B. 664.

3241. *Add. Annotation*:—*Refd.* *Lewis v. Guest, Keen & Nettlefolds, Watkins v. Same, Tucker v. Same, Ingram v. Crawshay* (1927), 96 L. J. K. B. 664.

3243a. ———— *Cesser of work obtained in lieu of compensation.*]—When a workman, partially incapacitated by an accident during the course of his employment, obtains work in lieu of compensation, the cesser of that work entitles him to an award, even in cases where the cesser is due to the state of the labour

ART XIV. SECT. 11, SUB-SECT. 6.—  
A.

sa. *Power to refuse application "without prejudice."*]—Where a circuit ct.

judge ordered an application to be "refused without prejudice":—*Held*: the refusal of compensation was final, & as the refusal could not be treated as a nullity, nor as a mere adjournment

of the application, the judge had no jurisdiction to entertain a second application.—*DELAHUNT v. MOODY*, [1928] 1 R. 208.—IR.

market & would have resulted in his being unemployed in any event.—*LEWIS v. GUEST, KEEN & NETTLEFOLDS, LTD., WATKINS v. SAME, TUCKER v. SAME, INGRAM v. CRAWSHAY BROTHERS*, [1928] 1 K. B. 20; 96 L. J. K. B. 664; 137 L. T. 386; 43 T. L. R. 436; 71 Sol. Jo. 388; 20 B. W. C. C. 359, C. A.

*Annotations*:—*Apld.* *Williams v. Cwmaman Coal Co.* (1927), 20 B. W. C. C. 476. *Refd.* *Cushion v. Tredegar Iron & Coal Co.* (1927), 20 B. W. C. C. 454; *Bevan v. Nixon's Navigation Co.* (1928), 139 L. T. 647.

**3243b.** ——.]—A coal miner, who had worked for many years underground, became, by reason of an attack of nystagmus, only able to do surface work at a lower wage. This work was unavailable, owing to the state of the labour market, though the workman, but for the nystagmus, would probably have been able to obtain employment underground:—*Held*: the effect of Workmen's Compensation Act, 1923 (c. 43), s. 16, which was re-enacted as Workmen's Compensation Act, 1925 (c. 84), s. 9 (4), was necessarily to exclude the idea that the words "able to earn" in Workmen's Compensation Act, 1906 (c. 58), Sched. I., applied to any circumstances not personal to the workman himself. It dealt expressly with the case of the man who could not find work, & it set the criterion whether the failure to find work was due wholly or mainly to the accident, but failure to find work due solely to the state of the labour market was expressly excluded by the sect., & it was impossible to say that *Cardiff Corpn. v. Hall*, No. 3284, *post*, when applied to a case after the passing of 1923 Act, was wrong.—*BEVAN v. NIXON'S NAVIGATION CO., LTD.* (1928), 139 L. T. 647; 44 T. L. R. 805; 21 B. W. C. C. 237, H. L.

**3251a.** ——.]—A workman lost an eye in the course of his employment. He refused to follow medical advice & wear a glass eye, but brooded over his accident, & got into a nervous state. The county ct. judge held the nervous condition caused incapacity & was directly due to the accident:—*Held*: it was a question of fact, as to which there was evidence to support the finding, & no misdirection.—*HODSON v. STAR PAPER MILLS, LTD.* (1927), 20 B. W. C. C. 265, C. A.

**3261.** *Add. Annotation*:—*Consd.* *Bevan v. Nixon's Navigation Co.* (1928), 139 L. T. 647.

**3274a.** ——.]—A workman, whose left eye was defective, suffered, in 1919, an injury to his right eye while working as a miner, for which compensation was received until the beginning of 1924, when he was given work underground. This was found to be unsuitable, & he was given surface work on the screens, & was paid compensation for partial incapacity. He left this work at the commencement of the stoppage due to a dispute in the coal trade in 1926, but was not re-employed at the conclusion of the stoppage, in Dec. 1926. In Feb. 1927, the workman applied to have his compensation increased, on the ground that the work on which he had been employed was a special kind of surface work found for him by his employers. The county ct. judge held *resps.* were not liable to pay compensation as claimed on the grounds set out in their particulars. The particulars referred to in *resps.* answer contained the allegation that the workman was not incapacitated from doing ordinary surface work:—*Held*: the award must be

taken to mean that the judge had found as a fact that the workman was capable of doing ordinary surface work, & there was evidence to support such a finding.—*CUSHION v. TREDEGAR IRON & COAL CO., LTD.* (1927), 20 B. W. C. C. 454, C. A.

**3275a.** ——.]—A miner, in 1916, lost his right eye by accident, & received compensation. He subsequently returned to work at the face, but in June, 1924, had another accident through which his left eye was injured, & he was paid compensation. In Mar. 1925, he returned to light work, receiving also a weekly sum by way of compensation. On July 1, 1925, the employers applied for a review & termination of the weekly payments. The workman stated in evidence that he was afraid to work below ground again, & the county ct. judge held work at the coal face was not suitable, & the man's refusal to do it was reasonable:—*Held*: the case must go back for the judge to decide whether the unsuitability of the work resulted from the first accident or the second, or both, & to assess the compensation payable only in regard to incapacity from the second accident.—*ASTON COAL CO., LTD. v. STANCIL* (1926), 20 B. W. C. C. 198, C. A.

**3283.** *Add. Annotation*:—*Refd.* *Lewis v. Guest, Keen & Nettlefolds, Watkins v. Same, Tucker v. Same, Ingram v. Crawshay* (1927), 137 L. T. 386.

**3284.** *Add. Annotations*:—*Consd.* *Hamilton v. Shelton Iron, Steel & Coal Co., Leigh v. Same, Timmis v. Same* (1926), 136 L. T. 427; *Lewis v. Guest, Keen & Nettlefolds, Watkins v. Same, Tucker v. Same, Ingram v. Crawshay* (1927), 96 L. J. K. B. 664; *Rhodes v. Digbs Colliery Co.*, [1927] 1 K. B. 152. *Apprvd.* *Bevan v. Nixon's Navigation Co.* (1928), 139 L. T. 647. *Refd.* *Cushion v. Tredegar Iron & Coal Co.* (1927), 20 B. W. C. C. 454.

**3286.** *Add. Annotation*:—*Refd.* *Bevan v. Nixon's Navigation Co.* (1928), 139 L. T. 647.

**3287.** *Add. Annotation*:—*Refd.* *Bevan v. Nixon's Navigation Co.* (1928), 139 L. T. 647.

**3295.** *Add. Annotation*:—*Consd.* *Lewis v. Guest, Keen & Nettlefolds, Watkins v. Same, Tucker v. Same, Ingram v. Crawshay* (1927), 96 L. J. K. B. 664.

**3302.** *Add. Annotation*:—*Refd.* *Bevan v. Nixon's Navigation Co.* (1928), 139 L. T. 647.

**3305.** *Add. Annotations*:—*Consd.* *Lewis v. Guest, Keen & Nettlefolds, Watkins v. Same, Tucker v. Same, Ingram v. Crawshay* (1927), 96 L. J. K. B. 664. *Refd.* *Cushion v. Tredegar Iron & Coal Co.* (1927), 20 B. W. C. C. 454.

**3315a.** ——.]—A workman was employed as a seaman on a fishing-boat at £3 a week. On Feb. 11, 1926, his finger was cut by a rope, & he was paid compensation until July 2, when he was certified fit for light work. He then obtained a situation on a trawler, until Sept., payment being on a profit-sharing basis, & his share of the profits being £21. He next worked on another trawler until Feb. 1927, payment being on the same basis, but there were no profits. On Nov. 5, 1926, he filed a request for *arbn.* claiming half the difference between his pre-accident wages & what he was able to earn on the trawlers on the profit-sharing basis. The county ct. judge assessed his weekly earning capacity since July 2, 1926, at £2 5s., & awarded him



a week compensation:—*Held*: (1) there was no evidence that the workman suffered any loss of earnings by reason of his injury, & no evidence to support the award; (2) the workman had not discharged the *onus* of showing a reasonable probability that incapacity would ensue in the future, & was not entitled to a declaration of liability. —*McLEOD v. BLACK* (1927), 20 B. W. C. C. 530, C. A.

3325. *Add. Annotation*:—*As to* (1) *Consd. Gardner v. Vickers* (1928), 44 T. L. R. 563.

3329. *Add. Annotation*:—*Generally, Refd. Gardner v. Vickers* (1928), 44 T. L. R. 563.

3341. *Add. Citations*:—[1927] A. C. 126; 96 L. J. K. B. 284; 136 L. T. 258; 19 B. W. C. C. 416.

*Add Annotation*:—*Refd. Curran v. Kays*, [1928] 2 K. B. 469.

3355. *Add. Annotation*:—*Consd. Welsh Navigation Steam Coal Co. v. Evans*, [1927] A. C. 834.

3357. *Add. Annotation*:—*Consd. Campbell v. Portland Colliery Co.* (1926), 19 B. W. C. C. 594.

3359a. *How calculated—Period of calculation—Posthumous child.*—A workman having been killed by accident arising out of his employment, his widow claimed compensation for herself & her posthumous child born some ten weeks after the workman's death. The employers paid a sum of money into ct. in respect of the child's allowance based on 15 per cent. of £2 a week for 780 weeks or fifteen years:—*Held*: the child was entitled to a sum calculated by taking 15 per cent. of £2 a week over a period from the death of the workman to the date when the child in fact would attain the age of fifteen, which, in this case, was some ten weeks more than fifteen years.—*ATHEY v. PICKERINGS, LTD.* (1926), 96 L. J. K. B. 250; 136 L. T. 535; *sub nom. Re ATHEY, PICKERINGS, LTD.'S APPLICATION*, 20 B. W. C. C. 215, C. A.

3359b. *Amount of lump sum.*—A workman died as the result of an accident, having previously received from his employers £65 5s. 5d. in weekly payments as compensation. On his death his employers paid into ct. £534 14s. 7d., made up of £234 14s. 7d., i.e., £300 less £65 5s. 5d., for the lump sum payable to the widow, & £300 for children's allowance. The total amount to which the children would have been entitled, if not limited in any way, was calculated to be £617 14s. The county ct. judge decided that the amount paid in was reasonable &, at the request of the widow, made an order for payment out of part of the amount:—*Held*: (1) the amount paid into ct. by the employers was insufficient, & the dependants were entitled to the full £600, since if the lump sum calculated under Workmen's Compensation Act, 1925 (c. 84), s. 8 (2), was reduced below £300, then, if the figures warranted it, the children's allowance under sect. 8 (3) might exceed £300, provided that the lump sum & the children's allowance together did not

exceed £600; (2) the widow was not deprived of her right of appeal by having accepted payment of part of the amount paid in, because, although she might have approbated the order on her own behalf, she had reprobated it in the interests of her children. (3) *Semble*: a request for arbn., & not an appeal, was the proper procedure for the widow.—*MALCOLM v. BARBER, WALKER & Co., LTD.* (1927), 137 L. T. 470; 20 B. W. C. C. 516, C. A.

3359c. — One child over fifteen partially dependent.]—A workman died as a result of an accident leaving a widow & two children under fifteen all wholly dependent, & also one daughter over fifteen partially dependent. The county ct. judge held the presence of the daughter over fifteen, only partially dependent, required him to calculate the children's allowance on the basis of partial dependency:—*Held*: the children's allowance must be calculated on the basis of their being wholly dependent, & the existence of another member of the family over fifteen, who happened to be only partially dependent, did not affect the calculation.—*GREEN v. PREMIER GLYNRHONWY SLATE CO., LTD.*, [1928] 1 K. B. 561; 97 L. J. K. B. 32; 138 L. T. 90; 20 B. W. C. C. 563, C. A.

3364. *Add. Annotation*:—*Consd. Lewis v. Guest, Keen & Nettlefolds, Watkins v. Same, Tucker v. Same, Ingram v. Crawshay* (1927), 96 L. J. K. B. 664.

3366. *Add. Annotation*:—*Consd. Lewis v. Guest, Keen & Nettlefolds, Watkins v. Same, Tucker v. Same, Ingram v. Crawshay* (1927), 96 L. J. K. B. 664. *Refd. Bevan v. Nixon's Navigation Co.* (1928), 139 L. T. 647.

3373. *Add. Annotations*:—*Consd. Hamilton v. Shelton Iron, Steel & Coal Co., Leigh v. Same, Timmins v. Same* (1926), 96 L. J. K. B. 295; *Lewis v. Guest, Keen & Nettlefolds, Watkins v. Same, Tucker v. Same, Ingram v. Crawshay* (1927), 96 L. J. K. B. 664. *Refd. Bevan v. Nixon's Navigation Co.* (1928), 139 L. T. 647.

3399. *Add. Annotations*:—*Mentd. Wigg. v. A.-G. for Irish Free State*, [1927] A. C. 674; *Re Article X of Articles of Agreement for Treaty between Great Britain & Ireland* (1928), 45 T. L. R. 57.

3423a. *Payments received under part-time agency agreement.*—A workman was employed as a fitter by a firm of engineers, & at the same time was acting under an agreement with a benefit society as their part-time agent. Under this agreement he agreed to obey the orders of the society & perform all his duties in accordance with official instructions. He was to be paid a weekly salary calculated on a percentage basis. The workman suffered an accident in the course of his employment as a fitter. The county ct. judge, in order to compute his average weekly earnings, added together the weekly payments received from both sources. The employers appealed on the ground that the relationship between

ART XIV. SECT. 13, SUB-SECT. 1.  
C. (b).

o. 19 B. W. C. C. 461.

PART XIV. SECT. 13, SUB-SECT. 2.—  
C. (a).

3374 i. — Offer of suitable work—*As non-union worker.*—*Held*: as the employers had not discharged the *onus* of proving that acceptance of the condition in their offer would not have

made the workman's position materially worse than it had been under the old contract, the arbitrator was not entitled to refuse compensation.—*M'DONALD v. OUTRAM (GEORGE) & Co., LTD.*, [1927] S. C. 333.—SCOT.



the society & the workman was that of principal & agent, & not master & servant, & that his payments under the agreement should not be taken into account:—*Held*: the judge had rightly construed the agreement as establishing the relationship of master & servant between the society & the workman.—*ROBERTS v. GARDNER (WILLIAM) & SONS* (1928), 21 B. W. C. C. 154, C. A.

**3433.** *Add. Annotations*:—*As to* (1) *Refd.* *Hamilton v. Shelton Iron, Steel & Coal Co., Leigh v. Same, Timmins v. Same* (1926), 96 L. J. K. B. 295. *As to* (5) *Refd.* *Bevan v. Nixon's Navigation Co.* (1928), 139 L. T. 647. *Generally, Refd.* *Lewis v. Guest, Keen & Nettlefolds, Watkins v. Same, Tucker v. Same, Ingram v. Crawshay* (1927), 96 L. J. K. B. 664.

**3469.** *Add. Annotations*:—*As to* (3) *Consd.* *Roberts v. Gardner* (1928), 21 B. W. C. C. 154. *Refd.* *Williams v. Larsen* (1928), 21 B. W. C. C. 339.

**3475.** *Add. Annotations*:—*Apld.* *Gardner v. Vickers* (1928), 44 T. L. R. 563; *Re Unemployment Insurance Act, 1920, Re Leeds Corpn. & Chadwick* (1928), 92 J. P. 192.

**3482a.** — *Causing temporary unemployment.*—*Applt.*, who was employed by resps. as a riveter on piecework, received notice, on Sept. 3, 1926, owing to the coal strike of that year, that there was no more work available for him. He accordingly ceased to work till Dec. 8, when he was re-employed by resps. On Jan. 11, 1927, he met with an accident causing total incapacity. On an application for compensation, the county ct. judge held the interruption was a normal incident & there was no break in the employment, & he awarded compensation on the basis of applt.'s earnings for the twelve months prior to the accident:—*Held*: the interval was not one of the incidents of a discontinuous employment, & there was a break in the employment, & the case must go back to the judge to assess compensation on that basis.—*GARDNER v. VICKERS, LTD.* (1928), 44 T. L. R. 563; 21 B. W. C. C. 129, C. A.

**3511.** *Add. Annotation*:—*Consd.* *Niddrie & Benhar Coal Co. v. Dee*, [1927] A. C. 299.

**3530a.** — — —.]—On a finding that a workman has fully recovered & there is no evidence of any probability of future incapacity, the judge has no power to order a declaration of liability to be recorded.—*PORTER v. WHITBYS, LTD.* (1926), 19 B. W. C. C. 414, C. A.

**3530b.** *Admission by employer of partial incapacity.*—On Sept. 26, 1926, a workman was kicked on the knee by a horse & injured. He was paid full compensation until May 5, 1927, when the employers gave notice of their intention to reduce the weekly compensation to 10s., & did in fact so reduce it. The workman applied for 30s. to be continued. The employers in their answer submitted to an award of 10s. a week to continue. The county ct. judge found that the man was able to do his full work on May 5, 1927, but ordered that compensation should be paid at 30s. up to July 4, 1927, & then terminate altogether:—*Held*: the award was inconsequent, & the

case must be sent back to the judge for a rehearing.—*SHEAY v. TITE (B. W.) & SONS* (1927), 20 B. W. C. C. 616, C. A.

**3531a.** — *Onus of proof on workman.*—Where the county ct. judge found that employers were not liable to pay compensation, as the workman was not incapacitated from doing his ordinary work at his ordinary wages:—*Held*: the judgment of the county ct. judge involved a finding that the workman was not entitled to a declaration of liability, & the evidence supported the finding, in that the workman had failed to show that there was a reasonable probability of an ensuing incapacity.—*WILLIAMS v. TREDEGAR IRON & COAL CO., LTD.* (1927), 96 L. J. K. B. 722; 137 L. T. 464; 20 B. W. C. C. 480, C. A.

**3531b.** — — —.]—*McLEOD v. BLACK*, No. 3315a, ante.

**3541a.** — *After termination of compensation.*—(1) Where a county ct. judge, upon a certificate of a medical referee that a workman who has been injured has entirely recovered & is fit for his usual employment, not containing any suggestion of the possibility of a recurrence of incapacity due to the injury at a future date, makes an order terminating the compensation, there is no jurisdiction to make a declaration of liability. (2) The fact that the certificate does not refer, one way or the other, to the possibility of future recurrence or complications, does not make it in any way ambiguous. "Recovery" *prima facie* means that there is no liability of a recurrence of illness & consequent incapacity.—*EVANS (RICHARD) & CO., LTD. v. GILBIE* (1926), 96 L. J. K. B. 117; 136 L. T. 93; 19 B. W. C. C. 375, C. A.

*Annotations*:—*As to* (1) *Consd.* *McLeod v. Black* (1927), 20 B. W. C. C. 530; *Wagstaff v. Gutta Percha Co.* (1927), 20 B. W. C. C. 430; *Williams v. Tredegar Iron & Coal Co., Ltd.* (1927), 96 L. J. K. B. 722.

**3543.** *Add. Annotations*:—*As to* (1) *Consd.* *Williams v. Tredegar Iron & Coal Co.* (1927), 96 L. J. K. B. 722. *As to* (2) *Consd.* *McLeod v. Black* (1927), 20 B. W. C. C. 530.

**3545a.** *Order giving liberty to apply.*—Employers having paid a workman full compensation for some months for an accident in their employment, applied for a review of the weekly payment & for termination, but offered to accept a declaration of liability. The county ct. judge held they were not entitled to terminate the weekly payments, as the workman was still partially incapacitated, but such payments should cease, & no such payments should be made so long as they employed & continued to employ the workman at a wage equivalent to his pre-accident wages, with liberty to either party to apply. He also ordered the employers to pay the costs:—*Held*: (1) the order was a right order, as liberty to apply carried out the effect of a declaration of liability; (2) the employers having failed to establish their right to termination of the weekly payments, the judge rightly exercised his discretion in ordering that the employers should pay the costs.—*SIDNEY LEE (EXETER), LTD. v. JAMES* (1928), 21 B. W. C. C. 220, C. A.

PART XIV. SECT. 13, SUB-SECT. 3.—  
B. (a).

3432 viii. — — —.]—*DUNSTONE v. FERRARI*, [1926] V. L. R. 155; 47

A. L. T. 141; [1926] Argus L. R. 133.—  
AUS.

PART XIV. SECT. 14, SUB-SECT. 2.  
3513 i. *Validity of—Jurisdiction of*

*arbitrator.*—An arbitrator ought not to make a prospective award.—*LAUER v. BRIGGS* (1926), 26 S. N. S. W. 275; 43 N. S. W. W. N. 84.—  
AUS.

- 3548. Add. Annotations:—**As to (1) **Refd. Evans v. Gilbie** (1926), 96 L. J. K. B. 117. As to (2) **Copsd. McLeod v. Black** (1927), 20 B. W. C. C. 530; **Wagstaff v. Gutta Percha Co.** (1927), 20 B. W. C. C. 430. **Appld. Williams v. Tredegar Iron & Coal Co.** (1927), 96 L. J. K. B. 722. As to (3) **Consd. Drewitt v. Britannic Assce.** (1927), 137 L. T. 511. **Dlst. Soyer v. Johnson, Matthey** (1927), 96 L. J. K. B. 1011. *Generally, Refd. Lee (Exeter) v. James* (1928), 21 B. W. C. C. 220.

1559. *Add. Annotations*:—*As to* (1) *Refd.* Williams v. Tredegar Iron & Coal Co. (1927), 96 L. J. K. B. 722. *As to* (2) *Refd.* Evans v. Gilbie (1926), 96 L. J. K. B. 117.

1559a. —.]—A workman having been injured, the employers entered into an agreement with him, which was duly recorded. This agreement gave the workman 30s. a week for total or partial incapacity "or until same shall be ended, diminished, increased or redeemed." Later the workman returned to work at his old wages, on the express agreement contained in correspondence that his rights under the registered agreement were kept alive, & that if the work was not continued & old wages paid, he should go back to such rights. As he was able to continue at work, the employers applied for a review to diminish or terminate the payments payable under the registered agreement. The workman claimed that he had not been paid his full old rate of wages under the second agreement & was entitled to have them made up to the old rate, & further, that by reason of this agreement the employers had no power to review the payments payable under the registered agreement. The county ct. judge held the employers' application to review was in breach of the agreement in the correspondence, & dismissed the application:—*Held*: the employers had expressly reserved their rights under the registered agreement to have the weekly payment reviewed. The workman's attempt at work having been successful, the employers' application to review was a proper one, & the judge was wrong in dismissing it. The right order on the facts was to discharge the registered agreement & direct a declaration of liability to be recorded.—HITCHENS & Co., LTD. v. HART (1927), 20 B. W. C. C. 609, C. A.

571a. Consideration for agreement—Sufficiency.]  
—An underground colliery workman left his employment in Mar. 1921, on account of illness. On July 18, 1922, he was certified to be suffering from nystagmus, the disablement, according to the certificate, being deemed to commence on that day. The workman applied for compensation, & the employers paid full compensation for total incapacity for four years, & then ceased payment. In proceedings for an award, instituted by the workman, the case was treated by both parties on the basis of an agreement to pay compensation as for total incapacity having been made, but the county

ct. judge held there had been no consideration on the part of the workman for the agreement, & as the workman was not entitled to any compensation since he had not been employed by resps. during twelve months prior to the date of the certificate, the agreement was outside Workmen's Compensation Act, 1925 (c. 84), & could not give jurisdiction within the Act:—*Held*: there had been good consideration, inasmuch as the workman had forborne to take steps, either by applying to the certifying surgeon, or by appeal to the medical referee, to get the date of the certificate of disablement altered, & the agreement was binding upon resps., & the workman was entitled to an award.—*REES v. IMPERIAL NAVIGATION COAL CO., LTD.* (1927), 20 B. W. C. C. 287, C. A.

- 3857. Add. Annotation:—***Consd. Paterson v. Ardrossan Harbour Co.* (1926), 10 B. W. C. C. 621.

**3659a. Grounds for removal—Allegation by workman that scope of agreement not understood by him.]—Circumstances in which :—Held :** an order for removal of a memorandum from the record was wrong, & must be discharged. —**QUARRELL v. LAMPORT & HOLT (1928), 21 B. W. C. C. 112, C. A.**

- 3676. Add. Annotation :—***As to (2) Consd. Vickers v. Miners Thames Steam Tug & Lighterage Co. v. Ingram (1927), 96 L. J. K. B. 490.*

- 3690.** *Add. Annotation* :—**Refd.** *Catton v. Ashwell & Nesbit*, [1928] Ch. 484.

- 3692.** *Add. Citations*:—96 L. J. P. C. 143; 136 L. T. 609; 20 B. W. C. C. 1.

**Add. Annotations :—***Apld.* *Macauley v. Baird* (1927), 20 B. W. C. C. 802; *Catton v. Ashwell & Nesbit*, [1928] Ch. 484. **Consd.** *Anchor Donaldson v. Crossland* (1928), 45 T. L. R 97.

- 3697. Add. Citations :—**[1927] 1 K. B. 152 ; 96 L. J. K. B. 127 ; 136 L. T. 134.

**3698a.** — **Notice of intention to end payments—**  
**Validity.]**—A workman was injured by accident arising out of & in the course of his employment. Resps.' doctor gave his certificate that the man had partially recovered, & resps. served notice on the workman in pursuance of Workmen's Compensation Act, 1923 (c. 42), s. 14, that they would cease payment of compensation within ten days. No counter-certificate by the workman's doctor was served in pursuance of the sect., but the workman filed a request for arbn. The county ct. judge awarded 8s. a week on the basis of partial incapacity from the date of the hearing in the county ct., & not from the date of termination of the weekly payment, on the ground that the workman had not complied with sect. 14, & was not entitled to compensation from that date:—*Held*: the notice was bad, in that it purported to end compensation when the workman was certified to be partially recovered only, & the compensation of 8s. a week for partial incapacity was payable

**XIV. SECT. 16, SUB-SECT. 1.**

**r. i. — Withdrawal of.]**—It is competent to withdraw an application for the recording of a memorandum if it is done timeously.—**M'GINLEY v. FARMER & CO., [1927] S. C. 149; 20 B. W. C. C. 25.—SCOT.**

**PART XIV. SECT. 16, SUB-SECT. 3.—**  
**A.**

3614 ii. ———.]—It is the duty of the sheriff-clerk to consider the question whether he ought or ought not to refuse to record the memorandum on the ground of inadequacy of compensation, & thereafter, according as his decision is in the affirmative or in the negative, to refer the matter to the

sheriff or to record the memorandum.—**TONNER v. WILLIAM BAIRD & Co., LTD., GALLACHER v. WILLIAM BAIRD & Co., LTD., [1927] S. C. 870.—SCOT.**

**PART XIV. SECT. 18, SUB-SECT. 1.**

3673 i. *Effect of payment in—Money not subject to arrestment.*—WILLIAM BAIRD & Co. v. CAMPBELL, [1928] S. C. 314.—SCOT.



from the date the employers ceased payment of compensation.—*HOWARTH v. SINGLETON* (J. E.) & SONS (1926), 20 B. W. C. C. 136, C. A.

3698b. ———.]—In pursuance of Workmen's Compensation Act, 1925 (c. 84), s. 12 (3), resps. served a workman with notice that they would end the weekly payments, or alternatively would take him back to work, & they ceased to pay him compensation on a date which was two days short of the ten clear days required. The workman filed a request for arbn. claiming (*inter alia*) a declaration of liability, alleging that he was still incapacitated. Resps. offered to accept an award of a declaration of liability, & before the hearing offered the sum by which the weekly payments fell short of the proper amount that was due in respect of the two days. The county ct. judge was satisfied the workman had recovered & was able to do his work, & held, payment for the two days having been offered, there was no further liability on resps., & made the declaration of liability offered:—*Held*: the notice was good, & was not invalidated because the payments were not made for the full period of ten days from the date thereof.—*COOPER v. COLLINS ELECTRICAL, LTD.* (1926), 20 B. W. C. C. 152, C. A.

3700. *Add. Citations*:—[1927] 1 K. B. 435; 96 L. J. K. B. 261; 136 L. T. 88.

3701. For the existing paragraph substitute the following paragraph:—

**Power to terminate payments—Incapacity ceased.**—On Oct. 17, 1923, a workman contracted miners' nystagmus in the course of his employment, & by voluntary agreement the employers paid him a weekly sum by way of compensation until Sept. 3, 1925, when they stopped the weekly payments, on the ground that the man had completely recovered. After the employers had commenced proceedings for a review, the workman admitted that the incapacity had ceased on Sept. 3, but claimed compensation up to the date of the award:—*Held*: the county ct. judge had no jurisdiction under Workmen's Compensation Act, 1923 (c. 42), s. 14, to award any payment after the incapacity had ceased, & he ought to make a retrospective award terminating the weekly payments as from the date of recovery.—*OCEAN COAL CO. v. DAVIES*, [1927] A. C. 271; 96 L. J. K. B. 364; 136 L. T. 449; 43 T. L. R. 108; 70 Sol. Jo. 1219; 19 B. W. C. C. 429, H. L.; *reversing* (1926), 96 L. J. K. B. 255, C. A.

*Annotations*:—*Consd.* Macaulay v. Baird (1927), 20 B. W. C. C. 802; Niddrie & Bonhar Coal Co. v. Dee, [1927] A. C. 299; Thorpe v. Sadler, Sadler v. Thorpe (1927), 20 B. W. C. C. 488. *Appl.* Lowe v. Essex County Council (1927), 20 B. W. C. C. 452; Pullen v. Enthoven (1927), 20 B. W. C. C. 248. *Consd.* Anchor Donaldson v. Crossland (1928), 45 T. L. R. 97; Catton v. Ashwell & Nesbit, [1928] Ch. 484; Dodd v. Oceanic Steam Navigation Co. (1928), 21 B. W. C. C. 118. *Reid.* Akers v. L. & N. E. Ry. (1926), 20 B. W. C. C. 195; Howarth v. Singleton (1926), 20 B. W. C. C. 136; Parker v. London Brick Co. & Forders (1927), 20 B. W. C. C. 573.

#### PART XIV. SECT. 19.

3702 d 1. **Power to make interim award—Withdrawal by employers of application for medical reference.**—*Held*: an interim award fell to be refused, in respect that the employers, having applied for a medical reference, were entitled to the protection of consignation until the settlement of the dispute.—*MACAULAY v. WILLIAM BAIRD*

& Co., [1927] S. C. 788; 20 B. W. C. C. 802.—*SCOT.*

so. "Weekly payment"—*What is.*—In order to make a payment a "weekly payment under the principal Act" within Workmen's Compensation Act, 1923 (c. 42), s. 14, it must be shown (a) that there was an admission, express or implied, of liability under the Act, & (b) that the payment was made in respect of that admission.

3701a. ———.]—*No. 3056a, ante.*

v. ENTHOVEN & SON,

3701b. ———.]—A workman was injured by an accident & was paid compensation by his employers for total incapacity. On receipt of their doctor's report that the workman was fit for light work, the employers made two offers of light work to the workman at the same rate of wages as before his accident. After the second refusal, the employers ceased to pay compensation. The county ct. judge held the workman was unreasonable in refusing the offers of light work &, applying *Ocean Coal Co. v. Davies*, No. 3701, *ante*, the employers were entitled to stop payment of compensation when they did:—*Held*: the evidence supported the findings, & the judge had correctly applied *Ocean Coal Co. v. Davies*, No. 3701, *ante*.—*LOWE v. ESSEX COUNTY COUNCIL* (1927), 20 B. W. C. C. 452, C. A.

3702a. ———.]—A workman met with an accident, which he alleged caused an inguinal swelling. He was paid full compensation until Sept. 20, 1926, when the payments were reduced. The workman filed an application claiming compensation at the old rate, & the employers filed a counter-application for termination of compensation. The county ct. judge found that the workman had entirely recovered on Sept. 20, 1926, & that the swelling from which he suffered at the date of the trial was not a result of the accident, & made an award for the employers on both applications:—*Held*: the employers, by paying compensation, were not estopped from saying that the injury was not caused by the accident, & there was evidence to support the judge's findings, & no misdirection.—*THORPE v. SADLER (A. L.) & SON, SADLER (A. L.) & SON v. THORPE* (1927), 20 B. W. C. C. 488, C. A.

3702b. ———.]—On May 15, 1927, a trimmer met with an accident on board a liner causing hernia. He received compensation until Nov. 12. On receipt of a medical report that he was fit to resume work, his employers gave notice on Nov. 2, that the weekly payments would be terminated. The workman did not obtain a counter-certificate, but, on Nov. 24, his solrs. wrote suggesting that he had not been examined for hernia, that an operation would be necessary, & that the notice of Nov. 2 should be cancelled. The employers thereupon requested the workman to present himself for further examinations, & as a result of these examinations again repudiated liability to pay compensation. The county ct. judge found that there was no incapacity on Jan. 7, 1928, but he made an award of compensation for eight weeks from Nov. 12, 1927, on the ground that compensation was not properly terminated on that date, in that the employers by subjecting the workman to further examinations had shown that they did not

Where employers paid a sum of money to a workman, who signed a receipt bearing that the payment was made without an admission of liability on their part:—*Held*: as it did not appear that the payment complied with the above requirements, sect. 14 did not apply.—*LAFFERTY v. DARGAVIL COAL CO., LTD.*, [1927] S. C. 60; 20 B. W. C. C. 671.—*SCOT.*



rely on their first medical report. He estimated the period during which the employers were satisfying themselves after Nov. 12 as to the workman's condition at eight weeks:—*Held*: the workman had not discharged the *onus* of proving incapacity after Nov. 12, 1927. The judge, in awarding compensation to the workman, in fact, for the trouble he had been put to by the employers after notice of termination had been given, had misdirected himself.—*DODD v. OCEANIC STEAM NAVIGATION CO., LTD.* (1928), 21 B. W. C. C. 118, C. A.

**3702c. Action for declaration—Of breach of statutory duty by employer—Whether maintainable.**—Pltf., a workman in the employment of defts., was injured by an accident, & defts. admitted liability & made a weekly payment of compensation. Ultimately a doctor reported that pltf. had recovered, & defts. stopped the payments & applied for a review thereof, & paid into ct., with a denial of liability, the amount of the weekly payments up to that date. While the county ct. proceedings were still pending, pltf. brought an action, alleging that he had not recovered from his injury, & claiming (1) a declaration that under Workmen's Compensation Act, 1925 (c. 84), s. 12, defts. had committed a breach of their duty by stopping the payments otherwise than in pursuance of an agreement or arbn., & (2) an injunction restraining a continuance of the breach:—*Held*: under sect. 21 the only tribunal to determine the question of incapacity was the county ct., & as that question had not yet been determined by that tribunal, pltf. could not show that his incapacity was continuing since the date when defts. stopped the weekly payments, & the action failed.—*CATTON v. ASHWELL & NESBIT, LTD.*, [1928] Ch. 484; 97 L. J. Ch. 199; 139 L. T. 34; 44 T. L. R. 422; 72 Sol. Jo. 317; 21 B. W. C. C. 97, C. A.

*Annotation*:—*Consd.* *Anchor Donaldson v. Crossland* (1928), 45 T. L. R. 97.

**3702d. Power to make interim award—Payment into court.**—A workman suffered injuries through an accident arising out of & in the course of his employment, & his employers paid him weekly compensation until a certain date. They then terminated the payment, on the ground that his incapacity had ceased, but there was no award or recorded agreement. The workman had not returned to work, & his employers had not served on him a notice under Workmen's Compensation Act, 1925 (c. 84), s. 12 (3). On the termination of the payments the workman, on the ground that his incapacity was still continuing, applied for an award of weekly compensation & for an interim award of weekly compensation until the question of the liability of his employers should be decided. The arbitrator made an interim award of a weekly payment, & authorised the employers to pay the money into ct. instead of paying it to the workman:—*Held*: under sect. 12 the workman was entitled to an interim award, & the arbitrator had no power to authorise the employers to pay the money due thereunder into ct. instead of paying it to the workman.—*ANCHOR DONALDSON, LTD. v. CROSSLAND* (1928), 45 T. L. R. 97, H. L.

**3704a. Under recorded agreement—Effect of supplemental unrecorded agreement.**—*HITCHENS & CO., LTD. v. HART*, No. 3559a, *ante*.

**3708. Add. Annotation**:—*Refd.* *Curran v. Kays*, [1928] 2 K. B. 469.

**3718. Add. Annotations**:—*Distd.* *Thorpe v. Sadler*, *Sadler v. Thorpe* (1927), 20 B. W. C. C. 488. *Consd.* *Curran v. Kays*, [1928] 2 K. B. 469.

**3725. Add. Annotation**:—*Refd.* *Lewis v. Guest*, *Keen & Nettlefolds, Watkins v. Same*, *Tucker v. Same*, *Ingram v. Crawshay* (1927), 96 L. J. K. B. 664.

**3726. Add. Citation**:—136 L. T. 129.

**3731. Add. Annotations**:—*Consd.* *Lewis v. Guest*, *Keen & Nettlefolds, Watkins v. Same*, *Tucker v. Same*, *Ingram v. Crawshay* (1927), 96 L. J. K. B. 664. *Refd.* *Cushion v. Tredegar Iron & Coal Co.* (1927), 20 B. W. C. C. 454.

**3733. Add. Annotation**:—*As to* (2) *Refd.* *Lewis v. Guest*, *Keen & Nettlefolds, Watkins v. Same*, *Tucker v. Same*, *Ingram v. Crawshay* (1927), 96 L. J. K. B. 664.

**3737. Add. Annotations**:—*Consd.* *Lewis v. Guest*, *Keen & Nettlefolds, Watkins v. Same*, *Tucker v. Same*, *Ingram v. Crawshay* (1927), 96 L. J. K. B. 664; *Bevan v. Nixon's Navigation Co.* (1928), 139 L. T. 647. *Refd.* *Cushion v. Tredegar Iron & Coal Co.* (1927), 20 B. W. C. C. 454.

**3737a. ———**—The principles laid down in *Bevan v. Energlyn Colliery Co.*, No. 3366, *ante*, for computing the weekly payment in cases of partial incapacity, where there has been a fluctuation of wages since the accident, have been incorporated in Workmen's Compensation Act, 1925 (c. 84), to a limited extent by sect. 11 (3). Apart from that sect. the principle does not apply to cases under the Act, the provisions of Workmen's Compensation Act, 1906 (c. 58), Sched. I. (3), with regard to partial incapacity, having been repealed by Workmen's Compensation Act, 1923 (c. 42).—*CALOW v. SHELTON IRON, STEEL & COAL CO., LTD.* (1928), 21 B. W. C. C. 125, C. A.

**3745a. ———**—A workman, who was paid compensation for the loss of three fingers, & who had returned to light work, was discharged owing to the closing down of his employers' works. He registered with the Labour Exchange & for some months received unemployment benefit, together with a proportionate amount of compensation from his late employers. When the unemployment benefit ceased he claimed full compensation, proving that he had made genuine attempts to obtain work but had failed owing to his injury. The county ct. judge awarded a sum, less than the full compensation, to date from the application for review & not from the cessation of the unemployment benefit:—*Held*: the workman was entitled to compensation on the basis of total incapacity as from the date when the unemployment benefit ceased.—*KING v. BRITISH STEEL CORPN., LTD.* (1928), 21 B. W. C. C. 37, C. A.

**3753a. ———** *Effect of Workmen's Compensation Act, 1926 (c. 42).*—A workman, being a minor, who met with an accident arising out of & in the course of his employment before the above Act came into force, is, if he was still under twenty-one years of age when the Act came into force, entitled to obtain a review during the extended period permitted by the amending Act.—*EDWARD CURRAN & CO. v. KAYS*, [1928] 2 K. B. 469; 97 L. J. K. B. ; 139 L. T. 294; 21 B. W. C. C. 203, C. A.

**3766a. Particulars—Contents of.]**—Upon an application by an employer to review a weekly payment & diminish it, or terminate or diminish it, the appropriate form is Form 5, under which certain particulars are to be given. These do not include particulars of the extent to which diminution is asked for, but the county ct. judge has a discretion to order or to refuse such further particulars under r. 29 (2). His decision on the point is not a decision on a question of law, & there is no appeal therefrom. *Semble*: such particulars ought to be sparingly ordered, & not with the object of compelling the county ct. judge to give costs to one side or the other, & there is much greater reason for asking for particulars of the extent of diminution of a weekly payment where termination is not asked for, than where the employer is asking for termination or diminution.—**VICKERS, LTD. v. MINERS, THAMES STEAM TUG & LIGHTERAGE CO. v. INGRAM** (1927), 96 L. J. K. B. 490; 137 L. T. 226; 71 Sol. Jo. 350; 20 B. W. C. C. 269, C. A.

**3775. Add. Annotation:—As to (1) Consd. Curran v. Kays**, [1928] 2 K. B. 469.

**3781. Add. Annotation:—As to (2) Refd. Curran v. Kays**, [1928] 2 K. B. 469.

**3799. Add. Annotation:—As to (1) Apld. Raeburn v. Lochgelly Iron & Coal Co.** (1926), 20 B. W. C. C. 637.

**3801a. Order extending Workmen's Compensation Act, 1906 (c. 58), s. 8, to ironworkers' cataract—Construction of Order.]**—*Held*: the proviso to Workmen's Compensation (Ironworkers' Cataract) Order, 1925, was not governed by the operative words in par. 2 which contained the absolute limit of six months in all, & where the incapacity was continuing, compensation could be allowed for the continuing incapacity. *Semble*: the absence of a bed in a ward or a vacancy in a place for an operation would be a good medical reason for the non-performance of an operation within the four months.—**DAVIES v. BALDWIN, LTD.** (1926), 136 L. T. 462; 20 B. W. C. C. 116, C. A.

**3802. Add. Annotation:—Apld. Young v. Keeble** (1928), 21 B. W. C. C. 294.

**3805. Add. Annotation:—Consd. O'Neil v. Wilsons & Clyde Coal Co.** (1926), 19 B. W. C. C. 656.

**3807. Add. Annotation:—Refd. O'Neil v. Wilsons & Clyde Coal Co.** (1926), 19 B. W. C. C. 656.

**3810. Add. Citations:—**[1927] A. C. 461; 96 L. J. K. B. 608; 137 L. T. 257; 71 Sol. Jo. 429; 20 B. W. C. C. 391.

*Add. Annotation:—Refd. M'Dougall v. Summerlee Iron Co.* (1927), 20 B. W. C. C. 419.

**3814. Add. Citations:—**[1928] 1 K. B. 291; 96 L. J. K. B. 347; 137 L. T. 26; 91 J. P. 43; 21 B. W. C. C. 226.

**3816. Add. Annotations:—As to (2) Consd. Cauldon Potteries v. Johnson** (1926), 20 B. W. C. C. 42, *Apld. Young v. Keeble* (1928), 21 B. W. C. C. 294.

**3818a. ———.]**—A french polisher had suffered intermittently from dermatitis since 1925,

while working for different employers. The medical referee issued a certificate on Jan. 30, 1928, in which he certified that on Jan. 30, 1928, appct. was no longer disabled by dermatitis. On Mar. 10, 1928, appct. was examined by the certifying surgeon, who on that date certified that she was suffering from dermatitis & had been disabled thereby since Sept. 29, 1927. On a claim by the workman for compensation based on the certifying surgeon's certificate of Mar. 10, 1928, the county ct. judge held the two certificates being inconsistent, the certificate of the medical referee must prevail to the effect that the workman was not disabled after Jan. 30, 1928:—*Held*: there was no vital inconsistency between the two certificates, bearing in mind the intermittent character of dermatitis, & the certificate of Mar. 10 was consistent with dermatitis having broken out again.—**MACY v. CORK MANUFACTURING CO., LTD.** (1928), 21 B. W. C. C. 306, C. A.

**3819a. Certificate incomplete—Death of certifying surgeon—Subsequent certificate by successor—Validity.]**—On July 12, 1926, eighteen months after the workman had left his employment, Dr. S., the certifying surgeon of the district, certified that the workman was suffering from lead poisoning. The certificate did not comply with the regulations as no date of disablement was filled in, nor were the words "I certify that the disablement commenced on the day of" struck out. Before the workman could see Dr. S. to have the omission put right the doctor died. After Dr. F. had been appointed in his place the workman, on Aug. 12, 1926, obtained a certificate from him in which the date of disablement was filled in as Nov. 23, 1924. In answer to the workmen's request for arbn., based on Dr. F.'s certificate, the employers denied liability to pay compensation on the ground that, as Dr. S.'s certificate did not specify the date of disablement, such date was deemed to be the date of the certificate, & was final & conclusive, & Dr. F.'s certificate was accordingly invalid, & as the workman had not been in their employment for more than twelve months prior to that date of disablement, he could not recover compensation. The county ct. judge upheld that contention:—*Held*: the first certificate was incomplete in that it had not dealt with the date of disablement in either manner provided by the regulations & was invalid, & the workman, not being able by reason of the death of Dr. S. to have the matter put in order, was entitled to rely on the second certificate.—**POWELL v. CAULDON POTTERIES, LTD.** (1926), 96 L. J. K. B. 245; 136 L. T. 532; 20 B. W. C. C. 16, C. A.

**3820. Add. Annotations:—Apld. Cauldon Potteries v. Johnson** (1926), 20 B. W. C. C. 42. *Consd. Davies v. Baldwins* (1926), 136 L. T. 462. *Apld. Young v. Keeble* (1928), 21 B. W. C. C. 294.

**3821a. ———.]**—A certificate was given by the certifying surgeon that a workman was

PART XIV. SECT. 20, SUB-SECT. 6.

**3763 i. Whether original arbitration or review appropriate—Payment of compensation under unrecorded agreement.]**—**HARRIS v. MANOR POWIS**

**COAL CO., LTD.**, [1926] S. C. 972.—**SCOT.**

PART XIV. SECT. 22, SUB-SECT. 3.—**B.**

**s. 6. Failure to show disablement due**

*to disease—Omission of word "thereby."—Held: fatal.—BROKEN HILL ASSOCIATED SMELTERS PROPRIETARY, LTD. v. VELLA*, [1927] S. A. S. R. 49.—**AUS.**



suffering from lead poisoning. A leading symptom of the disease was stated on the form to be dupuytren's contraction. Full compensation was paid until an application by the employers to review the weekly payments. The workman was still incapacitated by dupuytren's contraction. The county ct. judge refused to treat the certificate as conclusive as to dupuytren's contraction being a symptom of lead poisoning, & on contradictory medical evidence given at the hearing, & also on knowledge he had acquired some years before while sitting on a commission to consider industrial diseases, including dupuytren's contraction, held the symptoms, though still the same as those set out in the certificate, were not due to the certified disease, & reduced the compensation to 1*l.* a week. The case involved a point of law, & early in the hearing, counsel called attention to that fact, but the judge omitted to take any notes of the proceedings:—*Held*: (1) the certificate that the symptoms were due to the certified disease was conclusive, & evidence to the contrary was inadmissible, & there was no evidence of any new factor or new disease to support an award in reduction of compensation. (2) Observations on the judge's duty to take a note.—CAULDON POTTERIES, LTD. v. JOHNSON (1926), 20 B. W. C. C. 42, C. A.

*Annotation*:—As to (1) *Appld.* Young v. Keeble (1928), 21 B. W. C. C. 294.

**3821b. As to cause of death or incapacity.**—A workman, employed as a painter, was from July to Sept. 1927, laid up with an ulcer on his ankle & with heart trouble. From Oct. 19 onwards he became unfit for further work with loss of power in his left arm & leg, he became mentally incapable, his memory failed, & his heart got worse. On Nov. 15 he was admitted to hospital, where the medical superintendent found that he had long-standing disease of the heart caused by kidney trouble. On Nov. 23, the certifying surgeon visited the hospital, & on Nov. 28 certified that the workman was suffering from lead poisoning or its sequelæ, & had been disabled as from Oct. 19. The medical superintendent was ignorant both of the visit & of the certificate of the certifying surgeon, & when the workman died on Dec. 23, certified that the cause of death was cerebral hæmorrhage caused by valvular disease of the heart. The county ct. judge held he was not bound to find that death was due to the disease certified by the certifying surgeon, & refused to make an award in favour of the dependants, on the ground that they had not discharged the *onus* of proving that lead poisoning either caused, contributed to, or accelerated death:—*Held*: there was evidence to support the finding, & no misdirection.—YOUNG v. KEEBLE, LTD. (1928), 21 B. W. C. C. 294, C. A.

**3821c.** —.]—An odd job man in spinning mills was certified as suffering from epitheliomatous ulceration of the skin due to mineral oil. He died five months later. The county ct. judge held the certificate of the certifying surgeon was conclusive & debarred him from hearing any evidence on behalf of the employers, which tended to show that he had not contracted the disease in their employment & that death did not result from the disease:—*Held*: the judge was not entitled

to refuse to hear the evidence, & the case must be remitted for rehearing.—NEEDHAM v. ACE MILL, LTD. (1928), 21 B. W. C. C. 189, C. A.

**3825. Add. Annotations**:—*Consd.* Rees v. Imperial Navigation Coal Co. (1926), 20 B. W. C. C. 287. *Refd.* Powell v. Cauldon Potteries, (1926), 96 L. J. K. B. 245.

**3829a. What amounts to decision.**—A medical referee, in his certificate, said that it was impossible for him to give a certificate either agreeing with or against that given by the certifying surgeon, as it was outside his province as an ophthalmic surgeon. The county ct. judge having held the certificate of the certifying surgeon was conclusive:—*Held*: there had been no decision by the medical referee, & the case must go back for the appointment of a fresh medical referee.—JONES v. WILLIAM MUIRHEAD MACDONALD WILSON & Co., LTD. (1926), 19 B. W. C. C. 412, C. A.

**3831. Add. Annotation**:—*Distd.* Macy v. Cork Manufacturing Co. (1928), 21 B. W. C. C. 306.

**3834. Add. Citations**:—*affd. sub nom.* EVANS (RICHARD) & Co., LTD. v. SCAHILL (1927), 137 L. T. 161; 20 B. W. C. C. 348, H. L.

**3834a.** —.]—MACY v. CORK MANUFACTURING Co., LTD., No. 3818a, *ante*.

**3847. Add. Annotation**:—*Apprvd.* Blatchford v. Staddon & Founds, [1927] A. C. 461.

**3858. Add. Annotations**:—As to (1) *Consd.* Vickers v. Miners, Thames Steam Tug & Lighterage Co. v. Ingram (1927), 96 L. J. K. B. 490. As to (2) *Refd.* Vickers v. Miners, Thames Steam Tug & Lighterage Co. v. Ingram (1927), 96 L. J. K. B. 490.

**3860a. Effect of agreement for compensation—Facts as to agreement not presented in county court.**—On an application for review & redemption of weekly payments a workman alleged that he had negotiated with persons representing a new co. which had taken over the business of his employers, & the new co. had agreed to pay him £650 in full settlement of his claims. The county ct. judge had previously decided in a similar case that the workman could not rely upon such an agreement with the new co., as such agreement was only with a third party, & not with his employers. The parties treated the case as governed by that decision, & the question of the agreement was not gone into at the hearing. The application was then proceeded with as an application for review & the judge held the workman had recovered, & by his award stopped further weekly payments. The workman appealed, on the ground that the judge could not terminate the payments in view of the agreement:—*Held*: (1) the ct. could not entertain an appeal as to the effect of the agreement, as the facts as to that agreement had not been presented in the county ct., & there were no materials before the ct. on which they could come to a decision; (2) the question whether the workman had recovered was a question of fact, as to which there was evidence to support the finding, & there was no misdirection.—EAST KENT COLLIERY Co. v. HEATH (1926), 20 B. W. C. C. 97, C. A.

**3891a.** —.]—MALCOLM v. BARBER, WALKER & Co., LTD., No. 3359b, *ante*.



3896a. *Hearing unsatisfactory—Rehearing ordered.*—*HUCKNALL v. MANCHESTER CORPN.* (1928), 21 B. W. C. C. 8, C. A.

3897. *Add. Annotation:—Reid.* *Jones v. Cory* (1926), 20 B. W. C. C. 251.

3954a. *Acceptance of money paid into court—Appeal as to costs.*—On the hearing of a claim for compensation applt. agreed to accept £10 paid into ct. on Jan. 7, 1927, the date of the answer filed by resps., in full satisfaction of the claim. Under the award, the £10 was to be paid to applt. with a declaration of liability, but resps. were given costs after the date of filing of their answer. Applt. appealed from so much of the order as directed costs to be so paid:—*Held*: applt. could not take the benefit of the award & appeal from a part of it to which she objected, & there was no right of appeal.—*WALDEN v. GRAMOPHONE CO., LTD.* (1927), 20 B. W. C. C. 346, C. A.

3954b. — By widow—*Appeal as to amount of children's allowance.*—*MALCOLM v. BARBER, WALKER & CO., LTD.*, No. 3859b, *ante*.

3967. *Add. Citations:—*96 L. J. K. B. 254; 20 B. W. C. C. 198.

3969a. —.]—An infant workman having obtained an award, the employer appealed. Pending the appeal the employer agreed to withdraw the appeal, provided a lump sum was accepted by those acting on behalf of the infant:—*Held*: the proper order was to remit the case to the county ct. judge to consider the sufficiency of the amount offered in view of the chances of appeal being successful, & on the approval of the judge being given, the appeal should stand dismissed with liberty to apply.—*MARSHALL v. KIDDLE* (1927), 20 B. W. C. C. 614, C. A.

3981. *Add. Annotations:—Reid.* *Middleton Estate & Colliery Co. v. Finan* (1926), 20 B. W. C. C. 207; *Vickers v. Miners, Thames Steam Tug & Lighterage Co. v. Ingram* (1927), 96 L. J. K. B. 490.

3983. *Add. Annotation:—Reid.* *Middleton Estate & Colliery Co. v. Finan* (1926), 20 B. W. C. C. 207.

3990. *Add. Annotation:—As to (1) Reid.* *Vickers v. Miners, Thames Steam Tug & Lighterage Co. v. Ingram* (1927), 96 L. J. K. B. 490.

4009. *Add. Annotation:—Reid.* *Campbell v. Pollak*, [1927] A. C. 732.

4012a. — *Employer ordered to pay costs.*—*SIDNEY LEE (EXETER), LTD. v. JAMES*, No. 3545a, *ante*.

4013. *Add. Annotation:—Reid.* *Middleton Estate & Colliery Co. v. Finan* (1926), 20 B. W. C. C. 207.

4014a. —.]—On an application to review weekly

payments the employers received a letter from the workman's solrs., asking what was the exact amount of diminution they claimed, & replied that they intended to ask for a reduction of the 15s. a week to 2s. 6d. a week or to such other sum as the ct. should hold proper. The county ct. judge reduced the weekly payment to 10s., & ordered the employers to pay the costs:—*Held*: on the correct reading of the letter stating the diminution claimed the employers were successful on the award given, & the order as to costs should be set aside, & by consent of the employers, each party was ordered to pay their own costs.—*MIDDLETON ESTATE & COLLIERY CO., LTD. v. FINAN* (1926), 20 B. W. C. C. 207, C. A.

4019. *Add. Annotations:—Consd.* *Campbell v. Pollak*, [1927] A. C. 732. *Reid.* *Campbell v. Pollak*, [1927] A. C. 732.

4032a. *Workman's expenses in getting to medical referee's house.*—The ct. has no power to make an order that a workman, who is ordered to attend before a medical referee to determine whether he is entitled to continue in the receipt of a weekly payment for compensation, shall be paid a sum for his expenses in getting to the medical referee's house.—*RICHARDS v. UNITED NATIONAL COLLIERIES, LTD.* (1927), 96 L. J. K. B. 716; 137 L. T. 467; 71 Sol. Jo. 490; 20 B. W. C. C. 465, C. A.

4034a. *Taxing fee—Liability of workman to refund to employers.*—Notwithstanding Workmen's Compensation Act, 1925 (c. 84), Sched. I. (12), where a workman has brought unsuccessful proceedings against his employers, & has been ordered to pay their costs, he may also be made to refund to them the taxing fee which they have paid for having those costs taxed.—*ELWELL v. CRANE FOUNDRY CO.* (1928), 97 L. J. K. B. 641; 139 L. T. 300, C. A.

4042a. —.]—*KNIGHT v. SKINNER* (1928), 21 B. W. C. C. 344, C. A.

4055a. — *Owing to subsequent decision of appellate court.*—Where a county ct. judge's award was according to the law as interpreted at the date of the hearing, but such interpretation, owing to a subsequent decision of the House of Lords, was proved since to have been wrong:—*Held*: his order giving costs to the successful workman must be set aside, & applts, the employers, must have their costs both in the county ct. & in the Ct. of Appeal.—*AKERS v. LONDON & NORTH EASTERN RY. CO.* (1926), 20 B. W. C. C. 195, C. A.

4068. *Add. Citation:—*96 L. J. K. B. 268.

4076. *Add. Annotation:—As to (1) Distd.* *Adair v. Colville* (1926), 20 B. W. C. C. 702.

PART XIV. SECT. 22, SUB-SECT. 5.  
n i. —.]—*M'DOUGALL v. SUMMERLEE IRON CO., LTD.*, [1927] S. C. (H. L.) 72.—SCOT.

PART XIV. SECT. 24, SUB-SECT. 1.—  
A.

3979 ii. *S. P. M'ARDLE v. HOWIE (J. & R.), LTD.*, [1927] S. C. 779; 20 B. W. C. C. 790.—SCOT.

PART XIV. SECT. 24, SUB-SECT. 1.—J.  
sk. *Remit to medical referee—Fee of referee—By whom payable.*—The person liable for payment of the fee under Workmen's Compensation Act, 1923

(c. 42), s. 25 (1), is the person applying for registration at the time when the remit to the medical referee is made.—*EASTON v. NIDDRIE & BENHAR COAL CO., LTD.*, [1927] S. C. 3; 20 B. W. C. C. 652.—SCOT.

PART XIV. SECT. 25, SUB-SECT. 1.—  
A.

i i. —.]—The fact that pltf., who was suing in Admlty. for damages resulting from a collision which caused the death of her husband, had accepted benefits under Workmen's Compensation Act:—*Held*: not to bar her, under the principle of election, from

proceeding against the ship.—*DAGELAND v. S.S. CATALA*, [1927] 4 D. L. R. 426; [1927] 3 W. W. R. 97; 38 B. C. R. 440.—CAN.

PART XIV. SECT. 25, SUB-SECT. 1.—  
B.

4077 i. — *Deduction of costs of unsuccessful action.*—*ADAIR v. COLVILLE & SONS, LTD.*, [1927] S. C. 116; 20 B. W. C. C. 702.—SCOT.

& SONS, LTD., [1927] S. C. 116; 20 B. W. C. C. 702.—SCOT.

k i.

—A workman,

who has brought an action against his employer, founded solely upon the employer's liability at common law, & who has obtained a judgment in his favour, is not entitled, if that judgment be subsequently set aside upon appeal, to have compensation assessed in the action under Workmen's Compensation Act, 1906 (c. 58).—WARD v. [1927] I. R. 299.—IR.

**PART XIV. SECT. 25, SUB-SECT. 2.—**  
**A.**

n 1. — *From contractor.*—  
GEDDES v. DUNFERMLINE DISTRICT  
COMMITTEE, [1927] S. C. 797; 20  
B. W. C. C. 815.—SCOT.

sm. "Recover" damages — *What  
amounts to.*—The phrase "to recover"  
damages in Workmen's Compensation

Act, 1925 (c. 84), s. 30 (1), means  
"to receive payment of" damages, &  
where a workman has been unable to  
obtain payment under a common law  
judgment in his favour against a third  
party, he is entitled to claim com-  
pensation from his employers.—CUM-  
BERLAND v. LANARKSHIRE TRAMWAYS  
Co., [1927] S. C. 407; 20 B. W. C. C.  
780—SCOT.

## MAYOR'S AND CITY OF LONDON COURT.

### Part II.—Jurisdiction.

31. *Add. Annotation* :—**Dlstd.** *Lake v. Cronin, Hunt v. Cronin* (1928), 92 J. P. 191.

### Part III.—Practice and Procedure.

58. *Add. Annotation* :—**Refd.** *Re Keystone Knitting Mills Trade Mk.* (1928), 97 L. J. Ch. 316.



# MEDICINE AND PHARMACY.

## Part I.—Physicians and Surgeons.

15. *Add. Annotation* :—*Distd. Way v. Bishop*, [1928] Ch. 647.

## Part II.—The General Medical Council and Similar Bodies in the Dominions.

24. *Add. Annotation* :—*Generally, Mentd. R. v. Leicester JJ.*, *Ex p. Allbrighton*, [1927] 1 K. B. 557.
30. *Add. Annotation* :—*Gene lly, Mentd. R. v. Leicester JJ.*, *Ex p. Allbrighton*, [1927] 1 K. B. 557.

## Part III.—Medical Practitioners.

72. *Add. Annotation* :—*Refd. De Freville v. Dill* (1927), 96 L. J. K. B. 1056.
105. *Add. Annotation* :—*Folld. Macnaghten v. Douglas*, [1927] 2 K. B. 292.
106. For the existing paragraph substitute the following paragraph:—  
 ————.]—*Medical Act, 1858 (c. 90), s. 32,*
- does not apply to an osteopath, so as to prevent him from recovering at law fees charged for treatment as distinct from diagnosis or advice.—*MACNAGHTEN v. DOUGLAS*, [1927] 2 K. B. 292; 96 L. J. K. B. 738; 137 L. T. 518; 91 J. P. 143; 43 T. L. R. 525; 71 Sol. Jo. 409, D. C.

## Part VI.—Dentists.

- 205a. ———— **Non-payment of annual retention fee.**—*Dentists Act, 1921 (c. 21), s. 7 (1)*, impliedly authorises the Dental Board to provide for non-retention on, or removal from, the register in default of payment of the annual retention fee.—*TATTERSALL v. SLADEN*, [1928] Ch. 318; 97 L. J. Ch. 145; 138 L. T. 577; 44 T. L. R. 237; 26 L. G. R. 217.
- 205b. ———— **Conviction for misdemeanour.**—The word “misdemeanour” in *Dentists Act, 1878 (c. 33), s. 13*, is not confined to indictable misdemeanours.—*PICKUP v. UNITED KINGDOM DENTAL BOARD*, [1928] 2 K. B. 459; 97 L. J. K. B. 604; 139 L. T. 607; 92 J. P. 147; 44 T. L. R. 514; 72 Sol. Jo. 369; 26 L. G. R. 393, D. C.
206. *Add. Annotation* :—*Mentd. R. v. Leicester JJ.*, *Ex p. Allbrighton*, [1927] 1 K. B. 557.
223. *Add. Annotation* :—*Refd. Albemarle Supply Co. v. Hind*, [1928] 1 K. B. 307.
224. *Add. Annotation* :—*Refd. Dominion Press v. Customs & Excise Minister*, [1928] A. C. 340.

### PART II. SECT. 2.

**a i.** ———— *Must be specified in report of discipline committee.*—*CHURCH v. COLLEGE OF PHYSICIANS & SURGEONS*, [1927] 2 D. L. R. 957; [1927] 2 W. W. R. 9; 47 Can. Crim. Cas. 297; 22 Alta. L. R. 560; *varying*, [1927] 2 D. L. R. 701.—CAN.

**a i.** ———— *Jurisdiction of discipline committee.*—*Re MCLAUCHLAN & COLLEGE OF PHYSICIANS & SURGEONS*, [1927] 2 D. L. R. 953; [1927] 2 W. W. R. 4; 47 Can. Crim. Cas. 290; 22 Alta. L. R. 553.—CAN.

**b i.** ———— *Power of appellate court — To set aside order of council made without jurisdiction.*—*Re MCLAUCHLAN & COLLEGE OF PHYSICIANS & SURGEONS*, [1927] 2 D. L. R. 953; [1927] 2 W. W. R. 4; 47 Can. Crim. Cas. 290; 22 Alta. L. R. 553.—CAN.

**b ii.** ———— *To refer matter back to discipline committee for reconsideration.*—*CHURCH v. COLLEGE OF PHYSICIANS & SURGEONS*, [1927] 2

D. L. R. 957; [1927] 2 W. W. R. 9; 47 Can. Crim. Cas. 297; 22 Alta. L. R. 560; *varying*, [1927] 2 D. L. R. 701.—CAN.

**b iii.** ———— *To mitigate punishment.*—Where applt.'s conduct was such as to bring him within the disciplinary powers of the council & it was right in punishing him therefor, but in all the circumstances of the case the punishment imposed was too severe:—*Held*: his name should be restored to the register on Dec. 31, 1927.—*Re MCLAUCHLAN & COLLEGE OF PHYSICIANS & SURGEONS (Alta.)*, [1927] 3 D. L. R. 225; [1927] 2 W. W. R. 388; 48 Can. Crim. Cas. 148.—CAN.

### PART III. SECT. 3, SUB-SECT. 1.

**86 iv.** ————.]—Hospital liable for the negligence of nurses after an operation.—*NYBERG v. PROVOST MUNICIPAL HOSPITAL BOARD*, [1927] 1 D. L. R. 969; [1927] S. C. R. 226.—CAN.

### PART III. SECT. 7, SUB-SECT. 2.—B. (c).

**t i.** ————.]—*HORSEMAN v. NAIRN*, [1926] S. A. S. R. 1.—AUS.

**t ii.** ————.]—*O'CONNELL v. CULLEY*, [1927] V. L. R. 502; 49 A. L. T. 92; [1927] Argus L. R. 423.—AUS.

### PART VI. SECT. 1.

**a i.** ————.]—The rule as to the skill required of a dentist is the same as that with regard to the skill of a member of any other branch of the therapeutic art. Where he is registered & injury results from his treatment, the presumption is that he is competent & that the treatment was correct, until the contrary is shown.—*MCTAGGART v. POWERS*, [1927] 1 D. L. R. 28; 36 Man. L. R. 73; [1926] 3 W. W. R. 513.—CAN.

### PART VI. SECT. 2.

**207 iv.** ————.]—*Ex p. KEENE* (1926), 26 S. R. N. S. W. 463; 43 N. S. W. W. N. 136.—AUS.

## Part IX.—Drugs.

242. *Add. Citation* :—28 Cox, C. C. 303, D. C.

Conviction quashed.—*R. v. KYNASTON* (1926),  
19 Cr. App. Rep. 180, C. C. A.

242a. ——— *Prosecution under Dangerous Drugs  
Act, 1925 (c. 74)—Act not in operation.*—

## Part X.—Poisons.

257. *Add. Annotation* :—*Reid. R. v. Cory*, [1927] 1 K. B. 810.

### PART IX. SECT. 1.

242 i. *Dangerous drugs—Procuring drugs for unlicensed or unauthorised person—Doctor supplying wife with orders on chemist.*—A complaint, which charged a medical practitioner with procuring dangerous drugs for his wife, in contravention of Dangerous Drugs Act, 1920 (c. 46), s. 7, & Dangerous Drugs Regulations, 1921, reg. 4, libelled that accused had delivered to his wife five order forms of different dates, signed by him, in which he pretended that the drugs specified in the orders were required by him for professional use only, “while you well knew that the order forms were granted by you for the purpose of enabling your wife to obtain the drugs for her own use, she not being a person licensed or otherwise authorised to be in possession of the drugs,” & that his wife presented the order forms to certain chemists & thereby obtained

the drugs :—*Held* : the complaint relevantly charged an offence against the Act & regulation libelled, in respect that (1) the order forms, inasmuch as they bore to be “for professional use only,” were not prescriptions; (2) the procedure alleged to have been followed negatived the view that accused was dispensing his own medicine; (3) the wife was not a messenger on behalf of her husband, but a person obtaining drugs on her own behalf & for her own use.—*STRATHERN v. ROSS*, [1927] S. C. (J.) 70.—*SCOT*.

### PART X. SECT. 1.

h i. ———.]—*R. v. SMITH*, [1924] 4 D. L. R. 427; 55 O. L. R. 549.—*CAN.*

h ii. ——— *Conviction under amended Act—Amendment not in operation.*—*Held* : the conviction was bad.—*R. v. SOO GONG*, [1927] 2 D. L. R. 269; [1927] 1 W. W. R. 669; 47 Can. Crim. Cas. 275; 38 B. C. R. 321.—*CAN.*

### PART X. SECT. 2.

258 iii. ———.]—*Held* : a complaint, which set forth that a duly registered chemist on a specified date did keep an open shop for retailing poisons, contrary to Pharmacy Act, 1868 (c. 121), ss. 1, 15, as amended by Poisons & Pharmacy Act, 1908 (c. 55), s. 3 (1), & stated that accused, “not being personally present & *bona fide* conducting the sale,” did sell to a person named, by the hand of an assistant who was not a duly registered chemist, certain poisons, did not relevantly charge a contravention of the statutes libelled, in respect that the alleged transaction, being merely an isolated sale when the registered chemist did not happen to be present, was not an offence under the statutes, & particularly was not an offence under 1908 Act, s. 3 (1).—*LINSTEAD v. SIMPSON*, [1927] S. C. (J.) 101.—*SCOT*.

## METROPOLIS.

### Part III.—The London County Council.

8. *Add. Annotation* :—**Refd.** *Collins v. Whiteway*, [1927] 2 K. B. 378.

### Part VII.—Officers of Metropolitan Authorities.

29a. Transfer of existing officer to borough council  
—Right to remuneration for additional duties  
—London Government Act, 1899 (c. 14),

ss. 8 (3), 30 (1).]—**GRAY v. HACKNEY  
BOROUGH COUNCIL** (1904), 2 L. G. R. 429.

### Part XI.—Metropolitan Building Legislation.

81. In lieu of the paragraph following the catch-  
words substitute as follows :—

The comrs. under Metropolitan Building  
Act, 1855 (c. 122), having incurred expense  
under sect. 73 of the Act, demanded payment  
of the owner of the structure, who refused

to pay :—**Held** : the six months, within  
which a complaint was to be made, were to  
be reckoned from the demand & refusal, not  
from the incurring of the expense.

*Add. Annotation* :—**Apld.** *Ashby-de-la-Zouch  
Grdns. v. Summers*, [1928] 2 K. B. 397.

### Part XIV.—Customs of London.

143. *Add. Annotation* :—**Mentd.** *Campbell v. Pollak*, [1927] A. C. 732.



1120a. Who entitled to recover—Co-existence of majority & minority checkweighers.]—BELL v. BENNETT, No. 1117a, *ante*. 1188. *Add. Annotation*:—*Reid*. Edwards v. uncaegurwen Colliery Co., James v. Same, Jenkins v. Same (1926), 96 L. J. K. B. 337.

## Part XV.—Quarries.

1228. *Add. Annotation*: —*Reid*. Coleshill v. Manchester Corpn., [1928] 1 K. B. 776. *Mentd.* Oldham v. Sheffield Corpn. (1927), 136 L. T. 681.

### PART XIV. SECT. 1, SUB-SECT. 9.—A.

*sp. Statutory defence—Nature of.*—Observations on the nature of the statutory defence competent to mine-owners under Coal Mines Act, 1911 (c. 50), s. 102 (8).—PARK v. WILSONS & CLYDE COAL CO., HAGGERTY v. WILSONS & CLYDE COAL CO., [1928] S. C. 121.—SCOT.

### PART XIV. SECT. 1, SUB-SECT. 9.—B. (j).

*st. Duty to inspect every part of mine in which work is carried on.*—*Held*: a disused cut through was part of a mine, in respect of which inspection was necessary.—*Ex p.* DELLACA (1927), 27 S. R. N. S. W. 64; 44 N. S. W. W. N. 39.—AUS.

### PART XIV. SECT. 2, SUB-SECT. 4.

*i i.* — *Mining Act of Ontario, R. S. O., 1914 (c. 32), s. 164.*—DOYLE v. FOLEY-O'BRIEN, LTD. (1915), 7 O. W. N. 780; 8 O. W. N. 362; 34 O. L. R. 42.—CAN.

*i ii.* — —.—HULL v. SENECA SUPERIOR SILVER MINES, LTD. (1915), 8 O. W. N. 301; 33 O. L. R. 557; 24 D. L. R. 254.—CAN.

# MISREPRESENTATION AND FRAUD.

## Part I.—Representations Generally.

12. *Add. Annotation*:—*Reid. Re Wait*, [1927] 1 Ch. 606. *Trustee v. Lancaster Duchy*, [1927] 1 K. B. 516.
24. *Add. Annotation*:—*As to* (1) *Reid. Public*

## Part III.—What Constitutes Misrepresentation.

113. *Add. Annotation*:—*Apld. Hands v. Simpson Fawcett* (1928), 295.

## Part IV.—Fraudulent and Innocent Misrepresentation.

185. *Add. Annotation*:—*As to* (2) *Reid. Greer v. Downs Supply Co.*, [1927] 2 K. B. 28.
219. *Add. Annotation*:—*Reid. Torbay Hotel v. Jenkins*, [1927] 2 Ch. 225.
254. *Add. Annotation*:—*Gener*, *Mentd. II.* H., [1928] P. 206.

## Part V. Inducement, Materiality, and Alteration of Position.

389. *Add. Annotation*:—*Mentd. Greer v. Downs Supply Co.*, [1927] 2 K. B. 28.
- 434a. ———.]—*HUTCHINSON v. MORLEY* (1839), 2 Arn. 2; 7 Scott, 341; 3 Jur. 288.
439. *Add. Annotation*:—*Reid. Lake v. Simmons*, [1927] A. O. 487.
- 445a. ———.]—Pltf. desired to be present at the first performance of a play at a theatre. He knew that, in consequence of his having made certain serious & unfounded charges against some members of the theatre staff, an application for a ticket in his own name would be refused. He therefore obtained a ticket through the agency of a friend, who bought the ticket at the theatre without disclosing that it was for pltf. By order of deft., the managing director of the theatre, pltf. was refused admission to the theatre on the night in question. Pltf. claimed damages from deft. for maliciously procuring the proprietors of the theatre to break a contract for the admission of pltf to the theatre, alleged to have been made by them with pltf. by the sale of the ticket:—*Held*: the non-disclosure of the fact that the ticket was bought for pltf. prevented the sale of the ticket from constituting a contract as alleged, the identity of pltf. being in the circumstances a material element in the formation of the contract, & the action failed.—*SAID v. BUTT*, [1920] 3 K. B. 497; 90 L. J. K. B. 239; 124 L. T. 413; 36 T. L. R. 762.
- Annotations*:—*Consd. Dyster v. Randall*, [1926] Ch. 932. *Apld. Scammell v. Attlee* (1928), 45 T. L. R. 75.
455. *Add. Annotation*:—*Reid. James v. British General Insce.*, [1927] 2 K. B. 311.

### PART I. SECT. 7.

*g. i.* ———.]—*LAMB v. WALTERS*, [1926] App. D. 358. S. AF.

### PART III. SECT. 2, SUB-SECT. 2.—A. (a).

123 i. *Whether amounting to misrepresentation.*—Where although representations, inducing the making of a contract, are true so far as they go, they do not cover the whole truth, the non-disclosure, whether fraudulent

or innocent, may, according to circumstances, so relate to the essence of the contract as to entitle the representee to rescission.—*CANADIAN FARM IMPLEMENT CO., LTD. v. ALBERTA FOUNDRY & MACHINE CO., LTD. (Alta.)*, [1927] 2 D. L. R. 871; [1927] 1 W. W. R. 1025.—CAN.

### PART IV. SECT. 1, SUB-SECT. 2.—B. (a).

173 ii. ———.]—*MACFARLANE v.*

*DAVIS (Sask.)* (1911), 18 W. L. R. 498.—CAN.

*sd.*—*Pleading.*—Where a declaration alleged that representations were made by deft. falsely & fraudulently, to induce pltf. to act upon them, but did not contain any allegation that deft. knew the representations so made by him to be false:—*Held*: the declaration was sufficient.—*MCKAY v. CAMPBELL* (1871), 8 N. S. R. (2 G. & O.) 475.—CAN.

## Part VI.—Who are deemed Parties to the Representation

464. *Add. Annotation* :—*Refd.* *Konskier v. Goodman*, [1928] 1 K. B. 421.

## Part VII.—Remedies for Misrepresentation.

509. *Add. Annotation* :—*Refd.* *Houghton v. Nothard, Lowe & Wills* (1927), 44 T. L. R. 76.

## Part IX.—Proceedings for Rescission.

637. *Add. Annotation* :—*Mentd.* *Re Article X of Articles of Agreement for a Treaty between Great Britain & Ireland* (1928), 45 T. L. R. 57.
649. *Add. Annotation* :—*Refd.* *Public Trustee v. Lancaster Duchy*, [1927] 1 K. B. 516.
695. *Add. Annotation* :—*Refd.* *Hyman v. Hyman, Hughes v. Hughes* (1928), 139 L. T. 416.
739. *Add. Annotation* :—*Mentd.* *Weld v. Petre* (1928), 97 L. J. Ch. 399.
748. *Add. Annotation* :—*Refd.* *Weld v. Petre* (1928), 97 L. J. Ch. 399.

## Part X.—Misrepresentation as a Defence.

774. *Add. Annotation* :—*Refd.* *Re Wait*, [1927] 1 Ch. 606.

## Part XI.—Effect of Fraud on Innocent Parties.

783. *Add. Annotation* :—*Mentd.* *Re Stanton, Hogg v. Maule* (1927), 44 T. L. R. 118.

**PART VIII. SECT. 1, SUB-SECT. 2.—A.**  
531 iv. ———.]—*IRVING v. MERYGOLD* (1847), 5 U. C. R. 272.—CAN.

**PART VIII. SECT. 1, SUB-SECT. 5.—C.**  
583 iii. ———.]—*BLOIS v. CITY OF HALIFAX* (1921), 54 N. S. R. 207; 56 D. L. R. 239.—CAN.

**PART VIII. SECT. 1, SUB-SECT. 5.—D.**  
593 i. *Date of ascertainment of value—Date of purchase.*]—*HARDMAN v. MCLEOD* (1926), 26 S. R. N. S. W. 578; 43 N. S. W. W. N. 194.—AUS.

**PART IX. SECT. 1, SUB-SECT. 2.—C.**  
642 iv. ———.]—*WHEELER v. ATKINSON* (1926), 28 W. A. L. R. 12.—AUS.

**PART IX. SECT. 2, SUB-SECT. 4.—A.**  
708 i. *When ordered.*]—*HESS v. ROSS* (Sask.) (1912), 22 W. L. R. 742; 3 W. W. R. 251; 8 D. L. R. 798.—CAN.

**PART IX. SECT. 2, SUB-SECT. 5.—C.**  
722 i. *General rule.*]—*KLEYNHAUS BROTHERS v. WESSELS' TRUSTEE*, [1927] App. D. 271.—S. AF.

**PART IX. SECT. 3, SUB-SECT. 6.**  
742 ii. ———.]—*CARRIQUE v. CATTIS* (1914), 7 O. W. N. 500; 32 O. L. R. 548.—CAN.

**PART X. SECT. 3, SUB-SECT. 1.**  
773 ii. ———.]—A doctor sold his practice for £500. The purchaser

paid two instalments of the price, but, when sued for the balance of the price, he stated in defence that he had been induced to enter into the contract by the false & fraudulent misrepresentations of the seller:—*Held*: the purchaser's claim of damages, being illiquid, & based not upon the contract of sale but upon delict, could not constitute a relevant defence to the action, & could not be dealt with as a counter-claim in that action.—*SMART v. WILKINSON*, [1928] S. C. 383.—SCOT.

### PART XI.

r i. *S. P. RUTLEDGE v. ANDERSON* (1914), 27 W. L. R. 75; *affd.* (1915), 28 W. L. R. 393; 20 D. L. R. 97; 24 Man. L. R. 403.—CAN.



## MISTAKE.

## Part I.—Nature of Mistake.

5. *Add. Annotation* :—**Mentd.** *Tredeggar v. Harwood* (1928), 97 L. J. Ch.

## Part III.—Mistake of Fact.

64. *Add. Citations* :—96 L. J. K. B. 621 ; 137 L. T. 233 ; 43 T. L. R. 417 ; 33 Com. Cas. 16, H. L.
65. *Add. Annotation* :—**Refd.** *Greer v. Downs Supply Co.*, [1927] 2 K. B. 28.
66. *Add. Annotation* :—**Consd.** *Greer v. Downs Supply Co.*, [1927] 2 K. B. 28.
71. *Add. Annotation* :—**Refd.** *Lake v. Simmons*, [1927] A. C. 487.
72. *Add. Annotation* :—**Refd.** *Greer v. Downs Supply Co.*, [1927] 2 K. B. 28.
75. After this case add “*See, also*, SENTATION & FRAUD, No. 445a.”
86. *Add. Annotation* :—**Refd.** *Chaney v. Maclow* (1928), 45 T. L. R. 135.
87. *Add. Citations* :—96 L. J. Ch. 38 ; 136 L. T. 235.
94. *Add. Annotation* :—**Apld.** *Kennedy v. Thomassen* (1928), 45 T. L. R. 122. After this case add “*See, also*, CONTRACT, No. 3081a.”
125. *Add. Annotation* :—*As to* (3) **Apld.** *London Holeproof Hosiery Co. v. Padmore* (1928) 44 T. L. R. 499.
173. *Add. Annotation* :—*Generally*, **Refd.** *Home & Colonial Insee. v. London Guarantee & Accident Co.* (1928), 45 T. L. R. 134.

## Part V.—Relief in Cases of Mistake.

249. *Add. Annotation* :—*As to* (1) **Refd.** *Public Trustee v. Lancaster Duchy*, [1927] 1 K. B. 516.
293. *Add. Annotation* :—**Refd.** *Eagle Star & British Dominions Insee. v. Reiner* (1927), 43 T. L. R. 259.
- 414a. ————.]—**SMITH v. PAWSON** (1855), 25 L. T. O. S. 40, C. A.  
*Annotation* :—**Mentd.** *Musgrove v. Smith* (1855), 24 L. J. Ch. 439.
420. *Add. Annotation* :—**Expld.** *Re Mason* (1928), 97 L. J. Ch. 321.

## Part VI.—Recovery of Money Paid under Mistake.

458. *Add. Annotation* :—**Apld.** *Home & Colonial Insee. v. London Guarantee & Accident Co.* (1928), 45 T. L. R. 134.
463. *Add. Annotation* :—**Mentd.** *Re Harrington Motor Co., Ex p. Chaplin*, [1928] Ch. 105.
- 464a. **Mistake must have been cause of payment.**—Where an action was brought for money paid under a mistake of fact, & pltf.’s evidence showed that if he had known of the fact, his ignorance of the law would still have led him to pay :—**Held** : as knowledge of the fact would not have affected his conduct the action failed.—**HOME & COLONIAL INSURANCE Co., LTD. v. LONDON GUARANTEE & ACCIDENT Co., LTD.** (1928), 45 T. L. R. 134.
470. *Add. Annotation* :—**Mentd.** *Lloyds Bank v. Chartered Bank of India, Australia & China* (1928), 97 L. J. K. B. 609.
487. *Add. Annotation* :—*As to* (2) **Apld.** *Home & Colonial Insee. v. London Guarantee & Accident Co.* (1928), 45 T. L. R. 134.
511. *Add. Annotation* :—**Consd.** *Re Mason* (1928), 97 L. J. Ch. 321.
533. *Add. Annotations* :—*As to* (2) **Dlstd.** *Reckitt v. Barnett, Pembroke & Slater* (1927), 44 T. L. R. 63. *Generally*, **Refd.** *Home &*

## PART II. SECT. 2, SUB-SECT. 1.

11 v. ————.]—**Held** : even if the money had been paid under a mistake of law, it could not be recovered back.—**CAULFIELD v. ARNOLD** (No. 2), [1925] 1 D. L. R. 298 ; 34 B. C. R. 398.—**CAN.**

## PART III. SECT. 2, SUB-SECT. 7.

11. ————.]—**BURKE v. RITCHIE** (1906), Cout. 365.—**CAN.**

## PART V. SECT. 2, SUB-SECT. 1.

216 ii. *Mistaken belief that money due—Onus of proof on plaintiff.*—**RECSEY v. REICHE**, [1927] App. D. 554.—**S. AF.**

## PART V. SECT. 3, SUB-SECT. 1.—C. (b).

ri. ————.]—**MAHON v. MCLEAN** (1867), 13 Gr. 361.—**CAN.**

## PART V. SECT. 3, SUB-SECT. 2.—A. (a).

282 iii. *Revsd.* on other grounds, [1919] 3 W. W. R. 480 ; 48 D. L. R. 447.

282 ix. ————.]—**SAMSON v. BUTT**, [1927] N. Z. L. R. 119.—**N.Z.**

st. *Reasonableness of mistake.*—**Held** : not a question in issue.—**TSHOBA COLLIERY (NATAL), LTD. v. TSHOBA COAL SYNDICATE, LTD.** (1926), 47 N. L. R. 526.—**S. AF.**

## PART V. SECT. 3, SUB-SECT. 2.—A. (b).

300 ii. ————.]—**COTTINGHAM v. BOULTON** (1857), 6 Gr. 186.—**CAN.**

300 iii. ————.]—*Unless induced by other party.*—**Re GOLD MEDAL FURN. MFG. Co., Ex p. SCYTHES & Co.** (Ont.), [1927] 2 D. L. R. 323 ; 8 C. B. R. 169.—**CAN.**

## PART VI. SECT. 2, SUB-SECT. 2.

475 xix. ————.]—**CANADIAN MORTGAGE ASSOCN. v. R.**, [1917] 1 W. W. R. 1130 ; 10 Sask. L. R. 30 ; 33 D. L. R. 43.—**CAN.**

Colonial Insee. v. London Guarantee & Accident Co. (1928), 45 T. L. R. 134. Mentd. British & North European Bank v. Zalstein, [1927] 2 K. B. 92.

536. *Add. Annotation* :—Consd. *Re Mason* (1928), 97 L. J. Ch. 321.

537. *Add. Annotation* :—Refd. British & North

European Bank v. Zalstein, [1927] 2 K. B. 92.

540. *Add. Citations* :—[1927] 2 K. B. 92; 96 L. J. K. B. 539; 137 L. T. 127; 43 T. L. R. 299.

562. *Add. Citations* :—137 L. T. 533; 17 Asp. M. L. O. 305.

*Add. Annotation* :—Expld. *Smith Hogg v. Bamberger* (1928), 97 L. J. K. B. 458.

PART VI. SECT. 3, SUB-SECT. 1.  
t 1. —.—.]—FISHER v. LUKE, [1926]  
V. L. R. 190; 47 A. L. T. 165.—AUS.  
562 i. *Effect of change in understand-*

*ing of law—Subsequent declaration of law  
by court.*]—Money voluntarily paid at  
a time when the law is in favour of the  
payee cannot be recovered, if a subse-

quent judicial decision reverses the  
former understanding of the law.—  
JULIAN v. AUCKLAND (MAYOR, ETC.),  
[1927] N. Z. L. R. 453.—N.Z.

# MONEY AND MONEY-LENDING.

## Part I.—Money.

8. *Add. Annotation*:—*Refd.* Anchor Donaldson v. Crossland (1928), 45 T. L. R. 97. 10. *Add. Annotation*:—*Refd.* *Re* Wait, [1927] 1 Ch. 606.

## Part II.—Currency and Rate of Exchange.

12. *Add. Annotation*:—*As to* (1) *Refd.* Buerger v. New York Life Assce. (1927), 96 L. J. K. B. 930. 52. *Add. Annotation*:—*F* *td.* Richardson v. Richardson, [1927] P. 228. 63. *Add. Citations*:—96 L. J. K. B. 930; 137 L. T. 431.

## Part III.—Interest.

- 101a. —.]—SWEETLAND v. SMITH (1833), 1 Cr. & M. 585; 3 Tyr. 491; 2 L. J. Ex. 190; 149 E. R. 532. 219. *Add. Annotation*:—*Refd.* Weld v. Petre (1928), 97 L. J. Ch. 399. 119. *Add. Annotation*:—*Refd.* Graigola Merthyr Co. v. Swansea Corpn., [1928] Ch. 31. 224. *Add. Citation*:—136 L. T. 114. 145. *Add. Annotation*:—*Mentd.* Lala Indar Prasad v. Lala Jagmohan Das (1927), 43 T. L. R. 536. 243. *Add. Annotation*:—*Consd.* Weld v. Petre (1928), 97 L. J. Ch. 399.

## Part IV.—Money-Lending.

286. *Add. Annotations*:—*Generally*, *Refd.* Glaskie v. Watkins, [1927] 2 K. B. 181. *Mentd.* *Re* Debtor (No. 229 of 1927), [1927] 2 Ch. 367. 343. *Add. Annotation*:—*Refd.* Merz v. South Wales Equitable Money Soc., [1927] 2 K. B. 366. 294. *Add. Annotation*:—*Generally*, *Mentd.* *Re* Debtor (No. 229 of 1927), [1927] 2 Ch. 367. 345. *Add. Annotation*:—*Refd.* Merz v. South Wales Equitable Money Soc., [1927] 2 K. B. 366. 301. *Add. Annotation*:—*Mentd.* *Re* Debtor (No. 229 of 1927), [1927] 2 Ch. 367. 346. *Add. Annotation*:—*As to* (1) *Refd.* Merz v. South Wales Equitable Money Soc., [1927] 2 K. B. 366. 302. *Add. Annotations*:—*Refd.* Glaskie v. Watkins, [1927] 2 K. B. 181. *Mentd.* *Re* Debtor (No. 229 of 1927), [1927] 2 Ch. 367. 346a. *Company registered as money-lender—Security payable to secretary.*]—*Deft.* society became incorporated as a limited co. & began to carry on business as money-lenders & were registered as such, & they made an advance to pltfs., who signed a promissory note agreeing to pay the amount to the secretary of *deft.* society, which was mentioned by name in the note as the society of which he 303. *Add. Annotation*:—*Consd.* *Re* Mason (1928), 97 L. J. Ch. 321. 304. *Add. Annotation*:—*Consd.* Pirie v. Richardson, [1927] 1 K. B. 448. 316. *Add. Annotation*:—*Refd.* Merz v. South Wales Equitable Money Soc., [1927] 2 K. B. 366.

PART III. SECT. 2, SUB-SECT. 1.—A. n. *Revsd.*, 64 S. C. R. 396.

A. C. 380; 96 L. J. P. C. 41; 136 L. T. 646.—AUS.

borrowing for necessity.—SUNDER MULL v. SATYA KINKER SAHANA (1927), L. R. 55 Ind. App. 85.—IND.

PART III. SECT. 2, SUB-SECT. 1.—B. 95 vi. —.]—DUNN v. R. (1901), 1 Cout. Dig. 728.—CAN.

PART III. SECT. 2, SUB-SECT. 3.—A. sk. *Money obtained by threat.*]—FURPHY v. NIXON (1925), 37 C. L. R. 161; 26 S. R. N. S. W. 380.—AUS.

PART IV. SECT. 1, SUB-SECT. 1.—A. 282 i. *Question of fact.*]—In each case it is a question of fact whether a person is carrying on the business of money-lending.—KERR v. LOUISON, [1928] N. Z. L. R. 154.—N. Z.

PART III. SECT. 2, SUB-SECT. 2.—C. f i. —.]—THE CUSTODIAN v. BLUCHER, [1927] 3 D. L. R. 40; [1927] S. C. R. 420.—CAN.

PART III. SECT. 6, SUB-SECT. 1. 261 v. —.]—CLYDE NAVIGATION TRUSTEES v. KELVIN SHIPPING CO., LTD., [1927] S. C. 622.—SCOT.

PART IV. SECT. 2, SUB-SECT. 3. 324 i. *What amounts to—Question of fact.*]—GOLDESTEIN v. CRAFT (1926), 26 S. R. N. S. W. 354; 43 N. S. W. W. N. 13.—AUS.

sd. *Under Crown Suits Act, 1898 62 Vict. No. 9, W. A.*]—*Whether payable by Crown.*]—R. v. MCNEIL, [1927]

sl. *Rule in India.*]—In India compound interest is common, & often may be necessary & proper upon a



was secretary. In an action for a declaration that the transaction was void, on the ground that defts. had taken a security in a name other than their registered name, contrary to Money-lenders Act, 1900 (c. 51), s. 2 (1) (c):—*Held*: as no one could sue on the note except the secretary, the security had been taken in a name other than defts.' registered name, & pltf. were entitled to the declaration claimed.—*MERZ v. SOUTH WALES EQUITABLE MONEY SOCIETY, LTD.*, [1927] 2 K. B. 366; 96 L. J. K. B. 1020; 137 L. T. 626; 43 T. L. R. 456, C. A.

377. *Add. Annotation*:—*As to* (1) *Refd.* *Crossingham v. Park* (1927), 96 L. J. K. B. 1036.

377a. *Before proceedings taken by money-lender for recovery of money lent.*—(1) A county ct. has jurisdiction under Money-lenders Act, 1900 (c. 51), s. 1 (2), to entertain an application by a borrower from a registered money-lender to reopen a money-lending transaction, only when the amount of the money lent, whether repayable by instalments or otherwise, without the addition of any claims arising under any agreement to pay interest or an amount charged for "expenses, inquiries, fines, bonus, premium, renewals, or any other charges," is within the jurisdiction of the county ct.

(2) If this condition is fulfilled, the ct. may entertain the application, although the money-lender has not taken any proceedings to recover the money lent, & although the time has not come for taking such proceedings.—*CROSSINGHAM v. PARK*, [1928] 1 K. B. 330; 96 L. J. K. B. 1036; 137 L. T. 651; 43 T. L. R. 647, D. C.

379a. *Jurisdiction of county court—Amount of money lent over £100.*—*CROSSINGHAM v. PARK*, No. 377a, *ante*.

381a. ———.—(1) In order that there should be a contravention of Money-lenders Act, 1927 (c. 21), s. 5 (3), it is not necessary that a person acting as agent or canvasser for the purpose of inviting the public to borrow money from a money-lender should be employed by the money-lender, & the transaction will be illegal if the money-lender, although not having employed that person, nevertheless has consented to or connived at his acting in that capacity.

(2) Interest at forty-eight per cent. *per annum* for a loan amply secured by a bill of sale is excessive, & the transaction is harsh & unconscionable within sect. 10 of the above Act.—*VERNON-JEFFREYS v. PINTO* (1928), 97 L. J. Ch. 358; 44 T. L. R. 699; 72 Sol. Jo. 518.

410a. ———.—*VERNON-JEFFREYS v. PINTO*, No. 381a, *ante*.

434. *Add. Annotation*:—*As to* (2) *Refd.* *Glaskie v. Watkins*, [1927] 2 K. B. 181.

434a. *Remitting action to county court—Whether claim founded on contract—County Courts Act, 1919 (c. 73), s. 1.*—Pltf., a borrower from a money-lender, issued a writ claiming to have re-opened a money-lending transaction between pltf. & deft., a declaration that the interest charged therein was excessive & the transaction harsh & unconscionable, accounts & inquiries, payment of the sum found due to pltf. & other & necessary relief under Money-lenders Acts. Pltf. having applied to have the action remitted to the county ct. for trial, the claim being restricted to £100:—*Held*: pltf.'s claim was founded on contract within County Cts. Act, 1919 (c. 73), s. 1, & could be remitted to the county ct. under that sect. for hearing.—*WHITE v. SMITH* (1927), 96 L. J. K. B. 397; 137 L. T. 48; 43 T. L. R. 288; 71 Sol. Jo. 191, C. A.

442. *For "Party seeking relief—Ordered to pay costs" read "Costs—Party seeking relief—Ordered to pay costs."*

442a. ——— *Action by money-lender—Judgment for reduced amount—Discretion to deprive plaintiff of costs.*—In an action by money-lenders in the county ct. for money lent & interest, where the judge is satisfied that the transaction was harsh & unconscionable & the interest excessive, & where, after reopening the transaction, he gives judgment for pltf. for a reduced amount, he has a discretion to deprive pltf. of costs.—*TEMPERANCE LOAN FUND v. ERWOOD* (1927), 137 L. T. 449; 43 T. L. R. 530, D. C.

445. *Add. Annotation*:—*Consd.* *Glaskie v. Watkins*, [1927] 2 K. B. 181.

446. *Add. Annotations*:—*Refd.* *Glaskie v. Watkins*, [1927] 2 K. B. 181. *Mentd.* *Re Debtor* (No. 229 of 1927), [1927] 2 Ch. 367.

447. *Add. Annotations*:—*Consd.* *Crossingham v. Park* (1927), 96 L. J. K. B. 1036. *Refd.* *Glaskie v. Watkins*, [1927] 2 K. B. 181.

448. *Add. Annotation*:—*N.F.* *Glaskie v. Watkins*, [1927] 2 K. B. 181.

449. *Add. Citations*:—[1927] 2 K. B. 181; 96 L. J. K. B. 469; 137 L. T. 132; 71 Sol. Jo. 192, C. A.

456a. *Employment of agent or canvasser—Money-lenders Act, 1927 (c. 21), s. 5 (3).*—*VERNON-JEFFREYS v. PINTO*, No. 381a, *ante*.

# MORTGAGE.

## Part I.—Nature of Mortgage.

4. *Add. Annotation*:—**Refd.** *Weld v. Petre* (1928), 97 L. J. Ch. 399.
- 72a. *S. P. RATOLIFF v. DAVIS* (1610), 1 Bulst. 29; Cro. Jac. 244; Yelv. 178; Noy, 137; 80 E. R. 733.
- Annotations*:—**Consd.** *Ryall v. Rolle* (1749), 1 Atk. 165. **Refd.** *Kinsey v. Heyward* (1699), 1 Ld. Raym. 432; *Donald v. Suckling* (1866), L. R. 1 Q. B. 585.
- 78a. ————.]—Ordinarily by the common law, although a mtge. may be given without delivering possession, yet a mere pledge cannot be given without the delivery of the possession of the goods (MELLISH, L.J.). —**AYERS v. SOUTH AUSTRALIAN BANKING CO.** (1871), L. R. 3 P. C. 548; 7 Moo. P. C. C. 432; 19 W. R. 860; 17 E. R. 163; *sub nom.* **AYRES v. SOUTH AUSTRALIAN BANKING CO.**, 40 L. J. P. C. 22, P. C.
- Annotations*:—**Mentd.** *Batson v. London School Board* (1903), 67 J. P. 457. **Refd.** *Burdick v. Sewell* (1883), 10 Q. B. D. 363.

## Part II.—Classification of Mortgages.

260. *Add. Annotation*:—**Refd.** *Re Wait*, [1927] 1 Ch. 606.
305. *Add. Annotation*:—As to (1) **Consd.** *Weld v. Petre* (1928), 97 L. J. Ch. 399.

## Part III.—Parties to Mortgages.

371. *Add. Annotation*:—Generally, **Refd.** *Pirie v. Richardson*, [1927] 1 K. B. 448.

## Part IV.—Form and Contents of Mortgage.

488. *Add. Annotation*:—**Distd.** *Sowerby v. Lindsay* (1928), 44 T. L. R. 501.
490. *Add. Annotation*:—As to (1) **Consd.** *Sowerby v. Lindsay* (1928), 44 T. L. R. 501.
501. In the catchwords for “charged” read “changed.”
- 501a. ————.]—**JACKSON v. INNES** (1819), 1 Bli. 104; 4 E. R. 38, II. L.
- Annotations*:—**Apld.** *Clark v. Burgh* (1845), 2 Coll. 221. **Consd.** *Whitbread v. Smith* (1854), 3 De G. M. & G. 727. **Apld.** *Heather v. O'Neill* (1857), 4 Jur. N. S. 181. **Consd.** *Atkinson v. Smith* (1858), 3 De G. & J. 186. **Apld.** *Hastings v. Astley* (1861), 30 Beav. 260. **Expld.** *Dawson v. Bank of Whitehaven* (1877), 6 Ch. D. 218. **Distd.** *Jones v. Davies* (1878), 8 Ch. D. 205. **Refd.** *Reeve v. Hicks* (1825), 2 Sim. & St. 403; *Hipkin v. Wilson* (1850), 15 L. T. O. S. 559; *Plowden v. Hyde* (1852), 2 De G. M. & G. 681; *Eddleston v. Collins* (1853), 3 De G. M. & G. 1; *Walker v. Armstrong* (1856), 21 Beav. 284; *Heather v. O'Neill* (1858), 27 L. J. Ch. 512; *Plomley v. Fleton* (1888), 14 App. Cas. 61.
- 505a. ————.]—A mtge. of property does not alter the existing limitations affecting it, except for the purpose of the mtge., unless an express intention be shown to resettle it.—**HASTINGS (LORD) v. ASTLEY** (1861), 30 Beav. 260; 8 Jur. N. S. 225; 10 W. R. 73; 54 E. R. 888.
587. *Add. Annotations*:—**Refd.** *Houghton v. Nothard, Lowe & Wills*, [1927] 1 K. B. 246; *Liggett (Liverpool) v. Barclays Bank* (1927), 137 L. T. 443.

**PART I. SECT. 4, SUB-SECT. 2.**  
37 v. ————.]—Where a registered instrument clearly shows a transaction between the parties to be a sale, oral evidence to show that it was intended to be a mtge. is inadmissible in evidence.—**MAUNG SHWE PHOO v. MAUNG TUN SHIN** (1927), 1 L. R. 5 Ran. 644.—**IND.**

**PART I. SECT. 6, SUB-SECT. 1.**  
51 xvii. ————.]—**HERRON v. MAYLAND** (Alta.), [1927] 4 D. L. R. 171; [1927] 2 W. W. R. 768.—**CAN.**

51 xviii. ————.]—**BHAGWAN SAHAI v. BHAGWAN DIN** (1890), 1 L. R. 12 All. 387; L. R. 17 Ind. App. 98.—**IND.**

**PART II. SECT. 2, SUB-SECT. 2.—A.**  
e i. ————.]—**LEYS v. HOLLINGHEAD** (1878), 29 C. P. 66.—**CAN.**

**PART II. SECT. 2, SUB-SECT. 2.—B.**  
109 i. *Specific performance*.]—**JEWAN**

**LAL DAGA v. NILMANI CHAUDHURI** (1927), L. R. 55 Ind. App. 107.—**IND.**

**PART II. SECT. 2, SUB-SECT. 5.—A.**  
so. *Necessity for good faith—Effect of laches.*]—**Re AYLWARD, Ex p. McMILLAN** (P. E. I.), [1927] 4 D. L. R. 305; 8 C. B. R. 352.—**CAN.**

**PART II. SECT. 3, SUB-SECT. 1.—A.**  
b i. *Certificate of registry—Requisites of.*]—**Re BRADSHAW & SIMCOE COUNTY REGISTRAR** (1867), 26 U. C. R. 464.—**CAN.**

so. *Necessity for affidavit in Form E—Land Titles Act, 1917, s. 100.*]—**Re LAND TITLES ACT** (Sask.), [1919] 1 W. W. R. 713.—**CAN.**

st. ————.]—**Re LAND TITLES ACT, CANADA'S LIFE ASSURANCE CO.'S CASE** (Sask.), [1919] 2 W. W. R. 47.—**CAN.**

sg. *Registration fees—By whom payable.*]—A purchaser who, to secure a balance of purchase-money, has given

a mtge. to the ct., must pay the fees for registration of his mtge.—**SWEETNAM v. SWEETNAM** (1873), 6 P. R. 83.—**CAN.**

**PART II. SECT. 6, SUB-SECT. 3.**  
293 i. *Validity—Omission of penal sum in obligatory clause.*]—**Held**: the omission did not render the bond uncertain & ineffectual.—**GREAT WEST LIFE ASSURANCE CO. v. CAMPBELL** (Man.), [1927] 3 W. W. R. 645.—**CAN.**

**PART III. SECT. 3, SUB-SECT. 2.—A. (a) i.**

343 i. *Whether mortgagee concerned with application of money.*]—**PLACE v. SPAWN** (1859), 7 Gr. 406.—**CAN.**

**PART IV. SECT. 7, SUB-SECT. 1.**  
620 ii. ————.]—*Security for future advances—Construction of Stamp Act, 1891 (c. 39), ss. 15 (1), 88 (1) (2).*]—**O'SULLIVAN v. LOUGHNAN**, [1927] 1 I. R. 493.—**IR.**

623a. ——— Covenant for payment of yearly premium & other costs & charges of insurance.]—*Held*: a mtge. for £1,500, with covenants for payment of the yearly premium & other costs & charges of an insurance of £1,000 upon a particular life for seven years, required a £25 stamp.—*HALSE v. PETERS* (1831), 2 B. & Ad. 807; 1 L. J. K. B. 2; 109 E. R. 1342.

*Annotations*:—*N.F. Doe d. Mercer v. Bragg* (1838), 8 Ad. & El. 620. *Consd. Richards v. Macclesfield, Cocks v. Edwards* (1841), 10 L. J. Ch. 329. *Distd. Wroughton v. Turtle* (1843), 1 Dow. & L. 473. *Dhtd. Lawrance v. Boston* (1851), 21 L. J. Ex. 49. *Refd. Loyd v. Heathcote* (1833), 3 Tyr. 309.

625a. Second mortgage—Covenant to pay sum secured by first mortgage—First mortgage duly stamped.]—A second mtge. of freehold property subject to an existing first mtge. contained a covenant by the borrower to

pay by instalments (a) a sum equivalent to the amount of the loan, the subject of the first mtge., (b) a sum equivalent to the amount of the loan, the subject of the second mtge., & (c) a sum equivalent to the interest on the amounts remaining unpaid under both mtges. There was a proviso for redemption on payment of the amount of the second mtge. & interest thereon. The first mtge. had been duly stamped with the appropriate duty on the amount thereby secured:—*Held*: the second mtge. was liable to stamp duty in the aggregate of the two sums secured by the two mtges., the covenant contained in the second mtge. to pay the amount secured by the first mtge. being an additional covenant made with a different covenantee.—*MUTUAL PROPERTY INSURANCE CO., LTD. v. INLAND REVENUE COMRS.* (1926), 130 L. T. 354.

## Part VI.—Rights and Liabilities of the Mortgagor.

633. *Add. Annotation*:—*Refd. Purnell v. Roche*, [1927] 2 Ch. 142.

739. *Add. Annotation*:—*Refd. Re Wait*, [1927] 1 Ch. 606.

772a. ———.]—*KING v. BIRD*, No. 774, *post*.

845. *Add. Annotation*:—*Refd. The W. H. Randall*, [1928] P. 41.

846. *Add. Annotation*:—*Refd. Torbay Hotel v. Jenkins*, [1927] 2 Ch. 225.

## Part VII.—Equity of Redemption.

910. *Add. Annotation*:—*Mentd. Richards v. Pryse*, [1927] 2 K. B. 76.

984. *Add. Annotation*:—*Consd. Weld v. Petre* (1928), 97 B. J. Ch. 399.

1024. *Add. Annotation*:—*Refd. Ideal Films v. Richards*, [1927] 1 K. B. 374.

1025. *Add. Annotation*:—*Refd. Ideal Films v. Richards*, [1927] 1 K. B. 374.

1049. For the existing catchwords read “

1085. *Add. Annotation*:—*Refd. Smith v. Wood* (1928), 139 L. T. 250.

1091a. ——— Claim for repayment of excess received by mortgagee over amount due under mort-

gage.]—Where shares in a co. were mortgaged to secure a loan with interest, & the value of the shares increased enormously so that the mtgee. received dividends sufficient to pay off the loan & interest, & a summons was subsequently taken out claiming redemption, & also repayment of the excess of the amount of dividends received by the mtgee. over & above the amount due under the mtge.:—*Held*: an order for payment of the excess claimed against the mtgee. could, by R. S. C., Ord. 55, r. 5A, be obtained upon originating summons.—*WELD v. PETRE* (1928), 97 L. J. Ch. 399; 139 L. T. 596; 44 T. L. R. 739; 72 Sol. Jo. 569, C. A.

### PART VI. SECT. 3, SUB-SECT. 7.

665 iv. ———.]—A mtgor. in possession is entitled to cut timber on the land & to give third persons a licence to do so, unless it is shown that the security is thereby impaired. The *onus* is on the party seeking to establish impairment to plead & offer proof of it.—*REID v. GALBRAITH*, [1927] 2 D. L. R. 857; [1927] 1 W. W. R. 780; 38 B. C. R. 287; *varying*, [1926] 4 D. L. R. 814; [1926] 3 W. W. R. 500; 38 B. C. R. 36.—CAN.

### PART VI. SECT. 4, SUB-SECT. 2.—D.

§ i. ——— *Position of mortgagor*.]—Where a mtgee. leases the land to the mtgor., the latter does not take the lease in his character as mtgor., but in his individual capacity only, & as such he stands in the same position as a stranger to the mtge.—*MASSEY-*

*HARRIS CO. v. MANLEY*, [1927] 1 D. L. R. 464; [1927] 1 W. W. R. 35; 21 Sask. L. R. 256.—CAN.

### PART VI. SECT. 4, SUB-SECT. 3.—A.

h. *Revsd.*, [1924] 1 W. W. R. 1233; 18 Sask. L. R. 269.

sk. *Effect of Landlord & Tenant Act, R. S. O., 1914 (c. 155), s. 3.*—*KENNEDY v. AGRICULTURAL DEVELOPMENT BOARD*, [1926] 4 D. L. R. 717; 59 O. L. R. 374.—CAN.

sl. *Effect of Land Titles Act, s. 117.*—*MATHEWSON BROTHERS & MATHER v. GOOD*, [1927] 3 D. L. R. 422; [1927] 1 W. W. R. 728; 21 Sask. L. R. 403.—CAN.

### PART VI. SECT. 7.

sn. *Payment into court of amount due on mortgage—Application for order under Mortgages Act, R. S. O., 1914*

(c. 112)—*Mode of application.*—*Re APPLETON & ROSS*, [1927] 4 D. L. R. 1125; 61 O. L. R. 338.—CAN.

### PART VII. SECT. 5.

ai. ———.]—*FREDERIKSEN v. WESTERN CAN. INV. CO. (Sask.)*, [1927] 1 D. L. R. 804.—CAN.

### PART VII. SECT. 6, SUB-SECT. 1.

sp. *Statute for Sale of Equities of Redemption—When applicable.*—*FITZ-GIBBON v. DUGGAN* (1865), 11 Gr. 188.—CAN.

### PART VII. SECT. 6, SUB-SECT. 2.

ol. ——— *Assignee not barred by twenty years' possession of assignor claiming under mortgagor.*—*COLLINS v. REID* (1866), 6 N. S. R. (2 Old.) 252.—CAN.



## Part VIII.—Assignment and Devolution of Mortgage.

1177. *Add. Annotation*:—*Reid. Bonham v. Maycock* (1928), 138 L. T. 736.

1279a. *Sale on bankruptcy of mortgagor of mortgage of settled premises—Effect of—Right of*

*purchaser to hold mortgage as first charge on estate.*—*SIMPSON v. O'SULLIVAN* (1840), 7 Cl. & Fin. 550; West, 332; 7 E. R. 1179.

## Part IX.—Rights and Liabilities of the Mortgagee.

1352. To the existing paragraph, after the last words "toll gates," add as follows:—

; (3) he was entitled to have a receiver appointed.

## Part XII.—Priority of Mortgagees.

2038. *Add. Annotation*:—*Consd. Republica de Guatemala v. Nunez*, [1927] 1 K. B. 609.

## Part XIII.—Remedies of Mortgagee.

2258. *Add. Annotation*:—*Consd. Weld v. Petre* (1928), 97 L. J. Ch. 399.

2312a. .]—Property comprised in a mtge. was sold by the mtgee. by public auction, & at the sale the mtgee.'s solr. became the purchaser:—*Held*: the purchase by the solr. was invalid, & must be set aside.—*LAWRANCE v. GALSORTHY* (1857), 30 L. T. O. S. 112; 3 Jur. N. S. 1049.

*Annotation*:—*Reid. Nutt v. Easton* (1899), 80 L. T. 353.

2504. *Add. Annotation*:—*Reid. Ideal Films v. Richards*, [1927] 1 K. B. 374.

2535. *Add. Annotation*:—*Reid. Re Wait*, [1927] 1 Ch. 606.

2578a. —.—.]—*MASTERS v. CROUCH* (1927), 63 L. Jo. 557.

2631. *Add. Annotations*:—*Reid. Houghton v. Nothard, Lowe & Wills*, [1927] 1 K. B. 246; *Liggett (Liverpool) v. Barclays Bank* (1927), 137 L. T. 443.

PART VIII. SECT. 1, SUB-SECT. 4.—F.  
. *Revsd.*, 19 Gr. 59.

PART VIII. SECT. 1, SUB-SECT. 15.  
st. *Effect of transfer on lease by mortgagee in possession.*—*Semble*: an assignment of a mtge. is not by itself effective to transfer a lease given by the mtgee. in possession.—*KONKIN v. CANADIAN BANK OF COMMERCE* (Sask.), [1927] 3 W. W. R. 123.—CAN.

PART VIII. SECT. 3, SUB-SECT. 1.  
b i. —.—.]—*GARRETT v. SAUNDERS* (1876), 23 Gr. 566.—CAN.

PART IX. SECT. 1, SUB-SECT. 2.—D.  
a. *Varied.*, [1927] 2 D. L. R. 857; [1927] 1 W. W. R. 780; 38 B. C. R. 287.

PART IX. SECT. 2, SUB-SECT. 1.  
sv. *Whether possession by lessee of mortgagor—Under lease made after mortgage.*—*Re SHANTZ & HALLMAN*, [1927] 3 D. L. R. 658; 60 O. L. R. 543.—CAN.

PART IX. SECT. 7, SUB-SECT. 1.—A.  
sw. *Validity of lease—Non-compliance Land Titles Act, R. S. S., 1920 (c. 67), s. 108.*—*MASSEY-HARRIS Co. v. MANLEY*, [1927] 1 D. L. R. 464; [1927] 1 W. W. R. 35; 21 Sask. L. R. 256.—CAN.

PART XII. SECT. 1, SUB-SECT. 4.—C.  
f (p. 458) i. —.—.]—*THOMSON v. HARRISON*, [1927] 3 D. L. R. 526; 60 O. L. R. 484.—CAN.

sk. *Postponement of mortgage—Power of registrar to register.*—*Re WINDOVER & GREAT WEST LIFE ASSURANCE CO.* (Alta.), [1927] 3 D. L. R. 829; [1927] 2 W. W. R. 414.—CAN.

PART XII. SECT. 13, SUB-SECT. 1.—A. (a).

1995 iii. —.—.]—*KIRK v. HARVEY* (1913), 26 W. L. R. 747; 5 W. W. R. 980; 15 D. L. R. 488; 18 B. C. R. 645.—CAN.

1995 iv. —.—.]—*COLPITTS v. SHERWOOD* (Alta.), [1927] 3 D. L. R. 7.—CAN.

PART XII. SECT. 13, SUB-SECT. 4.  
sz. *Priority of mortgage over lien of lender—Of advance in reduction of mortgage.*—*Held*: the lender could not claim priority for his advance.—*IMPERIAL LOAN & INVESTMENT Co. v. O'SULLIVAN* (1879), 8 P. R. 162.—CAN.

sa. —.— *Of advance in payment of purchase money.*—*Held*: the lender could not claim priority in respect of his lien for unpaid purchase money.—*WATSON v. DOWSER* (1881), 28 Gr. 478.

sb. *Prior mortgagee purchasing rights of puisne mortgagee.*—*FATEH ALI v. GEHNA* (1927), 1 L. L. R. 9 Lah. 88.—IND.

PART XIII. SECT. 1, SUB-SECT. 1.  
2190 i. *Application of rule—Foreclosure—Proceedings on bond.*—*Re CHANDLER'S ESTATE* (1883), 17 N. S. R. (5 R. & G.) 78.—CAN.

PART XIII. SECT. 2, SUB-SECT. 1.—D.  
sd. *Sale of two properties subject to mortgages—Sale by mortgagee of one property on default by purchaser—Rights of purchaser of other property against mortgagor & defaulting purchaser.*—*NORRIS v. MEADOWS* (1882), 7 A. R. 237.—CAN.

PART XIII. SECT. 2, SUB-SECT. 3.  
D.  
so. *Sale under Land Titles Act Jurisdiction to stay proceedings.*

*Re LAND TITLES ACT, Re FIELDING & NORTH OF SCOTLAND MTGE. CO.*, [1927] 3 D. L. R. 690; [1927] 2 W. W. R. 423; 22 Alta. L. R. 575.—CAN.

PART XIII. SECT. 2, SUB-SECT. 8.—A.  
sg. *Sale under second mortgage.*—*FLEMING v. McDUGALL* (1880), 8 P. R. 200.—CAN.

PART XIII. SECT. 2, SUB-SECT. 8.—B. (a).  
q. *Revsd.*, 7 A. R. 10.

PART XIII. SECT. 2, SUB-SECT. 9.  
sj. *Sale under second mortgage—Purchaser's right to possession—Lease from first mortgagee to mortgagor.*—*Land having been sold under a power of sale in a second mtge. :—Held*: the mtgor. was estopped from setting up a lease from the first mtgee. as a claim for possession by a transferee from the purchaser, even though at the time of securing the lease the equity of redemption was no longer in the mtgor.—*SEWELL v. HNATIW & HNATIW* (Man.), [1927] 3 W. W. R. 577.—CAN.

PART XIII. SECT. 2, SUB-SECT. 10.—D.  
sl. *Subrogation—Contribution.*—*BOUCHER v. SMITH* (1862), 9 Gr. 347.—CAN.

PART XIII. SECT. 3, SUB-SECT. 1.—H. (a).

2589 i. *Interlocutory application.*—*EASTERN TRUST Co. v. NOVA SCOTIA STEEL & COAL Co.*, [1927] 1 D. L. R. 421; 59 N. S. R. 123.—CAN.

PART XIII. SECT. 5, SUB-SECT. 2.  
d i. —.— *Mortgage for purchase-money.*—*TULLY v. BRADBURY* (1861), 8 Gr. 561.—CAN.

2757. After this case add "See, also, LIMITATION OF ACTIONS, No. 1369a, ante."

2796. Add. Annotation:—Mentd. Wigg v. A.-G. of Irish Free State (1927), 96 L. J. P. C. 88.

2876. Add. Annotation:—Consd. Weld v. Petre (1928), 97 L. J. Ch. 399.

2890. Add. Annotation:—Refd. Purnell v. Roche, [1927] 2 Ch. 142.

2897a. ———.]—As a general rule, all persons beneficially interested in an equity of redemption ought to be made parties to a foreclosure suit.—CROPPER v. MELLERSH (1855), 3 Eq. Rep. 492; 24 L. J. Ch. 430; 24 L. T. O. S. 267; 1 Jur. N. S. 299; 3 W. R. 202.

Annotation:—N.F. Wilkins v. Reeves (1855), 3 Eq. Rep. 494.

2897b. ———.]—A suit was instituted by a mtgee. against the trustee for sale of the property & exor. of the mtgor. for a foreclosure:—Held: the persons beneficially interested in the equity of redemption were not necessary parties to the suit.—WILKINS

v. REEVES (1855), 3 Eq. Rep. 494; 24 L. T. O. S. 337; 3 W. R. 305.

2928a. ———.]—A surviving trustee & extrix., who was also tenant for life of mortgaged property, was made sole deft. to a bill for foreclosure or sale:—Held: the parties interested in remainder were sufficiently represented.—MARRIOTT v. KIRKHAM (1862), 3 Giff. 536; 31 L. J. Ch. 312; 6 L. T. 17; 8 Jur. N. S. 379; 10 W. R. 340; 66 E. R. 521.

2991. Add. Annotation:—Refd. Friern Barnet U. C. v. Adams, [1927] 2 Ch. 25.

3378. Add. Citation:—sub nom. Re CLAYTON & BARCLAY'S CONTRACT, [1895] 2 Ch. 212; 64 L. J. Ch. 615; sub nom. CLAYTON v. BARCLAY, 72 L. T. 764; 59 J. P. 489; 43 W. R. 549; 11 T. L. R. 415; 39 Sol. Jo. 503; 13 R. 556. Add. Annotations:—Refd. London & County Contract v. Tallack (1903), 51 W. R. 408; Official Receiver v. Cooke, [1906] 2 Ch. 661; Re Kent County Gas Light & Coke Co., [1909] 2 Ch. 195.

## Part XIV.—Discharge of Mortgages.

3427. Add. Annotation:—Refd. Bonham v. Maycock (1928), 138 L. T. 736.

3433. Add. Annotation:—Apld. Bonham v. Maycock (1928), 138 L. T. 736.

3434. Add. Annotation:—Apld. Bonham v. Maycock (1928), 138 L. T. 736.

3436a. ———.]—In the absence of express authority or holding out, the mere receiving of interest on a mtge. by the mtgee.'s solr. does not imply authority to receive the principal. The solr. is, for this purpose, agent of the mtgor. & not of the mtgee.—BONHAM v. MAYCOCK (1928), 138 L. T. 736; 44 T. L. R. 387; 72 Sol. Jo. 254.

### PART XIII. SECT. 5, SUB-SECT. 3.—A.

1 i. ———.]—The implied covenant under Land Titles Act, R. S. A., 1922 (c. 133), s. 54, does not arise in the case of the transfer of only part of the mortgaged land.—Re MACDONALD, [1925] 2 D. L. R. 748; [1925] 1 W. W. R. 1031; 21 Alta. L. R. 66.—CAN.

### PART XIII. SECT. 5, SUB-SECT. 4.

sm. Effect of consent to variation of principal sum.—MORTLEMAN v. PUBLIC TRUSTEE, [1927] N. Z. L. R. 642.—N.Z.

sn. Mortgage for purchase-money—Vendor accepting from purchaser transfer of other land subject to encumbrances—Right of vendor to add amount of incumbrances to claim under mortgage.—MAULSON v. MOORE (1860), 8 Gr. 418.—CAN.

so. Mortgage to managing director of company assigned to company—Right of mortgagor to set off against amount due—claim against managing director for services rendered.—NORTHARD & LOWE Co. v. DUBNO, [1927] 2 D. L. R. 892; 59 N. S. R. 310.—CAN.

### PART XIII. SECT. 5, SUB-SECT. 5.—B. (a).

2664 v. ———.]—McCUAIG v. BARBER (1898), 29 S. C. R. 126.—CAN.

2664 vi. ———.]—Where after a final order of foreclosure the mtgee. sues the mtgor. on his covenant, the mtgee. must be in the position, if redemption is sought, to restore the mortgaged property intact.—COLONIAL INVESTMENT & LOAN CO. v. MARTIN (Man.), [1927] 3 D. L. R. 360; [1927] 2 W. W. R. 94.—CAN.

### PART XIII. SECT. 5, SUB-SECT. 5.—E.

m i. ———.]—To purchaser from mortgagor.—In an action by a mtgee. against a mtgor. on his covenant to pay, the mtgor. pleaded that he had been released by an extension of time

given without his consent to a purchaser of the land from him:—Held: judgment must be given for pltf.—ALLOWAY & CHAMPION, LTD. v. STEPHENSON, [1927] 3 D. L. R. 220; [1927] 2 W. W. R. 337; 36 Man. L. R. 636.—CAN.

sq. Mortgage containing receipt clause but no covenant for repayment.—A mtge., which contains an acknowledgment of receipt of the money, but no covenant for repayment, does not of itself afford conclusive evidence of a debt, so that the mtgee., or his assigns, can maintain an action for its recovery.—LONDON LOAN CO. v. SMYTH (1882), 32 C. P. 530.—CAN.

### PART XIII. SECT. 6.

2687 i. Varied, 39 U. C. R. 280.

### PART XIII. SECT. 7, SUB-SECT. 2.—A. (d).

sr. Duty of mortgagor—To see to parcelling out of land directed to be sold.—BEATY v. RADENHURST (1871), 3 Ch. Ch. 344.—CAN.

st. Postponement of sale—Fresh advertisement unnecessary—Note of postponement at foot of old advertisement sufficient.—THOMPSON v. MILLIKEN (1868), 15 Gr. 197.—CAN.

su. Conveyance—Parties—Wife joining in execution of incumbrance.—MOORE v. SHINNERS (1858), 1 Ch. Ch. 59.—CAN.

### PART XIII. SECT. 7, SUB-SECT. 2.—B. (a).

sv. Mortgagee executor de son tort—Sufficient assets of deceased mortgagor—No right to foreclose.—KENNY v. KENNY (1825–1897), N. B. Dig. 311.—CAN.

### PART XIII. SECT. 7, SUB-SECT. 4.—D. (b).

sw. Widow of intestate mortgagor—Application for widow to represent estate.—Held: an application under

K. B. Rule 205 should be refused, since Surrogate Cts. Act made ample provision for the requirements of the mtgee.—Re GREAT WEST LIFE ASSURANCE CO., Re CHRISTIE ESTATE (Man.), [1927] 3 W. W. R. 302.—CAN.

### PART XIII. SECT. 7, SUB-SECT. 4.—H.

2945 iv. ———.]—KAULBACH v. TAYLOR (1880), R. E. D. 400.—CAN.

### PART XIII. SECT. 7, SUB-SECT. 6.—D. (b) ii.

q i. ———.]—To postpone sale.—MURDOCK v. LAWSON (1871), 9 N. S. R. 454.—CAN.

### PART XIII. SECT. 7, SUB-SECT. 6.—E. (a).

3169 i. ———.]—On default of defence.—ANGELICAN SYNOD v. RUSSELL & MAY (1927), 38 B. C. R. 400.—CAN.

### PART XIV. SECT. 2, SUB-SECT. 1.—A.

d (p. 603) i. ———.]—CAMPBELL v. RAYNOR, [1926] 4 D. L. R. 686; 59 O. L. R. 466.—CAN.

sx. Payments on account—Whether mortgage discharged.—Held: the transactions which had taken place discharged the mtge. debt.—BUCHANAN v. KERBY (1855), 5 Gr. 332.—CAN.

sy. ———.]—Held: the circumstances were sufficient to show that the mtge. was intended to cover a floating balance, & was not satisfied.—RUSSELL v. DAVEY (1858), 7 Gr. 13.—CAN.

3423 i. Set-off.—DICK v. SCHWARTZ (Man.), [1926] 3 D. L. R. 894.—CAN.

d (p. 604) i. ———.]—EWART v. DRYDEN (1867), 13 Gr. 50.—CAN.

sz. Payment to mortgagor's nominee—Nominee absconding—Mortgagor liable.—CORSINI v. PALM (1925), 35 B. C. R. 417.—CAN.

### PART XIV. SECT. 2, SUB-SECT. 2.

sa. Discharge of mortgage on execution & performance of agreement.—WEST

## Part XVI.—Accounts.

3698. *Add. Annotations* :—**Refd.** Royal Exchange Assce. v. Hope, [1928] Ch. 179 ; Smith v Wood (1928), 139 L. T. 250.

## Part XVII.—Interest on Mortgages.

3950. *Add. Annotation* :—*As to* (1) **Consd.** Sowerby v. Lindsay (1928), 44 T. L. R. 501. | 3990. *Add. Annotation* :—**Consd.** Weld v. Petre (1928), 97 L. J. Ch. 399.

## Part XVIII.—Costs, Charges, and Expenses.

4054. *Add. Annotations* :—**Refd.** Campbell v. Pollak, [1927] A. C. 732 ; Thomas v. Jones, [1928] P. 162.

4061a. —. ]—In 1897 the trustees of the will of J. & Mrs. J. executed a consolidating mtge. to B. upon certain securities to secure a certain amount. In 1924 & 1926 B. made further advances to Mrs. J., who was the owner in fee, upon the same securities. Mrs. J. died in 1926. In Jan. 1927 her trustees applied for & were granted a further advance on the same securities by B., whose solrs. had attended to the previous transactions. The deed secured an immediate advance, & it also secured all the previous existing securities, although the old securities had been kept on foot for the purpose of preserving priorities, & there was a new proviso for redemption. B.'s solrs. carried in a bill for taxation, the

charges being according to the scale in Sched. I., Part I., of the General Order under Solrs.' Remuneration Act, 1881 (c. 44), for "investigating title & preparing & completing deed of security." The taxing master took the view that Sched. I. did not apply, & taxed the bill accordingly :—*Held* : there had been an "investigation of title" within Sched. I., & the matter must be referred back to the taxing master.—*Re* COWARD, CHANCE & CO., [1928] Ch. 379 ; 97 L. J. Ch. 234 ; 139 L. T. 113 ; 72 Sol. Jo. 225.

4391. *Add. Annotation* :—**Refd.** Campbell v. Pollak, [1927] A. C. 732.

4392. *Add. Annotation* :—**Refd.** Campbell v. Pollak, [1927] A. C. 732.

4393. *Add. Annotation* :—**Refd.** Campbell v. Pollak, [1927] A. C. 732.

v. ACCIDENTAL FIRE INSURANCE CO. (Sask.), [1927] 3 D. L. R. 260.—**CAN.**

### PART XIV. SECT. 3, SUB SECT. 1.

n i. —. ]—Pltf. was the assignee of a mtge., & defts., the purchasers of the equity of redemption from R., the mtgor., covenanted to assume the incumbrances on the land, & pltf., in consideration of the assignment to him of that covenant of indemnity, released R. from all liability upon his personal covenant contained in the mtge. :—*Held* : the mtge. debt was not wiped out by the release, & pltf.

was entitled to enforce the covenant of indemnity.—**ESSER v. PRITZKER**, [1926] 2 D. L. R. 645 ; 58 O. L. R. 537.—**CAN.**

f i. *Statutory discharge executed by one of two executors of deceased mortgagee.*—*Held* : effective, when registered, as a reconveyance of the land.—*Re* A. & B., [1927] 3 D. L. R. 1070 ; 60 O. L. R. 647.—**CAN.**

### PART XVI. SECT. 2, SUB-SECT. 3.—B.

3770 i. *Improvements by mortgagee—Occupation rent not increased—Unless*

*improvements allowed.*—**DONOVAN v. HANNA**, [1926] N. Z. L. R. 883.—**N.Z.**

### PART XVII. SECT. 1.

3907 i. *A charge on mortgaged property.*—**MANGHI v. DIAL CHAND** (1926), I. L. R. 7 Lah. 559.—**IND.**

### PART XVII. SECT. 16.

sb. *Effect of consent to variation of rate of interest.*—**MORTLEMAN v. PUBLIC TRUSTEE**, [1927] N. Z. L. R. 642.—**N.Z.**



# NAME AND ARMS.

## Part I.—Name.

- 62a. **Costs of compliance.**—The tenant for life under a will must pay the expenses of taking testator's name & arms as directed by the will. —*Re* MERCER, DREWE-MERCER *v.* DREWE-MERCER (1889), 6 T. L. R. 95.
64. *Add. Citations* :—96 L. J. Ch. 9 ; 136 L. T. 23 ; *subsequent proceedings*, [1927] 1 Ch. 593.
- 64a. —.]—SEMPLE *v.* HOLLAND (1863), 38 Beav. 94 ; 55 E. R. 302.

# NEGLIGENCE.

## Part I.—General Principles.

12. *Add. Annotations*:—**Consd.** *Re Munton, Munton v. West*, [1927] 1 Ch. 262. **Refd.** *Re Windsor Steam Coal Co. (1901) Ltd.*, [1928] Ch. 609.
38. *Add. Annotation*:—**Refd.** *Coleshill v. Manchester Corpn.*, [1928] 1 K. B. 776.
59. *Add. Annotation*:—**Consd.** *Coleshill v. Manchester Corpn.*, [1928] 1 K. B. 776.
- 59a. —.]—In Mar. 1926, defts. carried out demolition work on premises adjoining other premises, called X., under a limited licence given by the owners of premises X. One of the conditions of the licence was that defts. should make good all damage done to premises X. by reason of the demolition operations. In the course of the operations defts. allowed debris to drop on an inaccessible part of the roof of premises X. & did not remove all the debris therefrom when the demolition work was completed. In July pltf. became the occupier of premises X. under a lease. In Sept. a heavy storm of rain washed the debris which had been left by defts. on the roof of premises X. into the gutters on the roof, & a gully was choked & the basement of premises X. was flooded, & goods which pltf. kept there were damaged. In an action by pltf. claiming damages for defts.' negligence:—**Held**: there could be no negligence, as there was no duty on the part of defts. towards pltf.—**KONSKIER v. GOODMAN (B.), LTD.**, [1928] 1 K. B. 421; 97 L. J. K. B. 263; 138 L. T. 481; 44 T. L. R. 91, C. A.
85. *Add. Annotations*:—**Ref.** *Silverman v. Imperial London Hotels (1927)*, 137 L. T. 57; *Dee Conservancy Board v. McConnell*, [1928] 2 K. B. 159.
91. *Add. Annotation*:—**Generally, Mentd.** *De Freville v. Dill* (1927), 96 L. J. K. B. 1056.
128. *Add. Annotation*:—**Refd.** *De Freville v. Dill* (1927), 96 L. J. K. B. 1056.
156. *Add. Annotation*:—**Refd.** *S.S. Singleton Abbey v. S.S. Paludina*, [1927] A. C. 16.
161. *Add. Annotation*:—**Refd.** *H. v. H.*, [1928] P. 206.
162. *Add. Annotation*:—**Consd.** *Canadian Pacific Ry. v. Kelvin Shipping Co.* (1927), 138 L. T. 369.

## Part II.—Negligence in regard to Property.

208. *Add. Annotations*:—**Consd.** *Forbes, Abbott & Lennard v. G. W. Ry.* (1927), 138 L. T. 286. **Refd.** *Silverman v. Imperial London Hotels* (1927), 137 L. T. 57; *Coleshill v. Manchester Corpn.*, [1928] 1 K. B. 776.
209. *Add. Annotation*:—**Refd.** *Coleshill v. Manchester Corpn.*, [1928] 1 K. B. 776.
213. *Add. Annotation*:—**Refd.** *Coleshill v. Manchester Corpn.*, [1928] 1 K. B. 776.
217. *Add. Annotations*:—**Refd.** *Silverman v. Imperial London Hotels* (1927), 137 L. T. 57; *Coleshill v. Manchester Corpn.*, [1928] 1 K. B. 776.
219. *Add. Annotation*:—**Refd.** *Coleshill v. Manchester Corpn.*, [1928] 1 K. B. 776.
223. *Add. Annotations*:—**As to (1) Consd.** *Coleshill v. Manchester Corpn.*, [1928] 1 K. B. 776. **Generally, Refd.** *De Freville v. Dill* (1927), 96 L. J. K. B. 1056.
256. *Add. Annotations*:—**As to (1) Refd.** *Oldham v. Sheffield Corpn.* (1927), 136 L. T. 681. **Generally Refd.** *Coleshill v. Manchester Corpn.*, [1928] 1 K. B. 776.
261. *Add. Annotations*:—**Refd.** *Silverman v. Imperial London Hotels* (1927), 137 L. T. 57; *Dee Conservancy Board v. McConnell*, [1928] 2 K. B. 159.
- 267a. **Proprietor of Turkish baths—Dangerous insects.**]—Circumstances (*see* CONTRACT, No. 5168a, *ante*), in which:—**Held**: apart from contract, defts. were under an obligation to a person using their premises to abstain from negligence, & if they, knowing of the danger, did not take sufficient precautions & such person were injured, he could recover.—**SILVERMAN v. IMPERIAL LONDON HOTELS, LTD.** (1927), 137 L. T. 57; 43 T. L. R. 260.

**PART I. SECT. 2, SUB-SECT. 3.—F.**  
 98 i. *Carriers.*]—A motor vehicle owned by two defts. was being driven by one of them, L., & pltf. was injured in a collision which followed:—**Held**: pltf., though not a passenger for hire, could maintain an action for damages for his injuries, want of ordinary & reasonable care on the part of L. being shown.—**PARLOV v. LOZINA & RAOLOVICH** (1920), 47 O. L. R. 376; 18 O. W. N. 139.—CAN.

**PART I. SECT. 4, SUB-SECT. 2.—A.**  
 182 iv. *Revd.*, [1919] 1 W. W. R.

**PART II. SECT. 1, SUB-SECT. 2.—B. (a).**

247 xi. —. —. —.]—**GUILFOIL v. McAVITY (T.) & SONS, LTD.** (N. B.), [1927] 3 D. L. R. 672.—CAN.

**PART II. SECT. 1, SUB-SECT. 2.—B. (i).**

ab. *Public Library Board.*]—**Held**: liable for injury sustained by pltf., by a fall upon an icy step of the public library building, which she was leaving after exchanging books in the library.—**NICKELL v. CITY OF WINDSOR**, [1927]

1 D. L. R. 379; 59 O. L. R. 618.—CAN.

**PART II. SECT. 1, SUB-SECT. 3.—A.**  
 285 ii. —. —. —.]—*Children walking along track.*]—**ACADIA COAL CO. v. McNEIL**, [1927] 3 D. L. R. 871; [1927] S. C. R. 497; 33 Can. Ry. Cas. 49.—CAN.

**PART II. SECT. 1, SUB-SECT. 3.—B. (a).**

286 xiii. —. —. —.]—**ACADIA COAL CO. v. McNEIL**, [1927] 3 D. L. R. 871; [1927] S. C. R. 497; 33 Can. Ry. Cas. 49.—CAN.

291. *Add. Annotations*:—**Consd.** *Coleshill v. Manchester Corpn.*, [1928] 1 K. B. 776. **Refd.** *Oldham v. Sheffield Corpn.* (1927), 136 L. T. 681.
304. *Add. Annotation*:—*As to* (1) **Consd.** *Oldham v. Sheffield Corpn.* (1927), 136 L. T. 681.

321. *Add. Annotation*:—**Refd.** *Coleshill v. Manchester Corpn.*, [1928] 1 K. B. 776.
322. *Add. Citations*:—136 L. T. 681; 91 J. P. 69; 25 L. G. R. 94.
- Add. Annotation*:—**Distd.** *Coleshill v. Manchester Corpn.*, [1928] 1 K. B. 776.

## Part III.—Negligence in relation to Highways.

396. *Add. Annotation*:—**Apld.** *Brooke v. Bool*, [1928] 2 K. B. 578.

- 421a. **Parties—Defendant insured—Institution of third party proceedings against insurer.**—(1) As a general rule, in the absence of special circumstances, the insurance co. which has issued a motorist's insurance policy should not be brought in as a third party at the hearing of an action for damages by the injured party against the motorist.
- (2) It is a well established rule of practice

at the Bar, enforced by the judges, that in an action against a motorist the jury should not be informed that deft. is insured.—*GOWAR v. HALES*, [1928] 1 K. B. 191; 96 L. J. K. B. 1088; 137 L. T. 580, C. A.

*Annotations*:—*As to* (1) **Refd.** *Grinham v. Davies* (1928), 139 L. T. 379. *As to* (2) **Apld.** *Grinham v. Davies* (1928), 139 L. T. 379.

- 421b. ————**Lothian v. Epworth Press** (1926), [1928] 1 K. B. 199, n.; 96 L. J. K. B. 1092, n.; 137 L. T. 582, n., C. A.
- Annotation*:—**Distd.** *Gowar v. Hales*, [1928] 1 K. B. 191.

## Part VIII.—Liability of Persons Jointly Interested.

- 473a. **Liability of party in control of proceedings.**—Circumstances (*see* AGENCY, No. 2318b, *ante*) in which:—**Held**: the landlord was liable for the damage, on the grounds (*inter alia*) of (a) control of the proceedings, & (b) a joint tortious enterprise, & (c) that, having undertaken the examination, he was

under a duty to take reasonable care to avoid damage resulting from it, & could not escape liability by getting some one else to make the examination or part of it for him.—*BROOKE v. BOOL*, [1928] 2 K. B. 578; 97 L. J. K. B. 511; 139 L. T. 376; 44 T. L. R. 531; 72 Sol. Jo. 354, D. C.

## Part IX.—Proof of Negligence.

501. *Add. Annotation*:—**Mentd.** *Campbell v. Pollak*, [1927] A. C. 732.
565. *Add. Annotation*:—**Refd.** *Broome v. Agar* (1928), 138 L. T. 698.
601. *Add. Annotation*:—**Refd.** *Gosse Millard v. Canadian Government Merchant Marine, American Can Co. v. Same*, [1927] 2 K. B. 432.

### PART III. SECT. 9, SUB-SECT. 1.—B.

g (p. 59) i. ————*Driving in fog.*—The driver of a tramcar when driving in a fog should keep his car under such control that he may stop it within the limits of his vision.—*VANCOUVER ICE & STORAGE CO. v. BRITISH COLUMBIA ELECTRIC RY. CO.*, [1927] 1 W. W. R. 631; 38 B. C. R. 234.—CAN.

1 i. ————*Collins v. General Service Transport Co. (B. C.)*, [1927] 2 D. L. R. 353.—CAN.

1 ii. ————*Schonberger v. Barron* (Alta.), [1927] 3 D. L. R. 708; [1927] 2 W. W. R. 417.—CAN.

386 x. ————*Solomon v. Mussett & Bright, Ltd.*, [1926] App. D. 427.—S. AF.

se. *Failure to give signal—Of intention to turn.*—It is incumbent upon the driver of a vehicle, who desires to change his course & to turn into another street, to give a warning to that effect, & to turn the corner at a pace which will give him complete control over his vehicle.—*Uys v. Uys*, [1927] App. D. 394.—S. AF.

### PART III. SECT. 9, SUB-SECT. 1.—C.

*Vehicle driven by third party—With owner's permission.*—*See* AGENCY, Nos. 2317 ii a-1, *ante*.

### PART III. SECT. 9, SUB-SECT. 1.—D.

402 i. *Injury must be attributable to*

*negligence of driver—Effect of contributory negligence of pedestrians—Effect of bye-law against "jay-walking."*—*CHESTER v. KINNEAR* (Alta.), [1927] 1 D. L. R. 47; [1926] 3 W. W. R. 601.—CAN.

402 ii. ————*Duty of tramcar drivers.*—*SYMONS v. WINNIPEG ELECTRIC CO. (Man.)*, [1928] 1 D. L. R. 159; [1927] 3 W. W. R. 650.—CAN.

### PART VII. SECT. 1.

433 i. *Liability dependent on breach of duty—Public park close to railway.*—*Held*: there was no obligation on the corpn. owning the park to build a fence to separate it from the railway.—*RICHARDSON v. CANADIAN NATIONAL RY. CO.*, [1927] 2 D. L. R. 801; 32 Can. Ry. Cas. 411; 60 O. L. R. 296.—CAN.

### PART VII. SECT. 2, SUB-SECT. 3.

458 i. *Licensee.*—*ACADIA COAL CO. v. McNEIL*, [1927] 3 D. L. R. 871; [1927] S. C. R. 497; 33 Can. Ry. Cas. 49.—CAN.

### PART IX. SECT. 1, SUB-SECT. 4.—C.

565 xlv. ————*Davidson v. Conrad* (1924), 58 N. S. R. 218.—CAN.

### PART IX. SECT. 4, SUB-SECT. 1.

589 xiii. ————*Tooth in patient's lung after extraction of teeth.*—*Held*: the maxim *res ipsa loquitur* did not apply.—*McTAGGART v. POWERS*, [1927] 1

D. L. R. 28; 36 Man. L. R. 73; [1926] 3 W. W. R. 513.—CAN.

589 xiv. ————*Fault possibly due to action of third party.*—Observations upon the applicability of the maxim *res ipsa loquitur* in cases where there is a possibility that the fault may be due to the action of a third party.—*CARRUTHERS v. MACGREGOR*, [1927] S. C. 816.—SCOT.

589 xv. ————*Henderson v. Mair*, [1928] S. C. 1.—SCOT.

sj. *Rebuttal of presumption.*—*Held*: assuming the maxim *res ipsa loquitur* applied, defender would still be entitled to succeed in respect (1) that he had offered several reasonable explanations of the accident, & so had discharged the *onus* laid upon him by the application of that maxim, & (2) that, in any event, he had definitely disproved negligence on his part.—*HENDERSON v. MAIR*, [1928] S. C. 1.—SCOT.

### PART IX. SECT. 4, SUB-SECT. 2.

sl. *Application of maxim.*—There being no evidence showing how an accident happened:—*Held*: the maxim *res ipsa loquitur* did not apply.—*RICHARDSON v. CANADIAN NATIONAL RY. CO.*, [1927] 2 D. L. R. 801; 32 Can. Ry. Cas. 411; 60 O. L. R. 296.—CAN.

sm. ————*The distinction between cases in which the maxim res ipsa loquitur applies & those in which the*



## Part X.—Defences.

628. *Add. Annotation*:—*Refd.* Cleghorn v. Oldham (1927), 43 T. L. R. 465.
633. *Add. Annotations*:—*Refd.* Dew v. United British S.S. Co. (1928), 139 L. T. 628. *Mentd.* Lloyd v. Cook, Goudge v. Broughton, Simson v. Miatt, Bartram v. Brown, Barker v. Hudson [1929] 1 K. B. 103.
658. *Add. Annotation*:—*Consd.* Brooke v. Bool, [1928] 2 K. B. 578.
667. *Add. Annotation*:—*Apld.* Brooke v. Bool, [1928] 2 K. B. 578.
674. *Add. Annotation*:—*Refd.* Canadian Pacific Ry. v. Kelvin Shipping Co. (1927), 138 L. T. 369.
695. *Add. Annotations*:—*Refd.* G. W. Ry. v. S.S. Mostyn, The Mostyn, [1928] A. C. 57; St. Anne's Well Brewery Co. v. Roberts (1928), 92 J. P. 95.
703. *Add. Annotation*:—*Dbtd.* G. W. Ry. v. S.S. Mostyn, The Mostyn, [1928] A. C. 57.
704. *Add. Annotation*:—*Dbtd.* G. W. Ry. v. S.S. Mostyn, The Mostyn, [1928] A. C. 57.
705. *Add. Annotations*:—*Consd.* G. W. Ry. v. S.S. Mostyn, The Mostyn, [1928] A. C. 57. *Refd.* Witham Outfall Board v. Boston Corp'n. (1926), 136 L. T. 756; Dee Conservancy Board v. McConnell, [1928] 2 K. B. 159.
706. *Add. Citations*:—*Revsd. sub. nom.* GREAT WESTERN RY. CO. v. MOSTYN (OWNERS), THE MOSTYN, [1928] A. C. 57; 97 L. J. P. 8; 138 L. T. 403; 92 J. P. 18; 44 T. L. R. 179; 72 Sol. Jo. 16; 26 L. G. R. 91; 17 Asp. M. L. C. 367, H. L.
- Add. Annotations*:—*Refd.* Witham Outfall Board v. Boston Corp'n. (1926), 136 L. T. 756; Dee Conservancy Board v. McConnell, [1928] 2 K. B. 159.
722. *Add. Annotations*:—*Con. v.* Forbes, Abbot & Lennard v. G. W. Ry. (1927), 138 L. T. 286; G. W. Ry. v. Durnford (1928), 139 L. T. 145. *Refd.* Marbe v. George Edwardes (Daly's Theatre) (1927), 138 L. T. 51; Silverman v. Imperial London Hotels (1927), 137 L. T. 57; Livock v. Pearson (1928), 33 Com. Cas. 188. *Mentd.* Marbé v. George Edwardes (Daly's Theatre) (1927), 43 T. L. R. 460; Wallem's Rederij A./S. v. Muller, Batavia, [1927] 2 K. B. 99.

## Part XI.—Contributory Negligence.

735. *Add. Annotation*:—*Apld.* Dew v. United British S.S. Co. (1928), 139 L. T. 628.
743. *Add. Annotation*:—*Refd.* Dew v. United British S.S. Co. (1928), 139 L. T. 628.
- 765a. —.]—The fact that a man was killed while endeavouring to cross in front of an electric tramcar at the intersection of two streets in a town, at a place where the rules of the tramway co. laid down that "the speed must be reduced & the car kept carefully under control," is not evidence of recklessness on his part amounting to contributory negligence sufficient to free the co. from liability for the accident, the jury having found that the driver of the tramcar was in fault.—TORONTO RY. CO. v. KING, [1908] A. C. 260; 77 L. J. P. C. 77; 98 L. T. 650, P. C.
782. *Add. Annotation*:—*Mentd.* The Backworth, [1927] P. 256.
791. *Add. Annotation*:—*Refd.* Canadian Pacific Ry. v. Kelvin Shipping Co. (1927), 138 L. T. 369.
792. *Add. Annotation*:—*Refd.* Dee Conservancy Board v. McConnell, [1928] 2 K. B. 159.
798. *Add. Citation*:—17 Asp. M. L. C. 117. *Add Annotation*: *Refd.* Canadian Pacific Ry. v. Kelvin Shipping Co. (1927), 138 L. T. 369.

cause of the accident is unknown, referred to.—MCCLEINTOCK v. WINNIPEG ELECTRIC CO., [1927] 3 D. L. R. 519; [1927] 2 W. W. R. 226; 33 Can. Ry. Cas. 39; 36 Man. L. R. 497.—CAN.

**PART X. SECT. 1, SUB-SECT. 2.—A.**  
622 ix. —.]—REID v. MIMICO, [1927] 1 D. L. R. 235; 59 O. L. R. 579.—CAN.

**PART X. SECT. 8.**

719 i. — *Professional assistance called in—Local authority providing medical attention.*—Hospital liable for the negligence of nurses after an operation.—NYBERG v. PROVOST MUNICIPAL HOSPITAL BOARD, [1927] 1 D. L. R. 969; [1927] S. C. R. 226.—CAN.

**PART XI. SECT. 1, SUB-SECT. 1.**

726 ix. —.]—KENZIE v. HART (Sask.), [1927] 3 D. L. R. 839.—CAN.

726 x. —.]—JOHNSTON v. MCMORRAN (B. C.), [1927] 4 D. L. R. 335; [1927] 3 W. W. R. 37.—CAN.

726 xi. —.]—PEACOCK v. STEPHENS (Sask.), [1927] 4 D. L. R. 1057; [1927] 3 W. W. R. 570.—CAN.

J.S.

732 lxviii. —.]—McLAUGHLIN v. LONG, [1927] 2 D. L. R. 186; [1927] S. C. R. 303; *varying*, [1926] 3 D. L. R. 918.—CAN.

**PART XI. SECT. 1, SUB-SECT. 2.—A.**

744 xxxii. —.]—DAVIDGE v. JOHNSON & McDONALD, LTD. (1926), 59 N. S. R. 76.—CAN.

744 xxxiii. —.]—BALLANTINE v. INTERNATIONAL RY. CO., [1927] 4 D. L. R. 951; 61 O. L. R. 273.—CAN.

**PART XI. SECT. 1, SUB-SECT. 2.—B.**

771 xxxix. *Subsequent proceedings*, [1923] 4 D. L. R. 727; [1923] S. C. R. 730; [1923] 3 W. W. R. 938.

771 lv. —.]—HEALING (A. G.) & CO. PROPRIETARY, LTD. v. HARRIS (1927), 39 C. L. R. 560; [1927] Argus L. R. 386.—AUS.

771 lvi. —.]—PENROSE v. BARR (B. C.), [1927] 4 D. L. R. 407; [1927] 3 W. W. R. 104.—CAN.

**PART XI. SECT. 2.**

782 xvi. —.]—HOARE v. INVERARITY (1926), 28 W. A. L. R. 125.—AUS.

**PART XI. SECT. 3.**

785 vii. —.]—In an action of damages against a corp'n., as the statutory authority charged with the duty of providing light in common stairs within the city during the hours of darkness, defenders moved that the action should be dismissed as irrelevant, in respect that upon her own averments pursuer was guilty of contributory negligence in going down a stair which she knew to be in darkness without first obtaining a light:—*Held*: pursuer's averments did not disclose contributory negligence on her part such as to warrant dismissal of the action.—JACKSON v. GLASGOW CORPN., [1928] S. C. 37.—SCOT.

788 i. — *Entering vehicle when driver perceptibly drunk.*—In an action against the driver of a motor car to recover damages for injuries sustained in a collision caused by the driver's negligence, pltf. is not entitled to succeed where such negligence was due to the intoxicated condition of deft., of which condition pltf. was aware at the time that he accepted the invitation to travel in the car.—FINNIE v. CARROLL (1927), 27 S. R. N. S. W. 495; 44 N. S. W. W. N. 182.—AUS.

52

## Part XII.—Damages.

810. *Add. Annotation* :—*Mentd. Conquer v. Boot*, [1928] 2 K. B. 336.

842. *Add. Annotation* :—*Consd. Grinham v. Davies* (1928), 139 L. T. 379.

842a. —.]—*GOWAR v. HALES*, No. 421a, *ante*.

842b. —.]—It is an established rule of

practice that, in an accident case, it should not be intimated to a jury that deft. is insured &, where this rule has been violated, it is within the discretion of the judge to discharge the jury, at the expense of the party whose advocate has violated the rule.—*GRINHAM v. DAVIES* (1928), 139 L. T. 379; 44 T. L. R. 523; 72 Sol. Jo. 303, D. O.

## Part XIII.—Negligence causing Death.

910. *Add. Annotation* :—*Apld. Dew v. United British S.S. Co.* (1928), 139 L. T. 628.

943. *Add. Annotation* :—*Refd. Carling v. Lebbon*, [1927] 2 K. B. 108.

944. *Add. Citations* :—[1927] 2 K. B. 108; 96 L. J. K. B. 515; 137 L. T. 255; 43 T. L. R. 454.

### PART XII. SECT. 3, SUB-SECT. 1.

*st. Loss of limb.*—Damages to be allowed to pltf., who has sustained the loss of part of his leg through the negligence of deft., discussed.—*CLARK v. WILSON*, [1926] S. A. S. R. 342.—AUS.

### PART XII. SECT. 6.

842 i. *Defendant insured against liability—Whether court informed thereof.*—*WALSH v. PEAT* (N. B.), [1927] 2 D. L. R. 1120.—CAN.

842 ii. —.]—Although it is, as a general rule, improper for counsel for pltf., when cross-examining deft., to ask whether deft. is entitled to an indemnity from an insurance co., yet special circumstances may justify the judge in not withdrawing the case from the jury.—*WILSON v. KENT (GEORGE) & SONS, LTD.*, [1928] N. Z. L. R. 166.—N. Z.

### PART XIII. SECT. 2, SUB-SECT. 2.

865 i. *Child—Adopted child—Fatal Accidents Act, R. S. O., 1914 (c. 151),*

s. 2 (a).]—*HOWIE v. LAWRENCE*, [1927] 1 D. L. R. 477; 59 O. L. R. 641.—CAN.

g i. —.]—Sisters of deceased are not entitled, as such, to the benefits of Fatal Accidents Act, 1920 (c. 29); & the mere allegation that they were dependent on him does not bring them within the Act.—*SHTITZ v. CANADIAN NATIONAL RY. CO.*, [1927] 1 D. L. R. 951; [1927] 1 W. W. R. 193; 21 Sask. L. R. 345.—CAN.

### PART XIII. SECT. 2, SUB-SECT. 3.

o i. —.]—W. was injured by falling into a gullet, which was in a street under the care of an urban district council. W. brought no action in his lifetime, & died within six months after the accident, & in consequence thereof. An action was instituted by the widow under Lord Campbell's Act, 1846 (c. 93), more than six months after the accident, & more than eight months from the death of W.:—*Held*: pltf. was entitled to maintain the action.—*WALSH v. BALLINA URBAN DISTRICT COUNCIL* (1921), 55 I. L. T. 140.—IR.

### PART XIII. SECT. 2, SUB-SECT. 7.—B.

907 ix. —.]—A claim for damages by a widow or the minor children of a person, whose death is alleged to have been caused by the negligence of deft., is not barred by the fact that the death was caused by the combined negligence of the latter & deceased.—*UNION GOVERNMENT (MINISTER OF RAILWAYS) v. LEE*, [1927] App. D. 202.—S. AF.

### PART XIII. SECT. 2, SUB-SECT. 8.—E.

*sw. Fine imposed under Penal Code in respect of accident—Taken into account.*—*NATHU RAM v. CHAND KUAR* (1927), I. L. R. 50 All. 408.—IND.

### PART XIII. SECT. 2, SUB-SECT. 8.—F.

o i. —.]—*YOUNG v. CANADIAN PACIFIC RY. CO. (No. 2)* (Sask.), [1927] 3 W. W. R. 175.—CAN.

### PART XIII. SECT. 2, SUB-SECT. 9.

g i. — *Sufficiency.*—*SHTITZ v. CANADIAN NATIONAL RY. CO.*, [1927] 1 D. L. R. 951; [1927] 1 W. W. R. 193; 21 Sask. L. R. 345.—CAN.

# NUISANCE.

## Part I.—Definition, Nature and Characteristics.

18. *Add. Annotation* :—*As to* (3) *Refd.* The Carlgarth, The Otarama, [1927] P. 93.

## Part II.—Nuisances in respect of Particular Matters.

134a. *Manure manufacture.*—CARDELL *v.* NEW QUAY LOCAL BOARD (1875), 39 J. P. Jo. 742.

134b. *Rag & bone business.*—P. set up a business of a rag & bone merchant without leave. The bones were stored in bags & removed

weekly. The justices having found as a fact that the business was noxious & *ejusdem generis* with those specified convicted P. :—*Held* : the conviction was right.—PASSEY *v.* OXFORD LOCAL BOARD (1879), 43 J. P. 622, D. C.

## Part III.—Neighbouring Owners.

302. *Add. Annotation* :—*Refd.* Bull *v.* West African Shipping, etc. Co., [1927] A. C. 686.

311. *Add. Annotations* :—*Distd.* St. Anne's Well Brewery Co. *v.* Roberts (1928), 92 J. P. 180. *Refd.* Glanville *v.* Sutton (1927), 44 T. L. R. 98; G. W. Ry. *v.* S.S. Mostyn, The Mostyn, [1928] A. C. 57.

316a. — *Confined to owners in possession.*—The doctrine of *Rylands v. Fletcher*, No. 311, *ante*, has never been applied to affect the liability of an owner, who was out of possession at the time when the injury took place.—ST. ANNE'S WELL BREWERY CO. *v.* ROBERTS (1928), 140 L. T. 1; 92 J. P. 180; 44 T. L. R. 703; 26 L. G. R. 638, C. A.

332. *Add. Annotation* :—*Generally*, *Refd.* Scammell *v.* Attlee (1928), 45 T. L. R. 75.

356. *Add. Annotation* :—*Refd.* St. Anne's Well Brewery Co. *v.* Roberts (1928), 92 J. P. 180.

357. *Add. Annotation* :—*Refd.* O'Cedar *v.* Slough Trading Co., [1927] 2 K. B. 123.

364. *Add. Annotation* :—*Consd.* St. Anne's Well Brewery Co. *v.* Roberts (1928), 92 J. P. 180.

374. *Add. Annotation* :—*Consd.* St. Anne's Well Brewery Co. *v.* Roberts (1928), 92 J. P. 180.

376. *Add. Annotations* :—*Refd.* G. W. Ry. *v.* S.S. Mostyn, The Mostyn, [1928] A. C. 57; St. Anne's Well Brewery Co. *v.* Roberts (1928), 92 J. P. 95.

389. *Add. Annotation* :—*Refd.* St. Anne's Well Brewery Co. *v.* Roberts (1928), 92 J. P. 95.

## Part IV.—Remedies.

438. *Add. Annotation* :—*Refd.* Lagan Navigation Co. *v.* Lambeg Bleaching, Dyeing & Finishing Co., [1927] A. C. 226.

439. *Add. Annotation* :—*As to* (1) *Refd.* Lagan Navigation Co. *v.* Lambeg Bleaching, Dyeing & Finishing Co., [1927] A. C. 226.

444. *Add. Annotations* :—*As to* (1) *Refd.* Lagan Navigation Co. *v.* Lambeg Bleaching, Dyeing & Finishing Co., [1927] A. C. 226. *Generally*, *Refd.* The Carlgarth, The Otarama, [1927] P. 93.

445. *Add. Annotation* :—*Consd.* Lagan Navigation Co. *v.* Lambeg Bleaching, Dyeing & Finishing Co., [1927] A. C. 226.

447. *Add. Annotation* :—*As to* (1) *Refd.* Salisbury & Fordingbridge District Drainage Board *v.*

Southern Tanning Co. (1920), Ltd., [1927] 2 K. B. 566.

465. *Add. Annotation* :—*Consd.* Lagan Navigation Co. *v.* Lambeg Bleaching, Dyeing & Finishing Co., [1927] A. C. 226.

549. *Add. Annotations* :—*Refd.* Coleshill *v.* Manchester Corpn., [1928] 1 K. B. 776. *Mentd.* Oldham *v.* Sheffield Corpn. (1927), 136 L. T. 681.

567a. —. ]—SHORT *v.* TAYLOR (1709), 2 Eq. Cas. Abr. 522; 22 E. R. 441.

*Annotation* :—*Appld.* Williams *v.* Jersey (1841), Cr. & Ph. 91.

608. *Add. Annotation* :—*Refd.* Lagan Navigation Co. *v.* Lambeg Bleaching, Dyeing & Finishing Co., [1927] A. C. 226.

### PART II. SECT. 9, SUB-SECT. 1.

95 i. *Dairy — Noisy churns.*—MCKELVEY *v.* INVERCARGILL MILK SUPPLY CO., LTD., [1928] N. Z. L. R. 223.—N.Z.

### PART II. SECT. 13, SUB-SECT. 4.

sd. *Hospital.*—SHUTTLEWORTH *v.* VANCOUVER GENERAL HOSPITAL, No. 673 iv, *post.*—CAN.

### PART III. SECT. 2, SUB-SECT. 2.—B. (i).

d i. —. ]—MCCARTNEY *v.* MILLER (1905), 7 Terr. L. R. 367; 2 W. L. R. 87.—CAN.

d ii. —. ]—BETTCHEER *v.* TURNER (Sask.) (1913), 25 W. L. R. 136.—CAN.



609. *Add. Annotation* :—**Refd.** Lagan Navigation Co. v. Lambeg Bleaching, Dyeing & Finishing Co., [1927] A. C. 226.
612. *Add. Annotation* :—**Refd.** Lagan Navigation Co. v. Lambeg Bleaching, Dyeing & Finishing Co., [1927] A. C. 226.
613. *Add. Citation* :—25 L. G. R. 1.
681. *Add. Annotation* :—**Refd.** Graigola Merthyr Co. v. Swansea Corp., [1928] Ch. 235.
738. *Add. Annotation* :—**Mentd.** Akt. Dampskibs Steinstad v. Pearson (1927), 137 L. T. 533.
740. *Add. Annotation* :—**Generally, Mentd.** Friern Barnet U. D. C. v. Adams (1927), 136 L. T. 649.
793. *Add. Annotation* :—**Consd.** Pointon v. Cox (1926), 136 L. T. 506.

PART IV. SECT. 2, SUB-SECT. 6.—  
A. (e).

673 iv. ——.]—In a *quia timet* action for an injunction restraining the establishment of a hospital, on the ground that it will constitute a nuisance to pltf., he must prove a strong probability almost amounting to moral

certainty that the hospital will be an actual nuisance.—SHUTTLEWORTH v. VANCOUVER GENERAL HOSPITAL, [1927] 2 D. L. R. 573; [1927] 1 W. W. R. 476; 38 B. C. R. 300.—CAN.

673 v. ——.]—Pltfs. moved for an injunction to prevent a nuisance, which they feared would arise from noise &

vibration caused by the establishment of a factory then in course of erection : —*Held* : as it had not been established that the damage apprehended was imminent & of a substantial character, the claim was premature.—ROBERTSON v. DUTHIE STEEL CASEMENT CO., LTD., [1927] N. Z. L. R. 826.—N. Z.

## OPEN SPACES AND RECREATION GROUNDS.

### Part III.—Powers of Regulation and Management.

**24a. Power of Public Trustee—To sell—Law of Property Act, 1925 (c. 20), Sched. I., Part V. (2).]**—The expression “an open space of land” in the above par. means any land that is unbuilt upon.

A small yard & ashes place at the rear of two houses in a town was, immediately before the commencement of the Act, held in undivided shares by the owners of the houses

with rights of access & user over same:—*Held*: the yard & ashes place were an open space within the par. & had vested in the Public Trustee. Leave given to the Public Trustee to sell same.—*Re BRADFORD CITY PREMISES*, [1928] Ch. 138; 138 L. T. 517; *sub nom. Re BRADFORD CITY PREMISES, SCAIFE v. PUBLIC TRUSTEE*, 97 L. J. Ch. 84.

### Part IV.—User of Open Spaces.

**38. Add. Annotation:—***Refd.* I. R. Comrs. v. Yorkshire Agricultural Soc. (1927), 44 T. L. R. 59. *Mentd.* General Medical Council

*v. I. R. Comrs.*, English Branch Council of General Medical Council v. I. R. Comrs. (1928), 139 L. T. 225.

# PARLIAMENT.

## Part II.—The House of Lords.

22. *Annotation*:—Delete Wycombe Grdns. v. Barton-upon-Irwell Grdns. (1926), 43 T. L. R. 89.
23. *Add. Annotation*:—*Reid*. G. v. G. (1928), 45 T. L. R. 7.
27. *Add. Annotation*:—*Mentd*. Buerger v. New York Life Assce. (1927), 96 L. J. K. B. 930.
37. *Add. Annotation*:—*Consd*. Campbell v. Pollak, [1927] A. C. 732.
38. *Add. Citations*:—[1927] A. C. 732; 96 L. J. K. B. 1093; 137 L. T. 656.
39. *Add. Annotation*:—*Consd*. Campbell v. Pollak, [1927] A. C. 732.
41. *Annotation*:—For “As to (1) *Mentd*.” read “As to (1) *Reid*.”  
*Add. Annotation*:—As to (3) *Reid*. Campbell v. Pollak, [1927] A. C. 732.
59. *Add. Annotation*:—*Mentd*. Curran v. Kays, [1928] 2 K. B. 469.
99. *Add. Annotation*:—As to (1) *Reid*. Campbell v. Pollak, [1927] A. C. 732.
107. *Add. Annotation*:—*Mentd*. Campbell v. Pollak, [1927] A. C. 732.
115. *Add. Annotation*:—*Mentd*. James v. British General Insce., [1927] 2 K. B. 311.
116. *Add. Annotation*:—*Mentd*. Hardie & Lane v. Chilton, [1928] 2 K. B. 306.
126. *Add. Annotation*:—*Mentd*. Canadian Pacific Ry. v. Kelvin Shipping Co. (1927), 138 L. T. 369.
- 135a. —.]—In an action by an agent for a claim for commission from the purchaser on the sale of a business, the trial judge found on the facts that the agent had earned his commission, & his decision was affirmed by the appellate ct.:—*Held*: the concurrent findings of the cts. below ought not to be disturbed.—Bow’s EMPORIUM, LTD. v. BRETT (A. R.) & Co., LTD. (1927), 44 T. L. R. 194, H. L.
- 155a. In Admiralty actions—Collision cases—Both vessels to blame.]—CANTON (OWNERS) v. RHESUS (OWNERS), [1928] W. N. 214; *sub nom*. THE CANTON, 31 Lloyd, L. R. 289, H. L.  
*Annotation*:—*Mentd*. The Young Sld (1928), 45 T. L. R. 138.
162. *Add. Annotation*:—*Consd*. Campbell v. Pollak, [1927] A. C. 732.
166. *Add. Annotations*:—*Mentd*. Cushion v. Tredgar Iron & Coal Co. (1927), 20 B. W. C. C. 454; Lewis v. Guest, Keen & Nettlefolds, Watkins v. Same, Tucker v. Same, Ingram v. Crawshay (1927), 96 L. J. K. B. 664.
190. *Add. Annotation*:—*Consd*. *Re* Article X of Articles of Agreement for a Treaty between Great Britain & Ireland (1928), 45 T. L. R. 57.

## Part V.—The Legislative Work of Parliament.

- 256a. **Metropolis Gas Act, 1860 (c. 125).**—*WYATT v. METROPOLITAN BOARD OF WORKS* (1862), 11 C. B. N. S. 744; 31 L. J. C. P. 217 142 E. R. 988.  
*Annotations*:—*Apld*. *Re* Skegness & St. Leonard’s Tram. Co., *Ex p*. Hanly (1888), 41 Ch. D. 215. *Reid*. *Re* Kent Tram. Co. (1879), 12 Ch. D. 312.  
*See, also*, COMPANIES, Vol. X., p. 1113, No. 7830.
261. *Add. Citations*:—*sub nom*. *Re* PETERSON, [1909] 2 Ch. 398; 79 L. J. Ch. 53; 101 L. T. 480; 73 J. P. 461.
- 263a. — **Metropolis Gas Act, 1860 (c. 125).**—*WYATT v. METROPOLITAN BOARD OF WORKS* (1862), 11 C. B. N. S. 744; 31 L. J. C. P. 217; 142 E. R. 988.  
*Annotations*:—*Apld*. *Re* Skegness & St. Leonard’s Tram. Co., *Ex p*. Hanly (1888), 41 Ch. D. 215. *Reid*. *Re* Kent Tram. Co. (1879), 12 Ch. D. 312.

## Part VII.—Privileges of Parliament.

365. *Add. Annotation*:—*Reid*. *Re* Article X of Articles of Agreement for a Treaty between Great Britain & Ireland (1928), 45 T. L. R. 57.
398. *Add. Annotation*:—*Mentd*. More v. Weaver, [1928] 2 K. B. 520
437. *Add. Annotation*:—*Reid*. *Re* Article X of Articles of Agreement for a Treaty between Great Britain & Ireland (1928), 45 T. L. R. 57.

### PART II. SECT. 2, SUB-SECT. 1.

- 16 i. *Appeals from Scottish courts—From Lords of Session—From interlocutory order.*—*ROSS v. ROSS*, [1927] S. C. (H. L.) 4. —SCOT.

### PART II. SECT. 2, SUB-SECT. 7.—C.

- 85 i. *Not admitted.*—*PORTLAND (DUKE) v. WOOD’S TRUSTEES*, [1927] S. C. (H. L.) 1.—SCOT.



## PARTITION.

### Part III.—Partition by Agreement.

57. *Add. Annotation* :—**Mentd.** Turner v. Watts (1927), 44 T. L. R. 105.

#### PART I.

h i.

—.]—It is essential for the maintainability of a suit for partition that pltf. should be in actual or constructive possession of the properties.—**SABJAN BIBI v. ASHANULLA BEPARI** (1926), I. L. R. 54 Calc. 524.—**IND.**

## PARTNERSHIP.

## Part I.—Partnership Generally.

8. *Add. Annotation* :—**Refd.** Dominion Iron & Steel Co. v. Invernairn, [1927] W. N. 277.
9. *Add. Annotation* :—**Mentd.** Collaroy Co. v. Giffard, [1928] Ch. 144.
21. *Add. Annotation* :—**Mentd.** *Re Debtor* (No. 229 of 1927), [1927] 2 Ch. 367.

## Part II.—Tests of Partnership.

43. *Add. Annotation* :—**Refd.** Arseculeratne v. Perera, [1928] A. C. 173.
44. *Add. Annotation* :—**Refd.** Arseculeratne v. Perera, [1928] A. C. 173.
77. *Add. Annotation* :—**Mentd.** English Insce. v. National Benefit Assce. (1928), 44 T. L. R. 801.
107. *Add. Annotation* :—**As to (2) Refd.** Watson v. Haggitt (1927), 44 T. L. R. 90.
171. *Add. Annotation* :—**Refd.** *Re Debtor* (No. 229 of 1927), [1927] 2 Ch. 367.
177. *Add. Annotation* :—**Mentd.** Lowther v. Harris, [1927] 1 K. B. 393.

## Part IV.—Relations between Partners and Third Parties.

442. *Add. Annotation* :—**Mentd.** Houghton v. Nothard, Lowe & Wills (1927), 44 T. L. R. 76.
449. *Add. Annotation* :—**Mentd.** H. v. H., [1928] P. 206.
520. *Add. Annotation* :—**Refd.** Smith v. Wood (1928), 139 L. T. 250.
592. *Add. Annotation* :—**Mentd.** Hardie & Lane v. Chiltern (1927), 96 L. J. K. B. 773.
605. *Add. Annotation* :—**Mentd.** Albemarle Supply Co. v. Hind, [1928] 1 K. B. 307.
609. *Add. Annotation* :—**Mentd.** Albemarle Supply Co. v. Hind (1927), 43 T. L. R. 652.
662. *Add. Annotation* :—**Refd.** Albemarle Supply Co. v. Hind, [1928] 1 K. B. 307.
- 718a. **Action by partnership**—In respect of goods supplied to partner before creation of partnership.]—Defts. contracted in writing with first pltf. to supply him with all the brass ashes produced at their mill at a certain fixed price, the ashes being agreed to be equal to a certain sample. Some ashes were delivered, & then pltf. took co-pltfs. into partnership, & ashes were delivered by defts. to the firm without any new or special contract. Neither the ashes supplied before the formation of the partnership nor those supplied afterwards were equal to sample, & pltfs. commenced an action to recover damages in respect of the breach of agreement :—**Held** : pltfs. could not recover in respect of the deliveries of ashes which took place prior to the formation of the partnership, but they could do so in respect of those which took place afterwards.—**BOUNTY v. HEATON** (1865), 13 L. T. 238.
588. *Add. Annotations* :—**Refd.** Cumberland v. Lanarkshire Tram. Co. (1927), 20 B. W. C. C. 780 ; Jenkins v. Jenkins, [1928] 2 K. B. 501.
859. *Add. Annotation* :—**Refd.** Pirie v. Richardson, [1927] 1 K. B. 448.

## PART I. SECT. 2.

d i. S. P. BROJO LAL SAHA BANIKYA v. BUDH NATH PYARILAL (1927), I. L. R. 55 Calc. 551.—IND.

## PART II. SECT. 5, SUB-SECT. 2.

91 xxi. —.]—LOTBINIERE LBR. Co. v. FORTIN, [1927] 4 D. L. R. 167.—CAN.

## PART II. SECT. 5, SUB-SECT. 4.

110 iv. —.]—RAGHUNANDAN NANU KOTHARE v. HORNASJEE BEZONJEE BAMJEE (1926), I. L. R. 51 Bom. 342.—IND.

## PART III. SECT. 3, SUB-SECT. 2.—B.

237 iii. S. P. ARCHIBALD v. MCNERHANIE (1899), 29 S. C. R. 564.—CAN.

## PART IV. SECT. 3, SUB-SECT. 1.

sl. *Insurances effected by firm*—*Firm turned into limited company.*]—**Held** : there was such a change of interest as to invalidate the insurances, in the absence of notification of the change to, & assent by, the insurance co.—**PEUCHEN CO. v. CITY MUTUAL FIRE INSURANCE CO.** (1891), 18 A. R. 446.—CAN.

## PART IV. SECT. 6, SUB-SECT. 2.—D.

799 ii. *Action in firm name*—*Whether*

*representatives of deceased partner necessary parties.*]—In a suit against a firm in the firm name, the firm having been dissolved to pltf.'s knowledge before the institution of the suit by reason of the death of a partner, the suit as so framed does not include the legal representatives of the deceased partner, & it is necessary to add them as parties in order to obtain judgment against the private estate of the deceased partner, as opposed to mere judgment against the partnership assets.—**MATHURDAS CANJI MATANI v. EBHRAHIM FAZALBHOY** (1927), I. L. R. 51 Bom. 986.—IND.

## Part V.—Relations of Partners inter se.

- 945a. — Of interest in partnership effects & profits.]—WARTNABY v. SHUTTLEWORTH & TAYLOR (1837), 1 Jur. 469, L. C.
1211. *Add. Annotation*:—Mentd. Livock v. Pearson (1928), 33 Com. Cas. 188.
1127. *Add. Annotation*:—Consd. Naval Colliery Co. v. I. R. Comrs. (1928), 138 L. T. 593.
1242. *Add. Annotation*:—Consd. Manley v. Sartori, [1927] 1 Ch. 157.
- 1459a. Foreign firm—Branch office in England.]—Partnership Act, 1890 (c. 39), s. 23, applies to a foreign firm having a branch house of business in England.—BROWN, JANSON & Co. v. HUTCHINSON & Co., [1895] 1 Q. B. 737; 64 L. J. Q. B. 359; 73 L. T. 437; 43 W. R. 533; 11 T. L. R. 291; 14 R. 354, C. A.; *subsequent proceedings*, [1895] 2 Q. B. 126.
- 1480a. —.]—(1) Where it is not the object of

- a suit to obtain the dissolution of a partnership, but, on the contrary, to continue the partnership, it is not according to the practice of the ct. in the course of that suit to grant a receiver & manager. (2) Cases, however, may arise in which the conduct of deft. being such as to endanger the existence of the partnership concern, the ct. will appoint an interim receiver & manager.—HALL v. HALL (1850), 3 Mac. & G. 79; 20 L. J. Ch. 585; 17 L. T. O. S. 11; 15 Jur. 363; 42 E. R. 191, L. C.
- Annotation*:—As to (1) Refd. Medwin v. Ditcham (1882), 47 L. T. 250.
- .]—HALL v. HALL, No. 1480a, *ante*.
1604. *Add. Annotation*:—Consd. Farey v. Cooper, [1927] 2 K. B. 384.
1614. *Add. Citations*:—96 L. J. Ch. 361; 137 L. T. 409.

## Part VI.—Dissolution.

- 1654a. Death of partner sending notice before notice received—Date of dissolution of partnership.]—Where a partner sends by post a notice to the other partner to determine the partnership as from the date of the notice, & dies before the other partner receives the notice, the partnership is dissolved, not by the notice, but by the death of the partner sending it, inasmuch as the statutory dissolution by notice is not brought about until receipt of the notice. In such a case the surviving partner has the rights which by the terms of the partnership he is to have on the death of a partner during the partnership.—MCLEOD v. DOWLING (1927), 43 T. L. R. 655.
- 1670a. Partner sending notice of intention to dissolve partnership—Death before notice received by other partner.]—MCLEOD v. DOWLING, No. 1654a, *ante*.
1835. *Add. Citations*:—96 L. J. Ch. 65; 136 L. T. 238.
- 1841a. — For share of “net profits”—Dissolution by death.]—Applt. & H. entered into partnership, the arts. providing that each partner was entitled to a salary & half the “net profits” during the term of the partnership, & that if either partner died the surviving partner was for five years to pay to the exors. a third of the “net annual profits.” H. died, & the partnership was thereby dissolved:—*Held*: the expression “net profits” was not necessarily to be interpreted as having the same meaning in every part of the arts., & applt., in calculating the share of the net profits payable to the exors., was not entitled to deduct any salary for himself.—WATSON v. HAGGITT, [1928] A. C. 127; 97 L. J. P. C. 33; 138 L. T. 306; 44 T. L. R. 90; 71 Sol. Jo. 963, P. C.
1845. *Add. Annotation*:—Consd. Manley v. Sartori, [1927] 1 Ch. 157.

PART V. SECT. 2, SUB-SECT. 2.—A. r i. —.]—COLE v. REED (1914), 29 W. L. R. 786.—CAN.

r ii. — *Construction of agreement.*]—DAVIS v. LOWRY (1912), 20 W. L. R. 839; 3 D. L. R. 157.—CAN.

PART V. SECT. 2, SUB-SECT. 3. 917 ii. —.]—Where a partner during the partnership, which was about to expire, received an offer for himself to negotiate for the renewal

of a lease enjoyed by the partnership:—*Held*: he was under no obligation to accept the offer for the benefit of the partnership.—WELZEL v. KAIN (1926), 27 S. R. N. S. W. 140; 44 N. S. W. W. N. 17.—AUS.

PART V. SECT. 7, SUB-SECT. 1. c i. — *Does not belong to individual partners.*]—SAWYER-MASSEY v. SCHLEY (1914), 29 W. L. R. 454.—CAN.

PART V. SECT. 13, SUB-SECT. 5.—H. (b). 1366 ii. —.]—MOMPLE v. MOMPLE (1927), 48 N. L. R. 374.—S. AF.

PART VI. SECT. 4. sp. *Registration of memorandum of dissolution—Under Partnership Registration Act, R. S. O., 1914 (c. 139)—Effect of.*]—DOMINION SUGAR CO. v. WARRELL, [1927] 2 D. L. R. 198; 60 O. L. R. 169.—CAN.



# PATENTS AND INVENTIONS.

## Part III.—“True and First Inventor.”

39. *Add. Citations* :—41 T. L. R. 545; *affd.* (1927), 96 L. J. Ch. 470; 137 L. T. 794; 43 T. L. R. 717; 44 R. P. C. 453, C. A.

*Add Annotation* :—*Refd.* Mackenzie-Kennedy v. Air Council 1927), 138 L. T. 8.

63. *Add. Annotation* :—*Refd.* Boyce v. Morris Motors (1927), 44 R. P. C. 105.

## Part IV.—Subject-Matter of Patent.

82. *Add. Annotations* :—*Mentd.* Palmolive Co. (of England) v. Freedman (1927), 44 T. L. R. 86; English Hop Growers v. Dering, [1928] 2 K. B. 174.

109. *Add Annotation* :—*Refd.* Re Simon-Carves & Robinson's Patent (1928), 45 R. P. C. 407.

117. *Add. Annotations* :—*As to* (2) *Consd.* Sharp & Dohme Inc. v. Boots Pure Drug Co. (1928), 45 R. P. C. 153; *Re* Simon-Carves & Robinson's Patent (1928), 45 R. P. C. 707. *Refd.* Boyce v. Morris Motors (1927), 44 R. P. C. 105.

134. *Add. Annotation* :—*Refd.* Adelman & Ham Boiler Corp. v. Llanrwst Foundry Co. (1928), 45 R. P. C. 413.

138. *Add. Annotations* :—*Refd.* Boyce v. Morris Motors (1927), 44 R. P. C. 105; Sharp & Dohme Inc. v. Boots Pure Drug Co. (1928), 45 R. P. C. 153.

142. *Add. Annotation* :—*Refd.* British United Shoe Machinery Co. v. Gimson Shoe Machinery Co. (1928), 45 R. P. C. 290.

149. *Add. Annotation* :—*As to* (3) *Refd.* Sharp & Dohme Inc. v. Boots Pure Drug Co. (1928), 45 R. P. C. 153.

162. *Add. Annotation* :—*As to* (3) *Consd.* British Thomson-Houston Co. v. Metropolitan Vickers Electrical Co. (1928), 45 R. P. C. 1.

163. *Add. Annotation* :—*Refd.* Sharp & Dohme Inc. v. Boots Pure Drug Co. (1928), 45 R. P. C. 153.

192. *Add. Annotation* :—*Refd.* Sharp & Dohme Inc. v. Boots Pure Drug Co. (1928), 45 R. P. C. 153.

231. *Add. Annotation* :—*Refd.* Mellor v. Beardmore (1927), 44 R. P. C. 175.

284. *Add. Annotation* :—*Generally, Refd.* Sharp & Dohme Inc. v. Boots Pure Drug Co. (1928), 45 R. P. C. 153.

299. *Add. Annotation* :—*Refd.* Boyce v. Morris Motors (1927), 44 R. P. C. 105.

302. *Citation* :—For “14 L. R. 487, H. L.,” read “14 T. L. R. 487, H. L.”

308a. —.]—*Held* : the applying to a ham boiler of a rack & catch was the addition of something which in itself had no novelty, & the patent was invalid for want of subject-matter.—ADELMANN & HAM BOILER CORPN. v. LLANRWST FOUNDRY CO. (1928), 45 R. P. C. 413.

308b. —.]—*Held* : (1) the first claim as to an apparatus was so vague as to be bad; (2) a combination claimed in the second claim did not produce a new result, & was merely the use successively of two pieces of apparatus, neither of which was patentable, & did not constitute a patentable combination, but was mere juxtaposition.—HANKS v. COOMBS (1928), 45 R. P. C. 237, C. A.

308c. —.]—JOHN WRIGHT & EAGLE RANGE, LTD. v. GENERAL GAS APPLIANCES, LTD. (1928), 45 R. P. C. 346.

315. *Add. Annotation* :—*Refd.* Sharp & Dohme Inc. v. Boots Pure Drug Co. (1928), 45 R. P. C. 153.

325. *Add. Annotation* :—*Refd.* Hanks v. Coombes (1928), 45 R. P. C. 237.

327. *Add. Annotation* :—*Refd.* Hanks v. Coombes (1928), 45 R. P. C. 237.

329. *Add. Annotation* :—*Refd.* Sharp & Dohme Inc. v. Boots Pure Drug Co. (1928), 45 R. P. C. 153.

336. *Add. Annotation* :—*Refd.* Jones & Attwood v. National Radiator Co. (1928), 45 R. P. C. 71.

339. *Add. Annotation* :—*Refd.* Re Higginson & Arundel's Patent (1927), 44 R. P. C. 430.

346. *Add. Annotation* :—*Refd.* Sharp & Dohme Inc. v. Boots Pure Drug Co. (1928), 45 R. P. C. 153.

349. *Add. Annotation* :—*Refd.* Safveans Akt. v. Ford Motor Co. (England) (1926), 44 R. P. C. 49.

### PART III. SECT. 1.

13 iii. S. P. DAVIS LOG & RAFT PATENTS CO. v. GATHELS (B. C.), [1927] 4 D. L. R. 95; [1927] 2 W. W. R. —CAN.

### PART III. SECT. 2, SUB-SECT. 2.

f. *Varied.* [1927] S. C. 597; 44 R. P. C. 175.

### PART IV. SECT. 1, SUB-SECT. 3.—C. (a).

k i. —.]—A patented process to be valid must denote ingenuity of in-

vention. It is not enough, in order to constitute invention, to disclose something which has been but dimly seen before.—ELECTROLYTIC ZINC PROCESS CO. v. FRENCH'S COMPLEX ORE REDUCING CO. OF CANADA, LTD., [1927] Exch. C. R. 94.—CAN.

### PART IV. SECT. 1, SUB-SECT. 5.—A.

193 vii. —.]—GUETTLER v. CAN. INTERNAT'L PAPER CO., [1927] 4 D. L. R. 617.—CAN.

193 viii. —.]—Where a specific machine already exists producing cer-

tain effects, & additions have been made to such machine to produce the same effect in a better manner:—*Semble* : a patent cannot be taken for the whole machine, but for the improvement only.—SHERBROOKE MACHINERY CO., LTD. v. HYDRAULIC CO., LTD., [1927] Exch. C. R. 114.—CAN.

### PART IV. SECT. 1, SUB-SECT. 7.—A.

270 xx. —.]—CANADIAN GENERAL ELECTRIC CO., LTD. v. FADA RADIO, LTD., [1927] 2 D. L. R. 911; [1927] Exch. C. R. 134.—CAN.

361. *Add. Annotations*:—**Refd.** Boyce v. Morris Motors (1927), 44 R. P. C. 105; Mellor v. Beardmore (1927), 44 R. P. C. 175.
365. *Add. Annotation*:—**Refd.** Sharp & Dohme Inc. v. Boots Pure Drug Co. (1928), 45 R. P. C. 153.
372. *Add. Annotation*:—**Generally, Refd.** Sharp & Dohme Inc. v. Boots Pure Drug Co. (1928), 45 R. P. C. 153.
390. *Add. Annotation*:—**Generally, Refd.** Mellor v. Beardmore (1927), 44 R. P. C. 175.
402. *Add. Annotation*:—**Generally, Refd.** Mellor v. Beardmore (1927), 44 R. P. C. 175.
409. *Add. Annotation*:—**Consd.** Wright & Eagle Range v. General Gas Appliances (1928) 45 R. P. C. 346.
- 412a. —.]—Where a known apparatus is first used for a particular purpose, a presumption of patentable subject-matter is raised by novelty in the mode of use, as distinguished from novelty of purpose. New mode of use may be based on advantage in treatment of particular materials.—**Re** SIMON-CARVES, LTD. & ROBINSON'S PATENT (1928), 45 R. P. C. 407.
423. *Add. Annotation*:—**Generally, Refd.** Sharp & Dohme Inc. v. Boots Pure Drug Co. (1928), 45 R. P. C. 153.
434. *Citations*:—For “44 R. P. C.” read “44 R. P. C. 367; *affd.* 45 R. P. C. 153, C. A.”
435. *Add. Annotation*:—**Consd.** Sharp & Dohme Inc. v. Boots Pure Drug Co. (1928), 45 R. P. C. 153.
457. *Add. Annotation*:—**Consd.** Sharpe & Dohme Inc. v. Boots Pure Drug Co. (1928), 45 R. P. C. 153.
- 472a. —.]—It is not enough to show that an apparatus described in an earlier specification alleged as an anticipation could have been used to produce a certain result; it must also be shown that the specification contains clear & unmistakable directions so to use it.—**BRITISH THOMSON-HOUSTON CO., LTD. v. METROPOLITAN-VICKERS ELECTRICAL CO., LTD.** (1928), 45 R. P. C. 1, H. L.; *affq.* S. C. *sub nom.* METROPOLITAN-VICKERS ELECTRICAL CO., LTD. v. BRITISH THOMSON-HOUSTON CO., LTD. (1925), 43 R. P. C. 76, C. A.
518. *Add. Annotations*:—**Consd.** British Thomson Houston Co. v. Metropolitan-Vickers Electrical Co. (1928), 45 R. P. C. 1. **Refd.** Wright & Eagle Range v. General Gas Appliances (1928), 45 R. P. C. 346.
556. *Add. Annotation*:—**Refd.** Sharpe & Dohme Inc. v. Boots Pure Drug Co. (1928), 45 R. P. C. 153.
559. *Add. Annotation*:—**Refd.** Mellor v. Beardmore (1927), 44 R. P. C. 175.
560. *Add. Annotations*:—**Refd.** Mellor v. Beardmore (1927), 44 R. P. C. 175; Sharp & Dohme Inc. v. Boots Pure Drug Co. (1928), 45 R. P. C. 153; **Re** Simon-Carves & Robinson's Patent (1928), 45 R. P. C. 407.
561. *Add. Annotation*:—**Refd.** Boyce v. Morris Motors (1927), 44 R. P. C. 105.
574. *Add. Annotation*:—**Refd.** Boyce v. Morris Motors (1927), 44 R. P. C. 105.
585. *Add. Annotation*:—**Refd.** Boyce v. Morris Motors (1927), 44 R. P. C. 105.
593. *Add. Annotation*:—**As to (3) Refd.** British Thomson-Houston Co. v. Metropolitan-Vickers Electrical Co. (1928), 45 R. P. C. 1.
598. *Add. Annotation*:—**Refd.** Jones & Attwood v. National Radiator Co. (1928), 45 R. P. C. 71.
625. *Add. Annotation*:—**Refd.** Sharp & Dohme Inc. v. Boots Pure Drug Co. (1928), 45 R. P. C. 153.
636. *Add. Annotation*:—**Refd.** *Re* Higginson & Arundel's Patent (1927), 44 R. P. C. 430.
640. *Add. Annotation*:—**Refd.** Sharp & Dohme Inc. v. Boots Pure Drug Co. (1928), 45 R. P. C. 153.
1. *Add. Citation*:—**Affd. sub nom.** BRITISH THOMSON-HOUSTON CO., LTD. v. METROPOLITAN-VICKERS ELECTRICAL CO., LTD. (1928), 45 R. P. C. 1, H. L.
- 680a. —.]—In an action for infringement defts. denied infringement, & alleged that the patent was invalid by reason of (*inter alia*) want of utility. Pltfs. proved the utility of their invention:—**Held**: the patent was valid, & had been infringed.—**BRITISH UNITED SHOE MACHINERY CO., LTD. v. LAMBERT HOWARTH & SONS, LTD. & GIMSON SHOE MACHINERY CO., LTD.** (1927), 44 R. P. C. 511.
- 680b. **S. P.** BRITISH UNITED SHOE MACHINERY CO., LTD. v. GIMSON SHOE MACHINERY CO., LTD. (1928), 45 R. P. C. 290, C. A.
- 688a. —.]—**ROSE STREET FOUNDRY & ENGINEERING CO., LTD. v. INDIA RUBBER GUTTA PERCHA & TELEGRAPH WORKS CO., LTD.** (1928), 45 R. P. C. 371.

**PART IV. SECT. 1, SUB-SECT. 9.—A.**

352 x. ———.]—BERGEON v. DE  
KERMOR ELECTRIC HEATING CO., LTD.,  
[1927] 3 D. L. R. 99; [1927] Exch.  
C. R. 181.—CAN.

352 xi. ———.]—DETROIT RUBBER PRODUCTS INC. v. REPUBLIC RUBBER CO., [1927] 4 D. L. R. 724.—CAN.

352 xii. ———.]—NIEBLO MANUFACTURING CO. v. STANDARD CO., [1927] 4 D. L. R. 785.—CAN.

**PART IV. SECT. 2, SUB-SECT. 1.**

436 xii. ———.]—ELECTROLYTIC  
ZINC PROCESS CO. v. FRENCH'S COM-  
PLEX ORE REDUCING CO. OF CANADA,  
LTD., [1927] Exch. C. R. 94.—CAN.

486 xiii. — — —.]—There must be a substantial exercise of the inventive power, though it may in some cases

be very slight, to sustain a grant for a patent for invention. Slight alterations may produce important results & may disclose great ingenuity.—  
CANADIAN GENERAL ELECTRIC CO., LTD. v. FADA RADIO, LTD., [1927] 2 D. L. R. 911; [1927] Exch. C. R. 134.—  
CAN.

**PART IV. SECT. 2, SUB-SECT. 2.—**  
**B. (b) ii.**

523 iii. —.]—GEORGESON v. URWIN  
& Co., [1928] N. Z. L. R. 207.—N. Z.

**PART IV. SECT. 2, SUB-SECT. 2.—**  
**B. (b) v.**

aj. "On sale"—Within Patent Act—What amounts to.}—SEMET-SOLVAY CO. v. COMR. OF PATENTS, [1927] 3 D. L. R. 385 : [1927] Exch. C. R. 218.—CAN.

**PART IV. SECT. 2, SUB-SECT. 2.—**  
**C. (a).**

594 ii. —.—.]—CANADIAN GENERAL  
ELECTRIC CO., LTD. v. FADA RADIO,  
LTD., [1927] 2 D. L. R. 911; [1927]  
Exch. C. R. 134.—CAN.

**PART IV. SECT. 2, SUB-SECT. 2.—**  
**C. (c).**

**615 iii. —.—[CANADIAN GENERAL  
ELECTRIC CO., LTD. v. FADA RADIO,  
LTD., [1927] 2 D. L. R. 911; [1927]  
Exch. C. R. 134.—CAN.**

**PART IV. SECT. 8, SUB-SECT. 2.**

690 i. *Effect of non-user.*—ELECTROLYTIC ZINC PROCESS CO. v. FRENCH'S COMPLEX ORE REDUCING CO. OF CANADA, LTD., [1927] Exch. C. R. 94.—CAN.

## Part V.—Application for Patent.

**700a. Effect of.]—**Samples & indorsements thereon, deposited under Patents & Designs Act, 1907 (c. 29), s. 2 (5), can be relied on in aid of the interpretation of the specification, & as effective prior publication against a subsequent claim.—NOTES OF OFFICIAL RULINGS 1928 (B) (1928), 45 R. P. C. App. iv.

**709a. Power to modify forms.]—**The Comptroller may only modify patents forms so as to adapt them for some purpose akin to the purpose for which they are primarily intended.—*Re SALLES' APPLICATION* (1927), 45 R. P. C. 61.

**727. For the existing paragraph substitute the following paragraph:—**

**Injunction to restrain acceptance — Lawful ground of objection—"Secret processes."]**—Where an injunction had been granted to restrain appct. for a patent from disclosing processes derived from pltf. co., or from doing any act which might cause same to become public or commonly known, & the Comptroller-General refused to undertake when he should receive an application for the acceptance of a complete specification to consider such injunction a "lawful ground of objection" to the acceptance of the complete specification within Patents & Designs Act, 1907 (c. 29), s. 7 (3), objecting to his duty

prescribed by the Patent Acts being in any way interfered with by the ct., the ct. granted an injunction restraining the Comptroller-General from accepting the complete specification, as under sect. 9, on such acceptance, the matter would be thrown open to public inspection, the specification being concerned with some of the processes which, as between pltf. co. & appct., appct. had been restrained from disclosing, & because the Comptroller-General might accept the complete specification on the footing that the injunction against appct. would not constitute a lawful ground of objection within sect. 7 (3). On appeal the S.-G. on behalf of the Comptroller-General undertook that the injunction granted against appct. would be properly considered in deciding whether the specification should be accepted as being something which might constitute "a lawful ground of objection" to such acceptance, & by consent the order against the Comptroller-General was discharged, notice of discontinuance to be served upon him. Appct. was also further restrained from proceeding with his application in addition to the injunction granted against him in the ct. below.—*REX CO. & REX RESEARCH CORPN. v. MUIRHEAD & COMPTROLLER-GENERAL OF PATENTS* (1926), 96 L. J. Ch. 121; 136 L. T. 568; 44 R. P. C. 38, C. A.

## Part VI.—Specifications.

**773. Add. Annotation:—***Refd. Re Dreyfus' Applns.* (1927), 44 R. P. C. 291.

**804. Add. Annotation:—***Consd. Hanks v. Coombes* (1928), 45 R. P. C. 237.

**804a. As to apparatus.]—***HANKS v. COOMBES*, No. 308b, *ante*.

**810a. —.]—***Re CHEMISCHE FABRIK AUF ACTIEN E. SCHERING) PATENT* (1928), 45 R. P. C. 403.

**814. Add. Annotation:—***Refd. Sharp & Dohme Inc. v. Boots Pure Drug Co.* (1928), 45 R. P. C. 153.

**843. Add. Annotation:—***Refd. Re Chemische Fabrik auf Actien (Vorm E. Schering) Patent* (1928), 45 R. P. C. 403.

**910. Add. Annotation:—***As to (3) Refd. Boyce v. Morris Motors* (1927), 44 R. P. C. 105.

**918. Add. Annotation:—***Refd. Mellor v. Beardmore* (1927), 44 R. P. C. 175.

**921. Add. Annotations:—***As to (1) Refd. Mellor v. Beardmore* (1927), 44 R. P. C. 175; *Sharp & Dohme Inc. v. Boots Pure Drug Co.* (1928), 45 R. P. C. 153; *Re Simon-Carves & Robinson's Patent* (1928), 45 R. P. C. 407.

**996. Add. Annotation:—***Appld. Hanks v. Coombes* (1928), 45 R. P. C. 237.

**1209. Add. Annotation:—***Refd. Re Keystone, Knitting Mills Trade Mk.* (1928), 97 L. J. Ch. 316.

### PART VI. SECT. 4, SUB-SECT. 2.— A. (b).

**sm. As to process.]—**The specification of a patent for a process must point out clearly the method by which the process is to be performed so as to accomplish the object in view.—*ELECTROLYTIC ZINC PROCESS CO. v. FRENCH'S COMPLEX ORE REDUCING CO. OF CANADA, LTD.*, [1927] Exch. C. R. 94.—CAN.

### PART VI. SECT. 4, SUB-SECT. 4.

**955 i. Whether necessary to distinguish novelty or improvement—General rule.]—**A patentee, in a patent for an improvement on a known device, must not throw his net so wide as to omit to disclose honestly what belongs to the prior art as distinct from his new claim.—*BERGEON v. DE KERMOR ELECTRIC HEATING CO., LTD.*, [1927] 3 D. L. R. 99; [1927] Exch. C. R. 181.—CAN.

### PART VI. SECT. 5, SUB-SECT. 1.

**989 i. Necessity for claim.]—**(1) A patentee must define & limit with precision what he claims to have invented, & everything not clearly claimed becomes *publici juris*.

(2) A patentee must clearly set forth the various steps in a process claimed, & if designedly or unskillfully he makes it ambiguous, vague or indefinite, the patent is bad.—*ELECTROLYTIC ZINC PROCESS CO. v. FRENCH'S COMPLEX ORE REDUCING CO. OF CANADA, LTD.*, [1927] Exch. C. R. 94.—CAN.

**989 ii. —.]—**Anything disclosed in the specifications of a patent, & for which no claim is made, becomes *publici juris*.—*BERGEON v. DE KERMOR ELECTRIC HEATING CO., LTD.*, [1927] 3 D. L. R. 99; [1927] Exch. C. R. 181.—CAN.

**992 i. Necessity for clear statement.]—***ELECTROLYTIC ZINC PROCESS CO. v. FRENCH'S COMPLEX ORE REDUCING*

*CO. OF CANADA, LTD.*, No. 989 i, *ante*.—CAN.

**k i. Failure to claim advisable addition as necessary element of invention.]—**Where in the specification in a patent for an oven the patentee states that a certain device or addition is advisable or preferable, but does not claim it as a necessary element of the invention, any oven so constructed as to represent the invention patented, but without such additional device, will be an infringement of the patent.—*SEMET-SOLVAY CO. v. COMR. OF PATENTS*, [1927] 3 D. L. R. 385; [1927] Exch. C. R. 218.—CAN.

### PART VI. SECT. 6, SUB-SECT. 2.—C.

**1105 i. General rule.]—**The language in a patent should be liberally construed with a view to maintaining its validity.—*DAVIS LOG & RAFT PATENTS CO. v. GATHELS (B. C.)*, [1927] 4 D. L. R. 95; [1927] 2 W. W. R. 753.—CAN.



1212. *Add. Annotation*:—**Refd.** Sharpe & Dohme Inc. v. Boots Pure Drug Co. (1927), 44 R. P. C. 367.

1248. *Add. Annotation*:—**Refd.** Boyce v. Morris Motors (1927), 44 R. P. C. 105.

## Part VII.—Grant of Patent.

1363a. —.]—The manufacturer of a particular article may be regarded as interested in commercial processes for making such article marketable; but an opposition is not necessarily admissible, merely because it is not frivolous, vexatious or blackmailing. —**Re** CLAVEL'S APPLICATION (1928), 45 R. P. C. 222.

1364. *Add. Annotation*:—**Refd.** *Re* Clavel's Appln. (1928), 45 R. P. C. 222.

1369. *Add. Annotation*:—**Consd.** *Re* Clavel's Appln. (1928), 45 R. P. C. 222.

1437. *Add. Annotation*:—**Refd.** *Re* Mooney's Appln. (1927), 44 R. P. C. 294.

1495a. —.]—**Re** CARPMAEL'S APPLICATION (1928), 45 R. P. C. 411.

## Part X.—Assignment and Devolution of Patents.

1534a. **Agreement for assignment**—Whether representation that grantee was "original inventor" material misrepresentation.]—**Held**: it had not been proved that a material misrepresentation had been made.—**THOMPSON v. JEFFERSON** (1928), 45 R. P. C. 309, P. C.

— **Construction**.]—*See* Nos. 1555–1557a, *post*.

1537. *Add. Annotation*:—**Mentd.** *English Hop Growers v. Dering*, [1928] 2 K. B. 174.

1546. *Add. Annotations*:—**Refd.** *Palmolive Co. (of England) v. Freedman* (1927), 44 T. L. R. 86. **Mentd.** *English Hop Growers v. Dering*, [1928] 2 K. B. 174.

1557a. — **Of all patents in relation to preparation**

& application of gutta percha—What patents within agreement.]—**BEWLEY v. HANCOCK** (1856), 6 De G. M. & G. 391; 26 L. T. O. S. 264; 2 Jur. N. S. 289; 4 W. R. 334; 43 E. R. 1285, L. C.

— **By joint owners of patents**—Assignments to "contain covenants by vendors" that patents valid—" & such other covenants as may be reasonably required."—*See* **CONTRACT**, Vol. XII., pp. 29, 30, No. 73.

1557b. **Assignment of all assignor's interest in patent**—Passes right to apply for extension of term.]—**Re** BEARD & SCOTT'S PATENT, *Re* SCOTT & BEARD'S PATENT (1927), 45 R. P. C. 31.

1562. *Add. Annotation*:—**As to** (3) **Appld.** *The W. H. Randall*, [1928] P. 41.

## Part XI.—Licences.

1590. *Add. Citation*:—28 R. P. C. 229.

*Add. Annotation*:—**Refd.** *Lacteosote v. Alberman*, [1927] 2 Ch. 117.

1669. *Add. Annotation*:—**As to** (1) **Refd.** *Constantinesco v. R.* (1927), 11 Tax Cas. 730.

1673a. —.]—(1) No action for a declaration of the validity of a patent, or for compensation for user of the invention by the Crown, against the Govt. department concerned is competent or open to the patentee under Patents & Designs Act, 1919 (c. 80), s. 8, if the Crown do not consent to its being dealt with in proceedings under sect. 8, but the remedy is by petition of right or by originating notice of motion addressed to the department. The true effect of sect. 8 is to

give merely a right of compensation to the patentee against the Crown for the use by its officers of his invention for the purposes of the Crown, & it does not give any right in itself to sue the department concerned.

(2) A claim for a declaration of the validity of the patent is not a claim in tort because the Crown has the right to use the patent on the statutory terms set out in sect. 8.

An action in which such a declaration was claimed against the Air Council, dismissed on the above grounds.—**ROWLAND & MACKENZIE-KENNEDY v. AIR COUNCIL** (1927), 96 L. J. Ch. 470; 137 L. T. 794; 43 T. L. R. 717; 44 R. P. C. 453, C. A.

*Annotation*:—**Generally, Refd.** *Mackenzie-Kennedy v. Air Council* (1927), 138 L. T. 8.

### PART XI. SECT. 1, SUB-SECT. 6.

**sp.** *Sub-assignment—Position of parties.*]—**HILL v. MOISAN**, [1927] 2 D. L. R. 1089.—CAN.

### PART XI. SECT. 1, SUB-SECT. 8.

**h i.** — *Invalidity of patent.*]

**CHANNELL v. O'CEDAR CORPN.** (1927), 60 O. L. R. 525.—CAN.

### PART XI. SECT. 2, SUB-SECT. 2.

1662i. *Grant of licence—On what terms granted—Licence fee—How calculated.*]—**CONSOLIDATED WAFER CO., LTD. v. INTERNATIONAL CONE CO., LTD.**, [1927]

1 D. L. R. 402; [1927] S. C. R. 300.—CAN.

**st. Appeal—From Exchequer Court—Proceedings under Patent Act, 1923 (c. 23), s. 40—Jurisdiction of Supreme Court of Canada.**]—**CONSOLIDATED WAFER CO., LTD. v. INTERNATIONAL CONE CO., LTD.**, [1927] 1 D. L. R. 402; [1927] S. C. R. 300.—CAN.

## Part XII.—Term of Patent.

- 1681a. — Being beneficial owner.]—*Re WHITE & GRAY'S PATENT* (1927), 45 R. P. C. 119.
- 1687a. Joinder of grantee—Application by assignee.]—Where a grantee declines to join in an application for the extension of the term of a patent & lodges notice of opposition, it is necessary to join such grantee as a party to the summons.—*Re BEARD & SCOTT'S PATENT, Re SCOTT & BEARD'S PATENT* (1927), 45 R. P. C. 31.
- 1706a. —.]—*Re BEARD & SCOTT'S PATENT, Re SCOTT & BEARD'S PATENT*, No. 1557b, *ante*.
- 1997a. — Irregularity in service of advertisements—Excused.]—*Re PANICALI & BRENNI'S PATENT* (1927), 44 R. P. C. 509.
2021. *Add. Annotation*:—*Reid. Re Chambers' Patent* (1927), 44 R. P. C. 332.
- 2021a. —.]—*Re BOUYER'S PATENT* (1928), 45 R. P. C. 268.
2031. *Add. Annotation*:—*Reid. Re Higginson & Arundel's Patent* (1927), 44 R. P. C. 430.
- 2062a. — —.]—*Re GILBERT'S PATENTS* (1927), 44 R. P. C. 527.
- 2062b. —.]—*Re WESTERN ELECTRIC CO., LTD.'S PATENTS* (1927), 45 R. P. C. 117.
- 2064a. — Loss partly made good by subsequent profits.]—An application for an extension of the term of a patent was opposed on the ground (*inter alia*) that sales lost during the war had been balanced by accumulated deferred sales after the war:—*Held*: there had been a loss which had been in part, but not wholly, made good by a subsequent gain, & an extension of two & a half years should be granted.—*Re HIGGINSON & ARUNDEL'S PATENT* (1927), 44 R. P. C. 430.
- 2064b. —.]—*Held*: in order to show that a loss had been counterbalanced by subsequent gains, it should be established that, as the result of the cessation of hostilities, those who had been holding up their demands had loosed them, so that, in the post-war years, the arrears of orders had been executed in addition to the work which would normally have been done in the normal development of the patent.—*Re BATES & UNITED SHOE MACHINERY CO., LTD.'S PATENT, Re BATES RICHARDS & UNITED SHOE MACHINERY CO., LTD.'S PATENT* (1928), 45 R. P. C. 270.
- 2064c. —.]—*Re BOUYER'S PATENT* (1928), 45 R. P. C. 268.
- 2090a. —.]—*Re ENFIELD CYCLE CO., LTD. & SMITH'S PATENT* (1927), 44 R. P. C. 526.
2094. *Add. Annotation*:—*Reid. Re Chambers' Patent* (1927), 44 R. P. C. 332.
2112. *Add. Annotation*:—*Reid. Re Chambers' Patent* (1927), 44 R. P. C. 332.
- 2130a. — —.]—*Re HOGG & CARR'S PATENTS* (1927), 45 R. P. C. 120.

## Part XIII.—Revocation.

- 2174a. Prior publication.]—In the case of an application for the revocation of a patent already granted, appct. must establish his case in the clearest possible manner, & where prior publication is relied on, it is necessary to point to a clear & specific disclosure of something which can fairly be stated to be the patentee's invention.—*Re LOWNDES' PATENT* (1927), 45 R. P. C. 48.
- 2251a. — —.]—*Re KOERNER'S PATENT* (1928), 45 R. P. C. 442.

## Part XIV.—Infringement.

2312. *Add. Annotation*:—*Reid. Sharpe & Dohme Inc. v. Boots Pure Drug Co.* (1928), 45 R. P. C. 153.
2389. *Add. Annotation*:—*Reid. Re Higginson & Arundel's Patent* (1927), 44 R. P. C. 430.
2556. *Add. Annotation*:—*Reid. The Jupiter* (No. 3) (1927), 137 L. T. 333.
2560. *Citations*:—For "47 Sol. Jo. 365" read "67 Sol. Jo. 365."
- Add. Annotation*:—*Reid. Mackenzie-Kennedy v. Air Council* (1927), 138 L. T. 8.
2614. *Add. Annotation*:—*Reid. British United Shoe Machinery Co. v. Gimson Shoe Machinery Co.* (1928), 45 R. P. C. 85.
2761. *Add. Annotation*:—*Generally, Reid. Sharp & Dohme Inc. v. Boots Pure Drug Co.* (1928), 45 R. P. C. 153.
- 2781a. —.]—*BRITISH THOMSON-HOUSTON CO., LTD.*, [1927] 3 D. L. R. 922; [1927] S. C. R. 520.—CAN.

PART XIII. SECT. 1, SUB-SECT. 2.—F. m i. —.]—*WRIGHT v. BELL TELEPHONE CO.* (1887), 2 Exch. C. R. 552.—CAN.

PART XIV. SECT. 1, SUB-SECT. 6.—A.

2337 i. *Sale in breach of limited licence—Necessity for knowledge of limitation.*]—In a suit by a patentee of articles against a vendor of them for infringement of pltf.'s patent by selling them contrary to conditions imposed by the patentee, it is necessary to allege in the statement of claim that deft. acquired the patented articles with

knowledge of those conditions.—*COLUMBIA GRAMOPHONE CO., LTD. v. FOSSEY* (1927), 27 S. R. N. S. W. 246; 44 N. S. W. W. N. 87.—AUS.

PART XIV. SECT. 2, SUB-SECT. 1.—A. 2536 iii. —.]—*CHANNELL v. O'CEDAR CORPN.* (1927), 60 O. L. R. 525.—CAN.

PART XIV. SECT. 2, SUB-SECT. 3.—C. (a).

2621 i. *Patent irregularly obtained—Untruth in affidavit verifying petition for patent.*]—*FADA RADIO, LTD. v. CANADIAN GENERAL ELECTRIC CO.,*

*LTD.*, [1927] 3 D. L. R. 922; [1927] S. C. R. 520.—CAN.

2621 ii. — *Absence of affidavit in support of petition for re-issued patent.*]—*FADA RADIO, LTD. v. CANADIAN GENERAL ELECTRIC CO., LTD.*, [1927] 3 D. L. R. 922; [1927] S. C. R. 520.—CAN.

PART XIV. SECT. 2, SUB-SECT. 3.—C. (b).

2621. *Defendant cannot impeach patent by counterclaim.*]—*NIEBLO MANUFACTURING CO. v. STANDARD CO.*, [1927] 2 D. L. R. 843; [1927] Exch. C. R. 82.—CAN.

- LTD. *v.* HENRY (P.) & Co., LTD. (1928), 45 R. P. C. 218, C. A.
2944. *Add. Annotation* :—*Generally*, *Refd.* Sharp & Dohme Inc. *v.* Boots Pure Drug Co. (1928), 45 R. P. C. 153.
2963. *Add. Annotation* :—*Refd.* Sharp & Dohme Inc. *v.* Boots Pure Drug Co. (1928), 45 R. P. C. 153.
2967. *Add. Annotation* :—*Refd.* *Re* Chemische Fabrik auf Actien (Vorm E. Schering) Patent (1928), 45 R. P. C. 403.
3093. *Add. Annotation* :—*Consd.* Mellor *v.* Beardmore (1927), 44 R. P. C. 175.
3098. *Add. Annotation* :—*Mentd.* Boyce *v.* Morris Motors (1927), 44 R. P. C. 105.
- 3120a. ———.]—In an action for infringement, the ct. held defts. had not infringed, & the action was dismissed with costs. A certificate, that the validity of the patent had come into question, was granted.—TECALEMIT, LTD. *v.* WAKEFIELD (C. C.) & Co., LTD. (1927), 44 R. P. C. 471.
- 3120b. ———.]—In an action for infringement, the ct. held defts. had not infringed, & the action failed. A certificate of particulars of objections was granted to defts., & a certificate of validity to pltfs.—TECALEMIT, LTD. *v.* EWARTS, LTD. (1927), 44 R. P. C. 488.
3150. *Add. Annotation* :—*Refd.* Sharp & Dohme Inc. *v.* Boots Pure Drug Co. (1928), 45 R. P. C. 153.
- 3152a. ——— *Sale of patented articles below price fixed by licence—Plaintiff awarded costs.*—COLUMBIA PHONOGRAPH Co., GENERAL *v.* REGENT FITTINGS Co. (1913), 30 R. P. C. 484.
3174. *Add. Annotation* :—*Refd.* British Thomson-Houston Co. *v.* Metropolitan-Vickers Electrical Co. (1928), 45 R. P. C. 1.
3177. *Add. Annotation* :—*Generally*, *Refd.* Sharp & Dohme Inc. *v.* Boots Pure Drug Co. (1928), 45 R. P. C. 153.
3185. *Add. Annotation* :—*Refd.* Mellor *v.* Beardmore (1927), 44 R. P. C. 175.
- 3212a. ——— *Plaintiff failing on issue of infringement.*—TECALEMIT, LTD. *v.* EWARTS, LTD., No. 3120b, *ante*.
3283. *Add. Annotations* :—*Refd.* Mellor *v.* Beardmore (1927), 44 R. P. C. 175; Sharp & Dohme Inc. *v.* Boots Pure Drug Co. (1928), 45 R. P. C. 153; *Re* Simon-Carves & Robinson's Patent (1928), 45 R. P. C. 407.

## Part XV.—Legal Proceedings.

- 3343a. ——— *Question of fact—Threat may be implied from words used.*—LUNA ADVERTISING Co., LTD. *v.* BURNHAM & Co. (1928), 45 R. P. C. 258.

## Part XVI.—International and Colonial Arrangements.

3432. *Add. Annotation* :—*Generally*, *Refd.* Sharpe & Dohme Inc. *v.* Boots Pure Drug Co. (1928), 45 R. P. C. 153.
3434. *Add. Annotation* :—*Generally*, *Refd.* Tattersall *v.* Sladen, [1928] Ch. 318.

PART XIV. SECT. 2, SUB-SECT. 9.—C.  
2986 ii. ———.]—DAVIS  
LOG & RAFT PATENTS Co. *v.* GATHELS  
(B. C.), [1927] 4 D. L. R. 95; [1927]  
2 W. W. R. 753.—CAN.

PART XIV. SECT. 2, SUB-SECT. 10.—  
D. (a)  
*sc.* *Expiration of patent.*]—An action  
for damages for infringement of a  
patent will lie, although the patent has

expired.—JENYNS *v.* JENYNS, [1927]  
S. R. Q. 313.—AUS.

PART XVI.  
*p. Revsd.*, [1924] 4 D. L. R. 484.



## PAWNS AND PLEDGES.

### Part II.—Pawns at Common Law.

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| <p>30. <i>Add. Annotations</i> :—<b>Refd.</b> Albemarle Supply Co. <i>v.</i> Hind (1927), 43 T. L. R. 652 ; Republica de Guatemala <i>v.</i> Nunez, [1927] 1 K. B. 669.</p> <p>138. <i>Add. Annotation</i> :—<b>Consd.</b> Weld <i>v.</i> Petre (1928), 97 L. J. Ch. 399.</p> | <p>b. <i>Add. Annotation</i> :—<b>Refd.</b> Lowther <i>v.</i> Harris, [1927] 1 K. B. 393.</p> <p>168. <i>Add. Annotation</i> :—<b>Consd.</b> Lake <i>v.</i> Simmons, [1927] A. C. 487.</p> <p>171. <i>Add. Annotation</i> :—<b>Refd.</b> Lowther <i>v.</i> Harris, [1927] 1 K. B. 393.</p> |
|---|--|

# PEERAGES AND DIGNITIES.

## Part I.—Peerage.

7. *Add. Annotation*:—*Mentd.* James v. British General Insce., [1927] 2 K. B. 311.  
 ——— ——— ———.]—Deft. having voted at the election of Scotch peers:—*Held*: as a Scotch peer, entitled to be discharged from arrest, although his vote had been protested against, his claim to the title disputed, & never recognised by the House of Lords or at ct.—DIGBY v. STIRLING (LORD) (1831), 8 Bing. 55; 1 Dowl. 248; 1 Moo. & S. 116; 131 E. R. 321; *sub nom.* DIGBY v. ALEXANDER, 1 L. J. C. P. 42.  
*Annotation*:—*Refd.* Smart v. Johnstone (1837), Murp. & H. 351.
268. *Add. Annotations*:—*Generally*, *Mentd.* Buerger v. New York Life Assce. (1927), 96 L. J. K. B. 930; *Re* v. Moscovitch (1927), 138 L. T. 183.

## PERPETUITIES.

## Part I.—The Rule Against Perpetuities.

2. *Add. Annotation* :—**Refd.** *Re Villar, Public Trustee v. Villar*, [1928] Ch. 471.
- 19a. ———.]—**CLEMENTI v. FIELDING** (1848), 12 L. T. O. S. 309.
29. *Add. Annotation* :—**Refd.** *I. R. Comrs. v. Bone* (1927), 13 Tax Cas. 20.
54. *Add. Annotation* :—**Refd.** *Re Villar, Public Trustee v. Villar*, [1928] Ch. 471.
56. *Add. Annotation* :—*As to* (2) **Refd.** *Re Villar, Public Trustee v. Villar*, [1928] Ch. 471.
58. *Add. Citation* :—*subsequent proceedings* (1788), 2 Term Rep. 241; 2 Bro. C. C. 344, L. C. *Add. Annotation* :—**Refd.** *Re Villar, Public Trustee v. Villar*, [1928] Ch. 471.
64. *Add. Annotation* :—**Refd.** *Re Lanyon, Lanyon v. Lanyon*, [1927] 2 Ch. 264.
- 66a. ——— **Survivor of Queen Victoria's descendants living.**]—By his will dated June 14, 1921, & confirmed by a codicil of Feb. 2, 1926, testator, who died on Sept. 6, 1926, gave his property to his trustees upon certain trusts as to income & capital for his participating issue as therein defined, using a well known common form so as to tie it up in such a way that the capital was not to vest until the expiration of "the period ending at the expiration of twenty years from the day of the death of the last survivor of all the lineal descendants of Her late Majesty Queen Victoria who shall be living at the time of my death" :—*Held* : though the existing lives selected were very numerous & it would be extremely difficult & expensive in the future to ascertain the date of the survivor's death, it could not be said to be so impracticable or beyond the scope of the ordinary legal testimony probably then available as to avoid the trust *ab initio* for uncertainty or perpetuity, & the trust was valid.—**Re VILLAR, PUBLIC TRUSTEE v. VILLAR** (1928), 45 T. L. R. 13; 72 Sol. Jo. 761, C. A.
67. *Add. Annotations* :—*As to* (4) **Apld.** *Re Villar, Public Trustee v. Villar*, [1928] Ch. 471. *Generally, Refd.* *Re Villar, Public Trustee v. Villar* (1928), 45 T. L. R. 13.
70. *Add. Annotation* :—*As to* (1) **Consd.** *Athey v. Pickerings* (1926), 96 L. J. K. B. 250.
274. *Add. Annotation* :—**Mentd.** *Johnson v. Clarke*, [1928] Ch. 847.
275. *Add. Annotation* :—**Mentd.** *Manchester Corpn. v. Audenshaw U. C. & Denton U. C.*, [1928] Ch. 763.
276. *Add. Annotation* :—**Mentd.** *Hardie & Lane v. Chiltern*, [1928] 1 K. B. 663.
293. *Add. Annotation* :—**Refd.** *Re Chardon, Johnston v. Davies*, [1928] Ch. 464.
295. *Add. Annotation* :—**Refd.** *I. R. Comrs. v. Bone* (1927), 13 Tax Cas. 20.
302. *Add. Annotation* :—**Mentd.** *Re Davies, Thomas v. Thomas-Davies*, [1928] Ch. 24.
346. *Add. Annotations* :—*As to* (1) **Consd.** *Re Payne, Taylor v. Payne*, [1927] 2 Ch. 1. **Refd.** *Re Monk, Giffen v. Wedd*, [1927] 2 Ch. 197; *Re Marshall, Graham v. Marshall*, [1928] Ch. 661.
372. *Add. Annotation* :—*As to* (1) **Refd.** *Re Lanyon, Lanyon v. Lanyon*, [1927] 2 Ch. 264.
397. *Add. Annotations* :—**Apld.** *Re Marshall, Graham v. Marshall*, [1928] Ch. 661. **Refd.** *Re Monk, Giffen v. Wedd*, [1927] 2 Ch. 197; *Re Payne, Taylor v. Payne*, [1927] 2 Ch. 1.
408. *Add. Annotation* :—*Generally, Mentd.* *Re Chardon, Johnston v. Davies*, [1928] Ch. 464.
- 408a. **Interest in personalty analagous to determinable fee—Gift to cemetery so long as graves maintained.**]—Testator gave £200 to his trustees on trust to invest it, & to pay the income thereof to a cemetery co. "during such period as they shall continue to maintain & keep" two specified graves "in the cemetery in good order & condition with flowers & plants thereon, as same have hitherto been kept by me," & he declared that, if the graves should not be kept in such order & condition, his trustees should pay & apply the income in manner therein mentioned :—*Held* : the gift did not infringe the rule against perpetuities.—**Re CHARDON, JOHNSTON v. DAVIES**, [1928] Ch. 464; 97 L. J. Ch. 289; 139 L. T. 261.
453. *Add. Annotation* :—**Refd.** *Re Villar, Public Trustee v. Villar*, [1928] Ch. 471.
545. *Add. Annotation* :—**Consd.** *Re Payne, Taylor v. Payne*, [1927] 2 Ch. 1.

## Part II.—The Rule Prohibiting Limitations to Issue of Unborn Persons.

576. *Add. Annotation* :—**Refd.** *Re Villar, Public Trustee v. Villar*, [1928] Ch. 471.



## Part III.—Restriction of Accumulation.

**646.** *Add. Annotation* :—As to (1) **Reid**. *Athey v. Pickerings* (1926), 96 L. J. K. B. 250.

**652a.** — **Commencement during twenty-one years from testator's death.**—Testator, who died in 1893, gave his net residue, subject to certain life annuities which did not exhaust the income, in trust for a bachelor's children who should attain twenty-one with a gift over in default. On Mar. 11, 1896, the surplus income was ordered to be accumulated for twenty-one years from testator's death, *i.e.*, until Nov. 6, 1914, or until the bachelor's previous death without leaving issue. During this twenty-one years' period the bachelor married & died leaving three children, two of whom were still living. Temporary orders for maintenance were made. On Nov. 12, 1914, it was declared that as from Nov. 6, 1914, the two children then living were entitled to maintenance under Conveyancing Act, 1881 (c. 41), s. 43 (1) but that notwithstanding sect. 43 (2) any income not so applied passed as on an intestacy. On July 20, 1927, the elder child attained twenty-one, & her contingent

moiety vested in possession. The question having arisen whether, having regard to Law of Property Act, 1925 (c. 20), s. 165, the order of Nov. 12, 1914, ought still to be acted on with regard to the younger child's contingent moiety :—*Held* : (1) the effect of sect. 165 was that the years of minority accumulation, which commenced during the twenty-one years' period, were not to be reckoned in ascertaining that period, & the income of the younger child's contingent moiety must in the first place be applied for her maintenance under Conveyancing Act, 1881 (c. 41), s. 43 (1), & the balance could be validly accumulated under sect. 43 (2) ; (2) quite apart from sect. 165, the moment the elder child attained a vested interest as a member of the contingent class, there could be no question of intestacy as to any part of the capital or income.—*Re MABER, WARD v. MABER*, [1928] Ch. 88 ; 97 L. J. Ch. 101 ; 138 L. T. 318.

**679.** *Add. Annotation* :—As to (2) **Consd.** *Re Chartres, Farman v. Barrett*, [1927] 1 Ch. 466.

## PERSONAL PROPERTY.

### Part I.—Definitions and Enumeration.

9. *Add. Annotation* :—*Refd. Re Mason* (1928), 97 L. J. Ch. 321.

### Part III.—Ownership.

94. For “—Mutual wills by husband & wife—  
Agreement not to revoke” read “——  
Mutual wills—By husband & wife—Agree-  
ment not to revoke.”

—— ———.]—Leasehold property was given  
to two sisters as joint tenants, & they  
mutually agreed to bequeath it in trust for

each other for life, & for their nieces after  
the death of the survivor :—*Held* : the  
agreement between the sisters, carried out by  
the making of mutual wills, severed the joint  
tenancy.—*Re WILFORD'S ESTATE, TAYLOR*  
*v. TAYLOR* (1879), 11 Ch. D. 267 ; 48 L. J. Ch.  
243 ; 27 W. R. 455.

*Annotation* :—*Refd. In the Estate of Heys, Walker v. Gaskill*,  
[1914] P. 192.

### Part IV.—Alienation.

114. *Add. Annotation* :—*Refd. Republica de Guatemala v. Nunez*, [1927] 1 K. B. 669.

#### PART III. SECT. 4, SUB-SECT. 2.

. *How arising*—*Joint purchase of*  
—*Held* : even if the shares

were purchased out of money con-  
tributed in equal amounts, & though  
transferred into the joint names of  
the purchasers, the shares were held

by them in equity as tenants in com-  
mon.—*O'CONNELL v. HARRISON*, [1927]  
I. R. 330.—*IR*.

## POLICE.

### Part II.—Police Forces.

4. *Add. Citation* :—1 B. R. A. 500.

### Part V.—Legal Proceedings by and against Police.

100. *Add. Annotation* :—*Refd.* R. v. Ely JJ., *Ex p. Mann* (1928), 45 T. L. R. 92.

### Part VII.—Superannuation and Other Allowances.

136. *Add Annotation* :—*Apld.* Piper v. St. Marylebone Licensing JJ., [1928] 2 K. B. 221.



## POOR LAW.

### Part I.—Poor Law Authorities.

31. *Add. Citations*:—96 L. J. K. B. 741; 137 L. T. 558; 25 L. G. R. 267.
41. *Add. Annotation*:—*Mentd.* Harnett v. Fisher, [1927] A. C. 573.
105. *Add. Annotation*:—*Refd.* R. v. Grain, *Ex p.* Wandsworth Grdns., [1927] 1 K. B. 540.

### Part IV.—Relief of the Poor.

188. *Add. Annotation*:—*As to* (3) *Consd.* R. v. Grain, *Ex p.* Wandsworth Grdns., [1927] 2 K. B. 205.
- 225a. *Within what time proceedings must be taken.*—*Appls.*, a board of guardians, in 1926 gave relief, by way of loan, to resp. under Poor Law Amendment Act, 1834 (c. 76), s. 58. In Feb. 1927 *appls.* made a written application to resp. for repayment, & in Aug. 1927 summonses were issued against resp. & against his employers to recover the amount due. The justices held, as more than six months had elapsed since the date when the last instalment of the loan was advanced, they had no jurisdiction by reason of Summary Jurisdiction Act, 1848 (c. 43), s. 11, & they dismissed the summons:—*Held*:
- the matter of complaint did not arise until the application for repayment was made.—*ASHBY-DE-LA-ZOUCH GUARDIANS v. SUMMERS*, [1928] 2 K. B. 397; 97 L. J. K. B. 397; 139 L. T. 46; 92 J. P. 72; 44 T. L. R. 406; 72 Sol. Jo. 241; 26 L. G. R. 245; 28 Cox, C. C. 494, D. C.
- 225b. *In what court proceedings must be taken.*—A ct. of summary jurisdiction is not a “county ct. or other ct. for the recovery of small debts” within Poor Law Act, 1927 (c. 14), s. 46 (1), & under that sub-sect. relief granted by way of loan by the guardians to a poor person cannot be recovered therein.—*EVANS v. MORGAN*, [1928] 2 K. B. 527; 97 L. J. K. B. 703; 139 L. T. 612; 92 J. P. 146; 44 T. L. R. 544; 26 L. G. R. 386, D. C.

### Part V.—Settlement.

327. *Add. Citations*:—[1927] 2 K. B. 511; 96 L. J. K. B. 793; 137 L. T. 524.
335. *Add. Citations*:—96 L. J. K. B. 511; 137 L. T. 98; 91 J. P. 41; 25 L. G. R. 21, H. L.
415. *Add. Annotation*:—*Refd.* Norwich Union v. Henstead Union, [1927] 2 K. B. 511.
436. *Add. Annotation*:—*As to* (2) *Consd.* Norwich Union v. Henstead Union, [1927] 2 K. B. 511.
- 482a. ——— *Nurse—Sent to training establishment.*—On July 20, 1920, A. signed an agreement at C. in the parish of F., by which she was to undergo a year’s free training in nursing under the C. Nursing Assocn. & thereafter to remain in their employment for three years. She was sent to D. on the same day for her training & returned to C. on July 9, 1921. She remained at C. under her contract till July 2, 1924, on which day she was allowed to go on holiday, & had no intention of returning, as her three years expired during her holiday. She subsequently became chargeable as a pauper lunatic:—*Held*: since she had not resided physically in the parish of F. for three complete years when she left on July 2, 1924, & had then no *animus revertendi*, she had not acquired a settlement there, there being no evidence that she resided there between July 20, 1920, & July 9, 1921.—*FARNHAM GUARDIANS v. CAMBRIDGE GUARDIANS* (1928), 45 T. L. R. 73, D. C.
720. *Citations*:—For “(1733), Cun. 76; 2 Sess. Cas. K. B. 245,” read “(1734), Cun. 76; 1 Sess. Cas. K. B. 251.”

### Part VII.—Vagrancy.

1616. *Add. Annotation*:—*Refd.* R. v. Grain, *Ex p.* Wandsworth Grdns., [1927] 2 K. B. 205.

#### PART IV. SECT. 1.

r i.

.]—*BUTTS v. SYDNEY MINES*, [1927] 1 D. L. R. 546; 59 N. S. R. 90.—CAN.

## Part VIII.—Old Age Pensions.

**1672a. Statutory conditions—Widow's pension—Husband's "entry into insurance."]**—The expression "entry into insurance" in Widows', Orphans', & Old Age Contributory Pensions Act, 1925 (c. 70), s. 5, means "last entry into insurance."—WADSWORTH v.

MINISTER OF HEALTH (1927), 138 L. T. 519 ; 44 T. L. R. 159, D. C.

**1672b. — Contributions—Payments made after appointed day—Widows', Orphans', & Old Age Contributory Pensions Act, 1925 (c. 70), s. 8.]**—TAYLOR v. MINISTER OF HEALTH, [1928] W. N. 244, D. C.

**POST OFFICE.**

**Part II.—Constitution.**

1. *Add. Annotation* :—**Reid, Mackenzie-Kennedy v. Air Council**, [1927] 2 K. B. 517.



# POWERS.

## Part III.—Construction of Powers.

28. *Add. Annotation*:—*Reid. Re Mathieson*, [1927] 1 Ch. 283.  
183a. Power to appoint part of share—Whether

including accrued shares.]—*Re HUTCHINSON'S SETTLEMENT, Ex p. DUNN* (1852), 5 De G. & Sm. 681; 17 Jur. 59; 64 E. R. 1297.

## Part IV.—Exercise of Powers.

164. *Add. Annotation*:—*Mentd. Ormond Investment Co. v. Betts*, [1928] A. C. 143.  
187a. — Appointment on "protective trusts."]  
—Testator, in exercise of a power of appointment among children & issue contained in his marriage settlement, bequeathed specific property to his son W., & directed his trustees to hold the income of the remainder of the trust property upon protective trusts for the benefit of his son O., & subject thereto to hold the remainder of such property in trust for his granddaughter M.:—*Held*: as the appointment upon "protective trusts," as defined by Trustee Act, 1925 (c. 19), s. 33, gave a discretion to the trustees to apply the income in the event of a forfeiture for the benefit either of O. or of his wife or children, it was to that extent void, both as being (1) a delegation of the power & (2) in excess of it, & the clause contained in sect. 33 (1) (ii) must be struck out of the will for all purposes; (3) there was no interval of time during which the income of the appointed fund was undisposed of, but there was a valid appointment to O. for life or until an event should happen depriving him of the right to receive the income, & subject thereto for the granddaughter M. absolutely.—*Re BOULTON'S SETTLEMENT TRUST, STEWART v. BOULTON*, [1928] Ch. 703; 97 L. Ch. 243; 139 L. T. 288.  
208. *Add. Annotations*:—*Reid. Salvesen (or von Lorang) v. Austrian Property Administrator*, [1927] A. C. 641; H. & H., [1928] P. 206.  
299a. —.]—*ELLIS v. ATKINSON* (1792), 3 Bro. C. C. 565; 2 Dick. 759; 29 E. R. 701, L. C. *Annotations*:—*Reid. Socket v. Wray* (1793), 4 Bro. C. C. 483; *Guise v. Small* (1794), 1 Anst. 277; *Whistler v. Newman* (1798), 4 Ves. 129; *Sperling v. Rochfort* (1803), 8 Ves. 164; *Parkes v. White* (1805), 11 Ves. 209; *Richards v. Chambers* (1805), 10 Ves. 580; *Francis v. Wigzell* (1816), 1 Madd. 258. *Mentd. Pybus v. Smith* (1791), 3 Bro. C. C. 340.  
360. *Add. Annotation*:—*Mentd. Re Brooks, Public Trustee v. White*, [1928] Ch. 214.  
637a. —.]—*GUINAND v. NAISH* (1845), 6 L. T. O. S. 18; 9 Jur. 703.  
748. *Add. Annotation*:—*Consd. Re Chartres, Farman v. Barrett*, [1927] 1 Ch. 466.  
768. *Add. Annotation*:—*Reid. Re Mathieson*, [1927] 1 Ch. 283.  
783. *Add. Annotation*:—*Reid. Re Bower Williams, Ex p. Trustee*, [1927] 1 Ch. 441.

## Part V.—Appointment Not in accordance with Terms of Power.

- 830a. — Appointment to trustees of child's marriage settlement—Share settled.]—A daughter being entitled under the marriage settlement of her father & mother to such share & interest in land & money as the surviving mother should appoint, provided by her own marriage settlement that all such share & interest to which she should become entitled, under her mother's settlement, should be vested in trustees to the use of her intended husband for life, remainder to herself for life, remainder to the children of the marriage. Four years after the marriage the mother appointed a sum to be paid to the trustees of the daughter's settlement, upon the uses therein expressed, in satisfaction of the daughter's share & interest under the marriage settlement of the father & mother:—*Held*: this was substantially an appointment to the daughter, & valid.—*LIMBERT v. GROTE* (1832), 1 My. & K. 1; 39 E. R. 581; *sub nom. LAMBARD v. GROTE*, 2 L. J. Ch. 10.

### PART III. SECT. 8.

ad. Power to donee to pass corpus as well as income.]—*SHAW v. SHAW* (1927), 59 N. S. R. 349.—CAN.

### PART IV. SECT. 10, SUB-SECT. 2.—B. (a).

683 ii. —.]—In execution of the powers reserved by a marriage settlement, a revocable appointment was made by deed whereby the appointors, husband & wife, directed the trustees

to hold the net purchase-money already received & to be received in respect of a certain contract of sale upon trust, on the death of the survivor of the appointors, as to three several sums of £15,000 for each of three of their daughters, & as to £12,500 for their fourth daughter, & as to the "remainder" one moiety to each of their two sons. The contract of sale referred to was for a sum of £100,000, of which £20,000 had already been paid. The contract of sale was subsequently rescinded on the purchaser paying a

further sum of £20,000:—*Held*: in the events which had happened, the principle that, where a person disposing of a sum among different persons acts on the assumption that he is dealing with a fund of specific amount, & gives part of the fund to one or more persons & the residue to another, if the fund falls short, all the gifts abate proportionately, would not apply, & the sons would get nothing under the gift of the "remainder."—*A'BECKETT v. TRUSTEES, EXECUTORS & AGENCY Co.* (1908), 5 C. L. R. 512.—AUS.

## Part VI.—Excessive, Defective, and Fraudulent Appointments.

- 872a. ——— Appointment on “protective trusts.”]—*Re BOULTON'S SETTLEMENT TRUST*, STEWART *v.* BOULTON, No. 187a, *ante*.  
 887. *Add. Annotation* :—*Consd. Re Payne, Taylor v. Payne*, [1927] 2 Ch. 1.  
 891. *Add. Citation* :—*subsequent proceedings*, 2 Bro. C. C. 344, L. C.  
 1051. *Add. Annotation* :—*As to* (1) *Refd. Re Lanyon, Lanyon v. Lanyon*, [1927] 2 Ch. 264.  
 1052. *Add. Annotation* :—*Mentd. Re Chardon, Johnston v. Davies*, [1928] Ch. 464.

## Part VIII.—Extinguishment and Suspension of Powers.

- 1105a. *Mutual wills—Wife expressly refraining from exercising power.*]—Where by her will the wife expressly refrained from exercising a power of appointment, which she had, but abstained from extinguishing it, & confined the operation of her will to her own property, & there was nothing in the husband's will, which either put the wife to her election or put her in the position of seeking at the same time to approbate & to reprobate its provisions :—*Held* : she was in no way precluded from exercising her power of appointment by a subsequent will.—(GRAY *v.* PERPETUAL TRUSTEE CO., [1928] A. C. 391 ; 97 L. J. P. C. 85 ; 139 L. T. 469 ; 44 T. L. R. 654 P. C.)

## Part IX.—Powers in the Nature of Trusts.

- 1233a. ———.]—DAVIE *v.* HOOPER (1711), 6 Abr. 336, pl. 6, H. L.  
 Bro. Parl. Cas. 51 ; 2 E. R. 926 ; *sub nom.* DAVY *v.* HOOPER, 2 Vern. 665 ; 1 Eq. Cas  
*Annotations* :—*Refd. Bellasis v. Uthwatt* (1737), West. *temp.* Hard. 273 ; *Cholmondeley v. Meyrick* (1758), 1 Eden, 77.

**PART VI. SECT. 1, SUB-SECT. 2.—A.**  
 1 i. ———.] Where the exercise of a power, in so far as it purported to reduce the right of fee conferred on the objects of the power to a life rent, was

*ultra vires* & invalid :—*Held* : as it was impossible to separate the valid from the invalid portions of the appointment without dislocating the whole scheme of division contemplated by

the truster, the whole exercise of the power fell to be disregarded.—MACKENZIE'S TRUSTEES *v.* MACK [1927] S. C. 421.—SCOT.

## PRESS AND PRINTING.

### Part II.—Printers and Publishers.

12. *Add. Annotation* :—**Mentd.** Dominion Press *v.* Customs & Excise Minister, [1928] A. C. 340.

### Part III.—Editors, Authors, and Journalists.

40. *Add. Annotation* :—**Refd.** Messenger *v.* British Broadcasting Co. (1928), 97 L. J. K. B. 251. 44. *Add. Annotation* :—**Refd.** Messenger *v.* British Broadcasting Co., [1927] 2 K. B. 543.
42. *Add. Annotation* :—**Mentd.** Messenger *v.* British Broadcasting Co., [1927] 2 K. B. 543.

### Part IV.—Newspapers.

90. *Add. Annotation* :—**Refd.** Sinanide *v.* La Maison Kosmeo (1928), 139 L. T. 365.

#### PART III. SECT. 3.

80. *Duty to become acquainted with his duties & liabilities.*—K. E. *v.* MAUNG TU SAW (1927), L. L. R. 6 Ran. 39.—**IND.**



## PRIZE LAW AND JURISDICTION.

### Part III.—Enemy Character.

176. *Add. Annotation* :—*Refd. Sassoon v. International Banking Corpn.*, [1927] A. C. 711.

### Part VII.—Contraband.

866. *Add. Annotation* :—*Generally, Refd. Sassoon v. International Banking Corpn.*, [1927] A. C. 711.

### Part X.—Claims.

1177a. .]—*THE ANNA CHRISTIANA* (1778), *Hay & Marr*. 161 ; 165 E. R. 37.

1189a. — .]—*THE VROUW HENRIETTA* (1803), 5 Ch. Rob. 75, n. ; 165 E. R. 702.  
*Annotation* :—*Apld. The Roland* (1915), 84 L. J. P. 127.

### Part XI.—Procedure.

1802a. Ship formerly enemy property-  
Transfer of ownership.]—*THE KANKAKEE*,

*THE HOCKING, THE GENESEE* (1917), 8 Lloyd, Pr. Cas. 74, P. C.

PART V. SECT. 4, SUB-SECT. 3.—A.

571 i. *Liability for wrongful capture*.  
—*THE ZODIACK* (1812), *Stewart*, 338.—  
CAN.

PART VI. SECT. 4, SUB-SECT. 6.

i. *Revsd.*, *Stewart*, 38, n.

PART VI. SECT. 7.

n. *Revsd.*, *Stewart*, 38, n.

PART VII. SECT. 6, SUB-SECT. 4.

r. *Revsd.*, *Stewart*, 122, n.

# PUBLIC AUTHORITIES, BODIES AND OFFICERS.

## Part I.—Acts of State.

11. *Add. Annotation:—Consd. Musmann v. Engelke*, [1928] 1 K. B. 90.
14. *Add. Annotation:—Appl. Engelke v. Musmann*, [1928] A. C. 433.
16. After the cross-reference following this case add "**Status of person claiming diplomatic privilege.**"—See CONSTITUTIONAL LAW, No.
47. *Add. Annotation:—Refd. Re. Mason* (1928), 97 L. J. Ch. 321.
66. To the cross-references following this case add "**Decrees of Russian Soviet Government—Effect of.**"—See No. 13, *ante*; COMPANIES, Nos. 8523, 8524, 8527a; CONSTITUTIONAL LAW, No. 387a; INSURANCE, 712a."

## Part III.—Exercise of Statutory Powers, Duties, etc.

90. *Add. Annotation:—Consd. Dee Conservancy Board v. McConnell*, [1928] 2 K. B. 159.
147. *Add. Annotation:—Refd. St. Anne's Well Brewery Co. v. Roberts* (1928), 92 J. P. 180.
178. *Add. Annotation:—Refd. Graigola Merthyr Co. v. Swansea Corp.*, [1928] Ch. 235.
209. *Add. Annotation:—As to (5) Consd. Dee Conservancy Board v. McConnell*, [1928] 2 K. B. 159.
317. *Add. Annotation:—Refd. Scammell v. Attlee* (1928), 45 T. L. R. 75.
330. *Add. Annotation:—Refd. Scammell v. Attlee* (1928), 45 T. L. R. 75.

## Part IV.—Exemptions from Liability.

387. *Add. Citation:—138 L. T. 8.*
391. *Add. Annotation:—Refd. Constantinesco v. R.* (1927), 11 Tax Cas. 730.
- 436a. — **Failure to record appearance—Officer of court.**—FINCH v. RISLEY (1593), cited Poph. 25; 79 E. R. 1145.
- Annotation:—Mentd. Doe d. Hayne v. Redfern* (1810), 12 East, 96.
483. *Add. Annotation:—Refd. L. C. C. v. Hackney B. C.*, [1928] 2 K. B. 588.
541. *Add. Annotation:—Consd. Dee Conservancy Board v. McConnell*, [1928] 2 K. B. 159.
601. *Add. Annotation:—Consd. More v. Weaver*, [1928] 2 K. B. 520.
604. *Add. Annotation:—Consd. More v. Weaver*, [1928] 2 K. B. 520.
636. In the third line of the existing paragraph read "1813" for "1913."
698. *Add. Annotation:—Consd. Wisbech R. D. C. v. Ward* (1928), 138 L. T. 308.
701. *Add. Citations:—[1928] 2 K. B. 1; 97 L. J. K. B. at p. 59; 138 L. T. 308; 26 L. G. R. 10.*

PART III. SECT. 4, SUB-SECT. 1.  
aa. Delete this case.

PART III. SECT. 4, SUB-SECT. 3.  
n. *Revsd.*, [1923] S. C. R. 397.

PART III. SECT. 5, SUB-SECT. 1.  
192 xiv. *Revsd.*, 31 S. C. R. 61.

PART III. SECT. 6, SUB-SECT. 2.—B.  
268 i. *General rule.*—SURATEK, BARA BAZAAR CO., LTD. v. MUNICIPAL CORPN. OF RANGOON (1927), 1 L. R. 5 Ran. 722.—IND.

PART III. SECT. 9, SUB-SECT. 2.  
316 i. *Whether general jurisdiction of courts ousted.*—Deft. corpn. erected a power-house, & pltf. claimed damages against the corpn. for the escape of grit & smoke from the power-house, & asked for an injunction to restrain the corpn. from using the power-house as it was being used:—*Held*: pltf. must be nonsuited, as his only remedy must be determined in the manner provided by Public Works Act, 1908.—O'BRIEN v. WELLINGTON CITY CORPN., [1928] N. Z. L. R. 215.—N.Z.

PART IV. SECT. 3, SUB-SECT. 1.—A.  
c i. — *Secretary of State for India*

*in Council.*—In order that a contract may be binding upon the Secretary of State for India in Council, it must be made in strict conformity with the provisions laid down in the statutes governing the matter.—KESSORAM, PODDAR & CO. v. SECRETARY OF STATE FOR INDIA (1926), 1 L. R. 54 Calc. 969.—IND.

af. *Indemnity Act, 1920* (c. 48)—*Effect of.*—Indemnity Act, 1920, s. 1 (1), does not apply to actions to enforce the implement by Govt. Departments of their wartime contracts. The saving of actions in respect of "rights under, or alleged breaches of, contract" contained in sect. 1 (1) (b) applies to cases in which rights under a contract have been interfered with, or a contract has been directly breached, by the exercise of some prerogative power.—GREENOCK CORPN. v. THE ADMIRALTY, [1928] S. C. 227.—SCOT.

PART IV. SECT. 3, SUB-SECT. 4.—B.  
t. *Revsd.*, [1927] 1 D. L. R. 969; [1927] S. C. R. 226.

PART IV. SECT. 4, SUB-SECT. 1.  
543 ii. — *Re O'CONNOR v. LEMIEUX*, [1927] 3 D. L. R. 831; 60 O. L. R. at p. 374.—CAN.

PART IV. SECT. 5, SUB-SECT. 2.—B. (c).

g i. — *Board of Public Utility Commissioners—Public Utilities Act, 1923* (c. 53), s. 137 (2).—*Re STANTON & GORDON*, [1927] 1 D. L. R. 273; [1926] 3 W. W. R. 769; 22 Alta. L. R. 387.—CAN.

PART VI. SECT. 3, SUB-SECT. 2.

739 iii. — *Harbour trustees.*—The mere fact that bodies such as harbour trustees administer their undertakings under Acts of Parliament is not sufficient to entitle them, as successful defenders, to expenses as between agent & client under Public Authorities Protection Act, 1893 (c. 61) s. 1 (b). They must base their motion upon such of the enactments regulating their constitution & functions as are relevant to the question whether the action was "for an act done in pursuance, or execution, or intended execution of any Act of Parliament, or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such Act, duty, or authority."—LIVINGSTONIA S.S. CO., LTD. v. CLYDE NAVIGATION TRUSTEES, [1928] S. C. 270.—SCOT.

# Protection—Public Authorities Protection Act.

**733. Add. Annotation :—***As to (1) Consd. Scammell v. Attlee (1928), 45 T. L. R. 75.*

**736. Add. Annotation :—***Refd. Graigola Merthyr Co. v. Swansea Corpn. (1928), 138 L. T. 465.*

**739a. S. P. Moss v. SALFORD CORPN. (1908), 72 J. P. Jo. 341.**

**766. Add. Annotation :—***Refd. Graigola Merthyr Co. v. Swansea Corpn., [1928] Ch. 235.*

**784. Add. Annotation :—***Refd. Scammell v. Attlee (1928), 45 T. L. R. 75.*

**795. Add. Annotation :—***Refd. Scammell v. Attlee (1928), 45 T. L. R. 75.*

**800. Add. Annotation :—***Mentd. The Harkaway, [1928] P. 199.*

**803. Add. Annotation :—***Apld. Graigola Merthyr Co. v. Swansea Corpn., [1928] Ch. 235.*

**804. Add. Citations :—***[1928] Ch. 235 ; 97 L. J. Ch. 135 ; 138 L. T. 465 ; 92 J. P. 8 ; 26 L. G. R. 58.*

**839. Add. Annotation :—***Consd. Scammell v. Atlee (1928), 45 T. L. R. 75.*

**854. Add. Annotation :—***As to (1) Refd. Scammell v. Attlee (1928), 45 T. L. R. 75.*

**854a. —.]—***Where deft. appears to be acting as a member of a public body under statutory authority & pleads the six months' limitation imposed by Public Authorities Protection Act, 1893 (c. 61), as the period within which an action must be brought in respect of his*

*acts, pltf. can defeat that claim by proving, on sufficient evidence, that deft. was not really intending to act in pursuance of his statutory authority, but was using his pretended authority from some improper motive, such as spite or for a purpose entirely outside statutory justification.*

*Where defts. are found purporting to execute a statute, the burden of proof is on pltf. to prove the existence of such a dishonest motive & the absence of any honest desire to execute the statute, & such existence & absence should be found only on strong & cogent evidence.—SCAMMELL (G.), LTD. v. ATTLEE (1928), 45 T. L. R. 75, C. A.*

**863. Add. Annotation :—***Apld. Graigola Merthyr Co. v. Swansea Corpn., [1928] Ch. 235.*

**864. Add. Annotation :—***Consd. Graigola Merthyr Co. v. Swansea Corpn., [1928] Ch. 235.*

**869. Add. Annotation :—***Refd. Graigola Merthyr Co. v. Swansea Corpn., [1928] Ch. 235.*

**870. Add. Annotation :—***Consd. Graigola Merthyr Co. v. Swansea Corpn., [1928] Ch. 235.*

**876. Add. Annotation :—***Refd. Scammell v. Attlee (1928), 45 T. L. R. 75.*

**888. Add. Annotation :—***Mentd. Pickford v. Quirke, Pickford v. I. R. Comrs. (1927), 138 L. T. 500.*

**955. Add. Annotation :—***Consd. Graigola Merthyr Co. v. Swansea Corpn., [1928] Ch. 235.*

**PART VI. SECT. 5, SUB-SECT. 1.**  
*sm. Admiralty proceedings in Exchequer Court of Canada—Act not applicable.]—*SYDNEY, CAPE BRETON & MONTREAL S.S. CO. v. MONTREAL HARBOUR COMRS. (1913), 15 Exch. C. R. 1 ; 20 D. L. R. 828.—CAN.

**PART VI. SECT. 5, SUB-SECT. 3.**  
*sp. Continuing trespass—Action not barred by Towns Incorporation Act, 1895 (c. 4).]*—ARCHIBALD v. TRURO CORPN. (1900), 33 N. S. R. 401.—CAN.

**PART VI. SECT. 6, SUB-SECT. 6.**  
*n (p. 133) i. — Where action in respect of want of repair caused by misfeasance.]—*PRENTICE v. SAULT STE.

*MARIE, [1927] 4 D. L. R. 800 ; 61 O. L. R. 246.—CAN.*  
*o (p. 134) i. — As to injuries.]—*MILLS v. CITY OF LETHBRIDGE (Alta.), [1927] 4 D. L. R. 1019 ; [1927] 3 W. W. R. 421.—CAN.

**PART VIII. SECT. 1, SUB-SECT. 2.**  
*1 i. — Of weights & measures.]—*Held : (1) the office of inspector was a freehold public office tenable during life or good behaviour ; (2) an inspector was not liable to dismissal at the pleasure of the Governor in Council as the holder of a public office under the Govt., but could only be removed from office by the justices in petty

*sessions for good cause, & after being called upon to show cause against his removal ; (3) the acceptance of a salary did not affect the tenure of his office, or render him liable to dismissal by the Govt. as a public servant.—*EX p. EVANS (1909), 10 S. R. N. S. W. 1 ; 26 N. S. W. W. N. 189 ; 9 C. L. R. 140.—AUS.

**PART VIII. SECT. 2, SUB-SECT. 2.**  
*n. For " Wigg v. COCHRANE v. A.-G., [1927] L. R. 285 " read " Wigg v. A.-G. OF IRISH FREE STATE, [1927] A. C. 674 ; 96 L. J. P. O. 88 ; 137 L. T. 460 ; 43 T. L. R. 457."*

*See, further, DEPENDENCIES, Nos. 714b, 714c.*



# PUBLIC HEALTH AND LOCAL ADMINISTRATION.

## Part III.—Control by Ministry of Health.

20. *Add. Annotation* :—*As to* (1) *Consd. Credit Gas Co. v. Crediton U. C.*, [1928] Ch. 447.
- 29a. ————.]—The duty of a local authority under 1875 Act, s. 15, to keep sewers in repair cannot be enforced by an action by a private person for a mandatory injunction. The proper remedy is a complaint to the Minister of Health under sect. 299 of the Act.—*CLARK v. EPSOM RURAL DISTRICT COUNCIL* (1928), 45 T. L. R. 106; 10. 210
38. P. L. Epsom

## Part V.—Bye-Laws.

120. *Add. Annotation* :—*Refd. Bean v. Flaxton R. D. C.* (1928), 139 L. T. 320.
- 121a. ————.]—Pltfs., a firm of builders who had, as a private enterprise of their own, built a number of houses upon land situate within the jurisdiction of defts., had not complied with defts.' bye-laws as to the drainage, with the result that differences arose between the parties. Subsequently, by agreement, defts. appointed a sub-committee to settle all outstanding matters, & an agreement was arrived at between pltfs. & the sub-committee. One of the terms of that agreement was that pltfs.' drainage scheme should remain, although it was contrary to defts.' bye-laws. Defts. having repudiated the agreement to which their sub-committee was a party, pltfs. brought an action claiming specific performance :—*Held* : as it had not been established that the building of the houses by pltfs. was, or formed part of, a housing scheme to which Housing Act, 1925 (c. 14), s. 99, applied, the verbal contract made by the sub-committee was not binding on defts., for the reason that defts. could not confer upon the sub-committee a power of entering into any such contract. Neither had the Minister power under sect. 99 to relax the bye-laws in a private building scheme.—*WILLIAM BEAN & SONS, LTD. v. FLAXTON RURAL DISTRICT COUNCIL* (1928), 139 L. T. 320; 92 J. P. 121; 26 L. G. R. 335, C. A.

## Part VII.—Particular Provisions.

286. *Add. Annotation* : *As to* (3) *Apld. Bean v. Flaxton R. D. C.* (1928), 139 L. T. 320.
308. *Add. Annotation* : — *Apld. Bean v. Flaxton R. D. C.* (1928), 139 L. T. 320.
- 333a. *Relaxation of bye-law—Under Housing Act, 1925 (c. 14), s. 99.*—*WILLIAM BEAN & SONS, LTD. v. FLAXTON RURAL DISTRICT COUNCIL*, No. 121a, ante.
339. *Add. Annotation* :—*Generally, Refd. Graigola Merthyr Co. v. Swansea Corpn.*, [1928] Ch. 325.
341. *Add. Annotation* :—*Mentd. Graigola Merthyr Co. v. Swansea Corpn.*, [1928] Ch. 235.

### PART V. SECT. 1.

a (p. 156) i. ——— *By Railway & Municipal Board—Does not validate invalid bye-law.*—*Re CASA LOMA*, [1927] 4 D. L. R. 645; 61 O. L. R. 187.—CAN.

a (p. 156) ii. ——— *Leave to appeal from Board—(Grounds for granting.)*—*Re CASA LOMA*, [1927] 4 D. L. R. 645; 61 O. L. R. 187.—CAN.

ee (p. 156) i. ———.]—*Re MCCUTCHEON & TORONTO CORPN.* (1863), 22 U. C. R. 613.—CAN.

### PART V. SECT. 2, SUB-SECT. 1.

dddd. ———.]—*Re FOXCROFT & LONDON*, [1927] 4 D. L. R. 684; 61 O. L. R. 209.—CAN.

### PART V. SECT. 2, SUB-SECT. 2.

54 iii. ———.]—*Re DUNLOP & TOWNSHIP OF DOURO* (1859), 18 U. C. R. 227.—CAN.

ee (p. 160) i. ——— *Bye-law creating lien—For unpaid water rates—Ultra vires.*—*BURCHELL v. SYDNEY CORPN.*, [1927] 1 D. L. R. 486; 59 N. S. R. 94.—CAN.

t (p. 161) i. ——— *Rate likely to produce less money than required.*—*Held* : the ct. would not interfere.—*Re GILCHRIST & SULLIVAN CORPN.* (1879), 44 U. C. R. 588.—CAN.

ee. ——— *Regulation of botanic park—Bye-law prohibiting meetings without consent of governors—Valid.*—*FOX v. ALLCHURCH*, [1926] S. A. S. R. 384.—AUS.

sf. ——— *Licensing taverns.*—*Re BRODIE & HOWMANVILLE CORPN.* (1876), 38 U. C. R. 580.—CAN.

sg. ——— *Bye-law increasing service tax—Invalid.*—*HARDY v. EDMONTON CORPN. (Alta.)*, [1925] 1 D. L. R. 256; [1924] 3 W. W. R. 936.—CAN.

### PART V. SECT. 4.

l i. ——— *Attorney-General.*—Where the law resulting from the exercise of a statutory power to make a bye-law operates for the general advantage of the public at large, none but the A.-G. may sue in respect of its breach.—*A.-G. & LUMLEY v. T. S. GILL & SON PTY., LTD.*, [1927] V. L. R. 22; [1927] Argus L. R. 223.—AUS.

### PART VII. SECT. 2, SUB-SECT. 1.

k i. ——— *Requiring licence—Valid.*—*WROBLEWSKI v. MCLAREN* (1927), 29 W. A. L. R. 24.—AUS.

### PART VII. SECT. 5, SUB-SECT. 2.—C.

sn. "Addition" to building—*What amounts to—Not new gambrel roof in lieu of old pitch roof.*—*DANBY v. VILLAGE OF WAKAW & KRAUS* (Sask.), [1927] 3 W. W. R. 107.—CAN.

### PART VII. SECT. 5, SUB-SECT. 9.—C.

329 i. *Continuing offence—Erection of building without approval of plans—No notice of disapproval served by council.*—*Held* : the contravention of the bye-laws was a continuing offence.—*PORTSTEWART URBAN DISTRICT COUNCIL v. HAMILL*, [1927] N. I. 181.—IR.

### PART VII. SECT. 6, SUB-SECT. 1.—B.

352 ii. ——— *Employer—Evidence of contract for medical & surgical care of employees.*—*QUEEN VICTORIA MEMORIAL HOSPITAL v. BOOTH, LTD.*, [1927] 4 D. L. R. 1016; 61 O. L. R. 293.—CAN.

1. *Add. Citation:* 1 K. B. 65, D. C.

502a. ——— From owner—Who is owner.

A solr., acting for the administratrix of a deceased person's estate, employed a builder to collect the rents of three working-class houses, & to pay the proceeds over to him. The local authority having executed works under Housing, Town Planning, etc. Act, 1919 (c. 35), s. 38 (*see, now*, Housing Act, 1925 (c. 14), s. 3), sought to recover the expenses from the solr. as "owner" within sect. 38:—*Held*: he was the owner, though he was not the person who received the rent directly from the tenants, as there might be more than one owner, & every one receiving the rent, as rent, in succession became the "owner."—*WATTS v. BATTERSEA CORPN.* (1928), 45 T. L. R. 85; 72 Sol. Jo. 847; 92 J. P. Jo. 747, D. C.

502b. ——— Statutory charge—Incidence of charge.]—The charge created by Housing Act, 1925 (c. 14), s. 3, is not a charge on the interests of the rack-rent owner only, but is a charge upon the entirety of the interests in the premises.—*PADDINGTON BOROUGH COUNCIL v. FINUCANE*, [1928] Ch. 567; 97 L. J. Ch. 219; 139 L. T. 368; 92 J. P. 68; 26 L. G. R. 283.

*Annotation*:—*Folld.* *Bristol Corpn. v. Virgin*, [1928] 2 K. B. 622.

—————.]—The charge given to a local authority in respect of repairs by

Housing Act, 1925 (c. 14), s. 3, is a charge on the whole of the proprietary interests in the premises, & ranks in priority to a fee farm rent already issuing out of the premises.—*BRISTOL CORPN. v. VIRGIN*, [1928] 2 K. B. 622; 97 L. J. K. B. 522; 139 L. T. 375; 92 J. P. 145; 44 T. L. R. 546; 26 L. G. R. 443, D. C.

509a. *Subsidy—Amount—Houses completed after passing of Housing (Financial Provisions Act, 1924 (c. 35).]*—*STEIN (JOHN G.) & CO., LTD. v. STIRLING COUNTY COUNCIL EASTERN DISTRICT COMMITTEE* (1927), 91 J. P. 205; 26 L. G. R. 51, H. L.

509b. ——— Agreement waiving compliance with bye-law—Whether authorised under Housing Act, 1925 (c. 14), s. 99.]—*WILLIAM BEAN & SONS, LTD. v. FLAXTON RURAL DISTRICT COUNCIL*, No. 121a, *ante*.

533. *Add. Citations*:—*sub nom.* *R. v. WARBLINGTON OVERSEERS*, 22 L. T. O. S. 304; 18 J. P. 647; *sub nom. Ex p. WARBLINGTON OVERSEERS*, 18 Jur. 494.

534. *Add. Citation*:—*sub nom.* *R. v. DEVERELL*, 23 L. J. M. C. 121.

*Annotations*:—*Refd.* *R. v. Kingswinford Overseers* (1854), 2 E. & B. 688; *Backhouse v. Bishopwearmouth* (1861), 7 Jur. N. S. 338.

549. *Add. Annotation*:—*Consd.* *Woolliscroft v. Stoke-on-Trent Corpn.* (1928), 92 J. P. 150.

352 iii. ——— Charge on patient's land —Gives no charge on land of husband for treatment of wife.]—*Re LAND TITLES ACT, Re MCCORANEY RURAL*

*MUNICIPALITY CAVEAT*, [1922] 2 W. W. R. 898; 66 D. L. R. 819.—*CAN.*

352 iv. ——— No precedence over prior mortgage.]—*MANUFACTURERS*

*LIFE INSURANCE CO. v. FLOWERY PLAINS* (No. 33), [1924] 1 D. L. R. 66; 20 Alta. L. R. 100; [1923] 3 W. W. R. 1361.—*CAN.*

## RAILWAYS AND CANALS.

## Part II.—Construction and Repair of Railways.

136. *Add. Annotation* :—*Consd. Manchester Corpn. v. Audenshaw U. C. & Denton U. C.*, [1928] Ch. 763.

197a. ———.]—A railway co. agreed with a landowner, through whose estate the railway would pass, to construct & maintain a siding connected with their railway at B., together with all necessary approaches thereto for public use, & for the reception & delivery of goods :—*Held* : (1) specific performance could be decreed of the agreement to construct the siding & approaches, without decreeing the co. to maintain them when made ; (2) the agreement did not bind the

co. to erect sheds, or to keep one of their servants in attendance at the siding, but it obliged them to construct a proper siding, with approaches & a wharf or raised platform for the loading & unloading of goods ; (3) "necessary approaches" meant "proper approaches."—*LYTTON v. GREAT NORTHERN RY. CO.* (1856), 2 K. & J. 394 ; 27 L. T. O. S. 42 ; 2 Jur. N. S. 436 ; 4 W. R. 441 ; 69 E. R. 836.

265. *Add. Annotation* :—*Refd. Manchester Corpn. v. Audenshaw U. C. & Denton U. C.*, [1928] Ch. 763.

## Part V.—Arrangements between Railway Companies.

371. *Add. Annotation* :—*As to* (1) *Distd. Crediton Gas Co. v. Crediton U. D. C.*, [1928] Ch. 447.

## Part VII.—Railway Companies and their Servants.

598a. *Injury to ganger—Duty to provide look-out man—Prevention of Accidents Rules, 1902, r. 9.*]—The foreman of a gang in the employ of a railway co. was employed to repair some signalling apparatus on the permanent way, & took with him a member of his gang to assist him. Whilst engaged in working on the down line he with his fellow workman stepped off the line on the up line to avoid a down train & both men were killed by an

up train. In an action by the widow of the foreman for damages against the co. for breach of statutory duty, the judge directed the jury that a regulation of the co. under which the foreman of a gang was entrusted with the duty of seeing that a look-out man was provided whenever he or any of his gang were at work upon the line was a compliance with r. 9. The jury found that the co. had not omitted to perform their statutory

## PART I. SECT. 4, SUB-SECT. 1.

sb. *Power of federal railway to sell its assets—Necessity for sanction of Governor-General in Council.*]—*OTTAWA VALLEY RY. CO. v. CENTRAL RY. CO., LTD.* (1926), Q. R. 42 K. B. 284.—CAN.

## PART I. SECT. 4, SUB-SECT. 3.

n (p. 253) i. ———.]—*None to Supreme Court of Canada.*]—*CEDAR RAPIDS MFG. & POWER CO. v. LACOSTE*, [1927] 2 D. L. R. 83.—CAN.

## PART I. SECT. 4, SUB-SECT. 6.

p (p. 254) i. ———.]—*When demurrage chargeable.*]—*J. BROWNLEE & CO. v. CANADIAN NATIONAL RYS.* (1926), 32 Can. Ry. Cas. 291.—CAN.

p (p. 254) ii. ———.]—*CONSOLIDATED RENDERING CO. v. CANADIAN NATIONAL RYS.* (1926), 32 Can. Ry. Cas. 294.—CAN.

uu i. ———.]—*Application of stop-off charge.*]—*DOMINION MILLERS' ASSOCN. v. CANADIAN NATIONAL & CANADIAN PACIFIC RY. COS.* (1925), 33 Can. Ry. Cas. 6.—CAN.

uu ii. *Dressing in transit—Application of stop-off.*]—*NELSON MAGANN LUMBER CO. v. CANADIAN PACIFIC RY. CO.* (1926), 32 Can. Ry. Cas. 286.—CAN.

oo (p. 256) i. ———.]—*CANADIAN LUMBERMEN'S ASSOCN. v. CANADIAN NATIONAL & CANADIAN PACIFIC RY. COS.* (1927), 33 Can. Ry. Cas. 1.—CAN.

## PART II. SECT. 3, SUB-SECT. 1.—C.

f i. ———.]—*WINDSOR CORPN. v. CANADIAN PACIFIC RY. CO.* (WYAN-

*DOTTE STREET BRIDGE CASE*) (1926), 32 Can. Ry. Cas. 26.—CAN.

sf. *Liability to reconstruct private bridge as highway bridge.*]—*LEDUC v. CANADIAN PACIFIC RY. CO.* (1927), 33 Can. Ry. Cas. 24.—CAN.

## PART II. SECT. 6, SUB-SECT. 4.—B. (b).

aa. *Revsd.*, 31 S. C. R. 155.

## PART IV. SECT. 1.

sj. *Extent of duty—Effect of Railway Act, 1919 (c. 68).*]—*COLEBOURNE v. HARROP (Ont.)*, [1927] 1 D. L. R. 116 ; 32 Can. Ry. Cas. 208.—CAN.

324 i. ———.]—*SCOTT v. WINNIPEG ELECTRIC CO.*, [1927] 2 D. L. R. 686 ; [1927] 1 W. W. R. 739 ; 32 Can. Ry. Cas. 397 ; 36 Man. L. R. 357.—CAN.

324 ii. ———.]—*Power to remove planks—From farm crossing.*]—*MACDONALD v. CANADIAN PACIFIC RY. CO. (Que.)* (1927), 33 Can. Ry. Cas. 60.—CAN.

m i. ———.]—*Effect of accident causing death or injury—Application of "slow order."*]—*Re RAILWAY ASSOCN. OF CANADA & SLOW ORDERS* (1926), 32 Can. Ry. Cas. 238.—CAN.

m ii. ———.]—*CANADIAN NATIONAL RYS. v. HYDRO ELECTRIC POWER COMMISSION & DEPARTMENT OF HIGHWAYS FOR ONTARIO (WESTHILL CROSSING CASE)* (1926), 32 Can. Ry. Cas. 297.—CAN.

f (p. 309) i. ———.]—*MONTREAL CORPN. v. CANADIAN PACIFIC RY. CO. (GOUIN BOULEVARD CROSSING CASE)* (1926), 32 Can. Ry. Cas. 245.—CAN.

f (p. 309) ii. ———.]—*SPRINGFIELD (VILLAGE) v. MICHIGAN CENTRAL RY. CO.* (1926), 32 Can. Ry. Cas. 254.—CAN.

f (p. 309) iii. ———.]—*MONTREAL CORPN. v. CANADIAN NATIONAL RYS.* (1927), 33 Can. Ry. Cas. 29.—CAN.

f (p. 309) iv. ———.]—*CANADIAN NATIONAL RYS. v. MONTREAL TRAMWAYS (GUY ST. CROSSING CASE)* (1927), 33 Can. Ry. Cas. 32.—CAN.

f (p. 309) v. ———.]—*SHERBROOKE CORPN. v. CANADIAN PACIFIC RY. CO.* (1927), 33 Can. Ry. Cas. 35.—CAN.

## PART IV. SECT. 2, SUB-SECT. 2.

a (p. 311) i. ———.]—*Whether gate wilfully left open—Gate wilfully opened by stranger.*]—*BROWN v. GREAT NORTHERN RY. CO.*, [1927] 2 D. L. R. 316 ; [1927] 1 W. W. R. 516 ; 32 Can. Ry. Cas. 326 ; 38 B. C. R. 115.—CAN.

## PART IV. SECT. 3.

p (p. 315). *Revsd.*, [1927] 3 D. L. R. 888 ; [1927] S. C. R. 505 ; 33 Can. Ry. Cas. 55.

p (p. 315) i. ———.]—*TREMBLAY v. CANADIAN PACIFIC RY. CO.* (1927), Q. R. 65 S. C. 406.—CAN.

q (p. 316). *Revsd.*, [1923] S. C. R. 397.

o (p. 317). *Revsd.*, 48 S. C. R. 561.

## PART V. SECT. 4, SUB-SECT. 2.

t. *Revsd.*, 1 O. L. R. 575, 591.

## PART VII. SECT. 1.

k. *Revsd.*, 47 S. C. R. 634.



duty of providing a look-out man, & that the foreman's death was caused by the negligence of one or the other or both of the men, & judgment was entered for the co. :—*Held* : (1) a motion for a new trial, on the grounds of misdirection & that the verdict was against the weight of evidence, must be refused ; (2) the rule does not require the look-out man provided to be some one who is not a member of the gang itself, but is appointed additionally. (3) *Seem* : the duty of the railway co. under the rule in any case of

danger is an absolute duty to provide a look-out man & to see that he is instructed to act. The co. does not comply with the rule by merely making regulations under which the foreman of a gang is entrusted with the duty of appointing a look-out man ; & if the foreman fails in that duty, the co. may be made liable for injury happening to a member of the gang other than the foreman himself.—*VINCENT v. SOUTHERN RY. CO.*, [1927] A. C. 430 ; 96 L. J. K. B. 597 ; 136 L. T. 513 ; 71 Sol. Jo. 34, H. L.

## Part X.—Railway Tribunals.

703. *Add. Annotation* :—*Refd.* R. v. Electricity Comrs., *Ex p.* Yorkshire Electric Power Co. (1927), 138 L. T. 230.

755. *Add. Annotation* :—*Refd.* Rownson, Drew & Clydesdale v. G. W. Ry., L. M. & S. Ry., L. & N. E. Ry. & Southern Ry. (1928), 19 Ry. & Can. Tr. Cas. 235.

756a. *Adjustment of charges to revenue—Railway carrying on subsidiary business—Railways Act, 1921 (c. 55), s. 58.*—In dealing with the subject of dock undertakings belonging to railway cos. the Railway Rates Tribunal accepted the division between " railway " & " dock " set out in the railway cos.' estimates, by which all receipts & expenses in respect of railways, sidings & warehouses, whether they were within the area of a dock or not, were treated as " railway " receipts & expenses, & all receipts & expenses in respect of " docks " other than those entered as " railway " receipts & expenses, were treated as " dock " receipts & expenses :—*Held* : (1) this division of receipts & expenditure between railways & docks could not be supported, as it involved the exclusion from consideration of charges at dock warehouses or storage

spaces where none of the goods stored therein used railways, & all charges in respect of the conveyance on railways in docks in whatever circumstances the rails were laid or charges were made for their use ; (2) (*BANKES, L.J.*) under sect. 58 (4) of the above Act the Tribunal has to take into consideration the different operations which go to make up the business of a dock undertaking, for which operations separate & distinct charges are made ; (3) *Seem* (*SCRUTTON, L.J.*) : warehousing on a dock undertaking goods exported or imported, storing such goods in the open on dock lands, the use of transit sheds, & services such as cooping, are dock & not railway charges.—*MANCHESTER SHIP CANAL CO.'S & DOCK & HARBOUR AUTHORITIES ASSOCN.'S APPLICATIONS*, [1927] 2 K. B. 154 ; 96 L. J. K. B. 421 ; 137 L. T. 39 ; 43 T. L. R. 301 ; *sub nom.* *STANDARD CHARGES (DOCKS HARBOURS & PIERS)*, 19 Ry. & Can. Tr. Cas. 75, C. A.

756b. —*STANDARD CHARGES (COLLECTION & DELIVERY-WAREHOUSING)* (1925), 19 Ry. & Can. Tr. Cas. 53.

## Part XIII.—Canals.

925. *Add. Annotation* :—*Refd.* Colleshill v. Manchester Corpn., [1928] 1 K. B. 776.

970. *Add. Annotation* :—*Mentd.* Dee Conservancy Board v. McConnell, [1928] 2 K. B. 159.

1032. *Add. Annotation* :—*Refd.* Colleshill v. Manchester Corpn., [1928] 1 K. B. 776.

### PART X. SECT. 3.

a (p. 375) i. — Over street railway incorporated by provincial legislature.—*Work for general advantage of Canada.*—Where a street railway co. operating within a province was originally incorporated by a provincial legislature, but its undertaking is subsequently declared by a Dominion Act to be a work for the general advantage of Canada, the execution of its powers is within the jurisdiction of the Board of Railway Comrs. for Canada.—*QUEBEC RAILWAY, LIGHT & POWER CO. v. MONTREAL LAND CO.*, [1928] 1 D. L. R. 143 ; [1927] S. C. R. 545.—*CAN.*

a (p. 375) ii. — Under Railway Act ss. 345, 351.—*PROVINCES OF BRITISH COLUMBIA & ALBERTA v. CANADIAN NATIONAL & CANADIAN PACIFIC RY. COS. (FARES FOR PROVINCIAL POLICE CASE)* (1927), Can. Ry. Cas. 322.—*CAN.*

d (p. 375) i. — Or to employ servants in inferior position.—*DEATH v. NEW SOUTH WALES RAILWAY COMRS.* (1927), 27 S. R. N. S. W. 187 ; 41 N. S. W. W. N. 53.—*AUS.*

e (p. 375) i. — — — — —.]—*ST. BRIGID'S PARISH, IBERVILLE COUNTY, P.Q. v. CANADIAN NATIONAL RYS.* (1927), 33 Can. Ry. Cas. 15.—*CAN.*

oo (p. 375) i. — — — — —.]—*As to effect of order of Board.*—*Re BOLAND & CANADIAN NATIONAL RYS.* (1926), 32 Can. Ry. Cas. 127.—*CAN.*

oooo i. — — — — —.]—*Prevention of alteration in routing of traffic.*—*BOARD OF TRADE OF HALIFAX, ST. JOHN & SACKVILLE, N.B., CANADIAN LUMBERMEN'S ASSOCN. v. CANADIAN NATIONAL RYS.* (1926), 32 Can. Ry. Cas. 37.—*CAN.*

t (p. 376) i. — — — — —.]—*Transit rate—With stop-over privileges—Refusal to order.*—*ROSS LEAF TOBACCO CO., LTD. v. CANADIAN FREIGHT ASSOCN.* (1927), 32 Can. Ry. Cas. 320.—*CAN.*

oo (p. 376) i. — — — — —.]—*STANDARD HARDWOOD LUMBER CO. v. CANADIAN PACIFIC RY. CO. & CANADIAN NATIONAL RYS. (COAL & COKE RATES CASE)* (1926), 32 Can. Ry. Cas. 282.—*CAN.*

qq (p. 376) i. — — — — —.]—*CANADIAN SHIPPERS' TRAFFIC BUREAU v. CANADIAN NATIONAL RYS.* (1926), 32 Can. Ry. Cas. 3.—*CAN.*

ooo (p. 376) i. — — — — —.]—*Refusal of facility involving variation of established principle.*—*PARISH OF LANCASTER, ST. JOHN, N.B. v. DOMINION EXPRESS CO. & CANADIAN NATIONAL EXPRESS CO.* (1926), 32 Can. Ry. Cas. 33.—*CAN.*

mmm (p. 376) i. — — — — —.]—*MULDOON v. CANADIAN PACIFIC RY. CO.* (1927), 33 Can. Ry. Cas. 13.—*CAN.*

j. 376) i. — — — — —.]—*Re CANADIAN PACIFIC RY. CO., PILES, P.Q.* (1926), 32 Can. Ry. Cas. 1.—*CAN.*

hh (p. 377) i. — — — — —.]—*Restoration of train services—Refusal to order.*—*ANNAPOLIS MUNICIPALITY N.S. v. CANADIAN NATIONAL RYS.* (1926), 32 Can. Ry. Cas. 257.—*CAN.*

pp (p. 377) i. — — — — —.]—*Refusal to fix responsibility for future accidents.*—*CANADIAN NATIONAL RYS. v. TOWNSHIP OF STAMFORD* (1926), 32 Can. Ry. Cas. 252.—*CAN.*

qq (p. 377) i. — — — — —.]—*Power to order substitution of private crossing.*—*CALHOUN v. CANADIAN NATIONAL RYS.* (1926), 32 Can. Ry. Cas. 236.—*CAN.*

vv. *Revsd.*, [1912] A. C. 224.

vv i. — — — — —.]—*Use of railway bridge for vehicular traffic.*—*SASKATCHEWAN DEPARTMENT OF HIGHWAYS v. CANADIAN NATIONAL RYS.* (1926), 32 Can. Ry. Cas. 23.—*CAN.*

g (p. 378) i. — — — — —.]—*Re CASA LOMA*, [1927] 4 D. L. R. 645 ; 61 O. L. R. 187.—*CAN.*

# RATES AND RATING.

## Part I.—Liability to be Rated.

5. *Add. Annotation* :—**Consd.** *L. C. C. v. Hackney B. C.*, [1928] 2 K. B. 588.
14. *Add. Annotation* :—**Consd.** *L. C. C. v. Hackney B. C.*, [1928] 2 K. B. 588.
15. *Add. Annotation* :—**Consd.** *L. C. C. v. Hackney B. C.*, [1928] 2 K. B. 588.
16. *Add. Annotation* :—**Consd.** *L. C. C. v. Hackney B. C.*, [1928] 2 K. B. 588.
17. *Add. Annotation* :—**Expld.** *L. C. C. v. Hackney B. C.*, [1928] 2 K. B. 588.
36. *Add. Annotation* :—**Consd.** *L. C. C. v. Hackney B. C.*, [1928] 2 K. B. 588.
- 37a. ———.]—Defts. were the overseers of a parish. Within the parish was a building, the property in which was vested in pltfs., managed by them in the early part of 1926 as an industrial school. After Mar. 1926 the building was no longer used as an industrial school & pltfs. removed their stores & furniture. The removal was completed in Apr. 1926, except that a caretaker was left in possession with a few articles of furniture for his use. In Mar. 1927 pltfs. decided to use the premises partly as an elementary school & partly for other purposes. Defts. rated pltfs. in respect of the building for the two periods ending Sept. 30, 1926, & Mar. 31, 1927, & it was admitted that the rate was duly made & confirmed. Pltfs. objected that the rate was invalid, as there was no beneficial occupation by them. Upon their refusing to pay, defts. complained to the justices, who issued a distress warrant, & defts. seized a tramcar belonging to pltfs. Pltfs. did not appeal to quarter sessions, but took proceedings in replevin :—*Held* : (1) pltfs. were not in beneficial occupation during the relevant period, & were not ratable; (2) the jurisdiction of the justices to grant a distress warrant depended on the question of actual occupation within the parish & not on that of beneficial occupation, & as pltfs. had failed to show that the distress was unlawful, the action of replevin failed.—**LONDON COUNTY COUNCIL v. HACKNEY BOROUGH COUNCIL**, [1928] K. B. 588; 97 L. J. K. B. 694; 139 L. T. 40; 92 J. P. 138; 44 T. L. R. 592; 26 L. G. R. 366.
65. *Add. Annotation* :—**Consd.** *L. C. C. v. Hackney B. C.*, [1928] 2 K. B. 588.
66. *Add. Annotation* :—**Consd.** *L. C. C. v. Hackney B. C.*, [1928] 2 K. B. 588.
69. *Add. Annotation* :—**Consd.** *L. C. C. v. Hackney B. C.*, [1928] 2 K. B. 588.
86. *Add. Annotation* :—**Consd.** *L. C. C. v. Hackney B. C.*, [1928] 2 K. B. 588.
87. *Add. Annotation* :—**Consd.** *L. C. C. v. Hackney B. C.*, [1928] 2 K. B. 588.
122. *Annotations* :—Delete "**Consd.** *Jones v. I. R. Comrs., Sweetmeat Automatic Delivery Co. v. I. R. Comrs.*, [1895] 1 Q. B. 484."
160. *Add. Annotation* :—**Refd.** *L. C. C. v. Hackney B. C.*, [1928] 2 K. B. 588.
218. *Add. Annotation* :—*As to* (3) **Consd.** *L. C. C. v. Hackney B. C.*, [1928] 2 K. B. 588.
235. *Add. Annotation* :—**Refd.** *Engelke v. Musmann*, [1928] A. C. 433.
281. *Add. Annotation* :—**Consd.** *Metropolitan Meat Industry Board v. Sheedy* (1927), 97 L. J. P. C. 1.
286. *Add. Annotation* :—*As to* (3) **Consd.** *L. C. C. v. Hackney B. C.*, [1928] 2 K. B. 588.
327. *Add. Annotation* :—**Refd.** *Metropolitan Meat Industry Board v. Sheedy* (1927), 97 L. J. P. C. 1.

### PART I. SECT. 1.

**y i.** ———.]—*Re* **COLEMAN TOWNSHIP & NORTHERN ONTARIO LIGHT & POWER CO., LTD.** (1927), 60 O. L. R. 405.—**CAN.**

**iii i.** ———.]—*Re* **STOUT & TORONTO**, [1927] 2 D. L. R. 1100; 60 O. L. R. 313.—**CAN.**

**iii ii.** ———.]—*Re* **DONALD MASON & Co. (Ont.)**, [1927] 4 D. L. R. 1061.—**CAN.**

### PART I. SECT. 2, SUB-SECT. 2.—A.

**14 ii.** ———.]—*Ottawa Corp. v. Ottawa Public School Board* (1923), 54 O. L. R. 633.—**CAN.**

### PART I. SECT. 2, SUB-SECT. 3.—B. (f).

**f i.** ———.]—*Station agent*.—*Held* : not occupying the land in an official capacity under the Crown.—*Re* **COCHRANE TOWN & KING**, [1925] 2 D. L. R. 550; 56 O. L. R. 477.—**CAN.**

### PART I. SECT. 2, SUB-SECT. 4.—A.

**113 i.** *Necessity for*.—*Christchurch (Mayor, Etc.) v. Pyne, Gould, Guinness*, [1928] N. Z. L. R. 318.—**N.Z.**

### PART I. SECT. 2, SUB-SECT. 7.

**203 i.** *Revsd.*, 32 S. C. R. 505.

### PART I. SECT. 4, SUB-SECT. 6.—A.

**c i.** ———.]—*Seamen's Friendly Society—Work given up by society & continued by Navy League of Canada*.—*Held* : the latter body was not exempt.—*Re* **NAVY LEAGUE OF CANADA (ASSESSMENT OF HALIFAX BRANCH OF)**, [1927] 2 D. L. R. 184; 59 N. S. R. 212.—**CAN.**

### PART I. SECT. 4, SUB-SECT. 7.

**i i.** ———.]—*Seminary for education of missionary priests*.—*Held* : the building could not be deemed to be one "used for church purposes" within School Assessment Act, R. S. A., 1922 (c. 52), s. 24 (d), & was not exempt.—*Ruthenian Catholic Mission of the Order of St. Basil the Great in Canada v. Mundare School District*, No. 1603, [1924] 2 D. L. R. 1143; [1924] 2 W. W. R. 481; 20 Alta. L. R. 338.—**CAN.**

### PART I. SECT. 4, SUB-SECT. 10.—C.

**sf.** *Liability before issue of patent*.—*Ruddell v. Georgeson* (1873), 9 Man. L. R. 467.—**CAN.**

**sg.** ———.]—*O'Grady v. McCaffray* (1882), 2 O. R. 309.—**CAN.**

———.]—*Half-breed lands*.—*Re*

**MATHERS** (1891), 7 Man. L. R. 431.—**CAN.**

### PART I. SECT. 4, SUB-SECT. 20.—A.

**t i.** ———.]—*Loading pier & equipment for shipment of coal*.—*Re* **ACADIA COAL CO.'S ASSESSMENT**, [1925] 1 D. L. R. 1179; 58 N. S. R. 17.—**CAN.**

### PART I. SECT. 4, SUB-SECT. 24.—L.

**sn.** *Land leased to commissariat officer & occupied by troops*.—*Held* : exempt.—*Principal Secretary of State for War v. Toronto Corp.* (1863), 22 U. C. R. 551.—**CAN.**

### PART I. SECT. 4, SUB-SECT. 24.—Q.

**a i.** ———.]—*Re* **HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO & THOROLD & PELHAM TOWNSHIPS** (1924), 55 O. L. R. 431.—**CAN.**

### PART I. SECT. 5.

**sp.** *Mortgagee—Of leasehold interest in land*.—*Held* : not a mtgee. of "ratable property" within Rating Act, 1925, s. 70.—*Waitomo County Council v. Miles*, [1928] N. Z. L. R. 22.—**N.Z.**

**sq.** *Colliery company letting houses to workmen during employment*.—*Buckhaven & Methil Corp. v. Wemyss Coal Co.*, [1928] S. C. 66.—**SCOT.**

503. *Add. Annotation*:—**Consd.** General Medical Council v. I. R. Comrs., English Branch Council of General Medical Council v. I. R. Comrs. (1928), 97 L. J. K. B. 578.
580. *Add. Annotation*:—**Refd.** Busby v. Avgherino, [1928] A. C. 290.
669. *Add. Annotation*:—**Refd.** Musmann v. Engelke, [1928] 1 K. B. 90.
676. After this case add “*See, also, LANDLORD & TENANT*, Nos. 4353, 4354.

## Part II.—Basis of Assessment.

726. *Add. Annotation*:—**Consd.** L. C. C. v. Hackney B. C., [1928] 2 K. B. 588.
769. *Add. Annotation*:—**Refd.** L. C. C. v. Hackney B. C., [1928] 2 K. B. 588.

## Part III.—Special Rate.

1123. *Add. Citation*:—[1928] Ch. 340.

## Part IV.—The Assessment.

1146. *Add. Citation*:—97 L. J. K. B. 10.
- 1158a. **Return required by rating authority—Form—Validity.**—Defts. for the purpose of making a new valuation list under Rating & Valuation Act, 1925 (c. 90), s. 40, having served a notice on pltf. requiring him to make a return of certain particulars, including “gross takings & outgoings” of his licensed premises & other particulars not contained in Rating & Valuation Act (Returns) Rules, 1926, Sched., pltf. commenced an action for a declaration that the form of return required was illegal, unauthorised & *ultra vires*, & called evidence to prove that the offending requisitions were not “reasonably required for the purpose of carrying out this Act” within the above sect.:—**Held**: pltf. had proved his case & was entitled to the declaration claimed.—**GRANT v. KNARESBOROUGH URBAN COUNCIL**, [1928] Ch. 310; 97 L. J. Ch. 106; 138 L. T. 488; 92 J. P. 30; 44 T. L. R. 224; 26 L. G. R. 165.
1164. *Add. Annotation*:—**Consd.** Kingston Mill, Stockport v. Owen (1928), 45 T. L. R. 107.

## Part V.—Making of the Rate.

### SECT. 2.—AMENDMENT OF RATE (Vol. XXXVIII., p. 585).

Add the following case:—

- 1184a. **Duty of rating authority to alter “then current rate”**—On alteration of valuation list by assessment committee.]—Appls., in Jan. 1927, gave notice of objection to the valuation list, & relief was refused by the assessment committee. In Nov. 1927 the new assessment committee which came into being on Apr. 1, 1927, reconsidered applts.’ objection & granted relief, as from Apr. 1, 1926. They altered the valuation list accordingly, but the

rating authority refused to alter the rate book, on the ground that the assessment committee could not make their reconsidered decision relate back to the earlier rating period in which the objection had been originally taken & decided:—**Held**: it was the duty of the rating authority to alter their “then current rate” on receipt of notice from the assessment committee, & “then current rate” meant the rate current at the date of the objection.—**KINGSTON MILL, STOCKPORT, LTD. v. OWEN** (1928), 45 T. L. R. 107; 92 J. P. Jo. 782, D. C.

### PART II. SECT. 1, SUB-SECT. 1.

*st. Agreement for fixed assessment value—Basis of valuation—Construction of agreement.*]—**CITY OF OTTAWA v. CANADIAN NATIONAL RYS.**, [1925] 3 D. L. R. 762; [1925] S. C. R. 494.—**CAN.**

### PART II. SECT. 1, SUB-SECT. 2.—A.

dd i. —.]—**EDINBURGH ASSESSOR v. CAIRA & OROLLA**, [1928], S. C. 398.—**SCOT.**

dd ii. —.]—**HERITABLE SECURITIES & MTGE. INVESTMENT ASSOCN., LTD. v. GLASGOW ASSESSOR**, [1928] S. C. 401.—**SCOT.**

### PART II. SECT. 1, SUB-SECT. 2.—B.

g i. —.]—**RANGOON TURF CLUB v. RANGOON CORPN.** (1927), I. L. R. 6 Ran. 75.—**IND.**

### PART II. SECT. 2, SUB-SECT. 6.—A.

d i. —.]—**COUSIN v. EDINBURGH ASSESSOR**, [1928] S. C. 392.—**SCOT.**

### PART II. SECT. 2, SUB-SECT. 13.

sw. *Deduction in respect of—Works used for manufacture of steel—What are—Not works preparing scrap metal for sale to steel manufacturers.*]—**JOHN JACKSON & CO. (IRON MERCHANTS), LTD. v. GLASGOW ASSESSOR**, [1928] S. C. 416.—**SCOT.**

sx. — *Works for refining crude oil—What are—Works for refining tar.*]—**JAMES ROSS & CO. (LIME WHARF), LTD. v. STIRLINGSHIRE ASSESSOR**, [1928] S. C. 420.—**SCOT.**

sy. — *Manufactory—What is—Not cellars & warehouse used for “aging,” bottling & maturing beer.*]—**WHITBREAD & CO., LTD. v. EDINBURGH**

**ASSESSOR**, [1928] S. C. 425.—**SCOT.**

sz. — *Not warehouse, stores & workshops of whisky blender.*]—**JOHN WALKER & SONS, LTD. v. KILMARNOCK ASSESSOR**, [1928] S. C. 430.—**SCOT.**

### PART IV. SECT. 2, SUB-SECT. 1.

n (p. 580) i. —.]—**VARSON v. TOWN OF VEGREVILLE** (1916), 34 W. L. R. 504.—**CAN.**

ff (p. 580) i. — *Error as to ownership.*]—**KRUMM v. SHEPARD** (Alta.), [1927] 3 D. L. R. 354; [1927] 2 W. W. R. 330.—**CAN.**

l (p. 581) i. —.]—*Ex p. CALHOUN* (1863), 10 N. B. R. (5 All.) 454.—**CAN.**

q (p. 582) i. — *“Parcel”*—*What is.*]—**Re MCBRIDE** (1927), 38 B. C. R. 431.—**CAN.**





## Part IX.—Rates and Rating in the Metropolis.

**1603.** *Add. Annotation* :—**Consd.** Lewis v. Elgy (1927), 11 Tax Cas. 723.

**1616a.** **Time for hearing appeal.**—When it is impossible for justices to dispose of their list by Mar. 31, they have jurisdiction after that date to hear an appeal of which notice was given at the proper time, &, if the parties are not ready for trial as soon as the justices

are able to hear the appeal, the justices have a discretion to postpone the hearing, so that they may have proper materials before them. —R. v. LONDON COUNTY J.J., *Ex p.* LOCKE LANCASTER & JOHNSON (W. W. & R.) & SONS, LTD. (1928), 139 L. T. 609; 92 J. P. 183; 44 T. L. R. 728; 72 Sol. Jo. 584;—26 L. G. R. 549, D. C.

*of land sold under decree.*—TURRILL v. TURRILL (1877), 7 P. R. 142.—**CAN.**  
ff (p. 624) i. — — — — —.]—

FONSECA v. SCHULTZ (1891), 7 Man. L. R. 458.—**CAN.**  
kk (p. 624) i. — — — — — *Whether*

*adequate remedy.*—SCHULTZ v. ALLO-WAY (1894), 10 Man. L. R. 221.—**CAN.**

# REAL PROPERTY AND CHATTELS REAL.

## Part I.—In General.

39. *Add. Annotation:—Mentd.* I. R. Comrs. v. Forth Conservancy Board (1928), 45 T. L. R. 83.
55. *Add. Annotation:—Mentd.* *Re* Reeves, Reeves v. Pawson, [1928] Ch. 351.

## Part II.—Estates and Interests in Real Estate.

- 159a. —.]—A leasehold for lives being settled on A. for life, with remainder to B., as *quasi* tenant in tail, with remainders over:—*Held*: the *quasi* tenant in tail could not, by fine or otherwise, during the life of A., bar the subsequent remainders without the concurrence of A.—*SLADE v. PATTISON* (1835), 5 L. J. Ch. 51.
- Annotations:—Refd.* *Edwards v. Champion* (1853), 3 De G. M. & G. 202; *Pickersgill v. Groy* (1862), 30 Beav. 352.
- 183a. *Cestui que vie* dead— & death concealed.]—*Re* JOBHURNS, *Ex p.* FLETCHER (1835), 4 L. J. Ch. 219.
- 509a. —. —. —.]—*WILLIAMS v. WATERS* (1845), 14 M. & W. 166; 5 L. T. O. S. 130: 153 E. R. 434.
- Annotation:—Folld.* *Re* Watson & Morrison's Contract, *Watson v. Kerr* (1900), 44 Sol. Jo. 529.
- 520a. —. —.]—*CAIN v. TEARE* (1843), 4 Moo. P. C. C. 249; 7 Jur. 567; 13 E. R. 297, P. C.
- 536a. —. —.]—*BARCLAY v. COLLETT* (1838), 4 Bing. N. C. 658; 1 Arn. 287; 6 Scott, 408; 7 L. J. C. P. 235; 132 E. R. 942.
- 537a. —. —.]—He who has occasion to use a deed is legally entitled to the custody of it; & where several are equally interested in it, either having possession may retain it against the others.—*FOSTER v. CRABB* (1852), 12 C. B. 136; 21 L. J. C. P. 189; 16 Jur. 835; 138 E. R. 853; *subsequent proceedings*, 12 C. B. 379.
- Annotations:—Refd.* *Taylor v. Sparrow* (1863), 4 Giff. 703; *Leathes v. Leathes* (1877), 36 L. T. 646; *Wright v. Robotham* (1886), 33 Ch. D. 106.
- 584a. —. —.]—*WARMAN v. SLAMAN* (1677), Cas. temp. Finch, 279; 23 E. R. 153.
- Annotations:—Refd.* *Ex p.* Wynch (1854), 5 De G. M. & G. 188; *Roddy v. Fitzgerald* (1858), 6 H. L. Cas. 823.
- 592a. —. —. Addition of “& if more children than one.”]—By a marriage settlement estates were limited to the wife & the husband for their lives, with remainder to the heirs of the body of the husband on the body of the wife, & their heirs, & if more children than one, equally to be divided among them as tenants in common, & for default of such issue to the wife & her heirs:—*Held*: the husband did not take an estate in tail special, but for life only, & the children took by purchase as tenants in common in fee in remainder.—*NORTH v. MARTIN* (1833), 6 Sim. 266; 58 E. R. 593.
- Annotations:—Consd.* *Jordan v. Adams* (1861), 9 C. B. N. S. 483. *Refd.* *Gummoe v. Howes* (1857), 23 Beav. 184.
- 628a. Limitation to particular persons.]—*WAKER v. SNOWE* (1622), Palm. 359; 81 E. R. 1123.
- Annotations:—Refd.* *Sayer v. Masterman* (1757), Amb. 344; *Doe d. Long v. Laming* (1760), 2 Burr. 1100; *Winter v. Perratt* (1843), 9 Cl. & Fin. 606; *Tarleton v. Liddell* (1851), 17 Q. B. 390.
- 663a. —. —. Death of protectors.]—The trustees of the real estate under a will were appointed also protectors of the estates tail created by the will. They all died, & new trustees of the real estate were appointed by the ct.:—*Held*: the tenant for life had become protector of the settlement, & he & the first tenant in tail could convey.—*CLARKE v. CHAMBERLIN* (1880), 16 Ch. D. 176; 29 W. R. 415.
- 761a. —. —. —.]—*SMITH v. RISLEY* (1639), Cro. Car. 529; 79 E. R. 1058; *sub nom.* *GERMAN v. RISLEY*, W. Jo. 418.
- Annotation:—Refd.* *Barker v. Keete* (1678), Freem. K. B. 249.

### PART I. SECT. 1.

ii. —. —. —.]—*HUNTER v. FARRELL* (N. B.) (1913), 13 E. L. R. 354; 14 D. L. R. 556.—CAN.

### PART I. SECT. 6.

m i. *How far English law of fixtures applicable in Canada—As between original vendor & subsequent vendees.*]—*TRAVIS-BARKER v. REED* (1922), 66 D. L. R. 426; 17 Alta. L. R. 319; [1921] 3 W. W. R. 770; *reversd.* on the facts, [1923] 3 D. L. R. 927; [1923] 3 W. W. R. 451.—CAN.

### PART I. SECT. 7.

o. —. —. —.]—*When presumed—After long possession.*]—*DOE d. MCKAY v. ALLEN* (1851), 7 N. B. R. (2 All.) 191.—CAN.

### PART II. SECT. 5.

pp (p. 679) i. —. —. —. —.]—

*CAMPBELL v. ROYAL CANADIAN BANK* (1872), 19 Gr. 334.—CAN.

o (p. 680) i. —. —. —. —.]—*Re* LESPERANCE, [1927] 4 D. L. R. 391; 61 O. L. R. 94.—CAN.

t (p. 680) i. —. —. —. —.]—*Re* TIERNEY, [1927] 3 D. L. R. 943; 60 O. L. R. 652.—CAN.

aaa (p. 680) i. —. —. —. —.]—*What is.*]—*IRONSIDES v. GREEN* (Man.), [1927] 3 D. L. R. 168; [1927] 2 W. W. R. 59.—CAN.

aaa (p. 680) ii. —. —. —. —.]—*Re* RIPSTEIN ESTATE (Man.), [1927] 3 W. W. R. 791.—CAN.

aaa (p. 680) iii. —. —. —. —.]—*FROSTAD v. LIBEK*, [1927] 3 D. L. R. 916; [1927] 2 W. W. R. 550; 21 Sask. L. R. 603.—CAN.

ooo (p. 680) i. —. —. —. —.]—*Land purchased subject to mortgage—Registration of conveyance before discharge of mortgage by vendor.*]—*Re* KUNTZ & HODGINS,

[1927] 4 D. L. R. 1009; 61 O. L. R. 298.—CAN.

k (p. 683) i. —. —. —. —.]—*Where a wife of her own consent leaves the society of her husband & then commits adultery, she is barred of her action for dower.*—*WHIMBEY v. HYDE*, [1927] 3 D. L. R. 237; 60 O. L. R. 399.

l (p. 685) i. *Application for order under Dower Act, R. S. O., 1897 (c. 164), s. 12—Duty of court.*]—*Re* KING (1899), 18 P. R. 365.—CAN.

### PART II. SECT. 6, SUB-SECT. 1.—E. (a).

sd. *General rule.*]—*CHANDRA KISHORE CHAKRAVARTY v. BISESWAR PAL* (1927), 1 L. R. 55 Calc. 396.—IND.

### PART II. SECT. 6, SUB-SECT. 2.

g i. —. —. —. —.]—*HARKESH SINGH v. HARDEVI* (1927), 1 L. R. 49 All. 763.—IND.



## Part III.—Transfer of Land inter vivos.

**885a. Effect of memorial—Evidence of contents of deed.]**—The registered memorial of a deed conveying lands in Middlesex is secondary evidence of the contents of such deed against the personal representatives of the party by whom such deed is registered.—*WOLLASTON v. HAKEWILL* (1841), 3 Man. & G. 297; 3 Scott, N. R. 593; 10 L. J. O. P. 303; 133 E. R. 1157.

*Annotations:*—*Mentd. Beardman v. Wilson* (1868), L. R. 4 C. P. 57; *Rendall v. Andrie* (1892), 61 L. J. Q. B. 630.

## PART III. SECT. 1.

**884 i. Grant must not commence in futuro.]**—*Re SMITH & DALE* (1920), 46 O. T. R. 403.—CAN.

## PART III. SECT. 3, SUB-SECT. 2.

**e i. — Effect of 26 Geo. 3, c. 3.]**—*DOE d. WILT v. JARDINE* (1836), 2 N. B. R. (Ber.) 245.—CAN.

## PART III. SECT. 6, SUB-SECT. 2.

**k (p. 747) i. S.P. WATERLOO v. BARNARD (Man.) (1915), 33 W. L. R. 223; 9 W. W. R. 870.—CAN.**

**k (p. 747) ii. — What is.]**—*BOURQUE v. CHAPPELL* (1900), 21 C. L. T. 132; 2 N. B. Eq. Rep. 187.—CAN.

**n (p. 747) i. —.]**—*SPEPPARD v. KENNEDY* (1884), 10 P. R. 242.—CAN.

**n (p. 747) ii. — Subsequent discontinuance of action—Whether filing of lis pendens constitutes cause of action.]**—*COWAN v. MACAULAY* (1897), 5 B. C. R. 495.—CAN.

**sk. Final order for cancellation of agreement for sale.]**—*Re LAND TITLES ACT, AVELSGAARD'S CASE* (Sask.), [1918] 2 W. W. R. 946.—CAN.

## PART III. SECT. 6, SUB-SECT. 4.

**ff (p. 748) i. — Not executor of administratrix.]**—*PUBLIC TRUSTEE v. REGISTRAR-GENERAL OF LAND*, [1927] N. Z. L. R. 839.—N.Z.

**hh (p. 748) i. — Under Quieting Titles Act—Not purchaser selling before completion of contract.]**—*Re BROWN* (1871), 3 Ch. Ch. 158.—CAN.

**q (p. 749) i. — Minister of Agriculture—In respect of claim under Live Stock Encouragement Act, R. S. A., 1922 (c. 65).]**—*R. v. RUMSEY & MORTHEM NO. 551 MUNICIPAL DISTRICT* (Alta.), [1926] 2 D. L. R. 792; [1926] 2 W. W. R. 34.—CAN.

**d (p. 749) i. — Person claiming partnership interest in land—Claim not founded on written document.]**—*Re MACCULLOUGH & GRAHAM* (Alta.) (1912), 21 W. L. R. 349; 5 D. L. R. 834.—CAN.

**e (p. 749) i. — Husband having interest under Dower Act, C. A., 1924 (c. 53).]**—*SHINBANE v. MINUK*, [1927] 3 D. L. R. 550; [1927] 2 W. W. R. 121; 36 Man. L. R. 530.—CAN.

**ff (p. 749) i. — Appeal from order for discharge—Registration of order pending appeal.]**—*Re MCINNIS*, [1927] 1 D. L. R. 481; [1927] 1

W. W. R. 209; 21 Sask. L. R. 309.—CAN.

**oo (p. 750) i. —.]**—*McKAY v. McDOUGALL*, [1921] 3 W. W. R. 833; 63 D. L. R. 247; 15 Sask. L. R. 24; *affd.* (1921), 68 D. L. R. 245.—CAN.

**oo (p. 750) ii. —.]**—*BISHOP v. WESTERN TRUST CO. (Sask.)*, [1922] 3 W. W. R. 818; 70 D. L. R. 451.—CAN.

**ll (p. 750) i. — When maintainable.]**—*PENDLETON v. PENDLETON*, [1927] 2 W. W. R. 720; 21 Sask. L. R. 579.—CAN.

**m (p. 751) i. — of parcel into lots under unregistered plan.]**—*Re RYAN & VANCOUVER DISTRICT REGISTRAR OF TITLES (B. C.)* (1914), 26 W. L. R. 982.—CAN.

**gg (p. 751) i. — To accept caveat based on mortgage before registration of grant from Crown.]**—*Re LAND TITLES ACT, CANADA LIFE ASSURANCE CO.'S CASE*, (Sask.), [1919] 2 W. W. R. 47.—CAN.

**sn. Application under Quieting Titles Act—Jurisdiction of court—To grant certificate.]**—*Exp. CHAMBERLAIN* (1869), 2 Ch. Ch. 352.—CAN.

**so. — To waive irregularity—In advertisement.]**—*Re HARRIS* (1888), 12 P. R. 430.—CAN.

## PART III. SECT. 6, SUB-SECT. 5.

**q (p. 753) i. — "Fraud" under Land Titles Act, 1917, ss. 59, 174 & 194, means actual fraud.]**—*DOMINION FIRE-BRICK & CLAY PRODUCTS, LTD. v. POLLOCK* (Sask.), [1919] 2 W. W. R. 245.—CAN.

**r (p. 753) i. —.]**—*ANNABLE v. COVENTRY* (1912), 22 W. L. R. 254; 5 D. L. R. 661; 2 W. W. R. 816.—CAN.

**kk (p. 753) i. —.]**—*CANADIAN PROVINCIAL POWER CO., LTD. v. NOVA SCOTIA POWER COMMISSION*, [1927] 2 D. L. R. 475; 59 N. S. R. 234.—CAN.

**h (p. 755) i. —.]**—*THOMAS v. GUAY*, [1927] 2 D. L. R. 1146.—CAN.

**mm (p. 755) i. — Right of owner of land sold for taxes to sue under Land Titles Act, s. 110—Delay in bringing action.]**—*BLACKSTOCK v. NORTH ALBERTA LAND REGISTRATION DISTRICT REGISTRAR* (Alta.), [1917] 2 W. W. R. 938.—CAN.

**rr (p. 755) i. — Conveyance of Crown land by squatter.]**—*ROBIN,*

**891. In the last line of the existing paragraph substitute the word "register" for the words "sale without registration."**

**902. Add. Citation:—sub nom., Re REGISTERED TITLE, No. 213,437; 63 L. Jo. 82; 163 L. T. Jo. 52**

*COLLAS & Co., LTD. v. THERIAULT* (1904), 25 C. L. T. 68; 3 N. B. Eq. Rep. 14.—CAN.

**ggg (p. 755) i. — Restrictive covenants.]**—*Re ROWAN & EATON*, [1927] 2 D. L. R. 722; 60 O. L. R. 245.—CAN.

## PART III. SECT. 6, SUB-SECT. 8.—A.

**st. Lis pendens—Dismissal of bill—Order discharging lis pendens unnecessary.]**—*DEXTER v. GOSFORD* (1858), 1 Ch. Ch. 22; 5 C. L. J. O. S. 67.—CAN.

## PART IV. SECT. 3, SUB-SECT. 1.

**e. Revid., [1927] 3 D. L. R. 1; [1927] S. C. R. 403.**

## PART V. SECT. 10.

**r (p. 777) i. —.]**—*TOWNSHIP OF COLCHESTER SOUTH v. HACKETT*, [1927] 4 D. L. R. 317; 61 O. L. R. 77.—CAN.

**t (p. 778) i. — Purchase at sale under writ of execution—Judgment irregular to purchaser's knowledge.]**—*Held: the sheriff's deed could not defeat pltf.'s right to recover.*—*HAMILTON v. LIGHTBODY* (1870), 21 C. P. 126.—CAN.

**t (p. 778) ii. — Colour of title.]**—*BOYD v. MILLETT* (1873), 9 N. S. R. 292.—CAN.

**t (p. 778) iii. —.]**—*McDONALD v. McISAAC* (1905), 38 N. S. R. 163.—CAN.

## PART V. SECT. 11, SUB-SECT. 2.—A.

**o (p. 760) i. —.]**—*PENLINGTON v. BROWNLEE* (1868), 28 U. C. R. 189.—CAN.

**aa (p. 760) i. — Proof of judgment unnecessary.]**—*RAISTON v. HUGHSON* (1867), 17 C. P. 364.—CAN.

**aa (p. 760) ii. —.]**—*JEX v. HICKS* (1876), 39 U. C. R. 606.—CAN.

**ff (p. 781) i. Title acquired pendente lite.]**—*Held: insufficient.*—*ADAMSON v. ADAMSON* (1878), 25 Gr. 550.—CAN.

## PART V. SECT. 13.

**sy. Nature of action.]**—An action for mesne profits is in origin an action of trespass, & is regulated by the broad principles applicable to actions for damages against wrongdoers.—*KAMALA PRASAD SUKUL v. KISHORI MOHAN PRAMANIK* (1927), 1 L. R. 55 Calc. 666.—IND.

**p i. —.]**—*HERR v. WESTON* (1872), 32 U. C. R. 402.—CAN.

## RECEIVERS.

### Part II.—Appointment by Court.

**106a.** ———.]—An *interim* appointment of a receiver of property in the possession of, & claimed by, deft. in the suit should be made only if there is a well-founded fear that, in the absence of protection, the property will

be dissipated or irreparably injured.  
BEVOY KRISHNA MUKHERJEE v. SATISH CHANDRA GIRI (1927), 55 L. R. Ind. App. 131.  
**451a.** ———.]—HALL v. JENKINSON (1813), 2 Ves. & B. 125 ; 35 E. R. 266, L. C.

### Part III.—Effect of Appointment.

**682.** *Add. Annotation* :—**Reid.** *Re A Debtor* (1928), 45 T. L. R. 10.

#### PART II. SECT. 1, SUB-SECT. 2.—A.

**n i.** *Master.*]—The master of the High Ct. has no jurisdiction to make an order appointing a receiver by way of equitable execution.—BAIRD v. MURPHY, [1928] I. R. 125.—IR.

#### PART II. SECT. 6, SUB-SECT. 2.—N.

**n i.** ———.]—In an action by a vendor of land for specific performance an order may be made, before the land is sold, for the appointment of a receiver of the rents & profits of the land.—KNOWLES v. JENKINS (Alta.),

[1923] 1 W. W. R. 1279.—CAN.

#### PART III. SECT. 1.

**n i.** ——— *Possession of receiver is possession of court—For benefit of person entitled thereto.*]—BISHESHWAR PRATAP NARAYAN SAHI v. CHANDRESHWAR PRASAD NARAYAN SINGH (1928), I. L. R. 7 Pat. 319.—IND.

#### PART III. SECT. 5, SUB-SECT. 5.—B.

**685 viii.** ———.]—NATIONAL TRUST Co. v. DOM. IRON & STEEL CO. (N. S.), [1927] 3 D. L. R. 1063.—CAN.

#### PART IV. SECT. 4.

**p (p. 66) i.** ——— *Against receiver—Effect of order.*]—An order of the ct. giving leave to a party to sue its receiver does not amount to a relinquishment of possession of the properties by that ct., & an order of decree against the receiver cannot be enforced in execution as against him without leave of the ct. appointing him.—SRIMATI JUGAL KISHORE DEBI v. DEVA PRASANNA MUKHERJI (1928), I. L. R. 7 Pat. 684.—IND.

# REGISTRATION OF BIRTHS, MARRIAGES AND DEATHS.

## PART III.

sh. "*Indians in province of Natal*"—*Includes only Indian immigrants—Act 17, 1923, ss. 6, 42 (1).—Ex p. BADAT (1927), 48 N. L. R. 435.—S. AF.*



## RENTCHARGES AND ANNUITIES.

### Part I.—Nature.

23. *Add. Annotation* :—**Mentd.** *Re Adelom, Oakshott v. Hawkins* (1928), 72 Sol. Jo. 810.      54. *Add. Annotation* :—**Consd.** *Re Alington & L. C. C. Contract* (1927), 138 L. T. 131.
52. *Add. Annotation* :—**Refd.** *Bristol Corpn. v. Virgin*, [1928] 2 K. B. 622.

### Part II.—Creation of Rentcharges and Annuities.

104. *Add. Annotation* :—**Mentd.** *Hyman v. Hyman, Hughes v. Hughes* (1928), 139 L. T. 416.

### Part III.—Alienation of Rentcharges and Annuities and Estates Charged Therewith.

246. *Add. Annotation* :—**Refd.** *Re Reeves, Reeves v. Pawson*, [1928] Ch. 351.      annuities—**Annuitants necessary parties to conveyance.**—*SULLIVAN v. SULLIVAN* (1860), 28 Beav. 102 ; 54 E. R. 304.
247. *Add. Annotation* :—**Apld.** *Kennedy v. Thomassen* (1928), 45 T. L. R. 122.      *Annotation* :—**Refd.** *Thompson v. Raine* (1873), 28 L. T. 362.
- 254a. ——— **Sale to raise charge paramount to**

### Part IV.—Rights as Affected by Various Forms of Limitation.

296. *Add. Annotation* :—**Refd.** *Re Fitch's Will Trusts, Public Trustee v. Nives* (1928), 139 L. T. 556.

### Part V.—Rights as Affected by Insufficiency of Grantor's Estate.

548. *Add. Annotation* :—**As to (2) Refd.** *Bristol Corpn. v. Virgin*, [1928] 2 K. B. 622.

### Part VI.—Payment of Rentcharges and Annuities.

590. *Add. Annotation* :—**Refd.** *Re Armaghdale, Craig v. Armaghdale* (1928), 44 T. L. R. 239.      593. *Add. Annotation* :—**Consd.** *Re Armaghdale, Craig v. Armaghdale* (1928), 44 T. L. R. 239.

### Part VII.—Forfeiture and Extinguishment of Rentcharges and Annuities.

810. After this case add "**Money paid in ignorance of death of annuitant—Recovery of.**"—*See CONTRACT, No. 3081a.*      *Add. Annotation* :—**Refd.** *Re Draycott S. E.*, [1928] Ch. 371.
814. *Add. Citation* :—138 L. T. 131.      821. *Add. Annotation* :—**Refd.** *Hyman v. Hyman, Hughes v. Hughes*, [1929] P. 1.

**PART I. SECT. 1.**  
11 i. ——— *Devise of land subject to annuity.*—Testator devised a half

interest in land to his son & two daughters "subject to the payment" of an annuity :—*Held* : the annuity

was charged upon the half interest.—*PEARCE v. WRIGHT* (1926), 39 C. L. R. 16.—**AUS.**

## REVENUE.

## Part VI.—Excise Duties.

SUB-SECT. 1.—BETTING DUTY (Vol. XXXIX., p. 232).

Add the following case :—

- 93a. Who liable to duty — Club — Managing totalisator & pari-mutuel.]—Deft. co. owned a club & managed on the premises a totalisator & a *pari-mutuel*, by means of which members could back horses running in races. The

amount staked by backers of losers formed the fund for paying the backers of winners, deft. co. deducting 10 per cent. for expenses :—*Held*: deft. co. were not liable to pay betting duty, as they merely received money for the purpose of distributing it.—A.-G. v. LUNCHEON & SPORTS CLUB, LTD. (1928), 45 T. L. R. 17; 72 Sol. Jo. 795, C. A.

## Part VII.—Excise Licences.

104. *Add. Citation* :—97 L. J. K. B. 36.

- 140a. Petrol-electric vehicle—Whether “electrically-propelled.”]—A vehicle which is propelled by an electric motor, the electricity for which is generated by an internal com-

bustion petrol engine carried on the vehicle itself, is an “electrically-propelled” vehicle within Finance Act, 1926 (c. 22), Sched. I. (5).—TILLING-STEVENS MOTORS, LTD. v. KENT COUNTY COUNCIL & MINISTER OF TRANSPORT (1929), 167 L. T. Jo. 154, H. L.

## Part VIII.—Drawbacks and Excise Allowances.

360. *Add. Annotation* :—*Refd.* Fenton Textile Asscn. v. Lodge, [1928] 1 K. B. 1.

## Part IX.—Stamp Duties.

435. *Add. Annotation* :—*Mentd.* Chaney v. Maclow (1928), 45 T. L. R. 135.

550. *Add. Annotations* :—*Mentd.* Ellesmere v. Wallace (1928), 44 T. L. R. 798; Kennedy v. Thomassen (1928), 45 T. L. R. 122; Weddle, Beck v. Hackett (1928), 45 T. L. R. 67.

667. *Add. Citations* :—[1928] 1 K. B. 703; 97 L. J. K. B. 116; 138 L. T. 171.

670. *Add. Annotation* :—*Apld.* Westmorland v. I. R. Comrs., [1928] 1 K. B. 703.

## Part X.—Corporation Duty.

780. *Add. Annotation* :—*Distd.* General Medical Council v. I. R. Comrs., English Branch

(Council of General Medical Council v. I. R. Comrs. (1928), 97 L. J. K. B. 578.

## PART VI. SECT. 4, SUB-SECT. 6.

*s. Affd. sub nom.* DOMINION PRESS, LTD. v. CUSTOMS & EXCISE MINISTER, [1928] A. C. 340; 97 L. J. P. C. 91; 139 L. T. 338.

## PART VII. SECT. 4, SUB-SECT. 3.—D.

*so. “Weight unladen”*—*How ascertained*—*Loose equipment*.]—Movable shelving, fitted to slide on brackets in a baker's van, & used to facilitate the delivery of goods to customers, is loose equipment within Roads Act, 1920 (c. 72), s. 7 (6), & does not fall to be included in the weight unladen

of the vehicle.—DARLING v. BURTON, [1928] S. C. (J.) 11.—SCOT.

## PART IX. SECT. 6, SUB-SECT. 3.—B.

*sl. Assignment*.]—There is no necessity for an assignment to be stamped, unless it is in the special form of an order, & possibly also unless it is directed to the persons having control of the money in question in such circumstances as to lead to the conclusion that they hold to the order of the person assigning it.—LIVERPOOL & LONDON & GLOBE INSURANCE CO., LTD. v. HARTLEY & FORD, [1927] V. L. R. 523; 49 A. L. T. 70; [1927] Argus. L. R. 417.—AUS.

PART IX. SECT. 6, SUB-SECT. 18.  
A. (a).

631 i. *Partnership property*—*Transfer of share by partner's executors*.]—DUCKETT v. COLLECTOR OF IMPOSTS, [1927] V. L. R. 457; 49 A. L. T. 82; [1927] Argus. L. R. 379.—AUS.

*so. Land*—*Undivided share*.]—A transfer of an undivided share of land is, for the purposes of Stamps Act, 1915, a transfer of land. A transfer of land may be dutiable as a transfer of land on a sale thereof, though the sale includes both land & personal property.—DUCKETT v. COLLECTOR OF IMPOSTS, [1927] V. L. R. 457; 49 A. L. T. 82; [1927] Argus. L. R. 379.—AUS.

## Part XIV.—Expenditure of the Revenue.

837. *Add. Annotation*:—*Reid. Re Article X of Articles of Agreement for a Treaty between Great Britain & Ireland (1928), 45 T. L. R. 57.*

839. *Add. Annotation*:—*Reid. Re Article X of Articles of Agreement for a Treaty between Great Britain & Ireland (1928), 45 T. L. R. 57.*

843a. **Savings Certificates — Nomination to — Validity.**—War Savings Certificates Regulations, 1919, although they do not expressly mention Savings Banks Act, 1887 (c. 40),

are not *ultra vires*, because they modify, & incorporate & apply as modified, the rules as to nominations contained in that Act. Thus, they make it possible for any holder of War Savings Certificates to nominate recipients of the certificates held, & any such nomination may include certificates held in excess of the authorised maximum, notwithstanding that certificates so held are liable to be forfeited.—*Re KIMBER, VALE v. ROCKMAN*, [1928] Ch. 749; 97 L. J. Ch. 430; 139 L. T. 550; 72 Sol. Jo. 545.

### PART XIII. SECT. 1, SUB-SECT. 1.

st. *Trial of issue—To determine fact*

*essential to defence—Amendment of defence.*—*R. v. MUTUAL FIRE ASSOCN. OF CANADA, LTD.* (1926), 58 N. S. R. 420.—CAN.

### PART IV. SECT. 1.

sw. *Right of Crown to fix amount.*—*KIDD v. R.*, [1924] Exch. C. R. 29.—CAN.



## ROYAL FORCES.

### Part I.—The Royal Navy.

**33a. Right to indemnity—For expenses in case of damage to ship or stores.]—**A Govt. steamer assisted a merchantman, on a stipulation to reimburse all expenses arising from damage to the steamer or the stores:—*Held*: such stipulation was no bar to salvage compensation.—*THE LUSTRE* (1834), 3 Hag. Adm. 154; 166 E. R. 363.

*Annotations*:—**Consd.** *The Ewell Grove* (1835), 3 Hag. Adm. 209. **Refd.** *The Lord Dufferin* (1849), 7 Notes of Cases Supp. xxxiii.

— **Ship “specially equipped with salvage plant.”]**—A cable ship belonging to the Admty. & in the employ of the Post Office rendered salvage services to a vessel, which had lost her propeller & required towage

assistance. The cable ship was fitted with grappling ropes & other salvage gear, & was specially constructed for laying & repairing submarine telegraph cables:—*Held*: even assuming the equipment constituted “salvage plant,” the vessel was not “specially equipped with salvage plant,” which meant plant of a kind that a vessel would not be equipped with except for the purpose of rendering salvage services, & the Admty. were not entitled to claim salvage remuneration in respect of the services of the vessel under Merchant Shipping (Salvage) Act, 1916 (c. 41).—*THE MORGANA*, [1920] P. 442; 89 L. J. P. 232; 124 L. T. 254; 36 T. L. R. 747; 15 Asp. M. L. C. 160.

### Part V.—The Regular Army.

**139. Add. Annotation**:—**Mentd.** *Re Article X of Articles of Agreement for a Treaty between Great Britain & Ireland* (1928), 45 T. L. R. 57.

### Part IX.—Matters Common to Navy, Army and Air Force.

**265. Add. Annotation**:—**Consd.** *Mackenzie-Kennedy v. Air Council* (1927), 138 L. T. 8.

## SALE OF GOODS.

### Part. I—The Contract of Sale Generally.

9. *Add. Annotation*:—**Refd.** *Dominion Press v. Customs & Excise Minister*, [1928] A. C. 340. 44. *Add. Annotation*:—**Refd.** *Dominion Press Customs & Excise Minister*, [1928] A. C. 3

### Part II.—Formation of Contract.

200. *Add. Citations*:—138 L. T. 154; 72 Sol. Jo. 14; 33 Com. Cas. 101.  
 341. *Add. Annotation*:—**Refd.** *Royal Exchange Assce. v. Hope*, [1928] Ch. 179.  
 403a. — **Perishing of only part of goods.**—Sale of Goods Act, 1893 (c. 71), s. 6, applies where there is a contract for the sale of specific goods & a part, but the whole, of the goods has, without the knowledge of the parties to the contract, already ceased to exist.—*BARROW, LANE & BALLARD, LTD. v. PHILIP PHILLIPS & CO., LTD.* (1928), 45 T. L. R. 133; 72 Sol. Jo. 874.  
 472. *Add. Annotation*:—**Consd.** *Charles v. Cardiff Collieries* (1928), 44 T. L. R. 448.

### Part III.—Conditions and Warranties.

512. *Add. Annotation*:—**Refd.** *Morelli v. Fitch & Gibbons*, [1928] 2 K. B. 636.  
 553. *Add. Citations*:—*affd.* (1928), 138 L. T. 663; 44 T. L. R. 297; 17 Asp. M. L. C. 428; 33 Com. Cas. 213, C. A.  
 564. *Add. Annotation*:—**Refd.** *Finlay v. N. V. Kwik Hoo Tong Handel Maatschappij*, [1928] 2 K. B. 604.  
 619a. **Sale of wine of particular brand.**—Pltf. asked for a bottle of S.'s ginger wine at the licensed premises of defts. While pltf. was endeavouring to draw the cork with a cork-screw, the bottle broke at the neck & injured him:—**Held**: the sale was one by description, & the bottle was not of merchantable quality, & the condition that it was of such quality implied under Sale of Goods Act, 1893 (c. 71), s. 14 (2), had been broken, & pltf. was entitled to damages.—**MORELLI v. FITCH & GIBBONS**, [1928] 2 K. B. 636; 97 L. J. K. B. 812; 44 T. L. R. 737; 72 Sol. Jo. 503, D. C.  
 621. *Add. Annotation*:—**Refd.** *Barker v. Agius* (1927), 33 Com. Cas. 120.  
 643a. — **MELLISH v. MOTTEUX** (1792), Peake, 156; 170 E. R. 113, N. P.  
*Annotations*:—**N.F.** *Baglehole v. Walters* (1811), 3 Camp. 154. **Refd.** *Pickering v. Dowson* (1813), 4 Taunt. 779.  
 643b. — **If a ship is sold "with all faults,"** the seller is not liable to an action in respect of latent defects which he knew of without disclosing at the time of the sale, unless he used some artifice to conceal them from the purchaser.—*BAGLEHOLE v. WALTERS* (1811), 3 Camp. 154; 170 E. R. 1338, N. P.  
*Annotations*:—**Apld.** *Pickering v. Dowson* (1813), 4 Taunt. 779; *Bywater v. Richardson* (1834), 1 Ad. & El. 508. **Apprvd.** *Ward v. Hobbs* (1879), 48 L. J. Q. B. 281. **Refd.** *Gorton v. Macintosh* (1882), 31 W. R. 232.  
 643c. — **Although a ship be sold "to be taken with all faults,"** the vendor cannot avail himself of that stipulation, if he knew of secret defects in her, & used means to prevent the purchaser from discovering them, or made a fraudulent representation of her condition at the time of the sale.—*SCHNEIDER v. HEATH* (1813), 3 Camp. 506; 170 E. R. 1462, N. P.  
*Annotations*:—**Consd.** *Ward v. Hobbs* (1877), 3 Q. B. D. 150. **Refd.** *Cornfoot v. Fowke* (1840), 6 M. & W. 358.  
 682. *Add. Annotation*:—**Refd.** *London Holeproof Hosiery Co. v. Padmore* (1928), 44 T. L. R. 499.  
 744a. **Effect of Sale of Goods Act, 1893 (c. 71), s. 14 (1).**—*MEDWAY OIL & STORAGE CO., LTD. v. SILICA GEL CORPN.* (1928), 33 Com. Cas. 195, H. L.  
 780a. — **Bottle—For wine.**—**MORELLI v. FITCH & GIBBONS**, No. 619a, *ante*.

#### PART II. SECT. 4, SUB-SECT. 7.— B. (a).

**sd. Marginal note—Giving power to vary or confirm option.**—**Held**: the contract form containing the marginal note constituted a memorandum sufficient to satisfy Stat. Frauds.—*J. B. ROGERS, LTD. v. HARRY LESNIE, LTD.* (1927), 27 S. R. N. S. W. 427; 44 N. S. W. W. N. 149.—**AUS.**

#### PART II. SECT. 4, SUB-SECT. 9.

346 i. — **By execution of contract.**—*COOLIN v. COOLIN* (Sask.), [1920] 3 W. W. R. 812.—**CAN.**

#### PART III. SECT. 4, SUB-SECT. 2.—A. 623 vi. — **FOXTON v. HAMILTON STEEL & IRON CO., LTD.** (1901), 21 C. L. T. 286; 1 O. L. R. 393.—**CAN.**

#### PART III. SECT. 18, SUB-SECT. 1.

**c. Reversd.** on the facts, 59 S. C. R. 118.

#### PART III. SECT. 18, SUB-SECT. 2.

**k. Reversd.**, 43 S. C. R. 614.

#### PART III. SECT. 19, SUB-SECT. 1.—B.

**d. Reversd.** on the facts, 59 S. C. R. 118.

#### PART III. SECT. 19, SUB-SECT. 2.— D. (b).

**g i. —** **Circumstances in which**:—**Held**: pltf. was not entitled to damages for the loss alleged to have been sustained by him by his inability to carry out contracts into which he alleged he had entered.—*McKENNY v. DRUMMOND & DVORETSKY* (1927), 29 W. A. L. R. 6.—**AUS.**

**sl. Return of purchase-money.**—*McKENNY v. DRUMMOND & DVORETSKY* (1927), 29 W. A. L. R. 6.—**AUS.**

782. *Add. Annotation*:—**Refd.** *Morelli v. Fitch & Gibbons*, [1928] 2 K. B. 636.
852. *Add. Annotation*:—**Mentd.** *Konskier v. Goodman*, [1928] 1 K. B. 421.
- 885a. *Date of shipment—In bill of lading—C. i. f. contract.*—**JAMES FINLAY & CO. v. N. V. KWIK HOO TONG HANDEL MAATSCHAPPIJ**, No. 1814a, *post*.
893. *Add. Annotation*:—**Refd.** *Livock v. Pearson* (1928), 33 Com. Cas. 188.
926. *Add. Citation*:—33 Com. Cas. 120.
995. *Add. Annotations*:—**Consd.** *Re Hall & Pini's Arbitration* (1928), 139 L. T. 50. **Refd.** *Finlay v. N. V. Kwik Hoo Tong Handel Maatschappij*, [1928] 2 K. B. 604.
996. *Add. Annotation*:—**Apld.** *Barker v. Agius* (1927), 33 Com. Cas. 120.
1016. *Add. Annotation*:—**Refd.** *Finlay v. N. V. Kwik Hoo Tong Handel Maatschappij*, [1928] 2 K. B. 604.
1024. *Add. Annotation*:—**Refd.** *Evans v. Webster* (1928), 45 T. L. R. 136.
1025. *Add. Annotation*:—**Refd.** *Finlay v. N. V. Kwik Hoo Tong Handel Maatschappij*, [1928] 2 K. B. 604.

## Part IV.—Effects of the Contract.

1089. *Add. Citations*:—*affd.* (1928), 138 L. T. 663; 44 T. L. R. 297; 17 Asp. M. L. C. 428; 33 Com. Cas. 213, C. A.
1261. *Add. Annotation*:—**Refd.** *Simeons v. Durand's Trustee*, [1928] 2 K. B. 66.
1268. *Add. Annotation*:—**Refd.** *Simeons v. Durand's Trustee*, [1928] 2 K. B. 66.
1272. *Add. Annotation*:—**Refd.** *Simeons v. Durand's Trustee*, [1928] 2 K. B. 66.
1399. *Add. Annotation*:—**Refd.** *English Hop Growers v. Dering*, [1928] 2 K. B. 174.
1403. *Add. Annotation*:—**Apld.** *Palmolive Co. (of England) v. Freedman*, [1928] Ch. 264.
1404. *Add. Citations*:—[1928] Ch. 264; 138 L. T. 274.
1409. *Add. Annotation*:—**Consd.** *Palmolive Co. (of England) v. Freedman*, [1928] Ch. 264.
1435. *Add. Annotation*:—**Refd.** *Barker v. Agius* (1927), 33 Com. Cas. 120.

## Part VI.—Performance of the Contract.

1516. *Add. Annotation*:—*As to* (1) **Refd.** *Royal Exchange Assce. v. Hope*, [1928] Ch. 179.
1811. *Add. Annotation*:—**Refd.** *Foreman & Ellams v. Blackburn*, [1928] 2 K. B. 60.
1812. *Add. Annotation*:—*As to* (2) **Consd.** *Foreman & Ellams v. Blackburn*, [1928] 2 K. B. 60.
- 1812a. ——— **Shipment of goods before contract—Ship visiting other ports before issue of bill of lading.**—A contract, dated July 2, provided for the sale of frozen rabbits & their shipment from Sydney c.i.f. Liverpool by a named steamer to sail during Aug. The bill of lading, which was dated Aug. 17, stated that the goods had been shipped by the steamer, then lying in Sydney. The steamer shipped the goods, or the bulk of them, at Sydney on June 25, when she proceeded to Queensland ports, thereafter returning to Sydney, & finally sailing from that port for Liverpool on Aug. 17. The buyers declined to take delivery of the goods, & the sellers claimed damages from them for breach of contract:—**Held**: the sellers were not entitled to recover, inasmuch as they had themselves committed breaches of the contract, by supplying goods the shipment of which had already taken place before the date of the contract of sale, & by tendering a bill of lading the issue of which had been delayed for so long as seven weeks after the shipment, the steamer having in the meantime visited other ports several hundred miles from the port of shipment.—**FOREMAN & ELLAMS, LTD. v. BLACKBURN**, [1928] 2 K. B. 60; 97 L. J. K. B. 355; 139 L. T. 68; 33 Com. Cas. 359; 17 Asp. M. L. C. 461.
- 1814a. ——— **Date of shipment incorrectly stated.**—The seller under a c.i.f. contract is bound to procure & tender to the buyer a bill of lading which shall correctly state the date of shipment.
- Where the seller under a c.i.f. contract, under which delivery is to be made in a specified month, tenders to the buyer a bill of lading in which the date of shipment is incorrectly stated, the shipment in fact not taking place in the month specified in the contract, the buyer, being deprived of his right to reject the tender of documents, is entitled to damages for the breach by the seller of his obligation to deliver a correct bill of lading, the measure of which is the difference between the market price & the contract price of the goods sold where the contract price is higher than the market price.—**JAMES FINLAY & CO. v. N. V. KWIK HOO TONG HANDEL MAATSCHAPPIJ**, [1928] 2 K. B. 604; 97 L. J. K. B. 817; 139 L. T. 582; 44 T. L. R. 643; 72 Sol. Jo. 468.
1816. *Add. Annotations*:—**Refd.** *De Monchy v. Phoenix Insee. of Hartford* (1928), 138 L. T. 703; *Tredegart v. Harwood*, [1928] Ch. 59.

### PART VI. SECT. 1, SUB-SECT. 3.

1498 iii. ——— *C.i.f. contract.*—Under a c.i.f. contract providing for payment against documents the pur-

chaser is under no obligation to take up documents that do not in fact relate to goods of the description contracted for, & a refusal to take up a draft does not necessarily prove th

the buyer was not ready & willing to perform the contract.—**HENRY DEAN & SONS (SYDNEY), LTD. v. P. O'DAY PROPRIETARY, LTD.** (1927), 39 C. L. R. 330; [1927] Argus. L. R. 233.—**AUS.**



1850. *Add. Annotation*:—**Refd.** De Monchy v. Phoenix Insce. of Hartford (1928), 138 L. T. 703.
1858. *Add. Annotation*:—**Distd.** Aronson v. Mologa Holzindustrie A/G Leningrad (1927), 138 L. T. 470.

## Part VII.—Rights of Unpaid Seller Against Goods.

2384. *Add. Annotation*:—**Apld.** A.-G. v. Pritchard (1928), 97 L. J. K. B. 561.
- After this case add "As regards hire-purchase agreements generally, see BAILMENT, Vol. III., p. 96, Nos. 257, 258."
2388. *Add. Annotation*:—**Distd.** A.-G. v. Pritchard (1928), 97 L. J. K. B. 561.

## Part VIII.—Breach of the Contract.

- 2493a. ———.—**Sturge v. Philpotts** (1839), 8 L. T. 30.
- 2519a. *Failure of seller to deliver correct bill of lading—Measure of damages.*—**JAMES FINLAY & Co. v. N. V. Kwik Hoo Tong Handel Maatschappij**, No. 1814a, *ante*.
2569. *Add. Annotation*:—**Distd.** *Re* Hall & Pim's Arbitration (1928), 139 L. T. 50.
2575. *Add. Citations*:—97 L. J. K. B. 60; 33 Com. Cas. 60.
2590. *Add. Annotation*:—**Refd.** Kasler & Cohen v. Slavouski, [1928] 1 K. B. 78.
2612. *Add. Citations*:—**Revsd.** (1928), 139 L. T. 50; 33 Com. Cas. 324, H. L.
- Add. Annotation*:—**Refd.** Finlay v. N. V. Kwik Hoo Tong Handel Maatschappij, [1928] 2 K. B. 604.
2618. *Add. Annotation*:—**Refd.** Finlay v. N. V. Kwik Hoo Tong Handel Maatschappij, [1928] 2 K. B. 604.
2644. *Add. Citation*:—[1927] B. & C. R. 140.
2687. *Add. Citation*:—138 L. T. 470.

**PART VI. SECT. 3, SUB-SECT. 1.**  
*sp. Retention of goods—With knowledge of mistake by vendor—Acceptance implied.*—**ACKERMAN v. MORRISON** (1911), 45 N. S. R. 185; 9 E. L. R. 397.—**CAN.**

**PART VI. SECT. 3, SUB-SECT. 3.—**  
**B. (a).**  
**1887 vii.** ———.—**WENTWORTH ORCHARD CO., LTD. v. MERCHANTS CONSOLIDATED, LTD. (Man.)**, [1922] 1 W. W. R. 291; 68 D. L. R. 227.—**CAN.**

**PART VIII. SECT. 2, SUB-SECT. 2.—A.**  
**h i.** ——— *Shipment f.o.b.*  
**v. SISCO** (1913), 29 O. L. R. 200; 4 O. W. N. 1498.—**CAN.**

## SALE OF LAND.

## Part I.—The Contract of Sale.

87. *Add. Annotation*:—**Consd.** *Farr, Smith v. Messers*, [1928] 1 K. B. 397.
128. *Add. Annotation*:—**Refd.** *Re Howden & Hyslop's Contract*, [1928] Ch. 479.
133. *Add. Annotation*:—**Generally, Refd.** *Bernard v. Williams* (1928), 139 L. T. 22.
195. *Add. Annotation*:—**Mentd.** *Houghton v. Nothard, Lowe & Wills*, [1928] A. C. 1.
198. *Add. Annotation*:—**As to (1) Refd.** *Chaney v. Maclow* (1928), 97 L. J. Ch. 349.
214. *Add. Annotation*:—**Refd.** *Arseculeratne v. Perera*, [1928] A. C. 173.
- 228a. ——— **Of part of property.**—There being a parol agreement for the purchase of a farm & farm house, the possession of the farm by the purchaser will be held an act of part performance sufficient to authorise the ct. to execute the contract, even though the house should have been occupied adversely to him.—**KING v. TURNER** (1824), 3 L. J. O. S. Ch. 58.
283. *Add. Annotation*:—**Apld.** *Johnson v. Clarke*, [1928] Ch. 847.
330. After this case add "**In lease.**"—**See LANDLORD & TENANT**, Vol. XXX., pp. 472–477."

## Part IV.—Conditions of Sale, Particulars and Special Stipulations.

585. *Add. Annotation*:—**Refd.** *Charles v. Cardiff Collieries* (1928), 44 T. L. R. 448.
634. *Add. Citations*:—97 L. J. Ch. 4; 138 L. T. 26. *Add. Annotation*:—**Mentd.** *Coles v. White City Manchester Greyhound Asscn.* (1928), 45 T. L. R. 125.
636. *Add. Annotation*:—**Consd.** *Bernard v. Williams* (1928), 139 L. T. 22.
- 771a. ——— ———].—**CURTIS v. FRENCH** (1928), 45 T. L. R. 15; 72 Sol. Jo. 762.
895. *Add. Annotation*:—**Expld.** *Bernard v. Williams* (1928), 139 L. T. 22.
912. *Add. Annotation*:—**Refd.** *Bernard v. Williams* (1928), 139 L. T. 22.
913. *Add. Annotation*:—**Refd.** *Bernard v. Williams* (1928), 139 L. T. 22.
916. *Add. Annotation*:—**Refd.** *Bernard v. Williams* (1928), 139 L. T. 22.
925. *Add. Annotation*:—**Refd.** *Bernard v. Williams* (1928), 139 L. T. 22.

## Part V.—Vendor's Title.

1078. *Add. Annotation*:—**Distd.** *Turner v. Watts* (1928), 138 L. T. 680.
- 1104a. **Sale by vendor in specified capacity.**—Where, in a vendor & purchaser contract, it is stated that the vendor will make title in a specified capacity, the contract does not amount to a warranty that he will make title in a particular manner. The warranty is no more than a warranty that a good title shall be made; & the purchaser can be forced to accept such good title, even though made by the vendor in a capacity other than that specified.
- By special conditions of sale, subject to which two houses were sold by auction, it was stated that the vendors were selling as "trustees for sale" under the will of A. On examination of the title by the purchasers, it appeared that no trust for sale was contained in the will:—**Held**: the above statement did not affect the powers of the vendors to make a good title as the legal personal representatives of A.—**Re SPENCER & HAUSER'S CONTRACT**, [1928] Ch. 598; 97 L. J. Ch. 335; 139 L. T. 287; 72 Sol. Jo. 336.
1151. *Add. Annotation*:—**Folld.** *Re Spencer & Hauser's Contract*, [1928] Ch. 598.
1152. *Citations*:—For "[1928] W. N. 135" read "No. 1104a, ante."
1219. *Add. Annotation*:—**Refd.** *Re Spencer & Hauser's Contract*, [1928] Ch. 598.
- 1416a. ——— **Subsequent purchase by solicitor from client.**—A solr., who has been employed to advise on a title, cannot, on purchasing the land himself of his client, set up an objection, which he did not think of any importance when advising his principal.—**BEEVOR v. SIMPSON** (1829), Tam. 69; 48 E. R. 28.
- 1458a. **S. P. FLOOD v. PRITCHARD** (1879), 40 L. T. 873.

PART I. SECT. 9, SUB-SECT. 2.—E.  
259 i. *Whether collateral agreement binding—Condition to detriment of party seeking to enforce agreement.*—**KIBBLEWHITE v. GARLAND**, [1928] N. Z. L. R. 135.—N.Z.

260 ii. ———].—**KITCHEN v. BOON** (1876), 24 Gr. 195.—CAN.

PART III. SECT. 8, SUB-SECT. 2.—A.  
k. *Revd.*, 7 A. R. 282.

PART IV. SECT. 2, SUB-SECT. 10.—B.

r (p. 118) i. ———].—**SHERRIN v. WIGGINS**, [1917] 2 W. W. R. 895; 27 Man. L. R. 572.—CAN.

## Part VI.—Position of Parties Pending Completion.

- 1597a. —.]—PINCKE v. CURTEIS (1793), 4 Bro. C. C. 333, n. ; 29 E. R. 920. 1640. *Add. Citation* : —[1928] Ch. 340.  
1786. *Add. Citation* : —[1927] B. & C. R. 137.

## Part VII.—Vendor and Purchaser Summons.

1823. *Add. Annotation* : —*Refd.* Johnson v. Clarke, [1928] Ch. 847. 1863. *Add. Annotation* : —*Generally, Mentd.* Johnson v. Clarke, [1928] Ch. 847.

## Part VIII.—Remedies under an Uncompleted Contract.

- 1944a. S. P. WESTERMAN v. PANTLIN (1900), 3 Seton on Judgments & Orders 7th ed. 2218. *Annotation* : —*Folld.* Olde v. Olde, [1904] 1 Ch. 35.  
2009a. —.]—BERNARD v. WILLIAMS, No. 2182, *post*.  
2013. *Add. Annotation* : —*Dbtd.* Bernard v. Williams (1928), 139 L. T. 22.  
2014. *Add. Annotation* : —*Refd.* Bernard v. Williams (1928), 139 L. T. 22.  
2061. *Add. Annotation* : —*Refd.* Bernard v. Williams (1928), 139 L. T. 22.  
2182. To the existing paragraph add as follows :—  
*Semble* : if time had not been of the essence, pltf. would not, in an action for recovery of deposit, have been entitled to rely on the absence of any memorandum in writing of the contract.  
*Add. Citation* : —139 L. T. 22.  
2242a. —.]—Part of purchase-money & money spent on improvements.]—CORNWALL v. WILLIAMS (1701), Colles, 117 ; 1 E. R. 209, H. L.

## Part IX.—The Conveyance.

2366. *Add. Annotation* : —*Refd.* Bernard v. Williams (1928), 139 L. T. 22. Council v. I. R. Comrs., English Branch Council of General Medical Council v. Same (1928), 139 L. T. 225.  
2382. *Add. Annotations* : —*Refd.* General Medical

## Part XI.—Position of Parties after Completion.

2656. *Add. Annotation* : —*Refd.* Graigola Merthyr Co. v. Swansea Corp., [1928] Ch. 235. 2705a. —.]—Pltf. & deft. both derived title to their respective properties from a common predecessor, who on his own purchase of both properties in 1876 covenanted with his vendors not to erect any dwelling-house at a less cost price than £800, or any pair of semi-detached villas at a less cost price than £1,200. In 1927 deft. built houses at prices exceeding these amounts, but the houses,  
2698. *Add. Annotation* : —*Consd.* Sunderland & South Shields Water Co. v. Hilton (1928), 97 L. J. K. B. 516.  
2700. *Add. Annotation* : —*Distd.* Sunderland & South Shields Water Co. v. Hilton (1928), 97 L. J. K. B. 516.

PART VI. SECT. 1, SUB-SECT. 2.—A.  
st. What amounts to possession—*Actual occupation of part.*]—MCKINNON v. McDONALD (1867), 13 Gr. 152.—CAN.

PART VIII. SECT. 1, SUB-SECT. 1.—A.  
k (p. 221) i. —]—*Requisites of valid cancellation notice.*]—BROWN v. ROBERTS (1912), 17 B. C. R. 16.—CAN.  
sm. Vendor unable to give title—*Through purchaser's acts—Liability of purchaser under contract.*]—WILKIN v. BROWN (Alta.), [1927] 2 D. L. R. 87.—CAN.

PART VIII. SECT. 2, SUB-SECT. 3.—  
C. (b).  
o. *Revsd.*, 33 O. L. R. 78.

PART VIII. SECT. 2, SUB-SECT. 3.—G.  
sp. Form of action.]—CLARKE v. ANDERSON (1839), 4 Ont. Dig. 7210.—CAN.

PART VIII. SECT. 3.  
o (p. 242) i. —.]—HAGEN v. FERRIS (1915), 31 W. L. R. 661 ; 8 W. W. R. 1039.—CAN.

PART VIII. SECT. 4, SUB-SECT. 3.—  
A. (a).  
st. Vendor unable to give title—*Public Works Act, 1908, s. 116.*]—UPHAM v. BARDEES, [1927] N. Z. L. R. 722.—N.Z.

PART VIII. SECT. 4, SUB-SECT. 3.—  
D. (a).  
p. *Revsd.*, 15 Sask. L. R. 410.

PART VIII. SECT. 7, SUB-SECT. 4.—  
A. (c).  
2335 i. *Revsd.*, 10 Alta. L. R. 478.

PART IX. SECT. 8, SUB-SECT. 3.—  
B. (c) ii.

2532 i. *Authority to receive purchase-money.*]—Where the vendor's solicitor appropriated the purchase-money to his own use:—*Held* : the solr. was agent for the vendor, who must bear the loss.—CHEESEMAN v. COREY (1913), 13 E. L. R. 469 ; 15 D. L. R. 445.—CAN.



## Cases 2705a—3040. ENGLISH AND EMPIRE DIGEST SUPPLEMENT.

owing to the great increase of building prices since 1876, were not of the type indicated by the prices of that date:—*Held*: deft. had not broken the 1876 covenants, which, on construction, related to the building prices ruling at the time the houses were actually erected.—GRANT v. DERWENT, [1928] Ch. 902; 97 L. J. Ch. 434; 92 J. P. Jo. 702.

2779. *Add. Annotation*:—*Reid*. Grant v. Derwent, [1928] Ch. 902.

2972. *Add. Annotation*:—*Mentd.* Weld v. Petre (1928), 97 L. J. Ch. 399.

3040. *Add. Annotation*:—*Mentd.* Weld v. Petre (1928), 97 L. J. Ch. 399.

PART XI. SECT. 2, SUB-SECT. 5.  
B. (d).

VANALSTINE (1837), 5 O. S. 454.— ‘assets’ within *Land Titles Act*, s. 94.]  
CAN.

PART XI. SECT. 4, SUB-SECT. 1.

—NORTH v. LAUWERYSSEN (Alta.),  
[1927] 2 D. L. R. 758; [1927] 1  
W. W. R. 687.—CAN.

f i. —.—VANDEBURGH v.

sy. Execution — Whether “liquid

# SET-OFF AND COUNTERCLAIM.

## Part I.—Set-Off.

2. *Add. Annotation* :—**Mentd.** Aktieselskabet Ocean v. Harding, [1928] 2 K. B. 371. *Estates v. Woodside Estate Co., Amersham* (1927), 97 L. J. K. B. 72 ; *Earle v. Hemsworth* R. D. C. (1928), 44 T. L. R. 758.
192. *Add. Annotations* :—**Refd.** Cottage Club

## Part II.—Counterclaim.

307. *Add. Annotation* :—*As to* (1) **Refd.** Lowe v. Bentley (1928), 44 T. L. R. 388. 327. *Add. Citation* :—72 Sol. Jo. 254.
314. *Add. Annotation* :—**Refd.** Lowe v. Bentley (1928), 44 T. L. R. 388. 372. *Add. Annotation* :—**Mentd.** Crossingham v. Park, [1928] 1 K. B. 330.
319. *Add. Annotation* :—**Refd.** Aktieselskabet Ocean v. Harding, [1928] 2 K. B. 371. 379. *Add. Annotation* :—**Refd.** Lowe v. Bentley (1928), 44 T. L. R. 388.

## Part III.—Pleading and Practice.

535. *Add. Annotation* :—**Refd.** Medway Oil & Storage Co. v. Continental Contractors (1928), 45 T. L. R. 20. 569. *Add. Annotation* :—**Folld.** Medway Oil & Storage Co. v. Continental Contractors, [1929] A. C. 88.
550. *Add. Annotation* :—**Refd.** Medway Oil & Storage Co. v. Continental Contractors, [1929] A. C. 88. 570. *Add. Annotation* :—**Refd.** Medway Oil & Storage Co. v. Continental Contractors, [1929] A. C. 88.
562. *Add. Citations* :—*reversd. sub nom.* MEDWAY OIL & STORAGE CO. v. CONTINENTAL CONTRACTORS, [1929] A. C. 88 ; 45 T. L. R. 20, H. L. 571. *Add. Annotation* :—**Apprvd. & Folld.** Medway Oil & Storage Co. v. Continental Contractors, [1929] A. C. 88.
568. *Add. Annotation* :—**Distd.** Medway Oil & Storage Co. v. Continental Contractors, A. C. 88. 574. *Add. Annotation* :—*As to* (3) **Consd.** Medway Oil & Storage Co. v. Continental Contractors, [1929] A. C. 88.

**PART I. SECT. 4, SUB-SECT. 1.**  
p. *Reversd.*, [1913] A. C. 160.

**PART II. SECT. 2, SUB-SECT. 5.**  
r (p. 414) i. — Counterclaim for

*fraudulent misrepresentation.*—*Held* : the counterclaim being based not upon the contract but upon delict, could not be dealt with in the action on the contract.—**SMART v. WILKIN-**

**SON**, [1928] S. C. 383.—**SCOT.**

**PART III. SECT. 1, SUB-SECT. 2.**  
p. For “ Q. R. 29 S. C. 516,” read  
“ *reversd.*, 29 S. C. R. 516.”

## SETTLEMENTS.

### Part II.—Creation and Construction of Settlements.

- 134a. "For default of such issue."—DOE d. LEES v. FORD (1853), 2 E. & B. 970; 2 C. L. R. 654; 23 L. J. Q. B. 53; 22 L. T. O. S. 184; 18 Jur. 420; 118 E. R. 1029.

### Part III.—Contracts for Settlements.

165. *Add. Annotation* :—*Refd.* Chaney v. Maclow (1928), 97 L. J. Ch. 349.  
 203. *Add. Annotation* :—*As to* (2) *Appld.* *Re* Marshall, Graham v. Marshall, [1928] Ch. 661.  
 291. *Add. Annotation* :—*Mentd.* *Re* Price, [1928] Ch. 579.  
 533. *Add. Annotation* :—*Refd.* *Re* Smith, Franklin v. Smith, [1928] Ch. 10.  
 535. *Add. Annotation* :—*Appld.* *Re* Smith, Franklin v. Smith, [1928] Ch. 10.  
 583. *Add. Annotation* :—*Refd.* *Re* Brooks, Public Trustee v. White, [1928] Ch. 214.

### Part V.—Consideration for Settlements.

770. *Add. Annotation* :—*Mentd.* Royal Exchange Assce. v. Hope, [1928] Ch. 179.  
 803a. ———.]—BURROWS v. GREENWOOD (1840), 4 Y. & C. Ex. 251; 5 Jur. 384; 160 E. R. 999.  
 803b. ———.]—The trustees & *cestui que trust* under a voluntary settlement cannot compel the settlor to perform any further act than he has already done to render such a settlement operative.—DENING v. WARE (1856), 22 Beav. 184; 4 W. R. 523; 52 E. R. 1078.

### Part VII.—Revocation and Avoidance of Settlements.

- 897a. ——— By subsequent sale of settled property.] —*Held*: the selling out of the settled stock did not amount to a virtual revocation of the settlement.—BLACKWELL v. WOOD (1831), 1 L. J. Ch. 35.  
 938a. ———.]—LAMPERT v. LAMPERT (1789), 1 Ves. 20; 30 E. R. 210.

### Part VIII.—Beneficial Interests in Personalty.

- 1059a. — Application of accumulations during minority.]—Certain property was vested in the Public Trustee under a settlement, whereby the settlor directed him after her decease to pay the income to the tenants for life therein mentioned, & directed that after the death of any tenant for life the share of that tenant for life should be held in trust for the grandchildren of the settlor in manner therein mentioned. One of the tenants for life died in the lifetime of the settlor. A summons was taken out by the Public Trustee for the direction of the ct. as to the application of the accumulations of income of the share of the tenant for life who died in the lifetime of the settlor, having regard to the facts that (a) no grandchild of the settlor had attained the age of twenty-one years, or being female had married, at the death of the settlor; (b) one of the grandchildren of the settlor was born after the dates, when two of such grandchildren had attained the age of twenty-one years, & (c) a grandchild of the settlor, who survived the settlor, died under the age of twenty-one years :—*Held*: (1) the property from which the accumulated income arose must be regarded as the share to which the infant would become ultimately entitled, even though that share might be reduced by reason of other members of the class coming into existence; (2) the share of the grandchild, who had died under the age of twenty-one years, which had been provisionally assigned to that grandchild, ought to be treated as not having been properly assigned, & that portion of the money which had accrued while the infant was a member of the class, & which had not been applied in the maintenance & education of the infant, ought to be reassigned amongst the other persons who were at that time members of the class;



(3) observations on the method of dealing with accumulations of income provisionally assigned to infant members of a class, having regard to Conveyancing Act, 1881 (c. 41),

s. 43, & Trustee Act, 1925 (c. 19), s. 31.—*Re KING, PUBLIC TRUSTEE v. ALDRIDGE*, [1928] Ch. 330; 97 L. J. Ch. 172; 138 L. T. 641.

## Part X.—Tenant for Life and Remainderman.

**1869.** *Add. Annotation*:—*As to (2) Apld. Re Robins, Holland v. Gillam*, [1928] Ch. 721.

**1872.** *Add. Annotation*:—*As to (2) Dlst. Re Robins, Holland v. Gillam*, [1928] Ch. 721.

**1873.** For the existing paragraph substitute the following paragraph:—

— — — — —.]—Testator, who died in 1871, devised his real estate to his trustees upon trust to divide the income during a long period, namely during the joint lives & the life of the survivor of a large class of persons, amongst another class of persons, their respective exors., administrators & assigns; & declared that, on cesser of the period, the land should be sold, & the net proceeds of sale divided amongst a third class of persons only then ascertainable, & he gave his trustees a power of sale until the trust for sale arose. Immediately before the commencement of Law of Property Act, 1925 (c. 20), all the *cestuis que vie* were dead except one, & all the original participants in income were also dead except one, & the income for many years had been distributed amongst their respective estates or assigns:—*Held*: (1) the land was held in undivided shares within Law of Property Act, 1925, Sched. I., Part IV., par. 1.

The trustees having received, through their surveyor, a notice from the local authority that certain premises, forming part of the trust estate, were in a defective condition,

carried out the necessary repairs, & temporarily paid the cost thereof out of the rents of the trust estate:—*Held*: (2) the trustees having asked the ct. for directions, the ct. was free to determine how the expenses ought to be borne; (3) the expenses should be borne by capital.—*Re ROBINS, HOLLAND v. GILLAM*, [1928] Ch. 721; 97 L. J. Ch. 417; 139 L. T. 393.

**1976.** *Add. Annotation*:—*Mentd. Mallett v. Staveley Coal & Iron Co.* (1927), 138 L. T. 201.

**2007.** *Add. Annotation*:—*Apld. Re Bates, Mountain v. Bates*, [1928] Ch. 682.

**2009a.** — — — — —.]—The directors of a co. owning & operating steam trawlers, having sold some of their vessels for sums largely exceeding the values at which they stood in the co.'s balance sheet, carried the proceeds to a suspense account & afterwards distributed them as cash bonuses to the shareholders, with a covering letter stating that such bonuses were capital payments not liable to income tax or super tax:—*Held*: not having been capitalised by the issue of bonus shares increasing the total capital, the payments were income receivable by the tenant for life during his life.—*Re BATES, MOUNTAIN v. BATES*, [1928] Ch. 682; 97 L. J. Ch. 240; 139 L. T. 162; 72 Sol. Jo. 468.

**2035.** *Add. Annotations*:—*Dlst. Re Bates, Mountain v. Bates*, [1928] Ch. 682; *Parker v. Chapman* (1928), 138 L. T. 729.

## Part XI.—Custody of Title Deeds.

**2363.** *Add. Annotation*:—*Mentd. Thomas v. Jones*, [1928] P. 162.

## Part XII.—Express Powers in Instruments.

**2396.** *Add. Annotation*:—*Refd. Johnson v. Clarke*, [1928] Ch. 847.

**2399a.** Power to sell under subsequent settlement—Reference to former settlement—"Ulterior to limitations therein."—*Held*: the expression "ulterior to the limitations therein" meant ulterior in point of position in the

deed, & not ulterior in point of time.—*MORGAN v. RUTSON* (1848), 16 Sim. 234; 17 L. J. Ch. 419; 11 L. T. O. S. 238; 12 Jur. 813; 60 E. R. 863.

**2570.** *Add. Annotation*:—*Refd. A.-G. v. Tasker* (1928), 92 J. P. 157.

## Part XIII.—Statutory Powers in Relation to Settled Property.

**2596.** *Add. Annotation*:—*Refd. Re Draycott Settled Estate*, [1928] Ch. 371.

**2597.** For the existing paragraph substitute the following paragraph:—

— *Settled Land Act, 1925 (c. 18), ss. 1, 2.*—Land was, on Dec. 31, 1925, held by two persons under a devise contained in a will, made in 1888, as joint tenants in fee simple

absolutely, subject to a charge for £1,000 created in 1869 in consideration of marriage:—*Held*: (1) the land was settled land within Settled Land Act, 1925, ss. 1 (1) (v) & 2, & it was excepted from the application of Law of Property Act, 1925 (c. 20), s. 36 (1); (2) there was nothing in the context to give to the words "settled land" in Law of Property Act, 1925, s. 36 (1), any other meaning than that given by sect. 205 (1) (*xavi*).—*Re GAUL & HOULSTON'S CONTRACT*, [1928] Ch. 689; 97 L. J. Ch. 362; 139 L. T. 473, C. A.

2598. *Add. Citations*:—97 L. J. Ch. 193; 139 L. T. 59.

2602. *Add. Annotation*:—**N.F.** *Re Parker's Settled Estates*, *Parker v. Parker*, [1928] Ch. 247.

2652. *Add. Annotation*:—**Refd.** *Re Adelom, Oakshott v. Hawkins* (1928), 72 Sol. Jo. 810.

2676. *Add. Annotation*:—**Consd.** *Re Robins, Holland v. Gillam*, [1928] Ch. 721.

2679a. ——— **Trust for accumulation of income for payment of mortgages.**—*Re STEVENS & DUNSBY'S CONTRACT*, [1928] W. N. 187.

2732. *Add. Annotation*:—**Refd.** *Re Adelom, Oakshott v. Hawkins* (1928), 72 Sol. Jo. 810.

2739. *Add. Annotation*:—*As to* (2) **Refd.** *Re Adelom, Oakshott v. Hawkins* (1928), 72 Sol. Jo. 810.

2798. *Add. Annotation*:—**Refd.** *Re Price*, [1928] Ch. 579.

3046. *Add. Annotations*:—*As to* (1) **Apld.** *Re Catchpool, Harris v. Catchpool*, [1928] Ch. 429. **Consd.** *Re Gaul & Houlston's Contract*, [1928] Ch. 689. **Refd.** *Re Parker's Settled Estates, Parker v. Parker*, [1928] Ch. 247.

3047. *Add. Citation*:—97 L. J. Ch. 161.

*Add. Annotation*:—**Refd.** *Re Gaul & Houlston's Contract*, [1928] Ch. 689.

3047a. ———.]—On Dec. 31, 1925, certain land stood limited to the use of A. for life, & after his death, subject to certain jointure rentcharges for life, & subject to certain portions which had been charged upon the estate, & which had been further secured by the limitation of a legal term, to the use of trustees upon trust for sale. The settlement under which the land so stood limited was a compound settlement, consisting of various documents, including two deeds of 1911 & 1913. In due course a vesting deed was executed in favour of A. A. died on Dec. 4, 1926, & probate, limited to the settled land, was granted to the trustees of the compound settlement as his special representatives, on the footing that that settlement did not come to an end on his death. There were separate trustees of the two deeds of 1911 & 1913. Clause 11 of the 1911 deed gave to the trustees thereof all the powers conferred on a tenant for life by Settled Land Acts, 1882 to 1890:—*Held*: (1) the whole legal estate, the subject-matter of the settlement, was not held upon trust for sale; (2) in view of clause 11 of the 1911 deed the trustees of the two deeds of 1911 & 1913 were persons on whom Settled Land Act, 1925 (c. 18), s. 23 (1), conferred the powers of a tenant for life, & they were statutory owners under the compound settlement; & when they sold the land they would sell it as statutory owners & not as trustees for sale, & they must pay over the proceeds of sale to the trustees of the compound settlement.—*Re NORTON, PINNEY v. BEAUCHAMP*, [1929] 1 Ch. 84.

## Part XV.—Land Held in Undivided Shares.

3138. For the existing paragraph substitute the following paragraph:—

——— **Settled land.**—By the will of testator, who died in 1884, his real estate was devised to trustees upon trust to permit his widow to receive the rents thereof during her life, & after her decease upon trust to pay same to or for the benefit of such of his two daughters, E. & M., as should be then living & should for the time being be single & unmarried in equal shares if more than one, & when both should be married upon trust as to both capital as well as income for all testator's children in equal shares. Testator's widow died in 1889, & on the death of E., in 1927, questions arose as to the respective interests of E. & M. & testator's children in the income & capital of the real estate. The ct. having decided that E. & M. were entitled to the income of the real estate during their joint lives in equal shares, & upon the death of E. her sister M. became entitled to the whole of the income during her spinsterhood, & upon her marriage or death the whole estate would become divisible in equal shares between the children of testator, the further question arose whether, on Law of Property Act, 1925 (c. 20), coming into force, the devised real estate vested in the then surviving trustee of the will upon the statu-

tory trusts under Sched. I., Part IV., par. 1 (1), or in her or the Public Trustee under par. 1 (3):—*Held*: (1) as the purposes of the trusts of testator's will were such as might continue beyond the life of his widow, the real estate devised by the will was, at the date of Law of Property Act, 1925, coming into force, by the effect of Wills Act, 1837 (c. 26), s. 31, vested in the then surviving trustee of the will in fee simple in trust for E. & M., who were then beneficially interested in equity until one of them should marry or die in undivided shares vested in possession; (2) although their interests were not absolute interests, the case fell within Sched. I., Part IV., par. 1 (1), & the real estate thereupon vested in the trustee of the will upon the statutory trusts; (3) when a case fell within par. 1 (1) it did not become necessary to consider whether it fell within any of the subsequent sub-paragraphs.—*Re DAWSON'S SETTLED ESTATES*, [1928] Ch. 421; 97 L. J. Ch. 343; 139 L. T. 94.

*Annotation*:—*As to* (2) **Refd.** *Re Robins, Holland v. Gillam*, [1928] Ch. 721.

3139. *Add. Citation*:—72 Sol. Jo. 86.

*Add. Annotations*:—**Consd.** *Re Robins, Holland v. Gillam*, [1928] Ch. 721. **Refd.** *Re Dawson's S. E.*, [1928] Ch.

**3139a.** Land held under one & same settlement—Vesting in trustees—Who are trustees.]—Where immediately before the coming into operation of Law of Property Act, 1925 (c. 20), the entirety of the land is settled land held under one & the same settlement, it vests in the trustees, if any, of the settlement under the old law as joint tenants upon the statutory trusts. If there are no such trustees then, pending their appointment, the land vests in the Public Trustee upon the statutory trusts.—*Re CATCHPOOL*,

*HARRIS v. CATCHPOOL*, [1928] Ch. 429; 97 L. J. Ch. 131; 139 L. T. 17; 72 Sol. Jo. 226.

**3140.** *Add. Annotation* :—As to (1) *Reid. Re Robins*, *Holland v. Gillam*, [1928] Ch. 721.

**3143.** *Citation* :—For the existing citation read “No. 1873, *ante*.”

**3146.** *Add. Annotation* :—*Folld. Re Robins*, *Holland v. Gillam*, [1928] Ch. 721.

**3148.** *Add. Citations* :—97 L. J. Ch. 197; 138 L. T. 735.

## Part XVI.—Resettlements.

**3171.** *Add. Annotation* :—Generally, *Reid. Re Parker's Settled Estates*, *Parker v. Parker*, [1928] Ch. 247.



## SEWERS AND DRAINS.

## Part I.—Sewers and Drains for Sanitary Purposes.

107. *Add. Annotation* :—**Refd.** Clark v. Epsom R. D. C. (1928), 45 T. L. R. 106.

148. *Add. Annotation* :—**Refd.** Clark v. Epsom R. D. C. (1928), 45 T. L. R. 106.

158. *Add. Annotation* :—**Refd.** Clark v. Epsom R. D. C. (1928), 45 T. L. R. 106.

250. *Add. Citation* :—26 L. G. R. 174.

319. *Add. Annotation* :—**Dlstd.** Grant v. Derwent, [1928] Ch. 902.

319a. ——— **Liability of owner requesting local authority to lay connecting pipe.**—Subject to the rights of a corpn. as highway & sewer authority, pltf. owned the soil of a public road with a sewer therein. Deft.'s property abutted on this road, as well as on another sewered road, & he was entitled under

Public Health Act, 1875 (c. 55), s. 21, to cause his drains to empty into the corpn.'s sewers, on giving proper notice & complying with regulations. At deft.'s request & acting under their local Act, the corpn. connected deft.'s combined drain with the sewer in pltf.'s road, carrying the connecting pipe through a small portion of pltf.'s subsoil :—**Held** : the corpn.'s acts were fully justified by the local Act, even if not by Public Health Acts, & whatever right for compensation pltf. might have against the corpn. for damage sustained by reason of the exercise of their statutory powers, he had no cause of action against deft. for requesting the corpn. to exercise those powers.—**GRANT v. DERWENT**, [1928] Ch. 902; 97 L. J. Ch. 434; 92 J. P. Jo. 702.

## Part III.—Sewers under Commissioners of Sewers.

351. *Add. Annotation* :—**Mentd.** Ormond Investment Co. v. Betts, [1928] A. C. 143.

403. *Add. Annotation* :—**Refd.** Graigola Merthyr Co. v. Swansea Corpn., [1928] Ch. 235.

## Part IV.—Sewers Rate.

457. *Add. Citations* :—97 L. J. K. B. 13; 138 L. T. 72.

# SHIPPING AND NAVIGATION.

## Part I.—In General.

80. *Add. Annotation* :—**Mentd.** Smith, *Hogg v. Bamberger* (1928), 97 L. J. K. B. 725.

## Part II.—Ownership and Control of Ships.

177. *Add. Annotation* :—**Refd.** Aron v. Miall (1928), 139 L. T. 562.

493. *Add. Annotation* :—**Refd.** Kerr v. Marine Products (1928), 44 T. L. R. 292.

## Part III.—Master, Officers and Crew.

614a. **Protection of open hatchways—Breach of statutory duty—Effect of contributory negligence.**—Pltf. was a coal trimmer, & in proceeding to his work on defts.' ship along a passage-way which he was entitled to go along, he stumbled & fell down an open hatchway into one of the holds of the ship, & was injured. He sued defts. for damages, basing his action on a breach of a statutory regulation made under 1894 Act, which provided for the fencing & protection of open

hatchways on ships :—**Held** : pltf.'s own contributory negligence was an answer to his claim against defts. based on a breach of statutory duty.—**DEW v. UNITED BRITISH S.S. Co., Ltd.** (1928), 139 L. T. 628, C. A.

685. *Add. Annotations* :—As to (3) **Refd.** First Russian Insce. v. London & Lancashire Insce. [1928] Ch. 922. As to (4) **Refd.** First Russian Insce. v. London & Lancashire Insce., [1928] Ch. 922. **Generally, Refd.** The Penelope, [1928] P. 180.

## Part V.—General Statutory Provisions for Safety of Ship and Cargo.

1596. *Add. Citation* :—17 Asp. M. L. C. 303.

## Part VII.—Carriage of Goods.

1682. *Add. Annotation* :—**Refd.** A.-G. v. Blackpool Corpn. (1928), 92 J. P. 50.

1780a. **Breach of duty—Broker assuming to charter vessel to himself—Ratification of wrongful act.**—Pltfs., owners of the *D.*, instructed H., a broker, to procure a charterparty for their ship. H. being minded, in breach of his duty as a broker, to make use of the ship for his own ends, purported to effect a charterparty dated Aug. 9, 1926, between pltfs. & an export co. of Danzig " & others " as charterers. This document was signed by H. " as agent only " for the owners & by H. " on behalf of the charterers as per separate chartering notes." By one of the clauses of the document the shipowners were to have a lien for all dead freight & demurrage at the port of loading. H. had no authority to act on behalf of the export co., who knew nothing about the transaction. Defts., timber merchants in London, bought from S. & Co., shippers in Danzig, red wood at a price including cost, freight & insurance from Danzig to London. S. & Co. engaged

cargo space for the wood on board the *D.*, by means of chartering notes signed by H. purporting to act " by order of the owners," but without their authority, & the wood was shipped on board the *D.* at Danzig under bills of lading signed by H. purporting to act for & on behalf of & with the authority of the master. Each bill of lading incorporated the terms, conditions & clauses of the so-called charterparty of Aug. 9, among which was the above lien clause. The bills of lading were indorsed by S. & Co. & tendered under the contract of sale to defts., who accepted them & paid S. & Co. for the goods. The *D.* left Danzig without a full cargo several days after the lay days had expired. When she arrived in London the master deposited the wood with wharfingers subject to a lien in favour of pltfs. for dead freight & demurrage, & pltfs. brought an action against defts. for a declaration that they were entitled to the lien :—**Held** : the lien clause in the document of Aug. 9 was incorporated in the bills of lading, on the grounds that (1) pltfs., by taking the cargo on board their ship & issuing

bills of lading in respect of it after they knew of H.'s breach of duty in assuming to charter their vessel to himself, had ratified his act & so validated the charterparty, & (2) the incorporation of the lien clause was not in any way dependent or contingent upon the charterparty being a valid or effective document, for in the absence of a condition to the contrary, one document, or part thereof, might be incorporated in another, although the first document had, of itself, no legal effect whatever; (3) defts. could not support a plea in avoidance of circuitry of action, because it was essential to that plea that the amount recoverable by deft. pleading it from pltf. in the action in which it was pleaded should be the exact amount recoverable by pltf. from him; & as S. & Co. were not parties to the action, it could not be averred that the damages, if any, recoverable by defts. from S. & Co. for breach of the contract of sale would be the same in amount as the sum recoverable by pltf. from defts. under the terms of the bills of lading, & it did not appear that S. & Co. had any cause of action against pltf., whose liabilities depended upon the bills of lading.—**AKT. OCEAN v. HARDING (B.) & SONS, LTD.**, [1928] 2 K. B. 371; 97 L. J. K. B. 684; 139 L. T. 217; 33 Com. Cas. 277; 17 Asp. M. L. C. 465, C. A.

1796. *Add. Annotation*:—As to (1) **Refd.** The Penelope, [1928] P. 180.

1958. *Add. Annotation*:—As to (4) **Refd.** Akt. Ocean v. Harding, [1928] 2 K. B. 371.

2129. *Add. Annotations*:—**Consd.** First Russian Insce. v. London & Lancashire Insce., [1928] Ch. 922; Hyman v. Hyman, Hughes v. Hughes, [1929] 1 K. B. 1. **Refd.** The Penelope, [1928] P. 180.

2136. *Add. Annotations*:—As to (1) **Refd.** The Penelope, [1928] P. 180. As to (2) **Consd.** First Russian Insce. v. London & Lancashire Insce., [1928] Ch. 922. **Generally, Refd.** Hyman v. Hyman, Hughes v. Hughes, [1929] 1 K. B. 1.

2212. *Add. Annotation*:—As to (2) **Consd.** Foreman & Ellams v. Blackburn, [1928] 2 K. B. 60.

2230a. —.].—Defts. bought timber to be shipped to Liverpool, & it was shipped in pltf.'s steamer along with the cargo of other shippers. The bill of lading was a clean bill, stating that a specified quantity had been shipped in good condition, & incorporating the terms of the charterparty, which provided that the statements in the bill of lading as to the goods having been shipped in good condition, & as to the aggregate number of pieces delivered to the steamer, should be conclusive evidence against the shipowner. At the time of signing the bill of lading the master signed a protest stating that part of defts.' goods was in bad condition. Defts. were indorsees of the bill of lading, & after the arrival of the steamer pltf. informed them that part of the cargo had been damaged before shipment. There being nothing to indicate to defts. that the damaged part belonged to them, defts. accepted the bill

of lading, when presented, & they paid for the timber. On delivery they found that the timber was defective, & that the quantity was less than the specified quantity. The shipowner sued defts. for balance of freight, & defts. counterclaimed for damages for delivering part of the goods in a damaged condition, & for failing to deliver part of the goods shipped:—**Held**: as the information of defts. was not of such a nature as to justify them in rejecting the bill of lading, pltf. was estopped from disputing the statements in it, & defts. were entitled to succeed on their counterclaim.—**EVANS v. JAMES WEBSTER & BROTHERS, LTD.** (1928), 45 T. L. R. 136.

2249. *Add. Citation*:—17 Asp. M. L. C. 307.

2254. *Add. Annotation*:—As to (2) **Refd.** Evans v. Webster (1928), 45 T. L. R. 136.

2257. *Add. Annotation*:—As to (2) **Refd.** Evans v. Webster (1928), 45 T. L. R. 136.

2259. *Add. Annotation*:—**Distd.** Evans v. Webster (1928), 45 T. L. R. 136.

2262a. **Damage before shipment.**]—**EVANS v. JAMES WEBSTER & BROTHERS, LTD.**, No. 2230a, *ante*.

2287. *Add. Annotation*:—**Refd.** Evans v. Webster (1928), 45 T. L. R. 136.

2450. *Add. Annotation*:—**Refd.** Akt. Ocean v. Harding, [1928] 2 K. B. 371.

2515. *Add. Annotation*:—**Refd.** Akt. Ocean v. Harding, [1928] 2 K. B. 371.

2526. *Add. Annotation*:—**Refd.** Akt. Ocean v. Harding, [1928] 2 K. B. 371.

2609. *Add. Annotation*:—**Apld.** Firemen's Fund Insce. v. Western Australian Insce. & Atlantic Insce. (1927), 138 L. T. 108.

2642. *Add. Annotation*:—**Refd.** Gosse Millard v. Canadian Government Merchant Marine, [1928] 1 K. B. 717.

2655. *Add. Annotation*:—As to (3) **Refd.** Akt. Ocean v. Harding, [1928] 2 K. B. 371.

2680. *Add. Annotation*:—As to (1) **Refd.** Gosse Millard v. Canadian Government Merchant Marine, [1928] 1 K. B. 717.

2683. *Add. Annotations*:—**Consd.** Foreman & Ellams v. Federal Steam Navigation Co., [1928] 2 K. B. 424. **Apld.** Gosse Millard v. Canadian Government Merchant Marine (1928), 45 T. L. R. 63.

2700. *Add. Annotation*:—**Refd.** Gosse Millard v. Canadian Government Merchant Marine, [1928] 1 K. B. 717.

2711. *Add. Annotations*:—**Consd.** Foreman & Ellams v. Federal Steam Navigation Co., [1928] 2 K. B. 424. **Apld.** Gosse Millard v. Canadian Government Merchant Marine, [1928] 1 K. B. 717. **Refd.** Gosse Millard v. Canadian Government Merchant Marine (1928), 45 T. L. R. 63; The Touraine, [1928] P. 58.

2712. *Add. Annotations*:—**Consd.** Foreman & Ellams v. Federal Steam Navigation Co., [1928] 2 K. B. 424; Gosse Millard v. Canadian Government Merchant Marine (1928), 45 T. L. R. 63.

PART VII. SECT. 3, SUB-SECT. 4.—A.

a. *Revsd.*, 30 S. C. R. 473.

PART VII. SECT. 5, SUB-SECT. 3.—C. (a).

b. *Revsd.*, 27 L. C. J. 39 n. P. C.



2714. *Add. Annotation*:—**Consd.** Gosse Millard v. Canadian Government Merchant Marine (1928), 45 T. L. R. 63.
2720. *Add. Citation*:—17 Asp. M. L. C. 294.  
*Add. Annotations*:—*As to* (1) **Consd.** Foreman & Ellams v. Federal Steam Navigation Co., [1928] 2 K. B. 424; Gosse Millard v. Canadian Government Merchant Marine (1928), 45 T. L. R. 63.
2721. *Add. Citations*:—17 Asp. M. L. C. 385; 33 Com. Cas. 139; *revsd.*, 45 T. L. R. 63, H. L.  
*Add. Annotation*:—**Consd.** Foreman & Ellams v. Federal Steam Navigation Co., [1928] 2 K. B. 424.
2722. *Add. Citations*:—44 T. L. R. 204; 17 Asp. M. L. C. 413.
2724. *Add. Citation*:—33 Com. Cas. 70.
2725. *Add. Citations*:—[1928] 2 K. B. 424; 72 Sol. Jo. 103; 17 Asp. M. L. C. 447; 33 Com. Cas. 168.
2777. *Add. Citation*:—17 Asp. M. L. C. 265.
2856. *Add. Citations*:—[1928] P. 180; 97 L. J. P. 127; 139 L. T. 355; 72 Sol. Jo. 557.
2962. *Add. Annotation*:—**Refd.** Smith, Hogg v. Bamberger (1928), 97 L. J. K. B. 458.
2974. *Add. Annotation*:—*As to* (1) **Apld.** Smith, Hogg v. Bamberger (1928), 97 L. J. K. B. 725.
3045. *Add. Annotation*:—**Apld.** Firemen's Fund Insce. v. Western Australian Insce. & Atlantic Insce. (1927), 138 L. T. 108.
3054. *Add. Citation*:—17 Asp. M. L. C. 311.
3100. *Add. Annotations*:—**Refd.** Foreman & Ellams v. Federal Steam Navigation Co., [1928] 2 K. B. 424; Gosse Millard v. Canadian Government Merchant Marine (1928), 45 T. L. R. 63.
3118. *Add. Annotation*:—**Apld.** Firemen's Fund Insce. v. Western Australian Insce. & Atlantic Insce. (1927), 138 L. T. 108.
3124. *Add. Annotation*:—**Refd.** The Touraine, [1928] P. 58.
3170. *Add. Annotation*:—*As to* (2) **Refd.** Akt. Ocean v. Harding, [1928] 2 K. B. 371.
3172. *Add. Annotation*:—**Refd.** Frenkel v. Macandrews (1928), 139 L. T. 327.
3177. *Add. Citation*:—17 Asp. M. L. C. 479.
3188. *Add. Annotation*:—*As to* (1) **Apld.** Canadian Pacific Ry. v. Kelvin Shipping Co. (1927), 138 L. T. 369.
3224. *Add. Annotation*:—**Mentd.** Gosse Millard v. Canadian Government Merchant Marine, [1928] 1 K. B. 717.
3604. *Add. Annotation*:—**Refd.** Smith, Hogg v. Bamberger (1928), 97 L. J. K. B. 725.
3624. *Add. Citation*:—17 Asp. M. L. C. 305.  
*Add. Annotation*:—**Refd.** Smith, Hogg v. Bamberger (1928), 97 L. J. K. B. 458.
3635. *Add. Annotation*:—**Consd.** Smith, Hogg v. Bamberger (1928), 97 L. J. K. B. 725.
3642. *Add. Annotation*:—**Refd.** Lambert v. I. R. Comrs. (1927), 12 Tax Cas. 1053.
3643. *Add. Annotation*:—**Mentd.** The W. H. Randall, [1928] P. 41.
3801. *Add. Annotation*:—**Refd.** Akt. Ocean v. Harding, [1928] 2 K. B. 371.
3836. *Add. Citation*:—17 Asp. M. L. C. 245.
- 4001a. ——— Whether lien clause incorporated

in bill of lading.]—**AKT.** OCEAN v. HARDING (B.) & SONS, LTD., No. 1780a, *ante*.

4126a. **Validity of charterparty—Breach of duty by broker procuring charterparty—Ratification of wrongful act.**—**AKT.** OCEAN v. HARDING (B.) & SONS, LTD., No. 1780a, *ante*.

4221. *Add. Annotation*:—**Refd.** Symington v. Union Insce. Soc. of Canton (1928), 97 L. J. K. B. 646.

4248a. ——— **Resps.** insured claimant's steamer by a policy providing that general average was to be adjusted according to the York-Antwerp Rules of 1924. The ship was chartered to go to Bordeaux to load for Cardiff, the charterparty also providing that average, if any, should be settled according to those rules. During loading at Bordeaux the foremast broke, & damage was done to the ship. For the purpose of repair she was moved to another dock within the port, & the shipowners incurred expenses as follows: wages & provisions of crew, cost of handling & discharging cargo for the purpose of repairs, cost of coal consumed in going in & out & keeping steam up, expense of towing in & out & mooring & port expenses, & cost of coal consumed in shifting the vessel. While staying at Bordeaux the ship was in no danger. On completion of repairs & loading she left for Cardiff, & while she was at sea she fouled some wreckage without any negligence of those on board her, & though there was no immediate danger she was made unfit to encounter the ordinary perils of the sea, & the master put into Cherbourg, as a port of refuge, & had repairs effected. The expenses at Cherbourg were similar to those at Bordeaux:—**Held**: (1) the cost of repairs in each case was recoverable as particular average; (2) the other expenses at Bordeaux could not be claimed as general average, since no danger was in operation there; (3) the other expenses at Cherbourg could be claimed as general average since, though there was no immediate danger, the vessel was not fit, without repair, to encounter the perils of the sea.—**VLASSOPOULOS v. BRITISH & FOREIGN MARINE INSURANCE CO., LTD.** (1928), 44 T. L. R. 725; 72 Sol. Jo. 612.

4253a. ——— **VLASSOPOULOS v. BRITISH & FOREIGN MARINE INSURANCE CO., LTD.**, No. 4248a, *ante*.

4260. *Add. Annotation*:—**Generally, Mentd.** Gosse Millard v. Canadian Government Merchant Marine, [1928] 1 K. B. 717.

4260a. ——— **VLASSOPOULOS v. BRITISH & FOREIGN MARINE INSURANCE CO., LTD.**, No. 4248a, *ante*.

4283a. ——— **Cost of shifting ship.**—**VLASSOPOULOS v. BRITISH & FOREIGN MARINE INSURANCE CO., LTD.**, No. 4248a, *ante*.

4363. *Add. Annotation*:—**Refd.** Smith, Hogg v. Bamberger (1928), 97 L. J. K. B. 458.

4372. *Add. Annotation*:—**Distd.** Akt. Ocean v. Harding, [1928] 2 K. B. 371.

4392. *Add. Annotation*:—**Refd.** Smith, Hogg v. Bamberger (1928), 97 L. J. K. B. 458.

4394. *Add. Annotation*:—**Distd.** Smith, Hogg v. Bamberger (1928), 97 L. J. K. B. 725.

PART VII. SECT. 6, SUB-SECT. 1.—B. (1927), 1 L. R. 52 Bom. 327.—**IND.**

3039 v. ——— **BURJOR F. R. JOSHI v. ELLERMAN CITY LINES, LTD.**

PART VII. SECT. 7, SUB-SECT. 6.  
3652 i. *Revsd.*, 30 S. C. R. 473.

PART VII. SECT. 15, SUB-SECT. 1.

4339 i. *Revsd.*, 33 S. C. R. 1  
4357 i. *Revsd.*, 33 S. C. R. 1.

4440. *Add. Annotation* :—**Refd.** Smith, Hogg v. Bamberger (1928), 97 L. J. K. B. 458.
4449. *Add. Annotation* :—**Consd.** Smith, Hogg v. Bamberger (1928), 97 L. J. K. B. 725.
4452. *Add. Annotation* :—**Refd.** Smith, Hogg v. Bamberger (1928), 97 L. J. K. B. 458.
4470. *Add. Citations* :—97 L. J. K. B. 725 ; 139 L. T. 575 ; 72 Sol. Jo. 435.
4472. *Add. Annotation* :—**Consd.** Smith, Hogg v. Bamberger (1928), 97 L. J. K. B. 725.
4475. *Add. Annotation* :—*As to* (1) **Consd.** Smith, Hogg v. Bamberger (1928), 97 L. J. K. B. 458.
4485. *Add. Annotation* :—**Distd.** Smith, Hogg v. Bamberger (1928), 97 L. J. K. B. 725.

## Part VIII.—Freight.

4882. *Add. Annotation* :—**Refd.** Akt. Ocean v. Farding, [1928] 2 K. B. 371.

## Part XI.—Contract of Towage.

5130. *Add. Citations* :—44 T. L. R. 140 ; 17 Asp. M. L. C. 344.

## Part XII.—Collisions.

5194. *Add. Annotation* :—*As to* (3) **Refd.** Canadian Pacific Ry. v. Kelvin Shipping Co. (1927), 138 L. T. 369.
5400. *Add. Annotation* :—**Folld.** The Harkaway, [1928] P. 199.
- 5400a. ———.]—Defts.' sailing barge came to anchor in a river. She was lying on the mud anchored with fifteen fathoms of chain leading from her bows on to the mud & thence to the anchor lying in the channel, which at low water was a mere gut-way thirty feet wide. Pltfs.' motor boat, drawing 5 feet 3 inches aft & with about one foot of water under her, coming up the river in the deepest water there was at the time, went over one of the flukes of the anchor projecting up out of the mud at the bottom of the river, & was holed & sank :—**Held** : having regard to the shallowness of the water the anchor ought to have been buoyed or some other warning given of its position, & defts. were liable to pltfs. for the damage sustained.—**THE HARKAWAY**, [1928] P. 199 ; 97 L. J. P. 113 ; 139 L. T. 615 ; 44 T. L. R. 649.
- 5748a. ———.]—**Held** : to comply with the direction to "stop" & then "navigate with caution" a vessel should run her way off & bring herself as nearly as possible to a standstill ; & a vessel which alleged that, on hearing the fog whistle of the other vessel, she went dead slow by stopping her engines & then putting them slow ahead, & so continued alternately stopping & going slow ahead, was not complying with art. 16.—**THE UNION**, [1928] P. 175 ; 97 L. J. P. 126 ; 139 L. T. 448.
5757. *Add. Annotation* :—**Generally, Mentd.** The Young Sid (1928), 45 T. L. R. 138.
5818. *Add. Annotation* :—**Mentd.** *Re* Article X of Articles of Agreement for Treaty between Great Britain & Ireland (1928), 45 T. L. R. 57.
6080. *Add. Annotation* :—**Mentd.** The Young Sid, (1928), 45 T. L. R. 138.
6174. *Add. Citation* :—17 Asp. M. L. C. 289.
6241. *Add. Annotation* :—**Consd.** Canadian Pacific Ry. v. Kelvin Shipping Co. (1927), 138 L. T. 369.
6248. *Add. Annotation* :—**Apld.** Canadian Pacific Ry. v. Kelvin Shipping Co. (1927), 138 L. T. 369.
6255. *Add. Annotation* :—*As to* (1) **Apld.** Canadian Pacific Ry. v. Kelvin Shipping Co. (1927), 138 L. T. 369.
6256. *Add. Annotation* :—**Refd.** Canadian Pacific Ry. v. Kelvin Shipping Co. (1927), 138 L. T. 369.
6267. *Add. Annotation* :—**Refd.** Canadian Pacific Ry. v. Kelvin Shipping Co. (1927), 138 L. T. 369.
6414. *Add. Annotation* :—**Refd.** Dew v. United British S.S. Co. (1928), 139 L. T. 628.
6417. *Add. Annotation* :—**Consd.** Dew v. United British S.S. Co. (1928), 139 L. T. 628.
6499. *Add. Annotation* :—**Consd.** Dee Conservancy Board v. McConnell, [1928] 2 K. B. 159.
6501. *Add. Annotation* :—**Refd.** Dee Conservancy Board v. McConnell, [1928] 2 K. B. 159.
6504. *Add. Annotation* :—**Consd.** Dee Conservancy Board v. McConnell, [1928] 2 K. B. 159.
6562. *Add. Annotation* :—**Refd.** Dew v. United British S.S. Co. (1928), 139 L. T. 628.
6591. *Add. Annotation* :—**Apld.** Brooke v. Bool, [1928] 2 K. B. 578.
6624. *Add. Annotation* :—**Refd.** The Ikala, [1928] P. 86.
6659. *Add. Annotation* :—**Refd.** Canadian Pacific Ry. v. Kelvin Shipping Co. (1927), 138 L. T. 369.
6663. *Add. Annotation* :—**Refd.** The Ikala, [1928] P. 86.
6677. *Add. Citation* :—17 Asp. M. L. C. 402.
6742. *Add. Annotation* :—**Refd.** The Point Breeze, [1928] P. 135.
6758. *Add. Annotation* :—**Refd.** Engelke v. Musmann, [1928] A. C. 433.

## Part XIV.—Wreck.

6794. *Add. Annotation* :—*As to* (2) **Consd.** Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159.
6796. *Add. Annotation* :—**Consd.** Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159.
6797. *Add. Annotation* :—**Apld.** Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159.
6807. *Add. Annotations* :—*As to* (1) **Consd.** Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159; *G. W. Ry. v. S.S. Mostyn*, [1928] A. C. 57.
- 6809a. ————.]—A ketch belonging to defts. sank, owing to their negligence, in a river, of which first pl'ts. were the conservators, & thereby obstructed the navigation of the river & second pl'ts.' wharf & the approaches thereto. Immediately after

the sinking of the ketch, & before any expenses were incurred in removing her, defts. abandoned her. Pl'ts. jointly incurred expenses in removing the obstruction, & sued to recover the amount from defts. :—*Held* : (1) the ketch having sunk through the negligence of defts., they became liable at common law for the damage caused by the obstruction to the navigation of the river & the blocking of the approach to the wharf, & they could not escape liability for that damage by abandoning the wreck; (2) the damages recoverable were the reasonable cost of removing the obstruction.—**DEE CONSERVANCY BOARD v. MCCONNELL**, [1928] 2 K. B. 159; 97 L. J. K. B. 487; 138 L. T. 656; 92 J. P. 54; 26 L. G. R. 204; 17 Asp. M. L. C. 433, C. A.

## Part XV.—Salvage.

7056. *Add. Annotation* :—*As to* (2) **Refd.** *Akt. Ocean v. Harding*, [1928] 2 K. B. 371.

## Part XVI.—Pilotage.

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|--|---|
| 8002. <i>Add. Citation</i> :—17 Asp. M. L. C. 338.               | servancy Board <i>v.</i> Federated Coal & Shipping Co., [1928] 1 K. B. 492. |
| 8030. <i>Add. Annotation</i> :— <b>Distd.</b> <i>Humber Con-</i> |   |

## Part XVII.—Shipping Casualties.

8057. *Add. Annotation* :—**Refd.** *The Royal Star* (1927), 97 L. J. P. 49.

## Part XVIII.—Limitation of Liability of Owners and Others.

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|--|---|
| 8083. <i>Add. Citation</i> :—17 Asp. M. L. C. 270.   | <i>American Can Co. v. Same</i> , [1927] 2 K. B. 432. |
| <i>Add. Annotation</i> :— <b>Refd.</b> <i>Gosse Millard v. Canadian Government Merchant Marine</i> , |   |

## Part XIX.—Liens on Ship, Freight and Cargo.

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| 8200. <i>Add. Annotation</i> :— <b>Mentd.</b> <i>The Point Breeze</i> , [1928] P. 135.                       | 8216. <i>Add. Annotation</i> :— <b>Refd.</b> <i>G.W. Ry. v. S.S. Mostyn</i> , [1928] A. C. 57. |
| 8213. <i>Add. Annotation</i> :— <b>Mentd.</b> <i>Engelke v. Musmann</i> , [1928] A. C. 433.                  |  |
| 8215. <i>Add. Annotation</i> :— <b>Consd.</b> Dee Conservancy Board <i>v.</i> McConnell, [1928] 2 K. B. 159. | 8384. <i>Add. Annotation</i> :— <b>Mentd.</b> <i>The Point Breeze</i> , [1928] P. 135.         |

## Part XXI.—Harbours, Docks and Piers.

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| 8534. <i>Add. Citation</i> :—26 L. G. R. 1.  | emption claimed having been shown to be in existence for over one hundred years, the ct. would endeavour to find a legal origin for it, but, assuming the exemption to have been proved, it was abolished by Shipping Dues Exemption Act, 1867 (c. 15).— <i>New-</i> |
| 8546. <i>Add. Annotation</i> :— <b>Refd.</b> <i>Busby v. Avgherino</i> , [1928] A. C. 290. |  |
| 8564a. <b>Exemption—Abolition of.</b> — <i>Held</i> : the ex-                              |  |



PORT CORPN. *v.* ISLE OF WIGHT FARMERS' TRADING SOCIETY, LTD. (1928), 92 J. P. 109.

8643. *Add. Annotation* :—*Generally*, *Refd.* Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159.

8645. *Add. Citations* :—92 J. P. 18 ; 44 T. L. R. 179 ; 72 Sol. Jo. 16 ; 26 L. G. R. 91 ; 17 Asp. M. L. C. 367.

*Add. Annotation* :—*Consd.* Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159.

8661. *Add. Citations* :—*affd.* (1927), 138 L. T. 382 ; 26 L. G. R. 1 ; *sub nom.* BOSTON CORPN. *v.* WITHAM OUTFALL BOARD, 92 J. P. 1, H. L.

8665. *Add. Annotation* :—*Consd.* Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159.

8715. *Add. Citations* :—138 L. T. 286 ; 17 Asp. M. L. C. 347 ; 33 Com. Cas. 79.

*Add. Annotation* :—*As to* (1) *Folld.* Wickett *v.* Port of London Authority (1928), 138 L. T. 668.

8715a. —.]—Pltf., a lighterman, was in charge of a barge, which was being taken from a dock through a lock. The dock & lock

were both the property of defts. While pltf. was navigating the barge under the orders & directions of defts., a rope attached to the barge broke & struck pltf., causing him personal injuries. Pltf. had no option to refuse to take the rope on board. Defts. relied on the terms of a notice, exhibited on the pierhead of the lock, to the effect that lightermen availing themselves of the facilities & assistance of defts.' servants must do so at their own risk, & upon the understanding that no liability whatsoever should attach to defts. or their servants for any injury from whatever cause arising to or by the craft or to or by any person on board thereof :—*Held* : the words of the above notice were *prima facie* adequate to exempt defts. from liability for the negligence of their servants, & the fact that pltf. as compelled to regulate the barge according to the directions of the dockmaster was in no way inconsistent with the fact that he was in the circumstances "availing himself of the facilities & assistance" of defts., & did not deprive defts. of the exemption afforded by the notice. —WICKETT *v.* PORT OF LONDON AUTHORITY (1928), 138 L. T. 668.

## Part XXV.—Requisition of Ship by Government.

8733. *Add. Annotation* :—*As to* (2) *Distd.* Ensign Shipping Co. *v.* I. R. Comrs. (1928), 139 L. T. 111.

8749. *Add. Annotation* :—*Consd.* Clan Line Steamers *v.* Board of Trade, [1928] 2 K. B. 557.

8750. *Add. Annotations* :—*Consd.* Clan Line Steamers *v.* Board of Trade, [1928] 2 K. B. 557. *Refd.* Hain S.S. Co. *v.* Board of Trade, [1928] 2 K. B. 534.

8751. *Add. Annotations* :—*Consd.* Hain S.S. Co. *v.* Board of Trade, [1928] 2 K. B. 534. *Refd.* Clan Line Steamers *v.* Board of Trade, [1928] 2 K. B. 557.

8753. *Add. Annotations* :—*Consd.* Clan Line Steamers *v.* Board of Trade, [1928] 2 K. B. 557 ; Hain S.S. Co. *v.* Board of Trade, [1928] 2 K. B. 534.

8754. *Add. Annotation* :—*Refd.* Clan Line Steamers *v.* Board of Trade (1928), 97 L. J. K. B. 735.

8755. *Add. Annotations* :—*As to* (1) *Consd.* Clan Line Steamers *v.* Board of Trade, [1928] 2 K. B. 557. *Refd.* Hain S.S. Co. *v.* Board of Trade, [1928] 2 K. B. 534.

8755a. — — — —.]—The *C. M.* was requisitioned on behalf of the Crown in 1917 by a charterparty, which provided that the Crown should not be liable for marine risks, but should be liable for "all consequences of hostilities or warlike operations." Whilst so requisitioned, the *C. M.* sailed from New York in convoy, destined for Nantes, then a war base, but also an ordinary commercial

port, with a cargo, 84 per cent. of which in weight was for the civil commissariat, & 16 per cent. in weight was for war purposes. She was the third ship in the second column from the port hand in the convoy, another vessel, the *W. F.*, which admittedly was at all material times engaged upon & carrying out a warlike operation, being in the corresponding position on the port column. While the convoy was proceeding at night without lights the steering-gear of the *C. M.* suddenly broke down, she sheered seven points off her course & came across the bows of the *W. F.*, by which she was struck & sunk. There was no negligence on the part of those on board the *C. M.* :—*Held* : (1) the arbitrator was entitled to find that the *C. M.* was at no material time engaged, upon or carrying out a warlike operation, notwithstanding a portion of her cargo consisted of war material ; (2) the loss of the *C. M.* was not the consequence of a warlike operation, inasmuch as the dominant & direct cause of the loss was the break-down of her steering-gear & her sheering off her course.—CLAN LINE STEAMERS, LTD. *v.* BOARD OF TRADE, [1928] 2 K. B. 557 ; 97 L. J. K. B. 735 ; 44 T. L. R. 784 ; 72 Sol. Jo. 583 ; 33 Com. Cas. 375, C. A.

8760. *Add. Citations* :—[1928] 2 K. B. 534 ; 139 L. T. 566.

*Add. Annotation* :—*As to* (2) *Appld.* Clan Line Steamers *v.* Board of Trade, [1928] 2 K. B. 557.

